



## AGENDA

### PLANNING COMMITTEE MEETING

Date: Thursday, 7 April 2022

Time: 7.00 pm

Venue: Council Chamber, Swale House, East Street, Sittingbourne, ME10 3HT\*

Membership:

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

Quorum = 6

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Pages

#### Information for the Public

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## 1. Emergency Evacuation Procedure

The Chairman will advise the meeting of the evacuation procedures to follow in the event of an emergency. This is particularly important for visitors and members of the public who will be unfamiliar with the building and procedures.

The Chairman will inform the meeting whether there is a planned evacuation drill due to take place, what the alarm sounds like (i.e. ringing bells), where the closest emergency exit route is, and where the second closest emergency exit route is, in the event that the closest exit or route is blocked.

The Chairman will inform the meeting that:

(a) in the event of the alarm sounding, everybody must leave the building via the nearest safe available exit and gather at the Assembly points at the far side of the Car Park. Nobody must leave the assembly point until everybody can be accounted for and nobody must return to the building until the Chairman has informed them that it is safe to do so; and

(b) the lifts must not be used in the event of an evacuation.

Any officers present at the meeting will aid with the evacuation.

It is important that the Chairman is informed of any person attending who is disabled or unable to use the stairs, so that suitable arrangements may be made in the event of an emergency.

## 2. Apologies for Absence and Confirmation of Substitutes

## 3. Minutes

To approve the [Minutes](#) of the Meeting held on 10 March 2022 (Minute Nos. 671 - 676) as a correct record.

#### 4. 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 Interests (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 meeting 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**

#### 5. Deferred Items

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To consider the following application:

**21/500173/FULL, Land East Of Hawes Woods High Oak Hill Iwade Road Newington Kent ME9 7HY**

Members of the public are advised to confirm with Planning Services prior to the meeting that this application will be considered at this meeting.

Requests to speak on this item must be registered with Democratic Services ([democraticservices@swale.gov.uk](mailto:democraticservices@swale.gov.uk) or call us on 01795 417328) by noon on Wednesday 6 April 2022.

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

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To consider the attached report (Parts 2, 3 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 6 April 2022.

## **Issued on Tuesday, 29 March 2022**

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, Swale Borough Council,  
Swale House, East Street, Sittingbourne, Kent, ME10 3HT**

## SWALE BOROUGH COUNCIL

### PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

**7 APRIL 2022**

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**PART 1** Reports to be considered in public session not included elsewhere on this Agenda

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

**PART 3** Applications for which refusal is recommended

**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 – 7 APRIL 2022

- Minutes of last Planning Committee Meeting
- Deferred Items
- Minutes of any Working Party Meetings

### DEFERRED ITEMS

Def 1 21/500173/FULL NEWINGTON Land East of Hawes Woods High Oak Hill  
Iwade Road

### PART 2

2.1 22/500014/FULL SELLING Moons Of Selling Ltd Grove Road

2.2 21/506308/ADV BORDEN Land at Wises Lane

2.3 22/500853/FULL NORTON Clocktower Barn Norton Lane

2.4 22/500563/FULL SITTINGBOURNE St Michaels Church High Street

2.5 20/502715/OUT BOBBING Bobbing Car Breakers Howt Green

### PART 3

3.1 21/505806/FULL FAVERSHAM 114 Lower Road

3.2 21/505951/FULL MINSTER Gilron Bell Farm Lane

### PART 5 – INDEX

5.1 20/503865/FULL HALFWAY The Annexe 168A Queenborough Road

5.2 21/500951/PNQCLA BORDEN Pebble Court Farm Woodgate Lane

5.3 20/504841/FULL OARE Uplees House Uplees Road

5.4 21/501937/FULL FAVERSHAM The Coach House 87B South Road

5.5 19/504670/FULL MINSTER Halfway House Halfway Road

5.6 21/500413/OUT SHEERNESS 32 Linden Drive & 67 Queensway

5.7 19/504418/FULL NORTON Building at Rushett Stables Rushett Lane

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**PLANNING COMMITTEE – 7 APRIL 2022****DEFERRED ITEM 1**

Report of the Head of Planning

**DEFERRED ITEMS**

Reports shown in previous Minutes as being deferred from that Meeting

<b>DEF ITEM 1 REFERENCE NO - 21/500173/FULL</b>		
<b>APPLICATION PROPOSAL</b>		
Retrospective application for change of use of land from agricultural to animal rescue including new stock fencing and gates, mobile field shelters, small animal houses, shipping containers for storage, associated boundary treatment and stationing of a mobile caravan for use as a residential unit for staff.		
<b>ADDRESS</b> Land East Of Hawes Woods High Oak Hill Iwade Road Newington Kent ME9 7HY		
<b>RECOMMENDATION</b> Refuse		
<b>SUMMARY OF REASONS FOR REFUSAL</b>		
The proposal does not accord with the core principle of sustainable development within the countryside and is harmful to its intrinsic value, visual amenity, key characteristics, sensitivity, landscape setting, functioning and purposes of the countryside. Moreover, the structures, fence and gates are considered to cause substantial harm to the rural character and appearance of the streetscene and the general character of the rural area. Insufficient information is provided for the Council to reasonably assess whether the proposed use (open days) would, by reason of the sites unstainable location, result in the significant uplift in traffic levels, to an extent that would be harmful to the character, appearance, and intrinsic visual amenity value of a designated Rural Lane (Iwade Road) and countryside setting.		
<b>REASON FOR REFERRAL TO COMMITTEE</b>		
This application was deferred by the Planning Committee on 9 <sup>th</sup> December 2021		
<b>WARD</b> Bobbing, Iwade And Lower Halstow	<b>PARISH/TOWN COUNCIL</b> Bobbing	<b>APPLICANT</b> The Happy Pants Ranch <b>AGENT</b>
<b>DECISION DUE DATE</b> 23/07/21	<b>PUBLICITY EXPIRY DATE</b> 22/03/22	

**1. BACKGROUND**

- 1.1 This application was reported to the Planning Committee on 9<sup>th</sup> December 2021. A copy of the report is attached as Appendix 1. The Planning Committee resolved the following:

*Resolved: That application 21/500173/FULL deferred for further negotiation with the Applicant and officers to include: a limited deferral of three months; a management plan; the land to be returned to agricultural use when it was no longer an animal sanctuary; appropriate gating/screening/fencing to be installed; restoration of the 15-metre buffer, with a compensation strategy; restrict occupation of caravans to the use of animal care; satisfactory plans to address the issues outlined in the report; the harm to the ancient woodland to be*

*addressed and reported back to consultees for further comments. In the event that permission be granted in due course, consideration be given to a two year temporary permission for open days and their impact to be monitored.*

1.2 A copy of the minutes of the committee meeting is attached as Appendix 2.

1.3 Since the Planning Committee of 9<sup>th</sup> December 2021 the following events have taken place:

- A letter was sent to the applicant Amey James on 23<sup>rd</sup> December 2021. This letter set out the additional information required to resolve the concerns set by Members at planning committee. The deadline date set by the council was 1<sup>st</sup> February 2022. A copy of the letter is attached as Appendix 3.
- On 1<sup>st</sup> February 2022 the council was approached by a planning agent working on behalf of the applicant requesting further time to gather the information. The request was made on the grounds that the council's letter had been sent over the Christmas period. A further three weeks were agreed moving the deadline to 22<sup>nd</sup> February 2022. Consequently, this meant that the council missed the target deferral of 3 months which was set by Members.
- Notwithstanding, the information was not forthcoming resulting in the second missed deadline by the applicant.
- Further conversions continued between the council, Ward Members and the applicant and a further extension of time was provided until 4<sup>th</sup> March 2022.
- On 4<sup>th</sup> March 2022, additional information was submitted by means of an email response with one plan attached – a proposed site plan. No supporting specialist information was provided. Further details are set out below:

2. **ADDITIONAL INFORMATION** (Summarised) Full details can be found online -'Additional supporting information received by applicant', dated 4<sup>th</sup> March 2022.

### **A Management Plan**

- ***Details of the general day to day management requirements of the site;***

2.1 An explanation has been provided which sets out the daily management of the site. This specifies that at least 4 -10 volunteers are on site between 9am-3pm to help with tasks from feeding and grooming to cleaning and medicating. This also provides information on the management of volunteers and a general daily routine followed by staff.

- ***Details of visitors including open days, permanent staff and volunteering staff – visitor numbers, visiting hours, parking arrangements including a request for a parking layout;***

2.2 This information discusses a two-year regeneration plan including the intention to open the front 5 acres of land to the public. While this information sets out the future vision, no further supporting information is provided in relation to this.

2.3 It is intended to run 1 or 2 open days a month (Covid / weather permitting). One of the days is intended as a mental health day, the other day an educational day. Both these days would

have a limited number of visitors (max 20) due to parking restrictions, health and safety etc and operate between the hours of 10-4pm. No days are specified.

- 2.4 The additional information sets out that there are car parking facilities at the front west side of the site, where the original site track has been reinstated and that the charity encourages all volunteers and visitors to “go green” by either car sharing, organising a minibus group or using the nearby public transport services to access the site.
- 2.5 The current vehicle parking area facilitates 20 cars and if necessary there will be vehicle access to the front East paddock as an overflow carpark in the dry months if necessary.
- 2.6 Open days are not intended until summer 2023 and it is their two year plan to prepare the front 1/3 of the site to open for small public visits initially.
- 2.7 The 5 year plan would see the remainder of the site open to visitors once it has been tended to and managed in accordance with professional ecologist advice and guidance. (Not provided)
- ***Details of animals including numbers, maximum number of animals to be kept onsite at any one time and how this will be managed;***
- 2.8 The information sets out that the site currently provides shelter for approximately 400 animals of varying species. The table below shows animal type and numbers:

<b>Animal type</b>	<b>Number of animals</b>		<b>Animal Type</b>	<b>Number of animals</b>
Pigs	22		Emus	2
Cows	9		Dogs	7
Horse	1		Cats	32
Ponies	4		Guinea pigs	35
Hinny	1		Peacock	1
Cockerels	120		Chicken	35
Geese	22		Goats	17
Turkeys	15		Turtles	25
Chicken	35		Tortoises	2
Ducks	30		Sheep	15
Snakes	3		Lizards	2
<b>Total number of animals 435</b>				

2.9 In terms of management of the animals the applicant provides the following explanation:

*'the Ranch only takes in animals with no where else to go, so if an animal is in need of rehoming, firstly alternative private homes or other sanctuary placement are appealed for via the social media channels. For approximately 75% of animals we are asked to help, homes are found. It is only those animals that have no where else to go (usually due to old age, behavioural or medical issues,) and are therefore awaiting euthanasia at the vets or booked in at the slaughter house, that they will come to be under the care of this sanctuary.*

2.10 *When an animal does need to come in, the charity always appeals for funds to help cover the extra costs of caring for that new animal, so as to put as little extra strain on the charity's finances as possible.*

2.11 *The charity has grown naturally and gradually over the past 10 years - in terms of support, size of area it operates from and number of animals it cares for. The more awareness of the sanctuary, naturally brings more support and therefore more donations, allowing the charity to help more needy animals, which in turn help the community and people caring for them. This is the way the sanctuary will continue to operate and develop.*

2.12 *A lot of common sense too comes into the amount of animals we care for - the charity would never seek to take in more animals that it could spacially, physically or financially care for, as this would have a negative impact on the welfare of those animals already living at the sanctuary and this would defeat the whole objective of the charity. It's paramount that love, freedom and happiness are the three things every animal at the sanctuary experiences in abundance.*

2.13 *Spatially, the sanctuary is only using around 1/2 of the land at the current site, however the charity is not seeking to take in any more animals at present, until the present site is more fit for use and the future of the site more secure.*

- **Details of how and where you intend to move structures around the site, including the 15m ancient woodland buffer and methods of removal;**

2.14 The applicant states that the structures were only intended to be temporary in nature due to the following - no concrete or hardstanding has been made; no foundations have been dug; all the timber structures (i.e. garden sheds and summerhouses) are sat on recycled pallets; storage containers, field shelters and any caravans are all completely mobile and moveable. Therefore, the applicant explains that all structures can be moved easily and quickly (via crane elevation, towing or simply deconstructing, relocating and reconstructing) without damage to any tree roots and minimal disruption to the site and nature within it.

2.15 The applicant confirms that all structures will be moved out of the 15m ancient woodland buffer zone and relocated to form a natural boundary Easterly across the site. The sheds and summerhouses will all sit in the area behind the containers.

- **Measures to minimise the impact upon bio-diversity**

2.16 This information sets out the applicant's intention to work with a number of professional ecologists and governing associations such as [gov.co.uk](http://gov.co.uk) and the countryside stewardship scheme, in implementing a range of ways the charity can protect and increase biodiversity on the site, including: wildlife conservation; planting native hedgerows; planting native trees;

growing a wild crop; green roofs; introducing and maintaining water courses; woodland restoration and management; pond maintenance and management and “plant a tree scheme”.

- **Details relating to noise abatement**

2.17 The applicant advises that they have worked with SBC Environmental Health Team to address the Noise Abatement Orders in the following ways:

- *Moved the cockerels 185m to a more sound-secluded area of the land which is much further away*
- *The coop / shed windows have been blacked out to prevent early morning crowing*
- *Roosting perches have all been raised to minimise the level of crowing noise*
- *Rehomed / relocated all the hens (means cockerels are less likely to crow in competition of females)*
- *Rehomed some of the cockerels (although this is almost impossible..)*
- *Moved the cows further away from the complainants property*
- *Fostered out the dog that had the loudest / deepest bark*
- *Encouraged the geese to use the pond which is furthest away from the complainants property*

2.18 In terms of mitigation, the applicant proposes the following measures:

- *Planting of dense, native hedgerow to absorb sound*
- *Introducing acoustic barriers and creating a bund wall to deflect sound*
- *Relocating the animals to the woodland areas of the site so trees can buffer the sound*

**The land to be returned to agricultural use when it was no longer an animal sanctuary**

2.19 No information is provided

**Appropriate gating/screening/fencing to be installed**

2.20 The applicant states that the current gates and fencing are appropriate and sympathetic to the surroundings. *The front gate and fence is solid to add some much needed screening and security as well as keeping the animals inside and prevent escaping from site. This is of similar style to several residential fences used just a few metres away at neighbouring properties. It is well set back from the lane, unobscuring any view from vehicles, as agreed on the highways comment on the planning proposal. We fully intend to plant a native hedgerow at the front of the site to the East and West of the gates to help screen the fence and also add a wealth of natural habitat, increasing the biodiversity net gain.*

2.21 The triangular patch to the front east of the gates is to be wild meadow seed planted to encourage bees and butterflies.

2.22 The triangular patch to the front west of the gates is to remain as natural woodchip area suitable for a vehicle pull in point, helping any possible congestion in the lanes.

2.23 All gates and fencing used inside the site are of a typical agricultural nature to be in keeping with the countryside environment whilst also strong and functional to secure the animals. Stock and wooden post fencing will be used as it is currently and wooden / metal field gates as per current drawings and elevations already submitted.

2.24 No further plans were provided.

**Restoration of the 15 metre buffer, with a compensation strategy;**

2.25 The applicant sets out that all structures (sheds, containers, summer houses etc) within the 15m ancient woodland buffer zone will be removed from their current position and relocated to another part of the site. As no footings or hardstanding was laid for these structures, there should be very little impact on the AW trees down the westerly side of the site.

2.26 The instatement of a minimum 15m buffer along the ancient woodland boundary (as per Natural England/Forestry Commission's Standing Advice), will be delineated with appropriate boundary treatment and the area should be allowed to naturally 'scrub' up with native species.

2.27 In depth details of any restoration actions required (not yet confirmed) will be outlined in the Ecologist report (suggested to be conditioned upon approval of the planning permission.)

**Restrict occupation of caravans to the use of animal care;**

2.28 The proposal states that constant care, attention and security is required and therefore someone needs to be on site 24/7. At the moment, the charity is not in a position to employ someone, and therefore the full-time care and attention is undertaken by Amey James and her partner / site manager Philip Greenhalgh. It also confirms that the mobile home would only be used whilst The Happy Pants Ranch resides at the site.

**3. PLANNING CONSTRAINTS**

3.1 Located in the countryside outside of any defined Built-up area boundary.

3.2 Site lies immediately adjacent to Ancient Woodland (Hawes Wood) and the southern boundary falls within the 15m buffer of Hawes Wood, which is designated as ancient & semi natural woodland.

3.3 Area of High Landscape Value Swale Level

3.4 Iwade Road is a designated Rural Lane

3.5 Potential Archaeological Importance

3.6 Agricultural Land Classification Grade 3b

3.7 Designated Local Wildlife Site; 'Hawes Wood and Wardwell Wood, Newington'.

**4. LOCAL REPRESENTATIONS**

4.1 KCC Biodiversity (22.03.2022) Summary of comments:

*Given what has happened to the site so far, we have little confidence that even the measures proposed above will be enacted effectively. The additional information repeatedly refers to an ecological report that will be produced but until this materialises, there is simply insufficient and conflicting information to assure us that ancient woodland/surrounding biodiversity can be safeguarded, or that there is any opportunity to rectify the damage caused by the site clearance.*

*Whilst it is too late to determine the harm/displacement caused to protected species on-site, it can still be determined how much biodiversity has been lost (using the pre-April 2020 habitat as baseline – a method explicitly referenced in the recently passed Environment Act 2021). This relates to paragraph 26 of the government's guidance on the natural environment which states it may be necessary to consider recent deliberate harm to biodiversity when determining a planning application.*

*We advise that at the very least, a report by a professional, CIEEM-registered, ecologist is produced in order to demonstrate that measures can be enacted to protect the ancient woodland from further impacts. This needs to include details, such as a planting schedule and corresponding site plans. A Defra metric should also be produced to objectively assess the biodiversity which has been lost and how much 'offsetting' can be achieved on-site.*

#### 4.2 KCC Highways and Transportation (16.03.2022)

The submitted plan does not demonstrate the parking. The applicant states that '*There are car parking facilities at the front west side of the sanctuary*' and '*The current vehicle parking area facilitates 20 cars*', but this has not been demonstrated on the plan. There is also mention of an overflow car park.

A 'Proposed Car park' is indicated on the plan, however this only measures 20m in width and would only accommodate 8 cars, based on our parking space dimension requirements of 2.5m width x 5m length. The applicant should use these dimensions when demonstrating the existing parking spaces, as it may be that less space is available when taking these measurements into account. We need to ensure that there is suitable parking available for both staff and visitors.

In addition, the width of the entrance should measure a minimum of 4.1m to allow two vehicles to pass each other safely. This needs to be indicated on further submitted plans.

The original entrance has been enlarged to allow access to this site, and dependant on the proposed opening times to the public, a more formalised access may be required.

The submitted information mentions a 2 year and a 5 year plan with regards to opening up to the public, however the applicant should submit further information in the form of a more robust plan as to proposed number of days it intends to be open to the public and how many people would be allowed to visit at any one time etc.

I think it would be appropriate to apply a suitable worded condition (should the Local Planning Authority be minded to approve this application) to allow visits by the public on a temporary basis for two years initially, dependant on the plan that should be submitted by the applicant, whereby the impact and parking facilities can be monitored and assessed.

#### Environmental Protection Team (15<sup>th</sup> March 2022)

#### 4.3 *Complaints to the Council from nearby residents alleging noise nuisance from the use of the application site as an animal sanctuary have been witnessed by officers of the Council and resulted in the service of Abatement Notices under the statutory nuisance provisions of the Environmental Protection Act 1990. The Abatement Notices require the applicant to take all reasonable steps to abate the noise nuisance and stop it recurring.*

*In a spirit of co-operation and in order to resolve the issue, officers have offered advice to the applicant regarding compliance with the Abatement Notices. It was also suggested to the*

*applicant that independent specialist advice be sought regarding possible solutions and noise mitigation measures.*

*Whilst the applicant has provided a list of measures that have been taken to try and mitigate the issue, if they have been implemented, they have not been successful resulting in continued complaints about excessive noise. Whilst the applicant has been advised of the unsuccessfulness of the measures, no further tangible noise mitigation measures have been put forward.*

*The situation to date is that evidence has been obtained independently by four officers on four separate occasions each witnessing what they assessed as potential breaches of the Abatement Notices currently in force. Whilst the noise issue continues to be monitored, further legal action for those breaches is currently under consideration by officers of the Council.*

*I think it is clear from the evidence of those Council officers who have witnessed the level of noise and the prolonged periods to which it adversely impacts on nearby residents, that the acceptability of this site for its use is untenable. I must therefore raise a strong objection to the granting of this retrospective application.*

#### 4.4 KCC Flood and Water Management (08.03.2022)

We have no further comment to make on this proposal and would refer you to our previous response on 12 August 2021.

Previous comments from 12.08.2021;

- *Potentially contaminated water from activities associated with the proposed facilities should only be directed to a dedicated foul water system. It will be unacceptable to direct this runoff to a watercourse or direct to ground.*

Following ongoing deliveries of hard core delivered to the site, KCC Flood and Management were re-consulted.

- *Given that this is a retrospective application we had assumed that the access road and car park were formed? We would advise that the use of recycled material is unacceptable as a permeable surface given the possibilities of it containing contaminants which could affect water quality, but it seems the EA have taken this in hand. (18.11.2021)*

#### 4.5 Rural Planning (09.03.2022)

*As far as I can see this additional submission simply underlines the requirement for attendance on site, in the caravan, as already advised in my email of 27 August 2021.*

Previous comments from 27.08.2021

- *Having now accessed the submitted information, I would agree that the continued operation of this registered animal charity on this site does require the sort of on-site attendance that a mobile home provides, for the proper care of the relatively large number and variety of animals involved, out of normal working hours (as well as day-time first aid point/shelter etc. for staff/volunteers).*
- *Given the nature of the use, it seems unlikely that the charity would meet the usual*



*financial tests that are applied to proposals for permanent rural workers' dwellings; however I note that the mobile home proposal is linked specifically to this specific charity and to the temporary period sought for the charity's use of the site. The applicant has confirmed (para 4.4 of the submitted Statement) willingness to accept an appropriate condition to this effect.*

#### 4.6 Environment Agency (14.03.2022)

Regarding the planning application the EA responds that they have no comments to make as the planning application as it falls outside of their remit as a statutory planning consultee

- 4.7 As a separate matter, Members will be aware that there is an ongoing issue at this site due to matters relating to import, soil material, and possible land contamination. Whilst these are not a planning matter (though land raising sufficient to materially change the topography of the site potentially would be) generally the powers to deal with such matters lie with the EA, rather than the Council. These matters are currently under investigation by the EA as set out in further details in paragraphs 6.27 to 6.30 below

#### Forestry Commission (15.03.2021)

- 4.8 *We note you have received additional information from the applicant, dated the 4th March 2022.*

*We are reassured that the applicant will be removing all structures from the ancient woodland buffer zone, and allowing the buffer zone to develop into an ecotone appropriate for a woodland edge.*

*We recommend that all livestock is excluded from the ancient woodland to prevent damage to the ground flora by grazing by means of suitable stock fencing where this is not already in place.*

*Care must also be taken that animal waste is not allowed to accumulate in such a manner or location as to be at risk of flowing into the ancient woodland during inclement weather or flood events.*

*We would take this opportunity to remind the applicant, as they have mentioned woodland management for the remaining woodland on-site, that any tree felling not explicitly granted within any planning permission may require a felling licence from the Forestry Commission. The applicant should therefore contact their local Woodland Officer for further advice.*

## 5. **CONSULTATIONS**

### Newington Parish Council

- 5.1 Councillors have considered the application and while there was no comment to make on the suitability of the site for an animal sanctuary which is outside the village, concern was raised concerning the impact of the traffic on local roads, Iwade Road, Church Lane, Boxted Lane and Mill Lane, also known as Bricklands. Councillors were not reassured regarding the applicant's projection of visitor numbers and were aware of the problems off-road parking is currently causing visitors to residents in Iwade Road.

Public consultation

5.2 In light of the re-consultation a total of 31 letters of representations were received. Of these 29 support the proposal while there were 2 letters of objection:

*Summarised reasons of support*

5.3 The thread running through all letters of support questions why the council would not support a charity organisation which brings many benefits to the local community. The location of the ranch is rural and this type of development is suited to the countryside. Moreover, noise of animals is expected in the countryside. The proposal would allow the charity to continue to rescue animals that are abandoned and abused – a benefit to the local community. Nearly all letters of support commend the hard work and dedication of the team.

*Summarised reason of objection*

- We note that many who are in favour of this rescue centre neither live in the area, nor have thought about the impact on our lanes or local people. How are such 'neighbour comments' even able to be listed on the planning portal when they cannot be considered neighbours when they live miles away from the area, have no local knowledge and the impact is not on themselves but on the lives of others.
- Noise breaches outside of stated hours between 11pm and 7am
- Constant noise from poultry and generators
- The plan is not drawn to scale. The 15m buffer zone along the Hawes Wood boundary appears to end well before the existing L/H gatepost facing the site. In reality the buffer zone should be 49.21 feet wide and end well after the new entrance which would have to be relocated to comply. Also, a Telegraph pole may need to be resited.
- Land shown on the drawing to the East of the site marked "Animal Enclosure" is a neighboring property Blackberry Farm. It does not form part of the site and is misleading
- A business of this size keeping this many animals cannot be sustainable without a proper electricity supply.
- There is no fencing along the Hawes Wood boundary, animals have already been escaping through the woods and out onto the road causing traffic problems
- The cockerel aviary, which was apparently moved to the far end of the site to alleviate the noise it produces, seems to have been moved back on the plan to its original position nearer to noise sensitive areas.
- The traffic in Iwade Road has increased dramatically over the last 15 months due to visitors, volunteers, deliveries etc to this site. This will increase if this company is allowed to have open days. There is no need to monitor the traffic they generate for two years, its already bad now and set to get worse. Residents cannot safely walk down our own street for fear of getting run over or attacked by one of their escaped animals.
- Doubt whether the animal inventory is correct bearing in mind that they have continued to collect stock even after being advised not to for 15 months.
- Biodiversity issues - company destroyed all wild life and habitats. There were many protected species of animals on this land including voles, GCN, slow worm, dormice etc. Most of which are now long gone. The vast amount of cats on this land are taking care of what is left.
- The idea that this company has saved this area from traveller community settlements has not been well received. They are living in a caravan which was pulled onto this site illegally and without seeking Planning Permission.
- In its fervent rush to illegally occupy this land using innocent animals as grounds, this company has killed more WILD animals than any others they will ever save.
- Risks to neighbouring farms and concerns surrounding bio-security measures

- There will be increased traffic to this Recue Centre from visitors on open days, deliveries, volunteers etc. which will make the narrow lanes increasingly dangerous especially with people who are unfamiliar with the area trying to locate it.

## 6. APPRAISAL

6.1 This section deals specifically with the items included in the Planning Committee resolution when the application was reported to Members on 9<sup>th</sup> December 2021. This is set out as follows:

- A limited deferral of three months;
- A management plan;
- The land to be returned to agricultural use when it was no longer an animal sanctuary;
- Appropriate gating/screening/fencing to be installed;
- Restoration of the 15-metre buffer, with a compensation strategy;
- Restrict occupation of caravans to the use of animal care;
- Satisfactory plans to address the issues outlined in the report; the harm to the ancient woodland to be addressed and reported back to consultees for further comments.

For ease, each point is addressed individually below:

### **A limited deferral of three months**

6.2 Noted, as set out in paragraph 1.3 above, the applicant was provided with further time to submit the information which has resulted in the application being presented back to committee after 4 months.

### **A Management Plan**

6.3 A Management Plan was required. In the Management Plan the following information was requested:

*Details of the general day to day management requirements of the site;*

6.4 The information provided by the applicant and summarised in paragraph 2.1 above provides a broad description of the current day to day running of the site, including volunteer numbers (4-10) and their duties.

*Details of visitors including open days, permanent staff and volunteering staff – visitor numbers, visiting hours, parking arrangements (please provide a parking layout);*

6.5 Turning to the future opening of the site to the public, minimal information has been provided. The applicant states intention to open the site to the public 1 or 2 days a month from 10am until 4pm to non-paying guests focusing primarily on the benefits education and to mental health. The proposed open days would intensify the use of the access and potentially increase the parking requirements at the site and it was recognised that improvements to the site would be needed before visitors can attend these open days. In this regard, the applicant has only marginally expanded on the information previously submitted. Furthermore, it now appears to increase the visitor numbers from 10 to 20.

6.6 Moreover, the submitted plan does not demonstrate existing or proposed parking facilities. The applicant states that 'There are car parking facilities at the front west side of the

sanctuary ' and 'The current vehicle parking area facilitates 20 cars', but this has not been demonstrated on the plan. There is also mention of an overflow car park however no further details are provided. Members will be aware of comments relating to an overflow car park within the original committee report (9<sup>th</sup> December 2021 paragraph 8.13):

*'The current car parking area (left hand side of the sanctuary through the entrance gates) holds a maximum of approx. 10 cars, **however the site allows ample space (on right hand side) for an overflow car park** so there would be no parking of vehicles outside of the site, in the lane etc. Members will note the area referred to by the applicant is currently undeveloped land. As such, the development has and continues too, result in the significant erosion of the site detrimental to the character and appearance and visual amenities of the area, to the detriment of this countryside setting with no safeguarding mitigations in measures in place.*

- 6.7 From the information submitted, the applicant again refers to 'an overflow' car park on undeveloped land and no information has been received to address the previous concerns set out within the previous report.
- 6.8 Turing to parking A 'Proposed Car park' is indicated on the plan, however this only measures 20m in width and would only accommodate 8 cars, based on Swale Borough Council Parking Standards which requires parking space dimension of 2.5m width x 5m length. KCC Highways is concerned that these parking dimensions should be used when demonstrating the existing parking spaces, as it may be that less space is available when taking these measurements into account. As is stands, the Council is still unable to accurately assess whether there is suitable parking available for both staff and visitors. In addition, the width of the entrance should measure a minimum of 4.1m to allow two vehicles to pass each other safely.
- 6.9 The original entrance has been enlarged to allow access to this site, and dependant on the proposed opening times to the public, a more formalised access may be required.
- 6.10 The submitted information mentions a 2 year and a 5 year plan with regards to opening up to the public, however this lacks any robust planning and are ideas and therefore would be difficult for the Council to reasonably enforce.

Details of animals including numbers, maximum number of animals to be kept onsite at any one time and how this will be managed;

- 6.11 The applicant specifies the number of animals to be kept on site as 400 with a total of 435 currently onsite. In terms of managing these numbers, the applicant refers to a 'common sense' approach - not taking in more animals than it could 'spatially, physically or financially care for'. However, this method is not enforceable and without appropriate boundaries this undocumented approach gives rise to various planning concerns including but not limited too - adverse amenity impacts specially noise related issues, biodiversity impacts, bio security measures and the potential for further encroachment into the undeveloped countryside.
- 6.12 Members are aware that this is a Designated Wildlife Site and adjoins an ancient woodland. I have consulted with KCC Ecology who have provided the following response:

*Photographs attributed to the site shows free-roaming cats (32 of which are purported to be on-site) and pigs (22 of which are purported to be on-site) within a woodland environment.*

*This would appear to be within the surrounding ancient woodland. The presence of these animals within the ancient woodland is very likely to cause deterioration to the woodland ecosystem. We also highlight that whilst a buffer-zone may prevent some animals encroaching into the ancient woodland (once established), it is unlikely to prevent cats from entering the woodland.*

*It is stated that the pigs "...currently inhabit a small, sectioned off area of the large woodland area on site... ..which is NOT ancient woodland". Can this area be shown on a map, with photographic evidence demonstrating that this area is woodland/orchard? The imagery available to us suggests almost the entire site was denuded of vegetation when the site was cleared and so we query where on-site this woodland is.*

- 6.13 A further concern of the Council is that the supporting information indicates that more animals will be brought to site at a later date, '*Spatially, the sanctuary is only using around 1/2 of the land at the current site, however the charity is not seeking to take in any more animals at present, until the present site is more fit for use and the future of the site more secure.*' Again no details are provided as to how this would be managed other than 'a common sense approach'.

*Details of how and where you intend to move structures around the site, including the 15m ancient woodland buffer and methods of removal;*

- 6.14 The additional information stipulates that the structures on-site will be moved to allow for a 15m buffer-zone for the adjacent ancient woodland. The information provides no detail in relation to the tonnes of aggregate that have been imported and methods of removal.
- 6.15 Moreover, Members will be aware that temporary boundary screening in the form of white plastic sheeting had been erected along the woodland edge secured to a number of the trees using wooden blocks and nails. The nailing of structures to the existing boundary trees is likely to have caused stem damage, thus exposing the trees to decay/disease. No details have been provided in relation to appropriate removal. Moreover no details have been provided as to whether the repositioning of the structures would be situated on top of imported hardcore or on an undeveloped section of land and what implications this would have on bio-diversity.

*Measures to minimise the impact upon bio-diversity*

- 6.16 In measures relating to bio-diversity KCC were consulted who provide the following response:
- 6.17 *The additional information states "Biodiversity is something the charity has strong beliefs in". This is not consistent with what has happened on-site. As previously mentioned, the site was likely relatively high in biodiversity before the unauthorised clearance, with the presence of protected species, like dormice and Great Crested Newts, in adjacent habitat (and, therefore, highly likely to be utilising the site). As the site was almost completely cleared of its grassland and scrub, there is now no habitat for wildlife on-site. Therefore, we take the view that this statement is patently false and little regard has been given to biodiversity thus far regarding on-site activities.*
- 6.18 *Under section 40 of the NERC Act (2006), paragraph 180 of the NPPF (2021) and the Environment Act (2021), biodiversity must be maintained and enhanced regarding*

*developments. This has not been adhered to and it is now very unlikely a biodiversity net-gain be achieved. This could be confirmed using the Defra metric and the pre-clearance habitat (before April 2020) as the baseline.*

- 6.19 *Additionally, in alignment with paragraph 180 of the NPPF 2021, the implementation of enhancements for biodiversity should be encouraged. However, as the development cannot demonstrate a net-gain in biodiversity, it cannot be demonstrated that enhancements can be incorporated.*

*Details relating to noise abatement measures*

- 6.20 In matters relating to noise, the additional submitted information has been reviewed by SBC Environmental Services Team who have provided the following response:

*Complaints to the Council from nearby residents alleging noise nuisance from the use of the application site as an animal sanctuary have been witnessed by officers of the Council and resulted in the service of Abatement Notices under the statutory nuisance provisions of the Environmental Protection Act 1990. The Abatement Notices require the applicant to take all reasonable steps to abate the noise nuisance and stop it recurring.*

*In a spirit of co-operation and in order to resolve the issue, officers have offered advice to the applicant regarding compliance with the Abatement Notices. It was also suggested to the applicant that independent specialist advice be sought regarding possible solutions and noise mitigation measures.*

*Whilst the applicant has provided a list of measures that have been taken to try and mitigate the issue, if they have been implemented, they have not been successful resulting in continued complaints about excessive noise. Whilst the applicant has been advised of the unsuccessfulness of the measures, no further tangible noise mitigation measures have been put forward.*

*The situation to date is that evidence has been obtained independently by four officers on four separate occasions each witnessing what they assessed as potential breaches of the Abatement Notices currently in force. Whilst the noise issue continues to be monitored, further legal action for those breaches is currently under consideration by officers of the Council.*

*It is clear from the evidence of those Council officers who have witnessed the level of noise and the prolonged periods to which it adversely impacts on nearby residents, that the acceptability of this site for its use is untenable. I must therefore raise a strong objection to the granting of this retrospective application.*

***The land to be returned to agricultural use when it was no longer an animal sanctuary***

- 6.21 No information is provided.

**Appropriate gating/screening/fencing to be installed**

- 6.22 The applicant argues that the existing boundary treatment along Iwade Road is acceptable. A revised scheme has not been submitted and therefore the Council maintains their original objection.

- 6.23 No plans or details are provided to demonstrate appropriate gating/screening/fencing along the boundaries with Hawes Wood and neighbouring properties to stop animal escape amongst other things. There are many recorded instances of animal escape from the farm. Members may also be aware that there is the issue of the domesticated animals allegedly eating protected species; which while covered by other legislation (and potentially a Police matter) is arguably material to our assessment of the development as reducing biodiversity in that way obviously runs contrary to the NPPF and Policy DM28.
- 6.24 There is also the issue of biosecurity issues and potential implications for neighbouring farms should poultry escape into neighbouring sites.

**Restoration of the 15 metre buffer, with a compensation strategy;**

- 6.25 In matters relating to Biodiversity restoration and compensation KCC Ecology were consulted who provided the following response:

*Measures have been proposed to compensate for the loss of habitat on-site and to limit adverse impacts on the ancient woodland.*

*For the ancient woodland buffer-zone, it is proposed that the hedgerow and tree planting will be native only, which is appropriate as non-native species will have little to no biodiversity value. We are supportive of native species-only landscaping.*

*It is stated that “Leaving grown crops un-harvested over winter provides a sources of food through the winter for seed eating birds”. Whilst this is beneficial in principle, we highlight that with over 30 cats on-site, the site is likely to be unsuitable for wild birds to be feeding on seed. Additionally, this ‘crop planting’ is not shown on the site plan.*

*It is stated that “Introducing and maintaining watercourses: Watercourses to be cleaned in an environmentally friendly way by removing vegetation and silt and spreading thinly along the bank”. With the introduction of non-native terrapins in the pond(s) on-site, and the likely runoff of animal effluent and other chemicals, we highlight that watercourses should not be implemented. Again, this has not been shown on the site plans and we would highlight that the Environment Agency/KCC Flood and Surface Water team must be consulted before additional watercourses are incorporated.*

*Management of the surrounding ‘vast’ woodland has been proposed. As the surrounding ancient woodland/non-ancient woodland has not been included within a blue-line boundary, we query whether the applicant owns the ancient woodland land or has permission from the landowner to manage it. We also highlight that ancient woodland management requires a Forestry Commission approved management plan. We seek clarification regarding this issue if the applicant intends to go ahead with this.*

*It is stated that “No lighting is left on all night because the only source of electricity (generator) is switched off routinely every night, so as not to have any adverse impacts on the immediate area and ancient woodland’s wildlife population”. We note the lack of external lighting on-site and are supportive of this measure (illumination throughout the night would likely adversely impact ancient woodland ecology).*

*It is stated that all structures will also feature ‘green roofs’ but, again, this proposal is lacking details and we would query how this will be achieved, what type of vegetation will be established and how it will be managed.*

**Restrict occupation of caravans to the use of animal care;**

- 6.26 The Council has liaised with the Rural Consultant who agrees that the continued operation of this registered animal charity on this site does require the sort of on-site attendance that a mobile home provides, for the proper care of the relatively large number and variety of animals involved, out of normal working hours (as well as day-time first aid point/shelter etc. for staff/volunteers). As such, the Council is reasonably satisfied that this could be conditioned in the event of approval.

**Other Matters**Environmental Health/Environment Agency

- 6.27 Members are aware that there are ongoing concerns at the site regarding the depositing of imported waste. Following the previous committee meeting, officers revisited the site on 17<sup>th</sup> December 2021 who report that there has been significant destruction were the land has been filled with imported waste. To roughly gauge the scale, it is estimated an area the size of a typical football field to an approximate typical 1.5m depth.
- 6.28 Notwithstanding, it is recognised that matters relating to soil material, import, or possible land contamination are not a planning matter (though land raising sufficient to materially change the topography of the site potentially would be) and that generally the powers to deal with such matters lie with the EA, rather than the Council.
- 6.29 These issues are on-going with the Environment Agency. The EA has confirmed that they are still not in receipt of transfer notes and that the applicant now suggests that the waste is site derived. The EA confirm that an U1 exemption is still currently registered with them however the applicant has been made fully aware by the EA that they cannot import this type of material again. The applicant has been provided with an opportunity to remove inclusions (plastics, metals, glass etc) that was not permitted under the U1 license from the hardcore material. In this regard, the applicant has a couple of skips on site and are hand picking out the rubbish. It is officers' view that this is likely to be an impossible task, when considering the sheer volume and type of waste which has been imported. It is not feasible to do this by hand with two skips. It is not a plausible suggestion put forward by the applicant and the EA is fully aware of the Councils ongoing concerns.
- 6.30 The next steps are a question of what action the EA feel is appropriate under their Enforcement and Sanctions Policy. The Council has been advised that essentially the EA have to exhaust all options before taking any enforcement - this is obviously a high public interest case from both sides of the public and therefore the EA need to be fair and proportionate in their response. At the time of writing this report, these issues remained ongoing, but I will update Members at the meeting if further information is received from the EA.

Bio security Measures

- 6.31 Poultry owners (more than 50 birds) have an obligation to register their flocks with DEFRA. Concern has been raised that high numbers of poultry are being kept at this site whilst neighbouring farms have been severely restricted by DEFRA's response to Avian Flu. In this regard, animal escape from the site is well documented including birds, and despite the



request from the council for more information regarding appropriate boundary treatments, no plans have been provided. Whilst it is recognised that cross contamination is an environmental issue and not a planning matter, the potential impact this site has on a family's livelihood is a material consideration as to whether this is a suitable location for an animal sanctuary.

## **7. CONCLUSION**

- 7.1 The additional information repeatedly refers to an ecological report that will be produced but until this materialises, there is simply insufficient and conflicting information to assure the Council that ancient woodland/surrounding biodiversity can be safeguarded, or that there is any opportunity to rectify the damage caused by the site clearance.
- 7.2 Moreover, the applicant references bio-diversity measures which would be put into practice however such measures are considerably expensive and, given the applicants own admission of lack of monies and general resource issues. And limited detail has been provided in support of such measures It is reasonable to conclude therefore that these proposals may never be implemented and therefore can only be afforded little weight.
- 7.3 In addition, based upon the lack of supporting specialist information and plans, and concerns raised from KCC Ecology and KCC Highways who are still not satisfied with the information as submitted, coupled with four (4) registered noise abatement breaches where Environmental Health investigations are ongoing, the Council is not satisfied that sufficient information has been provided to address the previous concerns. For this reason, the application is recommended for refusal based on the original reasons of refusal.

## **8. RECOMMENDATION - REFUSE for the following reasons:**

### **REASONS**

- (1) The animal rescue sanctuary comprising of mobile field shelters, small animal houses, shipping containers for storage, associated boundary treatment and stationing of a mobile caravan for use as a residential unit for staff, by reason of its countryside setting and location (in part) within the 15m buffer area of Hawes Woods, ad-hoc nature of development and associated inappropriate use of hardcore materials, causes significant and demonstratable harm to this countryside setting by reason of its failure to conserve, enhance or extend biodiversity, provide for net gains in biodiversity or minimise any adverse impacts or compensate where impacts cannot be mitigated. As such, the proposal does not accord with the core principle of sustainable development within the countryside and is harmful to its intrinsic value, visual amenity, key characteristics, sensitivity, landscape setting, functioning and purposes of the countryside, contrary to policies ST3, DM3, DM24, DM28 and DM29 of Bearing Fruits 2031: The Swale Borough Local Plan, and to the provisions of paragraphs 8, 10, 11, 12, 152, 153, 174 and 180 and 182 of the National Planning Policy Framework (NPPF) 2021
- (2) The fencing and gates to the front of the site amount to prominent, obtrusive and visually harmful development, which cause substantial harm to the rural character and appearance of the streetscene and the character of the rural area, contrary to Policy DM14 of the Swale Borough Local Plan 2017.

- (3) The significant number and location of structures and buildings at the site give rise to a cluttered appearance, with consequent harm to the character and appearance of the area, contrary to Policy DM14 of the Swale Borough Local Plan 2017.
- (4) The development, as a result of the cumulative constant daily noise from animals including cockerels, geese, sheep, cattle and dogs being accommodated there, results in an unacceptable level of noise and disturbance to the residents of adjacent dwellings in a manner harmful to, and adversely impacts upon current living conditions. The application is therefore contrary to Policy DM14 of the "Bearing Fruits 2031: The Swale Borough Local Plan 2017".
- (5) Insufficient information is provided for the Council to reasonably assess whether the proposed use (open days) would, by reason of the sites unstainable location, result in the significant uplift in traffic levels, to a manner harmful to the character, appearance, and intrinsic visual amenity value of a designated Rural Lane (Iwade Road) and countryside setting as a whole, contrary to policies ST3, DM3 (1e) and DM26 of the (adopted) Local Plan (adopted 2017).

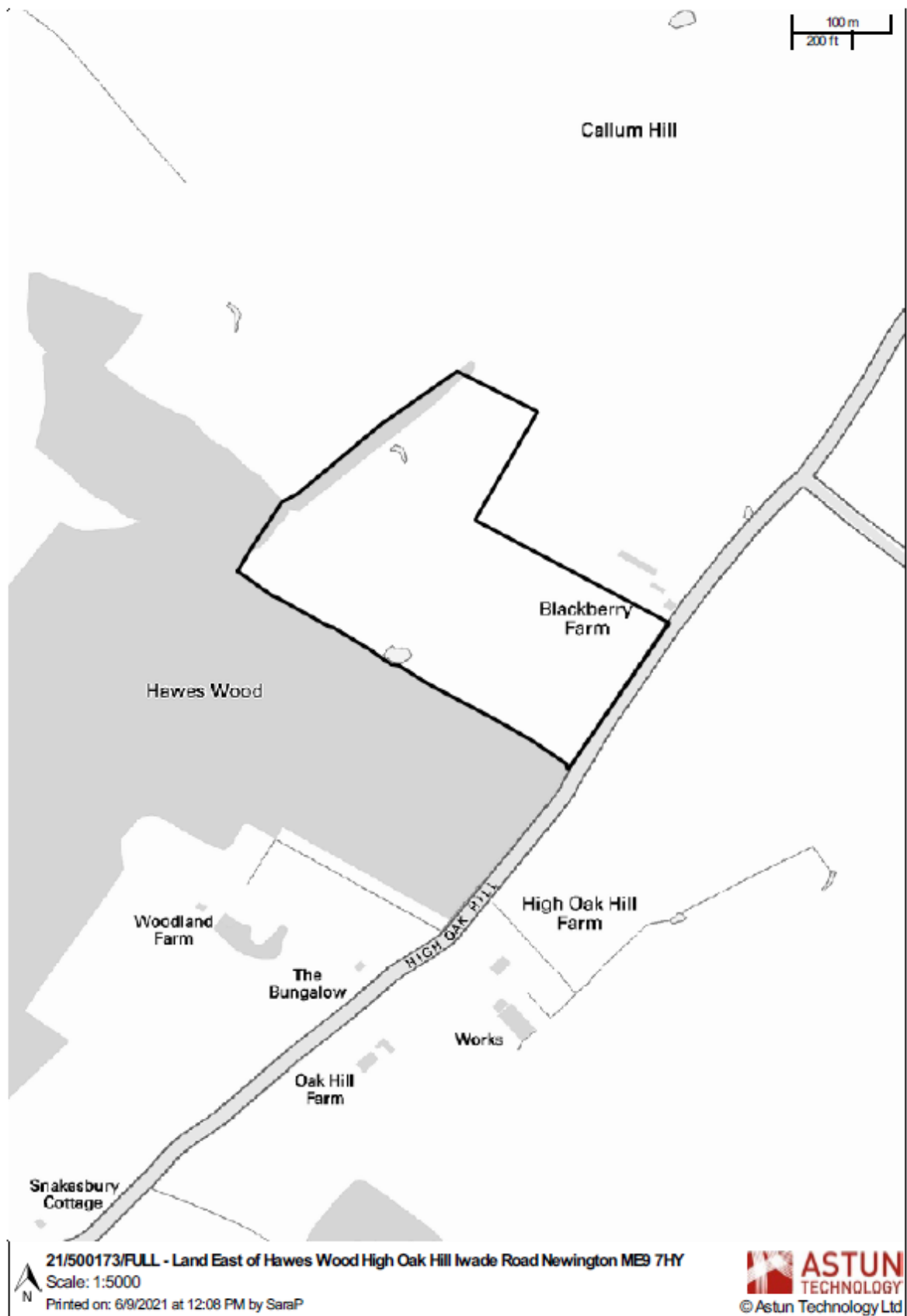
### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2021 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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**APPENDIX 1**

Report to Planning Committee – 9 December 2021

ITEM 3.1

**PLANNING COMMITTEE – 9 DECEMBER 2021****PART 3**

Report of the Head of Planning

**PART 3**Applications for which **REFUSAL** is recommended

<b>3.1 REFERENCE NO - 21/500173/FULL</b>		
<b>APPLICATION PROPOSAL</b>		
Retrospective application for change of use of land from agricultural to animal rescue including new stock fencing and gates, mobile field shelters, small animal houses, shipping containers for storage, associated boundary treatment and stationing of a mobile caravan for use as a residential unit for staff.		
<b>ADDRESS</b> Land East Of Hawes Woods High Oak Hill Iwade Road Newington Kent ME9 7HY		
<b>RECOMMENDATION</b> Refusal		
<b>SUMMARY OF REASONS FOR REFUSAL</b>		
The proposal does not accord with the core principle of sustainable development within the countryside and is harmful to its intrinsic value, visual amenity, key characteristics, sensitivity, landscape setting, functioning and purposes of the countryside. Moreover, the structures, fence and gates are considered to cause substantial harm to the rural character and appearance of the streetscene and the general character of the rural area. Insufficient information is provided for the Council to reasonably assess whether the proposed use (open days) would, by reason of the sites unstainable location, result in the significant uplift in traffic levels, to a manner harmful to the character, appearance, and intrinsic visual amenity value of a designated Rural Lane (Iwade Road) and countryside setting.		
<b>REASON FOR REFERRAL TO COMMITTEE</b>		
A high volume of support and in the interests of transparency		
<b>WARD</b> Bobbing, Iwade And Lower Halstow	<b>PARISH/TOWN COUNCIL</b> The site is subdivided by Parish Council boundaries. The front section to the east is located within Bobbing Parish Council and immediately to the west towards the rear section of the site sits within the remit of Lower Halstow Parish Council.	<b>APPLICANT</b> The Happy Pants Ranch <b>AGENT</b>
<b>DECISION DUE DATE</b> 23/07/21	<b>PUBLICITY EXPIRY DATE</b> 25/08/21	

**APPENDIX 1**

<b>PLANNING HISTORY</b>			
<b>Reference Number</b>	<b>Description</b>	<b>Decision</b>	<b>Determination Date</b>
No relevant planning history			
<b>ENFORCEMENT HISTORY</b>			
<b>Reference Number</b>	<b>Description</b>		<b>Determination Date</b>
21/500003/CHANGE	Pending Investigation		

**1. DESCRIPTION OF SITE**

- 1.1 The subject site is situated within the countryside outside of any designated built-up area boundary. It is located along the western side of Iwade Road and is broadly L-shaped measuring 400 metres east to west, and 300m north to south when measured from its widest point. The total area of the site is approximately 88,763 metres (8.9 hectares).
- 1.2 To the north, the application site is boarded by open countryside and sporadically placed farm buildings, all of which are located within an Area of High Landscape Value Swale Level (Policy DM24 of the Local Plan (2017), adopted).
- 1.3 To the east, the eastern site boundary provides the sites main entrance with direct access taken from Iwade Road. Iwade Road is a single-track lane, unclassified road which serves a single flow of traffic only having intermittent lay-bys for passing vehicles. Members will note that this is a designated Rural Lane (Policy DM26 Local Plan (2017) adopted).
- 1.4 Immediately to the south, the site is bordered by Hawes Wood, an area characterised by high density woodlands and recognised as Ancient Woodlands. The Ancient Woodland is also recognised as a Locally Designated Site of Biodiversity Value and Local Wildlife Site (Policies DM28 and DM29 of the Local Plan (2017) as adopted).
- 1.5 The application site is located, as the crow flies, roughly 1.17km away from the built up area of Newington to the south, approximately 1km to the built up area of Lower Halstow to the north and approximately 2.7km to Iwade to the northeast. The site is subdivided by Parish Council boundaries. The front section to the east is located within Bobbing Parish Council and immediately to the west towards the rear section of the site sits within the remit of Lower Halstow Parish Council.
- 1.6 Turning to the existing site, the main access point utilises an existing access leading from Iwade Road. The original access point appears to have been widened and is surrounded by a 1.6m high closed boarded timber fence. The section of the ground has been roughly laid with heavy hardcore which accommodates a parking area located immediately to the left upon entry. There are no clear road markers or associated vehicle parking signage.
- 1.7 To the left, along the southern site boundary immediately adjacent to Hawes Wood, there is a collection of outbuildings associated with the use of the site. These comprise of a large collection of shipping containers, various garden sheds and outbuildings, children's dens, a small caravan, outdoor furniture and other items generally associated with outside domestic

**APPENDIX 1**

use. These appear to be used as ancillary storage and staffing facilities. Further along there are mounds of rubble and hardcore. The development along this boundary falls within the 15m mitigation buffer of Hawes Wood, which is designated as ancient & semi natural woodland and is separated from the woodland by plastic sheeting nailed to various trees and posts along the edge of Hawes Wood.

- 1.8 Situated to the right (north east) of the main access leading through the site, there is a large undeveloped section of land that has been cleared and the beginnings of a pond which appeared (at the time of my site visit) to be in mid-construction. Towards the centre of the site within a cleared area devoid of grass, scrub or mature trees is a static caravan surrounded by clutter generally associated with domestic use.
- 1.9 The rear of the site is largely sub-divide by small paddocked areas and is the main location for the keeping of animals.

**2. PROPOSAL**

- 2.1 This application seeks retrospective permission for the change of use of land from agricultural land (Agricultural Land Classification Grade 3b) to an Animal Rescue Centre.
- 2.2 The site would be open to the public 1 or 2 days a month to non-paying guests focusing primarily on the benefits of education and mental health. Both days would bring approximately 20 visitors and include 10 visits per day between the hours of 10-4pm.
- 2.3 In terms of access, the existing site access has been utilised and the application includes the construction of a vehicle path leading through the site to a mid-point where it aligns with a large three berth caravan which is intended to be used both night and day by staff to ensure safeguarding of the animals. The application also includes the construction of a large area of hardstanding constructed from a hardcore material base for vehicle parking. The application form stipulates parking provision for up to 10 parked cars.
- 2.4 In addition, the application also seeks consent for a number of shipping containers, various garden sheds and outbuildings, children's dens, a small caravan, outdoor furniture and other items generally associated with outside domestic use which are situated along the southern boundary with Hawes Woods. These are currently used for ancillary storage and ancillary staffing facilities.
- 2.5 Boundary treatments include the installation of new close boarded timber fencing and associated entrance gates fronting Iwade Road. Additional boundary treatments include the installation of traditional style stock fencing within the site, and around the perimeter of the site.

**3. PLANNING CONSTRAINTS**

- 3.1 Located in the countryside outside of any defined Built-up area boundary.

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Report to Planning Committee – 9 December 2021

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- 3.2 Site lies immediately adjacent to Ancient Woodland (Hawes Wood) and the southern boundary falls within the 15m buffer of Hawes Wood, which is designated as ancient & semi natural woodland.
- 3.3 Area of High Landscape Value Swale Level
- 3.4 Iwade Road is a designated Rural Lane
- 3.5 Potential Archaeological Importance
- 3.6 Agricultural Land Classification Grade 3b
- 3.7 Designated Local Wildlife Site; ‘Hawes Wood and Wardwell Wood, Newington’.

**4. POLICY AND CONSIDERATIONS**

- 4.1 National Planning Policy Framework (NPPF) 2021: Paras 8 (Three dimensions of sustainable development); 10, 11, 12 (Presumption in favour of sustainable development); 47 (Determining applications); 81 (Building a strong, competitive economy); 84, 85 (Supporting a prosperous rural economy); 93 (Promoting healthy and safe communities); 104 (Promoting sustainable transport); 112, 113 (Considering development proposals); 119 (Making effective use of land); 126, 130, 134 (Achieving well-designed places); 152, 153 (Meeting the challenge of climate change, flooding and coastal change); 168, 169 (Planning and flood risk); 174 Conserving and enhancing the natural environment; 180, 182 (Habitats and biodiversity); 185 (Ground conditions and pollution).
- 4.2 Bearing Fruits 2031: The Swale Borough Local Plan 2017: Policy ST 1 Achieving sustainable development in Swale; Policy ST 3 The Swale settlement strategy; Policy CP1 Building a strong, competitive economy; Policy CP2 Promoting Sustainable Transport; Policy CP4 Requiring good design; Policy CP7 Conserving and enhancing the natural environment – providing for green infrastructure; DM3 The rural economy; Policy DM 6 Managing Transport Demand and Impact; Policy DM 7 Vehicle Parking; Policy DM12 Dwellings for rural workers; Policy DM 14 General Development Criteria; Policy DM 19 Sustainable Design and Construction; DM21 Water, flooding and drainage; DM24 Conserving and enhancing valued landscapes; DM26 Rural Lanes; DM28 Biodiversity and geological conservation; DM29 Woodlands, tress and hedges; DM31 Agricultural land.
- 4.3 The Swale Borough Parking Standards 2020 – Non residential Car Parking Standards. The proposed use is considered as Sui Generis which under Appendix D, sets out a requirement of 1 space per 2 staff with further visitor parking to be assessed individually.
- 4.4 Swale Landscape Character and Biodiversity Appraisal (June 2010) – Members will note that the site identifies as ‘Iwade Arable Farmlands’, where the landscape condition of the land is ‘Poor’ and the sensitivity is ‘Moderate’.

**5. LOCAL REPRESENTATIONS**

- 5.1 Bobbing Parish Council – No objection (06.05.2021), whilst no comments have been received from Lower Halstow Parish Council.



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- 5.2 Newington Parish Council (30.07.2021). No comments to make on the principle of development given that the site is located outside of Newington, however concern was raised concerning the impact of the traffic on local roads, Iwade Road, Church Lane, Boxted Lane and Mill Lane, also known as Bricklands. Moreover, Newington PC were not reassured regarding the applicant's projection of visitor numbers and were aware of the problems off-road parking is currently causing visitors to residents in Iwade Road.
- 5.3 The application was published in the press on 06.05.2021 which welcomed comments to the Council by 06.05.2021. A site Notice was also erected at the site which welcomed comments until 07.06.2021
- 5.4 In response to the public consultations the Council received 187 representations in support of this application. The support is far reaching and not just contained to the local area.

The thread running through all letters of support is that the location of the ranch is in a rural area with very little housing and this type of development needs to be accommodated in the countryside. The proposal would bring a derelict & disused site back into positive use which would benefit the area, the local community and allow the charity to continue to rescue animals that are abandoned and abused. Many have cited the welfare of the animals and what would happen to these animals in the eventuality that Happy Ranch was closed. The ranch is staffed by volunteers, and the ranch proposes mental health days with many people supporting this work and the benefit that it would bring to the local community.

- 5.5 A total of 4 letters of objections were received on the following grounds:

- Excessive noise and disturbance
- Surface water runoff
- Smells
- Security issues
- Intensified impact upon rural lane
- Use of inappropriate materials
- Waste disposal

**6. CONSULTATIONS**

- 6.1 KCC Biodiversity – Objection on the following grounds (10.08.2021):

- *The aerial imagery available to us shows the site as having high ecological interest previously, including a pond, scrub, grassland and woodland. Almost all of this habitat has been lost to the development which we highlight is extremely bad practice and has likely resulted in a breach of wildlife legislation. We point out the irony of an animal rescue centre which has displaced or even harmed wildlife in facilitation of the development*
- *The design and access statement notes "The site was extremely overgrown, covered in rubbish and was an unusable piece of land". We highlight that the land was likely rich in biodiversity, utilised by protected species and had high 'ecosystem service' value (the importance of which is referenced in paragraph 174 of the NPPF 2021). The amount of habitat clearance shown within the design and access statement is significant and completely unacceptable.*

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- *The site is also directly bordered ancient woodland. As such, we highlight paragraph 180 of the NPPF, which states “development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists”. Natural England and the Forestry Commission’s standing advice states that there should be a minimum of 15m between development footprint and ancient woodland. The submitted plans show that this has not been adhered to. Of note, this ancient woodland area is also a designated Local Wildlife Site; ‘Hawes Wood and Wardwell Wood, Newington.’*
- *We highlight that indirect impacts associated with the operational development can contribute to the ancient woodland deterioration, such as light and noise pollution, surface runoff, the spread of invasive species and recreational disturbance. It is unclear how these operational effects have been/will be mitigated for.*
- *Under section 40 of the NERC Act (2006), and paragraph 180 of the NPPF (2021), biodiversity must be maintained and enhanced through the planning system. Additionally, in alignment with paragraph 180 of the NPPF 2021, the implementation of enhancements for biodiversity should be encouraged.*
- *Taking the ecological baseline from the April 2020 aerial imagery, it is clear that the proposed development is not/cannot achieve biodiversity net-gain.*
- *With the amount of habitat destruction, overall biodiversity loss, lack of measures to safeguard the adjacent ancient woodland/Local Wildlife Site and no habitat restoration/compensation plans, we cannot support this application in its current format and recommend outright refusal.*

**6.2 Tree Consultant – Objection on the following grounds (02/08/2021):**

- *Piles of crushed rubble, shipping containers and building materials are all stored along the edge of Hawes Wood within the root protection areas (RPA) of trees growing along the woodland periphery. Temporary boundary screening in the form of white plastic sheeting has been erected along the woodland edge secured to a number of the trees using wooden blocks and nails (as seen in photo 2 below.) The nailing of structures to the existing boundary trees is likely to have caused stem damage, thus exposing the trees to decay/disease.*
- *The tree survey submitted with the application (by David Archer Associates) would appear to give an accurate account of the tree stock present on the site. However, as the construction of the new access and siting of the buildings/containers are fairly recent (within the last 6 months,) so in my view it is too early to assess the full impact of their construction within the root protection area (RPA) of the trees, as symptoms of root death/disturbance does not generally show on trees for a couple of years following the initial works/damage taking place. Therefore, at this point in time I do not support the author’s view in the arb report that the retrospective works have/will not impact on the long-term health of the trees.*

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- *In addition to the retrospective works encroaching within the RPA of the woodland trees, the development also falls within the 15m buffer of Hawes Wood, which is designated as ancient & semi natural woodland. The NPPF sets a high bar for development that would result in loss or deterioration of ancient woodland - paragraph 175c “development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists” ).*
- *Nearby development can have an indirect impact on ancient woodland or ancient and veteran trees and the species they support. These can include... reducing the amount of semi-natural habitats next to ancient woodland... increasing the amount of pollution, including dust... increasing disturbance to wildlife from additional traffic and visitors... increasing light or air pollution... increasing damaging activities like fly-tipping and the impact of domestic pets”. There also tends to be a certain amount of ancillary ‘spillage’ from dwellings/buildings into surrounding natural areas, in the form of outbuildings, children’s dens, compost heaps, outdoor furniture and other items kept outside. These indirect impacts would be considered to result in a deterioration of ancient woodland. The proximity of the proposal to the ancient woodland boundary means that it is impossible to achieve a 15m minimum semi-natural buffer to mitigate those impacts. It is also clear that the laying of the hardcore road and siting of the outbuildings, containers and storage of materials, all within the 15m buffer, has resulted in the destruction of a significant area of semi natural habitat next to the ancient woodland contrary to paragraph 175c of the current NPPF.*

**6.3 Environmental Services Objection (20.07.2021)**

- *The Council’s Environmental Response Team received complaints from nearby residents alleging noise nuisance following commencement of the use and occupation of the application site as an animal sanctuary. The complaints required investigation under the statutory nuisance provisions of the Environmental Protection Act 1990 to determine whether the impact of the use and resulting noise generated, constituted a statutory nuisance. The evidence gathered from officers’ site visits and from precision sound recording equipment located in a nearby residential premises confirmed the occurrence of noise at a level amounting to a statutory nuisance. Notices in respect of statutory noise nuisance arising from a generator supplying electricity to the site and from the animals being accommodated there have been served on the applicant. This requires the applicant to take all steps necessary to abate the nuisance and prohibit a recurrence of the same.*
- *Under the current situation and before any appeal against the notices has been decided or works carried out in compliance with them, I am unable to comment further or offer any support to this retrospective application and therefore object to it.*

**6.4 KCC Highways Initial Response - raise no objection on behalf of the local highway authority (04.05.2021)**

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*Additional information was submitted regarding the applicant's intention to open up the site to the public 1 or 2 days a month.*

Second Response received from KCC (19.08.2021) Further information is required as to the number of additional trips this would generate. Whilst it is appreciated the intention is to open the site for just 2 days a month there is the potential for this to become more frequent. The proposed open days would intensify the use of the access and potentially increase the parking requirements at the site I note that improvements to the site are needed before visitors can attend these open days and we would need more details as to what these plans would be.

*Further additional information has been received from the applicant however, at the time of writing this report I still wait a response from KCC, I will update Members at the meeting.*

6.5 KCC Flood and Water Management – No objection (12.08.2021) subject to the following advisory comments:

- *Potentially contaminated water from activities associated with the proposed facilities should only be directed to a dedicated foul water system. It will be unacceptable to direct this runoff to a watercourse or direct to ground.*

Following ongoing deliveries of hard core delivered to the site, KCC Flood and Management were re-consulted.

- *Given that this is a retrospective application we had assumed that the access road and car park were formed? We would advise that the use of recycled material is unacceptable as a permeable surface given the possibilities of it containing contaminants which could affect water quality, but it seems the EA have taken this in hand. (18.11.2021)*

6.6 Rural Consultant (27.08.2021)

The Rural Consultant was contacted to provide specialist advice on the retention and occupation on the caravan for the purposes of staff accommodation being located in the countryside. The response is set out below:

- *Having now accessed the submitted information, I would agree that the continued operation of this registered animal charity on this site does require the sort of on-site attendance that a mobile home provides, for the proper care of the relatively large number and variety of animals involved, out of normal working hours (as well as day-time first aid point/shelter etc. for staff/volunteers).*
- *Given the nature of the use, it seems unlikely that the charity would meet the usual financial tests that are applied to proposals for permanent rural workers' dwellings; however I note that the mobile home proposal is linked specifically to this specific charity and to the temporary period sought for the charity's use of the site. The applicant has confirmed (para 4.4 of the submitted Statement) willingness to accept an appropriate condition to this effect.*

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- 6.7 Environment Agency – Initially the EA raised no objection on the ground that the development did not fall within their remit (29.04.2021). However, due to on-going deliveries of hardcore the EA has cited various concerns namely burning and lorries entering the site and depositing illegal waste and following numerous visits to the site now raise strong objections to the ongoing nature of works onsite. The EA has liaised directly with the applicant and requested Waste Transfer notes, however at the time of writing this report, this information was not forthcoming and EA is considering serving a Section 34 Notice. The notice gives the applicant 7 days to respond and if no response, this amounts to an offence under EPA and the applicant could potentially be issued with a fixed penalty notice.
- 6.8 KCC Archaeologist No objection (28.04.2021)
- 6.9 Natural England – No objection (11.05.2021)
- 6.10 Kent Police – No objection (14.05.2021)
- 6.11 Landscape Officer (23.08.2021) *No landscape design and management/maintenance proposals are provided therefore there is not much to comment on. However, I note KCC Ecology's comments and concur regarding concerns about the clearance of possible/probable habitats and vegetation of value.*

**7. BACKGROUND PAPERS AND PLANS**

- 7.1 Site location plan 001, Single field shelter 003, Double field shelter 004, Details (Fence and Gates) 017, Proposed Block Plan 012, Proposed Plan 015, Proposed Plan 016, Proposed Elevations 018

**8. APPRAISAL****Principle of Development**

- 8.1 The site lies within the countryside and was undeveloped land before the application development was commenced. There are both local and national policies that restrict development in the countryside. Policy ST3 of the Local Plan sets out that *“At locations in the open countryside, outside the built-up area boundaries shown on the Proposals Map, development will not be permitted, unless supported by national planning policy and able to demonstrate that 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 In this regard, while it is recognised that the site lies outside of any defined built up area boundary, paragraph 85 of the NPPF (2021), stipulates that decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In this respect, I acknowledge that an Animal Rescue Centre is a service that is not offered elsewhere in the Borough and that the keeping of animals is generally considered consistent with a use generally dependant on a countryside setting and for this reason a degree of flexibility can be warranted here. However, I am concerned that no site-specific

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reasoned justification has been provided to demonstrate the need for this particular site and that alternative more suitable sites were not reasonably explored. In this regard Policy DM3 (b) of the Local Plan (adopted 2017) stipulates that in the countryside, for all proposals, the Council should, *'firstly consider the appropriate re-use of existing buildings or the development of other previously developed land, unless such sites are not available or it is demonstrated that a particular location is necessary to support the needs of rural communities or the active and sustainable management of the countryside'*.

- 8.3 Notwithstanding this, even if the Council were to consider the location of the Animal Rescue Centre outside of any defined built up boundary acceptable without firstly providing clear evidence that more suitable sites were reasonably explored as per the provisions of Policy DM3 set out above, the thread running through both the Local Plan (adopted 2017) and the NPPF (2021) remains firmly that this should only be in such circumstances where the development represents sustainable development, and respects the character, appearance, intrinsic value and importantly, the ecological/biodiversity of the countryside while also being consistent with all other material considerations.
- 8.4 Members will be aware that this is a retrospective application and throughout the course of the application concerns have been raised regarding the environmental impacts of the development namely burning of waste and lorries entering the site and depositing illegal hardcore waste and the loss of existing habitat and biodiversity.
- 8.5 In this respect the NPPF paragraph 8 (c) set outs the objectives of achieving sustainable development whereby the Environmental Objective is, *'to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity...'*. Paragraph 174 (b) states that decisions should *'recognise the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland'*, furthermore paragraph 180 of the NPPF, Habitats and biodiversity, states that when determining planning applications, local planning authorities should apply the following principles:
- a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;*
- c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists;*
- 8.6 At local level, Policy DM28 of the Local Plan (adopted) 2017, sets out that development proposals will conserve, enhance and extend biodiversity, provide for net gains in biodiversity and where possible, minimise any adverse impacts and compensate where impacts cannot be mitigated. In matters involving biodiversity, specialist advice was sought from KCC Ecology/Biodiversity and their response is set out below:

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- *The design and access statement notes “The site was extremely overgrown, covered in rubbish and was an unusable piece of land”. We highlight that the land was likely rich in biodiversity, utilised by protected species and had high ‘ecosystem service’ value (the importance of which is referenced in paragraph 174 of the NPPF 2021). The amount of habitat clearance shown within the design and access statement is significant and completely unacceptable.*
  - *The site is also directly bordered ancient woodland. As such, we highlight paragraph 180 of the NPPF, which states “development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists”. Natural England and the Forestry Commission’s standing advice states that there should be a minimum of 15m between development footprint and ancient woodland. The submitted plans show that this has not been adhered to. Of note, this ancient woodland area is also a designated Local Wildlife Site; ‘Hawes Wood and Wardwell Wood, Newington.’*
  - *We highlight that indirect impacts associated with the operational development can contribute to the ancient woodland deterioration, such as light and noise pollution, surface runoff, the spread of invasive species and recreational disturbance. It is unclear how these operational effects have been/will be mitigated for.*
  - *Under section 40 of the NERC Act (2006), and paragraph 180 of the NPPF (2021), biodiversity must be maintained and enhanced through the planning system. Additionally, in alignment with paragraph 180 of the NPPF 2021, the implementation of enhancements for biodiversity should be encouraged.*
  - *Taking the ecological baseline from the April 2020 aerial imagery, it is clear that the proposed development is not/cannot achieve biodiversity net-gain.*
- 8.7 In addition, Members will note that temporary boundary screening in the form of white plastic sheeting has been erected along the woodland edge secured to a number of the trees using wooden blocks and nails. The Council’s Tree Consultant advises that the nailing of structures to the existing boundary trees is likely to have caused stem damage, thus exposing the trees to decay/disease. As a result of the unsympathetic built development along the southern boundary, these indirect impacts would be considered to result in a deterioration of ancient woodland. The proximity of the proposal to the ancient woodland boundary means that it is impossible to achieve a 15m minimum semi-natural buffer to mitigate those impacts. It is also clear that the laying of the hardcore road and siting of the outbuildings, containers and storage of materials, all within the 15m buffer, has resulted in the destruction of a significant area of semi natural habitat next to the ancient woodland, contrary to paragraph 175c of the current NPPF.
- 8.8 As such, based upon the above, while the siting of an animal rescue centre located in the countryside outside of any defined built-up area boundary is broadly acceptable on the basis that the keeping of animals is generally reflective of a use associated with the countryside,

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any benefit to the community is significantly out-weighed by the serious harm caused by continual site erosion, biodiversity loss and habitat destruction, lack of measures to safeguard the adjacent ancient woodland/Local Wildlife Site and no habitat restoration/compensation plans.

- 8.9 Therefore, for the reasons set out above, the development is contrary to policies ST3, DM3 and DM28 of the Local Plan (2017) and fails to represent sustainable development within the countryside contrary to paragraphs 8, 174, 175c and 180 of the National Planning Policy Framework 2021. The proposal therefore directly conflicts with both local and national policy and is therefore wholly unacceptable in principle.

**Visual impact**

- 8.10 The site identifies as an Area of High Landscape Value Swale Level, 'Iwade Arable Farmlands', where under the assessment within the Swale Landscape Character and Biodiversity Appraisal (June 2010), the landscape condition of the area is described as 'Poor' and the sensitivity is 'Moderate'.
- 8.11 Policy DM3 of the Local Plan 2017, supports development in the countryside where: *The design and layout is sympathetic to the rural location and appropriate to their context.*
- 8.12 In addition, policy DM24 of the Local Plan (2017 adopted) sets out that permission will only be granted subject to:
- *Conservation and enhancement of the landscape being demonstrated*
  - *Avoidance, minimisation and mitigation of adverse landscaping impacts as appropriate and, when significant adverse impacts remain, that the social and or economic benefits of the proposal significantly and demonstrably outweigh harm to the Swale level landscape value of the designation concerned.*
- 8.13 The site has been the subject of continual harmful development over a period of approximately 6 months without suitable management plans in place to help lessen or mitigate against harm to the countryside, including any adverse visual impacts. At the time of writing this report, large lorries of hardcore were being delivered with rubble piled high throughout the site at various locations to provide foundations to hardstanding areas, where all previously grassed areas have been lost with no adequate landscaping proposals in place. The following statement provided by the applicant is also of concern, '*The current car parking area (left hand side of the sanctuary through the entrance gates) holds a maximum of approx. 10 cars, **however the site allows ample space (on right hand side) for an overflow car park** so there would be no parking of vehicles outside of the site, in the lane etc.* Members will note the area referred to by the applicant is currently undeveloped land. As such, the development has and continues too, result in the significant erosion of the site detrimental to the character and appearance and visual amenities of the area, to the detriment of this countryside setting with no safeguarding mitigations in measures in place.
- 8.14 In addition, all development in and around the site and most specifically, the development along the southern boundary immediately adjacent to Hawes Wood located within the 15m Ancient Woodland buffer zone, represents ad-hoc development of structures of all shapes



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and sizes, including residential paraphernalia which collectively appear unjustified and incongruous within the countryside and which fails to sympathise with this countryside setting, to the detriment of the appearance and intrinsic character and beauty of the surrounding countryside.

**Residential Amenity**

- 8.15 Policy DM14 of the Local Plan 2017 supports development that would, '*...cause no significant harm to amenity and other sensitive uses or areas*'.
- 8.16 Planning decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.
- 8.17 Members will note that a Noise Assessment Report was not submitted with the application and Members will be aware that the Council's Environmental Response Team received complaints from nearby residents alleging noise nuisance following commencement of the use and occupation of the application site as an animal sanctuary. The complaints required investigation under the statutory nuisance provisions of the Environmental Protection Act 1990 to determine whether the impact of the use and resulting noise generated, constituted a statutory nuisance. A range of parameters are considered in determining whether a noise amounts to a statutory nuisance and these include how often it happens, how long it goes on for, the time of day/night it occurs as well as the level or volume of the noise, all of which were thoroughly investigated.
- 8.18 The evidence gathered from officers' site visits and from precision sound recording equipment confirmed the occurrence of noise at a level amounting to a statutory nuisance. Notices in respect of statutory noise nuisance arising from a generator supplying electricity to the site and from the animals being accommodated there have been served on the applicant. This requires the applicant to take all steps necessary to abate the nuisance and prohibit a recurrence of the same.
- 8.19 The Noise Abatement Notices were served on 6<sup>th</sup> July 2021. One Abatement order related to the noise escape from a generator (21 day notice) and the second from noise issues for the keeping of animals (90 day notice). Swale Environmental Response Team acknowledge that steps have been taken to relocate the generator, and that some animals have been relocated to an alternative location within the site, however noise concerns remain ongoing and Swales Environmental Health Team are not satisfied that noise escape has been reasonably addressed and that investigations are still ongoing.
- 8.20 Therefore, it is reasonable to conclude that at the time of writing this report, the intended use of the site gives rise to unacceptable levels of noise and disturbance to the residents of adjacent dwellings, in a manner harmful to residential amenity to a degree that adversely impacts upon current living conditions. This amounts to a reason for refusal.

**Highways**

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- 8.21 In terms of access, the existing site access has been utilised and the application includes the construction of a vehicle path leading through the site to a mid-point where it aligns with the static caravan. Members will note that KCC Highways raised no objection to the access point noting that both the gates and the fences are set back far enough to have no concerns over obstructing visibility or highways movement.
- 8.22 Turning to the future opening of the site to the public, minimal information has been provided. The applicant states the intention is to open the site to the public 1 or 2 days a month to non-paying guests focusing primarily on the benefits education and to mental health. The proposed open days would intensify the use of the access and potentially increase the parking requirements at the site and KCC Highways notes that improvements to the site are needed before visitors can attend these open days and, requires more details as to what these plans would be.
- 8.23 The application has advised that *'each open day will allow for an extra 10 additional trips to the sanctuary; The entrance gates will be open so visiting cars do not cause any congestion in the lane; Any visitors will have allocated time slots again to allow for a controlled, steady flow of vehicles; The current car parking area (left hand side of the sanctuary through the entrance gates) holds a maximum of approx. 10 cars, however the site allows ample space (on right hand side) for an overflow car park so there would be no parking of vehicles outside of the site, in the lane etc. At the time of writing the report I am yet to hear back from KCC Highways, however in my opinion sufficient information has not been provided to reasonable assess the potential impact upon the highway network. I will update Members at the meeting.*
- 8.24 In addition and notwithstanding the above, Policy DM3 1(f) of the Local Plan (2017) stipulates that development should, *'avoid scales of traffic generation incompatible with the rural character of the area, having regard to Policy DM 6 and Policy DM26'*
- 8.25 In this regard, Iwade Road is an attractive designated Rural Lane and is the location of the main site access. Policy DM 26, Local Plan (2017) states *'planning permission will not be granted for development that would either physically, or as a result of traffic levels, significantly harm the character of rural lanes...development proposals should have particular regard to their landscape, amenity, biodiversity and historic or archaeological importance.*
- 8.26 The application site is located, as the crow flies, roughly 1.17km away from the built up area of Newington to the south, approximately 1km to the built up area of Lower Halstow to the north and approximately 2.7km to Iwade to the northeast. Public transport links in this area are poor, there is a train station in Newington and few bus links in and around the built up area boundaries but none of which service the site. Iwade Road leading to and from the application site is mainly unlit consisting of a single-track rural lane and is without pedestrian footways. Given the distances to the above mentioned services and the lack of public transport and footways close to the site, future visitors would be highly dependent on the use of private car and mobility buses due to the unsustainable location of the site. Opening the site to the public two days per month *'for an extra 10 additional trips to the sanctuary'*, would ultimately result in a significant uplift of traffic levels due to the sites unsustainable location,

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to a manner harmful to the character, appearance, and intrinsic visual amenity value of this rural lane and countryside location contrary to policies ST3, DM3 (1e) and DM26 of the (adopted) Local Plan (adopted 2017).

- 8.27 In terms of parking provision, Swale Borough Parking Standards 2020 for 'Sui Generis' such as this, requires 1 space per 2 staff with visitors to be assessed individually. In this instance, 10 spaces are provided however no parking plan, details of staff levels or confirmed visitor numbers have been provided and therefore I am unable to assess whether they meet the minimum space standards with a sufficient distance of manoeuvrability retained between bays.
- 8.28 No electric vehicle spaces are proposed nor is there suitable cycle parking facilities and given the unsustainable location of the site, these measures should be implemented into the design to comply with policies DM6(3e) and DM7 (3).

**Biodiversity**

- 8.29 As noted above, there is evidence to suggest the site was previously of high ecological interest, including a pond, scrub, grassland and woodland. Almost all of this natural habitat has been lost to the development and, as raised by KCC Biodiversity, has likely resulted in a breach of wildlife legislation.
- 8.30 At local level, Policy ST1 11.(f) of the Local Plan (adopted 2017) states that development should '...avoid significant harm to biodiversity or, when not possible, adequately mitigating it, or, as a last resort compensating for it with off-site action' and Policy DM28 of the Local Plan (adopted) 2017, sets out that development proposals will conserve, enhance and extend biodiversity, provide for net gains in biodiversity and where possible, minimise any adverse impacts and compensate where impacts cannot be mitigated.
- 8.31 In matters involving biodiversity, specialist advice was sought from KCC Ecology/Biodiversity and their response was fully assessed under 'Principle of Development', as set out above. In addition, specialist opinion was also sought from the Council's Tree Consultant with their concerns discussed in full within paragraph 8.9. It was concluded that the level of biodiversity loss surrounding the ongoing site erosion, biodiversity loss and habitat destruction, lack of measures to safeguard the adjacent ancient woodland/Local Wildlife Site and without any habitat restoration/compensation plans, the harm caused to biodiversity is so destructive that the application should be refused on these grounds.
- 8.32 Members are referred to Biodiversity net gain provision under policy 24 of the emerging draft plan. The Council has commenced work on a Local Plan Review and this document was subject to a Borough-wide consultation earlier in 2021. Work on this document is on-going and therefore significant weight cannot be afforded to its policies in the determination of planning application in this instance. Notwithstanding this, no net gains have been reasonably demonstrated throughout the course of this application.

**9. CONCLUSION**

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9.1 As such, for the reasons set out above, I consider the adverse impacts of the development would significantly and demonstrably outweigh the benefits, when assessed against the Local Plan (adopted 2017) and NPPF July 2021 and the other material planning considerations, and for this reason I therefore recommend that planning permission is refused for this application.

**10. RECOMMENDATION**

REFUSE for the following reasons:

- 1) The animal rescue sanctuary comprising of mobile field shelters, small animal houses, shipping containers for storage, associated boundary treatment and stationing of a mobile caravan for use as a residential unit for staff, by reason of its countryside setting and location (in part) within the 15m buffer area of Hawes Woods, ad-hoc nature of development and associated inappropriate use of hardcore materials, causes significant and demonstrable harm to this countryside setting by reason of its failure to conserve, enhance or extend biodiversity, provide for net gains in biodiversity or minimise any adverse impacts or compensate where impacts cannot be mitigated. As such, the proposal does not accord with the core principle of sustainable development within the countryside and is harmful to its intrinsic value, visual amenity, key characteristics, sensitivity, landscape setting, functioning and purposes of the countryside, contrary to policies ST3, DM3, DM24, DM28 and DM29 of Bearing Fruits 2031: The Swale Borough Local Plan, and to the provisions of paragraphs 8, 10, 11, 12, 152, 153, 174 and 180 and 182 of the National Planning Policy Framework (NPPF) 2021
- 2) The fencing and gates to the front of the site amount to prominent, obtrusive and visually harmful development, which cause substantial harm to the rural character and appearance of the streetscene and the character of the rural area, contrary to Policy DM14 of the Swale Borough Local Plan 2017.
- 3) The significant number and location of structures and buildings at the site give rise to a cluttered appearance, with consequent harm to the character and appearance of the area, contrary to Policy DM14 of the Swale Borough Local Plan 2017.
- 4) The development, as a result of the cumulative constant daily noise from animals including cockerels, geese, sheep, cattle and dogs being accommodated there, results in an unacceptable level of noise and disturbance to the residents of adjacent dwellings in a manner harmful to, and adversely impacts upon current living conditions. The application is therefore contrary to Policy DM14 of the "Bearing Fruits 2031: The Swale Borough Local Plan 2017".
- 5) Insufficient information is provided for the Council to reasonably assess whether the proposed use (open days) would, by reason of the sites unstainable location, result in the significant uplift in traffic levels, to a manner harmful to the character, appearance, and intrinsic visual amenity value of a designated Rural Lane (Iwade Road) and countryside setting as a whole, contrary to policies ST3, DM3 (1e) and DM26 of the (adopted) Local Plan (adopted 2017).

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

## **APPENDIX 1**

Report to Planning Committee – 9 December 2021

ITEM 3.1

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2021 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.

**APPENDIX 1**



**APPENDIX 2***Planning Committee**9 December 2021***PART 3**Applications for which **REFUSAL** is recommended

<b>3.1 REFERENCE NO - 21/500173/FULL</b>		
<b>APPLICATION PROPOSAL</b> Retrospective application for change of use of land from agricultural to animal rescue including new stock fencing and gates, mobile field shelters, small animal houses, shipping containers for storage, associated boundary treatment and stationing of a mobile caravan for use as a residential unit for staff.		
<b>ADDRESS</b> Land East Of Hawes Woods High Oak Hill Iwade Road Newington Kent ME9 7HY		
<b>WARD</b> Bobbing, Iwade And Lower Halstow	<b>PARISH/TOWN COUNCIL</b> The site is subdivided by Parish Council boundaries. The front section to the east is located within Bobbing Parish Council and immediately to the west towards the rear section of the site sits within the remit of Lower Halstow Parish Council.	<b>APPLICANT</b> The Happy Pants Ranch <b>AGENT</b>

The Senior Planning Officer introduced the application. She explained that this was a retrospective application for a change of use of land from agricultural to animal rescue. The application was within the countryside and outside the built-up area boundaries. The Senior Planning Officer said that although it was in the postal district of Newington, the site was within the parishes of Bobbing and Lower Halstow. Members were shown photographs of the site, in context with the 15-metre buffer of Hawes Wood, and its proximity to ancient woodland. The entrance to the site was off Iwade Road which was a designated Rural Lane. The Senior Planning Officer said that during the summer months, waste material was imported onto the site and Swale Borough Council (SBC) Environmental Health officers had visited the site. A noise abatement order had been issued in relation to noise from animals and a generator on the site. The Senior Planning Officer said that there had been many letters of support for the application and explained that SBC was not against the principle of the scheme, but had concerns, among other issues, against its siting within the 15 metre buffer of Hawes Wood.

In the absence of Julia Bell, a supporter, her speech was read-out by the Democratic Services Officer, in support of the application.

Amey James, the Applicant, spoke in support of the application.

**APPENDIX 2***Planning Committee**9 December 2021*

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The Chairman moved the officer recommendation to approve the application and this was seconded by Councillor Ben J Martin.

A visiting Ward Member spoke in support of the application.

In the debate that followed, Members raised the following points:

- There were a lot of challenges with this application;
- needed to bear in mind that this was already agricultural land;
- there was often a range of agricultural buildings in this type of setting in any case;
- there could have been animals on the land if it was being used as a farm, with associated noise issues;
- considered most of the reasons for refusal, and issues, could be addressed with conditions, such as restoration of the buffer zone to the ancient woodland, a fencing condition, a temporary permission could be given, restrict occupation of caravans to the use of animal care, removal of the excess waste;
- benefits of the scheme outweighed the harm;
- the opportunity to receive land like this for a charity was rare, as in many instances cost of land would be prohibitive;
- the Applicant had applied for pre-application advice, the timing and scope of this were queried;
- there was a lack of land coming forward for this type of enterprise; and
- sympathetic to an animal sanctuary but planning considerations could not be overridden.

In response to questions, the Major Projects Officer explained that responses from KCC Highways & Transportation to issues set-out in paragraph 6.4 of the report were included in the tabled paper for this item. The Environment Agency (EA) were in regular contact with SBC officers in terms of the imported waste on the site, and had visited the site earlier in the week. The EA had their own powers, under separate legislation, which they could pursue, regardless of the decision made by the Planning Committee on the application. The Major Projects Officer referred to paragraph 180 of the NPPF which referred in turn to the deterioration of ancient woodland, and that once damaged, was irreplaceable. Paragraph 180 stated that such applications should be refused unless there were exceptional reasons and a suitable compensation strategy. The Major Projects Officer said the key issue was that the application site adjoined an ancient woodland with irreplaceable habitats.

Members made further comments which included:

- The application did not give a bio-diversity net gain;
- needed to take into account material planning considerations;
- acknowledged that some of the issues could be overcome by conditions, but other issues could not;
- there were outstanding issues that the Applicant had not resolved, so even if conditions were added, they would need to be checked for compliance;
- a scheme like this was beneficial to the Borough;



**APPENDIX 2***Planning Committee**9 December 2021*

- it seemed as though the application was premature, sympathy with the Applicant but perhaps more input from planning experts was required;
- there were still outstanding issues and not enough information to make a decision;
- there were more questions than answers;
- since work had been carried out on the site there was increased flooding on the rural lanes in the vicinity; and
- the access point needed to be re-located so that it did not affect the 15 metre buffer zone to the ancient woodland.

Councillor Tony Winckless moved the following motion: That the application be deferred to allow the Planning Working Group to meet on site. This was seconded by Councillor Carole Jackson. On being put to vote, the motion was lost.

Debate continued on the substantive motion and the following points were made:

- Concerned that it seemed that waste was still being imported onto the site;
- the Applicant had carried out works on the site that had given rise to officers recommending the application for refusal; and
- what legal action could be taken to address the destruction that had already taken place?

In response, the Planning Lawyer referred to paragraph 180 of the NPPF and explained that an Inspector would take degradation of ancient woodland very seriously. She explained that there would need to be a compensation and/or restoration strategy if the application were to be approved, and work would have to cease straight away. It might be possible to use conditions to secure that if the strategy was not implemented the permission would fall away. The Head of Planning Services advised that if Members were minded, they could defer the application, to allow officers to have further discussions with the Applicant and to allow the Applicant to provide further information requested by officers and the Committee to address their concerns. The application could then be reported back to Committee subsequently, with the updated information including any amended plans/documents and subject to a set of detailed conditions in the event officers felt that sufficient information had been provided to adequately deal with all of the concerns raised in the report and during the Committee's consideration of the application.

In response to questions, the Environmental Enforcement Manager explained that an Abatement Notice had been served on the site earlier in the year, as a result of complaints about the noise of the animals and the generator. Her team had regular contact with the Applicant and had visited the site and were happy with the noise issues at that time, although this would continue to be monitored. The animals in question had been moved to the rear of the site and some had been re-homed. There continued to be reports of noise issues.

Further comments from Members included:

- Sympathetic to the Applicant, but there had been an irreplaceable impact and damage to the setting of the ancient woodland;

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**APPENDIX 2**

*Planning Committee*

*9 December 2021*

- the biodiversity impact of this scheme had been disastrous;
- the Committee needed to be sure they were not rubberstamping the destruction;
- the application could be deferred and the Council work with the Applicant;
- a more suitable location should be found; and
- if the application was deferred, a management plan should be sought.

There was some discussion on the reasons for a deferral.

Councillor Mike Dendor moved the following motion: That the application be deferred for further negotiation with the Applicant and officers to include:

a limited deferral of three months; a management plan; the land to be returned to agricultural use when it was no longer an animal sanctuary; appropriate gating/screening/fencing to be installed; restoration of the 15-metre buffer, with a compensation strategy; restrict occupation of caravans to the use of animal care; satisfactory plans to address the issues outlined in the report, including structures currently sited in the 15-metre buffer to be re-located elsewhere on the site; and the harm to the ancient woodland to be addressed and reported back to consultees for further comments.

In the event that permission be granted in due course, consideration be given to a two year temporary permission for open days and their impact to be monitored. This was seconded by Councillor Oliver Eakin and on being put to the vote, the motion was agreed.

*Resolved: That application 21/500173/FULL deferred for further negotiation with the Applicant and officers to include: a limited deferral of three months; a management plan; the land to be returned to agricultural use when it was no longer an animal sanctuary; appropriate gating/screening/fencing to be installed; restoration of the 15-metre buffer, with a compensation strategy; restrict occupation of caravans to the use of animal care; satisfactory plans to address the issues outlined in the report; the harm to the ancient woodland to be addressed and reported back to consultees for further comments. In the event that permission be granted in due course, consideration be given to a two year temporary permission for open days and their impact to be monitored.*


## APPENDIX 3

Swale House, East Street,  
Sittingbourne, Kent ME10 3HT  
DX59900 Sittingbourne 2  
Phone: 01795 424341  
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www.swale.gov.uk



The Happy Pants Ranch  
Iwade Road  
Bobbing  
Sittingbourne  
ME9 7HY

Our Ref: 21/500173/FULL  
Date: 23.12.2021

BY EMAIL [REDACTED]

Dear Amy James,

Ref: 21/500173/FULL

**Town and Country Planning Act 1990 (as amended)**

**Site Address:** Land East Of Hawes Woods, Iwade Road, ME9 7HY

I refer to the above site and write to provide you with an update following the outcome of Planning Committee dated 9<sup>th</sup> December 2021. As you are aware, the item was deferred from committee to allow the Council to seek a resolution to many of the issues raised. We are required to report the item back to Planning Committee no later than 10<sup>th</sup> March 2022.

To address the issues raised, you are now required to provide additional information as set out in further detail below, no later than 1<sup>st</sup> February 2022, on the basis that we will need sufficient time to re-consult statutory and non-statutory consultees on the additional information provided, and have sufficient time to report the application back to Planning Committee on 10<sup>th</sup> March 2022.

You have been asked to provide the following additional information:

- ***A Management Plan***

This should include but not be limited to:

- Details of the general day to day management requirements of the site;
- Details of visitors including open days, permanent staff and volunteering staff – visitor numbers, visiting hours, parking arrangements (please provide a parking layout);
- Details of animals including numbers, maximum number of animals to be kept onsite at any one time and how this will be managed;
- Details of how and where you intend to move structures around the site, including the 15m ancient woodland buffer and methods of removal;
- Measures to minimise the impact upon bio-diversity
- The planning committee heard how the site is causing statutory noise nuisance to local residents and there were two noise abatement notices issued to you. One has been satisfied but one remains active. Your management plan needs to clearly document how you will abate the noise from the animals.

- ***The land to be returned to agricultural use when it was no longer an animal sanctuary***

- You are advised to seek professional advice as to how restoration of the Ancient Woodland and Designated Wildlife site can reasonably be achieved including what measures need to be put in place;
- In this matter, the Council has sought the advice of KCC Biodiversity Team and will

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and surrounding rural areas



**APPENDIX 3**

provide you further feedback once we are in receipt of their response this should be no later than 11<sup>th</sup> January 2022.

- ***Appropriate gating/screening/fencing to be installed***
  - Please provide site layout plans, elevations drawings and details of materials to be used.
- ***A two year temporary permission for open days and their impact to be monitored***
  - It would be possible to include this additional information as part of your Management Plan as set out above – please include details as to how these open days will be monitored.
- ***Restoration of the 15 metre buffer, with a compensation strategy;***
  - Again, you are advised to seek professional advice as to how restoration to the Ancient Woodland and Designated Wildlife site can be reasonably achieved including a suitable compensation strategy in accordance with policy DM28 of the Local Plan (adopted 20217);
  - In addition, KCC Biodiversity Team have been asked to provide further guidance on these matters and I will provide you with further feedback once I am in receipt of their response.
- ***Restrict occupation of caravans to the use of animal care;***
  - The Council seeks to avoid permanent year-round residency in the countryside. For this reason, you are asked to provide details as to how this use will be restricted to the use of animal care only; ie: do you intend to have a rolling night duty night shift involving different members of staff and if so, how will this be managed?
- ***Satisfactory plans to address the issues outlined in the report;***

The following information is required:

  - Please confirm the site area;
  - Block plan;
  - Site layout plan to include all structures and areas of hardsurfacing;
  - Cross sectional drawings original and proposed;
  - Parking layout plan;
  - Detailed sustainable surface water drainage scheme;
  - Details of boundary treatments/fencing as set out above.
- ***The harm to the ancient woodland to be addressed and reported back to consultees;***
  - The Council is liaising with the relevant consultees and a response should be with you by 11<sup>th</sup> January 2022
- ***A plan of everything to be included within the application.***
  - Please note, it may be necessary to request additional information once the Council is in receipt of comments for the consultees.

## APPENDIX 3

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As set out above, to ensure that the Council can meet the Planning Committee deadline of 10<sup>th</sup> March 2022 as requested by Members, the information will need to be submitted directly to the council no later than 1<sup>st</sup> February 2022 to ensure that the Council is provided with sufficient time to re-consult all statutory and non-statutory consultees and to prepare the revised report in sufficient time.

I also take this opportunity to advise you, as per the letter sent to you on 13<sup>th</sup> September 2021, although the council is currently considering a planning application for the use of the site for such purposes, you will appreciate that the works undertaken to date are unauthorised and that further works should not continue on-site until such matters are resolved.

Turning to animal welfare, you are advised that this is not a planning matter however I have been informed that you were visited by the RSPCA on 16<sup>th</sup> December 2021 who raise no immediate issues at the site that would endanger the animals. As such, unless the Planning Department is contacted directly by Animal Welfare bodies regarding the need to rehouse animals, you are advised that the moving of structures should form part of your application rather than any action being taken now which could lead to further degradation of the Ancient Woodland, exacerbate any potential noise nuisance or potentially cause an animal welfare issue by relocating animals onto contaminated land.

If you still have concerns regarding animal welfare or require general advice on the keeping of farm yard animals, you are advised to contact the following bodies directly who will be able to provide you with further assistance:

KCC Animal Health Advice  
Call 03000 412020 (Monday to Friday, 9am to 5pm)

Animal Plant and Health Agency (DEFRA)  
Animal Health and welfare services – Telephone: 03000 303 8268

Should you wish to discuss this in further detail, please contact the case officer directly.

Yours sincerely

A handwritten signature in black ink, appearing to read "James Freeman".

James Freeman  
Head of Planning

Serving Faversham, Isle of Sheppey, Sittingbourne  
and surrounding rural areas



INVESTORS  
IN PEOPLE

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**PLANNING COMMITTEE – 7 APRIL 2022****PART 2**

Report of the Head of Planning

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

<b>2.1 REFERENCE NO - 22/500014/FULL</b>		
<b>APPLICATION PROPOSAL</b>		
Section 73 - Application for minor material amendment to condition 2 (to allow alterations to the design and position of unit 5) pursuant to 15/501089/FULL for - Demolition of existing commercial buildings, removal of the existing hard surface areas and the erection of 5 no dwellings with amenity space, paddocks, parking, access and landscaping as amended by drawings received 1st June 2015.		
<b>ADDRESS</b> Moons Of Selling Ltd Grove Road Selling Faversham Kent ME13 9RR		
<b>RECOMMENDATION</b> - Grant		
<b>REASON FOR REFERRAL TO COMMITTEE</b>		
Parish Council objection		
<b>WARD</b> Boughton And Courtenay	<b>PARISH/TOWN COUNCIL</b> Selling	<b>APPLICANT</b> Mr Clarke <b>AGENT</b> Luke Strange Architecture
<b>DECISION DUE DATE</b> 10/03/22	<b>PUBLICITY EXPIRY DATE</b> 11/02/22	

**Planning History**

18/505145/SUB

Submission of Details to Discharge condition 3 (Samples of all new facing materials and details of all external finishes) Condition 4 (Joinery) Condition 5 (Manufacturers Details of Rooflights) Condition 6 (Hard and Soft Landscaping) Condition 8 (Dust Suppression programme) Condition 10 (Site Details of Parking) Conditions 12 of planning permission 15/501089/FULL  
Approved Decision Date: 20.12.2018

15/501089/FULL

Demolition of existing commercial buildings, removal of the existing hard surface areas and the erection of 5 no dwellings with amenity space, paddocks, parking, access and landscaping as amended by drawings received 1st June 2015.  
Approved Decision Date: 07.12.2015

SW/12/0673

Lawful Development Certificate application for use of land and buildings as an agricultural contractors depot involving parking, storage & maintenance of vehicles and plant, open storage for materials, use of buildings A, B and C for vending machine business, paint storage and carpentry

respectively, all with related parking of vehicles, with siting of mobile home used residentially for security staff (Existing)

Approved Decision Date: 27.06.2012

SW/12/0038

Lawful Development Certificate for the existing use as offices, workshops, storage transport depot & plant depot (Existing)

Refused Decision Date: 14.03.2012

## 1. DESCRIPTION OF SITE

- 1.1 This site was for many years used for commercial purposes for a mixed use including as a base for HGV's involved in road surfacing and civil engineering, as confirmed by the Council granting of a Lawful Development Certificate in 2012. The overall site covers an area of approximately 2.4 hectares and the site is generally flat and is not located within an area at risk of flooding.
- 1.2 The site is located outside of any Local Plan defined built up area boundary and within the Kent Downs Area of Outstanding Natural Beauty (AONB) on Grove Road, Selling, a narrow designated rural lane. It is located to the south of Selling village and approximately 4km south of the M2 junction with the A2. The site is set back from Grove Road behind properties which front Grove Road. As such, the site is relatively well screened along the northern boundary towards Grove Road as well as from wider reaching views. There is existing good screening to the north west boundary. The existing access is provided from Grove Road but will approach roads to the site are very narrow lanes not suited to use by HGV's.
- 1.3 Full planning permission 15/501089/FULL was granted in 2015 for the erection of five new detached houses allied to the extinguishment of the lawful commercial use of the site. Work is underway on some of these properties pursuant to the planning permission and to the condition matters that were approved in 2018.

## 2. PROPOSAL

- 2.1 The current application seeks planning permission for an alternative design and orientation for the house on plot 5 via a minor material amendment to condition 2 (to allow the approval of alternative drawings) pursuant to the 2015 planning permission.
- 2.2 This proposal would amend the approved drawings to allow the position of the new dwelling on plot 5 to be reorientated to have a slightly more southerly rear aspect. The design will see a front central projection and the introduction of two dormer windows over the garage wing, along with the removal of two dormer windows on the rear projection and the insertion of a rooflight. The rear elevation will remain relatively unchanged save for the introduction of a glazed balcony.
- 2.3 The agent has confirmed that *'design wise, my clients wish to use a farm style aesthetic for the building to ensure the proposal will blend in senselessly with the other approved dwellings. The use of the same approved roof tiles will further ensure a continuation within the development'*.



### 3. PLANNING CONSTRAINTS

- 3.1 Area of Outstanding Natural Beauty KENT DOWNS

### 4. POLICY AND CONSIDERATIONS

- 4.1 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies

CP4 Requiring good design  
 ST3 The Swale settlement strategy  
 DM7 Vehicle parking  
 DM14 General development criteria  
 DM19 Sustainable design and construction  
 DM21 Water, flooding and drainage  
 DM24 Conserving and enhancing valued landscapes  
 DM26 Rural Lanes

### 5. LOCAL REPRESENTATIONS

- 5.1 Four letters of support from neighbours have been received which include the following points:

*As perhaps the nearest neighbour to this development I would like to state that I have reviewed the recent minor amendment- and see no reason for rejection of what is being proposed.*

*Indeed further delay in completing the development is to the detriment of the area, aesthetics of the countryside and wellbeing of those living nearby.*

*We want this work approved and completed in a timely manner avoiding any further unnecessary delay.*

*No one from the Parish Council has spoken to me or any of my neighbours. I would be happy to meet with them if requested to clarify any misplaced objection they may have.*

*As a resident on Grove Rd for close to 10 years now. I am delighted to see Moons Yard being put to good use as a residential development. Personally I wish developers would focus more on these types of areas as opposed to pure greenfield sites.*

*Having reviewed the minor amendment, I see no reason for rejection of this proposal. I think the overall proposal for this dwelling (and the site as a whole) is in keeping with the area.*

*So far as I am aware all the neighbours to the site are happy and in agreement that we have no objection and wish for the work to now be complete as soon as possible.*

### 6. CONSULTATION

- 6.1 Selling Parish Council has raised an objection to the application, saying:

*“Councillors felt that the amendments weren’t minor at all and the changes significant to the original application. In particular, the appearance of the house is very different to the*

*previous design and it looks like the new position may be intrusive to Barn House. Councillors have asked for reassurances that the large parking area is permeable for water.”*

The applicant has since confirmed that the parking area will be a permeable gravel finish.

- 6.2 Natural England makes no comment on the application. The site is beyond 6km from The Swale SPA and no SAMMS tariff is required here.
- 6.3 The Environment Agency has made no comment.
- 6.4 Kent Highways have chosen not to comment on the application
- 6.5 KCC Rights of Way have raised no objection
- 6.6 The Environmental Health Manager raises no objection.

## **7. APPRAISAL**

- 7.1 The key considerations in the determination of this application are the impacts on the proposed alterations would have on visual and residential amenities. The alterations include the dwelling being reorientated slightly and being re-designed including a proposed front projection. The principle of the application has already been established under application 15/501089/FULL and as such I will therefore consider only the proposed changes in this report i.e. the design and orientation of one unit.
- 7.2 The proposal is acceptable in my view and will not cause any harm to the character and appearance of the development. The removal and insertion of the dormer windows and rooflights is also acceptable, as they are appropriate and match the fenestration on the dwelling.
- 7.3 I note the Parish Council's objection and I believe that whilst the design is altered in a number of ways, that is permitted by this procedure, and that the changes will enhance the character and appearance of the development. I cannot see how the slight re-orientation of the property will cause any significant harm to neighbouring amenities as it will mean rear windows facing more away from the garden of Barn House and in my opinion, notwithstanding the introduction of a rear balcony, the distances involved mean that the new design is no worse than what has been approved.

## **8. CONCLUSION**

- 8.1 On the basis of the above, I consider the proposed amendments are acceptable and do not cause significant harm to either visual or residential amenities. As such, I recommend that the application be approved and that a new decision be issued re-stating all the original planning conditions other than the ones that have been discharged. I propose that condition 2 is re-worded to reflect the amended drawings.

- 9. **RECOMMENDATION** - GRANT subject to the following conditions, as per the original 2015 planning permission but updated to reflect the fact that works have begun on other plots, and matters approved in 2018.

## **CONDITIONS**

- (1) The development hereby approved shall be carried out in accordance with the following approved drawings:

Proposed redevelopment at Moons Yard, OV/DB/JC/01(A), OV/DB/JC/02, OV/DB/JC/03, OV/DB/JC/04, OV/DB/JC/06(B), OV/DB/JC/07(B), OV/PL/PB/01, OV/PL/PB/02, OV/PL/PB/03, OV/PL/PB/04(A) and OV/PL/PB/05, and in relation to Plot 5 drawings 478 / 02 and 478 / 03.

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

- (2) The development hereby permitted shall be carried out using the facing materials and details of all external finishes as approved under application 18/505145/SUB.

Reason: In the interests of high quality design and the amenities of the area.

- (3) The development hereby permitted shall be carried out in accordance with the detailed drawings of all new external joinery work, including windows and doors, showing the relationship to the face of the wall as approved under application 18/505145/SUB.

Reason: In the interests of high quality design and the amenities of the area.

- (4) The development hereby permitted shall be carried out using the manufacturers' details of rooflights as approved under application 18/505145/SUB.

Reason: In the interests of high quality design and the amenities of the area.

- (5) The development shall take place in accordance with hard and soft landscape details as approved under application 18/505145/SUB.

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

- (6) No development shall take place until details have been submitted to, and approved in writing by the Local Planning Authority, which set out what measures will be taken to ensure that the development incorporates sustainable construction techniques such as rainwater harvesting, water conservation, energy efficiency and, where appropriate, the use of local building materials; and provisions for the production of renewable energy such as wind power, or solar thermal or solar photo voltaic installations. Upon approval, the details shall be incorporated into the development as approved.

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

- (7) The development shall be carried out in accordance with details for the suppression of dust during construction of the development as approved under application 18/505145/SUB. The approved measures shall be employed throughout the period of construction unless any variation has been approved by the Local Planning Authority.

Reason: In the interests of residential amenity.

- (8) Adequate precautions shall be taken during the progress of the works to prevent the deposit of mud and similar substances on the public highway.

Reasons: In the interests of amenity and road safety.

- (9) The parking provision for site personnel, operatives and visitors as approved under application 18/505145/SUB shall be provided and retained throughout the construction 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.

- (10) Provision shall be made within the site for the disposal of surface water so as to prevent its discharge onto the highway.

Reason: In the interests of highway safety and convenience.

- (11) Before any part or agreed phase of the development is occupied, all remediation works identified in the contaminated land assessment approved by the Local Planning Authority under application 18/505145/SUB shall be carried out in full (or in phases as agreed in writing by the Local Planning Authority) on site under a quality assured scheme to demonstrate compliance with the proposed methodology and best practice guidance. If, during the works, contamination is encountered which has not previously been identified, then the additional contamination shall be fully assessed and an appropriate remediation scheme agreed with the Local Planning Authority.

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

- (12) Upon completion of the works identified in the contaminated land assessment, and before any part or agreed phase of the development is occupied, a closure report shall be submitted to and agreed in writing by the Local Planning Authority which shall include details of the proposed remediation works with quality assurance certificates to show that the works have been carried out in accordance with the approved methodology. Details of any post-remediation 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.

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

- (13) All hard and soft landscape works shall be carried out in accordance with the details approved under application 18/505145/SUB. 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.

- (14) Upon completion of the approved landscaping scheme, any trees or shrubs 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.

- (15) Notwithstanding the provisions of Class A of Part 1 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), the dwellings hereby permitted shall not be altered or enlarged.

Reason: In the interests of the amenities of the area.

- (16) No dwelling hereby permitted shall be occupied until space as shown on the approved drawings has been laid out within the site in accordance with the approved drawings for cycles to be securely parked and sheltered.

Reason: To ensure the provision and retention of adequate off-street parking facilities for cycles in the interests of highway safety.

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

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2021 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.

### **INFORMATIVE**

- (1) Please note that there is an agreement under Section 106 of the Town and Country Planning Act 1990 relating to this development.

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>2.2 REFERENCE NO - 21/506308/ADV</b>			
<b>APPLICATION PROPOSAL</b> Advert Application for installation of two (x2) freestanding non-illuminated aluminium signage boards and two (x2) freestanding non-illuminated flagpole-bound signage flags.			
<b>ADDRESS</b> Land At Wises Lane Borden Kent ME10 1GD			
<b>RECOMMENDATION</b> Grant			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council objection.			
<b>WARD</b> Borden And Grove Park	<b>PARISH/TOWN</b> Borden	<b>COUNCIL</b>	<b>APPLICANT</b> BDW Kent <b>AGENT</b>
<b>DECISION DUE DATE</b> 04/02/22		<b>PUBLICITY EXPIRY DATE</b> 17/01/22	

### Relevant Planning History

17/505711/HYBRID

Hybrid planning application with outline planning permission (all matters reserved except for access) sought for up to 595 dwellings including affordable housing; a two-form entry primary school with associated outdoor space and vehicle parking; local facilities comprising a Class A1 retail store of up to 480 sq m GIA and up to 560sqm GIA of "flexible use" floorspace that can be used for one or more of the following uses - A1 (retail), A2 (financial and professional services), A3 (restaurants and cafes), D1 (non-residential institutions); a rugby clubhouse / community building of up to 375 sq m GIA, three standard RFU sports pitches and associated vehicle parking; a link road between Borden Lane and Chestnut Street / A249; allotments; and formal and informal open space incorporating SuDS, new planting / landscaping and ecological enhancement works.

Full planning permission is sought for the erection of 80 dwellings including affordable housing, open space, associated access / roads, vehicle parking, associated services, infrastructure, landscaping and associated SuDS.

For clarity - the total number of dwellings proposed across the site is up to 675.

Appeal Against Non Determination

Appeal Allowed

Decision Date: 29.04.2021

## **1. DESCRIPTION OF SITE**

1.1 This application relates to the site of Hybrid planning application (17/505711/HYBRID) for a large, mixed-use development in Sittingbourne, that was allowed at appeal last year. Wises Lane at this point is designated as a rural lane in the Council's adopted Local Plan. Adjoining Wises Lane to the northeast is Maylam Gardens and to the south, and west there is predominately open countryside surrounding the site that extends up to the village of Borden.

## **2. PROPOSAL**

2.1 This application seeks advertisement consent for signage associated with marketing the site. The covering letter states that David Wilson have taken on the development of 80 new homes here and consent is being sought for 12 months. The applicant has introduced the

application as follows, although the scope of the application has been reduced at my suggestion since its submission to reduce the number of advertisements by half:

*Permission was granted through appeal on 29<sup>th</sup> April 2021 for a Hybrid planning application involving large, mixed-use development in Sittingbourne (Ref: 17/505711/HYBRID). David Wilson Homes have taken on the development of 80 new homes, which forms the Full permission of the aforementioned Hybrid application. As such, advertisement consent is now sought for the installation of four (x4) freestanding non-illuminated aluminium signage boards and four (x4) freestanding non-illuminated flagpole-bound signage flags relating to this approved development.*

*We have submitted details covering the proposed advertisement signs/flags that are to be erected within the boundaries of the site benefitting from Full permission, which will sit towards the south-eastern boundary of the site, adjacent to Wises Lane and just south of the Maylam Gardens roundabout.*

*No signs/flags will be erected within any land that constrains the use of advertisements (AONB, Conservation Area, etc.) and will remain in place temporarily whilst construction of the dwellings occurs, with their removal taking place after 12 months. The signs will remain in a clean and safe condition during their usage, and will not obscure any official road, rail or other transportation signage. There are also no issues in regards to land ownership permissions for the erection of these advertisements as we are the landowners for the area in which the advertisements are to be erected. It is therefore considered that this proposal would clearly adhere to the ‘standard conditions’ for outdoor advertisements.*

- 2.2 The signs originally comprised of four non-illuminated signage boards and four non-illuminated flags that advertised the development as “Cherry Fields”. The revised scheme has reduced the number of signage boards and flags to two boards and two flags. The development will now be advertised as “Applegate Park”.
- 2.3 The two advertisement boards will measure 2.8m wide x 1.9m tall attached to aluminium posts and set 3m above ground level and so measuring 4.9m high overall. The boards will be made of aluminium with digitally printed vinyl graphic applied that consists of white text on a blue background. They will be set three metres back from the road, in a “V” formation with flag poles either side.
- 2.4 The two flags are made of dark blue polyester with white text/branding which will measure 1m wide x 2.5m tall attached to aluminium flagpoles 6m high.

### **3. PLANNING CONSTRAINTS**

- 3.1 None

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

- 4.1 The National Planning Policy Framework (NPPF). Paragraph 132 of the NPPF states that:

*“The quality and character of places can suffer when advertisements are poorly sited and designed. A separate consent process within the planning system controls the display of advertisements, which should be operated in a way which is simple, efficient and effective.*



*Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts.”*

4.2 It is important to note that the Council’s discretion in this type of application relates only to amenity and public safety; not to the content of the signage. Part 1 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 states that:

3. *(1) A local planning authority shall exercise its powers under these Regulations in the interests of amenity and public safety, taking into account -*

*(a) The provisions of the development plan, so far as they are material; and*

*(b) Any other relevant factors.*

*(2) Without prejudice to the generality of paragraph (1) (b) –*

*(a) factors relating to amenity include the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest;*

*(b) factors relevant to public safety include –*

*(i) the safety of persons using the highway, railway, waterway, dock, harbour or aerodrome (civil or military)*

*ii) whether the display of the advertisement in question is likely to obscure, hinder the ready interpretation of, any traffic sign, railway signal or aid to navigation by water or air;*

*iii) whether the display of the advertisement in question is likely to hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle.*

*(3) In taking account of factors relevant to amenity, the local planning authority may, if it thinks fit, disregard any advertisement that is being displayed.*

*(4) Unless it appears to the local planning authority to be required in the interests of amenity or public safety, an express consent for the display of advertisements shall not contain any limitation or restriction relating to the subject matter, content or design of what is to be displayed.*

4.3 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017: Policies CP4 (Requiring good design), DM14 (General development criteria) and DM15 (New shopfronts, signs and advertisements).

4.4 Supplementary Planning Guidance (SPG): ‘The Design of Shopfronts, Signs & Advertisements’. Paragraph 2.2 of the SPG states that:

“The proliferation of signs and unnecessary repetition of information will be resisted.”

## **5. LOCAL REPRESENTATIONS**

5.1 No local representations received.

## 6. CONSULTATIONS

### 6.1 Borden Parish Council responded to the application as initially submitted as follows:

*The boards display the site as being 'Cherry Fields'. Cherry Fields is already on existing road with a large number of houses quarter of a mile from these advertising boards. This will confuse public and attending delivery drivers to either location.*

*The design appearance is not in keeping with the rural area and indeed with the outline planning permission.*

*The visual impact will have a tremendous detrimental effect on the surrounding rural area. The advertising boards will face Cryalls Lane, which is a rural lane, and thus will harmfully impact on the countryside ambiance of this popularly frequented outdoor local asset.*

*It is accepted that this location will witness a housing development but the properties will not be totally evident for some years and should not be overshadowed by the brash marketing structure. The developer has been adamant there is a 'crying need and demand' for these houses so why is there such a requirement to advertise in such an obtrusive manner?*

*The Town and Country Planning (Control of Advertisements) Regulations 2007 relates to the discontinuance and non-acceptance of an advertisement where there is a danger to members of the public. Due to the vehement objections of the development and the obvious harm that the lengthy public inquiry had on a small number of Borden residents it is a concern that this blatant oversized insensitive display will have an adverse effect on the health of some members of the community and therefore a danger to their mental well-being.*

*They have given the parish council early notification of the substation and gas governor, why was this application not given the same.*

*The signs are not in scale of in keeping with scenic and historic features of the area.*

*The quality and character of places can suffer when advertisements are poorly sited and designed. The parish council believes this is the case.*

### 6.2 The Parish Council later updated their comments (but still before the application was amended) to say:

*The boards display the site as being 'Cherry Fields'. Cherry Fields is already on existing road with a large number of houses quarter of a mile from these advertising boards. This will confuse the public and delivery drivers to either location.*

*The design appearance is not in keeping with the rural area or with the outline planning permission.*

*The flagpoles and flags will create unnecessary noise in wind. Their constant movement will also be harmful both to wildlife, habitat and the quiet enjoyment of the surrounding area.*

*The visual impact will be detrimental to the appeal of the surrounding rural area. The advertising boards will face Cryalls Lane, which is a rural lane, and will intrude on the appealing ambiance of this valued local area of countryside.*

*It is accepted that this location is a housing development site, however the properties will not be complete for some years and in the meantime the site should not be overshadowed by the proposed intrusive marketing hoardings. The developer has been adamant there is a crying need and demand for these houses so Borden PC question the need to further advertise on site.*

*The Town and Country Planning (Control of Advertisements) Regulations 2007 relates to the discontinuance and non-acceptance of an advertisement where there is a danger to members of the public. Due to the number and strength of feeling expressed by objectors to the development proposal and at the subsequent inquiry we are concerned that this advertising display will have an adverse effect on their mental health, well-being and welfare of residents.*

*The size of the signs is detrimental to the enjoyment of the scenic and historic features, area and will have a detrimental effect on the overall quality and character of the location.*

*The following point was raised and noted, but is not a relevant objection to planning consent.*

*They have given the parish council early notification of the substation and gas governor, why was this application not given the same.*

6.3 The agent responded to say they noted the potential confusion with naming the development as “Cherry Fields” and have now changed it to “Applegate Park”. The advertisements are only intended to remain in place for 12 months to advertise the first phase of the development. The boards are angled in a “V” formation so as to ensure the signage can be seen from both directions of travel down Wises Lane. This is seen as the safest way to display the advertisement boards here as it avoids the need for drivers on either side of the road having to turn their heads in such a way that could cause a potential accident.

6.4 Following the reduction in the amount of signage the Parish Council were re-consulted, and commented as follows:

*It was RESOLVED to comment that the parish council proposes that name should not be Applegate Park as it conflicts with a local farm but instead should be Cherry Orchard.*

6.5 Kent Highways and Transportation raises no objection.

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

7.1 Application papers and plans relating to 21/506308/ADV.

## **8. APPRAISAL**

Principle of Development

8.1 The application site lies within the Local Plan defined built-up area boundary of Sittingbourne/Borden and lies along a designated rural lane, and within the site allocated for

housing at south-west Sittingbourne under policy MU3 of the Local Plan. The need to promote this major new development to potential purchasers of the new residential homes is understood and the type of signage proposed is not untypical of what the Council has permitted elsewhere on such large-scale housing developments. I have considered the concerns of the Parish Council about the name of the development as 'Applegate Park' but as with all applications for advertisement consent, the only matters for consideration are those relating to amenity and public safety, not the content of the signage. I will deal with these statutory matters in turn.

#### Amenity

- 8.2 Amenity is usually defined in terms of appearance of the advertisement itself and the characteristics of the area where it is to be displayed but does not include the content or subject matter of the advertisement display. The relevant policies and the Council's SPG entitled 'The design of shopfronts, signs and advertisements' advise that such development should respect the character of the surrounding area and should not be excessive in quantity. There is a requirement to consider visual amenity and in doing so avoid the scenario of creating excessive visual clutter. The signage as originally proposed was for two pairs of identical signs and two pairs of flag advertisements located alongside each other which appeared to contain the same information. I believed it was unnecessary to have such a duplication of signs along this rural lane and therefore contacted the applicant to provide them with the opportunity to submit amendments to the scheme. The signage was then reduced by fifty per-cent which I believe would not amount to an over proliferation of signage within this area.
- 8.3 The signage would be non-illuminated and positioned close to the site entrance for the first phase of the proposed housing development, adjacent to the front gardens of Plots 78 and 79. I consider that the signs proposed are proportionate in size and relate appropriately to the new development and its use. The signs are strategically positioned to inform and direct potential house buyers into the site. The design and colouring of the signage would not be unusual and I consider that two boards and two flag poles would not result in an unacceptable level of visual clutter or be harmful to the visual amenity of the surrounding area, at least over such a short-term period.
- 8.4 The proposed signage will be located in excess of 100m from the nearest existing residential property located in Wises Lane therefore I do not consider it will cause significant harm to residential amenity.

#### Highway safety

- 8.5 The "V" boards have deliberately been positioned at a 40° angle to the roadside to enable the signage to be visible to passing traffic. I note that Kent Highways have no objection to the application on highway grounds and have not recommended any conditions.

#### Other Matters

- 8.6 The covering letter states that the marketing signage will remain in place for the duration of the first phase of the development. I have recommended a condition requiring this signage to be removed within 12 months from the date of the decision notice.

## 9. CONCLUSION

9.1 The application proposes temporary signage for the first phase of the consented housing development. The amount of signage has been significantly reduced in scope since initial submission and will not now result in an over proliferation of signage within this area. The content of the signs appears to be the Parish Council's overriding reason for not withdrawing their objection to the application and I must advise Members that this should not be a factor in their decision. I do not consider the proposed signage would have an unacceptable detrimental impact upon either visual and residential amenity, nor result in any harm to highway safety, which are the statutory tests here. I am therefore satisfied that the signage complies with policies DM14 and DM15 of the Local Plan and the NPPF.

## 10. RECOMMENDATION - GRANT Consent Subject to the following conditions

### CONDITIONS

- (1) No advertisement is to be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission.
- (2) No advertisement shall be sited or displayed so as to:
  - a. endanger persons using any highway, railway, waterway, dock, harbour or aerodrome (civil or military);
  - b. obscure, or hinder the ready interpretation of, any traffic sign, railway signal or aid to navigation by water or air; or
  - c. hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle.
- (3) Any advertisement displayed, and any site used for the display of advertisements, shall be maintained in a condition that does not impair the visual amenity of the site.
- (4) Any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a condition that does not endanger the public.
- (5) Where an advertisement is required under these Regulations to be removed, the site shall be left in a condition that does not endanger the public or impair visual amenity.

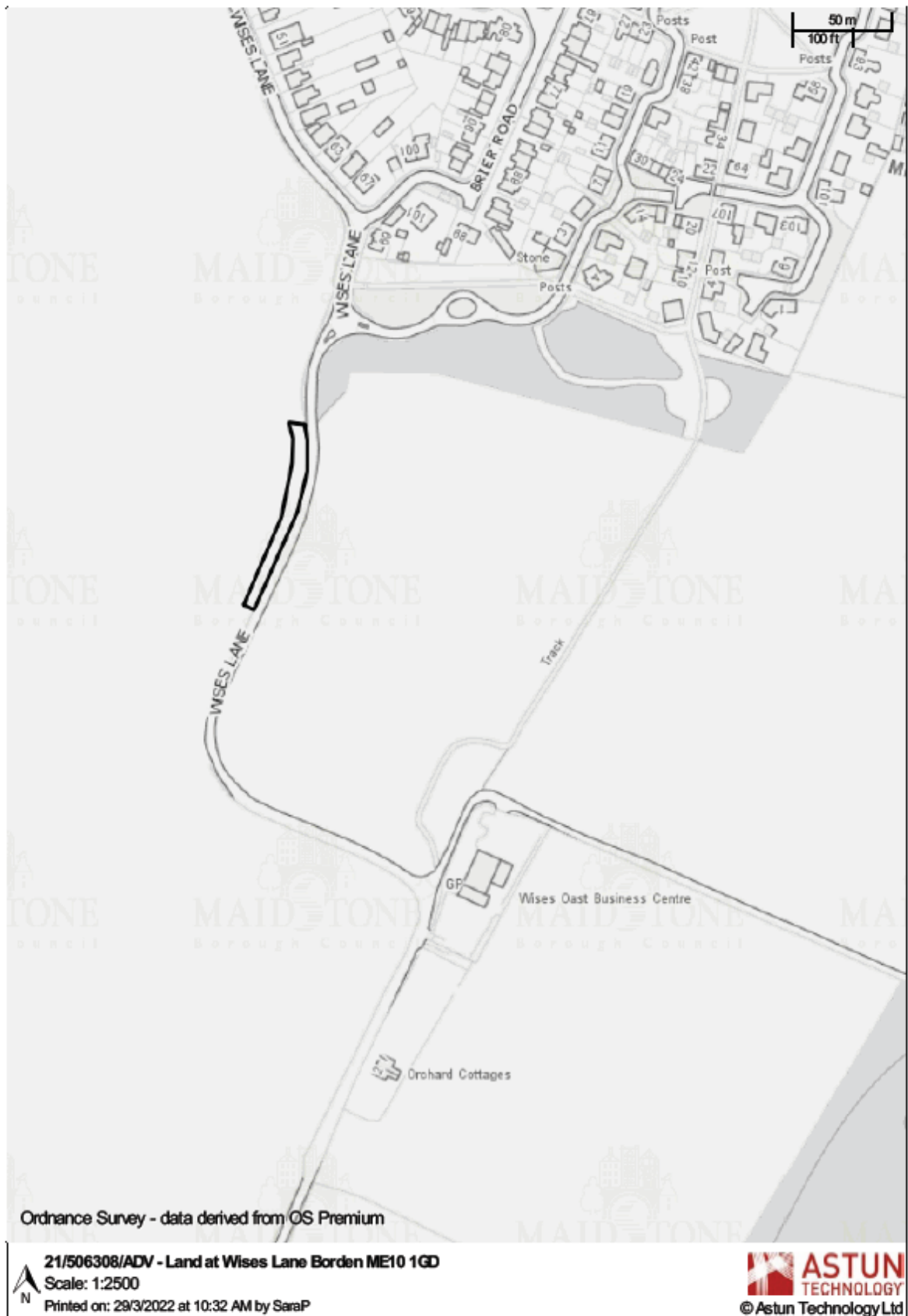
Reason: In accordance with the provisions of Regulation 2(1) of the Town and Country Planning (Control of Advertisement) (England) Regulations 2007.

- (6) The advertisements hereby permitted shall be removed no later than one year beginning with the date on which the consent is granted.

Reason: In the interests of visual amenity.

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>2.3 REFERENCE NO - 22/500853/FULL</b>		
<b>APPLICATION PROPOSAL</b> Retrospective application for erection of a detached garden office room.		
<b>ADDRESS</b> Clocktower Barn Norton Lane Norton Kent ME9 9JU		
<b>RECOMMENDATION</b> Approve subject to any additional comments received by the end of the Publicity Expiry Date.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council Objection		
<b>WARD</b> Teynham And Lynsted	<b>PARISH/TOWN COUNCIL</b> Norton, Buckland And Stone	<b>APPLICANT</b> Emma and Philip Mead <b>AGENT</b> Studio BRiNER
<b>DECISION DUE DATE</b> 22/04/22		<b>PUBLICITY EXPIRY DATE</b> 31/03/22

**Planning History**

SW/01/0242

Listed Building Consent for two glazed doors and minor alterations to the external steps.  
Approved Decision Date: 09.05.2001

SW/00/1149

Listed Building Consent for installation of two glazed doors.  
Refused Decision Date: 19.01.2001

SW/90/1117 - Reinstatement of fire damaged barn converted to dwellinghouse.

Approved Decision Date: 17.10.1990

SW/88/0503 – Conversion of barn and stable wing to 2no. dwellings and 4no. garages and conversion of former farm office to dwelling with new wing and detached garage.

Approved Decision Date: 02.06.1988

SW/88/0823 – Conversion of Conversion of barn and stable wing to 2no. dwellings and 4no. garages and conversion of former farm office to dwelling with new wing and detached garage.

Approved Decision Date: 09.09.1986

**1. DESCRIPTION OF SITE**

1.1 Clocktower Barn is a Grade II listed former agricultural building that has been converted into two dwellinghouses. The site sits outside the Local Plan defined built-up area boundary of the village but is located within the Lewson Street conservation area on Norton Lane, a designated rural lane.

1.2 The building itself comprises of black weatherboarding, plain tile roof and a distinctive clock tower, giving the building its name. The property sits within a sizeable plot with off road parking accessed from Norton Road.

**2. PROPOSAL**

- 2.1 The application seeks retrospective planning permission for the erection of a small outbuilding which is used as a home office within the private garden of one half of the barn. Planning permission is required as Class E of The Town and Country (General Permitted Development) (England) Order 2015 (as amended) does not allow for the erection of outbuildings, pools or containers within the curtilage of listed buildings. I also note that planning permissions SW/88/0823, SW/88/0503 and SW/90/1117 also removed permitted development rights which is usual on barn conversions to ensure the agricultural character of the building is retained.
- 2.2 The outbuilding sits behind the existing garage which is a modern structure and was built at the time of conversion. The current application building is constructed of timber boarding, with timber windows and door all under a felt shingle roof. The building measures approximately 4.2m x 3.1m with an overall height of 2.6m and is painted white.
- 2.3 The application is supported by a Heritage Statement which includes the following passage:

*The applicant purchased the property in April 2019 and constructed the Garden Room in June 2019 without seeking planning consent.*

*The structure is located in the rear garden behind the separate garage that was built as part of the conversion, on land that was previously lawn area. It takes the form of a painted timber-boarded shed with glazing to the two sides that face the garden. The structure is not physically connected to either the house or the garage, and it sits away from the boundary fence. Being a domestic shed structure with a raised floor level there was no requirement for excavating the ground for foundations.*

*The construction of the garden room therefore did not impact on any of the fabric of either the listed barn, the later garage building, the perimeter fencing, or any below ground features.*

*Due to the low scale and location the structure is not visible from any public vantage point from outside of the property. From within the rear garden the structure does not impact on the setting of the listed barn as it is significantly set back and offset to one side.*

### **3. PLANNING CONSTRAINTS**

Conservation Area Lewson Street

Listed Buildings MBC and SBC Ref Number: 1272/SW Description: G II THE STABLES AND CLOCKTOWER BARN, NORTON LANE, NORTON

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

- 4.1 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies:

CP4 (Design)

DM14 (General development criteria)

DM16 (Alterations and extensions)



DM26 (Rural lanes)  
DM32 (Development involving listed buildings)  
DM33 (Development affecting a conservation area)

- 4.2 Supplementary Planning Guidance (SPG): ‘The Conservation of Traditional Farm Buildings’, ‘Conservation Areas’ and ‘Listed Buildings – A Guide for Owners and Occupiers’. The first of these contains the following advice regarding outbuildings in relation to barn conversions:

*“Clothes drying areas should be carefully sited and screened as should garden sheds, greenhouses and car parking spaces.”*

- 4.3 Paragraph 202 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

## **5. LOCAL REPRESENTATIONS**

- 5.1 No local representations were received at the time of writing this report. However, the press advert expires on 31<sup>st</sup> March 2022 and Members will be updated on any representations received at the Committee Meeting.

## **6. CONSULTATIONS**

- 6.1 Norton, Buckland and Stone Parish Council states:

*“Having studied the photographs submitted with the application the Council decided that the style, construction and finish of the ‘garden office room’ seemed wholly inappropriate within the curtilage of the listed building”.*

- 6.2 The County Archaeological Officer states that no archaeological measures are required.

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

- 7.1 All plans and documentation relating to application 22/500583/FULL.

## **8. APPRAISAL**

- 8.1 The key consideration for this application is the impact of the new building on the setting of the main listed building and the special character of the conservation area.

- 8.2 Whilst I agree that the design of this simple outbuilding isn’t ideal within the setting of a listed building, the building is small scale and constructed of timber making it a lightweight structure that is subservient to the host property and inevitably rather temporary in nature. It is also sited behind the larger garage building, screening it somewhat from the main barn, and I believe that painting it black would mean that the outbuilding would blend in with the modern garage and would make it even more subservient to the host property, and I have therefore recommended a condition below to this effect.

- 8.3 In terms of the effect on the conservation area, rural lane and countryside setting, the building is located to the rear of the existing garage and with a height of 2.6m which cannot be seen from any public vantage points. I therefore have no concerns with regards to the visual amenity of the proposal.
- 8.4 With regards to residential amenity the outbuilding is located some distance from the nearest neighbouring properties and is of a scale and design that would not cause any concerns to residential amenity.

## 9. CONCLUSION

- 9.1 Overall, whilst I can appreciate the view of the Parish Council, I do not consider that the scale or nature of the building is so harmful that it would significantly detract from the listed building or conservation area setting. As such, the harm to the heritage assets is very limited and does not require significant public benefits to outweigh any such harm, especially as the building will enable continued use of the barn as a dwellinghouse without requiring its physical alteration.. The proposal therefore complies with policies DM14, DM16, DM32 and DM33 of the Local Plan.

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

### CONDITION

- (1) Within three months of the date of this decision notice, the outbuilding hereby approved shall be painted black.

Reason: In the interest of the setting of the listed building.

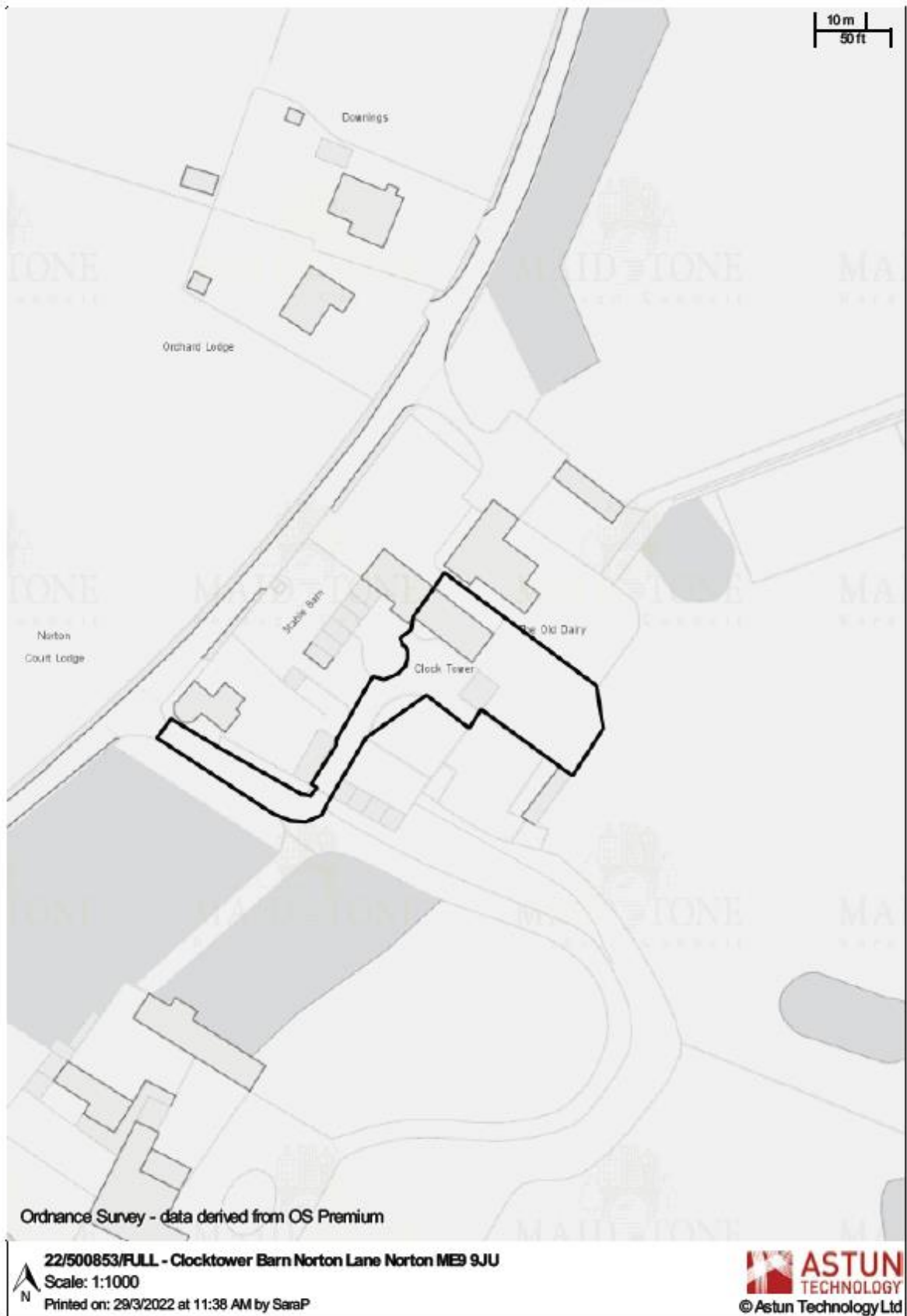
### The Council's approach to the application

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 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>2.4 REFERENCE NO - 22/500563/FULL</b>		
<b>APPLICATION PROPOSAL</b> Repair and partial reconstruction of church wall, including installation of a horizontal metal rail to the sections of wall between each pier, supported by decorative metal brackets.		
<b>ADDRESS</b> St Michaels Church High Street Sittingbourne Kent ME10 4PG		
<b>RECOMMENDATION</b> - Grant		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The development proposal would enable the repair and reconstruction of a historic wall in a manner appropriate to its heritage significance and in accordance with policies in the Local Plan.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> The application has been submitted by Swale Borough Council.		
<b>WARD</b> Chalkwell	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Swale Borough Council <b>AGENT</b> N/A
<b>DECISION DUE DATE</b> 13/04/22		<b>PUBLICITY EXPIRY DATE</b> 24/03/22

**RELEVANT PLANNING HISTORY**

SW/05/0347

Landscape and access improvements - proposed alterations to existing means of enclosure along northern perimeter of Churchyard-

No Objection Decision Date: 22.11.2005

SW/99/0854

Church Notice board

Granted Express Consent Decision Date: 29.10.1999

SW/98/0780

Two internally illuminated poster panels forming an integral part of the bus shelter

Refused Decision Date: 10.11.1998

SW/93/0665

Enclose an existing entrance porch to church hall and extend pitched roof over flat roofs at sides

Approved Decision Date: 03.09.1993

**1. DESCRIPTION OF SITE**

- 1.1** The application site relates to the front boundary wall to the south of the churchyard of St Michael's Church, and which fronts onto the High Street. The church dates from the eleventh century and both the church building and the wall are Grade II\* listed. The site is centrally located along Sittingbourne High Street, and it falls within the Sittingbourne

High Street Conservation Area boundary. The site is located within the built-up area boundary of the town.

## **2. PROPOSAL**

- 2.1 The development proposal relates to the repair, repointing and partial reconstruction of the sections of the church wall that have fallen into disrepair. In addition, it is proposed that metal railings are installed along the top of the wall, between each of the piers, which would restore the appearance of the wall as would have been prior to World War II.
- 2.2 As part of the proposed works, repairs are to be carried out to the knapped flintwork in each pier and repointing work will be undertaken where required. Each of the wall bays between the piers are to be partially reconstructed through the dismantling of the flint skin on the pavement side of the wall. The flint skin of the wall will be set aside for re-building purposes, the rubble backfill will be excavated and the core of the wall will be rebuilt using modern blockwork. The method used to replace the rubble infill of the wall will allow the flint skin of the wall which faces into the churchyard to remain in place whilst the flint skin of the retaining wall section is reconstructed.
- 2.3 The proposed works to the wall are to be undertaken due to multiple repairs which have been required to the wall over the years. The need for such works have been established following inspection and discussions between the Council's Heritage Team and specialist contractors.
- 2.4 Members should also note that in this instance listed building consent is not required. This is because the works are subject to Ecclesiastical Exemption, and instead are subject to a faculty application to the Diocese of Canterbury.

## **3. PLANNING CONSTRAINTS**

- 3.1 The site constraints are as follows:
- Grade II\* Listed Building and wall
  - Sittingbourne Conservation Area
  - Area of Archaeological Potential
  - Town Centre Boundary
  - Primary Shopping Area
  - Proposed Regeneration Area – Regen 1
  - SSSI Impact Risk Zone
  - Groundwater Source Protection Zone

## **4. POLICY AND CONSIDERATIONS**

- 4.1 National Planning Policy Framework 2021
- 4.2 Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies:

ST1	Delivering sustainable development in Swale
ST3	The Swale Settlement Strategy
ST5	The Sittingbourne Area Strategy
CP4	Requiring good design
CP8	Conserving and Enhancing the Historic Environment
DM14	General development criteria

DM32	Development involving Listed Buildings
DM33	Development affecting a Conservation Area

Sittingbourne Conservation Area Character Appraisal and Management Strategy March 2011

Planning and Development Guidelines No. 8 – Conservation Areas

## **5. LOCAL REPRESENTATIONS**

5.1 No local representations have been received.

## **6. CONSULTATIONS**

6.1 Ward Councillors – Cllr Whelan has confirmed that he has no objection to the proposal.

6.2 Historic England – Do not wish to offer advice, and suggest that advice is sought from the Council's specialist conservation and archaeological advisors.

6.3 Kent County Council Highways Team – The proposal does not meet the criteria to warrant involvement from the Highway Authority

6.4 Kent County Council Archaeology Team – Support the proposal. No archaeological measures are required in connection with the proposal. However, it would be appropriate for a photographic record to be maintained during works.

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

7.1 The applicant has provided appropriate plans and a heritage statement.

## **8. APPRAISAL**

### Principle of Development

8.1 The application site is centrally located within Sittingbourne. The application relates to the repair and restoration of an existing historic boundary wall, and the key considerations relate to the heritage impacts arising from this.

### Impact on Designated Heritage Assets

8.2 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on a local planning authority, in considering development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting, or any features of architectural or historic interest it possesses. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a requirement on a local planning authority in relation to development in a Conservation Area, to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

8.3 The NPPF also states that great weight should be given to the conservation of heritage assets, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. (para.199).

- 8.4 Policy DM32 of the Swale Local Plan 2017 states that proposals that affect a designated heritage asset, or its setting, will be permitted only where the building's special architectural or historic interest, and its setting and any features of special architectural or historic interest which it possesses, are preserved. Policy DM33 of the Swale Local Plan 2017 states that new development within, or adjacent to, a conservation area is expected to be both of an appropriate use, of a very high standard of design, and to respond positively to the grain of the historic area by preserving or enhancing the character or appearance of the place. In addition, buildings or features which make a valuable contribution to the character of a conservation area individually, or as part of a group, should be conserved, and that their demolition should only be permitted in exceptional circumstances, subject to the submission and approval of a detailed plan for redevelopment.
- 8.5 As stated above, St Michael's Church is a Grade II\* listed building. Historic records show that a church has been present on the site since the 11<sup>th</sup> century and the existing western tower is believed to have been constructed between the 13<sup>th</sup> and 15<sup>th</sup> century. The building has been subject to various alterations and additions over the years and was restored by George Dance Senior following a fire in 1762. Other restoration work is believed to have been carried out on the building by Slater and Carpenter between 1859 and 1887. The historic significance of the church lies in the extent of surviving medieval fabric and in the many architectural features of interest, which include carved stone heads to the exterior and interior, a 15<sup>th</sup> century font and tomb, and stained glass windows, (in particular, the Victorian east window of the Last Supper and the memorial window to the First World War in the south transept).
- 8.6 The boundary wall is described in the listing description as follows:
- “Churchyard wall and gate piers, also in knapped flint with stone dressings. Gate piers rise from plinths, are square in section and have pyramidal caps with gables on each face.”*
- 8.7 The listing description highlights the importance of the boundary wall as a historic feature of the site. The heritage assessment which has been provided breaks down the levels of significance and places high significance upon the evidential, historic and communal value of the church, and medium significance on its aesthetic value.
- 8.8 The Sittingbourne Conservation Area Appraisal states that ‘St Michael's Church is the principal landmark in the Conservation Area and provides visual relief to the built edges of the High Street. The knapped flint boundary wall...continues to provide enclosure to the street edge.’ The church and associated boundary wall are considered to make a significant contribution to the important views along the High Street.
- 8.9 As stated above, the proposed works to the boundary wall allow for the dismantling of the front flintwork skin to the wall panels which face on to the pavement and for their partial reconstruction using knapped flintwork set in lime mortar, which is to be set around modern blockwork to the central spine of the wall in the place of the current rubble infill. The modern blockwork will not be visible and will be used to strengthen the wall's core. The proposed works also allow for the cleaning and relaying of the redbrick, weathered concrete, and stone coping detail to the wall, and to the replacement of



stonework to the intervening piers where erosion has occurred. It is also proposed to reinstate horizontal metal railings above the churchyard wall in order to restore its historic appearance, based on archive photographs of the church which date to pre-1940, when the railings were removed and melted down for the war effort.

- 8.10 The proposed works to the boundary wall are one of several proposals being implemented by the Council in order to improve the quality of the public realm within Sittingbourne town centre. The boundary wall is in a state of disrepair and has been subject to multiple repairs. Whilst the works proposed would in part lead to the removal of sections of the wall bays, such works are designed to conserve its historic character and appearance of the wall on a long-term basis, in order to negate the requirements for continued short-term repairs, and to restore historic features which have been lost. The works are to be carried out by specialist contractors and are to incorporate the reuse of existing flintwork and bricks in order to retain as much of the historic fabric as possible. Any fabric which cannot be salvaged will be replaced on a like-for-like basis and the appearance of the wall will remain the same. The introduction of metal railings between the piers will restore a feature which has been lost and will reduce the potential for future damage to the wall. The proposal is considered to conserve and enhance the existing features of the wall and it will not detract from the significance of the designated heritage asset. The continued maintenance issues which have arisen due to the deterioration of the wall are considered to constitute sufficient justification for the works, which aim to preserve the long-term structural integrity and historic appearance of the wall.
- 8.11 The repair and restoration of the boundary wall will preserve an important historic feature within the Conservation Area, which will help to conserve the historic views along the high street and the scenic quality of the area. The installation of railings between the piers will reintroduce a traditional feature to the wall which will add to the sense of enclosure along the high street. The use of historically appropriate materials will enhance the existing character of the wall.
- 8.12 The Council's Conservation Officer has raised no objection to the proposed works, and supports the proposal, subject to conditions. Likewise, Historic England raise no objection to the proposal.
- 8.13 Taking the above into account, although the works proposed would involve some demolition, the reconstruction methods proposed are appropriate and I consider that the development would preserve and enhance this heritage asset and would comply with national and local policy.

#### Impact on Visual Amenity

- 8.14 Policy CP4 of the Swale Local Plan 2017 requires development proposals to be of high-quality design and to be in keeping with the character of the area. It states that particular regard should be paid to the scale, height, materials, detailing, mass, bulk, articulation and site coverage of any future proposals.
- 8.15 The proposed repair works to the boundary wall will improve the appearance of the wall whilst retaining its existing character. The proposed railings are modest in scale and their traditional character will complement the existing built form on the site. The

proposed works are considered to be acceptable from a design perspective and wider streetscene perspective.

#### Impact on Neighbouring Amenity

- 8.16 Policy DM14 states that any new proposed developments should not cause significant harm to the amenities of surrounding uses or areas and due consideration will be given to the impact of the proposed development upon neighbouring properties. Any new proposed schemes should not result in significant overshadowing through a loss of daylight or sunlight, in an unreasonable loss of privacy, in an unreasonable loss of outlook or in excessive noise or odour pollution.
- 8.17 Owing to the nature of the proposed works and the site location, the proposals would not impact neighbouring amenity in a negative manner.

#### Highways

Owing to the location of the boundary wall, which acts as a retaining wall between the churchyard and the pavement, the proposed repair works have the potential to impact pedestrian access along the High Street for the duration of the works. An informative will be added to any future consent to advise that consent may be required from Kent County Council for any likely obstructions in this regard.

#### Other Matters

- 8.18 Archaeology – The application site is located in an area of archaeological potential. The Kent County Council Archaeology team have been consulted and have confirmed that no archaeological measures are required. However, they have recommended that a photographic record should be maintained during the construction phase of the development. This will be secured via condition.

### **9. CONCLUSION**

- 9.1 The development proposal would preserve and enhance a designated heritage asset and no adverse planning impacts have been identified. On this basis, the proposal is in accordance with the Local Plan and the NPPF.

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

#### **CONDITIONS**

- (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 strict accordance with the following approved plans and documents:

2021-AR-07-200, Boundary wall plan, 2021-AR-07-201 Rev A, Red edged site location plan, Heritage Statement, Section 3 Specification document.

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

- (3) Sample sections of the metal railings and the two different types of supporting scroll brackets to be used (all in their proposed proprietary black paint finish) shall be submitted to and approved in writing by the Local Planning Authority prior to the installation of the railing element to the wall. The development shall be carried out in accordance with the approved details.

Reason: In the interest of protecting and preserving the integrity of the designated heritage asset.

- (4) Drawn (sectional) details, a written specification and/or a practical trial demonstration of the specific method (and materials used) in the fixing of the metal rail to the wall shall be submitted to and approved in writing by the Local Planning Authority prior to the installation of the railing element to the wall. The development shall be carried out in accordance with the approved details.

Reason: In the interest of protecting and preserving the integrity of the designated heritage asset.

- (5) No more than a two metre length of wall shall be removed until a sample panel of the combined inner blockwork spine wall and flintwork face has been erected for inspection on site, and no further development shall take place until such details have been approved in writing by the Local Planning Authority. The vertical sample panel (to be erected following the removal of the existing flintwork face and rubble core) shall be of not less than 1m<sup>2</sup> in vertical face area, and shall show the heritage lime-based mortar mix to be used (which shall also be confirmed in writing by the contractor at the time of the site inspection) and shall show the specific pointing form/profile to be used. The development shall be carried out in accordance with the approved details.

Reason: In the interest of protecting and preserving the integrity of the designated heritage asset.

- (6) No development shall be commenced until a sample section of replacement stone, replacement knapped flints and replacement red bricks to be used have been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interest of protecting and preserving the integrity of the designated heritage asset.

- (7) A photographic record shall be maintained by an archaeologist approved by the Local Planning Authority during the removal / excavation of any parts of the existing wall so that any items of interest and finds are recorded. The development shall not commence until details of a scheme to provide such a photographic record 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: To enable the recording of any items of historical or archaeological interest.

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

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2021 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.

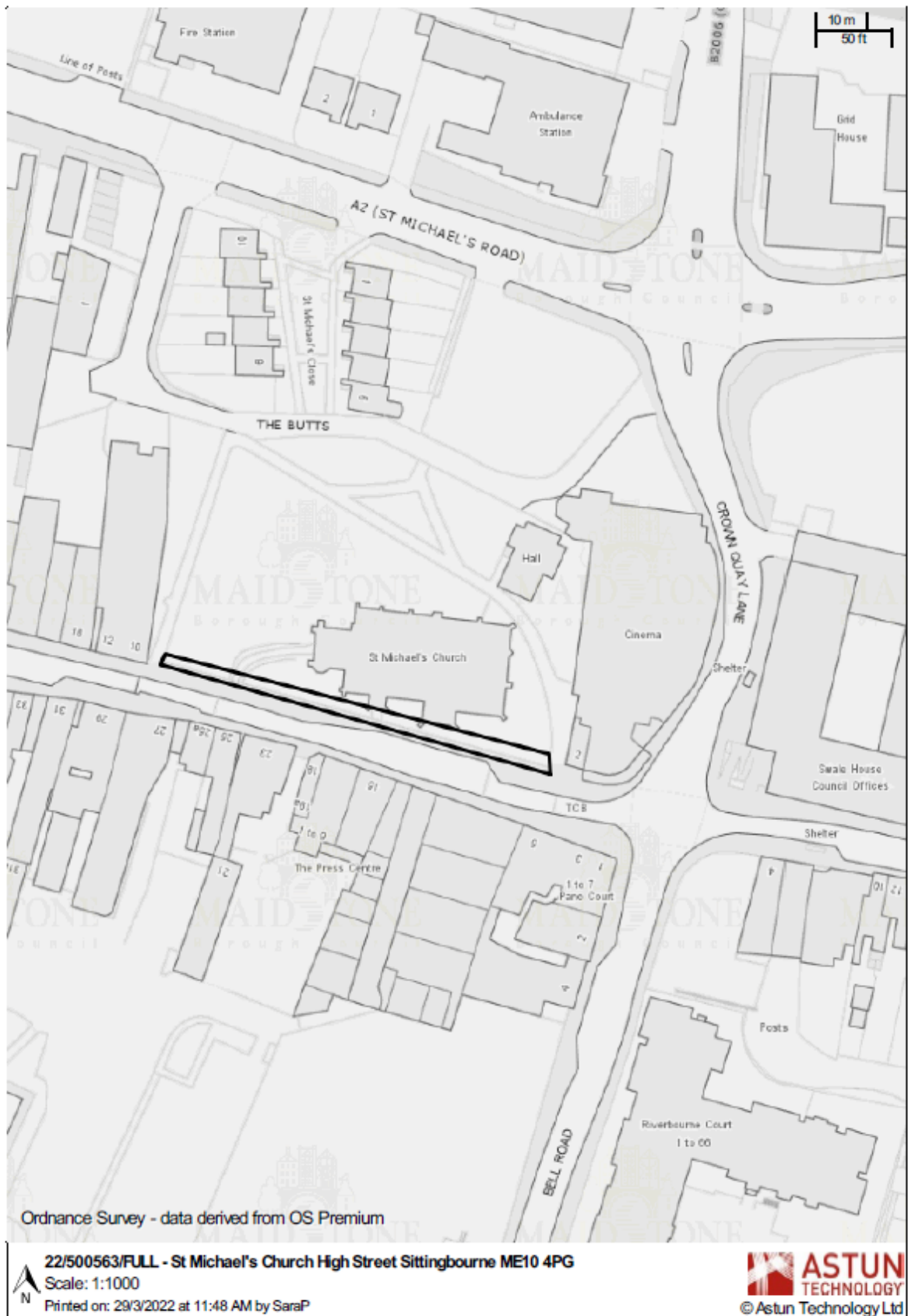
The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

### **INFORMATIVE**

(1) Please note that any obstructions to the highway will require the consent of Kent County Council. The applicant is advised to contact them in advance of any works commencing 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.



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<b>2.5 REFERENCE NO - 20/502715/OUT</b>		
<b>APPLICATION PROPOSAL</b> Outline application for the redevelopment of the site for residential use (All matters reserved).		
<b>ADDRESS</b> Bobbing Car Breakers, Sheppey Way, Bobbing, Sittingbourne, Kent, ME9 8QX		
<b>RECOMMENDATION</b> Grant subject to conditions and Section 106 agreement.		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The proposal development would result in benefits to the local environment in terms of landscaping, ecology and improved setting of the designated heritage asset. The proposal would make efficient use of a brownfield site and provide much needed housing, a proportion of which would be affordable. The benefits of the proposal would demonstrably outweigh the limited harm associated with the site's location in the open countryside.		
<b>REASON FOR REFERRAL TO COMMITTEE:</b> Parish Council objection		
<b>WARD</b> Bobbing, Iwade, and Lower Halstow	<b>PARISH/TOWN COUNCIL</b> Bobbing	<b>APPLICANT</b> S & P Motors <b>AGENT</b> Peter Court
<b>DECISION DUE DATE</b> 23/09/2020	<b>PUBLICITY EXPIRY DATE</b> 14/07/2021	

**Relevant Planning History**

19/500837/OUT

Outline application for the redevelopment of the site for residential use (All Matters Reserved).

The indicative layout suggested 26 dwellings would be delivered.

Refused Decision Date: 28.06.2019

**1. DESCRIPTION OF SITE**

- 1.1 The application site is located outside of a defined settlement. Sittingbourne sits to the east of the site by approximately 0.35km separated by the A249. The site has a closer relationship with the settlement of Iwade due to the access arrangements. Iwade is located to the north of the site by approximately 0.5km to the southern edge of the village.
- 1.2 Currently the site is used for commercial purposes operating as a car breakers yard with associated employment. The services offered include car breakers, tyre refurbishment, and parts/vehicle sales. The site contains a large degree of paraphernalia which is mainly comprised of stacked vehicles.
- 1.3 A number of single storey outbuildings are also located on the site mainly located to the eastern frontage slightly set back from the road. The buildings extend across the site frontage in a south/north trajectory. One of the buildings is located to the northern boundary to towards the rear of the site.
- 1.4 To the south of the application site a two-storey building with commercial/office building separates the site from a Grade 2 listed building (Pheasant Farm) which has a residential

use. To the north of the site a detached residential property is located, the dwelling is a chalet bungalow. To the west the open countryside extends comprised mainly of fields in an irregular pattern.

- 1.5 The application site is located within the 6km buffer zone of the Swale Special Protection Area (SPA). To the west of the site an allocated countryside gap extends in a north south trajectory separating Sittingbourne from the countryside to the west.

The site area is 0.98 hectares.

## **2. PROPOSAL**

- 2.1 The proposal seeks Outline Planning Consent for the redevelopment of the site for residential use with all matters reserved for future consideration.
- 2.2 Details of the access, layout, appearance, scale, and landscaping would be sought at reserved matters stage. The indicative plans have been submitted which show the site would be redeveloped to provide up to 16 residential units. The redevelopment of the site would result in the loss of the existing car breakers yard and demolition of the existing outbuildings.
- 2.3 The indicative site plan indicates that the proposal would be accessed via a single access point. The plan illustrates a mix of flat blocks, terraces, two semi-detached dwellings, and two detached units. No information regarding the number of bedrooms, elevations or floor plans have been provided. Sketch images indicate a mainly two storey development which has an informal rural pattern on development.
- 2.4 The planning statement has indicated that the site would provide a full quota of affordable units (40%).

## **3. PLANNING CONSTRAINTS**

- Outside of the Settlement Boundary,
- Grade 2 Listed Building located to the south of the site (Pheasant Farmhouse),
- Adjacent to, but outside, the Important Local Countryside Gap (DM25) located to the east of the site,
- Special Protection Area (SPA) 6km buffer zone,
- Brickearth – Swale areas.

## **4. POLICY AND CONSIDERATIONS**

- 4.1 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG)
- 4.2 Development Plan: ST 1(Delivering sustainable development), ST 3(Settlement strategy), ST 4(Development targets), ST 5(Sittingbourne area strategy), CP 1(Building a strong economy), CP 2(Promoting a strong economy), CP 3 (Delivering a wide range of home), CP 4(Requiring good design), DM 3(The rural economy), DM 6(Managing



transport demand and impact), DM 7(Vehicle parking), DM 14(General development criteria), DM 19(Sustainable design and construction), DM 21(Water, flooding and drainage), DM 24(Conserving and enhancing the landscape), DM25 (Countryside gap), DM 28(Biodiversity), DM 29(Woodland, trees and hedges), DM 32(Development involving listed buildings) of Bearing Fruits 2031: The Swale Borough Local Plan 2017.

- 4.3 Supplementary Planning Document (SPD): ‘Swale Landscape Character and Biodiversity Appraisal 2011’, ‘Swale Borough Council Parking Standards Supplementary Planning Document’, Kent Minerals and Waste Local Plan 2013-30.

## 5. LOCAL REPRESENTATIONS

- 5.1 4 letters of support have been received. A summary of the points raised in the letters of support is set out below:

- The existing car breakers yard has large commercial buildings a change of use would improve the outlook from the Farmhouse considerably,
- Traffic from the car breakers yard can be an issue for the business located adjacent to the site (Waller Associates Limited. Vehicles parking very close to the driveway and causing risk to those pulling out of the premises of the adjacent business. The proposed use would alleviate this problem.
- The proposal would involve decontamination of the lad which would benefit the environment,
- Good use of brownfield site providing much needed housing to Sittingbourne,
- Development would hopefully be allowed under permitted development under the governments changes to planning laws,
- The proposal would enhance the environment around the Grade II Listed Building and provide better outlook form this property,
- Change of use would alleviate the number of vehicles that park on the main road,
- Some alleviation to noise as a result of the change of use

- 5.2 One objection has been received. A summary of the points raised in the objections is set out below:

- “No more housing in Swale”.

## 6. CONSULTATIONS

- 6.1 Bobbing Parish Council – ‘Although the number of properties has decreased, Bobbing Parish Council still has concerns that the density will actually increase when a full planning application is submitted. Further concerns are increased traffic, the impact on the strategic gap between the settlements of Bobbing and Iwade and that this is unsustainable development; public transport is almost non-existent, and residents will be car dependent’.

6.2 Affordable Housing Manager – *‘In accordance with Swale’s Local Plan and because this development is located in Bobbing, 40% of the dwellings should be delivered as affordable housing (7 homes), with the tenure split to be 6 affordable rented homes (90%) and 1 shared ownership home (10%). I note from the Indicative Site Layout, that 7 homes have already been noted as affordable but with no differentiation between tenures. The affordable homes offered should also be a reasonable and proportionate mix to the open market homes.*

- *I am happy to accept the location of the affordable homes on the development site.*
- *I can confirm that there is a need for all types and sizes of affordable housing in the Bobbing and Sittingbourne area, including wheelchair adapted housing and for this reason and because all of the units appear to be family sized homes, I would recommend that they are all delivered to M4(2) standard.*
- *Please also note that due to the small number of affordable homes due on this site, RP’s may be reluctant to come forward and accept the seven homes’.*

6.3 SBC Economic Development – *‘I’ve had a look at the report, which in itself provides a narrative but limited detail in terms of the marketing that was undertaken or about the viability issues about redevelopment. I am taking the statement that existing building are at the end of their life, at face value having looked at it on street view and given its age and length of occupation by the existing user.*

*The parallels with the Floplast site are hard to dispute and this site does face the same access issues and is away from the ‘mainstream’ employment sites which will impact on any potential values. As such I strongly suspect that they are right about the viability of redevelopment on the site.*

*I’m not sure under whose jurisdiction car breaking operations fall in terms of EH and safety, but just wondered whether it’s worth checking with EH about whether legislative requirements have changed in recent years, which has placed pressure on smaller sites in this use, as I have no way of knowing whether it is too small for the current market as stated in the document? Just a thought’.*

6.4 Natural England – 1<sup>st</sup> Comment – *‘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.*

*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(s). However, our advice is that this proposed development, and the application of these measures to avoid or reduce the likely harmful effects from it, may need to be formally checked and confirmed by your Authority, as the competent authority, via an appropriate assessment in view of the [European Site’s conservation objectives](#) and in accordance with the Conservation of Habitats & Species Regulations 2017.*

*This is because Natural England notes that the recent [People Over Wind Ruling](#) by the Court of Justice of the European Union concluded that, when interpreting article 6(3) of*

*the Habitats Directive, it is not appropriate when determining whether or not a plan or project is likely to have a significant effect on a site and requires an appropriate assessment, to take account of measures intended to avoid or reduce the harmful effects of the plan or project on that site. The ruling also concluded that such measures can however be considered during an appropriate assessment to determine whether a plan or project will have an adverse effect on the integrity of the European site. Your Authority should have regard to this and may wish to seek its own legal advice to fully understand the implications of this ruling in this context.*

*Natural England advises that it is a matter for your Authority to decide whether an appropriate assessment of this proposal is necessary in light of this ruling. In accordance with the Conservation of Habitats & Species Regulations 2017, Natural England must be consulted on any appropriate assessment your Authority may decide to make.*

*Natural England has not assessed this application for impacts on protected species. Natural England has published [Standing Advice](#) which you can use to assess impacts on protected species, or you may wish to consult your own ecology services for advice.*

*Natural England and the Forestry Commission have also published standing advice on [ancient woodland and veteran trees](#) which you can use to assess any impacts on ancient woodland.*

*We recommend referring to our SSSI Impact Risk Zones (available on [Magic](#) and as a downloadable [dataset](#)) prior to consultation with Natural England. Further guidance on when to consult Natural England on planning and development proposals is available on gov.uk at <https://www.gov.uk/guidance/local-planning-authorities-get-environmental-advice>.*

*2<sup>nd</sup> comment – ‘Natural England has previously commented on this proposal and made comments to the authority in our letter dated 08 July 2020 (Our Ref: 320425).*

*The advice provided in our previous response applies equally to this amendment.*

*The proposed amendments to the original application are unlikely to have significantly different impacts on the natural environment than the original proposal.*

*Should the proposal be amended in a way which **significantly** affects its impact on the natural environment then, in accordance with Section 4 of the Natural Environment and Rural Communities Act 2006, Natural England should be consulted again. Before sending us the amended consultation, please assess whether the changes proposed will materially affect any of the advice we have previously offered. If they are unlikely to do so, please do not re-consult us’.*

- 6.5 KCC Minerals and Waste – 1<sup>st</sup> Comment – ‘Thank you for your email of the 24th June 2020. Having considered the details submitted with the application the County Council has the following matters it wishes to draw to your attention.

*The proposal has both land-won mineral and waste management facility safeguarding implications. The two matters are detailed separately below:*

**Land-won Mineral Safeguarding**

*The site has the safeguarded mineral Brickearth. Given that the area has been used for end of life vehicle dismantling for over 30 years with a hardened surface it is questionable if the brickearth material are likely to be economic, also the area itself is limited thus any prior extraction ahead of redevelopment of the site may not be economic in quantitative terms. However, the applicant should provide a Minerals Assessment (MA) that would assess these matters. If it is reasonable to conclude that there are no viable economic minerals at the site or that re-development of the land without prior extraction is justified the MA should demonstrate that it is in accordance with one or other of the exemption criteria as set out in Policy DM 7: Safeguarding Mineral Resources of the Kent Minerals and waste Local Plan 2013-30.*

**Waste Management Facility Safeguarding**

*The existing use of the site is a safeguarded waste management facility, for end of life vehicle (ELV) dismantling. Policy CSW 16: Safeguarding of Existing Waste Management Facilities of the Kent Minerals and waste Local Plan 2013-30 safeguards such sites from re-development to non-waste uses. The applicant should prepare and submit an Infrastructure assessment (IA) if it is to be argued that the loss of the facility is justified. The exemption criterion (5) of Policy DM 8: Safeguarding Minerals Management, Transportation, Production & Waste Management Facilities of the Kent Minerals and waste Local Plan 2013-30 allows for the exemption from the presumption to safeguard to be justified on economic non-viability grounds. Therefore, if this is advanced as an exemption justification Swale Borough Council will have to be satisfied that this has been objectively demonstrated. With a demonstration that the facility cannot be made to be viable for further ELV waste management.*

*Given that the submission to date is lacking the necessary information to address the above safeguarding matters the County Council objects to the application at this time’.*

*2<sup>nd</sup> comment - I can confirm that I have reviewed the information provided by Peter Court Associates regarding both the mineral safeguarding and waste facility safeguarding implications of the proposed redevelopment of Bobbing car Breakers.*

*The area of the site is limited (under 1 ha) and has been partially disturbed by the placement of a membrane, that and given the length of time the site has been used for a end of life vehicle dismantler (over 30 years) is persuasive evidence that any land won minerals have been disturbed and/or contaminated. Therefore, the potential for any useable brickearth or its viable prior extraction is so low that it can effectively be discounted. The County Council considers that on the evidence provided the balance of probability is such that exemption criterion (1) or (2) of Policy DM 7 can be invoked.*

*With regard to the safeguarding of the was facility Peter Court Associates states:*

*“I am informed that that the Environment Agency has sought to shut down my client’s breakers yard for the reasons, of alleged lack of membrane over part of the site. However, due to the very limited size of the site, it is simply uneconomic for any owner to undertake such works and effectively re-build the entire operation. Indeed, and as set out in the Employment Land Report by Sibley Pares Chartered Surveyors that*

*accompanied the planning application, no operator was interested in acquiring the site as it was too small to be economic for its existing use. The minimum size they required was three ha (seven acres.) Finally, it should be pointed out that the Environment Agency has not objected to the application.”*

*The County Council considers that this additional information adequately demonstrates that the applicant has attempted to retain this safeguarded waste facility, despite difficulties in meeting modern environmental pollution control legislation as enforced by the Environment Agency. This has proved to be not possible given the site lacks sufficient space to justify the capital investment to meet these modern standards. In short, the continued operation of the site is not viable, and cannot be made so. Therefore, the exemption criterion (5) of Policy DM 7 can be considered to have been met.*

*I hope the above will be useful in the determination of this application. Do not hesitate to contact me if you wish to discuss any matters further’.*

- 6.6 KCC Biodiversity Officer – 1<sup>st</sup> comment – ‘No ecological information has been submitted with this application. As a result of reviewing the data we have available to us (including aerial photos and biological records) and the information submitted with the planning application, we advise that current photos of the site must be submitted to enable us to consider if there is a need for ecological information to be submitted.

*The majority of the site is hard standing but there is a number of buildings proposed for demolition and therefore there is a need to consider if they contain suitable features to be used by roosting bats. The site is surrounded by a mature hedgerow (which we assume are to be retained) and therefore providing opportunities for bats to access the site. We require current photos of the buildings proposed for demolition to be submitted to enable us to consider if there is a need for a preliminary ecological appraisal (PEA) to be carried out.*

*If required, the PEA will assess the habitats and features within and around the site and identify if there is a need for further ecological surveys to assess ecological value and/or confirm protected species presence/likely absence. The PEA report, OR, if further surveys are recommended, an Ecological Impact Assessment (EclA) report, detailing all surveys and outcomes, will be required to be submitted as part the planning application.*

*This is in accordance with paragraph 99 of ODPM 06/2005 which states: “it is essential that the presence or otherwise of protected species and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision”. An EclA is a process of identifying, quantifying and evaluating the potential effects of development on habitats, species and ecosystems, so providing all ecological survey information alongside any necessary avoidance, mitigation and compensation proposals within one document.*

### **Designated Sites**

*The development includes proposals for new dwellings within the zone of influence (6km) of The Swale Special Protection Area (SPA) and Wetland of International*

*Importance under the Ramsar Convention (Ramsar Site). Swale Borough Council will need to ensure that the proposals fully adhere to the agreed approach within the North Kent Strategic Access Management and Monitoring Strategy (SAMMS) to mitigate for additional recreational impacts on the designated sites and to ensure that adequate means are in place to secure the mitigation before first occupation.*

*A recent decision from the Court of Justice of the European Union has detailed that mitigation measures cannot be taken into account when carrying out a screening assessment to decide whether a full ‘appropriate assessment’ is needed under the Habitats Directive. Therefore, we advise that due to the need for the application to contribute to the North Kent SAMMS there is a need for an appropriate assessment to be carried out as part of this application’.*

*2<sup>nd</sup> Comment – ‘We have reviewed the Ecological Appraisal, including a bat emergence survey, and we are satisfied that sufficient ecological information has been submitted to determine the planning application.*

*The submitted survey is now nearly 2 years old but due to the habitats on site we are satisfied that the conclusions are likely still to be valid.*

*We are satisfied with the conclusions that the proposed development site has limited potential to be used by protected/notable species and there is no requirement for a detailed mitigation strategy to be produced as part of this application.*

*The report has detailed that there is some potential for the site to be used by commuting badger and hedgehog and breeding birds may nest within the site but we are satisfied that impacts on these species can be avoided through the implementation of the precautionary mitigation detailed within Section 9 of the report. We advise that we don’t require a specific condition requiring the implementation of the precautionary mitigation but instead recommend that it is included within the construction management plan.*

*We advise that the condition for the construction management plan must specifically require the inclusion of the precautionary mitigation detailed within section 9 of the Ecological Appraisal; Native Ecology; September 2018.*

### **Lighting**

*The bat emergence survey recorded low numbers of common pipistrelle bats and noctule foraging/commuting within the site and artificial lighting can negatively impact bats. Therefore we recommend that any lighting condition requires the lighting plan to demonstrate the recommendations within the Bats and artificial lighting in the UK document (Bat Conservation Trust and Institution of Lighting Professionals) have been implemented. <https://cdn.bats.org.uk/pdf/Resources/ilp-guidance-note-8-bats-and-artificial-lighting-compressed.pdf?mtime=20181113114229>*

### **Designated Sites**

*The development includes proposals for new dwellings within the zone of influence (6km) of The Swale and Medway Estuary and Marshes Special Protection Area (SPA) and Wetland of International Importance under the Ramsar Convention (Ramsar Site). Swale Borough Council will need to ensure that the proposals fully adhere to the agreed*

*approach within the North Kent Strategic Access Management and Monitoring Strategy (SAMMS) to mitigate for additional recreational impacts on the designated sites and to ensure that adequate means are in place to secure the mitigation before first occupation.*

*A recent decision from the Court of Justice of the European Union has detailed that mitigation measures cannot be taken into account when carrying out a screening assessment to decide whether a full ‘appropriate assessment’ is needed under the Habitats Directive. Therefore, we advise that due to the need for the application to contribute to the North Kent SAMMS there is a need for an appropriate assessment to be carried out as part of this application.*

### **Ecological Enhancements**

*One of the principles of the National Planning Policy Framework is that “opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity”. The ecological appraisal has made recommendations to enhance the site but they are not reflected within the site plan. We advise that if planning permission is granted a condition is included requiring the submission of an ecological enhancement plan – suggested condition wording at the end of the report.*

### **Condition recommendations**

#### *Precautionary Ecological Mitigation*

*The precautionary mitigation within Section 9 of the Ecological Appraisal (Native Ecology; September 2018) must be included within Construction Management Plan to ensure it is implemented.*

#### *Lighting*

*The lighting condition requires the lighting plan to demonstrate the recommendations within the Bats and artificial lighting in the UK document (Bat Conservation Trust and Institution of Lighting Professionals) have been implemented. <https://cdn.bats.org.uk/pdf/Resources/ilp-guidance-note-8-bats-and-artificial-lighting-compressed.pdf?mtime=20181113114229>*

#### *Ecological Enhancements*

*Prior to occupation an ecological enhancement plan, must be submitted for approval in writing by the LPA, detailing what ecological enhancements will be incorporated into the site. The plans must be incorporated into the site as detailed in the approved plan’.*

*3<sup>rd</sup> comments – ‘Our comments dated 4th August 2020 are still valid – we have no further comments to make’.*

*Environment Agency – 1<sup>st</sup> response – ‘Thank you for your consultation, which we received on 24 June 2020. Our previous comments apply. I have attached them below for your convenience.*

No objection is raised subject to the imposition of four conditions. Members will note conditions 19, 20, 21, 22, 24, 25, 26 below. Some of the conditions are also reflective of Environmental Health condition requests.

*Without these conditions we may object to the proposal in line with paragraph 170 of the National Planning Policy Framework because it cannot be guaranteed that the development will cause or be put at unacceptable risk from, or be adversely affected by, unacceptable levels of water pollution.*

**Site specific information**

*The previous use of the proposed development site as a car breakers yard presents a high risk of residual contamination that could be mobilised during construction to pollute controlled waters. Controlled waters are sensitive in this location because although the proposed development site is located upon unproductive strata, local water courses/ditches could be impacted by release of contamination during construction works.*

*The reports submitted in support of this planning application provides us with confidence that it will be possible to suitably manage the risk posed to controlled waters by this development. Further detailed information will however be required before built development is undertaken. It is our opinion that it would place an unreasonable burden on the developer to ask for more detailed information prior to the granting of planning permission but respect that this is a decision for the Local Planning Authority.*

The EA have also requested an informative, which is included below.

2<sup>nd</sup> Comment – *‘Thank you for consulting us on the above application. We don’t have any further comments to add to our previous response dated 8 July 2020’.*

3<sup>rd</sup> Comment – *‘Thank you for your consultation. **We have no objection to the proposal subject to conditions.*** These are included below.

- 6.7 Environment Agency – 1<sup>st</sup> response – ‘Thank you for your consultation, which we received on 24 June 2020. Our previous comments apply. I have attached them below for your convenience.

No objection is raised subject to the imposition of four conditions. Members will note conditions 19, 20, 21, 22, 24, 25, 26 below. Some of the conditions are also reflective of Environmental Health condition requests.

Without these conditions we may object to the proposal in line with paragraph 170 of the National Planning Policy Framework because it cannot be guaranteed that the development will cause or be put at unacceptable risk from, or be adversely affected by, unacceptable levels of water pollution.

Site specific information

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proposed development site is located upon unproductive strata, local water courses/ditches could be impacted by release of contamination during construction works.

The reports submitted in support of this planning application provides us with confidence that it will be possible to suitably manage the risk posed to controlled waters by this development. Further detailed information will however be required before built development is undertaken. It is our opinion that it would place an unreasonable burden on the developer to ask for more detailed information prior to the granting of planning permission but respect that this is a decision for the Local Planning Authority.

The EA have also requested an informative, which is included below.

2<sup>nd</sup> Comment – ‘Thank you for consulting us on the above application. We don't have any further comments to add to our previous response dated 8 July 2020’.

3<sup>rd</sup> Comment – ‘Thank you for your consultation. We have no objection to the proposal subject to conditions. These are included below.’

6.8 KCC Highways – 1<sup>st</sup> Comment – *‘I refer to the above planning application and would comment as follows with respect to highway matters:-*

*The application is made in Outline form, with all matters reserved, including access, although the submitted indicative layout plan does suggest what form the access to the site will take. As opposed to the previous application on this site that was refused, reference 19/500837/OUT, the indicative plan now proposes just the single vehicular access point serving the whole development, with all dwellings subsequently accessed directly from the internal road layout. This would address the concern previously raised regarding some houses having direct vehicular access onto Sheppey Way without adequate turning space to allow vehicles to enter and exit the classified road in a forward gear, and this would also reduce the likelihood of on-street parking occurring on that section of the existing highway.*

*I am satisfied that the level of vehicular activity associated with a proposed development of 16 dwellings would not be considered severe, under the terms of the NPPF, particularly when compared against the current commercial uses on the site as a car breakers and vehicle recovery business. The submitted transport statement has referenced a development of up to 16 dwellings, as per the indicative layout, but I note that the application description and the text within the planning statement merely seek residential uses. The Highway Authority response assumes a development of 16 dwellings, so I would ask that any approval of this application does restrict the amount to no more than that figure.*

*The consolidation of the exiting accesses along the site frontage would reduce the proliferation of access points that currently dominates the highway environment. This will focus all the movements associated with the site into a single point and decrease the opportunity for conflicting turning movements. Whilst the transport statement suggests that the sightlines calculated from the speed survey data would be available, I also appreciate that the proposed access location is already used in connection with the commercial operations, and the proposed use is likely to generate less activity. The access location and sightlines are therefore considered acceptable, although the design of the junction itself would need to be refined at the reserved matters stage, as I consider that the initial access road width should be 5.5m in this instance instead of the 4.8m*

*indicated. As all matters are reserved, this amendment would not be required as part of the current application.*

*In order to provide pedestrian and cycle links from the development to local amenities and the wider community, a footway is proposed along the site frontage, extending south across the front of Pheasants Farmhouse, and the continuing further south on the eastern side of Sheppey Way to connect to the existing footway and Bramblefield Lane. This would provide a pedestrian route of approximately 1km to access the shops and train station in Kemsley. However, although the proposals suggest the provision of an on-carriageway cycle route along Sheppey Way by means of advisory cycle lanes, this does not align with the existing aspirations of this Authority to provide an off-carriageway footway/cycleway between Bobbing and Iwade. In order to accommodate this, it will be expected that the proposed footway should be designed as a shared footway/cycleway measuring a minimum of 3m wide.*

*Although the site is just within the 400m walking distance of existing northbound bus stops, it is located 550m from the southbound bus stop. It would therefore be appropriate to consider the provision of additional stops that would be more convenient to serve this development.*

*Consequently, I would have no objection to the proposed development and confirm that provided the following requirements are secured by condition or planning obligation, then I would raise no objection on behalf of the local highway authority:-*

The conditions and informatives requested by KCC Highways and Transportation have been included below, and in that regards Members will note conditions (8, 9, 12, 13, 14, 15, 16), and informative 1.

6.9 Southern Water – 1<sup>st</sup> Comment - *Please see the attached extract from Southern Water records showing the approximate position of our water mains in the immediate vicinity of the development site. The exact position of the public assets must be determined on site by the applicant.*

- The public water main requires a clearance of 6 metres on either side of the water main to protect it from construction works and to allow for future access for maintenance.
- No excavation, mounding or tree planting should be carried out within 6 metres of the external edge of the public water main without consent from Southern Water.
- No new soakaways, swales, ponds, watercourses or any other surface water retaining or conveying features should be located within 5 metres of a public water main.
- All existing infrastructure, including protective coatings and cathodic protection, should be protected during the course of construction works.

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.

Southern Water requires a formal application for a connection to the public foul sewer to be made by the applicant or developer. We request that should this application receive planning approval, the following informative is attached to the consent:

A formal application for connection to the public sewerage system is required in order to service this development, please read our New Connections Services Charging

Arrangements documents which is available to read on our website via the following link: [southernwater.co.uk/developing-building/connection-charging-arrangements](https://southernwater.co.uk/developing-building/connection-charging-arrangements) Our initial investigations indicate that there are no public surface water sewers in the area to serve this development. Alternative means of draining surface water from this development are required. This should not involve disposal to a public foul sewer. The planning application form makes reference to drainage using Sustainable Urban Drainage Systems (SuDS).

Under certain circumstances SuDS will be adopted by Southern Water should this be requested by the developer. Where SuDS form part of a continuous sewer system, and are not an isolated end of pipe SuDs component, adoption will be considered if such systems comply with the latest Sewers for Adoption (Appendix C) and CIRIA guidance available here: [water.org.uk/sewerage-sector-guidance-approved-documents/ciria.org/Memberships/The\\_SuDS\\_Manual\\_C753\\_Chapters.aspx](https://water.org.uk/sewerage-sector-guidance-approved-documents/ciria.org/Memberships/The_SuDS_Manual_C753_Chapters.aspx)

Where SuDS rely upon facilities which are not adoptable by sewerage undertakers the applicant will need to ensure that arrangements exist for the long-term maintenance of the SuDS facilities. It is critical that the effectiveness of these systems is maintained in perpetuity. Good management will avoid flooding from the proposed surface water system, which may result in the inundation of the foul sewerage system. Thus, where a SuDS scheme is to be implemented, the drainage details submitted to the Local Planning Authority should:

- Specify the responsibilities of each party for the implementation of the SuDS scheme.
- Specify a timetable for implementation.
- Provide a management and maintenance plan for the lifetime of the development.

This should include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The Council's Building Control officers or technical staff should be asked to comment on the adequacy of soakaways to dispose of surface water from the proposed development. The consent of the Highway Authority will be required for the proposed discharge to the Highway drain.

We request that should this application receive planning approval, the following condition is attached to the consent: "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."

This initial assessment does not prejudice any future assessment or commit to any adoption agreements under Section 104 of the Water Industry Act 1991. Please note that non-compliance with Sewers for Adoption standards will preclude future adoption of the foul and surface water sewerage network on site. The design of drainage should ensure that no groundwater or land drainage is to enter public sewers.

*2<sup>nd</sup> comment - Further to our previous response dated 14/07/2020 and additional information provided by the developer regarding on-site drainage. Southern Water have following comments.*

*At Planning Consultation stage, we refer to the interests of other Parties with regards to Surface Water disposal principles including the Environment Agency and Lead Local Flood Authority (LLFA).*

*If connection to a foul sewer proves to be the only viable means of disposal and should we have no option but to accept such discharge, then it should be at a discharge rate set by the LLFA in consultation with Southern Water.*

*Southern Water has undertaken a desktop study of the impact that the additional foul and surface water sewerage flows from the proposed development will have on the existing public sewer network. This initial study indicates that these additional flows may lead to an increased risk of foul flooding from the sewer network. Any network reinforcement that is deemed necessary to mitigate this will be provided by Southern Water.*

*Southern Water and the Developer will need to work together in order to review if the delivery of our network reinforcement aligns with the proposed occupation of the development, as it will take time to design and deliver any such reinforcement.*

*It may be possible for some initial dwellings to connect, pending network reinforcement. Southern Water will review and advise on this following consideration of the development programme and the extent of network reinforcement required. Southern Water will carry out detailed network modelling as part of this review which may require existing flows to be monitored. This will enable us to establish the extent of any works required.*

*Southern Water endeavour to provide reinforcement within 24 months of planning consent being granted (Full or Outline) however for large developments our assessment of the timescales needed will require an allowance for the following which may result in an extension of the 24 month period:*

- Initial feasibility, detail modelling and preliminary estimates.*
- Flow monitoring (If required).*
- Detailed design, including land negotiations.*
- Construction.*

*Southern Water hence requests the following condition to be applied: Occupation of the development is to be phased and implemented to align with the delivery by Southern Water of any sewerage network reinforcement required to ensure that adequate waste water network capacity is available to adequately drain the development. All other comments in our previous response 14/07/2020 remains valid.*

*3<sup>rd</sup> comments - 'The comments in our response dated 26/05/2021 remain unchanged and valid for the additional details'.*

- 6.10 Kent Police – 1<sup>st</sup> Comment – *'We have reviewed this application in regard to Crime Prevention Through Environmental Design (CPTED) and in accordance with the National Planning Policy Framework (NPPF).*

*As the application progresses, applicants/agents should consult us as local Designing out Crime Officers to address CPTED. We use details of the site, relevant crime levels/type and intelligence information to help design out the opportunity for Crime, Fear of Crime, Anti-Social Behavior (ASB), Nuisance and Conflict.*

*Secured by Design (SBD) [www.securedbydesign.com](http://www.securedbydesign.com) is the UK Police flagship initiative, to meet SBD physical security requirements, doorsets and windows must be certified by an approved independent third-party certification body e.g. (UKAS). This exceeds ADQ who require PAS 24: 2012 tested, that has been superseded. Products that are independently certificated to recognised security standards have been responsible for*

*consistently high reductions in crime as verified by numerous independent academic research studies. New development provides an opportunity to address the carbon cost of crime.*

*If this application is to be approved we require a Condition to be included to address designing out crime and show a clear audit trail for Design for Crime Prevention and Community Safety to meet our and Local Authority statutory duties under Section 17 of the Crime and Disorder Act 1998.*

*Cul-de-sacs that are short in length and not “open or leaky” by being linked to other areas by cycle routes or footpaths for example, can be very safe environments where residents can benefit from lower crime.*

- 1. Development layout to maximise natural surveillance.*
  - 2. Perimeter treatments can include densely planted hedging in certain areas of the plan.*
  - 3. Corner Properties and any ground floor bedroom windows will require defensible space.*
  - 4. Parking spaces require “active” windows so that the owners can see them.*
  - 5. Lighting to be designed to provide security without creating light pollution.*
  - 6. Doorsets and ground floor windows to meet PAS 24: 2016 certified standards.*
- We welcome a discussion with the applicant/agent about site specific designing out crime. If the points above are not addressed, they can affect the development and local policing.*

*This information is provided by Kent Police DOCO’s and refers to situational crime prevention. This advice focuses on CPTED and Community Safety with regard to this specific planning application’.*

*2<sup>nd</sup> Comment - The points below are in addition to our previous response dated 14 July 2020. We recommend;*

- Boundary treatments to be a minimum of 1.8m in height, with support beams facing inwards to prevent the creation of a climbing aid. Any rear access gates must also be lockable from both sides and positioned flush to the building line.*
- Parking spaces require surveillance from active windows i.e. living room or kitchen.*
- We generally advise external lighting be to BS5489:1:2020. Furthermore, installation of external lighting to the main entrances of all dwellings will avoid the potential for the future conflict/ nuisance caused by occupiers fitting their own lighting, whilst also reducing fear of crime and improve personal safety.*
- Doorsets and ground floor windows to meet PAS 24: 2016 certified standards or similar*

*For further guidance please see SBD Homes 2019’.*

6.11 KCC Education – *No response.*

6.12 UK Power Network – *No response.*

6.13 NHS Swale – *No response*, though as Members will be aware the NHS do not request contributions for schemes of less than 20 dwellings.

6.14 Lower Medway Drainage Board – *No response.*

6.15 Greenspaces Manager – *No response.*

6.16 Kent County Council Flood and Water Management – 1<sup>st</sup> Comment –

*Kent County Council as Lead Local Flood Authority have the following comments:*

*The application is for the construction of 16 residential dwellings on approximately 1ha brownfield site. The application is supported by a Drainage Strategy report (Herrington, June 2020). The means for the discharge of surface water runoff is not conclusive, however the report outlines a number of proposals for the discharge of surface water runoff, namely, into existing highway drainage network or into existing foul water drainage network.*

*As the site is previously developed there is less risk associated with the uncertainty of determination of the final discharge destination. It is strongly recommended that this is ascertained before progressing to full drainage design.*

*Should your local authority be minded to grant permission for this development, we would recommend the following conditions:*

*Reserved Matters:*

*No development shall take place until final discharge of the surface water drainage from the site is determined. Sufficient evidence shall be presented to demonstrate the feasibility of the final drainage strategy (final discharge destination) including any consents that may be required from relevant authorities.*

*Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water.*

*Condition:*

*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 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 off site 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.*

*This response has been provided using the best knowledge and information submitted as part of the planning application at the time of responding and is reliant on the accuracy of that information.*

*2<sup>nd</sup> Comment - We have been contacted by the applicant for development at Bobbing Car Breakers Sheppey Way Bobbing Sittingbourne Kent, ME9 8QX in relation to planning application 20/502715/OUT that Southern Water needs confirmation of the LLFA acceptance of discharge of surface water to the foul sewer.*

*The application is for the construction of 16 residential dwellings on approximately 1ha brownfield site. The application is supported by a Drainage Strategy report (Herrington, June 2020).*

*We have previously provided a consultation response on 13 July 2020 which recommend conditions as we had some uncertainty as to the final discharge destination which could be into existing highway drainage network or into existing foul water drainage network. We had recommended conditions to confirm the final drainage destination prior to works commencing.*

*In this instance we would support surface water discharge to the foul system given the constraints on drainage infrastructure in the area and the lack of any other alternative. We understand that a new sewer will be requisitioned and therefore can be appropriately sized to accommodate surface water and foul without any exceedances. We would expect that the surface water discharge rate from the site will be restricted to greenfield runoff rates.*

*In the event that upgrades to the existing network are required, then it would be important to ascertain that this can be accommodated and when it may be delivered.*

- 6.17 Environmental Services – 1<sup>st</sup> Comment – *Apart from some extra comments concerning air quality below, I have not much to add about this proposal that has not already been raised by my colleague Julie Coxon in her email sent to the planning officer for the previous submission made under 19/500837/OUT on 25<sup>th</sup> of April 2019. These comments are still valid. I note that this proposal was refused.*

*Her comments are reproduced in full below.*

*I have no objection to this development, but recommend that any planning approval be subject to the following conditions:*

*There is a strong likelihood for contamination to be present on the site, and the desk study submitted with the application has recommended a full site investigation, to include petroleum officer enquiries regarding the status of the old filling station tanks on site. I therefore recommend the following conditions:*

*1. 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:*

*No development approved by this permission shall be commenced prior to a contaminated land assessment (and associated remediation strategy if relevant), being submitted to and approved in writing by the Local Planning Authority, comprising:*

a) *An investigation, including relevant soil, soil gas, surface and groundwater sampling, carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology and following all the recommendations contained in the Soiltec Desk Study submitted with this application.*

b) *A site investigation report detailing all investigative works and sampling on site, together with the results of analyses, risk assessment to any receptors and a proposed remediation strategy which shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment, including any controlled waters.*

2. *Before any part or agreed phase of the development is occupied, all remediation works identified in the contaminated land assessment and approved by the Local Planning Authority shall be carried out in full (or in phases as agreed in writing by the Local Planning Authority) on site under a quality assured scheme to demonstrate compliance with the proposed methodology and best practice guidance. If, during the works, contamination is encountered which has not previously been identified, then the additional contamination shall be fully assessed and an appropriate remediation scheme agreed with the District Planning Authority.*

3. *Upon completion of the works identified in the contaminated land assessment, and before any part or agreed phase of the development is occupied, a closure report shall be submitted which shall include details of the proposed remediation works with quality assurance certificates to show that the works have been carried out in accordance with the approved methodology. Details of any post-remediation 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.*

4. *Prior to the commencement of the development a Code of Construction Practice shall be submitted to and approval in writing by the Local Planning Authority. The construction of the development shall then be carried out in accordance with the approved Code of Construction Practice and BS5228 Noise Vibration and Control on Construction and Open Sites and the Control of dust from construction sites (BRE DTi Feb 2003). unless previously agreed in writing by the Local Planning Authority.*

*The code shall include:*

- *An indicative programme for carrying out the works*
- *Measures to minimise the production of dust on the site(s)*
- *Measures to minimise the noise (including vibration) generated by the construction process to include the careful selection of plant and machinery and use of noise mitigation barrier(s)*
- *Maximum noise levels expected 1 metre from the affected façade of any residential unit adjacent to the site(s)*
- *Management of traffic visiting the site(s) including temporary parking or holding areas*
- *Measures to prevent the transfer of mud and extraneous material onto the public highway*
- *Measures to manage the production of waste and to maximise the reuse of materials*



- *Measures to minimise the potential for pollution of groundwater and surface water*
- *The arrangements for public consultation and liaison during the construction works*

*5. Prior to the commencement of the development hereby approved, a scheme to demonstrate that the internal noise levels within the residential units and the external noise levels in back garden and other relevant amenity areas will conform to the standard identified by BS 8233 2014, Sound Insulation and Noise Reduction for Buildings - Code of Practice, shall be 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 occupation of the premises and be retained thereafter.*

*I understand that the site will need to be cleared and buildings demolished prior to any site investigative works. Demolition of the buildings does not appear to form part of this application, and will need to be covered by other means, such as a prior notification application or building control demolition notice. An asbestos survey should be carried out and any asbestos found removed prior to demolition. To this end, I recommend the following condition:*

*6. No asbestos associated with the demolition of the existing buildings shall remain on the site.*

*Air quality*

*The site is close to the A249 which provides not only the main noise source to the site but also a risk of significant air pollution affecting it.*

*Therefore, to be consistent with the latest Air Quality Planning Technical Guidance, an air quality assessment is required for this site, using modern and acceptable methodology describing how air pollution may affect this site with any mitigation measures required as a result of the report being included.*

*Recommendations:*

*Described above.*

*2<sup>nd</sup> Comment – ‘Air Quality Assessment – EP comments The methodology and assessment used with the Air Quality Assessment undertaken by Kairus Ltd is acceptable and complete for the development nature, size and location. The operational impacts traffic flow related impacts to receptor sites are low and with this the change of use will reduce the numbers of vehicles compared to the previous Car breakers site. The mitigation measures suggested for the construction and operational phase are adequate for this development.*

Members will note that the conditions requested are included below, and attention is drawn to conditions (23, and 32), some conditions have been covered by those requested by the Environment Agency.

6.18 KCC Economic Development – Request for contributions.

	Per ‘applicable’ House (12x)	Per ‘applicable’ Flat (x4)	Total	Project
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Primary Education	£6,800.000	£1,700.00	£88,400.00	Towards the new Primary School construction upon land off Quinton Road, NW Sittingbourne policy MU1
Primary Land	£2026.22	£506.56	£26,340.86	Towards the new Primary school site acquisition upon land off Quinton Road, NW Sittingbourne
Secondary Education	£5,176.00	£1,294.00	£67,288.00	Towards the new Secondary school site construction upon land off Quinton Road, NW Sittingbourne policy MU1
Secondary Land	£2,635.73	£658.93	34,264.53	Towards the new Secondary school site acquisition upon land off Quinton Road, NW Sittingbourne

	Per Dwelling (x16)	Total	Project
Community Learning	£16.42	£262.72	Contributions requested towards additional equipment and resources at Sittingbourne Adult Education Centre
Youth Service	£65.50	£1048.00	Contributions requested towards additional resources for the youth service in Sittingbourne
Library Bookstock	£55.45	£887.20	Contributions requested towards additional resources, services and stock for the local Library Services including the mobile Library attending Bobbing
Social Care	£146.88	£2350.08	Towards Specialist Care accommodation in Swale Borough
	All homes built as Wheelchair Accessible & Adaptable Dwellings in accordance with Building Regs Part M4 (2)		
Waste	£221.92	£3,550.72	Towards MRF and additional capacity at the HWRC & WTS in Sittingbourne

Broadband	<p><b>Condition:</b> Before development commences details shall be submitted for the installation of fixed telecommunication infrastructure and High-Speed Fibre Optic (minimal internal speed of 1000mb) connections to multi point destinations and all buildings including residential, commercial and community. The infrastructure installed in accordance with the approved details during the construction of the development, capable of connection to commercial broadband providers and maintained in accordance with approved details.</p> <p><b>Reason:</b> To provide high quality digital infrastructure in new developments as required by paragraph 112 NPPF.</p>
Highways	Kent Highway Services will respond separately

I have chased up those consultees who have not responded and will update Members at the meeting.

## 7. BACKGROUND PAPERS AND PLANS

Location Plan	02098 1050 P2
Existing Site Plan	02098 1055 P3
Existing Site Elevations (Sheet 1)	02098 2001 P1
Existing Site Elevations (Sheet 2)	02098 2002 P1
Existing Site Elevations (Sheet 1)	02098 2003 P1
Existing Site Elevations (Sheet 4)	02098 2004 P1
Existing Site Elevations (Sheet 5)	02098 2005 P1
Proposed Site Layout	HMY_02098_SK_2013_P3
Sketch View Overview from Sheppey Way	HMY 02098_SK 2014_P1
Sketch View Entrance from Sheppey Way	HMY 02098_SK 2015_P1
Sketch View of Internal Courtyard	HMY 02098_SK 2016_P1
Herrington Consulting Limited Drainage Strategy (June 2020)	
Landscaping and Visual Appraisal	
Landscaping and Visual Appraisal 2-4 Assessment of Viewpoints	
Planning Design and Access Statement	
Planning Statement Appendix 1	
Planning Statement Appendix 2	
Statement of Employment	
Transport Statement	
Transport Statement Appendix 1 to 11	
Heritage Statement and Impact Assessment	
Phase 1 Environmental Study	
Project Design Guide	
Air Quality Assessment	

## 8. APPRAISAL

### Principle of Development

- 8.1 The application site is located outside of the Built-up Area boundary of Sittingbourne and Iwade. The site is considered to be located in the open countryside in accordance with policy ST 3 of the Swale Local Plan. Policy ST 3 states that proposals in the open countryside will not be permitted unless supported by national planning policy and can

demonstrate that it would contribute to protecting and where possible enhancing the setting, tranquillity and beauty of the countryside.

8.2 The application site currently operates as a car breaker yard with other associated activities. The site is covered in hardstanding and is has a number of outbuildings, and associated paraphernalia in the form of stacked vehicles and vehicle parts. The site is therefore considered to represent previously developed land (brown field) under the definition provided by the framework.

8.3 Paragraph 11 of the National Planning Policy Framework (NPPF) states that plans and decisions should apply a presumption in favour of sustainable development.

8.4 The Council's latest position indicates a demonstratable position of a 4.6-year housing supply and does not meet the minimum requirement of a 5-year housing land supply. In such situations, the NPPF advises that plans and decisions should apply a presumption in favour of sustainable development.

8.5 For decision making paragraph 11 states:

*'d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*

*i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*

*ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole'.*

8.6 As the Council cannot demonstrate a 5-year housing supply the titled balance applies, the application therefore falls to be considered under ii) as the site is not located in an protected area as defined by the Framework. The proposal needs to be considered on balance as to if it represents sustainable development.

8.7 Paragraph 80 of the NPPF states that isolated homes in the countryside should be avoided.

8.8 Paragraph 123 of the NPPF states that:

*'Local Planning authorities should take a positive approach to applications for alternative uses of land which is currently developed but not allocated for a specific purpose in the plans, where this would help to meet identified development needs. In particular they should support proposal to:*

*a) Use retail and employment land for homes in areas of high housing demand, provided this would not undermine key economic sectors or sites or the vitality and viability of town centres, and would be compatible with other policies in this Framework;...'*

8.9 Paragraph 8 of the NPPF explains that achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways:

- a) **an economic objective** – to help building a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;
- b) **a social objective** – to support strong, responsive and competitive economy, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities, health, social and cultural well-being; and
- c) **an environmental objective** – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigation and adapting to climate change, including moving to a low carbon economy.

#### *Social objective*

- 8.10 The proposal would seek to provide up to 16 residential units in accord with the indicative layout and Transport Statement. The proposal would also seek to provide a 40% affordable provision of 7 units. The provision of both market and social housing would be considered to have social benefit and is given moderate weight.
- 8.11 The proposal would see benefits in terms of additional open green space and additional landscaping. These would be considered to represent an improvement from the current status of the site. Currently the site does not operate on a 24hr basis, and the introduction of residential use would provide more natural surveillance and presence in the area. There is also a benefit for existing residents of the area as a result of the removal of the existing use, which detracts from local amenity.
- 8.12 The site is located in an isolated area and is some distance from local amenity provisions. The additional residents would likely rely upon services outside of the area due to the isolated position of the site. However, additional occupants of the area may add to the social vitality of the area.
- 8.13 The application site is approximately 0.73km to the edge of the settlement of Iwade and 1.6km to Bobbing both along the Sheppey Way. The site is also approximately 0.61km to the edge of north west Sittingbourne via a footbridge along Bramblefield Lane. The site, due to the proposed connecting footpath to Bramblefield Lane would be a short walk to Grovehurst Road which contains a small shop, surgery and pharmacy. The walk from the site to the Kelmsley train station would also be approximately 16 minutes from the site. Further, the Northwest Sittingbourne allocation proposes further amenities in the locality. Overall, the proposal is considered to have a neutral impact in regard to the social objective.

#### *Environmental objective*

- 8.14 The proposal would see the loss of the car breakers yard which likely results in pollutants to the natural environment. The replacement with residential use would see the

remediation of the land and removal of contaminants, and this would be secured by condition. Further, the site current has a low biodiversity value given the site coverage in hardstand and the end use. The proposal would offer the opportunity to introduce measures to enhance biodiversity, add landscaping (to the benefit of visual impact and landscape impact), and improve the sites contributions to the environment. These matters are given moderate positive weight.

- 8.15 The proposal is however located some distance from local amenity provisions provided in Iwade, Bobbing and at Kemsley. The proposal includes the provision of a pavement /path to connect the site to Bramblefield Lane and access to the services in Kemsley. While a degree of reliance on the car would be generated from the site, given the current use the impact would not be significant to the locality.

*Economic objective*

- 8.16 Policy DM 3 of the Swale Local Plan seeks to ensure the sustainable growth and expansion of enterprises in the rural area. The policy resists the provision of residential development where it would reduce the potential for rural employment, unless it is demonstrated that the employment use is it undesirable or unsuitable.
- 8.17 Paragraph 7.1.13 which provides associated guidance for policy DM 3 also indicates that a factor impacting the development of the rural economy is the limited availability of land and buildings. The paragraph continues to state that as a result of the limited land availability permission for residential use will only be granted where there is no demand for employment use or if they are wholly unsuitable for employment.
- 8.18 Policy CP 1 seeks to avoid proposals that would result in the diminishing of existing employment sites and allocations are appropriately located and sustainable. Paragraphs 84 and 85 of the National Planning Policy Framework also support the conservation and expansion of the rural economy, although recognising development outside of settlements should be sensitive to the surrounding area.
- 8.19 The application site is currently in active employment use as a car breakers yard (Sui Generis use). The site provides some ancillary services including tyre refurbishing and parts/vehicle sales.
- 8.20 An Employment Statement was provided with the application setting out the viability of the site. The statement drew on to two main points which have impacted the site viability and prevented the sale of the site. These relate to the size of the site and licencing/environmental impacts.
- 8.21 In accord with the statement the scale of the site is roughly half of what is required to run a business of this nature viably, with other such sites usually on plots of around 2ha. The land around the site is not available for expansion. Given the location of the site is not considered likely that permission for expansion would be looked upon favourably. Further, a number of the buildings have reached there 'end of life' and would require refurbishment. These factors have affected the attractiveness of the site in the marketplace.

- 8.22 The statement continues to set out that due to modern day Environmental Regulations make the running of the site and its viability for redevelopment for commercial purposes unviable. The Environment Agency have confirmed that the site does in places fall foul of compliance with EA Regulations.
- 8.23 The site is also located in fairly close proximity to two residential unit and in the local countryside, The re-use of the site for other purposes may therefore be difficult to secure through planning in retaining sufficient amenity and remediating the site may undermine other commercial uses of the site. The site is not allocated by the local plan and is not of a scale which would undermine the local economy.
- 8.24 The application has provided limited marketing evidence for the loss of the employment use. Further, no surveys or assessment of potential end uses on commercial vain have been submitted to support the application. However, the site is not allocated and currently results in a degree of pollution as a result of its use. The sites isolated position and need for remediation are considered against planning policy to make the site unattractive for commercial use. The loss of the employment site, when considered against the Framework as a whole is not considered harmful.
- 8.25 The construction process of the development would not be considered to have long term economic benefits. The impact of the construction process would be considered neutral. The re-use of this land for employment or residential use would require remediation of the site. The replacement of the employment use would therefore be considered desirable and the replacement with residential units would secure the site remediation.

#### *Summary*

- 8.26 The proposal is located in a somewhat isolated position which would result in reliance on private vehicular transport, though amenities at Iwade and in Sittingbourne can readily be reached using non-car travel modes. The transport statement considers the introduction of a footpath to extend down to Bramblefield Lane. The footpath would allow some access to the Kemsley area and its associated amenities. Some conditions could be imposed to mitigate this impact including requirements for sustainable energy resources on both dwellings and car charging units.
- 8.27 The proposal would see the loss of an employment use in a rural location. However, the loss is considered neutral as it results in Environmental benefits. Further, the proposal would utilise brownfield land and make efficient use of land.
- 8.28 The site is however brownfield land and is subject to contamination and provides limited benefits to the environment. The proposed re-use for residential purposes would allow for remediation of the land, introduction of additional landscaping, and ecological enhancements.
- 8.29 Further, to the above the proposal would provide social benefits with the provision of additional dwellings and contribution to an identified affordable housing need. The proposal is considered to result in a net gain to the setting of a designated heritage asset and would not result in harm to the landscape.

8.30 While the proposal would likely result, to some extent, in reliance on private vehicles, the scheme would incorporate measures to reduce the reliance on car use. On balance, the proposal would provide benefits to the environment visually, in terms of ecology, and by virtue of removing a use that detracts from local amenity. The overall impact of the development would not be so significant as to outweigh the benefits when considering the proposal against the Framework as a whole.

### **Visual Impact**

8.31 As noted above, the site is located in the open countryside. Policy ST 3 of the Local Plan does allow for development outside of the built-up area boundary. However, in such locations the proposal would need to demonstrate that it would contribute to protecting, and where appropriate enhancing, the landscape setting, beauty, and tranquillity of the countryside.

8.32 Policies CP 3, CP 4, DM 14 and DM 24 seek to ensure development has a high-quality design, is appropriate to the site context, and reinforces the local distinctiveness. Paragraph 124 (d) of the National Planning Policy Framework seeks to ensure efficient use of land which maintains the areas prevailing character.

8.33 Sheppey Way has a rural character with fields extending both to the east and west of the road. The road is bounded by vegetation formed of both hedging and tree coverage. Due to the width of the road and sporadic forms of both commercial and residential development, which are situated in close proximity to the road, there is a degree of urban form. The road represents a transition from the more urban form of Sittingbourne to the east and the open countryside to the west.

8.34 The application site is as above comprised of a car breakers yard. The site contains a large number of stacked vehicles in various states of disrepair. A number of outbuildings are also located across the site providing storage, reception area, and workshops. Due to the use of the site, there is also a wide degree of paraphernalia which covers the site.

8.35 Due to the proximity to Sheppey Way the breakers yard forms a prominent part of the street scene. A small buffer area between the road and the outbuildings/stacked vehicles allows for parking. While the cars are located to the mid-to-rear section of the site the presence is still discernible from the street scene.

8.36 Due to the use of the site, there is a somewhat *ad-hoc* arrangement of buildings and vehicles. The age, condition and structure of the site is not considered visually attractive and does detract from the rural, loose knit character of the area. The low-rise nature of the development and its small set back from the road reduce the visual prominence. However, the contamination, noise and activity levels associated with the site is not characteristic of the tranquillity of the countryside.

8.37 The existing residential development in the site context is low density and appears sporadically along this section of Sheppey Way. The indicative layout of the proposal illustrates up to 16 residential units, which is a reduction from previous proposals.

8.38 The proposal would see a higher density of residential development compared to its surrounding, which is somewhat out of character in the area, however, the sense of



density and enclosure of the vehicles and paraphernalia is similarly out of character in the existing environment. In addition, Members will note that this equates to a density of 16.32 dwellings per hectare.

- 8.39 The proposed indicative site layout indicates a buffer from the roadside. The buffer would reflect the current separation from the road and aid in reducing the visual presence of built form. Further, the plan indicates landscape buffers to the northern, southern, and western boundaries to screen the development and mirror the degree of vegetation in the wider area. The buffers may need to be somewhat adjusted to allow for residential curtilage but could still create a sense of separation from the roadside.
- 8.40 The proposal would result in a degree of urbanisation as the density of the proposed units would not have the sporadic form and spacing of a rural setting. However, the residential use would likely have a reduced perceived activity level to that of the car breakers yard. Further, the proposal would allow space for residential garden land, buffer zones with additional planting, and perceived sense of spacing which would cumulatively create a greater sense of tranquillity.
- 8.41 The restoration of the site, conditions to control the design and enclosure details could ensure that the proposal reflect the setting and local distinctiveness. The proposal would see a deviation from the general density and character of the area. However, when considered against the existing context up to 16 units would be considered to represent an improvement to the landscape, noting that the surrounding area is characterised by an eclectic mix of agricultural, residential and commercial buildings, many of which are not aesthetically pleasing.

### **Heritage**

- 8.42 Policy CP 8 seeks to ensure development proposals both sustain and enhance the significance of Swale's designated and non-designated heritage assets. Policy DM 32 of the Local Plan outlines that development proposal will be approved where the listed buildings setting is preserved.
- 8.43 The application has been accompanied by a Heritage Statement as the site lies within the setting of Pheasant Farmhouse which is grade II listed. Pheasants Farmhouse is located to the south of the site and was built circa 1700 and has been subject to early 19<sup>th</sup> century alterations. The building is two storeys and formed part of a former farmstead.
- 8.44 The application site is separated from the boundary of Pheasant Farmhouse by a small commercial unit. The farmhouse is set back from the road and is well screened by trees and vegetation. The access to the property provides glimpses of the building from the street scene.
- 8.45 It appears from historic mapping that outbuildings associated with Pheasant Farm stretched across to the north of the farmhouse and into the application site. These buildings potentially formed part of the historic agricultural use associated with the listed building. In comparing historic mapping and the areas current composition it appears a number of the buildings have been lost.

- 8.46 However, it is considered that building 3 on the application site formed part of the former farmstead of Pheasant Farm. The building would have been functionally linked to the listed building. However, it has been concluded that in accord with Historic England guidance that the visual separation, condition and intervening boundaries are such that the building is not curtilage listed.
- 8.47 Further, the Conservation Officer has assessed both external and internal photographs of building 3. In the assessment it has been acknowledged that given the alterations that have been made to building 3 the building has limited heritage value. As a result of the above the loss of building 3 has been accepted.
- 8.48 The current car breakers yard has commercial/urban appearance which is at odds with the farmhouse historic setting and use. The former setting of Pheasant Farmhouse would have consisted of low-rise farm buildings and set in a wider agricultural area. The breakers yards proliferation of stacked vehicles, ad hoc modern outbuildings, and general associated activity has a negative impact on the setting of the listed building.
- 8.49 The application has seen a reduction in potential unit numbers since the previous 2019 submission, with up to 16 units indicated on the illustrative plan. The density of residential units would be somewhat uncharacteristic of a rural area and the setting of a listed building, which would traditionally have been set in wider agricultural unit. However, the Conservation Officer has acknowledged that the proposal would see a net improvement to the setting of the listed building through the site's redevelopment.
- 8.50 The introduction of residential units would provide the opportunity decreased activity levels and wider open green spaces. Further, as per the recommendation of the Conservation Officer any approval could be subject to a condition to ensure the layout and design of the site sensitively address the sites rural context and its location within the setting of the listed building.
- 8.51 The Conservation Officer considered that the indicative layout loosely reflects a farmstead layout. The setting of the buildings to the west in a long-connected range would allow more of the site frontage undeveloped and this could provide the visual impression of an agricultural style development.
- 8.52 The proposal would allow and net improvement to the setting of the listed building. The overall design and layout would need to be subject to a condition for a development brief. Such a condition could be secured upon any grant of consent as it would ensure any forthcoming development would reflect the rural character of the area. The condition would relate only to the scale, design and layout as the other matters would be considered under reserved matters.
- 8.53 The proposal would be considered to result in a net gain to the setting of the listed building, subject to condition. The proposal would be considered to conserve and enhance the setting of the designated heritage assets in accord with local and national policy.

### **Residential Amenity**

- 8.54 Policy DM 14 of the Swale Local Plan states that all development should ensure that no significant harm to amenity levels. The layout, scale and detailing for the new dwellings would be secured at reserved matters stage.
- 8.55 Two residential dwellings are located to the north-east and south of the site, namely Corbiere and Pheasants Farmhouse. The curtilage of Corbiere lies adjacent to the northern boundary of the site. Pheasants Farmhouse is located to the south and the dwelling lies in excess of 21m from the site. A business unit is located between Pheasants Farmhouse and the site.
- 8.56 Currently the dwellings sit in the context of the car breakers yard which generates a degree of noise and activity associated with the use. The noise and activity levels associated with 16 residential units would be considered to have a lesser impact in regard to noise and activity levels on the surrounding area.
- 8.57 While some noise may be generated by the construction processes this would be a temporary impact and could be control by conditions relating to a construction management plan. Initially comments from Environmental Health had requested a condition relating to internal noise levels for the proposed units. However, these were not picked up in the second comment and given the siting of the existing residential units and the proposed use the condition is not considered to meet the tests under the NPPG.
- 8.58 The layout and design would be considered at reserve matters stage. The indicative layout illustrates the site could be constructed with an appropriate separation distance from existing properties to ensure sufficient daylight/sunlight could be retained. Further, the illustrative plan indicates buffers and separation distances which would protect outlook and prevent visual intrusion from occurring.
- 8.59 Due to the orientation and layout of the existing dwellings around the site, in combination with the scale of the plot no significant overlooking would occur. Some views toward to the rear residential amenity area of Corbiere may occur. Such views could be mitigated through obscure glazing and internal layout and are of an acceptable distance to prevent significant harm to privacy.
- 8.60 In regard to future occupants' amenity, generally flank to rear distances should have a minimum of 11m separation. Rear gardens should have an overall depth of 10m, and sufficient natural light should be available to the dwellings. The proposal has demonstrated a layout that is capable of creating sufficient privacy and outlook to the units.
- 8.61 The proposal does not indicate residential curtilages for all of the units. Although some of the units would likely be flats and the scale of the site with 16 units would be sufficient to ensure sufficient amenity space. Some re-orientation of the layout could be achieved to provide the required standards.
- 8.62 The proposal would be considered to be capable of providing sufficient amenity for future occupiers. Further, the proposal would conserve the amenity of existing residential properties.

### Highways and Parking

- 8.63 The application seeks outline consent will all matters reserved including the access to the site.
- 8.64 Policy DM 6 of the Swale Local Plan seeks to manage and transport demand and impact including sustainable transport measures. Policy DM 7 seeks to ensure sufficient parking is provided for both vehicles and bicycles.
- 8.65 The indicative site plan indicated a single vehicular access point which would be located along Sheppey Way. The indicative plan indicates a total of 16 units all of which would allow all of the dwellings accessed directly from the internal road layout. The single vehicle access would allow adequate turning space within the development allowing vehicles to leave the site in a forward gear. The single access would also aid in reducing the potential for vehicles to park on the highway.
- 8.66 As above the site currently operates a car breakers yard and vehicle recovery unit which generates a number of vehicle movements throughout the day. The Highways Officer is satisfied that a development of 16 residential units would not be considered serve under paragraph 111 of the National Planning Policy Framework. It is considered that the proposed use would generate less activity from the existing uses.
- 8.67 The Highways Officers comments were based upon a proposal of 16 residential units. The Officer has advised that the unit numbers should be restricted to 16 as a result of the assessment. The unit numbers would be secured via condition upon any grant of permission.
- 8.68 The proposed access location and sightlines are considered acceptable by the Highways Officer. However, the Officer has stated that the design of the junction would need to be refined and the road width may need to be extended to 5.5m. These matters could be dealt with at reserved matters stage as all matters are reserved at this stage.
- 8.69 Swale Borough Council Parking Standards (May 2020), outlines that in rural locations 1- and 2-bedroom flats should have 1 space per unit and 3- and 4-bedroom properties 3 parking spaces per unit. The guidance also indicates the provision of 0.2 visitor spaces per unit.
- 8.70 The information provided in the application does not provide a mix. The bedroom numbers remain unclear. The indicative plan indicates approximately 39 parking spaces (including garages). Assuming four of the units are flats the total need would be 46 spaces, this assumes all of the dwellings would be 3/4 bedrooms. Given the need for the proposal to meet a policy compliant mix and the additional space on site it is considered sufficient parking could be provided.
- 8.71 The Transport Statement has indicated a footway which would extend to the south of the site to connect with Bramblefield Lane. The footway would allow pedestrian access to facilities and amenities in Kemsley. The proposal suggests the provision of an on-carriageway cycle route along Sheppey Way. However, the Highways Officer considers that this should be formed of an off-carriageway footway/cycle route of 3m in width. The officer considers this could be secured via condition.

- 8.72 The footway would continue the existing footpath in front south of the site to extend along the front of Pheasant House. The footpath would then transfer to the eastern side of the road to meet Bramblefield Lane allowing wider access to the services in Kemsley.
- 8.73 The site is located some distance from local bus stops which are positioned to the north and south of the site. The KCC Highways Officer considers that the proposal could contribute to the provision of further bus stops outside of the development. The provision would aid encouraging the use of sustainable transport links.
- 8.74 The proposal is considered, subject to conditions and Section 106 agreement, to comply with Highways and Parking policy.

### **Biodiversity**

- 8.75 Policy DM 28 of the local plan seeks to ensure proposals conserve, enhance and extend biodiversity and provide net gains where possible. Due to the sites current condition it is considered that Biodiversity Net Gain would be achievable and this would be secured via condition.
- 8.76 The application site is utilised for commercial activities. The site is therefore subject to high activity levels, comprised mainly of hardstanding, and open storage and as such does not represent an area of high biodiversity value. The KCC Ecology Officer has assessed the Ecological appraisal and is satisfied with the content.
- 8.77 The Officer has noted that the site has limited potential to be used by protected/notable species and that there is no requirement for a detailed mitigation strategy. The report did indicate that the site offers the potential to be used by commuting badgers and hedgehogs. Further, the site may be subject to some breeding birds' nests. However, the Officer is satisfied that this could be avoided through the implementation of a precautionary mitigation strategy, incorporated into any condition requiring a Construction Management Plan.
- 8.78 The bat emergence survey indicated low numbers of common pipistrelle bats and noctule foraging/commuting within the site. Artificial lighting can negatively impact foraging bats and as such a condition would be applied to any grant of consent requiring details of lighting in accord with the Bat and artificial lighting in the UK document.
- 8.79 Both local and nation policy seeks to ensure ecological enhancements and such enhancements would be conditioned upon approval. Given the current condition of the site which is subject to contaminates the proposal offers a good opportunity to enhance ecology.
- 8.80 The site is located within the zone of influence (6km) of the Swale and Medway Estuary and Marshes Special Protection Area (SPA), and Wetland of International Importance under the Ramsar Convention (Ramsar Site). As a result of the sites proximity to the SPA and Ramsar sites an appropriate assessment must be undertaken, which will be assessed below:

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

- 8.81 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).
- 8.82 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.
- 8.83 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 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.
- 8.84 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 (£253.83 per dwelling as ultimately agreed by the North Kent Environmental Planning Group and Natural England) – these mitigation measures are considered to be ecologically sound.
- 8.85 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.
- 8.86 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.
- 8.87 The proposal would have an impact upon the SPAs, however the scale of the development (up to 16 residential units) is such that it would not be considered, alongside the mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff, that the impacts would be significant or long-term.
- 8.88 Based on the potential of up to 16 residential units being accommodated on the site A SAMMS contribution of up to £4061.28 could be secured under the Section 106 agreement. The legal agreement could be worded such that it sets out that the SPA mitigation contribution is to be secured prior to the occupation of any dwelling. Therefore, taking into account the above it is considered that there will be no adverse effect on the integrity of the SPAs.

- 8.89 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/>).
- 8.90 The proposal would be considered to reflect the aims of policy DM 28 and would provide onsite improvements for biodiversity as well off-site mitigation through SAMMS contributions.

#### **Developer Contributions**

- 8.91 Policies CP 6 and IMP 1 seek to deliver infrastructure requirements and other facilities. Contributions toward waste, social care, library book stock, youth services, community learning, and education would be sought. These have been outlined by KCC Contributions team (and Members will note paragraph 6.19 above, and that if 16 dwellings are ultimately built a contribution of approx. £224,392.11 would be payable) and could be secured through a Section 106 agreement.
- 8.92 In addition, the legal agreement would need to include contributions for wheelie bins, an administration / monitoring fee, SPA mitigation (see paragraph 8.86 above) and formal sports / play equipment. I will update Members at the meeting.

#### **Affordable Housing**

- 8.93 Policy DM 8 of the Swale Local Plan deals with affordable housing and sets out in 'All other rural areas', for which the site is located, there is a requirement (on schemes of 11 dwellings or more) for 40% of the total units to be affordable. Of the total number of affordable units, the Council would seek an indicative target of 90% affordable/social rent and 10% intermediate products.
- 8.94 The Planning Statement indicates a commitment to provide 40% affordable housing on site in accordance with the Councils policy. The indicative plan and associated document have indicated up to 16 residential units, which would be conditioned upon any grant of consent.
- 8.95 The maximum number of affordable units would therefore be 7, which in accord with the Housing Officers comments would need to comprise 6 affordable rented properties and 1 shared ownership dwelling. No details of mix have been provided as part of the outline consent, the affordable homes offered would need to be reasonable and proportionate mix to the open market properties.
- 8.96 The Housing Officer considers the location of the affordable units to be acceptable and confirms the need for all types and sizes of affordable units in Bobbing and Sittingbourne area. The Officer has recommended that all of the affordable units are delivered to a M4(2) standard which would be considered reasonable.
- 8.97 The Officer has noted that due to the small number of units on the site, some Registered Providers may be reluctant to come forward. The Section 106 could be written such that should the end developer be unable to secure a Registered Provider for the site then a

mechanism would be introduced to allow consideration of a contribution for off-site provision.

- 8.98 The proposal would contribute to the Borough's affordable housing need and would comply with the remits of policy DM 8 subject to an agreed Section 106 agreement.

### **Other**

#### *Land Contamination and Air Quality*

- 8.99 Due to both historic and present day uses of the site, the site is clearly subject to a degree of contamination. The Desk Study has recommended a full site investigation. An investigation and remediation works would be conditioned subject to any approval. Several conditions have been suggested by the Environmental Health Officer to ensure successful remediation. The Environment Agency similarly have no objection to the proposal subject to conditions.

- 8.100 The proposal would allow remediation of the site and the removal of contaminants that currently exist. Such works would be beneficial to the local environment.

- 8.101 The application site is located close to the A249 which is the primary noise source to the site and a source of air pollution affecting the site. A condition would be imposed to ensure internal noise levels to the development would be at an acceptable level. Environmental Health therefore recommended an Air Quality Assessment be provided.

- 8.102 The Air Quality Assessment provided, and its methodology was considered acceptable by Environmental Health. Members will note that the site is not located close to an AQMA(s). The report indicated that the operational impacts related to traffic flow to receptor sites were low. The change of use was also considered to reduce the numbers of vehicles compared to the existing use. The mitigation measures put forward to reduce the construction impact were equally found acceptable.

- 8.103 The proposal would be considered to have a beneficial impact in regard to the loss of vehicle movements and associated benefit to air quality and the reduction in on site contaminates.

#### *Drainage*

- 8.104 Policy DM 21 of the Local Plan seeks to ensure, when considering the implications of drainage for development that where possible, sustainable drainage systems to restrict run off to an appropriate discharge rate, maintain or improve the quality of the receiving watercourse.

- 8.105 KCC Flood and Water Management have commented on the application and has acknowledged that as the site is previously developed there is less risk associated with the determination of the final discharge destination. However, the proposals Drainage Strategy indicates discharge into the foul system given the constraints on drainage infrastructure in the local area. KCC recognised a new sewer would be requisitioned to accommodate surface water and foul without exceedance. It was noted that KCC would expect surface water discharge rates to greenfield run off rates.



8.106 The contaminants on site do present a risk that residual contamination could be mobilised during construction. It would be important to ensure that the controlled waters would not be polluted by the contaminants.

8.107 The Environmental Agency have commented that the reports submitted in support of the application demonstrate that it will be possible to manage the risk posed to controlled waters by the development. The Environment Agency have raised no objections to the proposed development providing their suggested conditions are applied to any grant of consent.

8.108 The proposal would be considered capable of achieving acceptable drainage standards. The proposal would be subject to conditions securing final details of the site's drainage strategy.

#### *Trees*

8.109 The SBC Tree Consultant has noted that the site is not subject to significant tree cover. Although notes that a row of conifers runs along the site boundary, which was confirmed upon the conduction of a site visit. The Tree Consultant considers that these trees are capable of retention and suggest a condition requiring an Arboricultural Method Statement and a Tree Protection Plan. Such conditions would be considered to meet the tests under the NPPG and could be applied to any grant of consent.

8.110 Further, the Tree Consultant has requested a condition securing a comprehensive landscaping scheme. Such a condition would be reasonable and would secure additional planting on site to ensure good visual amenity. Additional planting would secure a net gain in regard to landscaping due to the potential areas of open space which would allow for additional tree cover. Members will also appreciate that 'landscaping' is a reserved matters so if this application is approved, a separate submission giving full landscaping details would need to be submitted at the 'reserved matters' stage.

#### *Minerals and Waste*

8.111 The application site is located in a Brickearth Mineral safeguarding area. Further, the site's use as a car breakers yard means it represents a waste transfer site. The site area sits under 1ha of land and has been subject to previous disturbance. The site has operated as a car breakers yard for over 30 years.

8.112 Policy DM 7 of the Kent Minerals and Waste Local Plan permits non-mineral development which is incompatible with mineral safeguarding where (1) the mineral is not of economic value or does not exist, or (2) the extraction of the mineral would not be viable or practicable.

8.113 KCC Minerals considers that the use of the site and its current condition is persuasive evidence that land won minerals have been disturbed/or contaminated. The potential for usable brickearth is considered so low that it can be discounted. The Minerals Officer therefore considers the exemption criteria (1) and (2) of policy DM 7 of the Kent Minerals and Waste Local Plan have been met.

8.114 Policy DM 8 of the Kent Minerals and Waste Local Plan permits the loss of waste management facilities where it is demonstrated under criteria (5) that the facility is not viable or capable of being made viable.

8.115 The car breakers yard represents a waste facility. As above, the site's overall scale in conjunction with modern day Environmental Requirements undermines the viability of the site. The site's lack of adherence to Environmental Standards has been confirmed by the Environment Agency. The KCC Minerals Officer has acknowledged that the site meets criteria (5) of policy DM 8 and therefore has no objection to the loss of the waste facility.

## **9. CONCLUSION**

9.1 The proposal would result in the loss of an existing employment use and would result in residential development in the open countryside, albeit at a location close to the built-up area boundary of Sittingbourne. The visual impact of the proposal would have an urbanising affect and would have a relatively dense appearance to the looser grain of sporadic residential development in the area.

9.2 However, the proposal would result in an improvement to the existing visual appearance of the site. The change of use would result in lower activity levels and a reduction in the urban appearance the car breakers yard currently represents. The proposal would better reflect the tranquility and character of the area. Further, the proposal would provide net gains in regard to landscaping and biodiversity.

9.3 On balance, the proposal is not considered to result in significant harm that would outweigh the significant benefits of the scheme (including the contribution towards the overall housing supply and to the stock of affordable housing in the Borough) as considered against the Framework as a whole.

**10. RECOMMENDATION** – Grant, subject to conditions and completed section 106 agreement.

## **11. CONDITIONS**

- (1) Prior to the commencement of the development details relating to the scale, layout and appearance of the proposed buildings, and the landscaping and means of access of the site shall be submitted to and approved in writing by the Local Planning Authority.

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 no later than the expirations 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) Prior to the submission of any reserved matters as required by condition (1) a Development Brief shall be submitted to and approved in writing by the Local Planning Authority. The Brief shall address the proposed architectural approach, construction materials, hard and soft landscaping, and layout. The approved Development Brief shall be adhered to in the submission of details relating to condition (1).

Reason: In the interests of the visual amenity and setting of the designated heritage asset.

- (5) Prior to the commencement of the development an arboricultural method statement and tree protection plan shall be submitted to and approved in writing by the Local Planning Authority. The approved arboricultural method statement and tree protection plan shall be adhered to throughout the construction phase of the development.

Reason: To ensure the surrounding boundary trees are retained and adequately protected.

- (6) Prior to first occupation of the development an Ecological Enhancement Plan (which among other things shall demonstrate how a biodiversity net gain of at least 10% would be achieved) shall be submitted to and approved in writing by the Local Planning Authority. The approved ecological enhancements shall be incorporated into the site as per the approved plan prior to first occupation and maintained as such thereafter.

Reason: In the interest of the ecology of the area and in pursuance of Biodiversity Net Gain.

- (7) No development beyond the construction of foundations shall take place until details of external lighting, which shall be designed to follow recommendations within the Bats and Artificial Lighting in the UK guidance produced by the Bat Conservation Trust and Institution of Lighting Professionals, has been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details.

Reason: In the interests of the ecology of the area.

- (8) The details pursuant to condition (1) shall illustrate details of all proposed vehicle parking spaces. The approved parking spaces shall be provided prior to first occupation of the development hereby approved and retained thereafter. No development shall occur that would prevent access to the approved parking spaces.

Reason: In the interests of Highway Safety.

- (9) The details pursuant to condition (1) shall show details of covered cycle parking facilities. The approved cycle facilities shall be provided prior to first occupation of any dwelling hereby approved and retained thereafter.

Reason: In the interests of sustainable development and encouraging sustainable modes of travel.

- (10) The details submitted pursuant to condition (1) (the reserved matters) shall include an updated landscape strategy. All approved landscape works shall be carried out in accordance with the approved details. The landscaping works shall be carried out in accordance with the programme agreed in writing with the Local Planning Authority.

Reason: In the interest of the visual amenity and ecology of the area

- (11) 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.

- (12) The details submitted pursuant to condition (1) (the reserved matters) shall include measures to provide electrical vehicle charging points and shall include;
- (a) Electric vehicle charging points for all dwellings with parking facilities within their curtilage,
  - (b) Electrical vehicle charging points to be provided to a minimum of 10% of all other residential parking areas.,
  - (c) Electrical vehicle charging points to be provided to a minimum of 10% of visitor parking spaces.

No dwelling hereby permitted shall be occupied until the electric vehicle charging points for that dwelling have been installed. All Electric Vehicle Charging units shall be provided to Mode 3 standard with a minimum 7kw. The charging points shall be provided prior to first occupation of any dwelling hereby approved.

Reason: In the interest of sustainable development and encouraging sustainable modes of travel.

- (13) No development shall be carried out beyond the construction of foundations until detailed plans showing the proposed roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, driveway gradients, car parking and street furniture have been submitted to and approved in writing by the Local Planning Authority. The development shall proceed wholly in accordance with the approved details.

Reason: In the interest of highways safety and convenience.

- (14) Prior to first occupation of any dwelling hereby approved the closure of all existing access points (other than access arrangement approved in relation to condition 1 reserved matters) shall be undertaken.

Reason: In the interest of highway safety.

- (15) Prior to the commencement of the development hereby approved details of a 3m footway/cycleway and crossing facilities between the existing footway north of the application site and Bramblefield Lane in accordance with details that shall first have been submitted to and approved by the Local Planning Authority. The approved works shall be provided prior to the first dwelling being occupied and in accord with the approved details.

Reason: In the interest of highway safety and sustainable transport.

- (16) Prior to the commencement of the development hereby approved details of the proposed northbound and southbound bus stops with associated pedestrian hardstanding adjacent to the application site shall be submitted to and approved in writing by the Local Planning Authority. The approved bus stops shall be provided in accordance with the approved details prior to the first dwelling being occupied.

Reason: In the interest of highway safety and sustainable transport.

- (17) Prior to the commencement of the development 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. The infrastructure installed on accordance with the approved details during the construction of the development, capable of connection to commercial broadband providers and maintained in accordance with approved details.

Reason: To provide high quality digital infrastructure in the new developments.

- (18) The details submitted pursuant to condition 1 (the reserved matters) shall demonstrate how the development meets the principles of 'Secure by Design'.

Reason: In the interests of designing out crime.

- (19) No development approved by this planning permission shall commence until a strategy to deal with the potential risks associated with any contamination of the site has been submitted to and approved in writing by the Local Planning Authority. This strategy will include the following components:

1. A preliminary risk assessment which has identified: all previous uses; potential contaminants associated with those uses; a conceptual model of the site indicating sources, pathways and receptors; and potentially unacceptable risks arising from contamination at the site.
2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
4. A verification plan providing details of the data that will be collected in order

to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the written consent of the local planning authority. The scheme 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.

- (20) Prior to first occupation of any of the approved residential dwellings being occupied, a verification report demonstrating the completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to, and approved in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.

Reason: To ensure that the site does not pose any further risk to human health or the water environment by demonstrating that the requirements of the approved verification plan have been met and that remediation of the site is complete.

- (21) 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.

- (22) Upon the completion of the works identified in the contaminated land assessment, and prior to any agreed phase of the development is occupied, a closure report shall be submitted to and approved in writing by the Local Planning Authority. The closure report shall include details of the proposed remediation works with quality assurance certificates to show that the works have been carried out in accordance with the approved methodology. Details of any post-remediation 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.

Reason: To ensure the site has been satisfactorily remediated and is safe for human occupation.

- (23) Prior to the commencement of the development hereby approved, a scheme to demonstrate that the internal noise levels within the residential units and the external noise levels in back garden and other relevant amenity areas will conform to the standard identified by BS 8233 2014, Sound Insulation and Noise Reduction for Buildings - Code of Practice, shall be 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 occupation of the premises and be retained thereafter.

Reason: In the interests of residential amenity.

- (24) No infiltration of surface water drainage into the ground is permitted other than with the written consent of the Local Planning Authority. The development shall be carried out in accordance with the approved details.

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 caused by mobilised contaminants.

- (25) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated by a piling risk assessment that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

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 caused by mobilised contaminants.

- (26) 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 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.

- (27) Notwithstanding the provisions of Class A, Part 2, Schedule 2, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any order revoking and re-enacting that Order, no fences, gates walls or other means of enclosure shall be erected within the application site.

Reason: In the interests of visual amenity.

- (28) Upon completion of the development, no further development permitted by Classes A, B, C, D or E 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), shall be carried out.

Reason: In the interests of the amenities of the area.

- (29) Prior to the construction of any dwelling in any phase 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.

- (30) No development shall take place until details of the surface water drainage from the site is submitted to and approved in writing by the Local Planning Authority. The detailed drainage scheme 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 off site without increase to flood risk on or off-site. The surface water discharge rate should be designed to greenfield run off rates.

*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.

- (31) The development shall be designed to achieve a water consumption rate of no more than 110 liters 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.

- (32) Prior to the commencement of the development a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The construction of the development shall then be carried out in accordance with the approved Code of Construction Practice and, Noise Vibration and Control on Construction and Open Sites and the Control of dust from construction sites (BRE DTi Feb 2003). The Management Plan shall include:

- (a) Routing of construction and delivery vehicles to/from the site,
- (b) Parking and turning areas for construction and delivery vehicles and site personnel,
- (c) Timing of deliveries,
- (d) Provision of wheel washing facilities,
- (e) Temporary traffic management/signage,
- (f) Provision of construction vehicle loading/unloading and turning facilities prior to commencement of work on site and for the duration of construction,
- (g) Provision of parking facilities for site personnel and visitor prior to commencement of work on site and for the duration of construction,
- (h) Dust Management and Mitigation Measures,



- (i) Measures to minimise the noise (including vibration) generated by the construction process (including selection of plant and machinery and use of noise mitigation barriers),
- (j) Details of maximum noise levels up to 1m from the boundary of any residential property adjacent to the site,
- (k) Measures to minimise production of waste and reuse of materials,
- (l) Details of public liaison during construction works,
- (m) Details of the precautionary mitigation approach as outlined within section 9 of the Ecological Appraisal (Native Ecology; September 2018).

The approved Construction Management Plan shall be adhered to through the course of the development.

Reason: In the interests of highway safety, amenity levels and ecology of the area.

- (33) The development hereby approved shall not exceed a total of 16 dwellings. The approved dwellings shall not exceed two storey.

Reason: In the interest of visual amenity.

## 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.
- (2) Piling can result in risks to groundwater quality by mobilising contamination when boring through different bedrock layers and creating preferential pathways. Thus, it should be demonstrated that any proposed piling will not result in contamination of groundwater. If Piling is proposed, a Piling Risk Assessment must be submitted, written in accordance with EA guidance document "Piling and Penetrative Ground Improvement Methods on Land Affected by Contamination: Guidance on Pollution Prevention. National Groundwater & Contaminated Land Centre report NC/99/73". Contaminated soil that is, or must be, disposed of is waste. Therefore, its handling, transport, treatment and disposal are subject to waste management legislation, which includes:
  - Duty of Care Regulations 1991
  - Hazardous Waste (England and Wales) Regulations 2005
  - Environmental Permitting (England and Wales) Regulations 2010
  - The Waste (England and Wales) Regulations 2011

Developers should ensure that all contaminated materials are adequately characterised both chemically and physically in line with British Standard BS EN 14899:2005 'Characterization of Waste - Sampling of Waste Materials - Framework for the Preparation and Application of a Sampling Plan' and that the permitting status of any proposed treatment or disposal activity is clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays. If the total quantity of waste material to be produced at or taken off site is hazardous waste and is 500kg or greater in any 12-month period the developer will need to register with us as a hazardous waste producer. Refer to the Hazardous Waste pages on GOV.UK for more information'.

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

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2021 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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**PLANNING COMMITTEE – 7 APRIL 2022****PART 3**

Report of the Head of Planning

**PART 3**Applications for which **REFUSAL** is recommended

<b>3.1 REFERENCE NO - 21/505806/FULL</b>		
<b>APPLICATION PROPOSAL</b> Section 73 - Application for Variation of condition 6 (to allow change of opening hours from 11:00 hours - 21:00 hours to 11:00 hours - 23:00 hours) pursuant to SW/05/1274 for - Extension to existing shop and formation of take away (class A5).		
<b>ADDRESS</b> 114 Lower Road Faversham Kent		
<b>RECOMMENDATION</b> Refuse		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Town Council support.		
<b>WARD</b> Watling	<b>PARISH/TOWN COUNCIL</b> Faversham Town	<b>APPLICANT</b> Mr Ravinder Singh Bain <b>AGENT</b> Go To Professional Services
<b>DECISION DUE DATE</b> 24/12/21	<b>PUBLICITY EXPIRY DATE</b> 25/11/21	

**Planning History**

SW/05/1274

Extension to existing shop and formation of take away (class A5) within  
Approved Decision Date: 06.01.2006

SW/04/1359

Extensions to existing retail/residential premises to form two new flats over and erection of one self contained bungalow.

Approved Decision Date: 06.12.2004

SW/83/1221

Change of use to hot food to take away (fish and chips) – temporary permission until February 1986

Approved Decision Date: 24.02.1984

SW/83/0996

Change of use to launderette

Approved Decision Date: 14.11.1983

SW/83/0935

Change of use to hot food take away ( fish and chips)

Refused Decision Date: 21.10.1983

## 1. DESCRIPTION OF SITE

- 1.1 114 Lower Road is currently used as a fish and chip shop and is situated alongside a convenience store. There is residential accommodation above both retail units. The site lies outside the town centre, on Lower Road within a predominately residential area. A parking bay and bus stop are located immediately in front of the retail units, and there are no parking restrictions in the surrounding area.
- 1.2 The property was previously occupied as one retail unit but planning permission was approved in 2006 under planning reference SW/05/1274 to change the use of part of the shop (use class A1) to a takeaway (use class A5) together with an extension to the shop and internal alterations.
- 1.3 Condition 6 (opening hours) of planning permission SW/05/1274 states:

*No use of the premises for sale of hot food shall take place other than within the hours of 1100 hours to 2100 hours on any day of the week.*

*Grounds: In the interests of the amenities of the area, in pursuance of policy G1 of the Swale Borough Local Plan.*

## 2. PROPOSAL

- 2.1 The current application is made under section 73 is to vary the current permitted opening hours to allow the premises to remain open seven days a week from 11am to 11pm.
- 2.2 The application form states later opening hours are being proposed for the following reason:

*“We wish the condition to be changed to extend the hours of operation due to the nature of the demand at around closing time of the takeaway causing a build-up of customers on the busier days i.e., weekends and Fridays including orders alternative orders such as over the phone. The premises does not want to be forced to close later than the time permitted.*

*We wish the hours of operation to be amended from 1100 hours – 2100 hours to 1100 hours – 2300 hours. An increase of 2 hours to 11pm for operation.”*

- 2.3 Since submission, a Noise Impact Assessment Report (NIA) for the current kitchen extraction system has been carried out. This report recommends installing silencers and an extraction fan jacket to the current extraction system in order to meet the Council’s noise requirements.

## 3. PLANNING CONSTRAINTS

- 3.1 None

## 4. POLICY AND CONSIDERATIONS

- 4.1 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017:  
Policy CP1 Building a strong, competitive economy

Policy DM1 Maintaining and enhancing the vitality and viability of town centres and other areas

Policy DM2 Proposals for main town centre uses

Policy DM14 General development criteria

4.2 The National Planning Policy Guidance (NPPG) contains the following advice on noise:

***Can noise override other planning concerns?***

*It can, where justified, although it is important to look at noise in the context of the wider characteristics of a development proposal, its likely users and its surroundings, as these can have an important effect on whether noise is likely to pose a concern.*

***What are the observed effect levels?***

*Significant observed adverse effect level: This is the level of noise exposure above which significant adverse effects on health and quality of life occur.*

*Lowest observed adverse effect level: this is the level of noise exposure above which adverse effects on health and quality of life can be detected.*

*No observed effect level: this is the level of noise exposure below which no effect at all on health or quality of life can be detected.*

***How can it be established whether noise is likely to be a concern?***

*At the lowest extreme, when noise is not perceived to be present, there is by definition no effect. As the noise exposure increases, it will cross the ‘no observed effect’ level. However, the noise has no adverse effect so long as the exposure does not cause any change in behaviour, attitude or other physiological responses of those affected by it. The noise may slightly affect the acoustic character of an area but not to the extent there is a change in quality of life. If the noise exposure is at this level no specific measures are required to manage the acoustic environment.*

*As the exposure increases further, it crosses the ‘lowest observed adverse effect’ level boundary above which the noise starts to cause small changes in behaviour and attitude, for example, having to turn up the volume on the television or needing to speak more loudly to be heard. The noise therefore starts to have an adverse effect and consideration needs to be given to mitigating and minimising those effects (taking account of the economic and social benefits being derived from the activity causing the noise).*

*Increasing noise exposure will at some point cause the ‘significant observed adverse effect’ level boundary to be crossed. Above this level the noise causes a material change in behaviour such as keeping windows closed for most of the time or avoiding certain activities during periods when the noise is present. If the exposure is predicted to be above this level the planning process should be used to avoid this effect occurring, for example through the choice of sites at the plan-making stage, or by use of appropriate mitigation such as by altering the design and layout. While such decisions must be made taking account of the economic and social benefit of the activity causing or affected by the noise, it is undesirable for such exposure to be caused.*

*At the highest extreme, noise exposure would cause extensive and sustained adverse changes in behaviour and / or health without an ability to mitigate the effect of the noise. The impacts on health and quality of life are such that regardless of the benefits of the activity causing the noise, this situation should be avoided.*

## **5. LOCAL REPRESENTATIONS**

- 5.1 One representation has been received raising concerns that allowing later opening hours could result in anti-social behaviour.

## **6. CONSULTATIONS**

- 6.1 Faversham Town Council supports the application for the following reason:

1) *Members agreed to support the local business.*

- 6.2 The Council's Environmental Health Manager (EHM) requested a Noise Impact Assessment (NIA), but the agent questioned whether this was necessary given that only deliveries will be taking place after 9pm. The EHM responded to say the cooking process may still give rise to noise primarily from the extraction system but also from noise from within the kitchen or service areas. Therefore, a NIA would need to be submitted.

- 6.3 Following submission of the NIA, the EHM responded as follows:

*"I have read the Noise Impact Assessment submitted which addresses the potential adverse impact of the kitchen extraction system on occupants of the residential flat above the shop. However, the very likely additional noise resulting from vehicles operating the delivery service late into the evening together with individuals congregating at the front of the premises, will undoubtedly have an adverse impact on what is predominantly a residential area. I must therefore raise objection to the additional 2 hours on 7 days a week for this reason."*

*Notwithstanding this, I realize that there may be a genuine business need for the extended hours.*

*Whilst it is important to protect the existing residential amenity, I think there is generally a higher tolerance for a later opening hour on a Friday and Saturday and this department would be amenable to an extended closing time of 10pm on these two days of the week only.*

- 6.4 The agent was given the opportunity to seek an extension to the opening times until 10pm on Fridays and Saturdays only but they responded to say their request for an additional 14 hours a week would be reduced to just two. They also explained the applicant is willing to use electric mopeds to aid the reduction of noise, and requested the hours are extended on Monday to Wednesday until 9.30pm and Thursday to Sunday until 10.30pm.

- 6.5 The EHM responded to say that a complaint has now been received regarding noise and odour from the fish and chip shop and suggested the latest time it could be open is 9.30pm Sunday to Thursday, and 10.30pm Friday and Saturday. However, the applicants would be expected to implement the noise mitigation measures recommended in the NIA and an odour



assessment be carried out. In addition to this, a temporary permission would be appropriate, in order to assess the impact in three years' time.

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

7.1 Application papers relating to 21/505806/FULL.

## **8. APPRAISAL**

- 8.1 The principle of development has been established through the grant of planning permission SW/05/1274. What falls to be considered here is the proposed amendment to the opening hours of the takeaway shop.
- 8.2 There is a convenience store adjacent to the takeaway shop, but above are flats and the surrounding area is predominately residential in character. Policy DM14 of the adopted Local Plan seeks development that would not cause any significant harm to residential amenity. It is generally recognised that hot food takeaway shops can cause noise and disturbance to nearby residents, particularly in the evenings. Therefore, condition (6) of SW/05/1274 restricts an evening closing time of 9pm for the sale of hot food takeaway to prevent noise and disturbance to nearby residents. This is consistent with the Council's general longstanding approach to such uses in predominantly residential areas.
- 8.3 The applicant argues there is a demand for orders after 9pm and initially requested to open two hours later every day of the week.
- 8.4 I consulted the Environmental Health Manager who suggested extending the opening hours until 10pm only on Fridays and Saturdays provided the current extraction system was upgraded. However, the agent requested consideration be given to slightly later opening times during the week and at the weekend. I have carefully considered the agent's request, as well as the advice of the EHM but I remain of the view that allowing later closing times would give rise to significant harm to the living conditions of nearby residents.
- 8.5 I believe that an evening closing time of 9pm every day represents a reasonable compromise between the operational needs of the business and the need to protect residential amenities in what is essentially a residential area. I agree with the concerns raised by a local resident that extending the opening hours could result in noise and disturbance during less social hours.
- 8.6 I am guided in this conclusion by an appeal decision (APP/V2255/A/95/250712/P2) to reuse to extend opening hours (originally approved on appeal) beyond 9pm at 85B North Street, Milton Regis, Sittingbourne. This relates to a hot food take-away in a similar predominantly suburban residential area, which I consider to be a close parallel to the current application situation, and indicative of support for the Council's long term concern to limit the opening hours of such premises to protect the amenities of residential areas. The Inspector dismissed the appeal, concluding that:

*Noise and disturbance tend to be more obtrusive as the evening progresses, when ambient noise levels become lower. At the time of my visit, North Street was busy, but I would expect the volume of traffic to fall later in the evening, with general activity and ambient noise levels also reducing. I note that the adjoining fish and chip shop apparently closes at 2100 hours Mondays to Saturdays, and is closed on Sundays. The*

*conversations of customers as they arrive and leave, the banging of car doors, vehicles slowing, turning and accelerating with the associated engine noise, would combine to be unacceptably intrusive to nearby residents during quieter and less social hours.*

- 8.7 A second appeal relating to the same matter at the same premises was also dismissed in 2001 (APP/V2255/A/00/1054536). The Inspector concluded that:

*In this case, it seems to me that the comings and goings of customers and their conversations, the slamming of car doors and reviving of car engines as they manoeuvre to park would all create additional disturbance to neighbours at a time of day when they might expect peace and quiet. I therefore concur with the views of the previous Inspectors that later opening would cause noise nuisance to nearby residents because of customers using the premises during these unsocial hours. I consider that the proposal to extend the opening hours would be contrary to criterion 5 of policy G1 of the Local Plan.*

*This leads to me the conclusion that the extended opening hours would materially harm the living conditions of nearby occupiers, with particular reference to noise and general disturbance.*

- 8.8 I acknowledge that the EHM is amenable to extending the opening times on a temporary basis for three years if the extraction system is upgraded. However, this assumes that the applicant would be prepared to invest in upgrading the system for just two additional hours of trade per week, but I do not consider that the longer hours requested are acceptable, and I do not consider that the addition of new equipment will, in any case, have any effect upon noise arising from customers and deliveries which create most of the late night nuisance from such premises. As such, I see refusal of this application as consistent with the Council's careful and consistent approach to this issue.

## **9. CONCLUSION**

- 9.1 The premises is located within a residential area. I believe that allowing later opening hours would seriously harm the living conditions of nearby residents, with particular reference to noise and general disturbance. I therefore recommend that this application to vary condition 6 (opening hours) of SW/05/1274 is refused.

## **10. RECOMMENDATION - REFUSE for the following reason:**

- (1) The proposed extension of opening hours would detract from the amenity of residents living in the area, by virtue of noise, traffic, parking, and disturbance late at night, contrary to Policy DM14 of Bearing Fruits 2031: The Swale Borough Local Plan 2017.

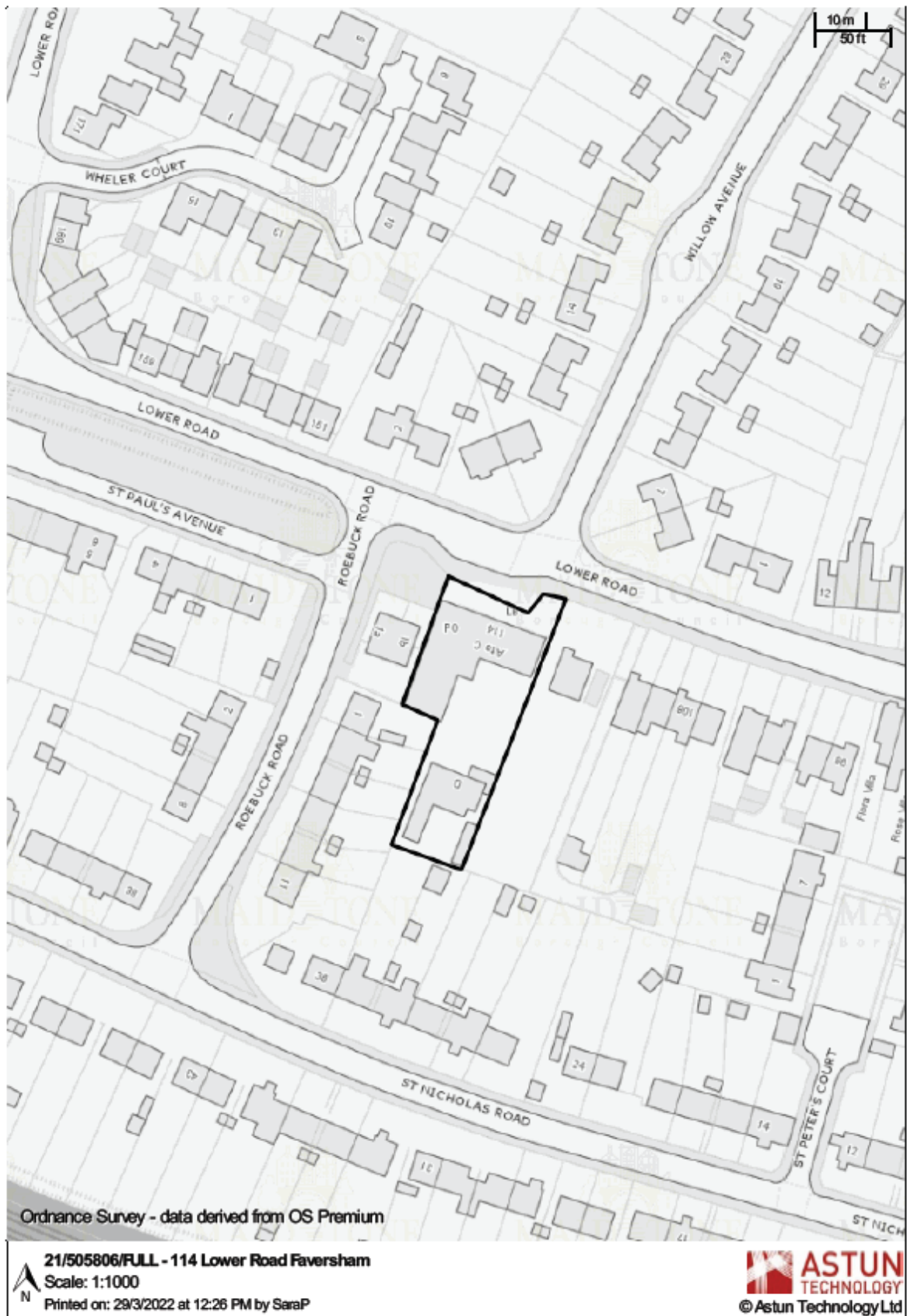
### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2021 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.



<b>3.2 REFERENCE NO - 21/505951/FULL</b>		
<b>APPLICATION PROPOSAL</b> Retrospective application for erection of two dormer windows with balconies on rear roof slope, addition of balcony to existing rear dormer window and use of flat roof as roof terrace, with railings. Proposed erection of single storey rear extensions.		
<b>ADDRESS</b> Gilron Bell Farm Lane Minster-on-sea Sheerness Kent ME12 4JA		
<b>RECOMMENDATION</b> Refuse		
<b>SUMMARY OF REASON FOR REFUSAL</b> The development seeking permission will further increase the bulk and form of the existing property which, taken together with previous extensions to the property, would cause unacceptable harm to the character and appearance of the property and wider countryside. Furthermore, the balconies and roof terrace created at the property cause unacceptable overlooking of Kentucky, the neighbouring property to the west.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council support.		
<b>WARD</b> Sheppey East	<b>PARISH/TOWN COUNCIL</b> Minster-On-Sea	<b>APPLICANT</b> Mr Peter Lay <b>AGENT</b> Mr Ken Crutchley
<b>DECISION DUE DATE</b> 05/01/22		<b>PUBLICITY EXPIRY DATE</b> 02/02/22

**Planning History**

18/502561/LDCEX

Lawful Development Certificate for the existing dog grooming parlour and office.

Refused      Decision Date: 08.08.2018

SW/11/0101

Re-application for proposed two storey side extension to existing chalet bungalow.

Approved      Decision Date: 24.03.2011

SW/10/0411

Two storey side extension to existing chalet bungalow

Approved      Decision Date: 21.05.2010

SW/09/0205

Two storey side extension.

Refused      Decision Date: 13.05.2009

SW/08/0802

Two storey extension.

Refused      Decision Date: 08.09.2008

SW/99/0246

Extension

Approved      Decision Date: 05.05.1999

SW/74/0565

2 bungalows outline

Refused      Decision Date: 11.09.1974

## **1. DESCRIPTION OF SITE**

- 1.1 Gilron is a detached chalet bungalow situated on Bell Farm Lane, in the countryside between Minster and Eastchurch. It is set back from the road and has been extended a number of times in the past, including a one and half storey side extension permitted under application SW/11/0101 and a single storey side extension under SW/99/0246. Various extensions are also present at the property that don't appear to have planning permission, including a loft conversion, a single storey rear extension and a conservatory to the side of the property. All these works appear to have been in place for in excess of four years and would therefore immune from enforcement action.
- 1.2 Two dormer windows with balconies and a roof terrace at the rear of the property have also been constructed. These additions require planning permission and have not been in place for more than four years, and therefore are not immune from enforcement action. These form part of this planning application (as amended).
- 1.3 To the side of the property is a large outbuilding also within the applicant's ownership. A dog grooming business is operating from the building. Parking for the property and business is provided within a car park to the front of this outbuilding.
- 1.4 Across the road is a holiday caravan park, and there are other residential dwellings along Bell Farm Lane.

## **2. PROPOSAL**

- 2.1 This application seeks retrospective planning permission for the erection of two dormer windows with balconies on the rear roof slope, the addition of a balcony to an existing rear dormer window on the eastern side of the property and use of a flat roof as a roof terrace, with railings. The dormer windows all have flat roofs, and are located on the western (rear) side of the property. The central dormer provides access to the flat roof of the existing rear extension, which is used as a roof terrace.
- 2.2 Two single storey rear extensions are also proposed. They will be located either side of the existing rear extension at the property. One extension will measure 3.2m x 3.1m in footprint, whilst the other will measure 3.6m x 3.1m in footprint. Both extensions will have a flat roof with a height of 3m, which matches the height of the existing rear extension. A roof lantern is also proposed in the flat roof. The extensions will provide a larger dining room at the property.

### **3. PLANNING CONSTRAINTS**

- 3.1 The site falls outside of any built confines and within the open countryside as defined in the Local Plan.

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

- 4.1 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG)
- 4.2 Development Plan: Policies CP4, DM11, DM14 and DM16 of Bearing Fruits 2031: The Swale Borough Local Plan 2017

Supplementary Planning Guidance (SPG): 'Designing an Extension: A Guide for Householders'. In relation to balconies the SPG advice is:

*“When considering applications for flat roofed extensions, the roof will not normally be allowed to be used as a balcony due to the resultant privacy problems for neighbours which can so often occur. The Council will seek to ensure that no doorway opens onto such a roof and may impose a condition preventing use of such an area as a balcony. Only in exceptional circumstances will a balcony arrangement be approved.”*

### **5. LOCAL REPRESENTATIONS**

- 5.1 Minster Parish Council supports the application, but it did not provide reasons for its support. Officers have sought to clarify this and the Parish Council has advised that it could find no material considerations not to support the application, and that this is a relevant planning consideration in itself.

### **6. CONSULTATIONS**

- 6.1 None

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

- 7.1 Documents and plans provided as part of 21/505951/FULL.

### **8. APPRAISAL**

#### Impact on character and appearance of rural area

- 8.1 The property lies within the countryside, and policy DM11 in The Swale Borough Local Plan 2017 states the Council will permit extensions (taking into account any previous additions untaken) to existing dwellings in the rural area where they are of an appropriate scale, mass and appearance in relation to the location.
- 8.2 In addition, paragraph 3.3 of the Council's adopted SPG states:

*“The Council will not normally approve an extension to a dwelling in a rural area if it*

*results in an increase of more than 60% of the property's original floorspace”.*

- 8.3 The previous additions to the property (including the side extensions, rear extension and conservatory) have added approximately 102m<sup>2</sup> to the original floor space. This would represent an increase of roughly 204%. Taking into account the extensions proposed under this application, an additional 18.7m<sup>2</sup> will be added to the existing floor space. When added to existing extensions undertaken this would result in the property being approximately 241% bigger than its original floor space. As a result, the overall resulting floor space significantly exceeds the 60% adopted guidance within the SPG. Whilst the dormer windows and external balconies do not add floorspace, they add further bulk and scale to the building.
- 8.4 Whilst the proposed extensions and dormers could be considered to be limited in scale in isolation, when taking into account the extent of existing extensions at the property, the development as a whole further increases the substantial bulk and form of the dwelling compared to the original dwelling. This cumulative increase will cause harm to the character and appearance of the property and wider countryside in my view, and is contrary to policy DM11.

#### Impact on neighbouring amenities

- 8.5 The main property that could be impacted by the development is Kentucky to the south. The proposed single storey extension will project roughly 5m past the rear elevation of Kentucky, which is in excess of the 3m projection recommended in the SPG for such extensions. However, in this case I note that there is a gap of roughly 2.8m between the properties. Taking into account this separation distance, I do not envisage the rear extension would cause any harm to amenity at this neighbouring dwelling. Due to the separation distance to other dwellings, I do not consider the rear extensions will result in any unacceptable impact to neighbouring amenity.
- 8.6 The dormer windows, balconies and roof terrace would not cause any loss of light or outlook to Kentucky. However, I have serious concerns regarding overlooking into this neighbouring property from the western balcony and roof terrace. Both these balcony / roof terrace areas will provide clear views of the rear elevation of Kentucky and its private amenity space. This will cause unacceptable harm to residential amenity of the occupiers of this dwelling, by virtue of a significant loss of privacy. I consider this to be unacceptable and contrary to policy DM14 of the Local Plan.

## **9. CONCLUSION**

- 9.1 This dwelling was originally a modest, single storey property that has already been significantly extended. I consider that the further development proposed under this application would add to the bulk and scale of the dwelling in a manner which will be harmful to the character and appearance of the property and to that of the wider countryside, contrary to policy DM11 of the Local Plan. Furthermore, the western dormer balcony and roof terrace will result in unacceptable overlooking of Kentucky to the west, and therefore will lead to a harmful impact on the residential amenities of this property,



contrary to policy DM14 of the Local Plan. As such I recommend planning permission is refused.

**10. RECOMMENDATION - REFUSE** for the following reasons:

- (1) The site is located within the countryside where policies of restraint generally apply. The proposed development (including the retrospective development subject to this application) would, when taken together with previous extensions to the existing dwelling, result in a development of significant scale, mass and appearance, that would fail to appear subservient to the original property and would be harmful to the intrinsic amenity value and character of the countryside. As such, the development is contrary to policies CP4, DM11 and DM14 of Bearing Fruits 2031 - The Swale Borough Local Plan (2017), and the Council's Supplementary Planning Guidance (SPG) 'Designing an Extension'.
- (2) The western dormer window balcony and roof terrace provides unrestricted views of the rear elevation of the property Kentucky to the west, and its private amenity space. This results in a significant loss of privacy to the occupiers of this dwelling, and is therefore contrary to policies CP4, DM14 and DM16 of the adopted Swale Borough Local Plan – Bearing Fruits 2031 and to the Council's adopted Supplementary Planning Guidance, entitled "Designing an Extension – A Guide for Householders"

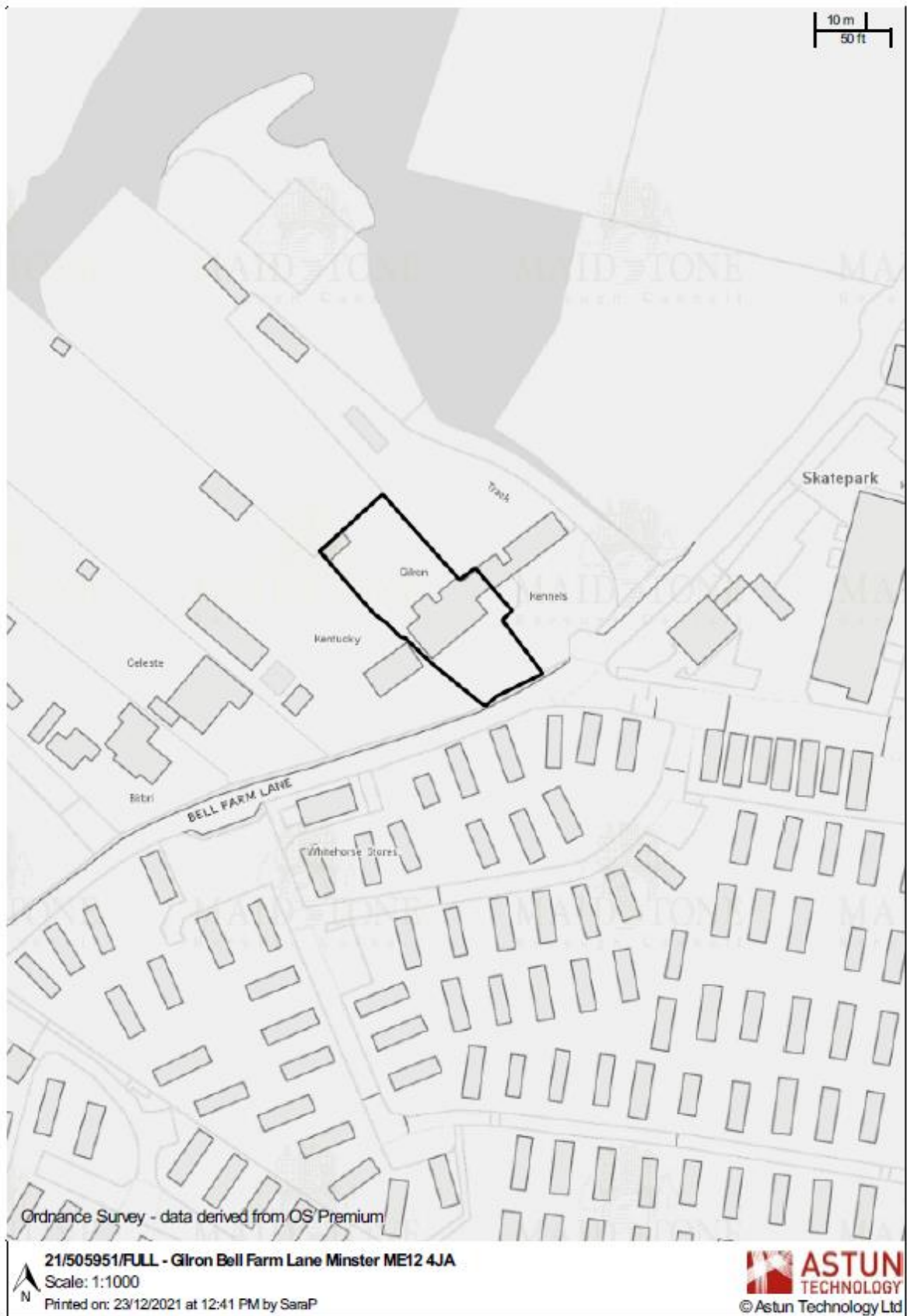
**The Council's approach to the application**

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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.



**PLANNING COMMITTEE – 7 APRIL 2022**

**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 – The Annexe 168A Queenborough Road Halfway**

**APPEAL DISMISSED**

**DELEGATED DECISION**

**Observations**

Although this appeal for conversion of an annexe to a separate dwelling was dismissed, it was only on the grounds that the required SAMMS contribution had not been secured. Otherwise, the Inspector found the small rear garden provided with the building to be acceptable as amenity space, and the smaller garden area retained for the main dwelling at 168A to equally be acceptable. Whilst the proposal would result in the loss of parking in front of the existing annexe for use by No 168A, the Inspector considered that at least one car could still be parked within the private frontage to 168A and that any overspill street parking would not be harmful in this location.

- **Item 5.2 – Pebble Court Farm Woodgate Lane Borden**

**APPEAL DISMISSED**

**COMMITTEE REFUSAL**

**Observations**

Full support for the Council's analysis of the planning status of this building, which means that the Class Q Prior Approval procedure is not applicable.

- **Item 5.3 – Uplees House Uplees Road Oare**

**APPEAL DISMISSED**

**DELEGATED DECISION**

**Observations**

Full support for the Local Plan's settlement strategy.

- **Item 5.4 – The Coach House 87B South Road Faversham**

**APPEAL DISMISSED**

**DELEGATED DECISION**

**Observations**

Full support for the Council's decision.

- **Item 5.5 – Halfway House Halfway Road Minster**

**APPEAL DISMISSED**

**DELEGATED DECISION**

**Observations**

The Inspector did not consider the impact of the proposed extensions to facilitate use of the first floor as a wine bar to be harmful to the character and appearance of the area. However, the Inspector did not consider the loss of the existing first floor residential accommodation to be acceptable, also noting that the current lack of a five year housing land supply would suggest an ongoing need to protect existing residential accommodation.

- **Item 5.6 – 32 Linden Drive & 67 Queensway Sheerness**

**APPEAL DISMISSED**

**APPEAL AGAINST NON DETERMINATION**

**Observations**

The Inspector dismissed the appeal on the grounds that an appropriate SAMMS payment had not been secured, and the lack of a sequential test relating to flood risk. As the scheme was in outline with all matters reserved, the Inspector considered that it was possible for a sensitively designed scheme for 3 x 1 bed dwellings to come forward in keeping with character and appearance and to avoid unacceptable amenity impacts.

- **Item 5.7 – Building at Rushett Stables Rushett Lane Norton**

**APPEALS DISMISSED AND ENFORCEMENT NOTICE CONFIRMED**

**ENFORCEMENT AND DELEGATED DECISION**

**Observations**

Very welcome decisions fully supporting the Council's position relating to this rural property, one that has gradually been developed into a dwellinghouse despite the refusal of a number of previous applications and varied appeal decisions.



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## Appeal Decision

Site visit made on 4 January 2022

by **D Szymanski BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28<sup>th</sup> February 2022

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**Appeal Ref: APP/V2255/W/20/3265165**

**The Annexe, Field View, 168A Queenborough Road, Halfway, Kent ME12 3DF**

- 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 Ms Elaine Price against the decision of Swale Borough Council.
  - The application Ref 20/503865/FULL, dated 21 August 2020, was refused by notice dated 14 October 2020.
  - The development proposed is described as 'I currently have a detached building in the same site as the main house named the Annex , it has planning permission Currently for family use only to the existing bungalow , I would like to submit an application to change the use from an Annex to a detached 1 bedroom bungalow calling it little farm lodge with a completely new address of maybe 168b , the Annex already has its own services separate from the main house , there would be no change to the building as it has its own drive with parking for two vehicles, there would be no need to make changes , I have been living in the Annex since June.'
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. I have considered the appeal on the basis the application is retrospective as set out in the application form and referenced in the Council's delegated report, which is reflected in the terminology I have used below.
3. The revised National Planning Policy Framework (2021) (the Framework) was published on 20 July 2021 and the 2021 Housing Delivery Test (HDT) measurement results were published on 14 January 2022. I have given the Council and the Appellant the opportunity to comment upon the implications of these for their cases.
4. The Council's third reason for refusal makes reference to the Swale Special Protection Area but its Appropriate Assessment (AA) makes reference to the Medway Estuary and Marshes Special Protection Area. I have been subsequently advised the appeal site lies within the Zones of Influence (ZoI) of the Thames Estuary & Marshes Special Protection Area, the Medway Estuary & Marshes Special Protection Area and Ramsar site and the Swale Special Protection Area and Ramsar site (the SPAs).
5. The Bird Wise North Kent Mitigation Strategy (2018) (the MS) explains the features of interest and the Likely Significant Effects (LSEs) from residential

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

Appeal Decision APP/V2255/W/20/3265165

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development within a ZoI is similar for each SPA/Ramsar site. It also deals with mitigation for the designated sites collectively via one single tariff, whether a development falls within 1, 2 or 3 ZoIs. I have given the appellant the opportunity to comment upon this matter and it has not been put to me this approach is incorrect. I have therefore considered the appeal on the basis that all the SPAs may be affected which is reflected in my setting out of the main issues below. The appellant would not be prejudiced by this approach.

### **Main Issues**

6. The main issues are:

- the effect of the development upon the SPAs;
- whether or not the development provides satisfactory living conditions for the occupiers of the appeal site and No 168A with particular reference to private outdoor space provision; and,
- the effect of the development upon highway convenience.

### **Reasons**

#### *SPAs*

7. The Conservation of Habitats and Species Regulations 2017 (the Regulations) requires where a plan or project is likely to result in a significant effect on a European site (in this case the SPAs), a competent authority is required to make an AA of the implications of that project on the integrity of a European site in view of its conservation objectives. Any LSEs from a development need to be considered alone and in combination with other development in the area, adopting the precautionary principle.
8. The SPAs are important habitats for species of wintering, breeding, and migrating waders, waterfowl, and terns which are rare or vulnerable. The conservation objectives of the SPAs are to maintain or restore the integrity of the sites by maintaining or restoring the extent, distribution, structure, function and supporting processes of the habitats of the qualifying features, the population of the qualifying features, and the distribution of the qualifying features within the sites.
9. The appeal scheme would permanently create a separate dwelling and household within the ZoI of the SPAs. The MS explains surveys and studies identified additional dwellings within 6km of the SPAs would have LSE on them. This is through increased visitors resulting in additional disturbance to birds, from recreational activities such as dog walking, cycling, and jogging. Therefore, the effects of this scheme alone and in combination with others would have LSE on the SPAs. The appellant does not dispute this matter.
10. The North Kent Strategic Access Management and Monitoring Strategy (SAMMS) sets out mitigation measures funded by financial contributions at a costed tariff. These include funding rangers, education, communication, site specific access and infrastructure enhancements, and monitoring. Natural England (NE) as the Statutory Nature Conservation Body, has endorsed the SAMMS. NE is a partnership organisation on the SAMMS Scheme Board that implement the funded mitigation. NE has confirmed the SAMMS comprise a package of strategic measures to address LSEs funded through contributions. I

Appeal Decision APP/V2255/W/20/3265165

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am satisfied that subject to a payment being secured against the appeal scheme via a planning obligation or other suitable mechanism that ensures a direct link between the monies and the scheme, the measures would overcome the LSEs on the SPAs.

11. The appellant is willing to accept a planning condition requiring a legal agreement to contribute to the SAMMS. However, the appellant's suggested conditions would not meet the requirements of the Regulations. This is because they suggest an AA can be undertaken by a party other than the competent authority, and the condition would be a pre-commencement condition for a commenced development. Therefore, allowing this appeal with the suggested condition would authorise a scheme without necessary mitigation secured, resulting in unmitigated LSEs to the SPAs. Moreover, as the scheme is retrospective, any such planning condition would be positively worded, in conflict with paragraph 21a-005-20140306 of the Planning Practice Guidance. Therefore, mitigation cannot be addressed by the conditions.
12. As the competent authority in determining this appeal, I do not have a planning obligation before me securing a financial contribution to SAMMS, or other alternative measures to mitigate the impact of this scheme. Therefore, it makes no provision to mitigate the recreational disturbance impacts and thus maintain or restore the integrity of the SPAs. Applying the precautionary principle, in the absence of appropriate mitigation, the appeal scheme would have significant adverse effects on the integrity of the SPAs due to increased recreational disturbance. For this reason, the appeal scheme would fail to adhere to the conservation objectives. Imperative reasons of overriding public interest do not exist and there are no other considerations that clearly outweigh the harm to the SPAs.
13. For the reasons set out above, the development conflicts with Policies ST1, DM14 and DM28 of the Swale Borough Local Plan (2017) (the LP). Amongst other things these require development avoids significant harm to and adequately mitigates the effects upon biodiversity, complies with the Council's supplementary guidance, and for proposals that adversely affect the integrity of a European site, permission will only be granted in exceptional circumstances where there are imperative reasons of overriding public interest and damage can be fully compensated. The development would also conflict with paragraphs 8, 174, 175 and 180 of the Framework, which require development shall protect and enhance the natural environment, improve biodiversity, and where significant harm to biodiversity cannot be adequately mitigated, permission should be refused.

#### *Living conditions*

14. Adequate private outdoor space is required to provide benefits for well-being and household and leisure activities, such as gardening, drying clothes, sitting outside, fresh air, and other hobbies. The appeal site plot is relatively wide and there is approximately 6m between the rear wall of the main annexe structure and back of the garden, and approximately 3m between the rear boundary and conservatory. At my visit it was clear this space could accommodate storage and outdoor seating, with some limited space for gardening opportunities or other activities/functions.
15. The Council has referred to a minimum depth of 10m for rear gardens in its delegated report, although it has not stated where this is set out in its policies.

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Appeal Decision APP/V2255/W/20/3265165

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The appeal site provides a small dwelling not likely to be occupied by a family. I find the level of outdoor space is of an adequate overall width, depth, shape, utility, and outlook to provide satisfactory living conditions for the occupiers.

16. The development would result in the permanent loss of private outdoor space for the neighbouring No 168A. I am informed that No 168A is a 3 bedroom dwelling of an adequate size for family occupation and that omitting the conservatory, the outdoor space is approximately 32 sqm. While it is not the 10m depth referred to in the delegated report, it is of a reasonable shape, width, depth, utility, and outlook to provide for various household and leisure activities as may be required for family occupation. Therefore, it provides satisfactory living conditions for the occupiers of No 168A.
17. For the reasons set out above the development provides satisfactory living conditions for the occupiers of the appeal site and No 168A with reference to private outdoor space provision. Therefore, it does not conflict with Policies CP4 and DM14 of the LP. Amongst other things these require development creates comfortable places that cause no significant harm to amenity.

#### *Highway convenience*

18. This development results in the occupiers of No 168A using parking on its private front space as they could no longer use the two spaces at the annexe. I have not been provided with plans demonstrating the front area of No 168A can provide two spaces in accordance with any of the dimensions in Table 7 of the SPD<sup>1</sup>. The front space at No 168A is shallow with a wall and gates necessitating what would be a perpendicular tandem parking arrangement if it were able to accommodate 2 cars. While it appears that a single space could be provided, it is not clear that the development can provide a minimum of two spaces of the requisite dimensions in a practically accessible manner.
19. I cannot be certain occupiers of No 168A would not need to park outside the property. While my visit can only represent a brief snapshot in time, parking space was plentiful outside the site and on the road. There was limited traffic on the public highway, with on-street parking space widely available nearby on the A250, St Peter's Close and Holmside Avenue. As well as at evenings and weekends, there may be intermittent increased parking associated with the Football Club and another sports club. However, there were no signs of parking stress at my visit, or evidence provided of this by the Council. Therefore, while occupiers of No 168A may need to park off the property to the detriment of highway convenience, I am not provided with substantive evidence demonstrating this would be harmful to the operation of the highway.
20. For the reasons set out above, the development would be likely to be detrimental to highway convenience, in conflict with Policy DM14 of the LP insofar as this requires compliance with the SPD. However, based upon the evidence before me this would not result in harmful effects that would necessitate dismissing this appeal. Therefore, the development does not conflict with Policy CP4 of the LP, which requires development should create safe accessible places. I do not find a conflict with Policy DM7 of the LP referred to in the Council's second reason for refusal, as this policy simply outlines the intention for the SPD but does not specifically require compliance with the SPD.

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<sup>1</sup> Swale Borough Council Parking Standards Supplementary Planning Document (2020) (the SPD)



Appeal Decision APP/V2255/W/20/3265165

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### **Planning Balance**

21. The 2021 HDT results indicate the Council delivered 78% of its required housing over the previous 3 years. I have not been provided with the Council's latest housing land supply position. However, given the harm to the integrity of the SPAs, the application of policies in the Framework that protect areas of particular importance provide a clear reason for refusing the development. Therefore, the tilted balance does not apply.
22. The provision of one dwelling is a limited social benefit to the supply of housing, attributed limited weight in favour of the scheme. The development is not harmful to and therefore has a neutral effect upon the living conditions of the occupiers of the appeal site and No 168A. There would be a policy conflict in respect of highway convenience, however, there would not be harm as a consequence of the conflict, and so is also a neutral matter in the balance.
23. At my visit the property appeared to be occupied. I have not been provided with confirmation as to whether this is the occupiers primary or only residence. Dismissing this appeal and any future enforcement notice would put the occupation of the dwelling at risk, representing an interference with their rights under Article 8 of the European Convention on Human Rights (right to respect for private and family life) as incorporated by the Human Rights Act 1998.
24. Dismissing this appeal may result in the occupiers needing to find new accommodation. However, there is no evidence of a shortage of suitable properties, or that occupiers have requirements resulting in needing to only reside at this property. Having regard to the legitimate, justified, and established planning policy aims to protect the SPAs from significant adverse effects upon their integrity, in this case the greater weight attaches to the public interest. Dismissal of the appeal is therefore necessary and proportionate and would not result in a violation of the human rights of the occupiers.
25. The development would adversely affect the integrity of the SPAs. This is a matter that attracts significant weight against the scheme, which significantly and demonstrably outweighs the benefits of the development.

### **Conclusion**

26. The development conflicts with the development plan and the Framework taken as a whole. There are no material considerations, including the policies of the Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

*Dan Szymanski*

INSPECTOR

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## Appeal Decision

Site visit made on 1 February 2022

**by L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 28 February 2022**

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**Appeal Ref: APP/V2255/W/21/3276153**

**Pebble Court Farm, Woodgate Lane, Borden ME9 7QB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval required under Article 3(1) and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by Mr Michael Miller against the decision of Swale Borough Council.
  - The application Ref 21/500951/PNQCLA, dated 20 February 2021, was refused by notice dated 30 April 2021.
  - The development proposed is change of use of agricultural building to 1no. dwelling and associated operational development.
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### Decision

1. The appeal is dismissed

### Preliminary Matters

2. Prior approval is sought in respect of the proposed change of use and conversion of an agricultural building to a dwelling under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
3. A clear description of the proposed development was not provided in the application form and an amended description of the development proposed was provided in the Council's decision notice and relied upon by the appellant in the appeal form. The amended description includes extensive references to the matters for which prior approval is sought and an incorrect reference to prior notification being made. I have therefore used the amended description in the banner heading above, but I have omitted unnecessary text to provide clarity and conciseness.

### Main Issue

4. The main issues are whether the appeal building is in use as an agricultural building and whether the appeal site was used solely for an agricultural use as part of an established agricultural unit on 20 March 2013, or if the appeal building was not in use on that date, when it was last in use.

### Reasons

5. The appeal site is a secluded area of land which previously formed part of the same ownership as Pebble Court Farm. It comprises areas of hardstanding and open ground, and two vacant buildings. The appeal building is the smaller of the two buildings and is positioned roughly in the middle of the appeal site, close to its western boundary.

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6. The appeal site and the appeal building are not currently in use for agricultural purposes. The appellant claims that the appeal building was not in agricultural use on 20 March 2013 but was in agricultural use when it was last in use, which was before that date. In this regard, the appellant relies on statements in the Council's officer report relating to a previous application<sup>1</sup> which suggest the appeal building was used for agricultural purposes and formed part of an agricultural holding historically.
7. The appellant accepts that he previously erroneously sought prior approval in respect of a proposed change of use of the appeal building from an office to a dwelling. I have been referred to an excerpt of the officer report relating to the appellant's previous application which states the appeal building 'has a formal agricultural use as detailed in SW/93/0558, although its last use would appear to be domestic storage as shown in a planning statement dated 2006'. I have not been presented with the full details of application reference SW/93/0558, but the main parties' representations confirm that application relates to a certificate of lawfulness concerning the larger building at the appeal site, submitted by a former owner in 1993. I have not been presented with the planning statement dated 2006, which the appellant claims relates to the larger building at the appeal site.
8. The planning statement submitted as part of SW/93/0558 refers to the appeal building as being used for agricultural storage purposes at that time, including for the storage of 'implements and machinery used to tend to the orchard, and other land on the holding i.e. tractors, grass cutters, ladders, fruit boxes etc.' and alludes to it being recently erected as permitted development on account of it being 'reasonable [sic] necessary for the purposes of agriculture'. The officer report for the appellant's previous application states the appeal building is shown as an agricultural building on the site plan of SW/93/0558, albeit with a different shaped footprint. It also states that since 1993 the building may not have been used solely for the purposes of agriculture because historic [undated] estate agent documents describe both the appeal building and the larger building at the appeal site as being in light industrial use.
9. It therefore appears that the main parties agree the appeal building may have been initially erected for the purposes of agriculture and was previously used for agricultural purposes as part of an agricultural unit in 1993, but that the agricultural use and agricultural unit have since ceased to exist. Their dispute revolves around how the appeal building had been used prior to 20 March 2013, and in this regard I have not been presented with any convincing evidence to support the claims made by either party. The Council has submitted an undated photograph relating to a 2005 planning application which appears to show a car parked within the appeal building, but as the appellant notes, this also shows a mechanical excavator in front of the building.
10. As the appellant claims the appeal building was not in agricultural use on 20 March 2013, if the appeal building is an agricultural building, I would need to be reasonably sure that when it was last in use before that date it was used for agricultural purposes as part of an agricultural unit; however, the expanse of time between 2013 and the fairly brief and undetailed descriptions of the appeal building's use in 1993 fail to provide that assurance. Furthermore, I

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<sup>1</sup> Council ref: 19/506161/PNOCLA



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would need to be satisfied that the appeal building has not been used for any other purpose since.

11. Based on the limited information before me, on the balance of probability, I am satisfied that the appeal building was used as an agricultural building in 1993. I am not, however, satisfied that the appeal building is currently in use as an agricultural building because it did not appear to be used for, or associated with, any agricultural uses during my site visit and no evidence has been submitted to demonstrate it has been used for any such purposes since 1993. I consider it extremely unlikely that the appeal building was last in use for any purposes in 1993, shortly after it was erected. The main parties refer to it as currently being a disused former agricultural building and subdivided from the residence at Pebble Court Farm.
12. The onus is on the appellant to demonstrate that the proposed development would fall within the scope of the development permitted by Class Q and would accord with all relevant criteria. The statements in the Council's previous officer report are undetailed and rely on limited information. Their purpose was to demonstrate the appeal building did not have a lawful use as an office, as had been erroneously claimed by the appellant at that time. They do not demonstrate the appeal building or the appeal site was used solely for an agricultural use as part of an established agricultural unit when it was last in use prior to 20 March 2013. It has not therefore been demonstrated that the proposal would comply with the description of permitted development set out at Schedule 2, Part 3, Class Q of the GPDO, or otherwise accord with Paragraph Q.1(a) of that Class.

#### **Other Matters**

13. The appellant has referred to the Framework, which provides guidance relating to planning decisions. The GPDO, in contrast, is legislation which has already granted planning permission for specific forms of development and compliance with the legislation is a matter of law. If a proposed development does not fall within the scope of development permitted by the GPDO, as is the case in this instance, no consideration can be given to the proposal's compliance with the advice of the Framework. Similarly, no weight can be assigned to any benefits resulting from the proposal, the personal circumstances of the appellant, or any support offered to the proposal by any other members of the public.

#### **Conclusion**

14. For the reasons I have set out, the appeal should be dismissed.

*L Douglas*

INSPECTOR

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## Appeal Decision

Site visit made on 14 February 2022

**by Robin Buchanan BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 1<sup>st</sup> March 2022**

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**Appeal Ref: APP/V2255/W/21/3277498**

**Uplees House, Uplees Road, Oare ME13 0QR**

- 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 Justin Richardson against the decision of Swale Borough Council.
  - The application Ref 20/504841/FULL, dated 14 October 2020, was refused by notice dated 22 December 2020.
  - The development proposed is change of use of garage/workshop to create 1 No. holiday let and erection of single-storey side and part single, part two-storey front/side extension.
- 

### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The description of development in the banner above is taken from the Council's decision notice. It is more precise than that used in the application form.
3. The Council's officer report refers to The Swale Special Protection Area. I deal with this consideration in 'other matters' below.

### Main Issues

4. The main issues in this case are:
  - whether there is a need for the development and the site would be a suitable location, with particular regard to tourism and the rural economy; and
  - its effect on the character and appearance of the area.

### Reasons

#### *Need and Location*

5. Uplees House is a detached dwelling in a large garden in the countryside. It is within a hamlet of some dwellings and other rural buildings, about a mile from Oare which is a small village just beyond the edge of Faversham. The proposal would provide a two-bedroom holiday-let unit. Vehicular access would be from a secondary means of access to Uplees House.

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6. The Council's Local Plan<sup>1</sup> (the LP) restricts development in the countryside. An exception is for sustainable rural tourism initiatives, including by re-use of a building. The LP is broadly consistent with Government policy in the Framework<sup>2</sup> which supports a prosperous rural economy and sustainable growth and expansion of all types of businesses in rural areas. This includes tourism by the conversion of under-utilised buildings. The Framework also recognises that sites to meet local business needs in rural areas may have to be found beyond existing settlements.
7. The Council suggests that 'many' opportunities for tourism re-use of buildings remain to be exploited and that some approved schemes have not been implemented. There is, though, no objective evidence to that effect before me. The appeal site is part of the curtilage of Uplees House and is not in a built-up area. It is, therefore, by definition previously developed 'brownfield' land<sup>3</sup>. The unit would be proximate to Uplees House and geographically near some other dwellings. Accordingly, though in a remote rural area, it would not in itself be isolated. It would also re-use what appeared to be a vacant building (I saw a new garage and store building exists elsewhere in the garden).
8. However, the unit would not result solely from conversion and re-use of a building. Moreover, once planning permission is granted it runs with the land and the development would remain long after the appellant's personal objectives and requirements have ceased to be material. The unit would be of a size, and have all the facilities required, for use and occupation as an independent dwellinghouse — a new home in an area where ordinarily such development is strictly controlled. A condition could limit its use as a holiday-let for temporary occupation by guests. These users would not have the same demands or needs for access to services and facilities as would permanent residents and the application was not, anyway, made for a separate dwelling.
9. Consequently, while the extension and enlargement of rural buildings for tourism use is not, I note, prohibited by the LP — and in this regard the Framework also supports well-designed new buildings — such development in the countryside must nevertheless be properly justified in need (including size) and location.
10. I have not been informed that the appellant, or the proposal, relates to an existing tourism business. The application form refers to the unit as a 'writers retreat' and the plans include a 'study'; whereas, in the appellant's appeal statement, it is for 'walkers, hikers, bird-watchers and cyclists'. I saw that the proposal and its location would provide tranquillity and solitude. It would also be well-related to habitat suitable for birds<sup>4</sup> and a local network of rural lanes and public footpaths, including the Saxon Shore Way. These could be used by walkers, hikers, bird-watchers and cyclists, including to access some tourism related destinations and support some communities year round that also provide some facilities and services.
11. I appreciate that the appellant has carefully researched the type of guests envisaged, including families or separate couples. I have no reason to doubt that the proposal is sincere and genuine and I sympathise with the appellant's

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<sup>1</sup> Swale Borough Local Plan, July 2017

<sup>2</sup> National Planning Policy Framework

<sup>3</sup> Framework Annex 2: Glossary

<sup>4</sup> Including The Swale Special Protection Area, a local nature reserve, a site of special scientific interest and a Ramsar

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objectives in these respects. However, while these two groups of guests might not be mutually exclusive, there is nevertheless on the face of it an unexplained contradiction in the nature of the proposed holiday-let use. Furthermore, the appellant's research that apparently underpins a need for the proposal (including its size) and for it to be in this specific location, is not before me. Nor is there any other objective evidence to demonstrate compliance with the Council's 'business credentials' (LP paragraph 7.1.14). This might, for example, ordinarily be set out in a business plan or market appraisal report prepared, or endorsed, by a suitably qualified professional. I am, therefore, not clear about the viability and sustainability of the proposal, including what its contribution to the local rural economy might be.

12. I have been referred to a dismissed appeal decision<sup>5</sup>. I note that it was for a holiday-let unit to be established entirely by new build and, while there may be similarities, I cannot be certain that the location of that appeal site is directly comparable. It can, therefore, be distinguished from the circumstances of the current appeal. The Council has also referred to the potential for the development to create a precedent. However, I have considered the proposal and the appeal on its individual planning merits.
13. Taking all of the above into account, I am not satisfied that the appellant has demonstrated that there is a need for the proposed development or that the site would be a suitable location, with particular regard to tourism and the rural economy. Consequently, in these circumstances it would conflict with LP Policies ST3, DM3 and DM14. These policies include that development in the countryside will not be permitted unless supported by other policies of the LP and the Framework. The expansion of tourist and visitor facilities must be in appropriate locations and where identified needs are not being met by existing facilities in the locality.

#### *Character and Appearance*

14. The single storey garage/workshop has a low pitched gabled roof and a narrow rectangular floor plan. It sits within its immediate environs, which is a small, discrete part of the garden of Uplees House, and with the other dwellings nearby, is surrounded by a patchwork of fields of various sizes, many without appreciable field boundaries. There is some marshland and a network of waterways on the approach towards the river Swale estuary. While there are some pockets or belts of trees it is a largely flat, expansive landscape with some extensive panoramic views across the countryside. It is locally distinctive for these reasons.
15. The re-use and conversion would renovate the structure and fabric of the building. The new build elements would be in three distinct parts: a single storey 'extension' using the same external building envelope and form, a two-storey circular 'link' with flat roof and a square 'wing' one and a half-storey in height with a lean-to style monopitch roof. These otherwise disparate constituent parts would, in this case, be successfully integrated by a simple, cohesive design, an articulated L-shaped layout and a common palate of external materials. It would be a novel building, complimentary to its intended use and purpose. In addition, despite the increased floor area the spread of built form would be limited and it would have small, localised vertical protuberance so otherwise retain a mostly single storey presence on the site.

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<sup>5</sup> APP/V2255/W/20/3271083

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16. It would, therefore, be largely inconspicuous and innocuous within the garden of Uplees House. It would also be set inside a cordon of garden boundary landscaping. This includes a hedgerow along the edge of the site and some tall evergreen trees immediately to the south which would have a significant screening and oversailing effect. Even if the proximity of part of the extended building led to the thinning or removal of part of the hedgerow, it would be a limited, very localised loss. Moreover, a small section of new hedgerow could be replanted, if necessary, without any serious or widespread visual intrusion meantime. As a result, the development would not detract from any public views from Uplees Road or in the more distant wider area.
17. Considering the above, the development would not cause any unacceptable harm to the character and appearance of the area. It would comply with LP Policies ST3, DM3 and DM14. These policies include that development should be well sited and of a scale, design, appearance and detail that is appropriate to its location. It should also protect the landscape setting and tranquillity of the countryside, be sympathetic to the rural location and its context and cause no significant harm to the character of the area.
18. It would also accord with the Framework which seeks well-designed new business buildings in rural areas that respect the character of the countryside. Development should also add to the overall quality of an area, be visually attractive as a result of good architecture and layout and be sympathetic to local character, including surrounding built environment and landscape setting while not preventing appropriate innovation or change.

#### **Other Matters**

##### *The Swale Special Protection Area (SPA)*

19. The appeal site is within a zone of influence of the SPA. It is designated<sup>6</sup> due to the presence of rare, vulnerable or migratory bird species. The birds are at risk of the impact of people in an area where the proximity of the occupiers of new development would be such that they would likely visit the SPA for recreational purposes. The Council has referred to an adopted strategy<sup>7</sup> which it considers would achieve suitable mitigation with a financial contribution secured by a planning obligation. There is no detail of the strategy or a planning obligation to this effect before me. However, since I intend to dismiss the appeal for other reasons, there is no need for me to consider the SPA any further.

#### **Conclusion**

20. Notwithstanding my findings on the character and appearance of the area, the proposal would not accord with the development plan overall. There are no other material considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given above I conclude that the appeal should not succeed.

*Robin Buchanan*

INSPECTOR

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<sup>6</sup> Conservation of Habitats and Species Regulations 2017 (as amended)

<sup>7</sup> The Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMM)



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## Appeal Decision

Site visit made on 8 February 2022

by **Philip Willmer BSc Dip Arch RIBA**

an Inspector appointed by the Secretary of State

Decision date: 3<sup>rd</sup> March 2022

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**Appeal Ref: APP/V2255/D/21/3279636**

**The Coach House, 87 South Road, Faversham, Kent, ME13 7LY**

- 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 Mrs Ann Hill against the decision of Swale Borough Council.
  - The application Ref 21/501937/FULL, dated 7 April 2021, was refused by notice dated 21 June 2021.
  - The development proposed is the erection of a garden shed.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The address for the appeal site given on the application form is St Ann's Cross, 81 South Road. However, the address given on the Council's decision notice is The Coach House, 87b South Road. As this is the address used on all the other documents and reflects the address shown on the Ordnance Survey plan, I have adopted this address in the header above.

### Main issues

3. I consider the main issues to be the effect of the proposal on the setting of numbers 87b listed grade II and whether the works would serve to preserve or enhance the character or appearance of the Faversham Conservation Area.

### Reasons

4. The appeal property, 87b is the former coach house to the adjacent dwelling, number 87, previously a public house. Both buildings are listed grade II, located in the Faversham Conservation Area, and now occupied as residential dwellings.
5. The coach house is a two-storey structure, brick up to first floor level with timber boarding above. It is a very simple unadorned building. Due to its design and detailing it is clearly an ancillary structure to the former public house.
6. The appellant proposes the erection of a garden shed in the courtyard garden of the coach house. Due to the size of the coach house the shed is required, for general storage as well as to provide a quiet study space for the appellant's son. The garden is located above street level and is accessed from the first floor of the coach house.

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7. A garden building here would be in the setting of the listed building. However, and while it would be for the Council to consider any proposal in the first instance, in my judgement, a small, appropriately designed, well-mannered, weatherboard clad garden building, reflecting the simple design of the coach house would, given the domestic setting of the listed building, not necessarily cause harm to its setting.
8. However, the proposed garden shed would be quite large in relation to the small courtyard garden. Further, by reason of its 'log' form of construction, cantilevered roof, ornate facias, and roof covering it would, in contrast to the vernacular form and detail of the coach house, appear more as a Scandinavian style garden chalet. It would therefore, in my judgement, appear as a fussy, incongruous and prominent structure that would cause harm to the setting of the listed building.
9. While I have found that the proposal would cause harm to the setting of the listed building I concur with the Council, that due to the residential nature of the area it would have a neutral impact on the character of the conservation area.
10. The National Planning Policy Framework (the Framework) requires great weight to be given to the conservation of designated heritage assets, which include listed buildings. It draws a distinction between substantial harm and less than substantial harm to such an asset. For the latter, which applies here, the test is that the harm should be weighed against public benefits, including securing the optimum viable use.
11. The works would provide some very limited economic benefit. However, given the harm that has been identified I conclude that the public benefits would not outweigh this harm, or the conflict that the works would have with the objectives of Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Framework and Policies DM14 and DM32 of the Swale Borough Local Plan *Bearing Fruits 2031* (Adopted July 2017) as they relate to the preservation of the setting of listed buildings.

#### **Other matters**

12. Given the limited size of the coach house, in particular the appellant's son's bedroom, I appreciate the need of the appellant for additional space. While I am sympathetic to these matters, on balance, they do not outweigh the harm the outbuilding as designed would cause in the long term.

#### **Conclusions**

13. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

*Philip Willmer*

INSPECTOR



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## Appeal Decision

Site visit made on 1 February 2022

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 8 March 2022**

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**Appeal Ref: APP/V2255/W/21/3275887**

**Halfway House, Halfway Road, Minster-On-Sea ME12 3AU**

- 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 Mrs Elvin Akis, ADS Properties against the decision of Swale Borough Council.
  - The application Ref 19/504670/FULL, dated 28 August 2019, was refused by notice dated 14 April 2021.
  - The development proposed is 'first floor side extension fronting Halfway Road, first floor rear extension and associated change of use of residential accommodation (C3 use class) to wine bar (A4 use class) at first floor level'.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The proposal was amended during the course of the application being considered by the Council. I have therefore taken the description of the development proposed for the banner heading above from the Council's decision notice, which the appellant has referred to within the appeal form.

### Main Issues

3. The main issues are the effect of the proposed development on residential accommodation, and the character and appearance of the area.

### Reasons

#### *Residential Accommodation*

4. The appeal site is occupied by a large part single and part two-storey building on a prominent corner plot, comprising a bar and restaurant at ground floor level and an independent residential flat at first floor level. It is proposed to extend the building at first floor level to create a wine bar in place of the residential flat, which would be associated with the restaurant.
5. Neither of the main parties have suggested that the appeal site lies within a primary shopping frontage or a Town Centre, as referred to by Policies DM1 and DM2 of the Swale Borough Local Plan (2017) (LP). Policy DM1 states that outside of such areas, non-retail uses will be permitted where they do not result in the loss of existing residential accommodation, amongst other things. In this case, where the proposal relates to an existing food and drink service use outside of a Town Centre, Policy DM2 states planning permission will be granted for main town centre uses where, amongst other things, they would

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not materially prejudice the provision of other land uses, particularly the supply of housing.

6. The flat is located above a bar and restaurant which operates to 0030, and is without dedicated outside space. I accept that will result in qualified living conditions. The appellant also states that the flat 'is not utilised for residential purposes associated to the existing business and is unlikely to be used as a private residential flat for the foreseeable future.' However, set against the context above, its undisputed lawful use is as residential accommodation. The flat is relatively spacious comprising four rooms in addition to a bathroom, which moderates the extent to which the absence of dedicated outside space would be perceived as substandard by occupants.
7. It is often the case that residential accommodation is located above bars and restaurants. It is not uncommon for individuals to reside there in connection with the operation of the business below, or indeed for other individuals to occupy such premises who accept some noise and disturbance as the consequence of living in a location close to commercial uses. The existence of a bar or restaurant beneath residential accommodation, following the appellant's logic, might be said to render all such arrangements unacceptable, which is evidently not the case. Moreover, there is no justification before me as to the reason why the flat has not been recently in use as accommodation, nor why the appellant contends that would not be the case in the future.
8. I note that the Council's lack of a five-year housing land supply would suggest there is an ongoing need to protect existing residential accommodation in the Borough. The proposal would result in the loss of existing residential accommodation and would therefore conflict with Policies DM1 and DM2 of the LP for the reasons I have given.

#### *Character and Appearance*

9. The appeal building would be extended at first floor level along its front elevation facing onto Halfway Road, and also to the rear. There would be partial views of the proposed rear extension from outside the appeal site, and the increase in the overall bulk of the appeal building would be noticeable from Queensborough Road. The proposed first floor extension along Halfway Road would follow the height and form of the existing first floor of the appeal building, creating a substantial building.
10. Although the appeal building would be larger than neighbouring buildings, the size of its plot would be sufficiently spacious to comfortably accommodate the proposed extensions, which would be subservient to the existing building on account of its existing size and expansive layout. The prominent position of the appeal site, forming one corner of a crossroads lined with commercial properties, would ensure the proposal would not appear incongruous in its mixed surroundings. The scale and bulk of the proposal would not be significantly greater than neighbouring residential terraces and other commercial buildings and would not therefore appear harmful or unsympathetic to the prevailing character of the area.
11. The proposed development would not therefore harm the character or appearance of the area and would accord with Policies CP4 and DM14 of the LP. These require, amongst other things, all development to be of high quality design that is sympathetic and appropriate to its surroundings.

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### **Other Matters**

12. The appellant has referred to the development of 153 dwellings in a nearby location and has claimed that the loss of the existing flat would not therefore unacceptably harm housing provision in the local area. In the context of ongoing large housing developments, the existing flat makes only a small contribution to housing supply. However, the loss of a single flat would still harm housing provision in an area where the Council is unable to demonstrate a five year housing land supply and where the development plan seeks to protect existing residential uses.
13. It has also been suggested that the proposal would contribute towards the vitality and viability of the area, and I accept it would improve and increase the leisure facilities of the existing business. However, no evidence has been presented to demonstrate the existing vitality and viability of the area is under threat or would benefit substantially from the proposal. The benefits of the proposal would not therefore outweigh the harm I have identified.

### **Conclusion**

14. The proposal would not harm the character or appearance of the area, but it would reduce residential accommodation in an area where there is a lack of housing land supply. The proposal would therefore conflict with the development plan taken as a whole, and there are no material considerations which indicate my decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not succeed.

*L Douglas*

INSPECTOR

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## Appeal Decision

Site visit made on 15 February 2022

by **D Szymanski BSc (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9<sup>th</sup> March 2022

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**Appeal Ref: APP/V2255/W/21/3277228**

**32 Linden Drive & 67 Queensway, Sheerness ME12 1LG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Mr M Barber against Swale Borough Council.
  - The application Ref 21/500413/OUT, is dated 24 January 2021.
  - The development proposed is described as Three number one bedroom dwellings with the dormers to the front elevation, with all living accommodation to first floors and above.
- 

### Decision

1. The appeal is dismissed, and planning permission is refused.

### Procedural Matters

2. In the banner heading above I have amended the address from that in the planning application form to refer to both properties that form the appeal site. This is consistent with the appeal form and appeal statement.
3. The application is made in outline with all matters reserved for future consideration. The plans show the appearance, scale and layout of the dwellings. Paragraph ID: 21b-021-20190723 of the Planning Practice Guidance (the PPG) advises where details are submitted as part of an outline application, they must be treated as forming part of the development, unless the applicant has made it clear the details are submitted for illustration purposes only.
4. The appellant advises the plans are illustrative and the Council has stated it treated the plans as illustrative. Therefore, I have considered the appeal on the basis the application is made in outline with all matters reserved. I have treated the submitted site, elevation, and floor plans as illustrative only. In-light of the clarification provided I have treated the reference to dormers in the description of development as an error, as this detail is not before me.
5. The appeal has been submitted due to the failure of the Council to give notice of its decision within the prescribed time period. The Council has subsequently advised it would have refused the application for the following reasons, which I have had regard to in setting out the main issues:

*The proposal fails to demonstrate how a scheme can be designed to mitigate flooding impacts in an area defined as Flood Zone 3. In the absence of*

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*evidence to the contrary, would give rise to significant and unacceptable risk to human life in the event of flood. The proposal would therefore be contrary to...*

*The proposed development will create potential for recreational disturbance to the Swale Special Protection Area. The application submission does not include an appropriate financial contribution to the Thames, Medway and Swale Strategic Access Management and Monitoring Strategy (SAMMS), or the means of securing such a contribution, and therefore fails to provide adequate mitigation against that potential harm. The development would therefore affect the integrity of this designated European site, and would be contrary to...*

*The proposal is considered to represent overdevelopment of the plot, by virtue of the likely height, scale, and design of the dwellings to accommodate three floors, the limited size of the site and the resultant likely cramped nature of the plots with small rear gardens, and the likely need to use obscure glazed windows on the rear elevations of the dwellings to protect neighbouring amenities. This would result in a development that would be out of character with the relatively spacious layout of dwellings in the surrounding area and which display a repetitive character of two-storey dwellings with consistent rooflines. Furthermore, the widespread use of obscure glazing on the rear elevations would fail to provide an acceptable degree of residential amenity which future occupiers would expect to enjoy. As such, the development would cause harm to the character and appearance of the surrounding area, would fail to represent good design, and would fail to provide sufficient amenity standards for future residents, contrary to...*

6. While the site is referred to as being within the Zone of Influence (ZoI) of the Swale Special Protection Area (Swale SPA) in the Council's committee report, I am subsequently informed, it lies within the 6km ZoI of the Swale SPA, Medway Estuary and Marshes SPA and the Outer Thames Estuary SPA (the SPAs). I have sought the views of the Council and the appellant in this regard. The Bird Wise North Kent Mitigation Strategy (2018) (the MS) explains the features of interest and the likely significant effects (LSEs) from development within the ZoIs of either of the SPAs is similar. It deals with mitigation for designated sites collectively via one single tariff. I have considered the appeal on the basis it is within the ZoI of all three SPAs which is reflected in the main issues below. The appellant would not be prejudiced by this approach.
7. The Flood Risk Assessment (FRA) accompanying the application makes reference to the sequential test, as the appeal site lies within Flood Zone 3. However, it does not set out a view on whether the sequential test is required. Therefore, I have sought the views of the Council and the appellant in respect of this matter, which is considered below.
8. The revised National Planning Policy Framework (2021) (the Framework) was published on 20 July 2021, and the 2021 Housing Delivery Test (HDT) results were published on 14 January 2022. The Council and the Appellant were given the opportunity to comment upon the implications of these for their cases, which I have taken into account in determining this appeal.

#### **Main Issues**

9. The main issues are:
  - the effect of the proposed development upon the SPAs;

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- whether or not the proposed development represents an acceptable form of development having regard to policies concerned with flood risk;
- the effect of the proposed development upon the character and appearance of the area; and,
- the effect of the proposed development upon the living conditions of the future occupiers of the appeal site and neighbouring occupiers, with particular reference to outlook and privacy.

### Reasons

#### *The SPAs*

10. The Conservation of Habitats and Species Regulations 2017 (the Regulations) requires where a plan or project is likely to result in a significant effect on a European site (in this case the SPAs), a competent authority is required to make an Appropriate Assessment of the implications of that project on the integrity of the European site in view of its conservation objectives. Any LSEs arising from a development need to be considered alone and in combination with other development in the area, adopting the precautionary principle.
11. The SPAs provide important habitats for species of wintering, migratory and breeding waders, terns, and waterfowl which are rare or vulnerable. The conservation objectives of the SPAs are to maintain or restore their integrity by maintaining or restoring the extent, distribution, structure, function and supporting processes of the habitats of the qualifying features, the population of the qualifying features, and their distribution within the site.
12. The development would increase the number of households and occupiers within the ZoIs of the SPAs. The MS explains surveys, studies and reports have identified additional dwellings within the ZoIs would have LSEs on the SPAs through increased visitors resulting in disturbance to birds, from recreational activities such as dog walking, cycling, and jogging. Therefore, the effects of this proposal alone and in combination with other development would have LSEs on the SPAs, which the appellant does not dispute.
13. The North Kent Strategic Access Management and Monitoring Strategy (SAMMS) sets out mitigation measures funded by financial contributions at the set per dwelling tariff. These include funding rangers, education, communication, site specific access and infrastructure enhancements and monitoring. Natural England (NE) as the Statutory Nature Conservation Body, has endorsed the SAMMS and are one of the partnership organisations on the Scheme Project Board. NE has confirmed it is satisfied that subject to a financial contribution being secured this would mitigate the effects on the SPAs, avoiding an adverse impact to the integrity of the SPAs and their features. I am satisfied that subject to a payment being received via a planning obligation or other means to secure the monies against this particular appeal scheme, the measures would adequately overcome any adverse effects on the SPAs.
14. While the appellant has agreed to pay the necessary tariff, as the competent authority in determining this appeal, I do not have a planning obligation before me securing a financial contribution to SAMMS, or other alternative measures to mitigate the impact of this proposal. Therefore, the appeal scheme makes no provision to mitigate the impacts and thus maintain or restore the integrity of the SPAs. Applying the precautionary principle, in the absence of

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appropriate mitigation, the appeal scheme would have LSEs on the integrity of the SPAs due to increased recreational disturbance and would fail to adhere to the conservation objectives. Imperative reasons of overriding public interest do not exist and there are no other considerations that clearly outweigh the harm to the SPAs.

15. For the reasons set out above, the development conflicts with Policies ST1, DM14 and DM28 of the Swale Borough Local Plan (2017) (the LP). Amongst other things these require development accords with adopted Supplementary Planning Documents and Guidance, avoids significant harm to and adequately mitigates the effects upon biodiversity, and proposals that adversely affect the integrity of SPAs will only be permitted in exceptional circumstances where there are imperative reasons of overriding public interest and damage can be fully compensated. The development would also conflict with paragraphs 8, 174, 175 and 180 of the Framework, which require development shall protect and enhance the natural environment and sites of biodiversity value, improve biodiversity, and where significant harm to biodiversity cannot be adequately mitigated, permission should be refused.

#### *Flood Risk*

16. The appeal site lies within Flood Zone 3 and is at high risk from tidal and fluvial flooding. Paragraph 159 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing it away from areas at highest risk. Paragraph 161 requires the application of a sequential approach to the location of development to avoid, where possible, flood risk to people and property. The proposed development would result in further dwellings and occupiers at the appeal site, resulting in an increase in risk of flooding to people and property.
17. Paragraph 162 of the Framework states development should not be permitted if there are reasonably available sites appropriate for the development in areas with a lower risk of flooding, and the sequential approach should be used in areas at risk from any source of flooding. Paragraph 7-033-20140306 of the PPG also advises the sequential approach to locating development should be applied. If it is not possible for a development to be located in areas with a lower risk, the exception test may have to be applied (paragraph 163).
18. The FRA identifies future flood depths of up to 1.2m may be experienced at the site and the sequential test may be required. However, no sequential test has been provided to me. The appellant suggests the entirety of the settlement is within a flood zone. However, the appellant has not set out the extent of each flood zone or provided a robust explanation of the appropriate area over which the sequential test should be applied. Therefore, the evidence does not demonstrate there are no other appropriate sites reasonably available in areas with a lower flood risk. Consequently, the sequential test is not satisfied.
19. Matters such as the exception test, flood resilience, the design and layout of the dwellings, the drainage strategy, and rainwater harvesting, are matters to be dealt with if the sequential test has been satisfied. The suggested measures do not overcome the need to carry out a sequential test.
20. For the reasons set out above the proposed development is not compliant with policies for flood risk. It conflicts with Policies DM14 and DM21 LP which require inappropriate development is avoided in areas at risk of flooding and

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development accords with national planning policy and the planning practice guidance. The development also conflicts with paragraphs 161 and 162 of the Framework, the relevant provisions of which I have referred to above.

#### *Character and appearance*

21. The appeal site comprises two corner plots forming the front and rear garden areas of Nos 32 Linden Drive and 67 Queensway located on the corner of the junction of the two roads. The host dwellings and those nearby are characterised primarily by two storey gable and hipped gable roof houses in groups of 2 – 5 dwellings. While there are some differences in combinations of front elevation materials, the similar heights, scales, roof pitches, architectural design and window positions means there is a strong degree of uniformity and rhythm in the vicinity of the appeal site. Given the host dwellings are in keeping with the design of those nearby and given their verdant corner plots, the appeal site is in keeping with the character and appearance of the area.
22. As the appeal scheme is in outline with all matters reserved, notwithstanding the indicative plot arrangement, scale and designs on the plans, these matters are not before me. From what I saw, the front and rear plot configuration of dwellings in the area varied significantly including some small front and rear of plot spaces, particularly to the south on Linden Drive. The size of the appeal site would appear to provide scope for a suitable layout, not out of keeping with plot arrangements nearby. Reserved matters submissions could secure a more sensitive scale, height, layout, and appearance of development. Therefore, it is not demonstrated that there is an inherent reason why, reserved matters submissions could not secure a sensitively designed scheme in keeping with the character and appearance of the area.
23. For the reasons set out above, subject to the imposition of suitably worded reserved matters planning conditions, I see no reason why the development could not be designed to be in keeping with the character and appearance of the area. At this stage, on this basis it would not conflict with Policy CP3 and DM14 of the LP. Amongst other things these require homes are of a high quality design appropriate and sympathetic to their surroundings, reflect the positive characteristics and features of the site and locality, and be at densities determined by the context and the defining characteristics of the area. It would also not conflict with paragraph 130 of the Framework insofar as this seeks that development is sympathetic to local character including the surrounding built environment.

#### *Living conditions*

24. I note the Council's concerns in respect of the internal layout, use of obscure glazing, and the potential for overlooking onto neighbouring properties. However, the detailed layout and design of the dwellings is also a matter to be the subject of future consideration under reserved matters submissions. Given the site size and layout of neighbouring properties, I am not persuaded it would not be possible to design an internal configuration for the proposed 1 bedroom dwellings that would ensure adequate living conditions for future occupiers of the dwellings, and neighbouring occupiers, in respect of matters such as outlook and privacy.
25. Subject to the imposition of suitably worded reserve matter planning conditions, I see no inherent reason why the proposed development could not

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provide satisfactory living conditions for the future occupiers of the proposed dwellings, and neighbouring occupiers, with particular reference to privacy and outlook. On this basis, the development would not conflict with Policies CP3, DP4 and DM14 of the LP which requires that homes are of a high quality, comfortable, and do not result in harmful effects on amenity. It would also not conflict with the aims of paragraph 130f) of the Framework which seeks that development provides a high standard of amenity for existing and future users.

### Other Matters

26. I have been provided with few details of the other planning decisions<sup>1</sup> listed by the appellant. For example, I have not been provided with sufficient details to identify the exact location of all developments, their design, the nature, and magnitude of the flood risk, whether those developments undertook and satisfied the sequential test, whether those decisions pre-date the requirement for the sequential test and the current development plan, and the full range of planning considerations before the Council in relation to those proposals.
27. Therefore, while noting the appellant's suggestion of inconsistency, I simply cannot make any reasoned comparison between those developments and the appeal proposal, which I have considered on its own merits and impacts. Furthermore, it is not clear whether those schemes pre-date the adoption of the MS, and how mitigation for the relevant SPAs was addressed. In the case of the appeal scheme, the failure to provide mitigation alone results in the scheme being unacceptable.
28. The appellant has stated some dissatisfaction with the Council's handling of the application. However, my consideration of the development is confined to the planning merits only. Any concerns over the Council's handling of the application, are a matter that should be pursued with the Council.

### Planning Balance

29. The proposed development is in an area at risk of flooding and the sequential test has not been satisfied, and it would result in harm to the integrity of the SPAs. In accordance with paragraph 11d)i) of the Framework, the application of policies that protect areas or assets of particular importance provide a clear reason for refusing permission, for which Framework policies have not been met. Therefore, the titled balance does not apply.
30. The proposal would result in a modest economic benefit during construction, and once complete a small on-going spend in the local economy. The Council's HDT result shows a measurement of 78% against its delivery requirements over the last 3 years and I am informed that it cannot demonstrate a deliverable housing land supply of 5 years. The precise shortfall is not before me. However, even if it were acute, the contribution of three dwellings would be a modest benefit. The provision of home offices would be a small benefit. Overall, the benefits of the proposed development attract limited weight in favour of the scheme.
31. The absence of conflict with policies in respect of the detailed design, materials and layout, the character and appearance of the area and the provision of satisfactory living conditions for future and neighbouring occupiers, would be

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<sup>1</sup> APP/V2255/A/12/2176368, 61 Cecil Avenue, 15/510315/Full, 16/505154/Full, 19/506168/Full, 16/507820/Full, 18/504243/Out, SW/09/0950.



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neutral matters in the planning balance. Compliance with policies in respect of matters such as resource and energy efficiency, accessibility of services and facilities, car and cycle parking provision, highway safety and electric vehicle charging points, would also be neutral matters.

32. However, the proposed development would adversely affect the integrity of the SPAs and it conflicts with the policies of the development plan and the Framework in respect of flood risk as it has not satisfied the sequential test. These are matters that attract significant weight against the scheme. Therefore, the policy compliance and the benefits of the proposal are significantly outweighed by the harm. Therefore, planning permission should be refused.

### **Conclusion**

33. The proposed development is contrary to the development plan and the National Planning Policy Framework read as a whole. There are no material considerations advanced that indicate the decision should be made other than in accordance with the development plan and the Framework. Therefore, for the reasons given, the appeal should not succeed, and planning permission is refused.

*Dan Szymanski*

INSPECTOR

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## Appeal Decisions

Site visit made on 27 January 2022

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2022

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### Appeal A Ref: APP/V2255/C/20/3256509

#### Building at Rushett Stables Rushett Lane, Norton, FAVERSHAM, ME13 0SG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Meldwyn Douglas Clifford Petherick against an enforcement notice issued by Swale Borough Council.
- The notice was issued on 26 June 2020.
- The breach of planning control as alleged in the notice is without planning permission the change of use of the Building from commercial to use as a single dwellinghouse.
- The requirement of the notice is to cease the use of the Building as a single dwellinghouse.
- The period for compliance with the requirement is twelve months.
- The appeal was made on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

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### Appeal B Ref: APP/V2255/W/20/3261861

#### Rushett Stables, Rushett Lane, Norton, FAVERSHAM, ME13 0SG

- 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 and Mrs D Petherick against the decision of Swale Borough Council.
- The application Ref 19/504418/FULL, dated 30 August 2019, was refused by notice dated 5 November 2019.
- The development proposed is the change of use from B1 commercial use of property to part residential.

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### Decisions

#### Appeal A - APP/V2255/C/20/3256509

1. It is directed that the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

#### Appeal B - APP/V2255/W/20/3261861

2. The appeal is dismissed.

### Procedural Matters

3. A revised National Planning Policy Framework (the Framework) came into force in July 2021, after the appeals had been submitted. Other than a change to the relevant paragraph numbers, the revised Framework does not materially alter the approach in respect of the main issue raised in these appeals and therefore the main parties have not been prejudiced by its publication.

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4. At the site visit the appellant declined to give the Inspector access inside the appeal building. Both parties agreed that the internal layout of the building is as indicated on the drawings submitted with planning application Ref: 19/504418/FULL, subject of the s78 appeal.

#### The Enforcement Notice

5. The alleged breach of planning control is the 'change of use of the building from commercial to use as a single dwellinghouse'. The appellant states that an office and toilet space in the building is retained as B1 commercial use. It appears to me that, though the appellant only formally cited ground (a), this comment is in essence a hidden appeal on ground (b) that those matters [stated in the enforcement notice] have not occurred. I shall deal with ground (b) before considering the ground (a) appeal.

#### Appeal A on ground (b)

6. The appeal building was originally erected as stables and forms part of a larger site from which Mr Petherick has operated his business for many years, described as "a contracting business using his own machinery for earth and tree works and also a building business that restores and repairs barns".
7. The planning history includes an appeal decision dated 26 January 2016 Ref: APP/V2255/W/15/3133029 which granted planning permission for 'the change of use from stables to office and workshop B1 use.' (hereafter referred to as the 2016 Decision). The appellant relies on this decision in his submissions. Whilst I have not been provided with the approved plans, the 2016 Decision included a number of alterations to the former stable building including alterations to its roof and the insertion of a number of new windows and doors. The internal arrangements proposed a large workshop and an adjacent office area.
8. Notwithstanding the previous Inspector's comments, the Council considers that the use of the building as an office and workshop never commenced. It is undisputed by the appellant that following the 2016 Decision he undertook works to the building which reflect the drawings submitted with planning application Ref: 19/504418/FULL subject of the s78 appeal. The internal layout provides a lounge, bedroom with ensuite toilet, a kitchen/utility room, a toilet, hall, and an office with an ensuite shower/toilet. Mr and Mrs Petherick have lived in the building since 2017.
9. The appellant submits that an office and toilet are used in connection with his business. Unlike the s78 appeal which relates to the whole site, the enforcement notice relates to the building only.
10. The main purpose of the appellant's use of the appeal building is residential, being a primary use. This is reflected in the wording of the allegation. Notwithstanding, that the buildings were previously rated as office and workshop with non-domestic rates being paid from 2010, the appellant confirms that the need for a workshop became less resulting in space for residential use. Nevertheless, from all the available evidence, given the internal layout of the appeal building it is reasonable to assume that the office and toilet are ancillary to, or part and parcel of the residential use. There is little evidence to show that the appeal building is in a mixed use. The burden of proof lies with the appellant to make his case and the standard of proof is the

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balance of probabilities. As a matter of fact and degree, the matter alleged in the notice has occurred in the building as identified. The hidden appeal on ground (b) therefore fails.

### **Appeal A on ground (a) and Appeal B (s78 appeal)**

#### **Main Issues**

11. The main issues are whether the appeal development in this location is acceptable having regard to its relationship to services and facilities and its effect on the character and appearance of the area.

#### **Reasons**

##### *Location of Development*

12. The appeal site is located in a hamlet of 7 dwellings accessed off Rushett Lane. It is surrounded by open countryside. The site is located outside any settlement boundary.
13. Bearing Fruits 2031 The Swale Borough Local Plan (LP) Policy ST1 sets out the broad presumption in favour of sustainable development in line with the Framework. LP Policy ST3 establishes the Council's settlement strategy and development policy that should apply in settlements and the open countryside. LP Policy CP3 seeks to deliver a wide choice of high quality homes in accordance with Policy ST3.
14. Being outside any defined settlement boundary LP Policy ST3 defines the appeal site as being in the countryside where development will not be permitted unless supported by the Framework and able to demonstrate that it would contribute to protecting and where appropriate enhancing the intrinsic value of the landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.
15. I have been provided with no details regarding the scale and nature of the appellants' business or the amount of traffic generated. Whilst acknowledging that the use of the building in connection with the appellants' business will generate some traffic, a residential use in addition, results in more reliance on vehicles to provide access to facilities and services for day to day living. The introduction of a residential use may reduce car movements to and from the site as the appellants avoid the need to commute for work. However, the appellants still require access to everyday services and facilities. I have not been provided with information that leads me to conclude that such access can be gained by sustainable transport modes. Indeed, I note that the site is some distance from existing settlements such as Sittingbourne and Faversham and outside of any defined built-up boundary. Moreover, the lack of street lighting or footpath along this rural lane makes travel unlikely by foot or bicycle. It is, therefore, likely that the occupiers of the site are reliant on less sustainable transport modes for access to everyday services and facilities.
16. There are no specific policies relating to live/work units in the LP. As mentioned above, it is reasonable to assume that the office and toilet are part and parcel of the overall residential use and that their use in connection with the appellants' business is likely to be ancillary to the residential use. Even if the office and toilet were used solely in connection with the business, no evidence has been submitted to demonstrate that the business requires a live/work unit

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or that there is an essential need for the appellants to live/work in the same location to support the daily needs of the business.

17. Whilst the appellants state that the need for a workshop has become less and less, no cogent evidence has been submitted to demonstrate that there is no longer a demand for such a use. Moreover, the previous Inspector found that the building was suitable for an office and workshop B1 use in this rural location.
18. Thus, I consider that the building subject to the enforcement notice and the appeal site are not a suitable location for a residential use irrespective of whether it forms part of a mixed use of B1 commercial and residential. A residential use or a B1 commercial and part residential use is contrary to LP Policies ST1, ST3, CP3, DM3 and DM14. There is also conflict with the aims of the Framework in this regard.

#### *Character and appearance*

19. I acknowledge that the previous Inspector found that the appeal building in use as an office and workshop would not cause harm to the character and appearance of the rural area. However, the appeal building has a different appearance to the one approved by the 2016 Decision. Although there has been no increase in its overall size, the windows and doors that have been inserted give the building a domestic appearance. Moreover, despite the existing vegetation which partially screens the site, the residential use with its private garden area and domestic paraphernalia and associated parking has changed the rural character and appearance of the site to a harmful degree.
20. Consequently, the appeal development has a harmful effect on the character and appearance of the area. Thus, it conflicts with LP Policies DM14 and ST3 and the Framework where it requires developments to add to the overall quality of the area.

#### **Other Matters**

21. The appellants' SAMMS Mitigation Contribution Agreement for ten units or less, is not a matter determinative to the appeals. Also, I have had regard to all other matters raised, including the letters of support for the development. None of these alter my conclusions above. A lack of third-party objections is not in itself a reason for allowing development that is unacceptable.
22. I acknowledge that Mr and Mrs Petherick have lived in the area for some time. However, there is no evidence before me to suggest that the use of the site for business use only would result in security issues or unreasonable noise levels.
23. I have been provided with no cogent evidence that the appeal building has high levels of insulation and energy efficiency.

#### **Planning Balance**

24. With reference to case law (*Green Lane Chertsey (Developments) Limited v Secretary of State for Housing and Communities and Local Government, Runnymede Borough Council [2019] EWHC 990 (Admin)*), the appellants initially argued that the Council does not have a five-year land supply and then subsequently submitted that it did and therefore reference to paragraph 11 of the Framework was not necessary.

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25. The Council consider it has a 4.6-year supply of housing. Therefore, relevant policies for the supply of housing should not be considered up to date. In such circumstances, paragraph 11 d) ii of the Framework indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. I have considered the appeal development in the context of sustainable development.
26. I have found that the appeal development is harmful to the character and appearance of the area and fails to comply with the aims of the Framework which recognises the intrinsic character and beauty of the countryside. However, the Framework also recognises that small and medium scale developments can make an important contribution to meeting the housing requirement of an area. However, the benefit of a contribution of a single dwelling is very small and I therefore give it little weight.
27. I find that the adverse impacts of the appeal development in this location having regard to its relationship to services and facilities and the harm to the character and appearance of the area, significantly and demonstrably outweigh the benefit of the provision of one new dwelling, when assessed against the policies in the Framework as a whole. Accordingly, I consider that the appeal development is not a sustainable form of development for either the purposes of the Framework or the development plan as a whole.

#### **Conclusion**

28. For the reasons given above, I conclude that that Appeal A should not succeed. I shall uphold the notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
29. For the reasons given above, I conclude that Appeal B should be dismissed.

*Elizabeth Jones*

INSPECTOR

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