



## AGENDA

### PLANNING COMMITTEE MEETING

Date: Thursday, 25 June 2020  
Time: 7.00pm  
Venue: Virtual Meeting Via Skype\*

#### Membership:

Councillors Cameron Beart, Monique Bonney, Roger Clark, Simon Clark, Mike Dendor, Tim Gibson (Chairman), James Hall, James Hunt, Carole Jackson, Elliott Jayes, Peter Marchington, Benjamin Martin (Vice-Chairman), Ben J Martin, David Simmons, Paul Stephen, Tim Valentine and Tony Winckless.

Quorum = 6

#### RECORDING NOTICE

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#### Information for the Public

\* Members of the press and public can listen to this meeting live. Details of how to join the meeting will be added the website after **4pm on Wednesday 24 June 2020.**

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1. Apologies for Absence and Confirmation of Substitutes
2. Minutes

To approve the Minutes of the Meeting held on [28 May 2020](#) (Minute Nos. 672 - 678) as a correct record.

3. Declarations of Interest

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves or their spouse, civil partner or person with whom they are living with as a spouse or civil partner. They must declare and resolve any interests and relationships.

The Chairman will ask Members if they have any interests to declare in respect of items on this agenda, under the following headings:

(a) Disclosable Pecuniary Interests (DPI) under the Localism Act 2011. The nature as well as the existence of any such interest must be declared. After declaring a DPI, the Member must leave the meeting and not take part in the discussion or vote. This applies even if there is provision for public speaking.

(b) Disclosable Non Pecuniary (DNPI) under the Code of Conduct adopted by the Council in May 2012. The nature as well as the existence of any such interest must be declared. After declaring a DNPI interest, the Member may stay, speak and vote on the matter.

(c) Where it is possible that a fair-minded and informed observer, having considered the facts would conclude that there was a real possibility that the Member might be predetermined or biased the Member should declare their predetermination or bias and then leave the room while that item is considered.

**Advice to Members:** If any Councillor has any doubt about the existence or nature of any DPI or DNPI which he/she may have in any item on this agenda, he/she should seek advice from the Monitoring Officer, the Head of Legal or from other Solicitors in Legal Services as early as possible, and in advance of the Meeting.

## Part B reports for the Planning Committee to decide

### 4. Report of the Head of Planning Services

To consider the attached report (Parts 1, 2 and 5).

The Council operates a scheme of public speaking at meetings of the Planning Committee. All applications on which the public has registered to speak will be taken first. Requests to speak at the meeting must be registered with Democratic Services ([democraticservices@swale.gov.uk](mailto:democraticservices@swale.gov.uk) or call 01795 417328) by noon on Wednesday 24 June 2020.

**Issued on Tuesday, 16 June 2020**

The reports included in Part I of this agenda can be made available in **alternative formats**. For further information about this service, or to arrange for special facilities to be provided at the meeting, **please contact DEMOCRATIC SERVICES on 01795 417330**. To find out more about the work of the Planning Committee, please visit [www.swale.gov.uk](http://www.swale.gov.uk)

Chief Executive, Services Swale Borough Council,  
Swale House, East Street, Sittingbourne, Kent, ME10 3HT

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## SWALE BOROUGH COUNCIL

### PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

**25 JUNE 2020**

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**PART 2** Applications for which permission is recommended

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**PART 4** Swale Borough Council's own development; observation on County Council's development; observations on development in other districts or by Statutory Undertakers and by Government Departments; and recommendations to the County Council on 'County Matter' applications.

**PART 5** Decisions by County Council and the Secretary of State on appeal, reported for information

**PART 6** Reports containing "Exempt Information" during the consideration of which it is anticipated that the press and public will be excluded

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ABBREVIATIONS: commonly used in this Agenda

CDA Crime and Disorder Act 1998

GPDO The Town and Country Planning (General Permitted Development) (England) Order 2015

HRA Human Rights Act 1998

SBLP Swale Borough Local Plan 2017

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## INDEX OF ITEMS FOR PLANNING COMMITTEE – 25 JUNE 2020

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### PART 2

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**PLANNING COMMITTEE – 25 JUNE 2020****PART 1**

Report of the Head of Planning

**PART 1**

Any other reports to be considered in the public session

**1.1 Section 106 Year End Review 2019 / 2020****1. Highlights of the Year: April 2019 to March 2020**

<b>2019/2020 Highlights</b>	
Total Value of Agreements Signed 2019/2020	£ 264,925.89 **
Payments Received 2019/2020	£ 3,982,976.49
S106 Money Spent	£ 4,233,000.00
Balance at Year End	£ 2,183,000.00

There were 14 Section 106 agreements signed in 2019/2020 with a total value of £264,925.89 in financial contributions from developers.

NB: The figures are subject to audit review for Statement of Accounts 2019/20. Short Term liabilities £8k Grants and contributions move to short term liabilities as per the CIPFA Accounting Standards.

\*\*some applications are in outline form therefore the final number of units has not been approved and contribution amounts cannot be calculated.

Table 1 below shows the breakdown of all 36 planning obligations secured during 2019/2020 by obligation type and financial value.

**Table 1: Number and Value of Obligations by Obligation Type**

<b>Obligation Type</b>	<b>No of Obligations</b>	<b>Obligation Value (potential)</b>
Primary Education	1	TBC**
Secondary Education	1	TBC**
Electric Vehicle Charging Contributions	1	20,000.00
Healthcare	3	41,760.01 *
Highways	2	99,960.00*
Junction Improvements	1	27,105.00
Libraries	3	1,536.57*
Monitoring Fee	4	3425.70
Open Spaces	1	7,136.00
Public Art	1	10,000.00
SPA / SAMMS Contribution	12	19,551.59*
Sports Contribution	1	TBC**
Sustainable Transport	1	30,000.00
Wheeled Bins	4	4,451.02*
<b>TOTAL</b>	<b>36</b>	<b>£264,925.89**</b>

NB: \* denotes outline applications / \*\*additional contributions to be added once reserved matters applications have been approved

## 2. Notable Agreements

Two agreements in 2019/2020 had planning obligations with financial contributions worth more than £100,000. These agreements are in relation to the following schemes:

**Table 2: Schemes with More Than £100k in Financial Value**

Planning Ref	Scheme Address	No of obligations	Potential Obligation Value
18/502735/FULL	Land At Perry Court, Ashford Road, Faversham	5	£187,065.00
18/503855/OUT (reserved matters application received pending consideration (19/506047/REM))	Land Off Plover Road, Minster	7	£ TBC (anticipated to be in excess of £100k if reserved matters application is approved)
<b>TOTAL</b>		<b>12</b>	<b>£TBC</b>

None of the signed agreements during 2019/2020 contained obligations for the provision of affordable housing.

There was one agreement during 2019/2020 that provided for education contributions.

**Table 3: Schemes with Education Contributions**

Planning Ref	Scheme Address	Education Contributions
18/503855/OUT (reserved matters application received pending consideration (19/506047/REM))	Land Off Plover Road, Minster	£ TBC (anticipated to be in excess of £100k if reserved matters application is approved)
<b>TOTAL</b>		<b>£ TBC</b>

## 3. Payments Received From April 2019

Total payments received from April 2019 – March 2020 were £ 3,982,976.49. Table 4 below breaks down the value of receipts by obligation type.

**Table 4: Receipts by Obligation Type**

Obligation Type	Receipt £
(LAP) Local Area of Play	2,302.84
Adult Social Care	59,081.58
Community Infrastructure Provision **	207,242.14
Community Learning	24,344.05
Cycle Shelters	5,077.16
Education Primary Contribution	1,017,806.34
Education Secondary Contribution	812,661.52
Footpath	11,222.57
Greenspace Contribution	12,573.09
Healthcare	436,003.19
Highways	104,320.99
Indexation	22,883.57
Junction Improvements	326,443.77
Libraries	107,927.96
Monitoring Fee	41,220.46
National Highway Contribution	203,700.91
Off-Site Sports and Community Facility	54,250.22
Open Space	160,227.27
Public Art	16,448.86
Public Open Space Commuted sum	37,009.94
Refuse/Recycling Bins	42,093.35
SAMMS (Strategic Access Management & Mitigation)	174,104.07
Steam Open Space	25,295.06
Social Care Contribution	37,511.81
Temporary Highway Improvement Contribution	10,965.91
Youth Service Contribution	30,257.86
<b>TOTAL</b>	<b>£ 3,982,976.49</b>

\*\* Community Infrastructure Provision includes contributions for primary education £160,545.28; secondary education £160,466.40; libraries £13,372.76; community learning £1,983.74; adult social care £6,049.28

Notable payments received were:

- **£ 207,242.14** – Community Infrastructure Provision: Primary Education (£160,545.28) towards Sunnybank PS expansion; Secondary Education (£160,466.40) towards Sittingbourne College and Westlands Sec school expansions; Libraries (£13,372.76) towards bookstock and digital den in Sittingbourne Library; Community Learning (£1,983.74) towards creche for hard to reach parents in Murston (TES and Adult Learner nominated programme); Adult Social Care (£6,049.28) towards Changing place in Sittingbourne (application SW/12/0260 - (Heron Fields) Parcel H East Hall Farm, (Former School Site) Sittingbourne, Kent ME10 3TP)
- **£ 179,648.53** – Healthcare Contribution - towards improvement or extension of Faversham Health Centre and/or Newton Place Surgery (application 15/504264/OUT – Land at Perry Court, Faversham)

- **£203,700.91** – National Highways Contribution - towards a scheme to improve capacity at junction 7 of the M2 motorway (application 15/504264/OUT – Land at Perry Court, Faversham)
- **£326,443.77** – Junction Improvements Contribution - improvement works to the junction of the A251 and the A2 and including a traffic signal scheme (application 15/504264/OUT – Land at Perry Court, Faversham)
- **£126,116.67** – Healthcare Contribution - towards the development of existing or new infrastructure to meet the impact of the Development including the Meads Practice and including any future medical practices to be establish in Newington (application 16/501266/FULL – 99 High Street & land to north of High Street, Newington)
- **£490,510.32** – Primary Education Contribution – towards the new Quinton Road Primary School Phase 1 (application 16/501266/FULL – 99 High Street & land to north of High Street, Newington)
- **£624,349.07** – Secondary Education Contribution - towards the new Quinton Road Secondary School Phase 1 (application 16/501266/FULL – 99 High Street & land to north of High Street, Newington)
- **£478,801.05** – Primary Education Contribution - for the provision of first phase of a new 1 form entry primary school in Faversham (application 16/508643/FULL – Land north of Graveney Road, Faversham)
- **£188,312.45** – Secondary School Contribution – towards second phase of expansion of Abbey Secondary School London Road Faversham (application 16/508643/FULL – Land north of Graveney Road, Faversham)
- **£104,320.99** – Highways Contributions – towards Station Road / London Road (application 18/503697/FULL – Land at Station Road, Teynham)

#### 4. **S106 Money Contributions forwarded to appropriate agencies**

##### **KENT COUNTY COUNCIL:**

**Secondary Education** Contributions received towards expansion / improvements of facilities at:

- Sittingbourne College and Westlands Sec school expansions (£160,466.40)
- second phase of expansion of Abbey Secondary School London Road Faversham (£192,076.55)
- new Quinton Road Secondary School phase 1, which for the avoidance of doubt may include professional and other fees and investigative works and studies reasonably incurred and/or undertaken by the County Council (£624,349.07)
- provision of extra secondary school places within a two mile radius of the site (£262,868.77)

**Primary Education** Contributions received towards expansion / improvements of facilities at:

- Sunnybank PS expansion (£160,545.28)
- first phase of a new 1 form entry primary school in Faversham (£488,371.60)
- new Quinton Road Primary School phase 1, which for the avoidance of doubt may include professional and other fees and investigative works and studies reasonably incurred and/or undertaken by the County Council (£490,510.32)
- phase 1 of the extension to Regis Manor Primary School (£48,494.97)

- provision of extra primary school places within a three mile radius of the site (£262,994.99)

**Library** Contributions received towards expansion / improvements of facilities at:

- Bookstock and digital den in Sittingbourne Library (£13,372.76)
- the internal reorganization of Faversham Library and expansion of the public library space (£24,965.35)
- additional book stock and facilities at Faversham Library (£27,540.86)
- phase 2 costs of the new Library in Sittingbourne Hub and provision of book stock to the mobile library services attending at Newington (£30,034.08)
- provision of additional books and other library supplies to help meet the needs of future occupiers of the development (£672.22)
- mobile library attending Upchurch (£700.52)

**Community Learning** Contributions received towards expansion / improvements of facilities at:

- Crèche for hard to reach parents in Murston (TES and Adult Learner nominated programme) (£1,983.74)
- portable equipment for new adult learners in Faversham (£6,556.47)
- providing additional classes and equipment at Faversham Adult Education Centre (£5,200.79)
- new equipment at Sittingbourne Education Centre (£7,995.42)

**Adult Social Care** Contributions received towards expansion / improvements of facilities at:

- Changing place in Sittingbourne (£6,049.28)
- Social Care Hub in Faversham (£28,529.66)
- changing places facility in Faversham (£31,472.88)

**Youth Services** Contributions received towards expansion / improvements of facilities at:

- Provision of services at St Marys Children's Centre and/or Bysingwood Children's Centre in Faversham (£6,022.32)
- provision of additional staff sessions and equipment to meet the needs arising from the development and to be provided to the Faversham Youth Consortia at Bysingwood Road Faversham (£13,298.29)
- the provision of youth services by the County Council within the vicinity of the development (£4,972.16)

**Social Care** Contribution - received towards expansion / improvements of facilities at:

- changing place facility in Sittingbourne Hub (£8,379.11)

**Footpath** Contribution - received towards expansion / improvements of facilities at:

- provision of the footpath to the north side of Canterbury Lane (£10,000.00)

#### **KENT HIGHWAYS (KCC)**

**National Highways** Contribution - provision of sustainable modes of transport and public transport serving the development (£203,700.91)

**Junction Improvement** Contribution - a scheme to improve capacity at junction 7 of the M2 (£326,443.77)

### **MISCELLANEOUS**

**Bobbing Village Hall** Contribution paid to Parish Council = £51,419.46

**MEDWAY COUNCIL** Contributions received for SAMMS = £150,966.40

At the request of **NHS/CCG**, SBC is currently holding contributions received (total = £454,388.00) for the following projects:

**Planning application ref: 15/504264/OUT**

**Land At Perry Court, London Road, Faversham**

£179,648.53 - towards improvement or extension of Faversham Health Centre and/or Newton Place Surgery

Planning application ref: 16/501266/FULL

99 High Street And Land To The North Of High Street , Newington

£126,116.67 - towards the development of existing or new infrastructure to meet the impact of the Development including the Meads Practice and including any future medical practices to be establish in Newington

**Planning application ref: 16/508643/FULL**

**Land North Of Graveney Road, Faversham**

£103,680.00 - provision of primary care infrastructure at (1) Newton Place Surgery in Newton Road Faversham

and/or (2) Faversham Medical Practice at Faversham Health Centre Bank Street Faversham

**Planning application ref: 18/505440/FULL**

**Land At Kingsborough Manor, Eastchurch Road, Eastchurch**

£13,952.80 - towards the improvement of services offered by Dr A S Pannu and Partners

**Planning application ref: 14/506519/FULL**

**Land At Kent Terrace Canterbury Lane Upchurch**

£12,605.19 - contributions to meet the needs of additional demands on the NHS

**Planning application ref: 17/501162/FULL**

**Preston Skreens, 402 Minster Road, Minster-on-sea**

£10,433.00 - Healthcare contribution towards the expansion of the extension refurbishment and/or upgrade of existing at facilities Sheppey Community Hospital

**Planning application ref: 16/504266/FULL**

**Land At Lavender Avenue Minster-on-sea**

£7,951.81 - Healthcare contribution towards Shiva Medical Centre and Minster Medical Centre

**PLANNING COMMITTEE – 25 JUNE 2020****PART 2**

Report of the Head of Planning

**PART 2**Applications for which **PERMISSION** is recommended

<b>2.1 REFERENCE NO - 20/500938/MOD106</b>		
<b>APPLICATION PROPOSAL</b>		
Modification of a Planning Obligation under reference SW/08/1124 to remove the requirement for provision of on-site affordable housing and replace it with a requirement to make a financial contribution of £44,000 towards off-site provision.		
<b>ADDRESS</b> 153 London Road Sittingbourne Kent ME10 1PA		
<b>RECOMMENDATION</b> That the modification as proposed is acceptable and that the Council does not defend the appeal.		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>		
An appeal has been submitted against non-determination of this modification and it cannot now be formally determined by the Council. However Members need to determine whether the modification would have been approved if it was still before them, or on what grounds they would have refused the application to modify the Section 106 Agreement. This will then form the basis of the Council's case regarding the proposal for the purposes of the appeal.		
In my view, based upon relevant planning policies, the supporting letters from registered affordable housing providers, the viability evidence and site history, the commuted sum approach and amount are acceptable.		
<b>REASON FOR REFERRAL TO COMMITTEE</b>		
Called in by Cllr Mike Baldock and Cllr Nicholas Hampshire		
<b>WARD</b> Borden And Grove Park	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Clarity Propoerties LTD <b>AGENT</b> Brachers LLP
<b>DECISION DUE DATE</b> 20/04/20	<b>PUBLICITY EXPIRY DATE</b> 26/03/20	

**Planning History**

18/503723/MOD106

Modification of Planning Obligation dated 18/05/2010 under reference SW/08/1124 to allow a reduction of on site affordable housing. Approved 30.07.2019

16/507631/LDCEX

Certificate of Lawful development to establish that works commenced under the approved planning permission, SW/13/0568, in the form of demolition of the existing buildings on 23rd May 2016. Approved 08.12.2016

SW/13/0568

Application to replace an extant planning permission SW/08/1124 (Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26, parking spaces and cycle store and new vehicular access) in order to extend the time limit for implementation. Approved 08.08.2013

SW/08/1124

Demolition of existing buildings and redevelopment of site to provide 12, two bedroom apartments, 14, one bedroom apartments, amenity space, 26 parking spaces and cycle store and new vehicular access. Approved 18.05.2010

## **1. DESCRIPTION OF SITE**

- 1.1 The application site is 0.09 hectares in size and rectangular in shape. It is directly adjacent to the Wickes car park and fronts onto London Road (A2). The site lies to the west of Sittingbourne Town Centre and residential properties lie opposite and to the west of the site. A Petrol Filling Station is located on the opposite side of London Road slightly to the east.
- 1.2 Construction of the 26 residential units (granted planning permission as per the history section above) is complete and a number of the units are occupied.

## **2. PROPOSAL**

- 2.1 The current proposal is to modify the Section 106 Agreement to allow the removal of the requirement for on-site affordable housing. Due to a previous modification being granted (as approved under 18/503723/MOD106), the Section 106 Agreement requires 3 units to be provided as shared ownership affordable housing.
- 2.2 In addition, the Section 106 Agreement required / requires the following developer contributions which will be unaffected by this application:
  - i) £227 per dwelling for library improvements;
  - ii) an open space contribution of £17,940;
  - iii) an adult social services contribution of £2362.85;
  - iv) a community learning contribution of £981.05;
  - v) a primary education contribution of £590.24 per dwelling; and
  - vi) a secondary education contribution of £589.95 per dwelling.

(All of these payments have been made, aside from the open space contribution, which is payable within 7 days of practical completion of the development. Due to the completion of the development I am aware that the Council's Section 106 Monitoring Officer is clarifying the details with the developer and as required, requesting payment.)

- 2.3 Further to discussions between Officer's and the applicant, the proposal has been amended, from originally proposing a financial contribution of £40,000, to seek to pay a financial contribution to the Council of £44,000, prior to the occupation of any more than 22 dwellings. This sum would then be able to be used by the Council towards



affordable housing elsewhere in the Borough. The wording of the Section 106 Agreement will need to be modified to enable this change, the precise wording of which would be agreed under the instruction of the Head of Legal Services.

- 2.4 It is of fundamental importance at this point to set out the background to this application. Members may recall that a similarly proposed modification was reported to Planning Committee on two separate occasions in 2017 for the removal of on site affordable housing. For clarity there is no reference number for the application made in 2017 as it was not submitted separately as a formal modification to the Section 106 agreement, but rather as a proposed modification under the original planning permissions (as referenced above). However, a summary of the application is provided as follows.
- 2.5 The application submitted in 2017 initially proposed the removal of on site affordable housing, a viability appraisal upon occupation of the 21st unit and a commuted sum of a maximum of £31,000 if the scheme achieved a certain level of profit. This proposal was reported to the Planning Committee of 2nd February 2017 with an Officer recommendation for approval. Members resolved - *“That the application be deferred to allow officers to advise the developer to either provide affordable housing or more than £31,000 for offsite affordable housing, and that it can not be dependant upon their profit margins.”* As a result of this, the applicant undertook a viability appraisal which was independently assessed and concluded that the scheme would not be viable if affordable housing was provided.
- 2.6 The application was reported back to Members at the 14<sup>th</sup> September 2017 Planning Committee meeting. The proposed modification was again to remove the requirement for on site affordable housing with a viability re-assessment submitted upon the occupation of the 21st unit. However, the proposal was altered to propose a commuted sum of a minimum of £31,000 if it was viable to do so, despite the conclusions of the viability appraisal and independent assessment as referred to above. There was again an Officer recommendation for approval. At the meeting, Members resolved that *“That the modification to the Section 106 Agreement for SW/08/1124 & SW/13/0568 be rejected and officers discuss alternative options with the applicant.”*
- 2.7 As set out above, the proposal considered in 2017 had not been submitted as a formal modification under Section 106A of the Town and Country Planning Act. Therefore, there was no requirement to issue a formal decision notice and there was no right of appeal for the applicant. As a result of this, under reference 18/503723/MOD106 a formal application to modify the Section 106 was made.
- 2.8 The application submitted under 18/503723/MOD106 was first reported to the Planning Committee on 7<sup>th</sup> March 2019. The modification sought an amendment to the Section 106 Agreement to remove the requirement for on site affordable housing and instead to provide a commuted sum of £40,000, prior to the occupation of the 21<sup>st</sup> unit. The application was deferred following the Head of Planning Services calling in the application *“as the Planning Committee was minded to make a decision that would be contrary to officer recommendation and contrary to planning policy and/or guidance.”*
- 2.9 The application was reported back to the Planning Committee on 4<sup>th</sup> April 2019 with a revised proposal. In summary, the application sought to modify the Section 106

Agreement to provide for 3 affordable units on site. However, due to potential delivery issues, a fall-back option was proposed if these units were unable to be provided as on-site provision. This fall back option was a contribution of £40,000 which would be payable before the occupation of 22 open market units. An update to the 2017 viability appraisal was also submitted prior to this committee meeting which set out that *“the latest UK House Price Data values in Swale have flat-lined since June 2017 when the original Viability Report was submitted. During this time, there has been an increase in Primary Building Cost (PBC) of 4.3% as shown in the attached BCIS data. As such, it can be concluded that the viability position is actually even weaker than before and certainly no better.”* At the 4<sup>th</sup> April 2019 meeting, Members resolved that the application was deferred *“until after the meetings with the Applicant and Registered Providers had taken place.”*

- 2.10 As a result of the above, the proposal was again amended to seek to provide 3 on site affordable units with the fall-back option of the financial contribution removed. This was a result of positive discussions which had taken place between a Registered Provider (RP) of affordable housing and the applicant. This proposed modification was considered acceptable by Members. As a result the S.106 was modified in this manner and the application approved.
- 2.11 The supporting information submitted with the proposed modification now being considered sets out that *“the RP made an offer to acquire the 3 x affordable housing units which was accepted by the applicant. The applicant has made strenuous efforts to conclude the agreement with the RP but these have proven to be unsuccessful. Unfortunately, the RP has now withdrawn from the purchase. The Applicant has also approached other RP’s but without success. It is therefore considered that there is no realistic prospect of securing a further RP willing to deliver the units on site.”*
- 2.12 The result of the above is the proposal which has now been submitted as set out in paragraph 2.3 above.

### **3. PLANNING CONSTRAINTS**

- 3.1 None

### **4. POLICY AND CONSIDERATIONS**

- 4.1 The National Planning Policy Framework (NPPF)

Para 62: *“Where a need for affordable housing is identified, planning policies should specify the type of affordable housing required, and expect it to be met on-site unless:*

*a) off-site provision or an appropriate financial contribution in lieu can be robustly justified; and*

*b) the agreed approach contributes to the objective of creating mixed and balanced communities.”*

Para 57: *“Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify*

*the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available.”*

#### 4.2 National Planning Practice Guidance

Within the section entitled ‘Planning Obligations’, the following is set out:

*“Plans should set out the contributions expected from development towards infrastructure and affordable housing. Where up to date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. Planning obligations can provide flexibility in ensuring planning permission responds to site and scheme specific circumstances. Where planning obligations are negotiated on the grounds of viability it is up to the applicant to demonstrate whether particular circumstances justify the need for viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker.”*

The section entitled ‘Viability’ states the following:

*“Plans should set out the contributions expected from development. This should include setting out the levels and types of affordable housing provision required”*

And

*“For the purpose of plan making an assumption of 15-20% of gross development value (GDV) may be considered a suitable return to developers in order to establish the viability of plan policies. Plan makers may choose to apply alternative figures where there is evidence to support this according to the type, scale and risk profile of planned development. A lower figure may be more appropriate in consideration of delivery of affordable housing in circumstances where this guarantees an end sale at a known value and reduces risk. Alternative figures may also be appropriate for different development types.”*

#### 4.3 Bearing Fruits 2031: The Swale Borough Local Plan 2017

Policies ST1 (Delivering sustainable development in Swale); ST2 (Development targets for jobs and homes 2014-2031); CP3 (Delivering a wide choice of high quality homes); DM8 (Affordable Housing).

Policy DM8 states that in Sittingbourne, the affordable housing provision sought (on developments of 11 dwellings or more) will be 10%. Furthermore, it states that *“In exceptional circumstances, and in accordance with a supplementary planning document to be prepared by the Borough Council:*

*a. on-site affordable housing provision may be commuted to a financial contribution to be used off-site, singly or in combination with other contributions.”*

The supporting text to policy DM8 at paragraph 7.3.10 states the following:

*“The starting point for any planning application is the on-site provision of affordable housing. In exceptional cases, the Council may consider affordable housing provision to be provided off-site. In such a case, it may be possible to require a commuted sum (or payment in lieu), which is an amount of money, paid by a developer to the Council when the size or scale of a development triggers a requirement for affordable housing, but it is not possible or desirable to provide it on the site. This option may be appropriate, for example, in cases of economic difficulties, where provision on an alternative site could be of higher quality, or where improvements to the quality of the existing housing stock are considered more appropriate.”*

## **5. LOCAL REPRESENTATIONS**

- 5.1 I have received one comment, stating the following – *“I am instructed on behalf of The Sittingbourne Society to express concern at the proposal contained within the above planning application. It seems wrong to us that at a time when the government is urging local authorities to provide more affordable housing the Council should be asked to reduce the amount of such housing to be provided in the Borough. We hope therefore that the Council will continue to require a proportion of housing provision to be “affordable” and will not permit the developer to wriggle out of his responsibilities in the way he is proposing.”*

## **6. CONSULTATIONS**

- 6.1 Cllr Mike Baldock (Cabinet Member for Planning and Ward Member) commented *“I want this referred to the Planning Committee.”*
- 6.2 Cllr Nicholas Hampshire (Ward Member) commented *“It is my wish that this modification be referred to the Planning Committee for decision.”*
- 6.3 Cllr Ben J Martin (Cabinet Member for Housing) has stated *“As I sit on the planning committee I don’t want to predetermine myself, however, the commuted sum seems a bit on the low side compared to the cost of providing a unit. Waverley council use this [https://www.waverley.gov.uk/downloads/file/2839/commuted\\_sums\\_calculator](https://www.waverley.gov.uk/downloads/file/2839/commuted_sums_calculator) to calculate commuted sums.”*
- 6.4 The Council’s Affordable Housing Manager has stated:
- “In regard to the £40K commuted sum in lieu of the 1 x 1BF and 2 x 2BF’s Sage HA were due to deliver as shared ownership, I have looked at current market sale prices of similar new-build flats in Sittingbourne and have found the following:*
- 153 London Rd (Clarity Mews) flats are advertised at offers over £130K for a 1-bedroom and £180K for a 2-bedroom*
  - 1-bed flats on the Abbey Homes development at Mill & Wharf are available for around £150-£160K*
  - Cooks Lane 1-bed flats are advertising prices at £162,500*
  - No5 High Street 1-bed flats are up for sale at £162,500*

*- 2-bedroom flats have just been launched for sale at Redrow's site Regents Quay advertised at £200K-£215K*

*Other than the Redrow scheme, these are very similar sale prices to those available at 153 London Rd and also sale prices considered back in 2015 when discussions were taking place about commuted sum values for this site. Furthermore, when we were considering the commuted sum amount in Nov 2016, we took account of commuted sums for two developments in Sittingbourne, both of which have now been paid. The six flats at Staplehurst Rd provided £75K and, four flats at 4 Canterbury Rd provided £69K. If the average commuted sum per flat of these schemes is considered, 153 London Rd's commuted sum could be a little higher at just over £44K. However, this does not of course take account of any expert commuted sum calculation or methodology that may need to be applied.*

*I would suggest that the wording around how the commuted sum should be spent is left relatively open so that it can be used towards any/all schemes across the borough for all types of affordable housing, including older persons/extra care and general needs on Council owned sites or on RP partnership developments for example.*

*Taking the above into account, along with Sage's decision to withdraw from the purchase due to it not being financially viable for an RP to own, operate and manage a scheme of just 3 dwellings in this location, Heylo's recent decision to also not take on these three units due to the location, current sales market and price and also reiterating the continuing issue that RP's are not accepting low numbers of affordable homes on development sites, it is my opinion that a sensible approach in this case would be to accept a commuted sum in lieu of affordable housing delivery."*

## **7. SUPPORTING INFORMATION**

- 7.1 Along with the comments set out in paragraph 2.11 above, the application is also supported by letters from two RPs. One of these has been submitted by Sage Housing which states *"We have decided to withdraw from the purchase of the 3 affordable housing flats at 153-155 London Road because it is not financially viable for us as a registered provider to own, operate and manage a scheme of just 3 affordable housing units in this location."*
- 7.2 The second letter, provided by Heylo Housing states that *"We are not in a position to offer on the 3 shared ownership flats at 153-155 London Road. Due to the location, price of the flats and current sales climate we have decided Home Reach will not be feasible in this area at this current time."*

## **8. APPRAISAL**

- 8.1 As set out above, there is a complex history to this proposed modification which includes various amended proposals being reported to Members on 5 separate occasions. It is recognised through the history of these applications that Members have been very firm in their requirement that on site affordable housing should be provided in this case.
- 8.2 It is also my view that the delivery of on site affordable housing is, wherever possible the best case scenario. Relevant planning policies set this out, however, they also

recognise that due to issues such as viability, or other specific factors this is not always possible. One specific factor is the issue of RPs being unable or unwilling to manage low numbers of affordable dwellings upon sites, which is a reoccurring theme across the Borough. I note that the Council's Affordable Housing Manager raised this as a very likely scenario when commenting on the previous applications submitted to modify the Section 106 Agreement in this way. I also give weight to the correspondence received from two RPs, as stated above, which reflects this in the application now being considered. As a result of this I am of the view that the principle of a commuted sum approach should be accepted here and would be in accordance with policy DM 8 of the Local Plan, allowing for the sum to be directed towards the delivery of affordable housing elsewhere in the Borough.

- 8.3 As a result of the above, this then leads onto a consideration of what level of financial contribution should be considered appropriate. In terms of this I firstly turn to the Council's Affordable Housing Manager's comments above which have included examples of when commuted sums have been accepted in the past, comparing this to average sales prices and then setting out what would likely be appropriate in this case. As a result of the applicant's agent being provided with the comments of the Council's Affordable Housing Manager, the proposal was amended from initially offering £40,000 as a commuted sum to £44,000 as per the proposal now before Members.
- 8.4 In addition to the above, I secondly turn to the relevant viability issues in this case. I note that a viability assessment was carried out in 2017 which set out that the developer would be making a profit of 0.65%. This is somewhat below the normal expected returns of 15-20%. Further to this, as a result of the time that had elapsed when the applicant submitted the application under 18/503723/MOD106, a viability update was submitted in April 2019 to reflect updated house price trends and building costs. Members may now consider that as a further period of time has elapsed that an update to the viability review should have been undertaken by the applicant. I considered this but believed it appropriate to undertake a review of flat prices in Swale in the intervening to provide an up to date representation. As a result of this I have analysed data of flat prices in Swale in the period from when the last viability review was undertaken in 2019 until the date when the latest data is available. I have analysed the Land Registry data, firstly because this is the source from which the viability update obtained information in 2019 and also because this is information which has been produced directly by Central Government. This shows that, perhaps unsurprisingly, there has been a very recent downward trend in the average flat price in Swale and for the latest month available (March 2020), the average price is lower than at any point in the period since the original viability report was undertaken. For context, the average price in June 2017 (the date when the original viability report was carried out) was £144,990, compared to £136,529 in March 2020. As such, with evidence to suggest that a commuted sum of £31,000 was appropriate in less challenging viability circumstances, I am of the view that on this basis a commuted sum of £44,000 would be acceptable and the request for further viability information would have been unnecessary.
- 8.5 I have considered the comments of the Cabinet Member for Housing and note the reference to a commuted sum calculator from Waverley Borough Council. Firstly, for clarity, Swale BC does not have a standardised approach to calculating commuted

sums. Although I am aware that other Authorities have adopted such an approach, as per the comments referred to, each Authority has a range of different circumstances and specific commuted sum calculators would be supported by background inputs related to that specific area. As such, I do not believe commuted sum calculators from other Authorities can be directly used for an application in Swale.

## **9. CONCLUSION**

9.1 As set out above, the applicant has appealed to the Planning Inspectorate against non-determination of the proposed modification. As a result the Council is unable to formally determine the application and this role will be undertaken by the Planning Inspectorate. Therefore Members must now determine the following –

- i) Whether, if an appeal had not been made, Members would have approved the application to modify the S.106 Agreement (either in accordance with my recommendation or for other reasons), or
- ii) Whether, if an appeal had not been made, Members would have refused the application to modify the Section 106 Agreement, and if so on what grounds.

9.2 It is my firm view based upon the assessment above that the commuted sum approach in these specific circumstances is acceptable. In addition to this I am of the view that the amount, for the particular reasons discussed, is appropriate.

9.3 Therefore my recommendation is that the Council does not defend the appeal. If this was the route that Members wished to take there would still be the opportunity for the Council to agree the proposed variation to the Section 106 Agreement (a commuted sum of £44,000 instead of on site delivery of 3 affordable units) outside of the appeal process. If this was to be the case then the applicant's agent has provided comments in writing to say that they would withdraw the appeal for this to take place. An application for an award of costs against the Council has also been made by the applicant and if the above was the route that Members decided to follow then the application for the award of costs would also be withdrawn.

9.4 Members may of course disagree with my assessment of the case. However, in taking this forward to defend at appeal the reasons for refusal must be set out in clear and detailed terms (with necessary supporting evidence) to justify the decision and minimise the risks of costs being awarded against the Council. Notwithstanding this, when considering the viability evidence, the current economic climate, the supporting evidence supplied with the application, the comments of the Council's Affordable Housing Manager and the history of the site in the context of relevant planning policies, my view is that there is a reasonable prospect that the Council would lose costs.

**10. RECOMMENDATION** – That the modification as proposed is considered acceptable and that the Council does not defend the appeal.

### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), February 2019 the Council takes a positive and proactive approach to development

proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.





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<b>2.2 REFERENCE NO - 20/500857/FULL</b>		
<b>APPLICATION PROPOSAL</b> Erection of a park office and use of an existing pitch as warden's accommodation, including creation of 3no. visitor parking spaces and footpath.		
<b>ADDRESS</b> Meadow View Park Irwin Road Minster-on-sea Sheerness Kent ME12 2DB		
<b>RECOMMENDATION</b> Grant		
<b>SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL</b> The visual, amenity, highways and flooding impacts of the proposal are acceptable, and accord with the provisions of the local plan and the NPPF.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Minster on Sea Parish Council have objected strongly to 'any permanent residential development' on the basis of flooding, change in the character of the park, and the local plan policies.		
<b>WARD</b> Minster Cliffs	<b>PARISH/TOWN COUNCIL</b> Minster-On-Sea	<b>APPLICANT</b> Mr Henry Boswell <b>AGENT</b> Michael Parkes Planning Services
<b>DECISION DUE DATE</b> 04/06/20		<b>PUBLICITY EXPIRY DATE</b> 21/04/20

### Planning History

18/506323/FULL - Retrospective application for the stationing of 37 static caravans including associated hardstanding and landscaping. Granted

SW/05/0715 - Change of use of land to static holiday caravan site. Certificate issued

SW/92/0136 - Lawful Development Certificate for unrestricted touring caravan and camping site. Granted

SW/82/0850 - Change of use from sewage plant to touring caravan and camping site. Granted

## **1. DESCRIPTION OF SITE**

1.1 Meadow View Park is a static caravan park situated off The Broadway to the north of Minster. The site is accessed via a private road (Irwin Road) which serves a wider complex of holiday accommodation (with a site area of approximately 7 hectares), including Parklands Village immediately to the north of Meadow View, Minster Park beyond that, and the Abbey Hotel which fronts onto the main road. Parklands and Minster Park comprise brick-built chalets.

1.2 The application site – which extends to 1.34 hectares - is generally flat and level, and contains a number of static caravans with grass lawns between the pitches and several empty plots that have not yet had caravan bases laid out. The site is within flood zone 3, and the Minster marshes lie immediately to the south and west, with a drainage ditch running along the southern site boundary.

1.3 The site lies within land formally designated by the adopted Local Plan for holiday park use, and has been in use as a caravan site since the early '80s.

## **2. PROPOSAL**

2.1 The application seeks permission for the use of 1 no. existing plot as warden's accommodation all year and for an additional small park office.

- 2.2 The warden's accommodation is shown as utilising an existing plot with the same format of unit as found on a 'holiday plot'.
- 2.3 The submission advises that a shortcoming for the park is the lack of warden occupancy and the applicant is keen on having an onsite presence during the off-season to provide an added layer of security for the site in order to deter unwelcome visitors and prevent crime. The submission advises that it is common practice within the industry to have staff on site throughout the year and off-season accommodation for wardens.
- 2.4 At Meadow View Park, the site warden has to be 'on-call' and present to deal with customers' needs and emergencies at all hours during the open season, is responsible for site closure after the 10 month occupancy period, has to prepare the site for re-opening and is responsible for ensuring access through the site to the Southern Water pumping station is available 24/7 throughout the year.
- 2.5 In addition, the site warden is responsible for all year maintenance and servicing as well as ground maintenance. The majority of these works are carried out during the closed period as it would otherwise negatively impact resident's enjoyment of the site in season. The annual winter maintenance programme comprises landscaping works (pruning trees, shrubs, cutting hedges, replacing plants badly affected by the summer) and repairs to gates and fences, repairs to paths and internal roadways, maintenance and servicing of caravans, buildings and exterior structures.
- 2.6 Where issues may arise such as heating malfunctions, burst water pipes and wind damage, the site warden is required to take immediate action. The site warden provides a monitoring presence and security to prevent theft, damage and vandalism to park facilities and customer's caravans and property, especially during the closed period. The submission considers that the importance of the wardens 'closed season' security and maintenance role justifies the "operational need" for the site warden to be on-site 'all-year'.
- 2.7 The site warden's role ensures a pleasant and safe environment when caravan owners and visitors arrive and whilst they are on-site. The application states that having such accommodation on site is essential to ensure that the holiday park can operate to a high standard, meeting customer expectations in season, and providing security for their property out of season, while managing the winter maintenance programme.
- 2.8 The application advises that the previous office was located close to the junction of Irwin Road, Ash Lane, Niwrim Way, and Brookside. However, following the sale of Meadow View Park, the original park office was not included within the new park boundaries, and as such, Meadow View Park does not currently benefit from a park office which is essential for the business and will ensure that the holiday park can operate to a high standard and meeting customer expectations in season.
- 2.9 The proposed office is located at the entrance to the site and adjacent to the proposed warden accommodation. It is shown as 6.10m long by 3.60m wide and 2.59m to its flat roof. It will provide a reception/office and toilet. Materials proposed are cedar cladding, soffit and fascia with firestone rubber roofing, and Joinery Casement Double Doors and Windows. The Park is open between 1st March and 2nd January the following year and the office/reception which will be open daily (office hours) and there will be a member of staff on call 24 hours a day 7 days a week to deal with enquiries. Also, appropriate provision has been made to allow access for disabled people.

### **3. PLANNING CONSTRAINTS**

- 3.1 The site is within an area of Potential Archaeological Importance, Flood Zone 3 (where the risk of flooding is considered to be relatively high), and a holiday park allocation (under policy DM4 of the adopted Local Plan).

#### 4. POLICY AND CONSIDERATIONS

- 4.1 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) generally support proposals that would support tourism and economic development, subject to consideration of issues such as flood risk and general amenity.
- 4.2 Policies ST1 (sustainable development), CP1 (strong, competitive economy), CP4 (good design), DM3 (rural economy), DM4 (holiday parks), DM5 (holiday park occupancy), DM7 (parking), DM14 (general development criteria), DM19 (sustainable design and construction, and DM21 (water, flooding, and drainage) of the adopted Swale Borough Local Plan 2017 are relevant.
- 4.3 In particular: policy DM4 allows for upgrading and improvement of existing static caravan holiday parks, and Part 3 of the policy reads as follows

*'Where new or improved facilities are proposed within the existing boundaries of the Holiday Park areas, as shown on the Proposals Map, planning permission will be granted provided they are:*

- a. of a type and scale appropriate to the site or park they are intended to serve;*
- b. where feasible, made available for use by the local resident population; and*
- c. in accordance with Policy DM 5.'*

- 4.4 Policy DM5 sets out that the occupancy of parks will be restricted to a maximum of 10 months.

#### 5. LOCAL REPRESENTATIONS

- 5.1 A site notice was put up on 31<sup>st</sup> March 2020. This expired on 21<sup>st</sup> April 2020. A press notice was put in the Kent Messenger on 12<sup>th</sup> March which expired on 2<sup>nd</sup> April 2020. No representations were received.
- 5.2 Minster-on-Sea Parish Council strongly objects to any permanent residential development on this site for the reasons it has outlined before. It states that these include:

*'The site lies in the countryside, outside the built-up area of Minster. Equally importantly, the site also lies in an area of serious risk of tidal flooding. The permanent year-round occupation of the single-story holiday chalets would place additional people at unnecessary risk and increase the burden on the emergency service in times of flood, contrary to Planning Policy Statement 25: Developmental and Flood Risk and Policies within the Swale Borough Local Plan and the Kent and Medway Structure Plan. The occupation of the holiday chalets is restricted to 10 months of the year in recognition of the fact that year-round occupation of the holiday chalets would amount to the creation of permanent dwelling, the occupiers of which would be subject to a substandard degree of residential amenity, and which would be unacceptable in principle in the countryside.*

*Furthermore, any increased level of occupancy of the holiday chalets would increase the level of activity at the site during the period of closure and would be detrimental to the character of the area. Moreover, an increase in the period of occupation at the site*

*would give rise to a greater risk of the unauthorised use of the chalets as permanent accommodation and this would be difficult to enforce against. The year-round residential occupation of the holiday chalets would be contrary to the Swale Borough Local Plan and the Kent and Medway Structure Plan.'*

- 5.3 These comments appear to have been made in consideration of the year round occupation of the entire park (which would be unacceptable). However, the submission is in fact for the year round occupation of only one unit for warden's accommodation, and could be conditioned as such.

## **6. CONSULTATIONS**

- 6.1 The Environment Agency has advised that the proposal is covered by their Flood Risk Standing Advice (FRSA). 'This means you do not have to consult us directly and can use our standing advice to manage flood risk for this planning application.'
- 6.2 County Council as Lead Local Flood Authority have reviewed the application and advised that they regard the proposal as low risk development as there would be a negligible increase in impermeable area.
- 6.3 KCC Highways and Transportation have no comments to make on the proposal.
- 6.4 The Kent Minerals and Waste Planning Team have no objection to the proposal.
- 6.5 Natural England have no comment to make on the proposal.
- 6.6 Kent Police have raised no objection to the proposal and have recommended that the unit is designed with adequate security and advise the applicant consider the SBD [Secure by Design] Commercial Guidance on [www.securedbydesign.com](http://www.securedbydesign.com) or contact us direct for further security information.
- 6.7 Southern Water have made no objection to the proposal and have recommended that an informative be placed n any permission.

## **7. BACKGROUND PAPERS AND PLANS**

Site location plan  
 Flood Risk Assessment  
 Proposed site plan Materials specification  
 Proposed office plan and elevations

## **8. APPRAISAL**

- 8.1 The key issues for consideration are:

Principle  
 Amenity  
 Visual impact  
 Highways and parking  
 Sustainable Design and Construction  
 Flooding

- 8.2 Principle

- 8.3 The site lies within a designated holiday park area, as set out by Policy DM4 of the adopted Local Plan. The principle of development that supports the wider tourism aims

of that policy is therefore generally acceptable subject to amenity considerations as set out below.

- 8.4 Because the proposal is in connection with the permitted and allocated use of the site as a holiday park under policy DM4, a standard condition is required to restrict occupancy and prevent the use of the proposed development for wider market use. This is consistent with the use of other holiday parks in the Borough.
- 8.5 Amenity
- 8.6 Policy DM 14 of the Local Plan seeks to ensure that new development does not cause significant harm to the amenities of the occupiers of neighbouring properties.
- 8.7 The Warden's accommodation is shown as located on an existing plot, and as such, the impact of this has already been assessed and been found to be acceptable under application reference 18/506323/FULL. There is no additional amenity impact of this element beyond that already permitted, and as such, this element of the proposal is considered to be acceptable.
- 8.8 The site office is located in close proximity to an existing unit and raises greater concern about its amenity impact. However, as examined in the recent approval 18/506323/FULL, the chalets on Niwrim Way (to the north of the application site) are holiday residences, and *not* residential dwellings. Although the occupants of Niwrim Way may consider these chalets to be their primary residence it must be made absolutely clear to all that they are *not* residential dwellings. The Council has won many appeals against use of these chalets as permanent dwellings and the established position (through Council-issued planning decisions and Planning Inspectorate appeal decisions) is that they are holiday chalets with 10 month occupancy.
- 8.9 The chalet adjacent to the proposed office therefore benefits from a lower degree of amenity protection under planning regulations and the issue of potential overlooking is much less heavily weighted. While you would not expect to be overlooked at close proximity in the lounge of your "normal" house, one does not normally expect the same privileges on close-quarters holiday camps. I also give weight to the dual aspect of the rooms which have windows also facing onto the proposed office, in addition to the fact that the windows facing the proposed office block, currently suit in close proximity to, and directly face a fence.
- 8.10 Therefore on balance, taking the above into account, I do not consider that loss of amenity to the adjacent unit is a defensible ground to justify refusal of planning permission.
- 8.11 Visual Impact
- 8.12 Policy CP4 of the Local Plan requires that development proposal be of a high quality design that is appropriate to its surroundings. Development proposal should create safe, accessible, comfortable, varied and attractive places, enrich the qualities of the existing environment by promoting and reinforcing local distinctiveness and strengthening sense of place, and make safe connections physically and visually both to and within developments, particularly through using landscape design and open space to retain and create green corridors for pedestrians, cyclists and biodiversity.
- 8.13 Policy DM14 requires proposals to reflect the positive characteristics of a site and locality, be well sited and of a scale, design, appearance and detail that is sympathetic and appropriate to a location and cause no significant harm to amenity.

- 8.14 The development is proposed on land which is identified for development. The warden's accommodation would not appear visually different to a holiday unit and as such would have no different visual impact.
- 8.15 The office unit would represent additional permanent development. However it would be of an appropriate scale and massing compared with the holiday accommodation, and be of a low scale at the entrance to the park. It would be sympathetic and appropriate to its location and as such would also be acceptable with regard to its visual impact.
- 8.16 Highways and Parking
- 8.17 The proposal would not result in additional vehicle movements to and from the site and as such would have a negligible impact on the highway. There is sufficient parking available at the site for the warden. 3 parking spaces are provided, and these would be sufficient for the purposes of the proposal and to provide additional parking for the wider site.
- 8.18 Sustainable Design and Construction
- Policy DM19 of the Local Plan requires all new non-residential developments to achieve BREEAM 'Good' standard or equivalent as a minimum.'
- 8.19 It is therefore appropriate to condition any permission to require that the office element of the proposal meet BREEAM 'good' standard.
- 8.20 Flooding
- 8.21 The proposed development is located within Flood Zone 3 (high risk of flooding). The proposed warden's accommodation could be considered 'Highly Vulnerable' under the NPPF as it would be in use year-round. The proposed park office would be considered 'Less Vulnerable'. The applicant has submitted a flood risk assessment and flood evacuation plan with the application.
- 8.22 The Environment Agency have assessed the application and has advised that the proposal is covered by their Flood Risk Standing Advice (FRSA). This means the Council do not have to consult them directly and can use their standing advice to manage flood risk for the planning application.
- 8.23 The Environment Agency's compatibility table shows that the warden's accommodation is non compatible development within flood zone 3. However, the guidance states that the table does not show the application of the Sequential Test.
- 8.24 The Sequential and Exception Tests should be applied to a change of use to a caravan, camping or chalet site, or to a mobile home or park home site.
- 8.25 The Sequential Test ensures that a sequential approach is followed to steer new development to areas with the lowest probability of flooding. The flood zones provide the basis for applying the Test. The aim is to steer new development to Flood Zone 1 (areas with a low probability of river or sea flooding). Where there are no reasonably available sites in Flood Zone 1, local planning authorities in their decision making should take into account the flood risk vulnerability of land uses and consider reasonably available sites in Flood Zone 2 (areas with a medium probability of river or sea flooding), applying the Exception Test if required. Only where there are no reasonably available sites in Flood Zones 1 or 2 should the suitability of sites in Flood Zone 3 (areas with a high probability of river or sea flooding) be considered, taking into



account the flood risk vulnerability of land uses and applying the Exception Test if required.

- 8.26 The Exception Test, as set out in paragraph 160 of the Framework, is a method to demonstrate and help ensure that flood risk to people and property will be managed satisfactorily, while allowing necessary development to go ahead in situations where suitable sites at lower risk of flooding are not available.
- 8.27 In terms of the sequential test, it is accepted that there is no alternative location for the type of accommodation proposed. In order to fulfill its purpose as accommodation for a warden to manage the site throughout the year, the development would have to be located within the park itself. As such, sequentially, there would be no alternative location for the proposal and it is considered that the proposal would pass the sequential test.
- 8.28 In terms of the exception test, it is firstly recognised that the nature of this use (provided that it is appropriately conditioned) would differ significantly from a permanent use by members of the general public. The Warden would not only be fully aware of the flood risk but would also be tasked with routinely monitoring risk to the site from all sources (including flood risk) and actively responding to on-site emergencies.
- 8.29 I am satisfied that in this regard, the first part of the exception test would be met in that the siting of a warden on the park will provide wider sustainability benefits to the community of the park that outweigh the flood risk.
- 8.30 Turning to the second part of the exception test, the application has been accompanied by a FRA which shows that the development can be achieved in a sustainable manner, with no increase of flood risk to the site and surrounding area.
- 8.31 The proposed warden's accommodation would be a static caravan on an existing caravan pitch and therefore would not increase impermeable surfaces compared to the existing pitch.
- 8.32 The FRA finds that the site currently benefits from tidal flood defences and is not considered to be at risk from tidal flooding or overtopping events from the present day to the year 2070 (expected lifetime of caravan park). There is however a residual risk to site in the event of a breach of defences.
- 8.33 In terms of the use of the site for permanent warden accommodation, it is accepted that the presence of an on-site warden would be considered a betterment (and an exceptional one that could not be repeated) in terms of the safety of site users in a flood event. An on-site warden would be able to promptly respond to EA Flood Alerts and Warnings and alert site users, evacuating the caravan site quickly if required. The proposed development is within an EA Flood Alert and Warning area for 'the Isle of Sheppey and Coast from Kemsley to Seasalter' and for the 'Rivers on the Isle of Sheppey'. It is essential that site owners, management, warden and staff subscribe to this service.
- 8.34 In case the flood defences were breached, a Flood Evacuation Plan is already in place at the site and has been submitted with the application.
- 8.35 I am therefore satisfied that the Exception Test, as set out in paragraph 160 of the Framework, has been satisfied, and the proposal demonstrates that flood risk to people and property will be managed satisfactorily.

- 8.36 With regard to the proposed office, this falls within the classification of 'less vulnerable' and would therefore be acceptable in this regard.
- 8.37 In conclusion, subject to an appropriate condition restricting the use of the mobile unit to warden's accommodation, and the office would be acceptable in terms of flood risk when considered against the government's standing advice including the sequential and exception test and taking account of the purpose and benefit of the warden's accommodation on site.

## 9. CONCLUSION

- 9.1 Taking account of the designation of the site as a holiday park area, as set out by Policy DM4 of the adopted Local Plan, the principle of development that supports the wider tourism aims of that policy is acceptable.
- 9.2 The visual, amenity and highways impact of the proposal are satisfactory and accord with the requirements as set out in policies CP4, DM7 and DM14 of the Local Plan.
- 9.3 The use of the mobile unit for the purpose of year round warden's accommodation, and the site office would be acceptable in terms of flood risk when considered against the government's standing advice including the sequential and exception test and taking account of the purpose and benefits accorded by the warden's accommodation on site. As such, the proposal is acceptable when considered against national guidance, and policy DM21 of the Local Plan.
- 9.4 The proposal therefore accords with the provisions of the Local Plan and the NPPF and it is recommended that permission be granted.

## 10. RECOMMENDATION

GRANT Subject to the following conditions:

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) The warden's accommodation hereby permitted shall not be occupied at any time other than by a person (and their dependant) solely or mainly employed as a warden for Meadow View Park (as shown within the proposed site plan).

Reason: Its use as a permanent unit of accommodation would, otherwise, be contrary to the provisions of the development plan for the area.

- (3) The parking areas shall be completed before the commencement of the use of the land or buildings hereby permitted and shall thereafter be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order, with or without modification) or not, shall be carried out on the areas indicated or in such a position as to preclude vehicular access to them.

Reason: Development without adequate parking/turning provision is likely to lead to parking inconvenient to other road users and in the interests of road safety.

- (4) The mitigation measures as described in section 8.5 and 8.6 of the Flood Risk Assessment ref (5166) shall be implemented prior to occupation and use of the Warden's accommodation and the site office.

Reason: To mitigate against flood risk.

- (5) The office building hereby approved shall be constructed to BREEAM 'Good' Standard or an equivalent standard and prior to the use of the building the relevant certification shall be submitted to the Local Planning Authority confirming that the required standard has been achieved.

Reason: In the interest of promoting energy efficiency and sustainable development.”

- (6) The development hereby permitted shall be carried out in accordance with the following approved plans:

Site location plan  
Flood Risk Assessment ref 5166  
Proposed site plan ref 13868A  
Materials specification  
Proposed office plan and elevations ref LT

Reason: To clarify which plans have been approved.

### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), February 2019 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

### **INFORMATIVES**

(1) It is recommended that the unit is designed with adequate security and you are advised to consider the SBD Commercial Guidance on [www.securedbydesign.com](http://www.securedbydesign.com)

(2) A formal application for connection to the public sewerage system is required in order to service this development. Please read Southern Water New Connections Services Charging Arrangements documents which has now been published and is available to read on our website via the following link: [southernwater.co.uk/infrastructure-charges](http://southernwater.co.uk/infrastructure-charges).

The disposal of surface water from this development shall follow the hierarchy within Part H3 of Building Regulations:

- a) An adequate soakaway or some other adequate infiltration system.
- b) A water course.
- c) Where neither of the above is practicable: a sewer.

It is possible that a sewer now deemed to be public could be crossing the development site. Therefore, should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its ownership before any further works commence on site. For further advice, please contact Southern Water, Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX (Tel: 0330 303 0119).

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.  
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.



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<b>2.3 REFERENCE NO - 19/505038/OUT</b>		
<b>APPLICATION PROPOSAL</b>		
Outline application for the demolition of former Public House and erection of a block of 15 flats (All Matters Reserved).		
<b>ADDRESS</b> The Lion 2 Church Street Milton Regis Sittingbourne ME10 2JY		
<b>RECOMMENDATION</b> Grant subject to conditions and signing of a suitably worded Section 106 Agreement		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>		
The site is in a sustainable location within the built up area boundary with suitable access to a wide range of services and facilities. The adopted Local Plan directs development towards these areas, and the site will utilise an existing brownfield site. The site is considered to be a non-designated heritage asset, and it has been determined there is no objection to the demolition of the building due to the low quality and significance of the building. The proposal is therefore considered to comply with para 197 of the NPPF, and weight has been given to the re-use of the site and provision of housing including affordable units. Whilst this is an application in outline only, it is considered that the site can accommodate such a development and in a manner that will maintain the character of the local area and would not give rise to an unacceptable impact upon residential amenities.		
<b>REASON FOR REFERRAL TO COMMITTEE</b>		
Called in by Cllr Mike Baldock		
<b>WARD</b> Chalkwell	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Bespoke Development Solutions Ltd <b>AGENT</b> Clay Architecture Ltd
<b>DECISION DUE DATE</b> 18/02/20		<b>PUBLICITY EXPIRY DATE</b> 27/01/20

**Planning History**

SW/79/0002

CHANGE OF USE TO RESIDENTIAL ( LION INN)

Approved Decision Date: 14.03.1979

**1. DESCRIPTION OF SITE**

- 1.1 The site comprises a two storey building situated to the north-west of Church Street, with garden areas to the north and east of the building. The site is currently vacant, and its planning use is considered to be a single residential dwelling. The exterior of the building is finished in a mix of render and facing brickwork under a slate roof.
- 1.2 The building at 2 Church Street was previously in use a public house known as 'The Lion Inn' and planning permission was granted to convert the former pub into a residential dwelling on 1979 (under reference SW/79/0002). The supporting information notes that the neighbouring property was acquired in 1989 (no. 4 Church Street) and amalgamated to form a single dwelling.
- 1.3 The existing vehicular access is to the south-east of the building and there is a driveway area in the rear part of the site.

- 1.4 The site is situated close to the southern end of Church Street which is a cul-de-sac and stops short of joining Mill Way (B2006). The surrounding area is mixed in terms of uses and character, to the north and east of the site are industrial units (Millen Industrial Estate), to the east of the site on the other side of the highway are commercial units and a retail park, and to the south and west of the site are residential properties. To the south and west of the site is a new residential development comprising 150 dwellings, including a four storey accommodation block opposite the site, and two storey terraced dwellings fronting onto Church Street.
- 1.5 The building is not listed, nor is it situated within a Conservation Area. The building is considered to be an undesignated heritage asset, however it should be noted that the Council does not have a local list regarding non-designated heritage assets.

## 2. PROPOSAL

- 2.1 Outline planning permission is sought for the demolition of the former Public House and erection of a block of 15 flats, with all matters reserved for future consideration.
- 2.2 The indicative proposals are for the erection of a block of flats containing 15 dwellings, with an indicative mix of mix of 1 and 2 bedroom flats (4 x 1 bed; and 11 x 2 bed).
- 2.3 The indicative plans show that the ground floor level would accommodate under croft vehicular parking, cycle storage and a bin store. A new vehicular access would be created to serve the under croft parking, and the existing access would also be used to access external parking spaces. Residential accommodation is shown to be situated on the first, second, third and fourth floors.

## 3. SUMMARY INFORMATION

	Existing	Proposed (indicative proposals)	Change (+/-)
Site Area (ha)	772m <sup>2</sup>	772m <sup>2</sup>	None
No. of Storeys	2	5	+ 3
Parking Spaces	3	17	+ 14
No. of Residential Units	1	15	+ 14
No. of Affordable Units	0	2	+ 2

## 4. PLANNING CONSTRAINTS

- 4.1 Potential Archaeological Importance
- 4.2 Environment Agency Flood Zone 2 and 3
- 4.3 Groundwater Source Protection Zone

## 5. POLICY AND CONSIDERATIONS

- 5.1 National Planning Policy Framework (NPPF): Paras 8 (three dimensions of sustainable development); 10, 11 (presumption in favour of sustainable development); 47 (Determining applications); 54, 55, 56, 57 (planning conditions and obligations); 61 (delivering sufficient supply of homes); 124, 127, 128, 130, 131 (good design); paragraphs 184 -202 (conserving the historic environment)
- 5.2 National Planning Practice Guidance (NPPG): Design.Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017 – Policies ST1 (Delivering sustainable development in Swale); ST2 (Development targets for jobs and homes



2014-2031); ST3 (The Swale settlement strategy); ST4 (Meeting the Local Plan development targets); ST5 (The Sittingbourne Area Strategy); CP2 (Promoting sustainable transport); CP3 (Delivering a wide choice of high quality homes); CP4 (Requiring good design); CP8 (Conserving and enhancing the historic environment); DM7 (Vehicle parking); DM8 (Affordable housing); DM14 (General development criteria); DM19 (Sustainable design and construction); DM21 (Water, flooding and drainage) and DM29 (woodlands, trees and hedges).

## 6. LOCAL REPRESENTATIONS

6.1 Two comments received from the Sittingbourne Heritage Museum, who objects to the application on the following summarised grounds;

- Loss of heritage
- Raised concern with an article in the local newspaper (KM SNE 27<sup>th</sup> November) under the headline 'Plans are in for flats to replace bar' and that it is biased.
- Planners should not allow biased advantaged planning notices in newspaper.
- The building is an old pub or beer house, and used as a family home for many years.
- Developers likely arguing it is unsustainable to restore, and is an eyesore
- Refers to the Sittingbourne Heritage Museum's book "Inns, Taverns and Public Houses of Sittingbourne and Milton" which includes references to the former pub 'The Lion' and its cultural and historical relevance.
- Requests that planning decisions are made under careful scrutiny from the new regime at the Council, with a balanced view and an eye on the future needs of the town in attracting visitors and investment.
- Once such heritage is gone it is gone forever.

Officer Note: Members should note that newspaper article/notice referred to in the representation received above relate to an article produced by the local newspaper, and does not relate to the statutory planning notices which are advertised in local newspaper publications.

6.2 One comment received from the Sittingbourne Society, referring to the comments from the Sittingbourne Heritage Museum and asks that the Council's Conservation Officer considers carefully the historic and architectural merits of the building before advising of a decision.

6.3 One comment was received neither objecting or supporting the proposal, and outlined that if the application is approved the site and area would benefit from the retention of trees.

## 7. CONSULTATIONS

7.1 **Environment Agency** raise no objection (06/12/2019) subject to conditions regarding contamination (regarding water).

7.2 **Natural England** comment (06/12/2019) that this proposal will give rise to increased recreational disturbance to the coastal Special Protection Area and Ramsar site. However, subject to the appropriate financial contribution being secured, Natural England is satisfied that the proposal will mitigate against the potential recreational impacts of the development on the site. However, due to the People Over Wind ruling by the Court of Justice of the European Union, Natural England advise that the measures to avoid or reduce the likely harmful effects from the development may need to be formally checked and confirmed via an Appropriate Assessment. It is for the

Council to decide whether an Appropriate Assessment is required and Natural England must be consulted.

An Appropriate Assessment has been carried out and Natural England have confirmed (13/05/2020) they raise no objection, subject to the standard financial contribution.

7.3 **Southern Water** raise no objection, subject to conditions regarding foul and surface water sewerage disposal and the public water supply main (10/12/2019).

7.4 **KCC Economic Development** request the following contributions (23/12/2019)

- Primary Education - £3324 per applicable dwelling (total £ 36,564.00 towards the expansion of Regis Manor Primary School)
- Secondary Education - £4115 per applicable dwelling (total £ 45,265.00 towards the expansion of Westlands Secondary School)
- Community learning - £16.42 per dwelling (total £246.30 towards additional equipment and classes at Sittingbourne Adult Education Centre)
- Youth Service - £65.50 per dwelling (total £982.50 towards additional equipment and classes at Sittingbourne Adult Education Centre)
- Library Bookstock- £55.45 per new dwelling (total £831.75 towards additional equipment and classes at Sittingbourne Adult Education Centre)
- Social Care - £146.88 per dwelling (total £2,203.20 towards specialist care accommodation within Swale Borough)
- Waste - £237.45 per dwelling (total £3563.10 towards additional capacity at the HWRC & WTS in Sittingbourne)
- A condition regarding high speed fibre optic broadband connection

7.5 **KCC Flood and Water** raise no objection subject to conditions seeking a detailed sustainable surface water scheme (04/12/2019). The comments note that the drainage strategy includes a controlled discharge of 2l/s into an existing opening of a tributary stream of Milton Creek south of the site. KCC support the proposal for the attenuation tank to be sized to accommodate flows up to the 100 +40% event and for sufficient storage to be provided should the outlet into the stream be blocked due to high water levels of the receiving stream. As part of a future design, supporting calculations should be provided to demonstrate that sufficient attenuation space is provided on site in the event of the outlet being blocked.

7.6 **KCC Highways and Transportation** raise no objection subject to requirements sought by condition or planning obligation (29/11/2019). This includes conditions securing the provision and retention of vehicle parking spaces; cycle parking facilities; provision of suitable visibility splays; provision of parking facilities during construction; and details of a construction management.

KCC Highways note that this is an outline application with all matters reserved, therefore the applicant should consider the following points at any subsequent reserved matters application;

- “The proposed development would not require the wide bell mouth junction at the access, as shown on the submitted plans. A standard vehicle crossover would be adequate for the proposed number of vehicle spaces.
- Parking spaces 13 to 17 may prove difficult to manoeuvre in and out of, due to the limited space behind the parking spaces.
- All dwellings with private off-street car parking should have an electric vehicle (EV)

charging point installed and this should be subject to a planning condition. Where communal car parks are proposed EV charging points should be provided at a rate of 10% of the total car parking provision.”

- 7.7 **KCC Minerals and Waste** raise no objection (03/12/2019). KCC note that the proposal is entirely within the built-up confines of Sittingbourne, thus the presence of safeguarded minerals is not considered relevant to its determination as mineral safeguarding does not apply within the built up confines of Kent’s urban areas and settlements.
- 7.8 **Environmental Health Manager** raises no objection (12/02/2020) subject to air quality mitigation measures and damage costs to form part of a S.106 agreement, and conditions regarding noise mitigation; and land contamination.

**08/01/2020:** Objected to the application as the submitted Air Quality (AQ) assessment did not offer sufficient information that the proposal would not impact or be impacted by elevated air pollution in the neighbourhood, and requested revised AQ assessment should be submitted.

The comments outline that the officer agrees with the submitted noise assessment and its conclusions subject to noise conditions, and details of the submitted land contamination report subject to further information sought by condition.

**28/01/2020:** *“Following my comments, more information has been submitted concerning mitigation measures and a damage cost calculation. This is an improvement on the first report with a realisation about the necessity to describe and calculate the necessary mitigation measures for this development.*

*I am aware that the levels at this locality are likely to be less than that identified at the St Pauls AQMA, but that should not detract from the fact that there are elevated levels of particulates not far away and any activity that might increase them during demolition and construction activities should be accounted for and minimised. I hope that the dust and construction mitigation measures described in the report are effective and carried out as described.*

*The damage cost sum calculated for mitigation is small but I am satisfied with the methodology arrived at. There should be a definite purpose and measure described where this sum will be used in mitigation.*

*The report refers to an outdated version of the Kent AQ Planning Technical Guidance on the Kent Air website. There is an updated 2019 version for Swale but it is not on the website yet so no blame can be made for not being aware of this document. That said, the description of electric charging points and low NOx boilers is welcome and appropriate for this locality.*

*Although not perfect, this report is significantly better than the original. Provided the mitigation measures are carried out as described in it and a description of how the damage cost sum is to be used, I will remove my initial objection on air quality grounds.”*

**12/02/2020:** “No objections to this proposal after receiving sufficient reassurance concerning air quality mitigation measures and damage costs which should form part of a section 106 agreement with mitigation measures to be described and submitted to the Local Planning Authority for approval.” They also request conditions regarding noise mitigation and land contamination.

- 7.9 **SBC Affordable Housing Manager** raises no objection (21/11/2019) subject to the provision of two affordable flats as set out below;

*“In line with Swale’s policy DM8 10% of the total number of dwellings on this development should be provided as two affordable flats.*

*When the policy requirement of the 90%-10% tenure split is applied to these 2 flats, this would be rounded up to deliver 2 affordable rent tenure homes. However, in a block with 13 other open market homes this may not be acceptable for a Housing Association to deliver. It is more likely, if we were able to secure a housing association on this site with such a very low number of affordable homes that they would choose to deliver these two flats as shared ownership.*

*As supported by policy CP3, a mix of housing types should be made available for a variety of groups including families, vulnerable and older persons households including those homes to be provided as affordable housing. Along with housing need demonstrated on the Council’s Housing Register and with the requirements of the Equality Act, I would recommend that at least one affordable dwelling be provided to Part M4(3) standard (wheelchair user dwelling) and that a one-bedroom ground floor flat would best meet this need. The other affordable housing unit should be provided as Part M4(2) standard (accessible and adaptable dwellings). I am not sure if this is possible in the design of this block of flats, and as previously noted it may be difficult to secure a Housing Association delivery partner on this site anyway.*

*I can confirm that Swale’s Housing Register demonstrates a need for all types and sizes of affordable accommodation for those in housing need in the Sittingbourne area.*

*To summarise my comments above, shared ownership flats in the same block as private sale is likely to be acceptable to a housing association, and it is also worth bearing in mind that there are currently no Housing Associations operating in Swale who would be willing to accept two affordable dwellings on an individual site.”*

- 7.10 **SBC Greenspaces Manager** raises no objection (17/04/2020) subject to a contribution towards local play/fitness facilities.

*“Clearly appreciated that there is little room from an onsite open space perspective, although the Mill Pond Linear Park once fully delivered would provide a level of provision opposite. Despite identification in the Design & Access Statement the Waterside Park is unlikely to be delivered, but Milton Creek Country Park is acknowledged as being within walking distance.*

*The Council would seek a contribution toward increasing capacity of local play/fitness facilities at Milton Creek Country Park for the additional population created by the new development at a level of £446 per dwelling as identified in the Open Spaces and play Strategy.”*

- 7.11 **Kent Police** object (28/11/2019) to the application and note concern with the design of the proposal and ground floor podium parking. Areas of concern include lack of access control to vehicle entry of the parking area; lack of secure route to lift/stairs from the parking area; the need for formal access control is required for the lift, staircase and the lobby door sets to all floors; lack of security for bike store; soft landscaping needs full access control; and outline specification for communal doors, openings and communal mail.

Officer Note: Members will note that the application is for outline consent with all matters reserved for future consideration, and the issues raised by Kent Police can be addressed at reserved matters stage, and a condition is attached to address this.

## **8. BACKGROUND PAPERS AND PLANS**

Location Plan; Existing Floor and Elevations; Existing Views; Indicative Floor plans; Indicative Elevations; Indicative Views; Visibility Splay; Acoustic Report; Flood Risk Assessment, Drainage Strategy & Groundwater Protection Report; Air Quality Assessment; Phase 1 Desk Study Report; Heritage Statement; Design and Access Statement.

## **9. APPRAISAL**

### **Principle of Development**

- 9.1 The site is situated within the built up area of Sittingbourne and comprises a brownfield site with existing residential use and therefore the principle of residential development is acceptable. The site is in an appropriate and sustainable location with good access to local facilities, transport links and schools, where good use should be made of available land. Furthermore, it is also important for Members to note that the Council are currently unable to demonstrate a 5-year housing land supply. As a result of this, I am of the view that the benefits of addressing this shortfall, upon a site within an existing built up area boundary should be given additional weight.

### **Heritage Considerations**

- 9.2 Policy CP8 (conserving and enhancing the historic environment) outlines that development will sustain and enhance the significance of designated and non-designated heritage assets, and that development proposals will accord with national policy in respect of heritage matters (as set out in paras 184 – 202 of the NPPF).
- 9.3 The building is not listed, nor is it situated within a Conservation Area. Local representations were received from the Sittingbourne Society and the Sittingbourne Heritage Museum raising concern regarding the loss of the building and the impact on heritage from the loss of a former public house. As such, advice was sought from the Council's Conservation team regarding the heritage impact of the proposed development.
- 9.4 In initial comments received from the Conservation team it was concluded that the former pub should be considered as an undesignated heritage asset (non-designated heritage asset) which forms part of the industrial history of Sittingbourne. Concerns were raised regarding the demolition of the building, and that further information in the form of a heritage assessment was required to support the application. The comments also outline that there may be scope for national statutory designation and/or that it would be a good candidate for a future local list of non-designated heritage assets.
- 9.5 It should be noted that the Council does not currently have a local list regarding non-designated heritage assets, nor is there a timeline for producing such a list.
- 9.6 Following these initial comments a heritage statement was submitted which has been reviewed by the Conservation team. The submitted heritage statement sets out the following regarding the significance of the heritage asset (pages 28 and 29);

- *“This is not a site of archaeological interest*
- *This is a building of little architectural and/or artistic interest*
- *The design of the building is not unique, there were pubs of similar design in the area and they were demolished in earlier clearances*
- *The building stopped trading as a pub, and stood empty and derelict for more than 30 years before the applicants parents purchased the building and obtained approval to change it into a house in 1979*
- *The site has lost all of its historic content and nothing of its historic setting remains. Everything west of Charlotte Street was removed in the 1970’s and in the 2000’s. There is nothing physically left of the historical social and industrial context of the area for the building to refer or add significance to.*
- *In its current state the building is not a good example of a public house of its period, the building has lost 85% of its historic features from years of standing derelict, from its conversion into a dwelling, and from the passing of time. Very little is left that identifies it as a pub of its period. The building has not traded as a pub since 1945.*
- *The overall quality and heritage significance of the asset is low. Therefore the impact of the proposals on the heritage asset is low.”*

9.7 The comments provided by the Conservation team outline that the submitted information within the Heritage Statement is acceptable and provides adequate justification for demolition. The comments also note that the site would not be worthy of statutory designation.

9.8 As set out in the NPPF, para 197 is relevant for non-designated heritage assets such as this and states: *“The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”*

9.9 As outlined above it is considered that the site is a non-designated heritage asset of low quality and significance. The Conservation team believe that the proposal represents less than substantial harm impact given the level of alterations that have occurred to the existing building and its residential use, and on balance therefore do not object to its demolition. The proposed new building would not impact on any locally designated heritage assets as there are none within close proximity to the site. The site is a very sustainable location, and would make efficient use of a brownfield site. The proposed residential units would compliment the existing mixed uses of the area and provide much needed housing, including the provision of affordable units when the Council can not demonstrate a 5 year housing land supply. As such, it is not considered that the proposed development would conflict with paragraph 197 of the NPPF.

9.10 The Conservation team support the potential for the conversion of the building, however this is not being proposed under the current application. Furthermore, the site falls within flood zones 2 & 3, where living/bedroom accommodation would be prohibited at ground floor level which would limit the conversion potential of the existing site – for example conversion into flats.

### **Visual Amenity**

9.11 As set out above, all matters are reserved for future consideration should this application be approved. As such, this is largely an issue to be dealt with at the reserved matters stage. Nevertheless, it is reasonable to conclude that a block of flats

comprising 15 dwellings can be accommodated on the site, without a harmful impact on visual amenity or the character of the wider area.

- 9.12 To the south and west of the site is a new residential development comprising 150 dwellings, including a four storey accommodation block opposite the site, and two storey terraced dwellings fronting onto Church Street. Taking into account the existing four storey flat block opposite the site, it is considered a proposal of a similar scale and massing is likely to be acceptable on this site.
- 9.13 The indicative proposals show that the building would be set back from the front boundary of the site, which would be reflective of the relationship that exists on the other side of Church Street, and provides scope for a scheme of soft landscaping to be incorporated along the frontage of the site.
- 9.14 A proposed indicative elevation has been provided to indicate massing and shows that the building would be five storeys, with accommodation on the fifth floor being served by a flat roof section of the building set back from the external walls of the building. The surrounding residential development is characterised by buildings with pitched gable roofs, including gables fronting onto the streetscene, which may be a more suitable design approach to reflect the character of the area and will be considered at the reserved matters stage.
- 9.15 The indicative proposal includes undercroft parking, and careful design will be needed to ensure this does not appear as a harsh or dominant feature on the building or streetscene.

### **Residential Amenity**

- 9.16 DM14 of the Local Plan states that all developments should cause no significant harm to the amenities of surrounding uses or area. The detailed scheme for the new dwellings would be secured at the reserved matters stage and this will include the design, form and scale of the dwellings including details such as window/door placement and details of boundary treatments.
- 9.17 The existing dwelling is a two storey building situated hard up against the front boundary of the site with windows facing the apartment block on the opposite side of Church Street which are considered to have an acceptable relationship in terms of residential amenity.  
The indicative proposal would increase the number of storeys, however would be set further back than the existing building and it is considered that the proposal would not result in any significant harm in terms of loss of light or outlook to the neighbouring properties on the other side of Church Street. In terms of privacy it is considered there is sufficient depth for front-front windows, however location and siting of windows would be fully addressed at the reserved matters stage.
- 9.18 With regard to the future residential amenity, the indicative proposals show a small area of external amenity space around the building, and the inclusion of an external balcony for each flat which is considered to provide a suitable level of amenity space for the 1 and 2 bedroom flats. Careful consideration at the reserved matters stage regarding window types and placement will be needed to ensure that all properties have a suitable level of light, outlook and privacy especially noting the large B&M Steel building to the north of the site.

- 9.19 The application has been supported by an acoustic assessment due to the site's relationship with nearby busy roads and an adjacent industrial use. The Environmental Health Officer has reviewed the submitted information and proposed mitigation measures which include enhanced glazing, non-opening windows, and suitable ventilation for internal living areas. The Environmental Health Officer comments outline the submitted acoustic assessment and conclusions are acceptable and raises no objection regarding noise impacts subject to details of noise mitigation measures sought by condition. This is attached at condition (16) and will ensure there is appropriate mitigation for the final design of the dwellings at the reserved matters stage.
- 9.20 Taking the above into account, it is considered that the development could be designed to avoid unacceptable impacts on neighbours, and comply with the above policies.

### **Access, Highways and Parking**

- 9.21 Details of access are reserved for future consideration and KCC Highways and Transportation have raised no objection subject to conditions securing the provision and retention of vehicle parking spaces; cycle parking facilities; provision of suitable visibility splays; provision of parking facilities during construction; and details of a construction management.
- 9.22 KCC Highways and Transportation also note considerations that should be addressed at the reserved matters stage including amendment to the indicative vehicular access. This is currently shown as a wide bell mouth junction; whereas KCC Highways and Transportation note that a standard vehicular crossover would be adequate for the proposed number of vehicle spaces.
- 9.23 The proposed indicative layout provides 17 parking spaces, 2 of which are visitor spaces, and 15 bicycle spaces which would be broadly in accordance with the KCC Residential Parking standards. KCC Highways and Transportation note that the indicative layout for parking spaces 13-17 off Church Street may be difficult to manoeuvre in and out of, and this should be addressed at the reserved matters stage. As such, it is considered that appropriate details regarding parking can be secured at the reserved matters stage.
- 9.24 KCC Highways and Transportation outlined that all dwellings with private off-street car parking should have an electric vehicle (EV) charging point installed and this should be subject to a planning condition, as the proposed parking arrangements are on the site this condition will be sought at condition (12).

### **Affordable Housing**

- 9.25 Policy DM8 requires 10% of the total number of homes on this site to be delivered as affordable housing. This equates to 2 affordable homes. When the policy requirement of the 90%-10% tenure split is applied to these 2 flats, this would be rounded up to deliver 2 affordable rent tenure homes. The Affordable Housing Manager notes that in a block with 13 other open market homes this may not be acceptable for a Housing Association to deliver. It is more likely, that if a housing association is secured for the site that they would choose to deliver these to flats as shared ownership due to the low number of affordable units.
- 9.26 The Affordable Housing Manager outlines that at least one affordable dwelling be provided to Part M4(3) standard (wheelchair user dwelling), the other affordable



housing unit should be provided as Part M4(2) standard (accessible and adaptable dwellings) which is supported by Policy CP3 which requires a mix of housing types.

- 9.27 The provision of two affordable units (affordable rent or shared ownership) on site would comply with Policy DM8, which requires 10% affordable housing for sites in Sittingbourne, and will be secured by a S.106 legal agreement.

### **Drainage / Flood Risk**

- 9.28 The application has been supported by a Flood Risk Assessment, Drainage Strategy & Groundwater Protection Report (dated November 2019).
- 9.29 With regard to flood risk, the site is within Environment Agency Flood Zones 2 and 3, and the flood risk assessment (FRA) sets out that no residential accommodation would be proposed at ground floor level. The FRA sets out other mitigation measures including the use of the under-croft parking, providing access and escape routes, early warning and having all habitable space a minimum of 2.4m above the worst-case flood level. The potential maximum flood level is noted to be 6.12 AOD (2115 figure), and therefore the FRA sets out that habitable space should be 8.52 AOD or higher which will be achieved by restricting residential accommodation to first floor level and above. Taking into account the existing residential use of the site, proposed mitigation measures as set out within the FRA, it is considered the development would meet the Exception Test as set out within the NPPF. The Environment Agency have raised no objection regarding flood risk, and a condition (14) will be attached requiring residential accommodation to be above 8.52 AOD and at first floor level and above only.
- 9.30 With regard to surface water drainage, KCC Drainage outlined they raised no objection to the outline application subject to further details sought via condition. These conditions include the provision of a finalised layout to ensure the requirements for surface water drainage can be accommodated within the development site; submission of a surface water drainage scheme; and verification report pertaining to the surface water drainage system. Therefore it is considered the proposed development would comply with policy DM21 of Bearing Fruits 2031: The Swale Borough Local Plan 2017 and paragraph 165 of the NPPF.
- 9.31 The site is within a Groundwater Source Protection Zone and the impact of development is assessed in the submitted 'Flood Risk Assessment, Drainage Strategy & Groundwater Protection Report'. This has been reviewed by the Environment Agency who raise no objection (06/12/2019) subject to conditions regarding contamination. Southern Water raise no objection, subject to conditions regarding foul and surface water sewerage disposal and the public water supply main.

### **Sustainable design and Construction**

- 9.32 The Council has declared a Climate Change and Biodiversity Emergency, and this is a material planning consideration. The supporting information notes that due to the outline nature of the scheme it does not propose any specific details regarding sustainable design or construction and that this will be fully addressed as part of a reserved matters application or controlled by a planning condition.
- 9.33 Therefore conditions have been incorporated to this application (nos. 12, 17 and 18) to ensure that the development incorporates sustainable measures. Condition 17 (which relates to achieving at least a 50% reduction in Carbon Emission Rates) is a pre-commencement condition, and Members will note that the applicant did not object or

comment on this condition during the required 10 working day notification period for pre-commencement conditions and as such it is included. Condition 18 is seeking a water consumption rate of no more than 110 litres per person per day in the interests of water conservation and sustainability which is considered reasonable for new developments. A condition requiring details of an electric charging point per dwelling is included at condition 12.

### Ecology

- 9.34 Paragraph 174 of the NPPF 2018 advises that when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity. Given the existing residential use of the site within a built up urban area and extent of existing hardstanding on the site, it is not considered that detailed ecological surveys were required for the application. Details of a scheme of biodiversity enhancements including the provision of bat and bird boxes will be sought via condition to enhance biodiversity within the site. Details of landscaping will also be controlled by condition to ensure an appropriate mix of native species planting for the site.

### Developer Contributions

- 9.35 Members will note from the consultation responses received above that in line with normal procedures for a development of this size, it would generate a requirement for financial contributions to deal with additional demand on local infrastructure. The contributions requested are as follows:

Primary Education - £3324 per applicable new dwelling	Total	£36,564
Secondary Education - £4115 per applicable new dwelling	Total	£45,265
Community Learning - £16.42 per dwelling	Total	£229.88
Youth Service - £65.50 per new dwelling	Total	£917
Library Bookstock- £55.45 per new dwelling	Total	£776.30
Social Care - £146.88 per new dwelling	Total	£2056.32
Waste - £237.54 per new dwelling	Total	£3325.56
SPA Mitigation (SAMMS) – £250.39 per new dwelling	Total	£3505.46
SBC Refuse Bins – £189.64 per flat	Total	£2654.96
SBC Play and Sports contribution– £446 per new dwelling	Total	£6244
Emissions Damage Cost (Air Quality)	Total	£1119
Administration and Monitoring Fee	Total	£5000

Provision of two affordable dwellings (to be affordable rent tenure homes or shared ownership) and one of the units to be built to Part M4(3) standard, and one of the units to be built to M4(2) standard.

Air quality mitigation measures and damage costs (with mitigation measures to be submitted to the Local Planning Authority for approval).

Total Developer Contributions: £107657.48

- 9.36 The above developer contributions have been worked out on the basis of a net gain of 14 dwellings as the site is in existing residential use. The level of contributions outlined above therefore differ from the KCC Economic Development consultation request as these have been based on 15 dwellings.

- 9.37 The applicant has agreed to pay these contributions and it is considered that they meet the relevant tests for planning obligations

- 9.38 It is also considered that a Section 106 Agreement is the best mechanism for addressing the SAMM contribution (of £250.39 per dwelling), the details of which are set out under the subheading 'The Conservation of Habitats and Species Regulations 2017'.

### **The Conservation of Habitats and Species Regulations 2017**

- 9.39 The application site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) and the Swale SPA which are European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.
- 9.40 Residential development within 6km of any access point to the SPAs has the potential for negative impacts upon that protected area by virtue of increased public access and degradation of special features therein. The HRA carried out by the Council as part of the Local Plan process (at the publication stage in April 2015 and one at the Main Mods stage in June 2016) considered the imposition of a tariff system to mitigate impacts upon the SPA (£250.39 per dwelling as ultimately agreed by the North Kent Environmental Planning Group and Natural England) – these mitigation measures are considered to be ecologically sound.
- 9.41 However, the recent (April 2018) judgement (People Over Wind v Coillte Teoranta, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, "it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site." The development therefore cannot be screened out of the need to provide an Appropriate Assessment (AA) solely on the basis of the agreed mitigation measures (SAMMS), and needs to progress to consideration under an AA.
- 9.42 In this regard, whilst there are likely to be impacts upon the SPAs arising from this development, the scale of development (15 dwellings within the built up area boundary with access to other recreation areas) and the mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff I believe will ensure that these impacts will not be significant or long-term. However, in order to confirm this I have carried out an Appropriate Assessment and re-consulted with Natural England. The consultation response from Natural England (13/05/2020) outlines that they raise no objection to the Appropriate Assessment undertaken, subject to securing appropriate mitigation via the SAMMS payment. As set out, above, the applicant has agreed to pay the tariff and as such I therefore consider that, subject to mitigation, there will be no adverse effect on the integrity of the SPAs.
- 9.43 Finally, it can be noted that the required mitigation works will be carried out by Bird Wise, the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, which itself is a partnership of local authorities, developers and environmental organisations, including SBC, KCC, Medway Council, Canterbury Council, the RSPB, Kent Wildlife Trust, and others. (<https://birdwise.org.uk/>).

## 10. CONCLUSION

10.1 Overall I give very significant weight to the sustainable location of the site within the built area boundary. The adopted Local Plan directs development towards these areas, and the site will utilise an existing brownfield site. The site is considered to be a non-designated heritage asset, and it has been determined there is no objection to the demolition of the building due to the low quality and significance of the building. The proposal is therefore considered to comply with para 197 of the NPPF, and weight has been given to the re-use of the site and provision of housing including affordable units. Whilst this is an application in outline only, it is considered that the site can accommodate such a development which will maintain the character of the local area and would not give rise to an unacceptable impact upon residential amenities. As such, I consider that outline planning permission should be granted subject to conditions set out below and the signing of a Section 106 agreement.

## 11. RECOMMENDATION

GRANT Subject to the following conditions:

### CONDITIONS to include

1. Details relating to the layout, scale and appearance of the proposed building(s), the access thereto and the landscaping of the site shall be submitted to and approved by the Local Planning Authority before any development is commenced.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. Application for approval of reserved matters referred to in Condition (1) above must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

3. The development to which this permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

4. The details submitted pursuant to condition (1) above shall show adequate land, reserved for the parking or garaging of cars and cycle parking facilities (in accordance with the currently adopted Kent County Council Vehicle Parking Standards or such other parking standards as shall have been adopted by the Council at the time that the reserved matters application is made) which land shall be kept available for this purpose at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not shall be carried out on such land (other than the erection of a private garage or garages) or in a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling(s) hereby permitted.

Reason: Development without adequate provision for the parking or garaging of cars is likely to lead to car parking inconvenient to other road users.

5. The details submitted pursuant to condition (1) above shall include details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees (including the retention of the tree identified close to the southern end of the site on the 'Existing Ground Floor Plan', drawing 5226/PL/100), shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials and the retention of existing trees within the site and an implementation programme. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

6. Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

7. Construction of the development shall not commence until details of the proposed means of foul and surface water sewerage disposal have been submitted to, and approved in writing by, the Local Planning Authority in consultation with Southern Water

Reason: To ensure that foul and surface water is adequately disposed of.

8. Development shall not begin in any phase until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme shall be based upon the principles contained within the Flood Risk Assessment, Drainage Strategy & Groundwater Protection Report by Alan Baxter Partnership (November 2019) and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site

The drainage scheme shall also demonstrate (with reference to published guidance):

- that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
- appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

The drainage scheme shall be implemented in accordance with the approved details.

Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water and to ensure that the development does not exacerbate the risk of on/off site flooding. These details and accompanying calculations are required prior to the commencement of the development as they form an intrinsic part of the proposal, the approval of which cannot be disaggregated from the carrying out of the rest of the development.

9. No building on any phase (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report, pertaining

to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority. The Report shall demonstrate the suitable modelled operation of the drainage system where the system constructed is different to that approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and, the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.

Reason: To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those risks to controlled waters, property and ecological systems, and to ensure that the development as constructed is compliant with and subsequently maintained pursuant to the requirements of paragraph 165 of the National Planning Policy Framework.

10. Submission of a Construction Management Plan before the commencement of any development on site to include the following:
  - (a) Routing of construction and delivery vehicles to / from site
  - (b) Provision of parking and turning facilities for construction and delivery vehicles and site personnel and visitors for the duration of development.
  - (c) Timing of deliveries
  - (d) Provision of wheel washing facilities
  - (e) Temporary traffic management / signage

Reason: In the interests of residential amenity and road safety.

11. Details of visibility splays shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details, and shall be implemented prior to the use of the site commencing.

Reason: To ensure provision of the visibility splays and in the interests of highway safety

12. Each dwelling shall be provided with 1 electric vehicle charging point (in accordance with details that shall first have been agreed in writing by the Local Planning Authority) and no dwelling shall be occupied until the charging point for that dwelling has been installed.

Reason: To encourage the use of electric vehicles, in the interests of climate change and reducing pollution.

13. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved.

Reason: To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution from previously unidentified contamination sources at the development site in line with paragraph 170 of the National Planning Policy Framework.

14. The finished floor levels for the habitable residential accommodation shall be no lower than 8.52mAOD, and shall be at first floor level or above.

Reason: To minimise risk of internal flooding.

15. The development hereby permitted shall not be commenced until the following components of a scheme to deal with the risks associated with contamination of the site shall have been submitted to and approved, in writing, by the local planning authority:

1) A site investigation, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site

2) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (2). This should give full details of the remediation measures required and how they are to be undertaken. The RMS should also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

3) A Closure Report is submitted upon completion of the works. The closure report shall include full verification details as set out in 3. This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean;

Reason: To ensure any land contaminated is adequately dealt with.

16. No development beyond the construction of foundations shall take place until details of noise mitigation measures as outlined in the Acoustic Assessment (dated October 2019) have been submitted to and approved in writing by the Local Planning Authority. This shall include details for the construction of non-opening windows with appropriate glazing for living rooms and a suitable and effective ventilation system. The work/measures specified in the approved scheme shall then be carried out in accordance with the approved details prior to occupation of the premises and be retained thereafter.

Reason: In the interests of the amenity of occupiers.

17. The dwelling(s) hereby approved shall be constructed and tested to achieve the following measure:

At least a 50% reduction in Dwelling Emission Rate compared to the Target Emission Rates as required under Part L1A of the Building Regulations 2013 (as amended); No development shall take place until details of the measures to be undertaken to secure compliance with this condition have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: In the interest of promoting energy efficiency and sustainable development.

18. The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the dwellings shall not be occupied unless the notice for the dwellings of the potential consumption of water per person per day required by the Building Regulations 2015 (As amended) has been given to the Building Control Inspector (internal or external).

Reason: In the interests of water conservation and sustainability.

19. Prior to the commencement of any above ground works, a scheme for the enhancement of biodiversity on the site shall have been submitted to and approved in writing by the Local Planning Authority. These shall include the installation of bat and bird nesting boxes along with provision of native planting where possible. The approved

details will be implemented and thereafter retained. The provision and installation of enhancements should take place within 6 months of the commencement of works, where appropriate.

Reason: To enhance biodiversity

20. The details submitted pursuant to condition (1) above shall demonstrate how principles relating to minimising the opportunities for crime and anti-social behavior have been incorporated in the layout, landscaping and building design.

Reason: In the interests of minimising the opportunities for crime and anti-social behaviour.

21. The details submitted pursuant to condition (1) above shall show dwellings extending to no more than five storeys in height

Reason: In the interests of complementing the character and appearance of existing development in the vicinity of the site.

22. The details submitted pursuant to condition (1) (for the residential development) above shall include details for the installation of fixed telecommunication infrastructure and High Speed Fibre Optic (minimal internal speed of 100mb) connections to multi point destinations and all buildings including residential shall be submitted to and approved in writing by the Local Planning Authority. The details shall provide sufficient capacity, including duct sizing to cater for all future phases of the development with sufficient flexibility to meet the needs of existing and future residents. The agreed details shall be laid out at the same time as other services during the construction process.

Reason: To provide high quality digital infrastructure.

23. No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:-

Monday to Friday 0800 - 1800 hours, Saturdays 0800 - 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

24. No impact pile driving in connection with the construction of the development shall take place on the site on any Saturday, Sunday or Bank Holiday, nor any other day except between the following times:-

Monday to Friday 0900-1700hours unless in association with an emergency or with the written approval of the Local Planning Authority.

Reason: In the interests of residential amenity

### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), February 2019 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.



The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

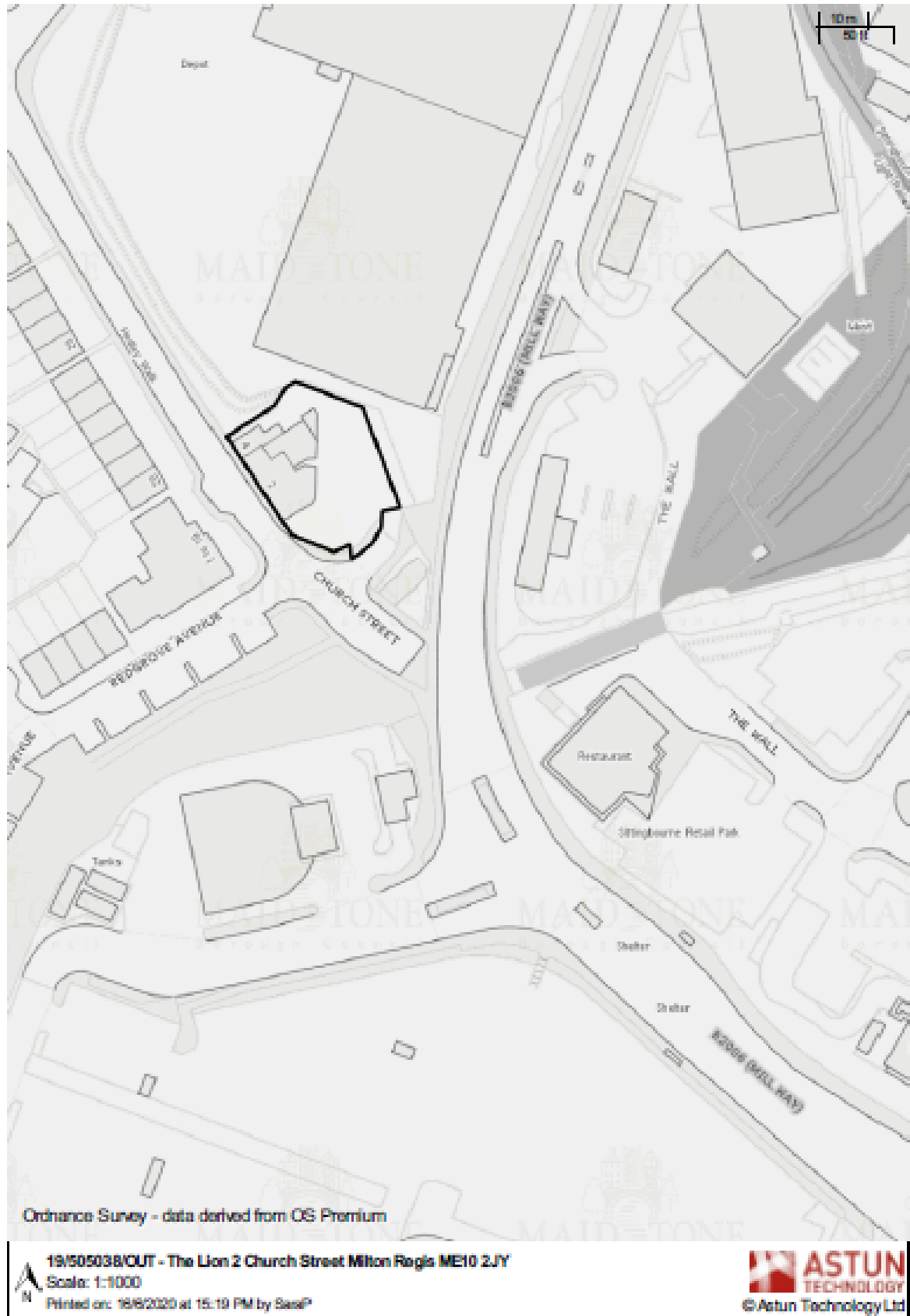
## **INFORMATIVES**

### **Southern Water:**

A formal application for connection to the public sewerage system is required in order to service this development. Please read Southern Waters New Connections Services Charging Arrangements documents which has now been published and is available to read on our website via the following link <https://beta.southernwater.co.uk/infrastructure-charges>

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.



<b>2.4 REFERENCE NO - 19/506131/FULL</b>		
<b>APPLICATION PROPOSAL</b> Construction of a detached two bedroomed house. (Resubmission of 18/506555/FULL)		
<b>ADDRESS</b> Land North Of Thatched Cottage, Canterbury Road, Faversham, Kent ME13 8LX		
<b>RECOMMENDATION</b> - Grant subject to conditions and SAMMS payment		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Town Council objection and applicant is a member of staff		
<b>WARD</b> Watling	<b>PARISH/TOWN COUNCIL</b> Faversham Town	<b>APPLICANT</b> Jeff And Julie Redpath
<b>DECISION DUE DATE</b> 01/07/20	<b>PUBLICITY EXPIRY DATE</b> 29/01/20	

### Planning History

18/506555/FULL

Construction of a detached three bedroom house.

Withdrawn Decision Date: 13.03.2019

#### **1. DESCRIPTION OF SITE**

- 1.1 The site is located adjacent to the A2 Canterbury Road to the south east of Faversham town centre, in the conservation area of Preston-next-Faversham. The development site itself is located to the north of and forms part of the garden of the Thatched Cottage, a Grade II listed building. It is an elevated but predominantly level site, but with a steep bank to the north east corner where it drops down towards Finch Close. Properties to the north and east are at a lower level, whilst those to the west are at a higher level.
- 1.2 The site is within the built up area boundary of Faversham and is characterised as a residential area being set between Preston Park and the newer Finch Close. It is within walking distance of local facilities and services in Faversham, and with nearby public transport links to further afield.
- 1.3 Access to the property is now from Finch Close, which is a relatively new but privately maintained estate road which continues on to serve a substantial number of homes. Direct access to the property was diverted from the A2 to Finch Close when the estate was built.
- 1.4 The previous application which included the creation of a new access point to Finch Close was withdrawn in 2019 in order to allow for a more restrained and less intrusive scheme to be developed. The new access proposed then would have cut through the Local Green Space (LGS) that separates the site from Finch Close, but that new access is not part of this current application.

#### **2. PROPOSAL**

- 2.1 The proposed development is for a new two-bedroom detached property of 1.5 storeys in a simple 'L' shape, and with a pitched roof with gabled ends, the use of traditional materials is confirmed with clay roof tiles, black painted weatherboarding and timber framed openings, and taking the form of an out-building rather than a self-conscious house. This has been done to limit the impact of the new property on the setting of the Thatched Cottage
- 2.2 The layout of the proposed new dwelling would be compact, with a kitchen/dining space, a smaller living room, utility room and w.c on the ground floor. First floor accommodation would comprise of two bedrooms and a bathroom set within the slope of the roof, with the restricted height areas being utilised for storage space. Four small rooflights would be sited along the north-facing slope allowing daylight into the upper rooms.
- 2.3 The proposed dwelling would be situated close to the north boundary of the site, with timber fencing and vegetation providing a boundary and separation from the Thatched Cottage. No changes to the site levels are proposed, other than minor regrading around the footprint of the new dwelling as necessary to create level foundations
- 2.4 Access to the site will be via the existing driveway onto Finch Close and laid with a permeable surface, the existing vegetation border to the east of the site will be maintained and access to the new dwelling will be via the existing driveway with a footpath continuation up to the property. Two car parking spaces and an electric vehicle charging point will be provided and the scheme will be designed to include for a reduced carbon emission footprint.
- 2.5 The application is supported by a Design and Access and Heritage Impact Assessment statement that describes the site and surroundings ,and explains the deign approach now taken as follows:

*“Given the particular significance of the thatched cottage, it would be wrong to propose a pastiche facsimile of this design. The design of the new dwelling nonetheless recognises the significance of the grade II listed Thatched Cottage, described in greater detail in the Heritage Statement, and sits subservient to it through a restrained palette of materials and a modest scale.*

*The use of traditional materials - clay roof tiles, black painted weatherboarding, and timber framed openings - will combine to create a property that is modern but sympathetic to its historic surroundings. The overall aesthetic will be that of an ancillary building.”*

- 2.6 In terms of access the statement confirms that:

*“Access to the new dwelling will be via the existing driveway to Thatched Cottage, thereby having negligible impact upon the existing use of Finch Close. The existing driveway gate will be relocated, in order to allow cars to pull off the road before opening, improving upon the current provision. There will be provision for two cars.*

*An electric vehicle charging point will be provided.*

*The main entrance to the new dwelling will be from the South, with a single step up from ground level.”*

- 2.7 The statement concludes as follows:

*“The overall impact of the proposed new dwelling on the Thatched Cottage is considered neutral / slight.*

*The former community of Preston, to which the Thatched Cottage belonged, was long tied to the chalk pit and the small group of local buildings and services. The progression of the development of the local area can be clearly seen in historic maps; a resource that continues to be available for those interested in the history of the site.*

*The proposed new dwelling is a further, albeit much smaller, scale of development, though it has no greater impact on the density of housing than adjacent developments to the East and West of the site.*

*The design makes use of traditional materials, and a simple building form, which will not compete with the Thatched Cottage for aesthetic dominance.*

*The design acknowledges the requirements of policy DM18 and retains the green edge to Finch Close, and seeks, through use of traditional materials and high quality design, to promote a raised standard of design in the area in accordance with the NPPF.”*

### **3. PLANNING CONSTRAINTS**

Potential Archaeological Importance

Conservation Area Preston-next-Faversham

### **4. POLICY AND CONSIDERATIONS**

- 4.1 The National Planning Policy Framework (NPPF) para graphs 10, 47, 68 and 193
- 4.2 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies ST3, CP4, CP8, DM14, DM18, DM19, DM21, DM32 & DM33
- 4.3 Conservation Area Character Appraisal document for the Faversham next Preston Conservation Area

### **5. LOCAL REPRESENTATIONS**

- 5.1 Nine letters of objection have been received from local residents and their comments are summarised below:
  - The access to the new development is off a private road maintained by service charge and operated by Kings Chase (Faversham) Ltd, a service company wholly owned by the residents of Finch Close. Thatched Cottage is not a member of Kings Chase service company and has not sought permission to access the private road.
  - Previous repairs to the private road cost residents £50,000 and lorries and diggers could cause more damage.
  - As this road is private and any damage costs will need to be borne by residents, they should all be involved in any decision. If the planning permission is accepted then one of the conditions should be that the owners pay a set upfront cost of road repairs and then contribute to the annual payments.

- If the access to the property is to be from Finch Close, the coming and going of construction vehicles would be extremely inconvenient.
- The road is already quite narrow and there had already been multiple collisions at that point in road
- The development appears to be in a confined space and does not compliment the Thatched Cottage which is listed.
- Building new house would change view from upstairs window of my house
- One would need to check that this house would not block sunlight to my garden
- This development would adversely impact on an existing listed building which dates to the 18th century and as such is quite rare in this part of Faversham.
- It would also mean that the residential density of the area surrounding the cottage would increase in what is already a densely populated area.

5.2 A letter has been submitted by the applicants in response to the local representations, and this is summarised below:

- It is evident that most comments related to the recent maintenance costs for the roadway and the danger of introducing another entrance onto the road.
- The overbearing issue from neighbours relates to the possible damage caused to the roadway during construction. In 2018, a large amount of money was spent on repairing the damaged roadway which occurred some distance further into the estate at a bend which presumably suffered some movement as vehicles negotiated the corner. If this is the case, it is the initial design of the roadway and not the weight of vehicles using it that caused the problems.
- I have already agreed that any future residents would enter into a binding agreement to make the usual contribution towards the upkeep of the estate management as do the residents of Finch Close.
- I feel this is being unfairly levelled at this planning proposal and were any damage to be caused by the bona-fide construction company employed it would be suitably repaired and paid for via their company insurance. There would be no reason for any resident to pay towards this.
- By careful management during the construction stage there is no reason for large heavy vehicles to be present in the roadway which residents fear and certainly no excavating machines.
- We have lived on the present site since 1998, years before Crest Nicholson developed the estate. I do not consider the roadway is “dangerous” nor have any knowledge of it regularly being the scene of multiple collisions. I also feel the road surface is of good quality and have difficulty in understanding why residents fear the odd lorry will cause damage particularly as a weekly dustcart and daily delivery vehicles appear to have no difficulty in using the roadway

without causing such problems.

- When the estate was being built, the roadway was laid prior to the dwellings being built. Having been used by all manner of heavy construction vehicles at that time, it was obviously considered of a sufficiently high standard to carry such traffic.
- There will be no additional vehicle access created onto the roadway and parking is on site for two cars. The proximity and scale of the proposed building I would suggest has been addressed by a careful, sympathetic design.
- This application has taken into account the Town Council and the neighbour's comments from the previous submission. It is now for a modest two bedroom chalet style residence. We may consider moving into the new build ourselves at the expense of selling the Thatched Cottage where we have lived since 1998.
- The proposed build is of a chalet style with a reduced footprint and reduced in height with no intrusive windows overlooking nearby dwellings.

## **6. CONSULTATIONS**

- 6.1 Faversham Town Council objected to this application stating the access road was too narrow and on a private road, the lack of amenity space, the impact on the setting of a listed building and that the developer should meet any costs incurred for damage to the existing private road.
- 6.2 Natural England has no objection to the application subject to the SAMMS tariff being required in relation to possible increased recreational disturbance affecting The Swale SPA.
- 6.3 Kent Highways commented that the proposal did not meet their usual criteria for comment however they were subsequently contacted given local residents concern over inadequacies in the road and its safety. They further commented that there was no crash data recorded on Finch Close regarding accidents and that the road meets the necessary requirements for the width of road.

## **7. BACKGROUND PAPERS AND PLANS**

- 7.1 All papers submitted with application 19/506131/FULL and associated drawings

## **8. APPRAISAL**

- 8.1 The main considerations in relation to the current application are the principle of development, visual impact and the impact of the proposed dwelling on the character of the conservation area and the setting of the Thatched Cottage, residential amenity, highways, and landscaping.

Principle of Development

- 8.2 The site is located within the built up area boundary of Faversham and is therefore a sustainable and acceptable location for new residential development, given the transport links, services and facilities the town has to offer. As such the principle of residential development here is acceptable. What falls to be considered under this

application is the acceptability of the submitted scheme in terms of scale, design, access, landscaping and amenity.

- 8.3 The land to the north and east of the site is designated as a Local Green Space, under local planning policy DM18 and this area is retained in an open form in this proposal, in accordance with the aims of the policy.

Visual impact and the impact of the proposed dwelling on the character of the conservation area and the setting of the Thatched Cottage

- 8.4 Whilst it is clear that the proposed new dwelling would be seen within the immediate setting of the listed Thatched Cottage, I do consider it would not crowd the space within the curtilage due to a combination of its thoughtful siting and scale. Furthermore, given its appropriate low-key aesthetic and the combination of existing and proposed planting, the new dwelling would in my view appear as an appropriately discrete and secondary/ancillary building in the immediate landscape around the listing building.
- 8.5 The perception of the proposed new dwelling as an ancillary structure is further assisted by the avoidance of a separate access point off Finch Close, such that it would read more as an outbuilding/annexe to Thatched Cottage, rather than a completely separate dwelling.
- 8.6 Therefore I consider that the primary, aesthetic and historical value of the Thatched Cottage, particularly its appearance as a thatched building, will be unaffected by the proposals. By restricting the palette of materials for the new dwelling house to a small range of traditional, locally familiar materials, it ensures that the design does not compete with the historic building. There is therefore a neutral impact on the setting of the listed building and on the character of the conservation area.
- 8.7 Additionally vegetation around the existing Thatched Cottage site and additionally the trees on the area of open space adjacent to A2 and Finch Close provide screening not only to the existing properties, but also to the new house.
- 8.8 Overall, in terms of visual impact I consider that the proposed scheme would create an attractive residential development that would contribute to the visual appearance of the conservation area as a whole and the streetscape along Finch Close.
- 8.9 I note the comment from an objector regarding the impact of this additional house on the overall density of the locality. The principal objective of policy CP3 of the adopted local plan is to deliver a wide choice of high quality homes within the borough. The policy requires that residential densities are determined by the context and the defining characteristics of an area. The proposed scheme comprises a new dwelling being a much smaller scale of development than the existing properties in the locality, and I consider it has no greater impact on the density of housing than the adjacent residential developments to the east or west of the site.

#### Residential Amenity

- 8.10 The property is modest in size and is to be located in an existing residential area with established vegetation and an existing access, which retains the character of the site and the immediate area. Furthermore, I consider it provides a favourable layout with good levels daylight, sunlight and privacy. Given this, I consider that a good level of



accommodation has been achieved. The Thatched Cottage retains sufficient amenity space and the new dwelling has space which is readily accessible from the main house and provides a good usable space suitable for the size of residential accommodation proposed.

- 8.11 The east elevation of the new dwelling faces onto the Finch Close and the west of no 72 Finch Close but given the distance, the intervening vegetation and the differing levels I consider this to be sufficient to mitigate against any direct overlooking which could be detrimental to privacy. Similarly, the intervening vegetation and the change in level down to the site from the properties to the north west, particularly in combination with a large shed positioned on the boundary of no 37 Preston Park, is sufficient to preserve the current levels of amenity for that house specifically and in that direction generally and ensures the private areas remain well screened.
- 8.12 I note the comment from a nearby resident concerned the proposal would “block sunlight to their garden”, but given the distance between the two properties (nearly 50m) and the scale of the proposed property I do consider this is unlikely.

#### Highways

- 8.13 Access to the new dwelling would be via the existing vehicular access to the Thatched Cottage from Finch Close, which is a relatively new private road built to serve the overall housing estate. It is adequate to serve the estate of over 70 homes and I see no reason to see any objection to use of the very first section up to this site by one additional dwelling.
- 8.14 I note the comments made by local residents regarding the narrow nature of the road, the issues with cars passing and the potential impact of an additional dwelling using the road. However the road was built to comply with the road types listed in Kent Design Guide, and it generally measures about 5m wide minimum on the two-way sections, and 3m on those sections either side of the traffic islands. Advice from Kent Highways states that two cars can pass one another on a road of 4.1m in width, and even two-way roads can go down to 3m when passing places are provided. This is a privately maintained road leading to a cul-de-sac used by a relatively large number of properties so the number of vehicle movements is relatively small and I would argue that sensible driving to the conditions on a residential estate road should not lead to any difficulties.
- 8.15 This is a modest two bedroom property and the impact of additional vehicle movements from here would be negligible on the overall use of the roadway. The vehicular access to the Thatched Cottage was located in its current position due to the construction of the houses in Finch Close and will remain unaltered.
- 8.16 I note many local residents and the Town Council have also expressed concern regarding potential damage to the roadway during the construction period. Whilst I appreciate the concern, given the relatively recent necessary repairs to the road, there is no greater risk here for damage than for any other development. I note the applicant has confirmed the cost of any possible damage would be met by the contractor were it to occur and in the long term the occupier would be a net contributor to the Finch Close estate management fund. However such issues as these would be a private matter between the applicants and the Management Company whom maintain this private road, and should not affect the determination of this application.

8.17 Additional details showing the parking spaces have been provided for clarity and show the spaces set into the site and screened by the existing established vegetation.

### Landscaping

- 8.18 This is an established site and there remains established vegetation around the site and in the locality. Only limited details of landscaping have been provided. Therefore I have attached a condition requiring that the final landscaping and planting details should be secured by condition.

### Other Matters

- 8.19 **Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017.**

This Appropriate Assessment has been undertaken without information provided by the applicant. The application site is located within 6km of The Swale Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

Due to the scale of development there is no scope to provide on site mitigation such as an on-site dog walking area or signage to prevent the primary causes of bird disturbance, which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats. The proposal thus has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.

In considering the European site interest, Natural England (NE) advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advises that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation, the proposal is unlikely to have significant effects on these sites.

The recent (April 2018) judgement (People Over Wind v Coillte Teoranta, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, "it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site." The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group (NKEPG).

NE has stipulated that, when considering any residential development within 6km of the SPA, the Council should secure financial contributions to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the (NKEPG) and that such strategic

mitigation must be in place before the dwelling is occupied. Based on the correspondence with Natural England (via the NKEPG), I conclude that off site mitigation is required in this instance.

In this regard, whilst there are likely to be impacts upon the SPA arising from this development, the mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff (to be secured by either s106 agreement or unilateral undertaking on all qualifying developments) will ensure that these impacts will not be significant or long-term. I therefore consider that, subject to mitigation, there will be no adverse effect on the integrity of the SPA.

It can be noted that the required mitigation works will be carried out by Bird Wise, the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, which itself is a partnership of local authorities, developers and environmental organisations, including SBC, KCC, Medway Council, Canterbury Council, the RSPB, Kent Wildlife Trust, and others.

The applicants have confirmed that they would be willing to pay the SAMMS contribution of £250.39 as the site is located within 6km of the SPA. This can be secured once the decision is made to grant planning permission.

## **9. CONCLUSION**

9.1 I consider that whilst there would be change to the setting of the listed building and wider conservation area street scene arising from the proposed development, this change does not automatically equate to harm. One function of the planning system is to ensure that change to the setting of listed buildings and the character and appearance of conservation areas is managed sensitively, and in this case, it has been possible to devise a scheme which would have a neutral impact on both these key planning considerations.

9.2 The proposal entails development within the built up area which is acceptable in principle and there are no adverse impacts to the character, appearance or layout of the vicinity of the site in general. The proposal does not result in any material harm to the outlook or amenity of neighbouring occupiers or any significant highways safety concerns. It accords with all the relevant policies of the development plan and government guidance in the revised NPPF. Subject to the attached conditions and the securing of SAMMS contribution, I therefore recommend that planning permission be granted.

## **10. RECOMMENDATION – Grant subject to the following conditions:**

### **CONDITIONS**

(1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004

(2) No development beyond the construction of foundations shall take place until samples of facing and roofing materials to be used (including roof and ridge tiles, plinth bricks

and weatherboarding in its proposed black painted/stained finish) have been submitted to and approved in writing by the Local Planning Authority. Works shall proceed in accordance with the approved details.

Reason: In the interest of visual amenity and in order to safeguard the setting of the listed building.

- (3) No development beyond the construction of foundations shall take place until manufacturer and/or supplier's technical specification of the specific conservation rooflight products and rainwater goods products to be used have been submitted to and approved in writing by the Local Planning Authority. Works shall proceed in accordance with the approved details.

Reason: In the interest of visual amenity and in order to safeguard the setting of the listed building.

- (4) All external doors shall be constructed in timber, and no such joinery shall be installed other than in accordance with 1:10 elevation details and 1:1 or 1:2 plan and vertical sections for each window and door type to be used for the new dwelling, which shall first have been submitted and subsequently approved in writing by the Local Planning Authority .

Reason: In the interest of visual amenity and in order to safeguard the setting of the listed building.

- (5) No development beyond the construction of foundations shall take place until, the following key construction details have been submitted to and approved in writing by the Local Planning Authority.

- (i) 1:1 or 1:2 vertical section of the eaves detailing to be used; and
- (ii) 1:1 or 1:2 vertical section of the verge detailing to be used (note: a cloaked verge detail will not be accepted);

Works shall proceed in accordance with the approved details.

Reason: In the interest of visual amenity and in order to safeguard the setting of the listed building.

- (7) No development beyond the construction of foundations shall take place until details of the colour finishes to be used for the paint or stain finish to the external joinery have been submitted to and approved in writing by the Local Planning Authority. Works shall proceed in accordance with the approved details.

Reason: In the interest of visual amenity and in order to safeguard the setting of the listed building.

- (8) No development beyond the construction of foundations shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials,

and an implementation programme.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

- (9) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

- (10) Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

- (11) All trees to be retained on the site must be protected during construction works by suitable fencing of a height not less than 1.2m at a distance as specified in Table 1 or Figure 2 of BS 5837 (2012) 'Trees in Relation to Design, Demolition and Construction' before any equipment, machinery or materials are brought on to the site and this fencing shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed, nor fires lit, within any of the area fenced in accordance with this condition, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.

Reason: To safeguard the existing trees to be retained and to ensure a satisfactory setting and external appearance to the development.

- (12) The external section of the chimney flue shall have a black-painted finish.

Reason: In the interest of visual amenity and in order to safeguard the setting of the listed building.

- (13) The area shown on approved site plan as proposed drawing shall be kept available for vehicle parking at all times and no permanent development, whether permitted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the first occupation of the dwelling hereby permitted.

Reason: Development without adequate provision for the parking or garaging of cars is likely to lead to car parking inconvenient to other road users.

- (14) The dwelling hereby approved shall be constructed and tested to achieve the following measure:

At least a 50% reduction in Dwelling Emission Rate compared to the Target Emission Rates as required under Part L1A of the Building Regulations 2013 (as amended);

No development shall take place until details of the measures to be undertaken to secure compliance with this condition have been submitted to and approved in writing by the local planning authority.

The development shall be carried out in accordance with the approved details.

Reason: In the interest of promoting energy efficiency and sustainable development.”

- (15) The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and no dwelling shall be occupied unless the notice for that dwelling of the potential consumption of water per person per day required by the Building Regulations 2015 (as amended) has been given to the Building Control Inspector (internal or external).

Reason: In the interests of water conservation and sustainability

- (16) Upon completion, no further development, whether permitted by Classes A, B, C or D of Part 1 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order) or not, shall be carried out.

Reason: In the interest of visual amenity and in order to safeguard the setting of the listed building.

### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), February 2019 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

### **INFORMATIVES**

- (1) This permission has only been granted after receipt of a financial contribution to the Strategic Access Management and Monitoring Strategy in respect of the nearby Special Protection Area.
- (2) The sections to be provided shall include part of the surrounding wall bordering the window or door opening and shall be set out clearly (annotated as necessary) to show the following details, as applicable:
  - Depth of reveal
  - Window head and cill/sub-cill detailing

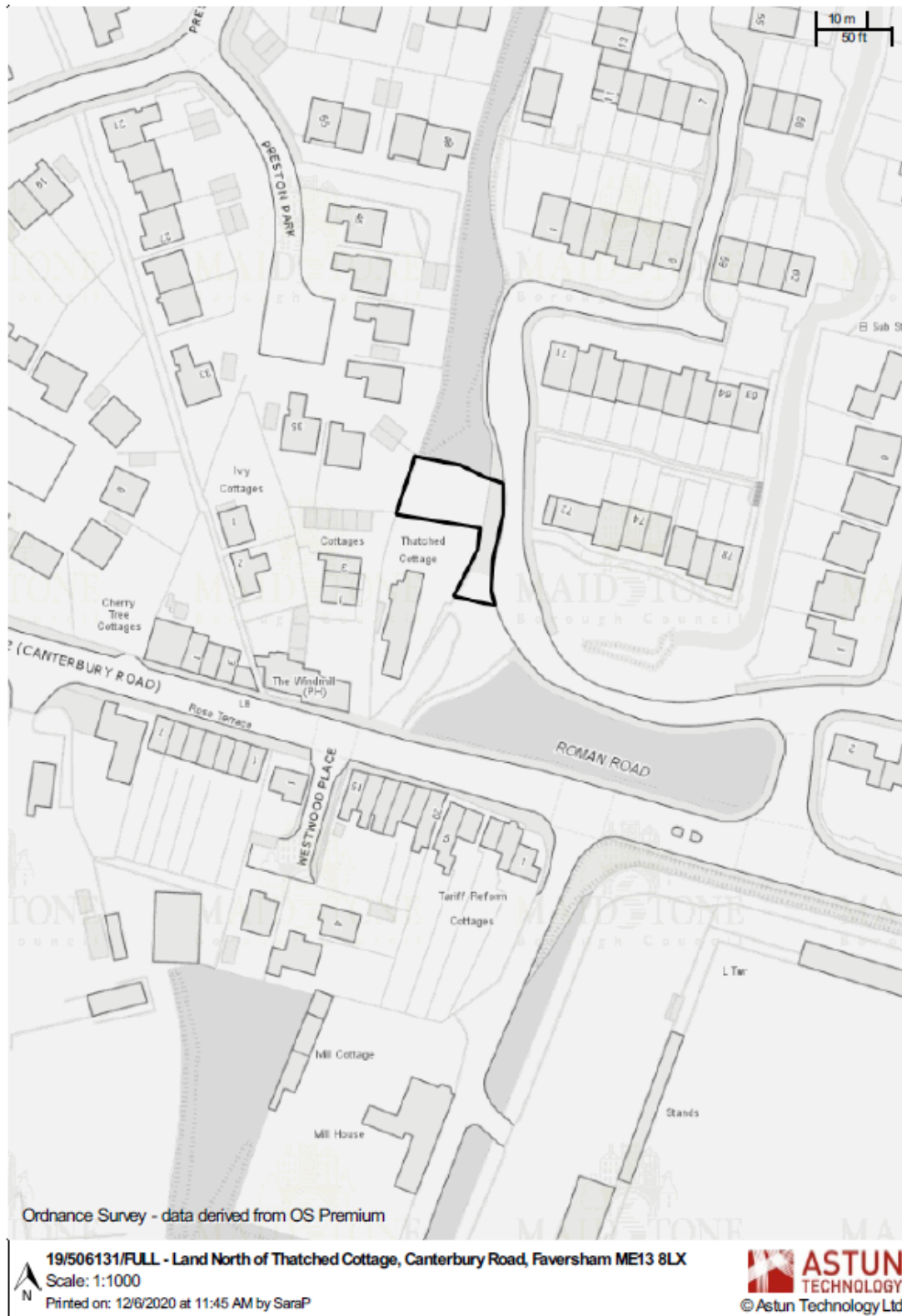
- Glazing section (thickness of glass and in case of double glazing, dimension of spacing between the panes of glass)
- Glazing bar profile(s)
- Door frame / window frame
- Weatherboard and threshold detail (for doors only)

It is recommended that the casement window detailing displays a flush (rather than stormproof) profile.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.





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<b>2.5 REFERENCE NO - 19/503528/FULL</b>			
<b>APPLICATION PROPOSAL</b>			
Demolition of existing garage, outbuilding and boundary wall. Erection of 3no. detached, three bedroom dwellings with associated landscaping, parking and access.			
<b>ADDRESS</b> The Vicarage, Church Lane, Newington, Sittingbourne, Kent ME9 7JU			
<b>RECOMMENDATION</b> Grant subject to conditions			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>			
The proposal is located within the built-up area boundary of Newington where the principle of development is generally supported. The size of the units are fully compliant with relevant policy and SPG and all units provide a good standard of accommodation and would contribute to the Councils housing supply within a sustainable location. No adverse impacts have been identified for the amenities of neighbouring properties.			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
Parish Council Objection			
<b>WARD</b> Hartlip, Newington And Upchurch	<b>PARISH/TOWN COUNCIL</b> Newington	<b>APPLICANT</b> Mr Julian Hills <b>AGENT</b> John Bishop And Associates	
<b>DECISION DUE DATE</b> 10/10/19		<b>PUBLICITY EXPIRY DATE</b> 12/09/19	
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
14/504665/FULL	Demolition of existing garages and boundary wall and construction of three detached 3 bedroom house with associated landscaping parking and access	Approved	15.10.2016
SW/14/0180	Demolition of existing garages and boundary wall and construction of one detached 3 bedroom house, two 3 bedroom semi-detached houses and a terraced house consisting of two four bedroom units and one three bedroom unit with associated landscaping, parking	Withdrawn	14.08.14

## 1. BACKGROUND

- 1.1 Planning permission for a similar scheme was granted on 15th October 2016 under reference 14/504665/FULL. However the applicants were unable to implement the proposal before the end of the three year period for the permission had expired.

- 1.2 Only minor changes are proposed to this current application which include the re-figuration of the parking layout and associated changes to the landscaping.

## 2. DESCRIPTION OF SITE

- 2.1 The application site totals 0.18ha and lies within the built up area boundary of Newington. The site currently comprises the side and rear garden of The Vicarage, a large detached two storey dwelling. This property has a small pitched roof outbuilding and a flat roof garage with a parking space to the front located close to Church Lane. The ground is relatively flat across the site but is approximately 1m higher than Church Lane and the adjacent housing at Vicarage Court to the north.
- 2.2 There is a TPO (TPO no. 2/2014) tree located to the front of the existing dwelling. This would be untouched by the proposal. There are a number of mature trees within the application site. The site lies 160m to the north of the Newington High Street Conservation Area.
- 2.3 The surrounding area is characterised by residential properties of different types and designs. The land to the west of the application site is used as agricultural fields.

## 3. PROPOSAL

- 3.1 The proposal is for the erection of three detached two storey dwellings. A new vehicular access is proposed off Church Lane and this would provide access to the parking spaces for the existing and proposed dwellings. The existing access would be reinstated as footway. Two parking spaces are shown to be provided for the existing dwelling and two parking spaces are proposed for each of the new dwellings with three additional spaces available for visitors. The existing outbuilding, flat roof garage and front boundary wall would be demolished and some of the existing trees (excluding the TPO tree) would be removed.
- 3.2 Each property would have generously sized rear gardens. The houses would have pitched roofs with gable features, chimneys and canopies outside the front doors. The main ridge heights would be 500mm higher than The Vicarage and roughly the same height as the properties to the south.
- 3.3 Unit 1 would be located towards the front of the site, close to no. 65 Church Lane and set forward of The Vicarage by 10m. Units 2 and 3 would be located towards the rear of the site, behind The Vicarage. There would be a distance of 21m between the rear elevation of The Vicarage and the front elevation of unit 3.

## 4. SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Site Area (ha)	1826m <sup>2</sup>	800.5m <sup>2</sup> (The Vicarage – retained)	
Approximate Ridge Height (m)	7.5m <sup>2</sup> (The Vicarage)	8m	

Approximate Eaves Height (m)	5m (The Vicarage)	5m	
No. of Storeys	2	2	
Net Floor Area	107m <sup>2</sup>	2	
Parking Spaces	2	11	9
No. of Residential Units	1	4	3
No. of Affordable Units	0	0	0

## 5. POLICY AND CONSIDERATIONS

5.1 National Planning Policy Framework (NPPF): Paras 8 (three dimensions of sustainable development); 10, 11 (presumption in favour of sustainable development); 47 (Determining applications); 54, 55, 56, 57 (planning conditions and obligations); 61 (delivering sufficient supply of homes); 124, 127, 128, 130, 131 (good design).

5.2 National Planning Practice Guidance (NPPG): Design.

5.3 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017 – Policies ST1 (Delivering sustainable development in Swale); ST2 (Development targets for jobs and homes 2014-2031); ST3 (The Swale settlement strategy); ST4 (Meeting the Local Plan development targets); ST5 (The Sittingbourne Area Strategy); CP2 (Promoting sustainable transport); CP3 (Delivering a wide choice of high quality homes); CP4 (Requiring good design); DM7 (Vehicle parking); DM14 (General development criteria); DM19 (Sustainable design and construction); DM21 (Water, flooding and drainage).

## 6. LOCAL REPRESENTATIONS

6.1 Newington Parish Council Objection; for the reason summarised below:

- Aimed to improve diocesan finances rather than parochial benefits
- Traffic congestion
- Impact upon residential amenity – air quality
- Windfall site

6.2 The Council received three letters of objection from residents, raising the following issues:

- Unsustainable development – impact upon environment
- Overdevelopment – loss of village
- Loss of trees and natural habitat
- Impact upon residential amenity – loss of privacy
- Parking congestion
- Highway safety
- Flood risk – increased risk on infrastructure

## 7. CONSULTATIONS

7.1 Environmental Health Scientific Officer: raises no objection. The site lies in close proximity to the Newington Air Quality Management Area and I have considered the impact of this proposal. I would recommend the inclusion of the standard air quality mitigation measures as expected on all developments in Swale. In addition I would

recommend a standard construction hours condition to protect the residential amenity of neighbouring properties during the construction phase.

7.2 Natural England: No objection, subject to SAMMS Payment Since this application will result in a net increase in residential accommodation, impacts to the coastal Special Protection Area(s) and Ramsar Site(s) may result from increased recreational disturbance. Your authority has measures in place to manage these potential impacts through the agreed strategic solution which we consider to be ecologically sound.

7.3 KCC Highways: No objection (Summary)

‘... although the development at Parsonage Farm has been built out since the original scheme was approved in 2016 and traffic flows on Church Lane may therefore have increased, Parsonage Farm (SW/14/0486) would have been known about back then when this site was approved. The 14 houses built at Parsonage Farm would be expected to generate around 7 vehicle movements in the AM and PM peak hours, and maybe not all of those would route through Church Lane anyway, so the increase would be imperceptible given there were already around 150 movements on Church Lane back then during the AM peak hour.

Similarly, the current application for the site would only be likely to generate between 1 to 2 movements during the AM and PM peak hours, so it shouldn't really be expected for the transport statement to go into the level of detail that it has into in order to justify the acceptance of a negligible amount of traffic generation onto Church Lane.

The bottom line though is that the NPPF will only allow refusal on highway grounds if the impact of a development is going to be “severe”. There is no way that you would convince a planning inspector at appeal that an additional 1 or 2 vehicle movements an hour on Church Lane should be considered severe.’

7.4 KCC Ecological Officer

We have reviewed the ecological information submitted with the planning application and we advise that sufficient information has been provided to determine the planning officer.

The following surveys have been submitted with the planning application and they confirmed that slow worms, common lizards and soprano pipistrelles and brown long eared bats were present within the site.

- Preliminary Ecological Appraisal (PEA) 2020
- Extended Phase 1 Habit Survey, Reptile Survey and Ecological and Enhancement Plan 2014
- Bat Emergence Survey 2014

When we originally commented on the application we raised concerns that the 2014 surveys would no longer be valid. However the 2020 PEA has satisfied that the site has not changed significantly since the reptile and bat emergence surveys have been carried out and the conclusions are unlikely to have changed significantly.

The only change in the survey results are that in 2020 a single long eared bat was recorded and the ecologist has provided the following information to demonstrate why they are satisfied that the building is unlikely to be used by maternity roost:

*The three bat surveys undertaken by Corylus Ecology in 2014 recorded no roosting brown long eared bats within the building and the internal inspection record no evidence suggesting the presence or past presence of a significant roost, such as a maternity roost. No bat droppings were recorded in the loft in 2014. A single roosting soprano pipistrelle bat recorded under roof tiles.*

*Given that five bat summer roosting seasons have passed since 2014, the absence of a large quantity of droppings within the building indicates that it is unlikely that a significant brown long-eared roost is now present or has been present in the intervening years since 2014. The loft space was fully accessible during the survey. The habitats within the site have not changed, nor has the use of the building for storage of the roosting conditions in the loft.*

*A single brown long-eared bat was recorded roosting in the loft during our PEA survey in late February 2020, along with approximately 10 non-recent droppings commensurate of that of brown long-eared bats scattered across the floor of the loft space. The mitigation set out within our PEA report is considered suitable for the provision of day roosting opportunities for a small number of roosting brown long-eared and soprano pipistrelle bats. Development proposals allow for the inclusion of integrated bat boxes to compensate for the loss of the known roosts.*

Based on the additional information provided we accept, on this occasion, that the emergence surveys are not required prior to determination. We have taken this view as the existing survey information demonstrates that bats are known to roost within the building, it is unlikely to be a maternity roost and the submitted information has confirmed that the mitigation can be integrated in to the strategy.

However the updated bat emergence surveys will be required to inform a detailed mitigation strategy. If planning permission is granted we recommend subject to condition:

- Detailed bat mitigation strategy
- SAMMS Payment

## **8. BACKGROUND PAPERS AND PLANS**

- 8.1 Existing and proposed plans and elevations; site location plan; Arboricultural Survey, Bat Emergency Survey; Habitat Survey, Reptile Survey; Design and Access Statement

## **9. APPRAISAL**

### **Principle of development**

- 9.1 The site lies within the built-up area boundary of Newington and is therefore considered to be a sustainable location for new housing development of a scheme this size. There is a general need for additional houses across the borough and I consider that this scheme would go some way towards contributing toward this need. I therefore consider that the proposal would be acceptable in principle.
- 9.2 In addition to housing, the proposal also seeks the demolition of existing garage, outbuilding and boundary wall fronting the eastern boundary. These structures are not located within a curtilage of a listed building, nor is the proposal located within a

conservation area. As such the principle of demolition is acceptable subject to consideration on visual impact discussed in further detail below.

### **Visual Impact**

- 9.3 The most prominent of the proposed dwellings would be unit 1. This would be a comparable height and scale to the adjacent houses and in my opinion would be of a good standard of design. The surrounding properties are a mix of types and design and the proposal would simply add to this mix whilst respecting the more traditional and rural feel of the village. The two proposed dwellings to the rear would be far less prominent from Church Lane and I am of the view that the same conclusions reached for unit 1 apply to these properties. I consider it sensible to remove permitted development rights for extensions and alterations to the dwellings, in order to control future works which might compromise the design quality, and therefore the visual impact, of the development.
- 9.4 The proposal shows a 4.8m wide hard surfaced road and vehicle entrance which is a reduction in the previous scheme. The existing pedestrian entrance has been maintained albeit changes to surface materials and landscaping and overall I consider that a reasonable level of landscaping has been maintained fronting Church Road. As such, the development would not detract from the visual amenities of the area and would achieve a good standard of design that it in-keeping with the character and appearance of the area.

### **Residential Amenity**

- 9.5 The proposed dwellings would be positioned so that there would be very little, if any, overshadowing or overbearing impact. Unit 3 would be a sufficient distance (21m) from the rear of The Vicarage to ensure that there would be no mutual overlooking introduced between these properties. The 21m separation will ensure that overlooking from unit 3 into the rear garden of The Vicarage causes no significant harm to the residents of this existing property. Unit 3 would be further still from the rear of the flats within Vicarage Court, thereby ensuring that mutual overlooking between windows is minimised and causes no significant harm. Considering the position, orientation and windows within the fenestration no adverse amenity impacts have been identified for Units 1 or 2.

### **Highways**

- 9.6 A total of 11 vehicle parking bays are proposed. The current parking standards stipulates that a dwelling with 3 or more dwellings has a requirement of 2 accessible spaces per dwelling with a minimum size requirement of 2.5m x 5m which has been achieved in this instance with 3 additional spaces for visitors.
- 9.7 The proposal would introduce parking immediately to the front of The Vicarage and to unit 1. Whilst this can often result in parking dominating the street scene, in this case, the spaces are set back from the back edge of the footpath and there is a large garden area to the front of The Vicarage which is turfed and has trees, including the protected TPO tree. This would ensure that parking does not dominate this frontage. In terms of the visual impact of a parking space to the front of unit 1, I am of the view that, as



with the parking for The Vicarage, the front garden can adequately accommodate one parking space without detriment to visual amenities.

## Landscaping

- 9.8 Turning to landscaping, policy CP4 of the adopted local plan emphasises the retention of existing trees, hedgerows and other features which contributes to the character and quality of the area, whilst encouraging planting of trees and hedgerows as appropriate using native species. Policy DM14 requires the provision of an integrated landscape strategy that would achieve a high standard of landscaping scheme within the development. I note that the submission indicates the removal of a number of existing trees, however the two existing TPO's would be retained. The proposal is complemented by additional planting and well created landscaped amenity areas around each dwelling to help the development assimilate well within its surroundings.

## Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017.

- 9.9 Since this application would result in a net increase in residential accommodation on the site, impacts to the SPA and Ramsar sites may occur from increased recreational disturbance. An HRA/AA is appended below. Due to the scale of the development there is no scope to provide on site mitigation and therefore off site mitigation is required by means of developer contributions at the rate of £250.39 per dwelling. The agent has provided written confirmation that the applicant would be willing to pay this mitigation fee.

## 10. CONCLUSION

- 10.1 The proposal entails development within the built up area boundary which is acceptable as a matter of principle. I consider the uplift on an additional 3 units can be reasonably accommodated within the site without given rise to unacceptable impacts to residential or visual amenities. As such I recommend this application is approved.

## 11. RECOMMENDATION

GRANT Subject to the following conditions

### CONDITIONS to include

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission;

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

2. No development shall take place other than in accordance with the following approved plans as amended: 19-009/01 Rev A, 19-009/02 Rev A & 19-009/03 Rev A

Reason: To ensure a satisfactory appearance to the development and to safeguard the enjoyment of their properties by existing and prospective occupiers.

3. No development beyond the construction of foundations shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees,

shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

4. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed in writing with the Local Planning Authority

Reason: In the interest of the visual amenities of the area.

5. Upon completion of the approved landscaping scheme, any trees or scrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with tree or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reason: In the interest of visual amenities of the area and encouraging wildlife and biodiversity.

6. No demolition/construction activities shall take place, other than between 0800 to 1800 hours (Monday to Friday) and 0800 to 1300 hours (Saturday) with no working activities on Sunday or Bank Holiday.

Reason: In the interest of the amenities of occupiers of neighbouring properties.

7. The area shown on the submitted plan as car parking space(s) shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown (other than the erection of a private garage or garages) or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling(s) hereby permitted.

Reason: Development without adequate provision for the parking of cars is likely to lead to car parking inconvenient to other road users.

8. Provision and maintenance of 1m x 1m pedestrian visibility splays behind the footway on both sides of the access with no obstructions over 0.6m above footway level, prior to the use of the site commencing.

Reason: In the interests of pedestrian and highway safety.

9. The dwellings hereby approved shall be constructed and tested to achieve the following measure:

At least a 50% reduction in Dwelling Emission Rate compared to the Target Emission Rates as required under Part L1A of the Building Regulations 2013 (as amended);

No development shall take place until details of the measures to be undertaken to secure compliance with this condition have been submitted to and approved in writing

by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: In the interest of promoting energy efficiency and sustainable development.

10. The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the dwellings shall not be occupied unless the notice for the dwellings of the potential consumption of water per person per day required by the Building Regulations 2015 (As amended) has been given to the Building Control Inspector (internal or external).

Reason: In the interests of water conservation and sustainability.

11. The commencement of the development shall not take place until a programme for the control and suppression of dust during the construction & demolition phase has been submitted to and approved in writing by the Local Planning Authority. The programme shall include monitoring & mitigation details in accordance with the Institute of Air Quality Management (IAQM) Guidance on the Assessment of Dust from Demolition & Construction. The measures approved shall be employed throughout the period of demolition and construction unless any variation has been approved by the Local Planning Authority.

Reason: In the interests of residential amenity.

12. Notwithstanding the provisions of Classes A, B, C, D, E and F of Schedule 2, Part 1, Class A Town and Country Planning (General Permitted Development) Order 2015 (or any other order revoking and re-enacting that order, with or without modifications), no works shall be carried out without the prior permission of the Local Planning Authority, obtained through the submission of a planning application.

Reason: To prevent the overdevelopment of the site and to safeguard the living conditions of occupiers of adjoining properties and the appearance of the streetscene

13. Prior to works commencing on site a detailed bat mitigation strategy must be submitted to the PLA for written approval. It must include the following:

- Results of two emergence and one dawn re-entry surveys – carried out between May and August
- Overview of the mitigation required
- Detailed methodology to implement mitigation
- Timings of the proposed works
- Plan showing the location of the replacement roosts
- Details of monitoring

The mitigation must be implemented as detailed within the submitted plans

Reason: In the interests of biodiversity.

14. No dwelling shall be occupied until Electric Vehicle Charging facilities have been provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the provision and retention of electric vehicle charging facilities in

the interest of reducing greenhouse gas emissions

### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), February 2019 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

### **Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017.**

This Appropriate Assessment (AA) has been undertaken without information provided by the applicant.

The application site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

The proposal therefore has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advise that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation and site remediation satisfactory to the EA, the proposal is unlikely to have significant effects on these sites.

The recent (April 2018) judgement (*People Over Wind v Coillte Teoranta*, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, "*it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.*" The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group.

However, the proposed development is of a very small scale and, in itself and in combination with other development, would not have an adverse effect on the integrity of the SPA, subject to the conditions set out within the report.

Notwithstanding the above, NE has stipulated that, when considering any residential development within 6km of the SPA, the Council should secure financial contributions to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG), and that such strategic mitigation must be in place before the dwelling is occupied.

Due to the scale of development there is no scope to provide on site mitigation such as an on-site dog walking area or signage to prevent the primary causes of bird disturbance, which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats.

Based on the correspondence with Natural England (via the NKEPG), I conclude that off site mitigation is required.

In this regard, whilst there are likely to be impacts upon the SPA arising from this development, the mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff (which has been secured prior to the determination of this application) will ensure that these impacts will not be significant or long-term. I therefore consider that, subject to mitigation, there will be no adverse effect on the integrity of the SPA.

It can be noted that the required mitigation works will be carried out by Bird Wise, the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, which itself is a partnership of local authorities, developers and environmental organisations, including SBC, KCC, Medway Council, Canterbury Council, the RSPB, Kent Wildlife Trust, and others (<https://birdwise.org.uk/>).

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.



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<b>2.6 REFERENCE NO - 20/501348/OUT</b>		
<b>APPLICATION PROPOSAL</b>		
Outline application for the erection of a residential development (All matters reserved except access).		
<b>ADDRESS</b> Land Rear Of 17 & 17A Station Street Sittingbourne Kent ME10 3DU		
<b>RECOMMENDATION</b> Grant, with all matters reserved with the exception of access		
<b>SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL</b>		
The proposal is acceptable with regards to the relevant policies of the development plan: Bearing Fruits (2031), government guidance in the NPPF and all other material planning considerations		
<b>REASON FOR REFERRAL TO COMMITTEE</b>		
Application on behalf of Swale Borough Council		
<b>WARD</b> Chalkwell	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Swale Borough Council <b>AGENT</b> DHA Planning
<b>DECISION DUE DATE</b> 15/05/20		<b>PUBLICITY EXPIRY DATE</b> 10/06/20
<b>PLANNING HISTORY</b>		
<b>Ref No.</b>	<b>Description</b>	<b>Decision</b>
SW/94/0110	CONVERSION OF REAR GARDEN TO AN INTERNAL PRIVATE CAR PARK Grant of Conditional PP Decision Date:	
SW/85/1158	CHANGE OF USE OF EX RESIDENTIAL ACCOMMODATION TO OFFICE USE 2nd AND TOP FLOOR Approved pre 1990 Decision Date: 12.02.1986	
SW/79/1208	CHANGE OF USE FROM RESIDENTIAL TO OFFICES Approved pre 1990 Decision Date: 25.10.1979	

## 1. DESCRIPTION OF SITE

- 1.1 The subject site at 17-17A Station Street comprises a four storey building previously used for office accommodation (Citizens Advice Bureau), with a large rear garden area which is currently fully paved and was formerly used for car-parking ancillary to the office use
- 1.2 This application relates to the car-parking area as set out above, located to the rear of the site and is currently accessible from Pembury Street between a block of flats to the south at No's 1-11 Station View Court and a three storey town house Kember Place to the north.
- 1.3 Both of the adjoining buildings are relatively new. Pembury Street is essentially a residential street and some of the rear gardens of the Station Street properties appear to have been subject to largely residential 'back-land' development in the past.

- 1.4 The site is located within Sittingbourne Town Centre with the High Street approximately 90m south of the site and Sittingbourne railway station 130m to the north.

## **2. PROPOSAL**

- 2.1 This application seeks outline planning permission, with all matters reserved for future consideration (except for means of access), for the erection of one residential dwelling within the existing car park of the vacant office building, formerly the Citizens Advice Bureau.
- 2.2 Indicative plans have been provided showing that the property will be a detached building, three storeys in height approximately 5m in width and between 10m and 12m in length, with an eaves height of 8.2m and a ridge height of 10.9 with gardens in excess of 10m in depth.
- 2.3 The floor plans indicate that the dwelling would have a total area of 116m<sup>2</sup> and the internal layout would provide (kitchen etc) with three bedrooms and would be suitable for 6 person occupancy. The rear garden would be 10m deep.
- 2.4 The dwelling would have a dedicated drive to the front off of Pembury Street to provide off street parking suitable for two parked vehicles with a parking area of 5m x 3m each

## **3. PLANNING CONSTRAINTS**

- 3.1 No planning constraints are identified.

## **4. POLICY AND CONSIDERATIONS**

- 4.1 The National Planning Policy Framework (NPPF): Paragraphs 8, 11, 117, 118, 124, 128, 130 and 131 are relevant.

National Planning Practice Guidance (NPPG)

Bearing Fruits 2031: The Swale Borough Local Plan 2017

Policy ST1	Delivering sustainable development
Policy ST3	The Swale settlement strategy
Policy ST5	The Sittingbourne area strategy
Policy CP3	Delivering a wide choice of high quality homes
Policy CP4	Requiring good design
Policy DM7	Vehicle parking
Policy DM14	General development criteria
Policy DM19	Sustainable design and construction

## **5. LOCAL REPRESENTATIONS**

- 5.1 One letter received raising objection on the following grounds:
- The three storey portion of the property extends beyond the rear wall of Kember Place, Pembury Street, which will suffer from reduced light on all three levels. This could be resolved by making the three storey portion of the property shorter with the one storey rear extension being longer than the current plans

- There are windows at the side of the proposed development that will indirectly overlook the gardens of Kember Place and 19 Station Street.
- The rear windows on the upper two floors of the proposed development are large and will directly overlook the gardens of both Kember Place and 10 Station Street and also overlook the conservatory and rear bedrooms of 19 Station Street, significantly reducing privacy.

## 6. CONSULTATIONS

6.1 Kent Highways and Transportation advise that the development does not qualify for a response from them.

6.2 Environmental Health Manager – No objection, subject to conditions

## 7. BACKGROUND PAPERS AND PLANS

7.1 DHA\_14320-01 Site Location Plan, DHA\_14320-02 Existing Site Layout, DHA\_14320-03 Illustrative Proposed Site Layout Plan, DHA\_14320-04 Outlined Proposed Floor Plans, DHA\_14320-05 Outline Proposed Elevation and Section Plans, DHA\_14320-06 Existing and Illustrative Proposed Street View.

## 8. APPRAISAL

### Principle of Development

8.1 The site of the proposed residential unit is located within the build up area boundary of Sittingbourne, where the principle of residential development is acceptable. The site is in an appropriate and sustainable location with good access to local facilities, transport links and schools, where good use should be made available of land.

### Access, Highways, Parking

8.2 As noted above, the application is seeking outline consent, with details of access being sought at this stage. Means of access is being proposed from Pembury Street between a block of flats no's 1-11 Station View Court and a three storey town house, Kember Place. Pembury Street is an unclassified Road as identified in Kent County Council Highways Gazetteer.

8.3 The proposal would utilise the existing vehicle crossover that has a width of 6m and no other changes are proposed to the existing situation. Two off street parking spaces would be provided side by side within the front forecourt measuring approximately 5m x 3m each.

8.4 In addition, the proposed development is located in close proximity to the Sittingbourne Railway Station and local buses. This close proximity will encourage future occupiers to use alternative, sustainable methods of transport where possible.

8.5 It is acknowledged that the proposed redevelopment of the site would result in the loss of the parking area which currently serves 17 & 17A Station Street, however this building is currently vacant. Notwithstanding, this is a Town Centre Location with suitable transport links and a number of accessible public car parks are located within

close proximity of the site and therefore in a prime location where zero parking provision is generally considered acceptable.

### **Visual Amenity**

- 8.6 As set out above, all matters of detail (other than access) are reserved for future consideration should this application be approved. As such, this is largely an issue to be dealt with at the reserved matters stage. Nevertheless, it is reasonable to conclude that one dwelling can be accommodated on the site, without a harmful impact on visual amenity or the character of the wider area.
- 8.7 The indicative plans show a three storey detached dwelling which would infill the area between Station View Court to the north and Kember Place to the south. The indicative height, scale and massing of the proposal is broadly acceptable and would accord with the existing character of the area
- 8.8 The pattern of development in the vicinity of the site is comprised of a mixture of dwelling types and designs, generally ranging between 3 and 4 stories in height and the indicative scheme would be within this range. The development reflects the general character of the surrounding area that comprise of two storey detached and semi-detached properties. There is scope to provide a well detailed development which complements the existing built form.

### **Residential Amenity**

- 8.9 DM14 of the Local Plan states that all development should cause no significant harm to the amenities of surrounding uses or area. The detailed design of the new dwelling would be secured at the reserved matters stage and this will include the design, form and scale of the building including details such as window/door placement and details of boundary treatments.
- 8.10 Whilst the layout and design are matters for future consideration, the application shows an illustrative layout which maintains sufficient spacing between the dwelling and existing neighbouring properties without resulting in a significantly harmful impact upon existing neighbouring dwellings in terms of residential amenity. To the rear of the site along Station Street the properties are considered to be located at a sufficient distance to mitigate loss of outlook and privacy.
- 8.11 In regard to loss of light and overshadowing it is noted that four (4) windows are located on the side elevation of Station Court. According to the planning application SW/07/0449 these windows are secondary windows for the living areas of the flats. However, I do note that the indicative layout shows the dwelling set away from these windows and abutting the side elevation of 55a Pembury Street which has no windows on this elevation.
- 8.12 The illustrative plan (DHA/14320/03) demonstrates that the proposed dwelling is of a sufficient size to meet the minimum gross internal floor areas for a three bedroom three storey townhouse as set out in the Nationally Described Space Standard and a usable garden area to a depth of 10m would be provided.

### **Landscaping**

8.13 Landscaping is a reserved matter. Policy DM14 requires the provision of an integrated landscape scheme that would achieve a high standard of landscaping within the development. No details have been provided in relation to landscaping, however at present the site comprises of previously developed area of hardstanding and no trees or areas of landscaping are identified on site. As such, the future submission of a landscaping scheme will only be a welcomed benefit to the existing situation and I have no concerns in this regard.

#### **Sustainable Design and Construction**

8.14 The Council has declared a Climate Change and Biodiversity Emergency, and this is a material planning consideration. To ensure that the final development incorporates sustainable measures relevant conditions will be incorporated into future reserved matters to allow the Council to ensure the scheme is designed in a way that takes steps to minimise the environmental impacts.

#### **Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017.**

8.15 This Appropriate Assessment has been undertaken without information provided by the applicant. The application site is located within 6km of The Swale Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

8.16 SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

8.17 Due to the scale of development there is no scope to provide on site mitigation such as an on-site dog walking area or signage to prevent the primary causes of bird disturbance, which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats. The proposal thus has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.

8.18 In considering the European site interest, Natural England (NE) advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advises that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation, the proposal is unlikely to have significant effects on these sites.

8.19 The recent (April 2018) judgement (*People Over Wind v Coillte Teoranta*, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, *"it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site."* The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis

of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group (NKEPG).

- 8.20 NE has stipulated that, when considering any residential development within 6km of the SPA, the Council should secure financial contributions to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the (NKEPG) and that such strategic mitigation must be in place before the dwelling is occupied. Based on the correspondence with Natural England (via the NKEPG), I conclude that off site mitigation is required.
- 8.21 In this regard, whilst there are likely to be impacts upon the SPA arising from this development, the mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff (to be secured by either s106 agreement or unilateral undertaking on all qualifying developments) will ensure that these impacts will not be significant or long-term. I therefore consider that, subject to mitigation, there will be no adverse effect on the integrity of the SPA.
- 8.22 It can be noted that the required mitigation works will be carried out by Bird Wise, the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, which itself is a partnership of local authorities, developers and environmental organisations, including SBC, KCC, Medway Council, Canterbury Council, the RSPB, Kent Wildlife Trust, and others.
- 8.23 In the event of an approval, agreement would be required for the applicant to pay the SAMMS contribution of £250.37 per dwelling

## **9. CONCLUSION**

- 9.1 The application site is suitable for development and located within the built up area of Sittingbourne, with good connectivity to local schools and shops, and wider bus, road and rail network. The scheme would have a negligible impact on the highway network and provides a good level of parking within a town centre location. Whilst this application is outline only, an indicative layout and street scene has been prepared to demonstrate how the site can accommodate a sympathetically designed scheme that reflects the design characteristics of the local area and broadly complies with policy. As such, I consider that outline planning permission should be granted, subject to conditions set out below.

## **10. RECOMMENDATION**

GRANT Subject to the following conditions:

### **CONDITIONS to include**

- (1) Details relating to the layout, scale and appearance of the proposed building and the landscaping of the site shall be submitted to and approved by the Local Planning Authority before any development is commenced.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) Application for approval of reserved matters referred to in Condition (1) above must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (3) The development to which this permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (4) The details submitted pursuant to condition (1) above shall show adequate land, reserved for the parking or garaging of cars (in accordance with the currently adopted Kent County Council Vehicle Parking Standards) which land shall be kept available for this purpose at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not shall be carried out on such land or in a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling hereby permitted.

Reason: Development without adequate provision for the parking or garaging of cars is likely to lead to car parking inconvenient to other road users.

- (5) All hard and soft landscape works submitted and approved pursuant to condition (1) above shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

- (6) Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

- (7) Prior to the construction of the dwelling, details of the materials and measures to be used to increase energy efficiency and thermal performance and reduce carbon emissions and construction waste shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved materials and measures.

Reason: In the interest of promoting energy efficiency and sustainable development.

- (8) No construction activities shall take place, other than between 0800 to 1800 hours Monday to Friday and 0800 to 1300 hours Saturday with no working activities on Sunday or Bank Holiday.

Reason : In the interests of residential amenity.

- (9) If during construction/demolition works evidence of potential contamination is encountered, works shall cease and the site fully assessed to enable an appropriate remediation plan to be developed. Works shall not re-commence until an appropriate remediation scheme has been submitted to, and approved in writing by, the Local Planning Authority and the remediation has been completed.

Upon completion of the building works, this condition shall not be discharged until a closure report has been submitted to and approved in writing by the Local Planning Authority. The closure report shall include details of;

- a) Details of any sampling and remediation works conducted and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology.
- b) Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.
- c) If no contamination has been discovered during the build then evidence (e.g. photos or letters from site manager) to show that no contamination was discovered should be included.

Reason: To limit the risks associated with contamination of the site in the interests of future residents

- (10) No development shall take place until a scheme to demonstrate that the internal noise levels within the dwelling will conform to the standard identified by BS 8233 2014, Sound Insulation and Noise Reduction for Buildings - Code of Practice, has been submitted to and approved in writing by the Local Planning Authority. The work specified in the approved scheme shall then be carried out in accordance with the approved details prior to the first occupation of any of the dwellings and shall be retained thereafter.

Reason: In the interests of residential amenity.

- (11) The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the dwellings shall not be occupied unless the notice for the dwellings of the potential consumption of water per person per day required by the Building Regulations 2015 (As amended) has been given to the Building Control Inspector (internal or external).

Reason: In the interests of water conservation and sustainability.

- (12) No dwelling shall be occupied until Electric Vehicle Charging facilities have been provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority.



Reason: To ensure the provision and retention of electric vehicle charging facilities in the interest of reducing greenhouse gas emissions.

### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), February 2019 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

### **INFORMATIVES**

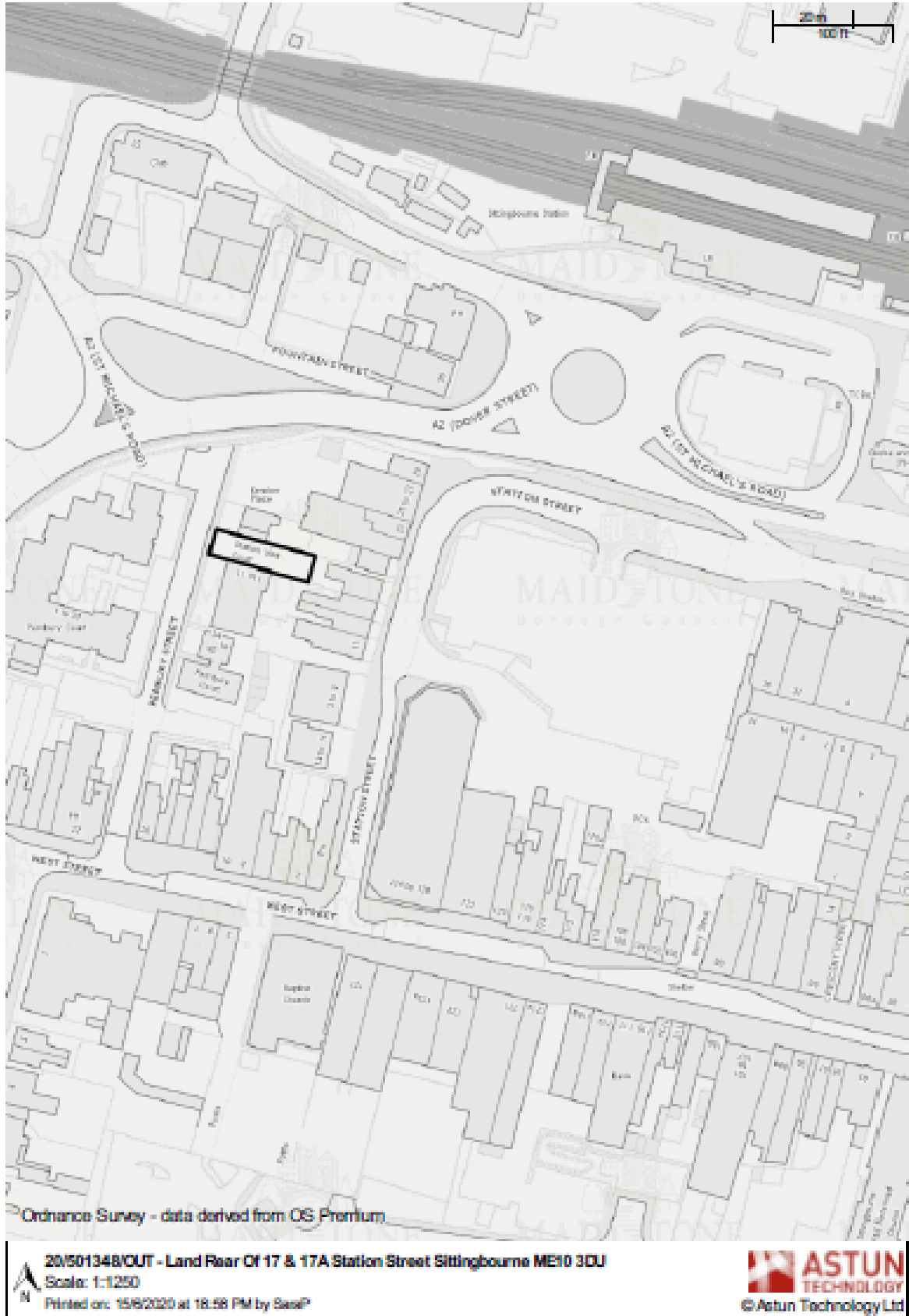
It is the responsibility of the applicant to ensure , before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority.

Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the road. This is called 'highway land'. Some of this land is owned by The Kent County Council (KCC) whilst some are owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil. Information about how to clarify the highway boundary can be found at <https://www.kent.gov.uk/roads-and-travel/what-we-look-after/highway-land/highway-boundary-enquiries>

The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.



<b>2.7 REFERENCE NO - 20/500400/OUT</b>		
<b>APPLICATION PROPOSAL</b>		
Outline Application with access matters sought for the erection of up to 5 no. dwellings on the land to the south of Chequers Road, Minster-on-Sea. (All other matters reserved for future consideration.)		
<b>ADDRESS</b> Land South Of Chequers Road Minster-on-sea Kent ME12 3SH		
<b>RECOMMENDATION</b> Grant subject to conditions and SAMMS payment		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>		
The Council is currently unable to demonstrate a 5-year supply of housing sites and this development would contribute towards addressing this identified under supply. Whilst the site falls outside the settlement boundary it is a sustainable location adjacent to an existing urban area with a good range of services which can be reached by sustainable travel modes, and there are a range of public transport options which enable connectivity to nearby larger urban areas. When assessed against para 11 of the NPPF, it is considered that the positive impacts of the development in terms of its sustainable location and social benefits of the scheme comply with the environmental and social objectives of sustainable development. Whilst there would be an adverse impact from the development on undeveloped land, it is not considered that this adverse impact would significantly and demonstrably outweigh the identified benefits of the scheme. As such when assessed against paragraph 11 of the NPPF, the proposal is considered to comprise sustainable development, and the principle of this development is considered acceptable.		
<b>REASON FOR REFERRAL TO COMMITTEE</b>		
Parish Council objection		
<b>WARD</b> Sheppey Central	<b>PARISH/TOWN COUNCIL</b> Minster-On-Sea	<b>APPLICANT</b> Mr Richard Alderson <b>AGENT</b> DHA Planning
<b>DECISION DUE DATE</b> 29/05/20		<b>PUBLICITY EXPIRY DATE</b> 06/04/20

**Planning History**Adjacent site to the north

18/501999/FULL

Minor material amendment to condition 2 (approved plans) to application 16/505623/FULL with amendment indicating the site entry moving slightly towards the east due to a electric pole being in the way of the original site entranced.

Approved Decision Date: 22.06.2018

17/506198/FULL

Minor material amendment to Condition 2 of planning permission 16/505623/FULL to substitute elevation drawings to change shape of rear single storey roof form from gable end to lean-to and enlarge first floor rear window above. Alter position of front door, and internal alterations to layout.

Approved Decision Date: 25.01.2018

16/505623/FULL

Development of 5 detached and 4 semi-detached dwellings

Approved      Decision Date: 03.11.2017

SW/75/0279

Residential dwellings outline

Refused      Decision Date: 22.05.1975

## **1. DESCRIPTION OF SITE**

- 1.1 The application site is located to the south of Chequers Road and is approximately 0.4 hectares in size. It is roughly triangular in shape and is currently undeveloped, and therefore can be considered to be greenfield land. The site slopes gradually from north to south. Access to the site is provided from Chequers Road via a track that runs along the north eastern boundary of the site.
- 1.2 The site is immediately south of the development of nine houses approved under application 16/505623/FULL. To the west are residential properties situated along Elm Lane, to the south is open countryside and to the east is Danedale Stables. There is a pending planning application for five dwellings at Danedale Stables (reference 19/505353/FULL).
- 1.3 The site lies close to the built up area boundary of Minster (the built up area boundary runs along the northern side of Chequers Road), and as such, is considered to lie in open countryside.

## **2. PROPOSAL**

- 2.1 Outline planning permission is sought for the erection of up to five dwellings with only approval for means of access to the site being sought as part of this application, which would leave matters such as appearance, scale, layout and landscaping to be dealt with under a subsequent reserved matters application.
- 2.2 Plans have been provided showing an indicate layout of the proposal, including plans of the front elevations of the dwellings and floorplans. The layout plan shows five detached two storey dwellings on the site, arranged in a linear fashion. Two indicative types of dwellings are proposed, both of traditional design. Type A (which is shown located on plots 1 and 5) would have a gable roof with hip ends, with a projecting gable feature on the front elevation of the property, a footprint of 9m x 10m, with an eaves height of 5m and a ridge height of 8.5m. Type B (which is shown located on plots 2, 3 and 4) consists of a hipped roof with a catslide to the side, which will accommodate an attached single garage, a footprint of 9m x 12m, with an eaves height of 5m and a ridge height of 9m. Both types of properties are shown having an open plan living area, study, separate front room and cloakroom on the ground floor, and four bedrooms (on with an en-suite) and bathroom on the first floor.
- 2.3 The existing access onto the site will be utilised and extended into the site, and will run along the northern boundary of the site. Two parking spaces will be provided at each property, along with an internal garage at plots 2, 3 and 4 and a detached garage at plot 1. A visitor parking space will be provided opposite plot 2. The indicative layout indicates hedge and tree planting is proposed around the site boundaries.

## **3. PLANNING CONSTRAINTS**

- 3.1 None

## **4. POLICY AND CONSIDERATIONS**

- 4.1 The National Planning Policy Framework (NPPF): Paras 7, 8, 11 (sustainable development); 59-76 (delivering a sufficient supply of homes); 77-79 (rural housing); 170 (local and natural environment); 175 (biodiversity) and National Planning Practice Guidance (NPPG)
- 4.2 Development Plan: Policies ST3, CP3, CP4, DM7, DM14 and DM19 of Bearing Fruits 2031: The Swale Borough Local Plan 2017

## 5. LOCAL REPRESENTATIONS

- 5.1 One objection has been received from a neighbouring property. Its contents is summarised below:
- The application goes against Swale Borough Council Policy ST3 - Swale Settlement Strategy - and there should be NO exceptions to this policy.
  - The proposal lies within the open countryside and outside the built-up area where no development is permitted as dictated by Swale Borough Council Local Plan.
  - The proposal would set a precedent for the proliferation of similar developments to the detriment of the open countryside.
  - The access is totally unsuitable as it is opposite the junction of Danedale Avenue and vehicles would be unable to see to the right when leaving the site, making it dangerous.
  - During the summer, trees were chopped down on site prior to submitting the application, so much for protecting the environment. At a time of global warming trees can help to suck carbon dioxide from the atmosphere, so hence boost health and well being.

## 6. CONSULTATIONS

- 6.1 Minster Parish Council object to the application, stating the following:

*“The proposal lies within the open countryside outside the built-up area where no development is permitted as dictated by the Swale Borough Council Local Plan. The proposal would set a precedent for the proliferation of the same to the detriment of the open countryside.”*

- 6.2 Environmental Health – No objections subject to conditions relating to gas fired boilers, electric vehicle charging points, construction hours and dust control.
- 6.3 Kent Highways – *“With reference to the submitted Transport Technical Note, using the industry recognised TRICS software, it is noted that development would be expected to generate around 2 to 3 vehicle movements during the AM and PM peak hours. This would not be considered likely to lead to any significant traffic impacts on the local highway network, and it is recognised that the proposed access would utilise an historic existing access that currently serves the application site. The appropriate visibility sightlines, based on the speed limit of this section of Chequers Road, can be provided within the existing highway limits and this would also facilitate the provision of lengthier sightlines if required. Whilst there is no pedestrian footway link to the site at present, this is to be provided shortly as part of the planning obligation required by the adjacent housing development currently being constructed to the west of the proposed access. I would expect this development continue this footway across the whole site frontage of Chequers Road. Although it is proposed that the access would be formed as a vehicle crossing and measure 4.8m wide, I would consider that this should be widened to 5.5m for the first 10m from the carriageway edge to better accommodate two-way passage during turning movements at the point of access. I am satisfied that this detail can be*

*provided as part of any subsequent Reserved Matters application or Discharge of Condition application.” Recommends conditions imposed below.*

- 6.4 KCC Ecology – Originally requested further information relating to trees along the northern boundary. This was submitted and KCC Ecology stated “*We accept the conclusions of the submitted Preliminary Ecological Appraisal that the proposed development has limited potential to impact protected/notable species.*” Recommend conditions relating to the submission of a lighting scheme and ecological enhancement plan.
- 6.5 Natural England – Development will result in a net increase in residential development and as such mitigation is required.

## **7. BACKGROUND PAPERS AND PLANS**

- 7.1 Plans and documents relating to application 20/500400/OUT.

## **8. APPRAISAL**

### **Principle of Development**

- 8.1 The development site lies outside the built up area boundary where policies of rural restraint apply. The main relevant planning policy is ST3 of the Local Plan, which states that at locations in the open countryside outside the defined built up area boundaries, development will not be permitted unless supported by national policy and where it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings, and the vitality of rural communities.
- 8.2 The National Planning Policy Guidance (NPPF) seeks to promote sustainable development in rural areas, and housing should be located where it will enhance or maintain the vitality of rural communities and avoid isolated new homes in the countryside.
- 8.3 Paragraph 79 of the NPPF states that the local planning authority (LPA) should avoid isolated homes in the countryside. Given the site’s position adjoining the settlement boundary and close proximity to existing residential dwellings, it is not considered that the development would constitute isolated homes in the countryside.
- 8.4 The Council cannot currently demonstrate a five-year housing land supply. In such situations, the NPPF advises that plans and decisions should apply a presumption in favour of sustainable development. Para 8 of the NPPF explains that achieving sustainable development means that the planning system has three overarching objectives (economic, social and environmental), which are interdependent and need to be pursued in mutually supportive ways.
- 8.5 The site is just outside the built up settlement boundary of Minster. Minster itself forms part of the West Sheppey Triangle which is a Tier 3 ‘Other Urban Local Centre’ settlement within the Councils settlement strategy which is considered to provide a reasonable range of services. Policy ST6, the Isle of Sheppey area strategy states that the focus of development and long-term change is at settlements within the West Sheppey Triangle. The site is considered to relate well to the existing urban settlement of Minster and the West Sheppey Triangle which itself is considered to be sustainable as it has access to shops, services, education and healthcare facilities as well as public transport links to nearby larger urban areas. As such, I take the view the

proposal is located within a sustainable location, appropriate for residential development.

- 8.6 However the site comprises of undeveloped greenfield land and cannot be considered as brownfield or previously developed land. Therefore the development would take place on an undeveloped site which is considered to have a significant adverse impact.
- 8.7 The proposal is for five dwellings which would be of some social benefit. As outlined above, the site has good connectivity with an existing urban area with has a good range of services. As such it is considered that the proposed dwellings would help support the social viability of the existing urban area including existing shops, schools and nearby employment opportunities. It is considered that this would result in a positive impact. As economic benefits from the construction of these dwellings would be short-term, these are limited and would carry little weight. It is considered that there would be a neutral impact.
- 8.8 When assessed against para 11 of the NPPF, it is considered that the positive impacts of the development in terms of its sustainable location and social benefits of the scheme comply with the environmental and social objectives of sustainable development. The proposal would also help contribute towards the Borough's housing land supply, and whilst the proposal is a relatively small site it will make a contribution in a sustainable location. Therefore it is not considered that the adverse impact in terms of developing an undeveloped parcel of land would significantly and demonstrably outweigh the benefits of the scheme outlined above. As such, the proposal is considered to comprise sustainable development, and the principle of this development is considered acceptable.

### **Visual Impact**

- 8.9 At this stage, although it is not necessary, drawings have been submitted regarding the scale, appearance and layout of the proposal. Due to the presence of the development of nine houses to the north of the site, views of the proposal from Chequers Road will be limited. I note the site is currently undeveloped and the proposal will introduce a substantial amount of built form, however I consider the proposal will relate well to the residential development to both the north and west of the site, and as such will not cause significant harm the character and appearance of the countryside in my view.
- 8.10 The indicative layout shows the properties arranged in a linear form within the site, which reflects the surrounding linear development in the area. The detailed design of the dwellings are not being considered at this stage, but it is considered that two types of dwellings proposed here would not cause any harm to the character of the area taking into account the range of dwellings within the surrounding area.

### **Residential Amenity**

- 8.11 This outline application provides details of the scale, appearance and layout of the proposed buildings, however approval of these details are not being sought at this stage. Nonetheless I do need to consider whether the site is capable of accommodating up to five dwellings.
- 8.12 The closest residential properties are the nine dwellings under construction to the north of the site and Martindale, a two storey property to the west. Whilst layout and design are matters for future consideration, the application shows an illustrative layout which maintains sufficient spacing between proposed dwellings and existing neighbouring

properties. It is considered that the site can accommodate 5 dwellings without resulting in a significantly harmful impact upon existing neighbouring dwellings in terms of residential amenity.

- 8.13 The properties sit roughly in line with one another and as such I do not believe there will be any unacceptable overshadowing or overbearing impact between the properties. I do note that the distance between plot 1 and plot 2 is only 9.5m. The Council expects a minimum of 11m between rear and side elevations, to ensure any overshadowing/overlooking impact is acceptable. As such, the positioning of these properties will need to be altered to ensure an 11m gap can be provided. I consider this can easily be achieved on the site.
- 8.14 The submitted floorplans show each property will have four bedrooms, and the floorspace provided is acceptable and in line with the National Space Standards. The rear gardens will have a depth of between 9.5m (plot 1) – 22m (plot 5). The Council usually expects rear gardens to be a minimum of 10m in depth. The garden at plot 1 is slightly below this amount, however taking into account the concern raised at paragraph 8.14 above, the garden at plot 1 will need to be increased in order to provide an 11m gap to plot 2 to the west. As such, I consider the proposal is capable of providing a good standard of amenity for future occupiers.

### **Highways**

- 8.15 The development will utilise the existing access at the site. The appropriate visibility sightlines can be demonstrated, and as such, KCC Highways have no concerns regarding the use of this access upon highway safety. The submitted Transport Technical Note states that the development would be expected to generate around 2 to 3 vehicle movements during the AM and PM peak hours. These expected movements would not be considered likely to lead to any significant traffic impacts on the local highway network. As part of the adjacent housing development to the north of the site, a footpath is to be provided along Chequers Road to the west of the access. Highways have requested a condition to ensure this is continued across the whole site frontage of Chequers Road. I believe this will ensure pedestrian access to the site is acceptable from a highway safety perspective.
- 8.16 The Highways Authority did request one change to the proposed access. It is currently only 4.8m wide, and Highways consider this should be widened to 5.5m for the first 10m from the carriageway edge to better accommodate two-way passage during turning movements at the point of access. The site is wide enough to provide this, and therefore this detail is requested by condition. Overall, KCC Highways are satisfied with the proposed access subject to conditions, which I have imposed below and I therefore believe the access onto the site will be acceptable.
- 8.17 In terms of parking, the illustrative site location plan indicates each dwelling would have two car parking spaces, and one visitor space would be provided within the site. It is considered that adequate parking provision can be provided on site and this would be considered in depth when a detailed layout is available at reserved matters stage. As such I do not consider the proposal would be likely to increase parking pressure on the nearby area.

### **Landscaping**

- 8.18 There are a number of trees on the site however none of them have TPOs protecting them and preventing their removal. The proposed site layout plan shows several of the trees retained as well as indicative landscaping across the site. I consider that the



relevant landscaping condition included below will ensure a detailed landscape plan is provided.

### **SPA Payment**

8.19 I have for completeness set out an Appropriate Assessment below. Since this application will result in a net increase in residential accommodation on the site, impacts to the SPA and Ramsar sites may occur from increased recreational disturbance. Due to the scale of the development there is no scope to provide on site mitigation and therefore off site mitigation is required by means of developer contributions at the rate of £250.39 per dwelling. The agent has provided written confirmation that the applicant would be willing to pay this mitigation fee in principle.

### **9. CONCLUSION**

9.1 The Council is currently unable to demonstrate a 5-year supply of housing sites and this development would help to contribute towards addressing this identified under supply. Whilst the site falls outside the settlement boundary it is a sustainable location adjacent to an existing urban area with a good range of services which can be reached by sustainable travel modes. Therefore I consider the application is acceptable in principle. I consider the site is capable of providing five dwellings that will not result in unacceptable impacts to residential or visual amenities. The proposed access is acceptable and will not cause harm to highway safety and convenience. As such I consider that the harm arising from this development is significantly and demonstrably outweighed by the benefits, and I recommend this application is approved.

**10. RECOMMENDATION - GRANT** Subject to the following conditions:

#### **CONDITIONS**

1. Details relating to the layout, scale and appearance of the proposed buildings and the landscaping of the site shall be submitted to and approved by the Local Planning Authority before any development is commenced.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. Application for approval of reserved matters referred to in Condition (1) above must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

3. The development to which this permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

4. All hard and soft landscape works submitted and approved pursuant to condition (1) above shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

5. Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

6. Prior to the construction of the dwellings, details of the materials and measures to be used to increase energy efficiency and thermal performance and reduce carbon emissions and construction waste shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved materials and measures.

Reason: In the interest of promoting energy efficiency and sustainable development.

7. The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and no dwelling shall be occupied unless the notice for that dwelling of the potential consumption of water per person per day required by the Building Regulations 2015 (As amended) has been given to the Building Control Inspector (internal or external).

Reason: In the interests of water conservation and sustainability.

8. The commencement of the development shall not take place until a programme for the suppression of dust during the construction of the development has been submitted to and approved in writing by the Local Planning Authority. The measures approved shall be employed throughout the period of construction unless any variation has been approved by the Local Planning Authority.

Reason: In the interest of residential amenity.

9. No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:- Monday to Friday 0800 - 1800 hours, Saturdays 0800 - 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interest of residential amenity.

10. During construction provision shall be made on the site, to the satisfaction of the Local Planning Authority, to accommodate operatives' and construction vehicles loading, off-loading or turning on the site.

Reason: To ensure that vehicles can be parked or manoeuvred off the highway in the interests of highway safety.

11. Prior to the works commencing on site details of parking for site personnel / operatives / visitors shall be submitted to and approved by the Local Planning Authority and thereafter shall be provided and retained throughout the construction of the development. The approved parking shall be provided prior to the commencement of the development.

Reason: To ensure provision of adequate off-street parking for vehicles in the interests of highway safety and to protect the amenities of local residents.

12. As an initial operation on site, adequate precautions shall be taken during the progress of the works to guard against the deposit of mud and similar substances on the public highway in accordance with proposals to be submitted to, and agreed in writing by the Local Planning Authority. Such proposals shall include washing facilities by which vehicles will have their wheels, chassis and bodywork effectively cleaned and washed free of mud and similar substances.

Reason: In the interests of amenity and road safety.

13. The details submitted in pursuance of Reserved Matters shall show adequate land, to the satisfaction of the Local Planning Authority, reserved for parking or garaging in accordance with the Approved Parking Standards and, upon approval of the details this area shall be provided, surfaced and drained to the satisfaction of the Local Planning Authority before any building is occupied and shall be retained for the use of the occupiers of, and visitors to, the premises. Thereafter, no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order), shall be carried out on the land so shown or in such a position as to preclude vehicular access to the reserved vehicle parking area.

Reason: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to parking inconvenient to other road users and be detrimental to highway safety and amenity.

14. No dwelling shall be occupied until space has been laid out within the site in accordance with the approved drawings for cycles to be parked.

Reason: To ensure the provision and retention of adequate off-street parking facilities for cycles in the interests of sustainable development and promoting cycle visits.

15. Notwithstanding the approved plans, a 5.5m wide access for the first 10m from the carriageway edge shall be completed prior to the occupation of any buildings hereby approved in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highway safety.

16. No dwelling shall be occupied until Electric Vehicle Charging facilities have been provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the provision and retention of electric vehicle charging facilities in the interest of reducing greenhouse gas emissions.

17. Before the first occupation of a dwelling / premises the following works between that dwelling / premises and the adopted highway shall be completed as follows:
- (A) Footways and/or footpaths shall be completed, with the exception of the wearing course;
  - (B) Carriageways completed, with the exception of the wearing course, including the provision of a turning facility beyond the dwelling together with related:
    - (1) highway drainage, including off-site works,
    - (2) junction visibility splays,
    - (3) street lighting, street nameplates and highway structures if any.

Reason: In the interests of highway safety.

18. Before the dwellings hereby permitted are first occupied the area between the nearside carriageway edge and lines drawn between a point 2.4m back from the carriageway edge along the centre line of the access and points on the carriageway edge 43m from and on both sides of the centre line of the access shall be cleared of obstruction to visibility at and above a height of 0.9m above the nearside carriageway level and thereafter maintained free of obstruction at all times.

Reason: In the interests of highway safety.

19. Within 3 months of works commencing on site a lighting scheme must be submitted for written approval by the Local Planning Authority demonstrating that it has been designed to ensure there will be minimal light spill on to the site boundaries and the surrounding area.

Reason: In the interests of biodiversity.

20. Within 6 months of works commencing an ecological enhancement plan must be submitted to the Local Planning Authority for written approval. The plan must clearly demonstrate what enhancements will be incorporated in to the site and where they will be located. The plan must be implemented as approved.

Reason: In the interests of biodiversity.

### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), February 2019 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

### **INFORMATIVES**

- (1) It is the responsibility of the applicant to ensure, before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority. Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the road. This is called 'highway land'. Some of this land is owned by The Kent County Council (KCC) whilst some are owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil. Information about how to clarify the highway boundary can be found at <https://www.kent.gov.uk/roads-and-travel/what-we-look-after/highway-land/highway-boundary-enquiries>
- The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.



**Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017.**

This Appropriate Assessment (AA) has been undertaken without information provided by the applicant.

The application site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

The proposal therefore has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advise that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation and site remediation satisfactory to the EA, the proposal is unlikely to have significant effects on these sites.

The recent (April 2018) judgement (*People Over Wind v Coillte Teoranta*, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, *"it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site."* The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group.

However, the proposed development is of a very small scale and, in itself and in combination with other development, would not have an adverse effect on the integrity of the SPA, subject to the conditions set out within the report.

Notwithstanding the above, NE has stipulated that, when considering any residential development within 6km of the SPA, the Council should secure financial contributions to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG), and that such strategic mitigation must be in place before the dwellings are occupied.

Due to the scale of development there is no scope to provide on site mitigation such as an on-site dog walking area or signage to prevent the primary causes of bird disturbance, which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats.

Based on the correspondence with Natural England (via the NKEPG), I conclude that off site mitigation is required.

In this regard, whilst there are likely to be impacts upon the SPA arising from this development, the mitigation measures to be implemented within the SPA from collection of

the standard SAMMS tariff (to be secured by either the SAMMS payment form or unilateral undertaking on all qualifying developments) will ensure that these impacts will not be significant or long-term. I therefore consider that, subject to mitigation, there will be no adverse effect on the integrity of the SPA.

It can be noted that the required mitigation works will be carried out by Bird Wise, the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, which itself is a partnership of local authorities, developers and environmental organisations, including SBC, KCC, Medway Council, Canterbury Council, the RSPB, Kent Wildlife Trust, and others (<https://birdwise.org.uk/>).

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.  
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.





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<b>2.8 REFERENCE NO - 20/500809/FULL &amp; 20/500810/LBC</b>		
<b>APPLICATION PROPOSAL</b> Planning permission and listed building consent for the change of use of ground floor store to cafe and two storey flat above, including erection of the rear external staircase and creation of first floor terrace.		
<b>ADDRESS</b> 9 High Street Queenborough Kent ME11 5AA		
<b>RECOMMENDATION</b> Grant subject to conditions		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The proposal will not cause harm to residential or visual amenities, and will preserve the listed building, its setting, and the surrounding Conservation Area.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Applicant is a Councillor		
<b>WARD</b> Queenborough And Halfway	<b>PARISH/TOWN COUNCIL</b> Queenborough	<b>APPLICANT</b> Mr Simon Fowle <b>AGENT</b> Wyndham Jordan Architects
<b>DECISION DUE DATE</b> 29/04/20		<b>PUBLICITY EXPIRY DATE</b> 09/04/20

**THIS REPORT RELATES TO TWO SEPARATE APPLICATIONS BUT THEY ARE DEALT WITH TOGETHER AS THE PROPOSAL IS SEEKING BOTH PLANNING PERMISSION AND LISTED BUILDING CONSENT FOR THE SAME PROPOSAL AT THE SAME PROPERTY. EACH APPLICATION SHOULD BE DETERMINED ON ITS OWN MERITS.**

### Planning History

SW/08/0341

Listed Building Consent for change of use of ground floor store to cafe and two storey flat over.

Granted LBC                      Decision Date: 15.05.2008      NOT IMPLEMENTED

SW/08/0272

Change of use of ground floor store to cafe and two storey flat over.

Grant of Conditional PP              Decision Date: 23.05.2008      NOT IMPLEMENTED

SW/92/0402

Listed building consent for shop front & fascia

Granted LBC                      Decision Date: 22.06.1992

SW/92/0401

Shop front & fascia

Grant of Conditional PP              Decision Date: 22.06.1992

SW/82/0034

Application for listed building consent for extension

Approved pre 1990      Decision Date: 15.03.1982

SW/82/0033

Rear extension

Approved pre 1990 Decision Date: 15.03.1982

## **1. DESCRIPTION OF SITE**

- 1.1 No. 9 High Street (also known as Bosuns Store) is a two storey, end of terrace property located within the built up area boundary of Queenborough. It is located to the south west of the junction between the High Street and West Street. The property is Grade II listed and is also within the Queenborough Conservation Area.
- 1.2 The building is currently in a poor state, stemming from the fact it has been vacant for over a decade. On the ground floor, there is currently a shop, with associated kitchen and WC. On the first and second floors is a flat, access to which is provided from within the shop. On the first floor is a lounge, kitchen and a bathroom, whilst in the roof space are two bedrooms. At the rear of the site is a small yard which is accessed from West Street. There is an existing outhouse at the rear of the yard.
- 1.3 The surrounding area is characterised by a mixture of both commercial and residential uses. Immediately west of the site is the clubhouse for Queenborough Yacht Club, and the rear amenity space of this neighbouring building extends to the rear of the site. To the north is a public car park and to the east is enclosed land used for external storage.

## **2. PROPOSAL**

- 2.1 These applications seek planning permission and listed building consent for the conversion of the ground floor to a café with alterations to the two bedroom flat above. On the ground floor, the internal staircase that provides access to the flat will be removed. The WC will be relocated to the centre of the ground floor and the kitchen will be extended into the area where the WC previously was situated. The existing PVCu door at the rear of the building will be replaced with a part glazed timber door. The proposed café will employ 2 full-time and 1 part-time members of staff, and propose the following opening hours: 0900 – 1700 Monday to Friday, 0900 – 1800 Saturday and 1100 – 1600 Sunday.
- 2.2 Externally, a steel staircase will be erected in the yard at the rear of the building, and a terrace will be created above the existing flat roof extension at the rear of the building. This will create a separate access to the flat on the first and second floors. The existing first floor window will be replaced with a partially glazed timber door. A timber privacy screen will be erected along the western boundary of the terrace. On the first floor, the bathroom will be relocated to the centre of the building, with a lounge/dining/kitchen area proposed at the front of the building, and a utility room at the rear. New partition walls will create the revised first floor layout. On the second floor, an en-suite will be installed in the larger of the two bedrooms, and the PVCu dormer window on the rear elevation will be replaced with a timber sash window. In line with amendments recommended by the Conservation Officer, black stained weatherboarding will be added to the rear elevations of the building, and the existing roof on the rear two storey extension will be replaced with new slates.
- 2.3 I note a very similar scheme was approved at the site in 2008 (reference SW/08/0272 & SW/08/0341). The main differences proposed under this application include the

addition of a staircase to provide a separate access to the flat above the proposed ground floor café and the erection of a first floor terrace. The internal layout differs slightly too, as the current proposal seeks the removal of the internal staircase between ground and first floor, along with the reduction in size and repositioning of the WC facility for the café. The internal layout on the first floor is also different to allow for the creation of a hallway leading from the proposed external access.

### **3. PLANNING CONSTRAINTS**

- 3.1 Potential Archaeological Importance
- 3.2 Conservation Area Queenborough
- 3.3 Environment Agency Flood Zone 2/3
- 3.4 Grade II listed building

### **4. POLICY AND CONSIDERATIONS**

- 4.1 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG)
- 4.2 Development Plan: Policies CP1, CP4, DM1, DM11, DM14, DM16, DM32 and DM33 of Bearing Fruits 2031: The Swale Borough Local Plan 2017
- 4.3 Supplementary Planning Guidance (SPG): ‘Conservation Areas’ and ‘Listed Buildings: A Guide for Owners and Occupiers’

### **5. LOCAL REPRESENTATIONS**

- 5.1 None

### **6. CONSULTATIONS**

- 6.1 Queenborough Town Council – No comments to make.
- 6.2 Environmental Health – Originally raised no objections to the proposal, subject to the conditions relating to hours of construction, sound insulation and mechanical ventilation systems. Sound proofing details were subsequently submitted and Environmental Health confirmed they consider the details will give a sufficient level of sound insulation.
- 6.3 Environment Agency – No objection.
- 6.4 KCC Archaeology – *“I have reviewed the details and note that there is very little ground excavation or alteration of historic fabric involved in the proposals. I am therefore satisfied that no archaeological measures are required in connection with this proposal.”*

### **7. BACKGROUND PAPERS AND PLANS**

- 7.1 Plans and documents relating to 20/500809/FULL and 20/500810/LBC.



## **APPRAISAL**

### **Planning application**

- 7.2 The site is located within the built up area boundary of Queenborough, which is defined as a Local Centre under policy DM2 of the Local Plan. The change of use of the ground floor from a shop to a café is acceptable in my view, as it would add to the range of services available within Queenborough, and enhance the vitality of the town. Furthermore it would bring a derelict listed building back into use. I also note that the conversion of the ground floor of the building into a café was approved under applications SW/08/0272 & SW/08/0341, although these permissions were never implemented. As such, I am of the opinion that the principle of the application is acceptable.
- 7.3 With regards to residential amenity, the first and second floors are already in residential use, however have been vacant for a number of years. The erection of an external staircase and terrace at the rear of the building will create a separate access to the flat, and would also result in some internal alterations to the first floor of the flat. However I consider these make the best use of the space, whilst also ensuring minimal changes to the layout of the listed building occur. The proposed terrace will provide a small amount of outdoor space for the flat, and the erection of a privacy screen along the western boundary with Queenborough Yacht Club will ensure that the area has a significant degree of privacy and will prevent any harmful overlooking to the adjoining properties to the west of the site. Sound proofing is proposed between the ground and first floor to ensure the proposed café does not cause any unacceptable noise impacts on the flat above. Taking the above into account, I believe the proposal will provide an adequate standard of amenity for future occupiers of the flat.
- 7.4 I do not consider the proposal will have any unacceptable impacts to the amenity of any neighbouring properties. The attached property is the clubhouse for the Queenborough Yacht Club, and whilst the proposed external staircase and use of the flat roof may have some impacts on this building, taking into account its commercial use, I do not believe the proposal will be significantly harmful. The closest property to the east lies roughly 16m away and due to the distance, I do not envisage the proposals will have an unacceptable impact on this property.
- 7.5 The proposed external works will be located on the rear of the building, and the main change will include the erection of a steel staircase and creation of a terrace on the existing flat roof extension on the rear of the building. Due to the position of the property on the junction between High Street and West Street, this will be highly visible from public viewpoints. Following amendments in line with comments from the Conservation Officer, I believe the proposed external changes will be acceptable and will sit comfortably on the building. The other proposed external works, namely the replacement of PVCu doors and windows with timber and the additional of black stained weatherboarding on the rear elevation of the building would amount to minor changes in my view, but will improve the appearance of the property. I believe the character and appearance of the Conservation Area, as well as the listed building, would be preserved.

- 7.6 There is no dedicated parking for either the café or flat, however I note the site is in a central location and opposite a free public car park. As such, I have no concerns from this regard.

### **Listed Building Consent**

- 7.7 The property is Grade II listed and the Council has a statutory duty to pay special regard to the desirability of preserving listed buildings, their setting and any features of interest which are present. Policy DM32 states that proposals to extend or alter a listed building will be permitted provided that the building's special architectural or historic interest it possesses is preserved. The impact of the proposal upon the listed building will be considered here.
- 7.8 The building is currently in a poor and disused state. Further details were requested relating to sound proofing and details of the method of fixing the metal railing and privacy screen to the flat roof. I am satisfied that no significant harm will occur to the listed building as a result, and Environmental Health have confirmed they are satisfied with the details. Two conditions have been imposed below to ensure details relating to the fixing of the privacy screen and metal railings are submitted and approved by the Council. I consider this will ensure these aspects of the development have an appropriate finish. Concern was raised regarding the removal of the original back wall of the property on the ground floor, and amended plans have subsequently been submitted ensuring this wall is retained.
- 7.9 Discussions took place regarding the timber privacy screen. Following amendments adding a top timber edging detail which would finish flush with the hit & miss vertical panels on either side of the fixing battens, I consider the screen will work well in combination with the proposed new element of the application of adding weatherboard cladding to the rear elevation of the kitchen extension and the rear wing at first floor level. With the weatherboarding stained black (as proposed), the metal railings in a black finish and the balcony screen also stained black to match the weatherboarding, the net visual effect would be an acceptable, coherent one. I include a condition below to ensure both the weatherboarding and timber privacy screen are stained black using the same timber preservation coating product.
- 7.10 The removal of modern features within the building, such as the replacement of existing PVCu windows and doors with timber (as shown on the submitted joinery details) and the removal of the internal staircase will enhance the character of the building. The proposed internal replacement doors (which would replace the non-original internal doors) to a similar, appropriately simple boarded design would also enhance the building in my view. The details of a traditional cast iron air brick to be used as ventilation in the bathroom are also acceptable.
- 7.11 I consider the proposal has been sympathetically designed to ensure minimal changes are made to the historic fabric of the building. I believe they will sit comfortably on the building. As such, I do not believe the building itself, its setting, or its historical and architectural interest would be harmed by the proposal.



## 8. CONCLUSION

- 8.1 Taking into account the above, the proposal will bring a vacant listed building back into use, to the benefit of the building itself and the surrounding Conservation Area. The proposal will not cause harm to residential and visual amenities, and as such, I recommend planning permission and listed building consent be granted.

## 9. RECOMMENDATION – GRANT subject to the following conditions:

### **FOR 20/500809/FULL Planning Permission only**

#### CONDITIONS

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) The development hereby approved shall be carried out in accordance with the following approved drawings: HSQ1932.01, HSQ1932.054A , HSQ1932.05A, HSQ1932.06A, HSQ1932.07A, HSQ1932.08 and HSQ1932.09.

Reason: For the avoidance of doubt and in the interests of proper planning.

- (3) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:

Monday to Friday 0730 – 1800 hours, Saturdays 0730 – 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- (4) Details of any mechanical ventilation system that will be installed shall be submitted to and approved by the Local Planning Authority and upon approval shall be installed, maintained and operated in a manner which prevents the transmission of odours, fumes, noise and vibration to neighbouring premises.

Reason: In the interests of residential amenity.

#### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), February 2019 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

**FOR 20/500810/LBC Listed Building Consent only**

CONDITIONS

1. The works to which this consent relates must be begun not later than the expiration of three years beginning with the date on which this consent is granted.

Reason: In pursuance of Section 18 of the Listed Building Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby approved shall be carried out in accordance with the following approved drawings: HSQ1932.01, HSQ1932.054A , HSQ1932.05A, HSQ1932.06A, HSQ1932.07A, HSQ1932.08 and HSQ1932.09.

Reason: For the avoidance of doubt and in the interests of proper planning.

3. Prior to the erection of the terrace railings, details of the fixing of the terrace railings to the new terrace floor surface shall be submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with these approved details.

Reason: In the interest of the special architectural or historic interest of the listed building and preserving or enhancing the character and appearance of the surrounding area.

4. Prior to the erection of the timber privacy screen, details of how the screen would be fixed to the roof of the ground floor extension shall be submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with these approved details.

Reason: In the interest of the special architectural or historic interest of the listed building and preserving or enhancing the character and appearance of the surrounding area.

5. The timber privacy screen and weatherboarding hereby approved shall be stained black using the same timber preservation coating product and shall be retained as such thereafter.

Reason: In the interest of the special architectural or historic interest of the listed building and preserving or enhancing the character and appearance of the surrounding area.

6. The air/vent brick to be used to provide ventilation to the proposed ground floor WC facility, and also to provide trickle ventilation at first and second floor levels, shall be the traditional cast iron vent brick shown in the submitted additional details unless otherwise previously agreed in writing with the Local Planning Authority.

Reason: In the interest of the special architectural or historic interest of the listed building and preserving or enhancing the character and appearance of the surrounding area.

7. The replacement internal doors to be used in the development hereby permitted shall be Ledged & Braced FD30 Internal Fire Door unless otherwise previously agreed in writing with the Local Planning Authority.

Reason: In the interest of the special architectural or historic interest of the listed building.

8. Prior to the use of the café commencing, the sound insulation details provided as part of the application shall be installed between the ground and first floors and shall retain the existing floor boards. Furthermore the outer layer of sound bloc plasterboard shall be provided with a plaster skim finish.

Reason: In the interest of the special architectural or historic interest of the listed building.

9. The insertion of any noise insulation and/or fire protection systems between the first and second floors of the building shall ensure the existing floorboards remain intact.

Reason: In the interest of the special architectural or historic interest of the listed building.

10. All works of making good shall be carried out with materials and methods of construction that match existing fabric of the listed building unless otherwise agreed in this consent.

Reason: In the interest of the special architectural or historic interest of the listed building and in the interest of preserving or enhancing the character and appearance of the surrounding area.



**PLANNING COMMITTEE – 25 JUNE 2020**

**PART 5**

Report of the Head of Planning

**PART 5**

Decisions by County Council and Secretary of State, reported for information

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- **Item 5.1 – 10 Coleman Drive Sittingbourne**

**APPEAL ALLOWED**

**DELEGATED REFUSAL**

**Observations**

A decision, which is contrary to the adopted SPG, and to numerous other appeal decisions.

- **Item 5.2 – 1 New Houses Broom Street Graveney**

**LAWFUL DEVELOPMENT CERTIFICATE APPEAL DISMISSED**

**DELEGATED REFUSAL**

**Observations**

Support for the Council's decision based on the facts of this case, in this complex and inexact area of planning law.

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## Appeal Decision

Site visit made on 11 March 2020

by **Ian Harrison BA Hons DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 06 April 2020

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**Appeal Ref: APP/V2255/D/20/3244113**

**10 Coleman Drive, Sittingbourne, Kent ME10 2EA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr C Brooks against the decision of Swale Borough Council.
  - The application Ref 19/504794/FULL, dated 23 September 2019, was refused by notice dated 26 November 2019.
  - The development proposed is a single storey rear extension.
- 

### Decision

1. The appeal is allowed and planning permission is granted for a single storey rear extension at 10 Coleman Drive, Sittingbourne, Kent ME10 2EA in accordance with the terms of the application, 19/504794/FULL, dated 23 September 2019, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, Existing Block Plan, Proposed Block Plan and RA1339/REV C/01
  - 3) The materials to be used in the construction of the external walls of the development hereby permitted shall match those used in the existing building.

### Procedural Matter

2. The description of the development used in the banner heading and the description above have been taken from the application form and the appeal form. Although the Council used a different description of development that included additional works that were shown on the submitted plans, neither of the parties have provided written confirmation that a revised description has been agreed. Accordingly, I have used the one given on the original application form which reflects the development for which planning permission was sought.

### Main Issue

3. The main issue is the effect on the living conditions of the occupiers of the neighbouring dwelling of 12 Coleman Drive, with particular regard to loss of light and outlook.

### Reasons

4. The appeal site is located within a residential area that features detached and semi-detached dwellings of similar age, that are generally of consistent scale and have repetitive architectural features. The pair of semi-detached dwellings of 10

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<https://www.gov.uk/planning-inspectorate>

Appeal Decision APP/V2255/D/20/3244113

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and 12 Coleman Drive appear to be handed replicas of each other with the main rear elevations being aligned, albeit a conservatory has been erected at the rear of the dwelling at the appeal site. The rear elevation of 12 Coleman Drive features two openings at ground floor level, with the closest to the appeal site appearing to serve a living room and the other serving a kitchen. The gardens of the two dwellings are separated by a line of fencing.

5. The proposal would involve the removal of the conservatory and the erection of a single storey extension. The extension would have a flat roof and would be in close proximity to the boundary that is shared with 12 Coleman Drive.
6. Although the rear extension would project a substantial distance beyond the rear elevation of the neighbouring dwelling and be visible above the established boundary treatments, the height of the extension and its flat roof design would limit the effect of the development on the outlook from within the adjacent part of the garden and the living room that is close to the shared boundary. Moreover, due to the orientation of the neighbouring dwelling and the size of the garden serving that dwelling, the extension would not cause the occupiers of the adjacent living room to experience a significant sense of enclosure. As such, the extension would not be oppressive or have an overbearing effect to an extent that it would have a harmful impact on the overall living conditions of the occupiers of the neighbouring dwelling.
7. Moreover, although it is a deep extension, due to its appropriate height and the orientation of the dwellings, it would not cause a reduction of daylight or sunlight within the neighbouring dwelling to an extent that would unduly undermine living conditions within the neighbouring dwelling.
8. By exceeding a depth of 3 metres, the proposal does not accord with the limitations that are set out at paragraph 5.7 of the Council's Designing an Extension Supplementary Planning Guidance<sup>1</sup> (The SPG) and therefore does not accord with those parts of policies CP4 and CM14 of the Swale Borough Local Plan<sup>2</sup> (SBLP) which require developments to comply with the SPG. However, I do not find that the proposal would conflict with the overall aim of that restriction which is to protect the outlook, sunlight and daylight that is available to the occupiers of neighbouring dwellings.
9. I therefore conclude that the development would not have a harmful effect on the living conditions of the occupiers of 12 Coleman Drive. Accordingly, the proposal accords with those parts of policies CP4, DM14 and DM16 of SBLP which require that development protects and causes no significant harm to residential amenity and is of high design quality that is appropriate to its surroundings.

#### **Conclusion and Conditions**

10. I conclude that the appeal should be allowed subject to the conditions set out above. I have attached a condition to require the development to be undertaken in accordance with the submitted plans in the interests of clarity. Another condition requires the development to be undertaken utilising materials that match the existing dwelling in the interests of maintaining the character and appearance of the existing dwelling and the locality.

*Ian Harrison*

INSPECTOR

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<sup>1</sup> Designing an Extension: A Guide for Householders Supplementary Planning Guidance.

<sup>2</sup> Bearing Fruits 2031: The Swale Borough Local Plan (2017)





The Planning Inspectorate

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## Appeal Decision

by K R Seward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 09 June 2020

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**Appeal Ref: APP/V2255/X/19/3241797**

**1 New Houses, Broom Street, Graveney, Faversham ME13 9DW**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development ('LDC').
  - The appeal is made by Mr & Mrs B & S Jeffreys against the decision of Swale Borough Council.
  - The application Ref 19/502593/LAWPRO, dated 17 May 2019, was refused by notice dated 19 August 2019.
  - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
  - The development for which a certificate of lawful use or development is sought is erection of single storey building for use as garages, home workshop, home office and games room/summerhouse.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. In an LDC appeal, the planning merits of the outbuilding are not relevant. My decision rests on the application of relevant planning law and judicial authority to the facts of the case. Therefore, arguments concerning potential impacts upon neighbouring property cannot be taken into account.
3. I have not conducted a site visit, but I am satisfied that I have sufficient information before me to make a decision particularly as it includes a series of plans, aerial images and other photographs.

### Main Issue

4. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether the proposed development would constitute permitted development by virtue of the provisions of Article 3(1) and Class E(a) of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the GPDO').

### Reasons

5. In an LDC appeal the onus of proof is on the appellant to show that, on the balance of probabilities, the development would be lawful at the time of the application.
6. The proposal is for an outbuilding to be used as a home workshop, home office

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[www.gov.uk/planning-inspectorate](http://www.gov.uk/planning-inspectorate)

and games room/summerhouse. It would replace an existing games room/summerhouse, most of which would be removed, to facilitate construction of the new building. The outbuilding would occupy a corner position on land located behind the rear garden of the neighbouring properties at Nos 2 and 3.

7. Article 3(1) of the GPDO grants planning permission for the classes of development set out in Schedule 2 to the Order. It includes, at Part 1, Class E(a), the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. That is subject to prescribed limitations and conditions, but there is no suggestion they would be exceeded.
8. While the Council expressed reservations over the proposed outbuilding being required for incidental purposes, the sole reason for refusal stated in its decision notice concerns the location of the outbuilding. In the Council's view, the proposed outbuilding would not be within the curtilage of the house. Therefore, the question to be determined is whether the curtilage extends to the whole application site.
9. The GPDO does not attempt to define the term 'curtilage' and there is no other all-encompassing, authoritative definition.
10. The Technical Guidance on permitted development rights for householders<sup>1</sup> explains that some terms are not defined in the Order but are understood in the case of 'curtilage' to mean "land which forms part and parcel with the house. Usually it is the area of land within which the house sits, or to which it is attached, such as the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area."
11. As Guidance only it does not have the force of law but represents Government advice on how the GPDO was intended to be interpreted. The term is used in different contexts within the planning system, and this may result in varying interpretations.
12. The Courts have often addressed the meaning of 'curtilage' most frequently in relation to listed buildings. In arriving at its decision, the Council considered some of these cases the earliest one being the Court of Appeal decision in *Methuen-Campbell v Walters* [1979] 1 QB 525. In that case it was held that for land to fall within the curtilage of a building, it must be intimately associated with the building to support the conclusion that it forms part and parcel of the building. It was possible that this may extend to ancillary buildings, structures or areas such as outhouses, a garage, a driveway and so forth. A curtilage may consist of more than one parcel of land, need not have been conveyed or demised together and might even fall within another, broader curtilage.
13. Most reliance appears to be placed by the Council on the Court of Appeal decision in *Dyer v Dorset CC* [1988] 3 WLR 213. This case alone is referenced in its decision. *Dyer* provides authority that the term 'curtilage' bears its restricted and established meaning connoting a small area forming part and parcel with the house or building which it contained or to which it was attached. Subsequently, in *McAlpine v SSE* [1995] 159 L.G. Rev. 429 it was held that "there is no rigid definition to a curtilage", but that: it is a feature constrained to a small area about a building; apparently in "intimate association" with such building; and no physical enclosure is necessary to

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<sup>1</sup> Published by the Ministry of Housing, Communities and Local Government in September 2019

define it, "but the considered land must be part of the enclosure with the house".

14. The Council also relies on the Inspector's reasoning in *R (oao Sumption) v Greenwich LBC* [2007] EWHC 2276 (Admin) that the smallness of land was a relative factor as a matter of fact and degree. The Inspector's decision was in fact quashed. The case is nonetheless noteworthy as authority that a lack of historic connection between the land and a listed building can be a relevant fact but it is not determinative. It is necessary to determine the status of the land from the factual situation existing at the date of the application. On the facts in *Sumption* the curtilage did extend over a 'recently expanded garden' where the land was clearly capable of such use, some work had been done to it, there was access to it and it was part of the land attached to the building and being enjoyed with it. In those circumstances the historical lack of connection was not capable of carrying weight. The Court also made reference to the Oxford English Dictionary definition of 'curtilage' as 'an area of land attached to a house and forming one enclosure with it'.
15. The appellants cite other caselaw tackling the issue of 'curtilage'. In chronological order, *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195 it was found that "The ground used for the comfortable enjoyment of a house or other building may be regarded as being within the curtilage of the house or building" and "It is enough that it serves the purpose of the house or building in some necessary or reasonably useful way."
16. The Court of Appeal in *Skerritts of Nottingham Ltd v SSETR (No. 1)* [2000] EWCA Civ 60 described the decision in *Dyer* as plainly correct, though commenting that "this court went further than it was necessary to go in expressing the view that the curtilage of a building must always be small, or that the notion of smallness is inherent in the expression." In addition, at first instance "the deputy judge was mistaken in treating *Dyer* as having such clear force as he thought it had." Thus, the decision makes plain that there should not be a rigid application of the concept of size.
17. The High Court in *Lowe v First Secretary of State* [2003] EWHC 537 (Admin) found the judgment of Lord Justice Nourse in *Dyer* to be of most assistance to conclude that: "The expression 'curtilage' is a question of fact and degree. It connotes a building or piece of land attached to a dwelling house and forming one enclosure with it. It is not restricted in size, but it must fairly be described as being part of the enclosure of the house to which it refers. It may include stables and other outbuildings, and certainly includes a garden, whether walled or not. It might include accommodation land such as a small paddock close to the house."
18. The concept of "curtilage" was more recently reviewed by the High Court in *Burford v SSCLG* [2017] J.P.L. 1300 where it was noted that the use of land as incidental to the enjoyment of a dwelling house is not determinative of the land being curtilage. The case reaffirmed the criteria laid down in *Attorney-General ex rel. Sutcliffe and Others v Calderdale Borough Council* [1983] 46 P&CR 399 for identifying curtilage, namely: (1) the physical layout of the [listed] building and the structure; (2) their ownership, past and present; (3) their use or function, past and present. The decision is also particularly relevant as it concerned the application of Class E of the GPDO, as arises here.
19. Having regard to all the authorities it is apparent that whether land comprises



'curtilage' is a question of fact and degree to be considered on a case by case basis and thus primarily a matter for the decision maker.

20. By only considering some of the relevant authorities, the Council perhaps placed too much reliance on the curtilage being a small area about a building although other factors influenced its decision. *Dyer* must be read in conjunction with subsequent decisions where it was considered and applied. As emerged from *Skerritts*, size does not matter necessarily in identifying a curtilage, but that did not mean the relative size between the building and its claimed curtilage was not a relevant consideration. Of course, in none of these cases do I have the plans on which the decisions were based to draw comparisons, but the key principles emerging fall to be applied.
21. What emerges from the authorities is that the relevant date on which to determine the extent of the curtilage is the date of the application, but this involves considering both the past history of the land and how it is laid out and used at the time of the application.
22. The appeal property is at one end of a terrace of three houses originally built as agricultural workers dwellings after planning permission was granted in 1953. An application for a LDC was approved in 1999 for a use without complying with the agricultural occupancy condition imposed in 1953.
23. The Council notes that the drawings which accompanied both applications in 1953 and 1999 identified the residential curtilage as the narrow strip to the rear to the same depth as the neighbouring properties. That is unsurprising when the other land was a later acquisition and the 1999 application related to the 1953 permission. It does not mean that the land behind Nos 2 and 3 cannot now be within the curtilage of No 1 although it was not historically.
24. The Ordnance Survey maps of 1963 and 1978 show the three houses each with a rear garden of equal depth. The proposed site is behind the gardens and appears as an undivided plot on which a block of garages and small outbuildings have appeared by 1978. The garages lie beside the access which also serves the dwelling to the north known as 'Sparrow Court'. The proposed site is colour washed in the same way as the gardens.
25. The landholding for No 1 now includes the access and the plot behind the terrace except for two garages in the block and a small area behind No.3. It is roughly 'L' shaped. The copy Land Registry Title plan produced does not provide evidence that the whole property was one curtilage in 1999 as the appellant suggests. It merely confirms the land is part of one registered land title under the same ownership.
26. The appellant acknowledges that the status of the land between 1953-1999 is unknown but says it has been in the same ownership and used as garden for No 1 since at least the year 2000. An aerial photograph said to date from 1999 shows the land as grassed, but not much else can be gleaned. By 2000-2001, an aerial image shows a fence along the original rear boundary of No 1, but with a gap where a worn trodden path leads from the garden into the square shaped area now the subject of this appeal. A small pond is located in one corner, the area is mainly fenced and looks to be grassed with some shrubs. By 2003, the summerhouse can be seen and more shrubs/trees have appeared. Later images from 2008 and 2010 show further tree cover in both areas.
27. The material gives a firm indication that part of the land has been used as a

- garden in association with the dwelling at No 1 for some years. However, land can be used as garden without being part of its curtilage.
28. When the summerhouse was erected on the land in 2002 the Council took no further action after investigating a complaint over its construction. The reason for the Council's decision is unclear. It might be because the Council concluded the summerhouse was permitted development within the terms of the previous 1995 GPDO having been built within the curtilage of the dwellinghouse. There could be other reasons. Without the details it cannot be known.
  29. Another enforcement investigation was undertaken by the Council in 2015 into the stationing of a caravan on the land behind the garden of No 2. Following the completion of a planning contravention notice by the appellants, as landowners, the Council's response referred to "the caravan stationed in the rear garden of your property". It confirmed that the case was closed after confirmation that the caravan would not be used as a permanent residence.
  30. The letter and conclusion reached is not especially informative. Use of the land as garden is not determinative of curtilage and the stationing of a caravan is not in itself a use of land. It is unclear if there would be in fact have been any development. More information would be needed to draw any inferences.
  31. The appellants' acquired No 1 in 2007. The sales brochure described the property as benefiting from 'gardens' in the plural including a summerhouse. The gardens are distinguished from a one-acre paddock included in the sale. Photographs show both gardens; those nearest to the house with seating area, decked paths and borders and the wider landscaped area with summerhouse. Clearly, the proposed site was regarded at that time as a garden, but that does not automatically mean it formed part of the curtilage then or now. Indeed, the reference to 'gardens' appears to distinguish between the two different areas.
  32. The Council refers to two Appeal Decisions. The Inspector in the 2 Ryefields Barns<sup>2</sup> appeal emphasised that "curtilage" and "use" are not the same thing. Further, that a parcel of land may acquire use rights for purposes related to the residential occupation of a dwelling without necessarily being within the curtilage of a dwelling. As principles, I regard both points as uncontroversial.
  33. In the Maple Manor, Redhill appeal<sup>3</sup> the Inspector noted that neither the use of an area as additional garden land nor its description as being in 'residential use' in enforcement proceedings were decisive factors in determining the curtilage. In that case, the land in question was separated from other garden by a drive, fencing, hedgerow and a summerhouse. Having regard to its physical division and characteristics it was found that the land was a distinct piece of property which did not have the necessary intimate association with the dwellinghouse.
  34. It seems to me that the points raised in both those Appeal Decisions are consistent with the long line of authorities in which no one factor was decisive. As each case turns on its individual facts, they do not take matters much further forward. However, as pointed out by the previous Inspector in the Redhill appeal, the judgment in *Sumption* cannot be taken to establish, as a matter of law, that the curtilage of a dwellinghouse can be expanded without limit on the annexation of other land, simply because that other land is used for garden purposes. All the relevant circumstances should be considered.

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<sup>2</sup> Appeal ref: APP/Y9507/X/15/3131994 dated 20 May 2016

<sup>3</sup> Appeal ref: APP/L3625/C/10/2133035 dated 13 May 2011

35. In this instance, the land has been used as a garden to serve the purpose of the dwelling in some reasonably necessary or useful manner for there to be a functional relationship between the use of the land and the dwelling. The proposed building would be located on land within common ownership (as per *Sutcliffe*) although it was not in the past. Clearly, it is possible for the extent of curtilage to change over time. When the application was made the land was used in conjunction with the dwelling as residential garden and had done so for some time. The appellant places much emphasis on the functional use as garden over a 20 year period, but that is only one element of the factors requiring consideration.
36. There is an existing summerhouse on the land which would be partially replaced but as its planning status is not altogether clear I place little reliance upon its presence.
37. Historically No 1 was a narrow plot. It is now considerably larger having encompassed land to the north which extends north-westwards behind the whole terrace. The additional land beyond the original rear garden is sizeable in comparison to the original plot, but I do not find that in itself to be particularly significant. However, the proximity to the dwelling and physical layout are of note. As made clear in *Burford* in reference to both *Dyer* and *Lowe*, 'curtilage' is an area of land 'attached to' a house and 'forming one enclosure with it'.
38. The land on which the outbuilding would be constructed adjoins the original garden, but it is not physically proximate to the dwelling at No 1. It lies some way off behind the rear gardens of the neighbouring properties at Nos 2 and 3 within an area shown on the site plan as including the block containing garages belonging to two neighbours. The existing summerhouse is a wide and narrow structure extending partly behind the end garage owned by No 3. Given the configuration, there is not a close spatial relationship with the dwelling at No 1. The lack of historical connection carries little weight in itself in this case, but the awkward layout with third party property intruding into the space is reflective of its past as separate plots.
39. The existing layout plan confirms the land remains laid out as a separate area of garden from that closest to the house. It is segregated from the original rear garden by a short section of fencing with gates providing access between the areas. Access can also be obtained via gates from the drive running down the side of the property. Whatever the reason for the fence, its position appears to correspond with the original boundary. Its presence reinforces there being physically separate and distinct areas.
40. Although the outbuilding would be built on land used as garden for No 1 for many years, it is a distinct area from that which formed the original garden. Whilst the purposes for which it was used at the time of the application were incidental to the use of the dwelling, that does not necessarily make it curtilage as confirmed in *Burford*. As it is, the land is not part of the land attached to the dwellinghouse. Nor can it fairly be described as forming one enclosure with it when it is fenced and gated.
41. On the information before me, although a functional relationship exists, the land concerned does not have a close spatial relationship with the dwelling nor does it form one enclosure with it. There is not an intimate association between what is essentially an additional piece of garden and the dwelling. Taking account of the factors as a whole, I am not satisfied that the proposed

outbuilding would have been built on land comprising curtilage of the dwellinghouse at No 1 when the application was made.

**Conclusion**

42. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a single storey building for use as garages, home workshop, home office and games room/summerhouse was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*KR Seward*

INSPECTOR

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