

AGENDA

PLANNING COMMITTEE MEETING

Date: Thursday, 15 September 2022

Time: 7.00 pm

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

Membership:

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

Quorum = 6

Pages

Information about this meeting

*Members of the press and public may follow the proceedings of this meeting live via a weblink which will be published on the Swale Borough Council website.

Link to meeting:

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At the start of the meeting the Chair will confirm if all or part of the meeting is being audio recorded. The whole of the meeting will be recorded, except where there are confidential or exempt items.

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Therefore by entering the meeting and speaking at Committee you are consenting to being recorded and to the possible use of those sound recordings for training purposes.

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1. Emergency Evacuation Procedure

The Chair 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 Chair 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 Chair 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 Chair 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 Chair 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

3. Minutes

To approve the [Minutes](#) of the Meeting held on 18 August 2022 (Minute Nos. 245 - 252) 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 Chair 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:

- 21/505936/FULL 19-21 Mount Field, Queenborough, Kent, ME11 5DB

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 or call us on 01795 417328) by noon on Wednesday 14 September 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 or call 01795 417328) by noon on Wednesday 14 September 2022.

Issued on Tuesday 6, September 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

**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

15 SEPTEMBER 2022

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DEFERRED ITEMS Items shown in previous Minutes as being deferred from that meeting may be considered at this meeting

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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

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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DEFERRED ITEMS

DEF ITEM 1 21/505936/FULL QUEENBOROUGH 19-21 Mount Field

PART 2

2.1 22/502256/FULL WARDEN Land off Imperial Drive

2.2 21/505047/AGRREQ LEYSDOWN Muswell Manor Farm
Shellness Road

PART 3

3.1 22/501402/FULL TEYNHAM Land Adjacent To Hinkleys Mill
Teynham Street

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5.1 20/501925/OUT MINSTER 55 Parsonage Chase

5.2 20/506107/OUT MINSTER Read's Orchard Parsonage Chase

5.3 17/503860/FULL UPCHURCH St Thomas Yard Holywell Lane

5.4 21/501324/FULL SITTINGBOURNE 2 Larkfield Avenue

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PLANNING COMMITTEE – 15 SEPTEMBER 2022**DEFERRED ITEM**

Report of the Head of Planning

DEFERRED ITEMS

Reports shown in previous Minutes as being deferred from that Meeting

DEF ITEM 1 REFERENCE NO - 21/505936/FULL			
APPLICATION PROPOSAL Erection of 3no. dwellings to replace those demolished under application 19/501984/DEMREQ			
ADDRESS 19-21 Mount Field Queenborough Kent ME11 5DB			
RECOMMENDATION Grant subject to conditions and completion and receipt of an appropriate SAMMS payment			
SUMMARY OF REASONS FOR RECOMMENDATION Please refer to full committee report			
REASON FOR REFERRAL TO COMMITTEE This application was originally deferred by the Planning Committee on 23 rd June 2022			
WARD Queenborough and Halfway	PARISH/TOWN COUNCIL Queenborough	APPLICANT Mr Q Searle AGENT Building Drawings	
DECISION DUE DATE 31/12/21	PUBLICITY EXPIRY DATE 22/06/22	CASE OFFICER Rebecca Corrigan	
RELEVANT PLANNING HISTORY			
Application no.	Description	Decision	Date
SW/06/0377	The construction of fourteen number three bedroom houses at two and three storeys, a new access road, landscaping and car parking.	Approval, subject to conditions	22.11.2022
19/501984/DEM REQ	Prior Notification for the proposed demolition of 3 dwellings	Prior Approval not required	07.06.2019

1. INTRODUCTION

1.1 This application was previously reported to the Planning Committee on 23 June 2022, with a recommendation for approval. However, at that meeting Members resolved the following:

“That application 21/505936/FULL be deferred and Southern Water be requested to review the sewerage drains in the vicinity to ensure they were fit for purpose.”.

1.2 The original Committee report is attached to this report as Appendix A

2. CONSULTATIONS

- 2.1 Southern Water (02.08.2022) Advise that there were previously foul flooding issues which resulted in a Notice being served on the developer. Ultimately Southern Water intervened and undertook a 110m relay/diversion of the drains.
- 2.2 KCC Drainage (04.08.2022) The application under the above reference number falls outside the definition of major development and also falls outside of KCC's remit as statutory consultee
- 2.3 Environment Agency (11.08.2022) raise no objection to the proposed development
- 2.4 Environmental Services (16.08.2022) No additional comments
- 2.5 KCC Biodiversity (25.08.2022) Advised to add a planning condition to provide net gains in biodiversity

3. Appraisal

- 3.1 The application was presented to Planning Committee on 23rd June 2022 however, it was deferred by members as concerns were raised in relation to the sewer system which runs under the property and within the immediate area. Members brought to officers attention that the original drainage system for the (now demolished) dwellings was inadequate, leading to a collapsed system and as a result foul water flooded the neighbouring properties. Officers were advised that Southern Water were heavily involved pumping the foul water out of the flooded neighbouring properties as well as the carrying out of essential maintenance works to rectify the damage caused.
- 3.2 Southern Water had been consulted as part of the original application and raised no objection to the proposal. However, Members were concerned that no reference to the above problems had been mentioned in Southern Waters' response and wanted to ensure that the previous issues had been taken into consideration.
- 3.3 Southern Water have now provided further information and advise that there were foul flooding problems arising from work undertaken by a developer who was subsequently served notice by Southern Water in 2014. Eventually Southern Water undertook a 110m relay/diversion to deal with the problem which was completed in 2017. This would explain why Southern Water do not raise objection to the current application.

4. CONCLUSION

- 4.1 In view of the above, it remains my opinion that the proposal is acceptable. I therefore recommend that the application be granted subject to conditions outlined in the original report and the inclusion of an additional condition (16), as set out below:

5. RECOMMENDATION

GRANT Subject to the following conditions including the

- 1) The development which this permission relates shall be begun not later than the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town & Country Planning Act 1990

- 2) The development hereby approved shall be carried out in accordance with drawing title number(s): 21061QS-PP-(03)01-Proposed Plans-Ground and First Floor; 21061QS-PP-(03)02-Proposed Plans-Second Floor and Roof; 21061QS-PP-(04)01-Proposed Elevations-All; 21061QS-PP-(13)01-Site Plans-Location Plan; 21061QS-PP-(13)02-Site Plans-Existing Block Plan; 21061QS-PP-(13)03-Site Plans-Proposed Block Plan

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

- 3) All external materials to be used in the development shall match those specified on the application form.

Reason: To ensure that the materials harmonise with the surroundings, in accordance

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

Reason: In the interest of residential amenity.

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

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

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

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

- 7) 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 tree or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

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

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

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

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

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

- 9) No development beyond construction of foundations shall take place until a scheme for the adequate provision of active electric vehicle charging points has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to the first occupation of the development hereby approved.

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

- 10) The development shall be carried out using the flood resilience measures specified in the revised Flood Risk Assessment submitted with the application.

Reason: To minimise risks from flooding.

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

Reason: In the interests of water conservation and sustainability.

- 12) Upon completion, no further rear extensions to the dwellings, whether permitted by Class A of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order) or not, shall be carried out.

Reason: In the interests of neighbouring amenities, flood risk and retention of sufficient amenity provision

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

Reason: To minimise risk from flooding

- 14) Prior to the completion of the development hereby approved, details of how the development will enhance biodiversity will be submitted to, and approved in writing by, the Local Planning Authority. These shall include the installation of bat and bird nesting boxes along with provision of generous native species planting where possible. The approved details will be implemented and thereafter retained.

Reason: To minimise impacts on and provide net gains for biodiversity in accordance with the requirements of the NPPF.

- 15) The area shown on the submitted plans as car parking space (including the integral garages) shall be kept available for such use at all times and no permanent

development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling(s) hereby permitted.

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

- 16) Construction of the development shall not commence until written evidence is provided to demonstrate that the developer has agreed with Southern Water, the measures to be undertaken to protect/divert the public water supply main.

Reason: To minimise risk from flooding.

INFORMATIVES

Southern Water

You are referred to the response received to the Council from Southern Water on 4th January 2022. As per the contents of the advisory note, you are advised to liaise directly with Southern Water regarding the location of the public sewer prior to the implementation of development. This planning permission does not remove or override any requirement for approval from Southern Water in respect of development over or near a public sewer.

KCC Ecological Service

The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended (section 1), it is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this Act. Trees and scrub are likely to contain nesting birds between 1st March and 31st August inclusive. These habitats are present on the application site and are to be assumed to contain nesting birds between the above dates, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period and has shown it is absolutely certain that nesting birds are not present.

Network Rail

You are referred to the response received to the Council from Network Rail on 1st February 2022. As per the contents of the advisory note, due to the close proximity of the proposed dwellings to Network Rail's land and the operational railway, you are advised to liaise with National Rail directly and follow the Asset Protection informatives which are issued to all proposals within close proximity to the railway (compliance with the informatives does not remove the need to engage with Network Rail ASPRO team).

Highways

It is important to note that planning permission does not convey any approval to carry out works on or affecting the public highway.

Any changes to or affecting the public highway in Kent require the formal agreement of the Highway Authority, Kent County Council (KCC), and it should not be assumed that this will be a given because planning permission has been granted. For this reason, anyone considering works

which may affect the public highway, including any highway-owned street furniture, is advised to engage with KCC Highways and Transportation at an early stage in the design process.

Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the public highway. Some of this highway land is owned by Kent County Council whilst some is owned by third party owners. Irrespective of the ownership, this land may have highway rights over the topsoil.

Works on private land may also affect the public highway. These include works to cellars, to retaining walls which support the highway or land above the highway, and to balconies, signs or other structures which project over the highway. Such works also require the approval of the Highway Authority.

Kent County Council has now introduced a formal technical approval process for new or altered highway assets, with the aim of improving future maintainability. This process applies to all development works affecting the public highway other than applications for vehicle crossings, which are covered by a separate approval process.

Should the development be approved by the Planning Authority, it is the responsibility of the applicant to ensure, before the development is commenced, that all necessary highway approvals and consents have been obtained and that the limits of the highway boundary have been clearly established, since failure to do so may result in enforcement action being taken by the Highway Authority. The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under the relevant legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

Guidance for applicants, including information about how to clarify the highway boundary and links to application forms for vehicular crossings and other highway matters, may be found on Kent County Council's website:

<https://www.kent.gov.uk/roads-and-travel/highway-permits-and-licences/highways-permissions-and-technical-guidance>. Alternatively, KCC Highways and Transportation may be contacted by telephone: 03000 418181

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

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

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

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

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

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat

Regulations require a Habitat Regulations Assessment. For similar proposals NE also advise that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation and site remediation satisfactory to the EA, the proposal is unlikely to have significant effects on these sites.

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

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

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

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

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

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.



APPENDIX A

2.2 REFERENCE NO - 21/505936/FULL			
APPLICATION PROPOSAL			
Erection of 3no. dwellings to replace those demolished under application 19/501984/DEMREQ			
ADDRESS 19-21 Mount Field Queenborough Kent ME11 5DB			
RECOMMENDATION That delegated authority is given to the Head of Planning to grant Planning Permission, subject to completion of a further reconsultation process, the imposition of recommended conditions and completion of a SAMMS payment.			
SUMMARY OF REASONS FOR RECOMMENDATION			
<p>The proposal entails development within the built-up area which is acceptable in principle. The development is on the site of three former dwellings that were originally granted under planning Ref: SW/06/0377, but subsequently demolished in 2019. The scale, design and appearance of the development as proposed is consistent with the former dwellings. No significant impacts to the character, appearance or layout of the vicinity of the site have been identified and although in Flood zone 3, the Environment Agency does not object to the development as proposed. The proposal does not result in any material harm to the outlook or amenity of neighbouring occupiers or any highways safety concerns over or beyond the relationships that existed with the previous dwellings. It accords with all the relevant policies of the development plan and government guidance in the revised NPPF. The agent has agreed to pay a SAMMS contribution subject to approval and therefore suitable mitigation measures have been agreed.</p>			
REASON FOR REFERRAL TO COMMITTEE			
Objection from Queenborough Town Council and Call in by Cllr Beart			
WARD Queenborough And Halfway	PARISH/TOWN COUNCIL Queenborough	APPLICANT Mr Q Searle AGENT Building Drawings	
DECISION DUE DATE 31/12/21		PUBLICITY EXPIRY DATE 03/06/22	
PLANNING HISTORY			
Application Ref:	Description	Recommendation	Date
SW/06/0377	The construction of fourteen number three bedroom houses at two and three storeys, a new access road, landscaping and car parking.	Approval, subject to conditions	22.11.2006
19/501984/DEMREQ	Prior Notification for the proposed demolition of 3 dwellings.	Prior Approval not required	07.06.2019

APPENDIX A**1. DESCRIPTION OF SITE**

- 1.1 The subject site is located within the built-up area of Queenborough. The site is situated on an area of land situated on the western side of Mount Field and infills an area between a railway embankment to the west and a relatively modern housing estate to the east.
- 1.2 The site is currently vacant, previously occupied by three dwellings of three storeys in height which formed a small terrace row. The three original dwellings formed part of a larger residential housing scheme for 14 dwellings under planning application Ref: SW/06/0377 dated 22.11.2006, and dwellings of similar design and scale are sited on each side of the site. The three dwellings (19-21) were subsequently demolished, being deemed unfit for purpose, and the site is currently empty with the exception of protective hoarding around the sites perimeter. There is an established landscape buffer of mature trees along the western boundary of the site adjacent to the railway line. The site of the proposed access is an existing turning head, used for informal parking by the occupants of dwellings in Mount Field.
- 1.3 To the west, on the opposite site of the railway line is Queenborough Conservation Area.
- 1.4 The site is also in Flood Zone 3 in an area at risk of flooding.

2. PROPOSAL

- 2.1 This application seeks planning permission for the erection of 3no. three bedroom dwellings with amenity space and landscaping. The original dwellings were demolished having been found to be structurally unsafe.
- 2.2 The built form of development would be three storeys in height, the third storey accommodated partially within the roofspace served by dormer windows to the front and rear. A summary and comparison of the scale of development proposed is set out in further detail within Section 3, below. The main difference between the scheme and the dwellings previously present on the site is the introduction of a single storey rear infill extension to the rear of the properties (2.4m by 2.4m to eaves/ 3.4m to ridge height).
- 2.3 The proposal has been revised under the course of this application. The width of the development has been reduced by 1m on either side of the development block. To the west, the development has been set in to retain a sufficient landscape buffer to ensure protection of the visual amenity of the Queenborough Conservation area opposite as requested as part of the original consent (SW/06/0377). To the east, the development has been set in to ensure that the proposal aligns with the side flank of the previous consent, in the interests of visual amenity.
- 2.4 The proposed dwellings would be of a relatively traditional design incorporating a pitched roof with gable ends and would feature front and rear facing flat roof half dormer windows, and front Juliet balconies above the integral garages, mirroring that of the original consent and existing properties directly opposite at no's.22-26 (cons). A combination of brickwork and cladding is proposed to the fenestrations. Concrete interlocking tiles are proposed for the roof and white uPVC windows are proposed for the doors and windows.

APPENDIX A

Report to Planning Committee – 23 June 2022

ITEM 2.2

- 2.5 The existing access and hardstanding would be retained. Each property would be served by two parking spaces (one within a garage).
- 2.6 The application site area has recently been amended to incorporate further space for car parking. This is within land already identified as being under the control of the applicant. Nonetheless, as the site area has technically been enlarged it is necessary to carry out a further consultation, which is currently underway. It is not envisaged that this would raise any new matters of concern (and it is noted that no neighbour objections have been received), however it is important that the correct consultation process is followed.

3. SUMMARY INFORMATION

	Demolished Properties	Proposed	Change (+/-)
Approximate Ridge Height (m)	10.8m	10.5m	
Approximate Eaves Height (m)	6.3m	6.3m	
Approximate Depth (m)			
Ground Floor	12.8m	13.7m	
First and second floors	9.8m	10m	
Approximate Width (m) single unit	4.4m	4.4m	
Approximate Width (m) block	13m	13m	
No. of Storeys	3	3	
No. of Bedrooms	3	3	
Net Floor Area	120m ²	125m ²	
Parking Spaces	2	2/3	

4. PLANNING CONSTRAINTS

- 4.1 Potential Archaeological Importance
- 4.2 Environment Agency Flood Zone 2/3

5. POLICY AND CONSIDERATIONS5.1 The National Planning Policy Framework (NPPF) 2021

Chapter 2: Sustainable Development; Chapter 6: Building a strong, competitive economy; Chapter 9: Promoting sustainable transport; Chapter 11: Making effective use of land; Chapter 12: Achieving well-designed places; Chapter 14 :Meeting the challenge of climate change, flooding and coastal change; Chapter 15: Conserving and enhancing the natural environment; Chapter 16: Conserving and enhancing the historic environment

- 5.2 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 ST 6 The Isle of Sheppey area strategy; Policy CP2 Promoting Sustainable Transport; Policy CP 3 Delivering a wide choice of high quality homes; Policy CP4 Requiring good design; Policy DM 6 Managing Transport Demand and Impact; Policy DM 7 Vehicle Parking; Policy DM 14

APPENDIX A

Report to Planning Committee – 23 June 2022

ITEM 2.2

General Development Criteria; Policy DM 19 Sustainable Design and Construction; Policy DM 21 Water, Flooding and Drainage; DM 28 Biodiversity and geological conservation

5.3 Swale Vehicle Parking Standards SPD 2020

6. LOCAL REPRESENTATIONS

6.1 No neighbouring representations were received.

7. CONSULTATIONS

7.1 Queenborough Town Council:

“The Town Council raise concerns, knowing of the issues around this area of Queenborough regarding sewage and water flooding.

Prior to any consideration of the application a completely new flood report should be sought and accompany the submitted application for review by consultees’, the one attached is outdated being 2005.

The impact of these dwellings on the Queenborough and Rushenden sewage system should be reviewed as homes in Queenborough continue to be flooded with raw sewage with the most recent event being January 2021.

The current pumping station is totally inadequate for Queenborough and Rushenden, with a long history of flooding of raw sewage where the station cannot cope, and Southern Water must improve the pumping station.

Queenborough Town Council ask Swale Borough Council for careful consideration to application for a new connection to the current system.”

7.2 Cllr Cameron Beart: *“I note that the Town Council have already objected to the above application so this should be a committee referral anyway but I would like to call this application in to be determined by the planning committee as ward member also.”*

7.3 KCC Flood and Water Management: (Summarised) (19.12.2021) *“The application under the above reference number therefore falls outside the definition of major development and also falls outside of KCC’s remit as statutory consultee”*

7.4 KCC Highways: (21.12.2021) The development proposal does not meet the criteria to warrant involvement from the Highway Authority

7.5 Southern Water: (04.01.2022) (Summarised) *The exact position of the public assets must be determined on site by the applicant in consultation with Southern Water before the layout of the proposed development is finalised. Relevant conditions and Informatives are advised.*

7.6 Environment Agency: (11.01.2022) Initially objected to the proposal based upon an insufficient Flood Risk Assessment. A revised and updated FRA was submitted by KRS Environmental dated April 2022 whereby the EA raised no objection to the proposal (17.05.2022)

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- 7.7 KCC Ecological Advice: (14.01.2022) We advise that the proposed development has limited potential to result in ecological impacts and as such we are satisfied that there is no requirement for an ecological survey to be carried out. Ecological Enhancement condition recommended and Breeding Birds Informative.
- 7.8 Network Rail (01.02.2022) (Summarised) - *Due to the close proximity of the proposed dwellings to Network Rail's land and the operational railway, Network Rail requests the applicant / developer engages Network Rail's Asset Protection and Optimisation (ASPRO) team via AssetProtectionLondonSouthEast@networkrail.co.uk prior to works commencing. This will allow our ASPRO team to review the details of the proposal to ensure that the works can be completed without any risk to the operational railway.*
- 7.9 Environmental Health: (27.04.2022) No objection, subject to conditions – Hours of construction & EV charging
- 7.10 Natural England: No comments received

8. BACKGROUND PAPERS AND PLANS

- 8.1 Existing – Site Plan
- 8.2 Proposed – 21061QS-PP-(03)01-Proposed Plans-Ground and First Floor; 21061QS-PP-(03)02-Proposed Plans-Second Floor and Roof; 21061QS-PP-(04)01-Proposed Elevations-All; 21061QS-PP-(13)01-Site Plans-Location Plan; 21061QS-PP-(13)02-Site Plans-Existing Block Plan; 21061QS-PP-(13)03-Site Plans-Proposed Block Plan (Revised drawings)

9. APPRAISALPrinciple of Development

- 9.1 The site is an existing brownfield site, the principle of development for three houses having been previously established under planning application Ref: SW/06/0377, and by the construction and presence of three dwellings on the site until they were demolished in 2019. The application site lies within the built up area of Queenborough, within a residential and sustainable location reasonably accessible by public transport. The principle of development within these locations is generally regarded as acceptable and in accordance with accords with Policy ST3 of Bearing Fruits 2031 – The Swale Borough Local Plan 2017.
- 9.2 In addition, Policy CP3 also aims to steer new development to the built-up area boundaries. As a result, the site location is considered sustainable, situated within the defines of an urban area with a good range of services which can be reached by sustainable travel modes to the benefit of future residents and in accordance with sustainable development set out within the NPPF 2021.
- 9.3 Overall, I consider the principle of development consistent with policies ST1, ST3, CP3 of the Local Plan (2017) as adopted, subject to considerations set out in further detail below.

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Visual Impact

- 9.4 The Government attaches great importance to the design of the built environment as stated in paragraph 130 of the NPPF. In addition, Policy CP4 of the Swale Local Plan 2017 promotes and encourages high-quality design which should be appropriate and reflect the character of the area.
- 9.5 In terms of scale and bulk, the proposal has been amended through the course of this application to reduce the width of the development proposed in line with the dwellings previously on the site and as per the approved scheme (Ref: SW/06/0377). A single storey infill extension has been introduced however I am satisfied that this is a relatively modest extension (2.4m deep by 2.4m to eaves/ 3.4m to ridge height) which does not adversely impact upon the scale of development previously approved. Moreover, there has been only a minimal increase (5m²) in the proposed floor area.
- 9.6 Turning to design and appearance, the appearance is reflective of the previously approved scheme and identical to the residential block directly opposite at no's 22 to 26 Mount Field. I note the proximity to Queenborough Conservation Area, however this is located on the opposite side of the Railway Line, and I do not envisage the scheme would cause harm to the setting the Conservation Area, taking into account the former similar development on the site and surrounding built form. Revised plans have been submitted to reduce the width of the development along the western boundary which will ensure the retention of the existing and well established landscaped buffer between the flanks of the proposed houses and the boundary of the site with the railway line and I am satisfied that this will provide appropriate and sufficient mitigation to the setting of the conservation area.

Residential Amenity

- 9.7 The proposed dwellings would be located a minimum of 17 metres from the closest existing dwelling at No.14 Barler Place. This distance is measured from the (east) flank wall of the proposed dwellings to the rear wall of No.14 and is the same as the previous dwellings on the site which was considered acceptable under the application Ref: SW/06/0377. No windows are proposed in the side flank of the properties and the proposed dwellings would be a sufficient distance to avoid any unacceptable overshadowing, and I do not envisage the scheme giving rise to significant noise and disturbance.
- 9.8 In respect of the relationship with no's 22-26 Mount Field to the north and no.17 & 18 to the south, the distances at first and second floor level would be approx. 19 metres. Whilst less than the 21m standard normally applied, I note this distance would be the same as the dwellings that were previously on the site and considered acceptable as per the previous approval in 2006. I consider this to be acceptable given this historic relationship between dwellings.
- 9.9 Due to the nature of the development it is also necessary to consider the amenities of future occupiers. The internal spaces would meet national standards and rear gardens would be modest but acceptable and commensurate with the gardens associated with the demolished properties.

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Highways, Access, Parking

- 9.10 Policy DM7 states that parking requirements in respect of any new proposed developments should be in accordance with Swale Borough Parking Standards 2020
- 9.11 In terms of access and highway safety, no changes are proposed to the existing site entrance or hardstanding to the front forecourt. KCC Highways have been consulted and no concerns have been raised.
- 9.12 Each dwelling would be provided with 2 parking spaces, one of which would be in the integral garage. This would be in line with the arrangements for the dwellings previously constructed on site and in accordance with the original consent (SW/06/0377). However, the integral garage space does not comply with the dimensions specified in the more recent Parking SPD adopted by the Council. Under normal circumstances this would not be acceptable. However as the units are effectively replacement dwellings for the dwellings that until recently were on the plot, and the parking arrangements would be no worse than provided for these dwellings, I consider this to be acceptable in this particular instance. I note that the integral garage measures 2.6 by 5.2m and as such consider it would still be possible to utilise this space for parking, albeit it is not in accordance with the new standards.
- 9.13 For this reason, I am satisfied that there is sufficient parking for future occupiers and that parking would not lead to displacement of parking to the highway, to the detriment of highway safety.

Flood Risk

- 9.14 The property is located within designated Flood Zone 3. Following an initial objection from the Environmental Agency on the grounds that the original FRA was out of date (2005) a revised Flood Risk Assessment has been provided under the course of this application. I have consulted with the Environment Agency on the revised FRA who have raised no objections to the proposal, despite the location within flood zone 3. I have no reason to dispute this response and the proposal is acceptable in this regard.

Landscaping

- 9.15 Policy DM14 requires the provision of an integrated landscape scheme that would achieve a high standard of landscaping within the development. No landscaping has been provided however I am satisfied that this can be implemented via a condition, attached.

Ecology/SAMMS

- 9.16 Since this application would result in a net increase in residential accommodation on the site, impacts to the SPA and Ramsar sites may occur from increased recreational disturbance. An HRA/AA is appended below. Due to the scale of the development there is no scope to provide on site mitigation and therefore off site mitigation is required by means of developer contributions at the rate of £253.83 per dwelling. The applicant has confirmed that he is willing to make this payment in the event of an approval.

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Other Matters

9.17 I note the comments from the Town Council regarding the Queenborough and Rushenden sewage system and raise concerns that the pumping station is inadequate for this area. I have consulted with Southern Water who are responsible for sewerage disposal and no objections on capacity grounds have been raised, although conditions/informatives are sought to protect existing sewers and apparatus.

10. CONCLUSION

10.1 The proposal entails development within the built-up area which is acceptable in principle. The application is to replace three dwellings of almost identical form that were recently demolished, but were subject to previous approval at this site, under planning Ref: SW/06/0377, and the scale, design and appearance are found to be consistent with this previously approved development. No significant impacts to the character, appearance or layout of the vicinity of the site have been identified and although in Flood zone 3, the Environment Agency does not object to the development as proposed. The proposal does not result in any material harm to the outlook or amenity of neighbouring occupiers or any highways safety concerns over or beyond the relationships between the previous dwellings that stood on site. It accords with all the relevant policies of the development plan and government guidance in the revised NPPF. Moreover, the agent has agreed to pay a SAMMS contribution subject to approval and therefore suitable mitigation measures have been agreed in principle.

11. RECOMMENDATION

That delegated authority is given to Grant planning permission, subject to completion of the new consultation process (as described in para. 2.6) securing a SAMMS payment and the following conditions:

CONDITIONS to include

- 1) The development which this permission relates shall be begun not later than the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town & Country Planning Act 1990

- 2) The development hereby approved shall be carried out in accordance with drawing title number(s): 21061QS-PP-(03)01-Proposed Plans-Ground and First Floor; 21061QS-PP-(03)02-Proposed Plans-Second Floor and Roof; 21061QS-PP-(04)01-Proposed Elevations-All; 21061QS-PP-(13)01 Rev A-Site Plans-Location Plan; 21061QS-PP-(13)02-Site Plans-Existing Block Plan; 21061QS-PP-(13)03 Rev A-Site Plans-Proposed Block Plan

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

- 3) All external materials to be used in the development shall match those specified on the application form.

Reason: To ensure that the materials harmonise with the surroundings, in

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accordance

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

Reason: In the interest of residential amenity.

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

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

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

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

- 7) 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 tree or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

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

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

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

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

- 9) No development beyond construction of foundations shall take place until a scheme for the adequate provision of active electric vehicle charging points has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to the first occupation of the development hereby approved.

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

- 10) The development shall be carried out using the flood resilience measures specified in the revised Flood Risk Assessment submitted with the application.

Reason: To minimise risks from flooding.

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

Reason: In the interests of water conservation and sustainability.

- 12) Upon completion, no further rear extensions to the dwellings, whether permitted by Class A of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order) or not, shall be carried out.

Reason: In the interests of neighbouring amenities, flood risk and retention of sufficient amenity provision

- 13) Construction of the development shall not commence until details of the proposed means of foul sewerage and surface water disposal have been submitted to, and approved in writing by, the Local Planning Authority.

Reason: To minimise risk from flooding

- 14) Prior to the completion of the development hereby approved, details of how the development will enhance biodiversity will be submitted to, and approved in writing by, the Local Planning Authority. These shall include the installation of bat and bird nesting boxes along with provision of generous native species planting where possible. The approved details will be implemented and thereafter retained.

Reason: To minimise impacts on and provide net gains for biodiversity in accordance with the requirements of the NPPF.

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

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

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INFORMATIVESSouthern Water

You are referred to the response received to the Council from Southern Water on 4th January 2022. As per the contents of the advisory note, you are advised to liaise directly with Southern Water regarding the location of the public sewer prior to the implementation of development. This planning permission does not remove or override any requirement for approval from Southern Water in respect of development over or near a public sewer.

KCC Ecological Service

The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended (section 1), it is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this Act. Trees and scrub are likely to contain nesting birds between 1st March and 31st August inclusive. These habitats are present on the application site and are to be assumed to contain nesting birds between the above dates, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period and has shown it is absolutely certain that nesting birds are not present.

Network Rail

You are referred to the response received to the Council from Network Rail on 1st February 2022. As per the contents of the advisory note, due to the close proximity of the proposed dwellings to Network Rail's land and the operational railway, you are advised to liaise with National Rail directly and follow the Asset Protection informatives which are issued to all proposals within close proximity to the railway (compliance with the informatives does not remove the need to engage with Network Rail ASPRO team).

Highways

It is important to note that planning permission does not convey any approval to carry out works on or affecting the public highway.

Any changes to or affecting the public highway in Kent require the formal agreement of the Highway Authority, Kent County Council (KCC), and it should not be assumed that this will be a given because planning permission has been granted. For this reason, anyone considering works which may affect the public highway, including any highway-owned street furniture, is advised to engage with KCC Highways and Transportation at an early stage in the design process.

Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the public highway. Some of this highway land is owned by Kent County Council whilst some is owned by third party owners. Irrespective of the ownership, this land may have highway rights over the topsoil.

Works on private land may also affect the public highway. These include works to cellars, to retaining walls which support the highway or land above the highway, and to balconies, signs or other structures which project over the highway. Such works also require the approval of the Highway Authority.

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Kent County Council has now introduced a formal technical approval process for new or altered highway assets, with the aim of improving future maintainability. This process applies to all development works affecting the public highway other than applications for vehicle crossings, which are covered by a separate approval process.

Should the development be approved by the Planning Authority, it is the responsibility of the applicant to ensure, before the development is commenced, that all necessary highway approvals and consents have been obtained and that the limits of the highway boundary have been clearly established, since failure to do so may result in enforcement action being taken by the Highway Authority. The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under the relevant legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

Guidance for applicants, including information about how to clarify the highway boundary and links to application forms for vehicular crossings and other highway matters, may be found on Kent County Council's website:

<https://www.kent.gov.uk/roads-and-travel/highway-permits-and-licences/highways-permissionsand-technical-guidance>. Alternatively, KCC Highways and Transportation may be contacted by telephone: 03000 418181

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

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

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

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

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

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

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

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

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

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

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

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.



PLANNING COMMITTEE – 15 SEPTEMBER 2022**PART 2**

Report of the Head of Planning

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

2.1 REFERENCE NO - 22/502256/FULL		
APPLICATION PROPOSAL Erection of 5no. two storey three bed dwellings and 1no. single storey two bed dwelling with rooms in the roof space.		
ADDRESS Land Off Imperial Drive Warden Kent ME12 4SE		
RECOMMENDATION Grant subject to conditions and receipt of SAMMS payment		
SUMMARY OF REASONS FOR RECOMMENDATION The development represents appropriate infill development within the built up area boundary of Warden. It will not cause unacceptable harm to visual or residential amenity, and will include the resurfacing of part of Imperial Drive, which is currently unmade.		
REASON FOR REFERRAL TO COMMITTEE Parish Council objection		
WARD Sheppey East	PARISH/TOWN COUNCIL Warden	APPLICANT Gemma Nash AGENT S Graham Architects Limited
DECISION DUE DATE 04/07/22	PUBLICITY EXPIRY DATE 30/08/22	CASE OFFICER Megan Harris

Planning History

21/502778/OUT

Outline application for the erection of 6no. dwellings (Layout and Access being sought).

Pending Consideration Decision Date:

1. DESCRIPTION OF SITE

- 1.1 The application site is comprised of an empty plot of land on the northern side of Imperial Drive, an unmade road. It is roughly rectangular and measures approximately 0.22 hectares in area. The site is currently covered in overgrown vegetation. A mature willow tree is located in the south western corner of the site, which is protected by a TPO.
- 1.2 The surrounding area is characterised by residential development of various forms and scales. Immediately west are two detached chalet bungalows which front Thorn Hill Road (one of which, No. 42 Thorn Hill Road, is owned by the applicant). To the north and east are detached bungalows and chalet bungalows, whilst to the south are two storey terraces.
- 1.3 The site lies within the built up area boundary of Warden.

- 1.4 There is an outline application currently pending consideration for this site (ref. 21/502778/OUT). The application was submitted in 2021 and seeks outline permission for six dwellings on the site. There were various issues with the application, and this application for full planning permission was subsequently submitted to address the issues. It is envisaged that the applicant will withdraw the outline application once this application is determined.

2. PROPOSAL

- 2.1 This application seeks planning permission for the erection of six dwellings at the site.
- 2.2 Plot 1 will be a detached two storey property, set back from Imperial Drive by roughly 18.5m in order to avoid the TPO willow tree in the south western corner of the site. Plot 2 and 3 will be a two storey semi detached pair which front Imperial Drive. Plot 4 is a chalet bungalow located to the east of plots 2 and 3, also fronting Imperial Drive. Plots 5 and 6 are a two storey semi detached pair, set within the rear part of the site, with the front elevations facing westwards, which will result in the semis sitting perpendicular to Imperial Drive. All properties will have a standard gable roof, apart from plots 2 and 3 which will have barn hips. Each property will have a suitably-sized rear garden.
- 2.3 Access to the dwellings will be taken from Imperial Drive, with an internal access road providing access to plots 1, 5 and 6. Plots 2, 3 and 4 will have driveways to the front which are directly accessed from Imperial Drive. Each property will have two parking spaces. As part of the development, the section of Imperial Drive to the front of the site which leads to Thorn Hill Road to the west (all included within the red line edge on the site plan) will be resurfaced.
- 2.4 Amendments were sought during the course of the application, to address the concerns raised in relation to the TPO (parking spaces were originally proposed in close proximity to the crown of the tree) and the appearance of plots 2, 3 and 4 in relation to the streetscene to the east.
- 2.5 It also came to light during the course of the application that notice had not been served on all the owners of the site. The section of Imperial Drive to the front of the site leading to Thorn Hill Road is partly owned by the terraced properties opposite the site, and notice was served on these property owners during the application. I am now satisfied that all relevant owners have been notified of the application.

3. PLANNING CONSTRAINTS

- 3.1 TPO willow tree on site.

4. POLICY AND CONSIDERATION

- 4.1 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG)
- 4.2 Development Plan – Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies:

ST1 (Delivering sustainable development in Swale)
ST3 (The Swale settlement strategy)
ST6 (The Isle of Sheppey area strategy)
CP3 (Delivering a wide choice of high quality homes)
CP4 (Good design)
DM6 (Managing transport demand and impact)

DM7 (Vehicle parking)
DM14 (General development criteria)
DM19 (Sustainable design and construction)
DM28 (Biodiversity and geological conservation)
DM29 (Woodlands, trees and hedges)

- 4.3 Swale Borough Council adopted SPG entitled 'Designing an Extension: A Guide for Householders'
- 4.4 The DCLG published "Technical housing standards – nationally described space standard" in 2015, which sets out the minimal gross internal floor areas within new dwellings.
- 4.5 SBC Vehicle Parking Standards Supplementary Planning Document (SPD) which is pursuant to Policy DM7 of the Bearing Fruits Local Plan Adopted 2017 was adopted by the Council in June 2020 and is a material consideration in the determination of planning applications.

5. LOCAL REPRESENTATIONS

- 5.1 Four objections were received from three neighbouring properties. Their contents are summarised below:
 - Concerned Imperial Drive will be impacted by the development – properties opposite have private parking on the Drive itself, which has already been impacted by overgrown bushes on the site. The development could take away these spaces.
 - Development could result in additional parking on Imperial Drive, which will take away the allocated parking for existing dwellings opposite the site.
 - If road is resurfaced, it would create a rat run. Currently it is safe for children to play in the vicinity, but if the road were made up it could be busier and less safe.

6. CONSULTATIONS

- 6.1 Warden Parish Council – *"We the Parish Council feel that the site is being overdeveloped. We also feel that due to the extra traffic that the residential development would cause. The Applicant should be expected to bring the whole road to an adoptable standard between Thornhill Road and Imperial Drive."*
- 6.2 KCC Ecology – *"We have reviewed the ecological information and we are satisfied that sufficient survey information has been provided however additional information is required on the proposed reptile receptor site."*

The ecological information submitted with the planning application has detailed that a breeding population of slow worms are present and there is potential for roosting/foraging bats and breeding birds within the site."

Further information was provided regarding the receptor site and the following response was received from KCC Ecology:

"We have reviewed the ecological information and we are satisfied that sufficient survey information has been provided to determine the planning application."

Conditions relating to the receptor site, lighting strategy and ecological enhancements are imposed, along with an informative relating to breeding birds. These are all imposed below.

- 6.3 Natural England – Development will result in new dwellings and as such mitigation is required.

6.4 Environmental Health – No objections subject to conditions relating to EV charging points, hours of construction and pile driving.

6.5 KCC Highways – *“It is noted that the proposed development will be accessed directly from an unmade private road, and as such Kent County Council in its capacity as the Local Highway Authority has limited interest in the application. I do not consider that the additional traffic generated by the proposed 6 dwellings will have a material impact upon the adopted sections of Imperial Drive or Thorn Hill Road that provide the connections to the private road. Consequently, I would not raise an objection to the proposals. However, in order to assist the Local Planning Authority in its consideration of the development, I would offer the following comments:*

- *The LPA may consider it reasonable to seek that the developer makes improvements to the unmade portion of Imperial Drive, as responsibility to maintain this private road will fall on the frontagers. It is noted from the red and blue boundary lines shown on the submitted location plan that the applicant owns almost 50% of the frontage onto the unmade road, so does hold a sizeable proportion of the responsibility.*
- *The drawings do not show clearly how the development will tie into Imperial Drive, as the proposed radius kerbs are taken to a tangent point at the theoretical back of footway alignment, rather than the edge of carriageway. The 5m strip of land between the frontage of the site boundary and the existing vehicular running lane is currently overgrown scrub, and none of the drawings indicate how this will be surfaced. The image below demonstrates the position of the existing road alignment and how far back the site frontage is set;*
- *Plots 2 and 3 are only shown to have 1 parking space each, rather than 2 that would be required to conform with the Borough Council’s adopted parking standards. The second vehicle is likely to park in tandem therefore, on the 5m strip of land mentioned above, where the footway and verge would be located, if the road were ever to be made up as per the rest of Imperial Drive.*
- *Each dwelling should have an EV charging point and secure cycle storage.”*

Additional plans were provided showing the section of Imperial Drive to the front of the site and up to Thorn Hill Road will be made up. KCC Highways were reconsulted, and confirmed they have no objections to the scheme, subject to the imposition of conditions relating to EV charging points, cycle storage and a construction management plan.

7. **BACKGROUND PAPERS AND PLANS**

7.1 Plans and documents relating to application 22/502256/FULL.

8. **APPRAISAL**

Principle of Development

8.1 The application site lies within the built-up area of Warden, with its range of facilities and services in a residential area where the principle of minor infill residential development accords with Policy ST3 of Bearing Fruits 2031 – The Swale Borough Local Plan 2017.

8.2 Policy CP3 aims to steer new development to the built-up area boundaries where in this instance, the site’s location is considered fairly sustainable, situated within the defines of an urban area with a range of services which can be reached by sustainable travel modes.

- 8.3 Furthermore, the proposal would contribute towards the Borough's housing land supply under Policy CP3, and whilst I acknowledge that an uplift of six dwellings is only a modest contribution, it is a positive contribution nonetheless.
- 8.4 Overall, I consider the principle of development consistent with policies ST1, ST3, CP3 of the Local Plan (2017) as adopted, subject to considerations set out in further detail below.

Visual Impact

- 8.5 The principal objective of policy CP3 of the adopted local plan is to deliver a wide choice of high quality homes within the borough. The policy requires that residential densities are determined by the context and the defining characteristics of an area.
- 8.6 The proposed six dwellings sit comfortably on the site in my view, and represent a density similar to the terraced dwellings to the south of the site. There is some variety in the design of the properties, which in my opinion is appropriate, and will ensure the development blends in with the varied character of residential development in the surrounding area. The application form sets out that brickwork, slate tiles and dark grey UPVC will be used on the development, however no specific details of materials have been provided, so I include a condition below securing this.
- 8.7 I was initially concerned about how the development would tie into the streetscene to the east, which is comprised of narrow width, shallow roofed bungalows. A chalet bungalow is proposed immediately west of Sea Reach, the bungalow to the east of the site, and whilst it is taller and bulkier than this existing neighbour, taking into account the gap between the properties, I do not envisage that the difference in height of the properties will appear odd. Barn hips have been added to plots 2 and 3 to lessen their bulk when compared to the proposed chalet bungalow, and following the submission of amended plans, I am satisfied that the development coherently ties into the existing streetscene.
- 8.8 Plots 2, 3 and 4 at the front of the site are set slightly forward of the Sea Reach and No. 42 either side of the site, but I note the building line along this stretch of Imperial Drive is not very strong, and these plots will sit in line with Gratel, the bungalow to the east of Sea Reach. As such, the siting of the proposed dwellings will not cause harm to the character and appearance of the streetscene in my view.
- 8.9 I note the Parish Council's concerns relating to the overdevelopment of the site, however for the reasons set out above, I consider the six proposed dwellings can be comfortably accommodated on the site, without causing harm to the character and appearance of the area.
- 8.10 Overall, I am of the opinion that the proposal would reasonably assimilate within the context of its setting, consistent with the aims of policies CP4 and DM14 of the Local Plan (2017).

Residential Amenity

- 8.11 Policy DM14 advises that development should respect the amenities of occupiers of neighbouring properties and uses by ensuring that development does not create loss of sunlight, overshadowing, overlooking or result in excessive noise, activity or vehicular movements or visual intrusion.
- 8.12 The proposed dwellings would provide a good standard of amenity for future occupants. Internal layouts are sensible and practical, meeting the national space standards, and garden areas are suitably sized, all being 10m in depth.

- 8.13 The location of the dwellings within the site is acceptable, and ensures that distances of 11m between flank and rear elevations are met. As such, I do not envisage the development will lead to harmful overshadowing or overbearing impacts within the development.
- 8.14 Turning to consider the impact of the proposed development on the existing properties, the dwellings will lie a minimum 21m from the properties to the west of the site along Thorn Hill Drive. Due to this distance, I do not consider there will be any harmful amenity impacts to these neighbouring properties. The development will lie a minimum of 25m from the terraces to the south, and as such I don't consider any impacts to these properties will be significantly harmful. The side elevation of plot 6 will lie in excess of 21m from the rear elevation of the properties along Sea Approach to the north, and this distance is sufficient to ensure any impacts to residential amenity are minimum in my view.
- 8.15 Turning to consider the impact to the bungalow to the east of the site, Sea Reach, I note plot 4, the chalet bungalow will sit approximately 1.2m forwards of Sea Reach. Taking into account the 2.7m gap between the properties, I do not consider this forward projection will cause any harm to this neighbouring bungalow. The proposed chalet bungalow does not project rearwards of Sea Reach, and this neighbouring property will in fact sit 4m rearwards of plot 4. Taking into account Sea Reach is single storey and the gap of 2.7m between properties, I do not consider that the projection will cause unacceptable harm to the amenity of future occupiers of plot 4.
- 8.16 There is potential for overlooking of the rear garden of Sea Reach from the rear elevations of plots 5 and 6 at the rear of the site. The agent has addressed this by placing only bathroom windows on the rear elevation at first floor level. Bathrooms are non-habitable and in this instance will be served by obscure glazed windows which would be non-opening under a height of 1.7m and this would be secured by condition. As such I consider that the impact upon the amenities of Sea Reach have been adequately addressed.

Highways

- 8.17 Policies DM6 and DM7 of the Local Plan 2017 seek to ensure that new developments do not create unacceptable highways impacts and provide suitable parking.
- 8.18 KCC Highways were consulted on the application and they set out that the traffic generated by the addition of six dwellings will not cause harm to the adopted roads in the vicinity of the site. As such, I am satisfied the development will not lead to harm to highway safety and convenience in the highway network.
- 8.19 The road to the front of the site is currently unmade, and the Highways Authority have suggested that the developer should resurface the road as part of the development. The proposal will lead to additional vehicle movements along this section of Imperial Drive, and I consider it necessary for the development to make improvements to this road, a request which was also made by Warden Parish Council. The agent provided plans showing this, and I impose a condition below requiring the majority of the works to the road to be carried out prior to the building of the dwellings beyond foundation level. The condition will require the final wearing course to be completed prior to the occupation of the units.
- 8.20 With regard to the parking provision, two spaces are provided per dwelling. This provision is in line with adopted SBC Parking Standards SPD, and as such I consider the parking provision to be acceptable and will not lead to additional parking in Imperial Drive or nearby roads. I include a condition below to ensure the spaces are retained. Details of cycle storage and EV charging points have not been provided, so these matters are secured via condition.

- 8.21 I note the concerns raised by neighbours relating to the resurfacing of the road, however the development will not result in the road reducing in width, and as such the existing parking situation for neighbouring properties will remain the same.

Landscaping

- 8.22 DM29 seeks to safeguard trees, woodland, old orchard trees and hedgerows as features, habitats and areas to ensure they continue to be an essential part of the environment. The mature willow on the site is protected by a TPO. Following the submission of a tree protection plan and the relocation of parking spaces away from the tree, the Council's Tree Consultant is satisfied that the development will not harm this protected feature. I impose a condition below ensuring the tree protection plan and measures set out in the arb report are implemented during construction.
- 8.23 Only limited details of landscaping have been provided. Therefore in the event of planning permission being granted it is recommended that landscaping and planting details should be secured by condition.

SPA Payment

- 8.24 I have for completeness set out an Appropriate Assessment below. Since this application will result in a net increase in residential accommodation on the site, impacts to the SPA and Ramsar sites may occur from increased recreational disturbance. Due to the scale of the development there is no scope to provide on-site mitigation and therefore off site mitigation is required by means of developer contributions at the rate of £275.88 per dwelling. The agent has provided written confirmation that the applicant would be willing to pay this mitigation fee in principle.

Other Matters

- 8.25 Due to the overgrown nature of the site, ecological surveys were required. KCC Ecology have reviewed the submitted details, and note that there are a breeding population of slow worms within the site, and there is potential for roosting/foraging bats and breeding birds. Following clarification from the applicant, they are satisfied that the proposed receptor site for the slow worms is appropriate, and request a condition is imposed requiring the mitigation detailed within the Reptile Method Statement to be implemented. This is imposed below.
- 8.26 The TPO willow tree contains suitable features to be used by roosting bats. As bats are therefore likely to be present within the site, KCC Ecology request a condition is imposed to require the submission of a lighting strategy which avoids light spill onto the willow tree and minimises light spill within the wider site. This condition is imposed below. An ecological enhancement plans has been provided as part of the application, and KCC Ecology are satisfied with the proposed measures, but do request that hedgehog highways are included in all close boarded fencing. This is secured via condition below. With these conditions in place, I am satisfied the development is acceptable from an ecological perspective.

9. **CONCLUSION**

- 9.1 The principle of residential development on this infill site is acceptable, and the amended scheme represents good design which makes effective use of the land, without causing harm to visual or residential amenity. The proposal provides adequate parking provision and includes the resurfacing of the section of Imperial Drive to the front and west of the site, which will be a public benefit to all users of the road, which is currently in a poor state. As such, I recommend this application is approved.

10. **RECOMMENDATION** – That planning permission is GRANTED Subject to payment of the SAMMS contribution to mitigate impacts upon the SPA and subject to the following conditions:

CONDITIONS

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

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

- (2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2091 103, 2091 104, 2091 105 Rev C, 2091 106 Rev C, 2091 107 Rev C, 2091 110 Rev B, 2091 150 Rev D, 2091 151 Rev C, 2091 180 Rev C, 2091 181 Rev C, 2091 182 Rev C, 2091 200 Rev C, 2091 201 Rev C, 2091 202 Rev C, 2091 210 Rev C, 2091 211 Rev D, 2091 212 Rev C, 2091 220 Rev C, 2091 221 Rev C, 2091 222 Rev C, 2091 230 Rev C, 2091 231 Rev C, 2091 232 Rev C, 2091 500 Rev B, 2091 510 Rev C, 2091 520 Rev C and 2091 530 Rev B.

Reason: In the interests of proper planning and for the avoidance of doubt.

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

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

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

- (4) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall include details of the following:

- (a) Routing of construction and delivery vehicles to / from 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

Reason: In the interests of the amenities of the area and highway safety and convenience.

- (5) Prior to works commencing the reptile mitigation within the Reptile Method Statement (Calumma Ecology; March 2022) must be implemented as detailed. On completion of the mitigation a letter must be submitted to the Local Planning Authority confirming the works have been carried out as detailed.

Reason: In the interests of biodiversity.

- (6) Within 2 months of works commencing a lighting plan must be submitted to and approved in writing by the Local Planning Authority which demonstrates it avoids any light spill on the mature willow tree and that has been designed following the recommendations within the Bats and artificial lighting in the UK document produced by the Bat Conservation Trust and Institution of Lighting Professionals: <https://cdn.bats.org.uk/pdf/Resources/ilp-guidance-note-8-bats-and-artificial-lighting-compressed.pdf?mtime=20181113114229>

Reason: In the interests of biodiversity.

- (7) No development beyond the construction of foundations of the proposed dwellings shall take place until the works to Imperial Drive, with the exception of the wearing course, are completed as referred to on plan no 2091-104 A. The wearing course shall be completed prior to the occupation of the dwellings hereby permitted.

Reason: In the interests of highway safety.

- (8) No development beyond the construction of foundations shall take place until details of the external finishing materials to be used on the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority, and works shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity.

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

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

- (10) Prior to the occupation of the dwellings hereby permitted, a letter must be submitted to and approved in writing by the Local Planning Authority which confirms that the ecological enhancement detailed within the Preliminary Ecological Appraisal (Calumma Ecology; September 2021) and hedgehog highways have been incorporated into the site and information provided to the new owners about any management requirements. The letter must include a plan confirming the location of all the enhancement features.

Reason: In the interests of biodiversity.

- (11) Prior to the occupation of the dwellings hereby permitted, details of secure, covered cycle storage for each residential dwelling shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full prior to the first occupation of the development hereby approved.

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

- (12) The area shown on the submitted layout as vehicle parking and turning space shall be provided, surfaced and drained to the satisfaction of the Local Planning Authority before the development hereby approved is first occupied, and shall be retained for the use of the occupiers of, and visitors to, the dwellings, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to this reserved parking space.

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

- (13) Prior to the occupation of the dwellings hereby permitted, one electric vehicle charging point per dwelling shall be provided. The Electric Vehicle charger must be provided to Mode 3 standard (providing up to 7kw). Approved models are shown on the Office for Low Emission Vehicles Homecharge Scheme approved chargepoint model list: <https://www.gov.uk/government/publications/electric-vehicle-homecharge-scheme-approved-chargepoint-model-list>

Reason: In the interests of encouraging sustainable modes of transport and minimising the carbon footprint of the development.

- (14) 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 interest of residential amenity.

- (15) No impact pile driving in connection with the construction of the development shall take place on the site on any Saturday, Sunday or Bank Holiday, nor on any other day except between the following times: - Monday to Friday 0900 - 1700 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interest of residential amenity.

- (16) Before the development hereby permitted is first occupied, the first floor window openings on the east facing elevation on plots 5 and 6 serving the bathrooms (as shown on drawing no. 2091 231 Rev C) shall be obscure glazed and shall be incapable of being opened except for a high level fanlight opening of at least 1.7m above inside floor level and shall subsequently be maintained as such in perpetuity.

Reason: To prevent overlooking of adjoining property and to safeguard the privacy of existing and prospective occupiers.

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

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

- (18) 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.

- (19) The development must be carried out in accordance with the working methodology and tree protection measures recommended in the submitted Arboricultural and Planning Integration Report by GHA Trees (ref. GHA/DS/133460:21) and the Tree Protection Plan provided on 15.08.22.

Reason: In the interests of visual amenity.

- (20) The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the dwellings shall not be occupied unless the notice for the 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.

- (21) Notwithstanding the provisions of Class A, Part 2, Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) no gates, fences, walls or other means of enclosure shall be erected or provided in advance of the front walls of any dwelling.

Reason: In the interests of visual amenity.

INFORMATIVES

- (1) The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended (section 1), it is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this act. Trees, scrub, hedgerows and buildings are likely to contain nesting birds between 1st March and 31st August inclusive. Vegetation is present on the application site and are to be assumed to contain nesting birds between the above dates, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period and has shown it is absolutely certain that nesting birds are not present.
- (2) It is important to note that planning permission does not convey any approval to carry out works on or affecting the public highway. Any changes to or affecting the public highway in Kent require the formal agreement of the Highway Authority, Kent County Council (KCC), and it should not be assumed that this will be a given because planning permission has been granted. For this reason, anyone considering works which may affect the public highway, including any highway-owned street furniture, is advised to engage with KCC Highways and Transportation at an early stage in the design process.

Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the public highway. Some of this highway land is owned by Kent County Council whilst some is owned by third party owners.

Irrespective of the ownership, this land may have highway rights over the topsoil. Works on private land may also affect the public highway. These include works to cellars, to retaining walls which support the highway or land above the highway, and to balconies, signs or other structures which project over the highway. Such works also require the approval of the Highway Authority.

Kent County Council has now introduced a formal technical approval process for new or altered highway assets, with the aim of improving future maintainability. This process applies to all development works affecting the public highway other than applications for vehicle crossings, which are covered by a separate approval process. Should the development be approved by the Planning Authority, it is the responsibility of the applicant to ensure, before the development is commenced, that all necessary highway approvals and consents have been obtained and that the limits of the highway boundary have been clearly established, since failure to do so may result in enforcement action being taken by the Highway Authority. The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under the relevant legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

Guidance for applicants, including information about how to clarify the highway boundary and links to application forms for vehicular crossings and other highway matters, may be found on Kent County Council's website:

<https://www.kent.gov.uk/roads-and-travel/highway-permits-and-licences/highways-permissionsand-technical-guidance>. Alternatively, KCC Highways and Transportation may

be contacted by telephone: 03000 418181

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

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

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

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

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

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

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

The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group.

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

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

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

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

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

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

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.



22/502256/FULL - Land off Imperial Drive Warden ME12 4SE
Scale: 1:1000
Printed on: 1/9/2022 at 12:32 PM by SaraP



2.2 REFERENCE NO - 21/505047/AGRREQ		
APPLICATION PROPOSAL Prior notification for erection of a steel portal framed agricultural building designed for the secure storage of hay, haylage and straw. For its prior approval to: - siting, design and external appearance.		
ADDRESS Muswell Manor Farm Shellness Road Leysdown-on-sea Kent		
RECOMMENDATION Prior Approval Required and Approved		
REASON FOR REFERRAL TO COMMITTEE Parish Council objection		
WARD Sheppey East	PARISH/TOWN COUNCIL Leysdown	APPLICANT Burden Bros Contractors AGENT Burden Bros Construction
DECISION DUE DATE 09/12/21	PUBLICITY EXPIRY DATE 12/08/22	CASE OFFICER: Emily Clark

Planning History

SW/74/1055

Straw and hay barn

Approved Decision Date: 10.02.1975

1. DESCRIPTION OF SITE

1.1 The application site is located within the wider setting of Muswell Manor Farm which is situated within the countryside. Located within the immediate setting is the Muswell Manor Holiday Park and the Grade II Listed Muswell Manor with the wider area characterised by an agricultural landscape with sporadic farm buildings. A public right of way runs to the east of the site.

2. PROPOSAL

2.1 This application seeks confirmation as to whether the siting, design or external appearance of the proposed agricultural storage building for the intended storage of hay, haylage and straw requires prior approval from the Council under Class A(a) of Part 6 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

2.2 The applicant was advised to revise the building to be of a smaller scale, provide detail as to why a new building of this size is required and also re-site the building to a more appropriate location.

2.3 Following amendments prior approval is sought for a building with an approximate floor area of 665 sqm (35m x 19m), with 7.5m eaves height and 9.7m ridge height together with its associated hardstanding.

2.4 Materials proposed would be:

- The proposed roof is Grey 0.7mm single skin plastic coated box profile with 20% roof lights, vented ridges and galvanised box gutters and downpipes in grey.
- Side Cladding is Juniper green 0.5mm single skin plastic coated box profile from eaves to ground level.
- The Gable ends will be cladded in Juniper Green, vertical 0.5mm 1000/32mm plastic coated forward box profile
- A 6.0m x 6.0m roller shutter door and personnel door will be located in the north side elevation

3. PLANNING CONSTRAINTS

3.1 Potential Archaeological Importance

3.2 Environment Agency Flood Zone 3

4. POLICY AND CONSIDERATIONS

4.1 Class A(a) of Part 6 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

4.2 Policies CP1, CP4, CP8, DM3, DM14, DM21 and DM32 of the adopted Local Plan (2017) Bearing Fruits 2031.

5. LOCAL REPRESENTATIONS

5.1 Leysdown Parish Council were consulted three times, on various amendments. Only one response was received objecting to the application and stating the following:

“The barn attracts children playing in it and there is an additional risk of arson.

Construction traffic causing hazards to cyclists on cycle path through Leysdown Road.

The current plan would place the barn near the wooden chalets that have gas bottles; fire risk especially with the real risk of arson.

We also feel that the extra farm traffic going through Leysdown would increase the danger to the public when the sites are open. Especially as this would coincide with the main traffic to and from the barn.

We do appreciate the farmers have to improve their facilities but we do feel this is in a very inappropriate place for a larger unit.”

5.2 Ward members were consulted on the application. Cllr Tatton comments as follows:

“Firstly be advised neither Leysdown Parish Council or I received any notifications of the application, now that I do via correspondence on Facebook & Muswell Manor I feel I should add my concerns.

Access to the proposed {barn} & fields by agricultural vehicles through the conurbations of Leysdown Parish Council on the B2500 Leysdown Road from Old Rides Farm & onto the national speed limit road in the costal park known as Shellness Road.

FYI: Commissioning, Environment & Leisure are trying to resolve the issues that exist with the Shellness Road.

If there is an across country / field alternative, then a consideration should be given, or any route that can keep Agriculture vehicles travelling on the Shellness Road & Leysdown Road

The Burden Bros. Are fully aware that metal buildings offer limited fire proofing subject internal combustion issues which Old Rides Farm experienced a couple of years ago”.

A further comment was received from Cllr Tatton on the 01/09/22 which is included in full below:

“I have to concur with Muswell’s issues / objections to this application. A further consideration that has not been highlighted as an adverse concern & well worthy of a site visit is the straw laying in the Leysdown Road blocking the surface water drains, along with blowing in all directions including pedestrians faces & bodies.”

5.3 Residents were consulted three times over the course of the application, on various amendments. In total 18 comments from different addresses were received objecting to the application. Members should note some residents submitted comments more than once. These are summarised below:

- Will obstruct sunset and views across the fields
- Overshadowing from the barn
- Noise pollution due to extra tractors, trailers etc.
- Danger of chalet residents sharing the road with tractors
- Will bring more vermin closer to the chalets
- The dust from the hay and straw will affect health of residents
- Health and safety concerns of the hay catching fire and being so close to residents and arson attacks
- Shared access road with Muswell Manor Holiday Park is insufficient and will be made worse by additional vehicle movements
- Existing barn is in disrepair
- Muswell Manor is a grade 2 listed building, and the proposal would harm its setting
- Overhead cables have previously been damaged by larger vehicles

6. CONSULTATIONS

6.1 Historic England comment that the proposal is outside their statutory remit to comment.

6.2 Rural Planning Consultant initially requested amendments to the size of the building and additional information to justify the need for the building. Upon receipt of amendments is satisfied that the building is reasonably necessary for the purposes of agriculture.

7. BACKGROUND PAPERS AND PLANS

7.1 Application papers and plans for application reference 21/505047/AGRREQ

8. APPRAISAL

Part 6 Criteria

8.1 It is important for Members to note from the outset that this is not an application for planning permission; it is a request to determine whether or not prior approval is required **only** in relation to: Siting, Design and External Appearance of the building. Part 6, Class A of the GPDO allows for agricultural development on units of 5 hectares or more. This is subject to certain limitations, assessed below:

A.1

- 8.2 The development must not be carried out on a separate parcel of land forming part of the unit which is less than 1 hectare – *it is not*.
- 8.3 It must not consist of the erection or extension of any agricultural building on an established agricultural unit (as defined in paragraph X of Part 3 of this Schedule) where development under Class Q or S of Part 3 (changes of use of this Schedule has been carried out within a period of 10 years ending with the date on which development under Class A(a) begins – *No Class Q or S development has taken place on the farm*.
- 8.4 It must not consist of, or include, the erection extension or alteration of a dwelling – *The development does not involve a dwelling*.
- 8.5 It must not involve the provision of a building, structure or works not designed for agricultural purposes – *The application form states the intended use for the storing of hay, haylage and straw associated with the agricultural business*.
- 8.6 It must not exceed 1000 sqm – *the building has a footprint of 665m² with an additional 172m² of hardstanding*.
- 8.7 The height of any part of any building, structure or works within 3km of the perimeter of an aerodrome must not exceed 3m – *the site is not within 3km of an aerodrome*.
- 8.8 The height of any part of any building, structure or works not within 3km of the perimeter of an aerodrome must not exceed 12m – *the building has a maximum height of 9.7m*.
- 8.9 Any part of the development must not be within 25m of a metalled part of a trunk road or classified road – *the development is not*.
- 8.10 It must not consist of, or include, the erection or construction of, or the carrying out of any works to, a building, structure or an excavation used or to be used for the accommodation of livestock or for the storage of slurry or sewage sludge where the building, structure excavation is or would be within 400m of the curtilage of a protected building – *the building will not be used for the accommodation of livestock or for the storage of slurry or sewage sludge*.
- 8.11 It must not involve excavations or engineering operations on or over article 2(4) land which are connected with fish farming – *the site is not article 2(4) and is not connected to fish farming*.
- 8.12 Any building for storing for or waste from a biomass boiler or an anaerobic digestion system – 1. Would be used for storing waste not produced by that boiler or system or for storing fuel not produced on land within the unit; or 2. Is or would be within 400m of the

curtilage of a protected building – *the development would not store waste from a biomass boiler or an anaerobic digestion system.*

- 8.13 The proposal complies with the criteria and conditions as set out within Part 6, Class A of the GPDO and as such, I am satisfied that the proposal can be considered under this scheme, and that the Council's determination is to whether prior approval is required as to the buildings siting, design and external appearance.

Siting, design and external appearance

- 8.14 The site is located approximately 97m from the Grade II Listed Muswell Manor which is situated to the east together with the Muswell Manor Holiday Park. Section 16(2) of the Listed Building and Conservation Areas Act 1990 states that *in considering whether to grant listed building consent for any works the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.* The implementation of Policy DM32 (Development involving listed buildings) of the Bearing Fruits 2031: The Swale Borough Local Plan 2017 is consistent with the above-mentioned legislation
- 8.15 The proposed building has the potential to impact the setting of this important listed property due to its proximity and scale and therefore a careful assessment to the siting, design and external appearance must be carried out. The application lies outside the remit for Historic England to comment however the views of the Council's Conservation Officer have been sought to ensure the historic asset is not harmed as a result of the proposal.
- 8.16 Following discussions with the Conservation Officer, amendments have been sought to amend the scale and positioning of the building. The building was originally sited in a more exposed position to the northwest of the Muswell Manor Holiday Park and was of a greater size, the building is now positioned further to the southwest, contained behind the existing agricultural barn and has been reduced in footprint and height. Due to its height, views of the development from the south, north and west will occur across this largely open agricultural landscape however its positioning behind the existing barn will obscure views from the east and form a physical separation between the new building and the listed Muswell Manor. It is therefore considered that the impact on the listed building in this amended location would not be harmful as the proposed building is sufficiently removed from its setting.
- 8.17 The building would be fully sheeted with a roller shutter door, the applicant considers this design necessary for security purposes and to preserve the stock stored within the building. The design is typical of modern agricultural buildings and have no concern in this regard.
- 8.18 Some additional screen planting has been shown on the plans with a mix of Hawthorn, Blackthorn and Hazel to help soften the appearance of the building however it is considered that a greater degree of screen planting should be incorporated to the side and rear of the proposed building so a condition has been included below requiring this.
- 8.19 Concerns have been raised by local residents in relation to overshadowing, overbearing and loss of view as a result of the siting and scale of the building. Whilst loss of view is

not a material planning consideration, in its amended siting the building will be sited 60m from the nearest chalet with the existing barn located between the holiday site and the building. It is therefore not considered that any overbearing/overshadowing will occur to the adjacent chalets.

- 8.20 As such I do not consider that the new building would be excessively prominent or imposing due to its siting, design or external appearance and that it would not give rise to any significant harm to the character and appearance of the area or adjacent listed building.

Other matters

- 8.21 The proposed building would be accessed via an existing track and access which leads to the existing barn. This track is also shared with the holiday park residents and residents of the listed Muswell Manor. The site is already an agricultural holding and whilst there will be some additional vehicle movements as a result of this proposal it is not considered that these will be excessive. The access track itself comprises of gravel laid and is not in a poor condition.
- 8.22 Increased vermin, damage to overhead cables and increased risk of arson and fires are not material planning considerations.

9. CONCLUSION

- 9.1 The proposal requires prior approval from the Local Planning Authority due to its proximity to the listed building and position in the open countryside. The dimensions and use of the building and associated hardstanding accords with the criteria set out in class A, and the amended proposed siting, design and external appearance of the proposed agricultural building would not cause significant harm to the character and appearance of the area in general in my view. Subject to the below conditions, I am also satisfied the development will not cause harm to setting of the nearby Grade II Listed Muswell Manor. As such, prior approval is granted.

10. RECOMMENDATION

Prior Approval Required and Granted subject to the following conditions:

CONDITIONS to include

- (1) No development beyond the construction of foundations shall take place until a soft landscaping scheme including additional tree planting has been submitted to and approved in writing by the Local Planning Authority.

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

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

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

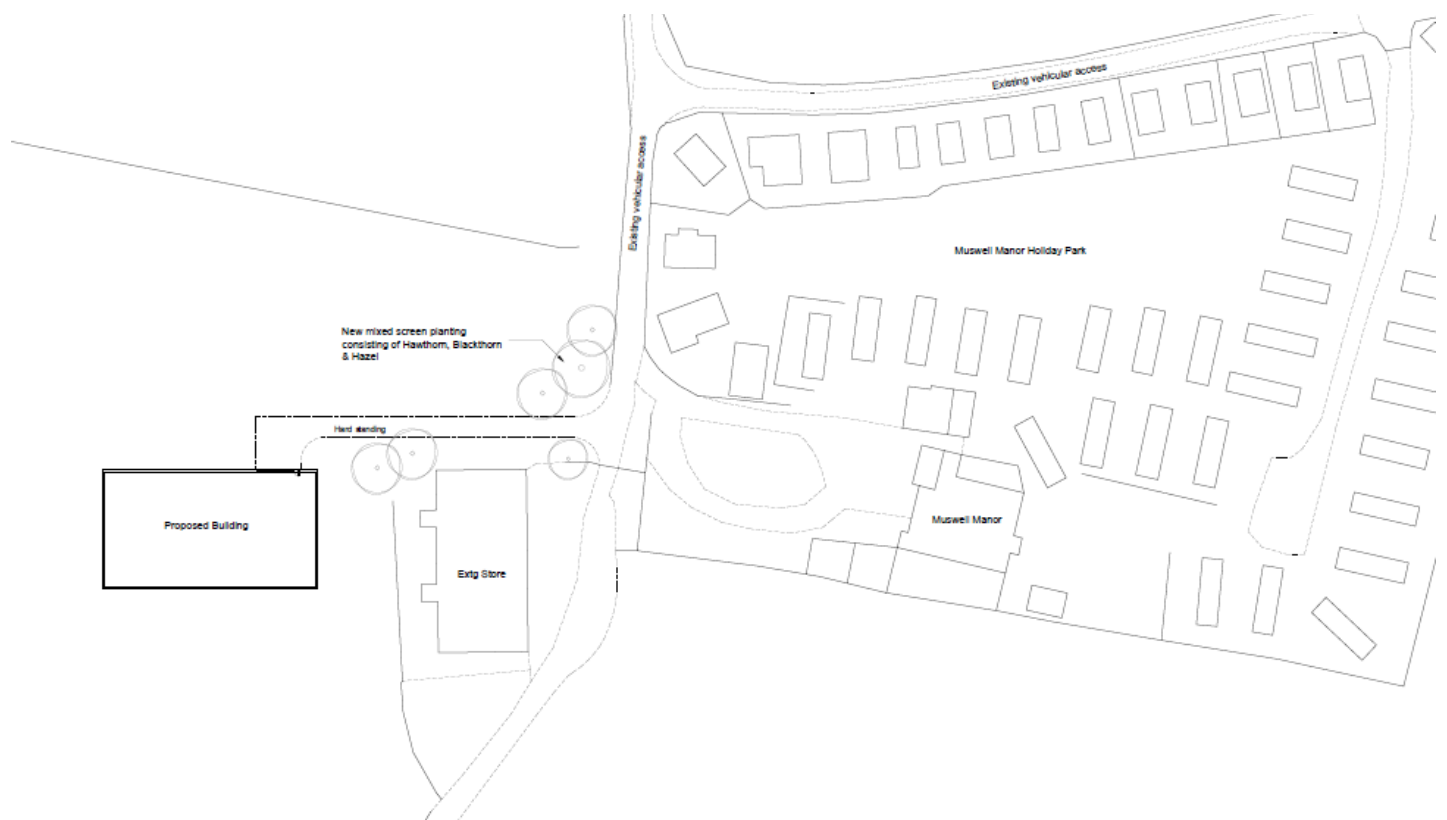
The Council's approach to the application

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 – 15 SEPTEMBER 2022**PART 3**

Report of the Head of Planning

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

REFERENCE NO - 22/501402/FULL		
APPLICATION PROPOSAL Erection of a detached dwelling with associated parking and amenity space.		
ADDRESS Land Adjacent to Hinkleys Mill Teynham Street Teynham Sittingbourne Kent ME9 9EU		
RECOMMENDATION Refuse		
REASON FOR REFERRAL TO COMMITTEE Cllr Bowen call in following local support		
WARD Teynham And Lynsted	PARISH/TOWN COUNCIL Teynham	APPLICANT Mr And Mrs Dixon AGENT APX Architecture
DECISION DUE DATE 16/06/22	PUBLICITY EXPIRY DATE 26/05/22	CASE OFFICER Alice Reeves

Planning History

SW/09/0049 & SW/09/0051

Erection of 2 storey side extension to form annexe accommodation, removal of chimney, insertion of front door, excavation works around proposed annexe, provision of solar panels and side dormer windows.

Refused Decision Date: 08.04.2009

SW/01/0253

One dwelling with garage

Refused Decision Date:

1. DESCRIPTION OF SITE

- 1.1 The site is located in a rural location outside of any defined built-up area boundary and sits within a small hamlet with a loose knit development pattern.
- 1.2 The application site is located between two Grade II listed buildings on a parcel of land which effectively now forms part of the garden area to the converted Hinkleys Mill, which dates from the 16th Century, and may have once been the Millers House in relation to a former windmill since demolished. The area of land between Hinkleys Mill and the separately listed Banks Cottages appears to have always been partly undeveloped and open, with the house benefitting from the current open rural setting in terms of helping to understand its historic function.

- 1.3 The adjacent Banks Farm Cottages also date from the 16th Century and was historically a single, Wealden Hall type house before later being subdivided into two cottages.
- 1.4 An application was submitted on the same site for a residential dwelling in 2001, which was refused due to the site being outside any defined built-up area boundary and the associated harm to the setting of adjacent listed buildings.

2. PROPOSAL

- 2.1 The application seeks planning permission for the erection of a four-bedroom detached family home. The proposed site plan shows some limited landscaping and designated parking for two cars. The proposed dwelling would be accessed by the existing site access from Teynham Street.
- 2.2 The proposed dwelling has been designed as a modern barn and would measure 14.25m in length x 7m in width, with a single storey rear projection of just under 3.2m. Materials include:
 - Black stained vertical timber boarding
 - Natural timber boarding feature panels treated with wood protection to provide a silver-grey appearance
 - Dark framed powder coated aluminium windows and doors
 - Agricultural style box guttering and downpipes
 - Corrugated metal roof finish
- 2.3 The application is supported by an Arboricultural Report, Heritage Statement and Design and Access Statement. I have taken the following points from these documents:
 - The applicant's family has been farming in Conyer and Teynham for over 200 years
 - The family own several properties and land within the immediate area, including Hlnkleys Mill which is owned by the applicant's sister who has agreed to make the application site available for a potential new multi-generational family home
 - The applicant has a son who requires a high level of care, a need that will continue to grow
 - The applicant's family reside in the immediate area of the application site, it is practical for the applicant to seek accommodation within the locality
 - A further complication is being able to source suitable accommodation which can be adapted to the future needs of the family
 - A bedroom and shower room are proposed on the ground floor for the applicant's mother who requires ground floor accommodation
 - The building will be of Passivhaus standard

3. PLANNING CONSTRAINTS

Potential Archaeological Importance

Designated Countryside

4. POLICY AND CONSIDERATIONS

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

ST1 (Delivering sustainable development in Swale)
ST3 (The Swale settlement strategy)
CP3 (Delivering a wide choice of high-quality homes)
CP4 (Design)
DM7 (Parking)
DM14 (General development criteria)
DM19 (Sustainable design and construction)
DM32 (Listed Buildings)

4.2 The Supplementary Planning Document: Swale Borough Council – Parking Standards 2020 (which has been adopted since the Local Plan was published and supersede the County standards referred to in policy DM14)

4.3 The National Planning Policy Framework 2021 (NPPF): Chapters 2, 4, 5, 12, 14, 15 and 16

5. LOCAL REPRESENTATIONS

5.1 Two letters were received from local residents neither objecting or supporting which can be summarised as follows:

- Not against the principle of development but there are aspects that are unacceptable
- The proposed house is set a long way back from the existing building line which would adversely affect the appearance of the street
- The side elevations show first floor windows which would adversely affect privacy into garden
- Black weatherboarding is not a suitable material
- The application form states that there are no trees that would be affected but this isn't the case

5.2 One letter of objection was received and can be summarised as follows:

- We support development on this site but object to the proposed scheme
- Harmful effect on the adjacent listed buildings and rural street scene
- The proposed development would sit as a discordant element in the street by reason of siting deep into the plot
- Parking to the front of the building would dominate the street scene
- The site is not allocated for residential development and lies outside the defined built-up area of Teynham and Conyer
- It is noted that the applicant is putting forward a case that the new home is needed to provide care for the applicant's son, will the council if permission is granted place additional planning conditions on the property
- The land adjacent to Hinckley Mill has long lost any association to the farm and is an ideal location to place a new dwelling for a family intending to live and work in the area – in principle we support development to sustain our rural community

- Fully support a contemporary design however have concerns with the vertically hung black cladding which may overwhelm the adjacent listed properties
- A more visually modest design would have less impact on the adjacent listed buildings
- Bus services between Teynham and Conyer have been significantly reduced. There are no safe footpaths or street lighting on Conyer Road, the residents of Teynham Street rely solely on private vehicle transport – this new dwelling will add at least 2-3 cars to what is only a small country lane
- The applicant should endeavour to contact residents and demonstrate a willingness to fully consider the needs of their neighbours

5.3 Four letters of support were received (three of which are family members who live locally) and can be summarised as follows:

- I go past the site most days and like the design and think it will sit nicely on the street
- It is good that the building is set back so that Hinkleys Mill and Banks Farm Cottages are still the prominent properties on the road
- As family members we fully understand the need for a new family home to be built
- Will provide appropriately designed accommodation for a family who are considering the long-term care and support of their family members with special needs
- This new home will mean the applicants are closer to wider family for their support thus reducing a future need for social/local services
- We are confident the design will be delivered in a way to enhance the surrounding area which already aesthetically balances new and old designs
- The plot lends itself to development to “finish” off the street with the additional of another property

6. CONSULTATIONS

- 6.1 Natural England – Raises no objection to the application subject to strategic mitigation (payment) in respect of possible increased recreational disturbance to The Swale SPA/Ramsar site.
- 6.2 Kent Highways and Transportation – The proposal does not warrant involvement from the Highway Authority.
- 6.3 Teynham Parish Council – no comments received.

7. BACKGROUND PAPERS AND PLANS

- 7.1 All plans and documents related to 22/501402/FULL.

8. APPRAISAL

Principle of development

- 8.1 One of the main considerations in the determination of this application is whether this would be classed as sustainable development. The Council’s adopted Local Plan states that development proposals will be supported in accordance with the settlement hierarchy which

is set in Policy ST3. This identifies settlements in descending order of sustainability and this site ranks at the very bottom in order of settlements where residential development should be pursued. This site is remote from local services and Policy ST3 states:

‘At locations in the open countryside, outside the built-up area boundaries 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 The Council remains firm in its position that sites which are located outside of any built-up area boundary and in the designated countryside are covered by national and local planning policies which restrict development in the countryside, with particular focus on new residential development.

8.3 The Council do not consider that the advice set out within the NPPF lends support to the scheme. The NPPF, whilst clearly promoting the need to provide a wide choice of quality homes, does not allow this at all costs. The golden thread running through the document is the presumption in favour of sustainable development, where the NPPF emphasises that decisions should be made in accordance with the development plan unless material considerations indicate otherwise. As the Council cannot currently demonstrate a 5-year housing land supply paragraph 11(d) of the NPPF is triggered. Paragraph 11(d) states:

‘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.’

Footnote 7 to paragraph 11 adds that designated heritage assets are included within the definition of assets of particular importance, as set out in paragraph 11(d) i above.

8.4 In respect of housing in the countryside, paragraph 79 of the NPPF states:

‘To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.’

8.5 This then raises the question as to whether a new residential dwelling in this location would enhance or maintain the vitality of rural communities. It is the view of the Local Planning Authority that the contribution of a single dwelling would be negligible, so this cannot be considered the case here.

8.6 The application site is located outside a defined settlement and has very limited access to amenities meaning that the use of the car is essential in order to access necessary services and facilities such as a doctor’s surgery and schools. I appreciate that the Design and

Access Statement states that Teynham is only 1 mile walk away, and whilst that may be the case however, there are no dedicated footpaths and limited street lighting. The future occupants would be required to walk or cycle down a narrow unlit designated rural lane in order to reach the limited facilities that Teynham provides, which makes this undesirable. Therefore, future occupants of the development are likely to be largely reliant on the use of the private motor car to access services and facilities, which is contrary to the environmental aims of the NPPF.

- 8.7 It is noted that the applicant has stated that there are specific medical needs within the family and that the proposed dwelling would ensure that nearby family members can help with care and will help to reduce the costs of care on the local authority. The Council appreciates the specific requirements of the family, but a material consideration is the dismissed appeal from 2001 (SW/00/1244, APP/V2255/A/01/1064578). It is acknowledged that this appeal decision is 20 years old and relates to a site elsewhere in the Borough at Doddington, however, the key issues at hand here are comparable in that the appellants wished to erect a new dwelling outside the built-up area boundary and had a son with complex medical needs. The Inspector stated in his decision:

'I have found this proposal to be contrary to settlement, countryside and landscape protection policies... I have identified the Appellant's personal circumstances as a material consideration in this case and have accordingly paid due regard to these factors.'

'Whilst sympathetic to these circumstances and after careful consideration, I find them to represent insufficient justification to overcome the significant adverse consequences on the character and appearance of the area arising from the development proposed.'

Impact on nearby listed buildings

- 8.8 The Local Planning Authority also has significant reservations regarding the impact of the proposed dwelling on the character and setting of the adjacent listed buildings. The proposed scheme is broadly like the refused 2001 scheme for this site, although the design of the current scheme is more contemporary in its approach and with the siting of the current proposal markedly different to that of the 2001 scheme.
- 8.9 The second reason for refusal of the 2001 scheme referenced the overtly dominant and harmful impact of the adjacent listed building. Whilst it might be argued that pushing the building further back in to the site means that the new dwelling would have less of an impact on the setting of the listed buildings either side of the proposed new house, in practice, the Council considers that the slight decrease in the level of visual impact would be marginal as the current, long undeveloped green space, which is important to the rural character and setting of each listed building, would be significantly taken up by the new dwelling and associated parking.
- 8.10 There may be an argument to suggest that the vaguely barn-like, weatherboarded form of the proposed dwelling is more appropriate than the imitation vernacular approach used in the 2001 application, but this is a debatable, highly subjective issue. What is not in question is that erecting a house in this location would be harmful to the setting of both adjacent listed building's settings which each in turn derive some degree of significance from the current rural, green setting due to their simple vernacular rural form. Whilst the level of

heritage impact may fall within a mid-range spectrum, less than substantial harm in each case, the level of public benefit is unlikely to be sufficient to outweigh that harm and as such is contrary to policy 202 of the NPPF.

Parking

The proposed site plan shows only two car parking spaces for the proposed four-bedroom dwelling which is contrary to the Council's Parking SPD which expects at least 3 off road car parking spaces for a property of this size in the rural area. This is a large plot, and the parking could have been amended if there weren't overriding issues regarding the principle of development and the impact on the setting of the adjacent listed buildings.

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

- 8.11 This Appropriate Assessment has been undertaken without information provided by the applicant. The application site is located within 6km of The Swale Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).
- 8.12 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.
- 8.13 Due to the scale of development, there is no scope to provide onsite mitigation such as an on-site dog walking area or signage to prevent the primary causes of bird disturbance, which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats. The proposal thus has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.
- 8.14 In considering the European site interest, Natural England (NE) advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advises that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation, the proposal is unlikely to have significant effects on these sites.
- 8.15 The recent (April 2018) judgement (People Over Wind v Coillte Teoranta, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, "it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site." The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group (NKEPG).

- 8.16 NE has stipulated that, when considering any residential development within 6km of the SPA, the Council should secure financial contributions to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the (NKEPG) and that such strategic mitigation must be in place before the dwelling is occupied. Based on the correspondence with Natural England (via the NKEPG), I conclude that off site mitigation is required in this instance.
- 8.17 In this regard, whilst there are likely to be impacts upon the SPA arising from this development, the mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff (to be secured by either s106 agreement or unilateral undertaking on all qualifying developments) will ensure that these impacts will not be significant or long-term. I therefore consider that, subject to mitigation, there will be no adverse effect on the integrity of the SPA, and this is a matter that may still need to be resolved at appeal stage.
- 8.18 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.

9. PLANNING BALANCE

- 9.1 It is acknowledged that the proposed dwelling would contribute to the current 5-year Land Supply deficit at Swale Borough Council. Whilst the personal circumstances of the applicant have been considered, they are not considered to justify the harm that would arise to the setting of the adjacent listed buildings and the proposal is contrary to both national and local policy which aims to protect the rural areas.
- 9.2 Therefore, and in light of the above, the Tilted Balance does not apply to this application, as the proposal clearly fails the tests as set out in Footnote 7 of paragraph 11 d) i of the NPPF, in terms of protecting the setting of listed buildings, which are defined assets of particular importance.

10. RECOMMENDATION

REFUSE for the following reasons:

REASONS

- (1) The proposed development would not represent sustainable development as this location is a considerable distance outside any established built-up area boundary where occupants would be dependent on private transport for all daily needs contrary to policies ST1, ST3 and DM14 of Bearing Fruits 2031; and paragraphs 8, 11 and 12 of the National Planning Policy Framework 2021. The applicants' family circumstances have been very carefully considered but are not considered to be sufficient to override the strong presumption against this development or to outweigh the harm to the area resulting from this development.

- (2) The proposed dwelling by virtue of its location, scale and architectural style would be overly dominant and harmful to the setting of the adjacent listed buildings, a less than substantial impact which is not outweighed by public benefit contrary to policy DM32 of Bearing Fruits 2031; and paragraphs 11 d) i and 202, of the National Planning Policy Framework 2021.
- (3) The proposed development would provide an insufficient number of parking spaces which is contrary to policy DM14 of Bearing Fruits 2031 and the Supplementary Planning Document Swale Borough Council – Parking Standards 2020.
- (4) 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 aims of policies ST1, DM14, and DM28 of Bearing Fruits 2031 - The Swale Borough Local Plan 2017; and the National Planning Policy Framework.

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.



PLANNING COMMITTEE – 15 SEPTEMBER 2022**PART 5**

Report of the Head of Planning

PART 5Decisions by County Council and Secretary of State, reported for information

- **Item 5.1 – 55 Parsonage Chase Minster**

APPEAL DISMISSED**DELEGATED REFUSAL****Observations**

The Inspector agreed with the Council's view, that the proposed development would be harmful to the character and appearance of Parsonage Chase, contrary to Policies CP4 and DM14 of the Swale Local Plan 2017. The Inspector also agreed with the Council's contention, that the proposed development would not provide satisfactory living conditions for the future occupiers of Plots 5-7, contrary to Policy CP4, and that, in the absence of the relevant ecological surveys, it was not possible to determine the potential impact of the development upon the biodiversity of the site and area, contrary to Policy DM28 of the Swale Local Plan. The appeal was dismissed on this basis. However, the Inspector did not agree with the Council's view that the scheme would harm the setting and significance of the nearby Grade II listed building, Parsonage Farm. The Inspector found that, as the appeal site had already been developed in the past into a bungalow and associated garden area, any link to the original setting of Parsonage Farm had already been lost. Due to the modest size of the development and to the fact that the residential character of the site would be retained, the proposal was not considered to significantly affect the special interest or setting of the listed building.

- **Item 5.2 – Read's Orchard Parsonage Chase Minster**

APPEAL ALLOWED**DELEGATED REFUSAL****Observations**

The Inspector found that there is currently little opportunity to appreciate the setting of Parsonage Farm (a Grade II Listed Building), or its significance from the appeal site. That the contribution of the appeal site to the significance of the listed building is therefore limited, and any link to the original agricultural setting of the farmhouse would be lost with the housing approved on appeal to the south and west. The Inspector concluded that the proposed development would not harm the setting of Parsonage Farm, resulting in a neutral effect on its significance. The Inspector agreed with the Council that the proposal would represent backland development but other than through the proposed access, similar to a parking area on the north side of this end of Parsonage Chase, it would not be prominent in the street scene nor harmful to the character of the road and as this application sought outline permission only, the Inspector saw no reason why it would not be possible to provide a high quality design that would relate satisfactorily to the existing dwellings on Parsonage Chase, or the major development approved on appeal to the south. Whilst biodiversity net gain had been calculated at

just 0.14%, the Inspector commented that there is no requirement in national or local policy at this time for a higher percentage increase.

- **Item 5.3 – St Thomas Yard Holywell Lane Upchurch**

APPEAL ALLOWED

DELEGATED REFUSAL

Observations

The Council's position in terms of a 5 year site supply had changed significantly between refusing the application and the appeal hearing. The Inspector found that the current unmet need for gypsy & traveller sites within the borough was a matter to which he ascribed considerable weight, that there was a lack of alternative available sites, and that access to medical facilities and education and the best interests of the children on site all weighed in favour of the application.

The Inspector considered that the visual impact of the development, including views from nearby public footpaths, was limited by the presence of surrounding caravans and wider sporadic buildings and that the cumulation of Gypsy sites on this part of the land did not unacceptably impact the rural character of the area. The site entrance works had cut through a bank, but were screened and has mellowed since being undertaken some 6 years ago. Overall, the Inspector concluded that the development did not cause significant harm to the character of the area or landscape, was in accordance with policies DM10, DM24 and DM26 of the Local Plan, and that the lack of alternative sites and personal circumstances also weighed in favour of the application.

- **Item 5.4 – 2 Larkfield Avenue Sittingbourne**

APPEAL DISMISSED

DELEGATED REFUSAL

Observations

The Inspector agreed with the Council's primary case that whilst the dwelling itself was appropriately sited and designed, the private garden would extend towards Dean Road and would be enclosed in a manner that would be harmful to the open streetscene, and would provide a poor level of amenity space for occupants of the dwelling.



Appeal Decision

Site visit made on 28 June 2022

by Martin Small BA(Hons) BPI DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 August 2022

Appeal Ref: APP/V2255/W/21/3286020

55 Parsonage Chase, Minster-On-Sea, ME12 3JX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Batten against the decision of Swale Borough Council.
 - The application Ref 20/501925/OUT, dated 4 May 2020, was refused by notice dated 27 August 2021.
 - The development proposed is replacement of existing bungalow with 7 houses and associated car parking and access drive.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is submitted in outline form with access, appearance, layout and scale for approval at this time and only landscaping reserved for future approval.
3. The appeal site lies within 6km of the Swale, Thames and Medway Estuary and Marshes Special Protection Areas (SPAs) and Ramsar sites. The Council's third reason for refusal related to the absence of a legal agreement to secure mitigation against harm to the integrity of these designated habitats sites. However, during the course of the appeal, the appellant made a contribution of £1,522.80 towards mitigation measures identified in the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMMS). The Council has confirmed that the contribution has addressed the reason for refusal. I return to this matter below.

Main Issues

4. The main issues are:
 - i) the effect of the proposed development on the character and appearance of the area;
 - ii) whether the proposed development would provide satisfactory living conditions for future occupiers, with particular regard to outlook and car parking;
 - iii) the effect of the proposed development on biodiversity, with particular regard to Great Crested Newts; and
 - iv) whether the proposed development would preserve the setting of the Grade II listed Parsonage Farm.
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Reasons

Character and appearance

5. Parsonage Chase is an established residential street primarily comprising detached bungalows, chalet bungalows and 2-storey dwellings of varying ages and styles facing the road with hardstandings and gardens / planting to the frontages. The southern end of the cul-de-sac is more recent but maintains the mixture of dwelling styles and frontages. However, notably, two pairs of semi-detached 2.5 storey houses have more recently been built on the corner between the older properties and the newer southern extension to the road.
6. The appeal site is a single plot accommodating a bungalow with a reasonably large garden located just off Parsonage Chase, on the east side of an accessway to Parsonage Farm. The property is accessed off but set back from Parsonage Chase, with its front elevation facing towards Leigh Court, a small close of modern modest 2-storey dwellings.
7. The site is bounded by fencing and vegetation with a small green and footpath to the north and the gardens of Parsonage Farm and properties in Leigh Court to the south. To the other side of the access to Parsonage Farm is the side elevation and rear garden of No 65 Parsonage Chase, the end property of the more recent dwellings at the southern end of the road. The openness of the site makes a localised but positive contribution to the character and appearance of the area.
8. The dwellings on plots 1-4 of the proposed development would be sited facing Leigh Court and be of a similar scale and form. They would therefore read as a consistent extension of the existing development in Leigh Court. Whilst set back slightly the dwellings on plots 5-7 would relate more to the street scene in Parsonage Chase. These dwellings would be side on to the access to Parsonage Farm reflecting the alignment of development on the other side of the drive. At 2.5 storeys they would be of a similar height to the new dwellings on the corner of Parsonage Chase.
9. However, the proposed layout shows proposed plots 5-7 as substantially smaller than those on Parsonage Chase. The layout is cramped as demonstrated by the proximity of the dwellings on plots 5-7 to the parking spaces for plots 4-7, the need for tandem parking for plots 5-7 and the awkward relationship of the parking spaces for plots 1 and 2.
10. Furthermore, the terrace of plots 5-7 would be incongruous in Parsonage Chase. Whilst landscaping is a reserved matter, the layout would include extensive areas of hardstanding with little room for planting to soften the extent of built development. In this respect it would be similar to Leigh Court, which I found to be a sterile environment, and would not be consistent with the numerous vegetated frontages on Parsonage Chase. The scheme would thus be harmfully at odds with the existing pattern of development on that street.
11. I therefore conclude that the proposed development would be harmful to the character and appearance of Parsonage Chase. Accordingly, in this respect, the proposals would conflict with Policies CP 4 and DM 14 of Bearing Fruits 2031 – The Swale Borough Local Plan 2017 (the Local Plan). In combination and amongst other things these policies require high quality design appropriate to the location and surroundings, as promoted by the National Design Guide.

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Living conditions

12. The layout shows the dwellings on plots 5-7 with a poor outlook directly onto a communal path and their parking areas with no room for planting in between to soften this outlook or provide privacy. Plot 5 would also have cars parked directly alongside the side of the dwelling and garden, which could result in potential disturbance. The rear gardens of plots 5 and 7 would be significantly compromised by the refuse bin and cycle stores.
13. I therefore conclude that the proposed development would not provide satisfactory living conditions for the occupiers of the dwellings on Plots 5-7. Accordingly, in this respect, the development would not be of a high quality design, so conflicting with Policy CP 4 and thus with Policy DM 14 of the Local Plan. The proposal would also conflict with paragraph 130 of the National Planning Policy Framework (the Framework) in that it would fail to create a place with a high standard of amenity for future users.

Biodiversity

14. No Preliminary Ecological Assessment was submitted with the application or the appeal to identify any biodiversity interest of the site, such as the presence of protected species e.g. Great Crested Newts (GCN) and / or bat roosting opportunities. The only ecological information submitted was a letter from 'Cleaner Ponds' which describes the wildlife identified within a small pond on the appeal site. This did not include any GCN, although the previous occupiers of the property contend that GCN were present in the pond in 2014.
15. Moreover, previous surveys in 2018 and 2019 undertaken for applications on sites near to the appeal site (18/503135/OUT and 19/503138/OUT) have found that GCN were present in the area. The more recent survey found a good population of GCN in a pond within 100m of the appeal site. GCN can commute up to at least 250m from a breeding pond and there is thus a reasonable likelihood of their presence on the appeal site, notwithstanding that it has been maintained as a domestic garden.
16. I have considered whether a survey could be secured by condition. However, Circular 06/2005 "Biodiversity and Geological Conservation – Statutory Obligations within the Planning System" sets out the necessity of establishing the presence or otherwise of protected species and the extent that they may be affected by a proposed development before planning permission is granted. It advises that the need to ensure ecological surveys are carried out should therefore only be left to planning conditions in exceptional circumstances. No such circumstances have been put to me and I therefore conclude that it would not be appropriate to rely on such a condition in this case.
17. In the absence of any substantive evidence to the contrary, I cannot be confident that the proposed development would not be harmful to the biodiversity of the site and area. Accordingly, in this respect, it would conflict with Policy DM 28 of the Local Plan which seeks to conserve, enhance and extend biodiversity.

Parsonage Farm

18. The appeal site is within the setting of the Grade II listed Parsonage Farm. In determining this appeal I must have special regard to the desirability of preserving the setting of this listed building. The Framework sets out that

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great weight should be given to the conservation of a designated heritage asset and that any harm to the significance of such an asset should require clear and convincing justification. The Framework recognises that development within the setting of heritage assets can affect their significance.

19. The National Heritage List for England entry for Parsonage Farm describes it as comprising two parallel ranges dating from the early-mid 17th and 18th centuries. The property's significance therefore lies in its architectural and historic interest. It is set back from Parsonage Chase behind the newer properties at the southern end of the road. There is limited intervisibility between the appeal site and Parsonage Farm but the site is nevertheless within the setting of the heritage asset.
20. The former agricultural setting of the dwelling has been encroached upon by the development of Leigh Court and the southern end of Parsonage Chase but the property retains an extensive garden principally to the south that gives the building space. This more recent residential development has eroded the original setting of the listed building and outline planning permission for up to 700 houses has been granted on appeal on land to the south and west (APP/V2255/W/19/3238171). Nevertheless, Historic England's *Good Practice Advice in Planning Note 3: The Setting of Heritage Assets* explains that consideration still needs to be given to whether additional change would further detract from or enhance the significance of the asset.
21. Whilst part of the original setting of the Parsonage Farm, the appeal site has been developed in the past for a bungalow and garden and thus any link to that original setting has already been very largely lost. The site offers only a limited experience of Parsonage Farm, being separated from it by fencing and vegetation. The site therefore contributes very little to the significance of the listed building. Whilst better revealing that significance would be desirable and is encouraged by paragraph 206 of the Framework, given this limited contribution and the modest scale of the proposed development I am not persuaded that the failure of the proposals to do so would justify withholding planning permission.
22. The existing vegetation on the boundary to the access road provides some softening of the built environment, but this garden shrubbery does not make a contribution to the special interest of the listed building. Moreover, the access is dominated by the flank elevation of No 65 and the concrete panel wall to the rear garden which directly abut the accessway and form part of the setting of the heritage asset.
23. The proposed development would retain the residential character of the site. Although the flank elevation of the proposed dwelling on Plot 7 would be particularly noticeable with little or no room for planting on the boundary, the setting of Parsonage Farm formed by the access has already been substantially eroded by No 65. The development would not significantly affect the ability to appreciate the special interest of the listed building.
24. I therefore conclude that the proposed development would not harm the setting of Parsonage Farm and that the setting would thereby be preserved. Accordingly, in this respect, the proposals would comply with Policies CP 8, ST 6 and DM 32 of the Local Plan, which in combination and amongst other things seek to protect heritage assets. The development would also generally comply with the heritage policies of the Framework.

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Other Matters

The Swale, Thames and Medway Estuary and Marshes Special Protection Areas

25. The SPAs are designated for their prevalence of rare and vulnerable birds and for regularly occurring migratory species which together comprise their qualifying features. The conservation objectives of each of the SPAs are, in summary, to ensure that the integrity of the site is maintained or restored in order to protect the habitats and the birds that depend upon them. The Bird Wise North Kent Mitigation Strategy (the Strategy) notes that increased recreational disturbance associated with a net increase in residential accommodation within 6km is adversely affecting the integrity of the SPAs.
26. The proposed development would result in a net increase of 6 dwellings within 6km of the SPAs. It would therefore be likely to have a significant effect on the integrity of the designated habitats sites. In such circumstances the Conservation of Habitats and Species Regulations 2017 (as amended) require a decision maker to undertake an Appropriate Assessment (AA) before giving any permission. In doing so, I can have regard to mitigation measures. I return to this matter below.

Other considerations

27. Local residents have raised concerns including parking issues and the removal of trees from the site. However, none of these matters have been determinative in this appeal.

Planning Balance

28. It is common ground that the Council cannot demonstrate a 5-year supply of deliverable housing sites, although I have no evidence of the extent of the shortfall. Consequently, paragraph 11 of the Framework is engaged and the most important policies of the development plan for determining this appeal are deemed to be out of date.
29. However, this does not mean that they carry no weight; paragraph 219 of the Framework sets out that weight should be given to a policy according to its degree of consistency with the Framework. Policies CP 4 and DM 14 of the Local Plan are broadly consistent with the Framework's policies on design and character. Policy DM 28 is broadly consistent with the policies of the Framework on biodiversity. The conflict I have found with these policies therefore carries significant weight in my determination.
30. Policy CP 3 of the Local Plan, to which the appellant refers, supports windfall sites in principle. However, given the conflict with policies relating to character and appearance, living conditions and biodiversity, the proposed development conflicts with the development plan taken as a whole.
31. Nevertheless, paragraph 11 of the Framework is a material consideration. I have found above that the proposal would not harm the significance of the designated heritage asset of Parsonage Farm. Consequently, 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 in accordance with paragraph 11 d) ii).

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32. The net gain of 6 dwellings would accord with the Government's aim of significantly boosting the supply of homes as set out in the Framework (paragraph 60). The Framework supports the development of windfall sites, requiring great weight to be given to the benefits of using suitable sites within existing settlements for homes (paragraph 69). It recognises that small and medium sites can make an important contribution to meeting the housing requirement of an area and supports the effective and efficient use of land (paragraphs 69, 119 and 124). The development would also have economic benefits from the construction of the dwellings and expenditure by future occupiers. However, 6 additional dwellings would only be a modest contribution to the housing supply in the borough and the economic benefits would be correspondingly limited.
33. Set against those benefits are the adverse effects on character and appearance and biodiversity and of unsatisfactory living conditions. The Framework notes the desirability of maintaining an area's prevailing character and the importance of securing well-designed, attractive places (paragraph 124). Planning decisions should ensure that developments add to the overall quality of the area, are visually attractive as a result of layout and appropriate / effective landscaping and, whilst not preventing or discouraging appropriate innovation or change, are sympathetic to local character (paragraph 130). Decisions should also safeguard and improve the environment, create places with a high standard of amenity for existing and future users and minimise impacts on biodiversity (paragraphs 119, 130 and 174).
34. Having regard to all these policies, I conclude that the adverse impacts of granting permission would significantly and demonstrably outweigh the modest benefits of 6 additional dwellings. As such, the proposed development would not be the sustainable development for which paragraph 11 of the Framework indicates a presumption.
35. In these circumstances it is not necessary for me to undertake an AA in respect of the effects of the development on the integrity of the Swale, Thames and Medway Estuary and Marshes Special Protection Areas. Also, as I am dismissing the appeal, there would be no interference with the human rights of the occupiers of neighbouring properties.

Conclusion

36. I have found above that the proposed development would conflict with the development plan taken as a whole. There are no considerations, including the provisions of the Framework, that indicate that a decision should be made other than in accordance with the development plan.
37. For this reason, and having regard to all other matters raised, the appeal is dismissed.

Martin Small

INSPECTOR

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Appeal Decision

Site visit made on 28 June 2022

by **Martin Small BA(Hons) BPI DipCM MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 August 2022

Appeal Ref: APP/V2255/W/21/3287464

Read's Orchard, Parsonage Chase, Minster-On-Sea, ME12 3JX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mrs J Read, Mrs J Newman, Mr J Read & Mr J H Read against the decision of Swale Borough Council.
 - The application Ref 20/506107/OUT, dated 21 December 2020, was refused by notice dated 21 October 2021.
 - The development proposed is formation of access road, erection of nine dwellings with associated parking, landscaping and provision of Orchard.
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Decision

1. The appeal is allowed and outline planning permission is granted for the formation of access road, erection of nine dwellings with associated parking, landscaping and provision of Orchard at Read's Orchard, Parsonage Chase, Minster-On-Sea, ME12 3JX in accordance with the details of the application Ref 20/506107/OUT, dated 21 December 2020, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The application was submitted in outline form with all matters of detail except access to Parsonage Chase reserved for subsequent approval. The application was accompanied by a sketch layout plan showing how 9 dwellings could be accommodated on the site and sketch floor plans. These are titled "Indicative" and I have considered them as such in my determination.
3. The appeal site lies within 6km of the Swale Special Protection Area (SPA) and Ramsar site. The Council's third reason for refusal related to the absence of a legal agreement to secure mitigation against harm to the integrity of this designated habitat site. However, during the course of the appeal, the appellants submitted a unilateral undertaking (UU) with an obligation for a contribution towards mitigation measures identified in the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMMS). The Council has raised concerns with the UU. I return to this matter below.

Main Issues

4. The main issues are:
 - i) the effect of the proposed development on the character and appearance of the area;
 - ii) whether the proposed development would preserve the setting of the Grade II listed Parsonage Farm; and
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- iii) the effect of the proposed development on the integrity of the Swale Special Protection Area.

Reasons

Background

5. The appeal site forms part of a much larger area of land allocated for a minimum of 620 dwellings under Policy A12 of Bearing Fruits 2031 – The Swale Borough Local Plan 2017 (the Local Plan). Clause 1 c. of the policy requires the retention and positive management of the site, an overgrown traditional orchard, as part of any proposals for the development of the allocated site. However, planning permission has been granted on appeal for up to 700 houses on a site including a large part of the allocated site but excluding the current appeal site (APP/V2255/W/19/3238171). I have no evidence that this scheme will not be implemented.

Character and appearance

6. Parsonage Chase is an established residential street primarily comprising detached bungalows, chalet bungalows and 2-storey dwellings of various ages and styles facing the road with hardstandings and gardens / planting to the frontages. The southern end is a cul-de-sac and more recent but maintains the mixture of dwelling styles and frontages with the limited gaps between the dwellings resulting in a generally enclosed, inward-looking feel.
7. The appeal site is located behind the properties on the south side of this newer southern section with the access to the site via a gap between Nos 79 and 81 Parsonage Chase across an existing grass verge. Access to the eastern edge of the site is possible through a gap between Nos 71 and 73 Parsonage Chase, which is indicated in the approved appeal scheme as a pedestrian and cycle link between the housing / open space to the south and Parsonage Chase. The proposed development would therefore represent backland development but other than through the proposed access, similar to that to a parking area on the north side of this end of Parsonage Chase, it would not be prominent in the street scene nor harmful to the character of the road.
8. The current proposal follows the previous refusal of outline planning permission for 15 bungalows and seeks to address the Council's previous concerns. Layout is a reserved matter and I see no reason why it would not be possible to provide a high quality design that would relate satisfactorily to the existing dwellings on Parsonage Chase. The Site Parameters Plan for the development approved on appeal shows areas of housing to the south and west of the appeal site before me, separated by areas of open green space and retained planting. Again, there is no evidence that it would not be possible for these two appeal schemes to relate satisfactorily to each other.
9. The gaps between Nos 71 and 73 and Nos 79 and 81 afford views of the site but these are otherwise limited to glimpses between the dwellings on the south side of the road. The vegetation on the site therefore makes a limited contribution to the character and appearance of Parsonage Chase. Moreover, the Arboricultural Survey (PJC Consultancy October 2019) found that those trees on the site that could be surveyed were of low quality and value. The indicative layout demonstrates that there would be adequate room to retain or

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provide planting as part of a detailed landscaping scheme to be submitted and approved as a reserved matter.

10. I therefore conclude that the proposed development would not be unduly harmful to the character and appearance of Parsonage Chase or wider area. Accordingly, in this respect, it would comply with Policies ST 6, CP 4 and DM 14 of the Local Plan which, in combination and amongst other things, require high quality design appropriate to the location and surroundings, including landscape character.

Parsonage Farm

11. The appeal site is within the setting of the Grade II listed Parsonage Farm. In determining this appeal I must have special regard to the desirability of preserving the setting of this listed building. The National Planning Policy Framework (the Framework) sets out that great weight should be given to the conservation of a designated heritage asset and that any harm to the significance of such an asset should require clear and convincing justification. The Framework recognises that development within the setting of heritage assets can affect their significance.
12. The National Heritage List for England entry for Parsonage Farm describes it as comprising two parallel ranges dating from the early-mid 17th century and 18th century, although the Heritage Assessment submitted with the application (Heritage Collective October 2020) suggests that it may have earlier origins. The property's significance therefore lies in its architectural and historic interest. It is set back from Parsonage Chase behind the newer properties at the southern end of the road. There are views of Parsonage Farm from the eastern edge of the appeal site and of the site from the listed building. The site is therefore within the setting of this heritage asset, although there is currently little opportunity to appreciate its significance from the appeal site.
13. The original agricultural setting of Parsonage Farm has been eroded significantly in relatively recent years with the encroachment of the development at the southern end of Parsonage Chase to the north and Leigh Court to the east. The Site Parameters Plan for the development approved on appeal indicates the current agricultural land to the south immediately beyond the property's extensive garden as open space with housing beyond and further housing to the west of the appeal site.
14. These developments have been deemed acceptable and have substantially changed and will change the setting of this designated heritage asset. Nevertheless, Historic England's *Good Practice Advice in Planning Note 3: The Setting of Heritage Assets* explains that consideration still needs to be given to whether additional change would further detract from or enhance the significance of the asset.
15. Historic maps indicate that the appeal site originally formed part of the open agricultural setting of the farmhouse and it first appears as an orchard on the Ordnance Survey map of 1933. It is not certain that there has been a connection between the farmhouse and the orchard for many years. The main aspect of the listed building is to the east, away from the appeal site, and the orchard is shown as physically separate from the curtilage of Parsonage Farm on these maps.

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16. The farmhouse is currently separated from the site by its curtilage and boundary planting and the perception of separation would be increased by the pedestrian and cycle link in the approved appeal scheme. The contribution of the appeal site to the significance of the listed building is therefore limited, and any link to the original agricultural setting of the farmhouse would be lost with the housing approved on appeal to the west.
17. The indicative layout demonstrates that there would be sufficient space on the site to accommodate the 9 dwellings proposed and parking / turning areas in an appropriate layout and planting, including a new orchard, between the new development and Parsonage Farm. Such planting would provide a further buffer between the proposed development and the listed building.
18. Furthermore, whilst clause e. of Policy A12 requires development on the allocated site to conserve the setting of Parsonage Farm, there is no indication in the policy or its supporting text that the retention and positive management of the appeal site is considered important in conserving that setting. The approved appeal scheme does not rely on the site remaining an orchard to preserve that setting.
19. There may be opportunities to retain the view of the farmhouse from the pedestrian and cycle link but that it is outside the scope of the appeal before me. Nevertheless, the proposed development would not significantly affect the ability to appreciate the special interest of the building.
20. I therefore conclude that the proposed development would not harm the setting of Parsonage Farm, resulting in a neutral effect on the significance of the listed building, and that the setting would thereby be preserved. Accordingly, in this respect, the proposals would comply with Policies CP 8, ST 6 and DM 32 of the Local Plan, which in combination and amongst other things, seek to protect heritage assets. The development would also generally comply with the heritage policies of the Framework.

The Swale SPA

21. The SPA is designated for its prevalence of rare and vulnerable birds and for regularly occurring migratory species which together comprise its qualifying features. The conservation objectives of the SPA are, in summary, to ensure that the integrity of the site is maintained or restored in order to protect the habitats and the birds that depend upon them. The Bird Wise North Kent Mitigation Strategy (the Strategy) notes that increased recreational disturbance associated with a net increase in residential accommodation within 6km is adversely affecting the integrity of the SPA.
22. The proposed development would result in 9 additional dwellings within 6km of the SPA. It would therefore be likely to have a significant effect on the integrity of the designated habitats site. In such circumstances, the Conservation of Habitats and Species Regulations 2017 (as amended) require a decision maker to undertake an appropriate assessment (AA) before giving any permission. In doing so, I can have regard to mitigation measures.
23. Both the SAMMS and the Strategy set out a range of mitigation measures including a dog project, wardening / visitor engagement and site specific access and infrastructure enhancements. The Strategy has been endorsed by Natural England (NE) and I am satisfied therefore that the measures within the

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Strategy provide adequate mitigation for the recreational effects associated with the occupancy of new residential development. The measures are funded through contributions from developers within 6km of the SPA in accordance with Policies ST 6, CP 7 and DM 28 of the Local Plan.

24. The appellants have submitted a planning obligation to pay the requisite contribution towards these mitigation measures. The Council has commented that the obligation should require the contribution to be paid prior to commencement of development rather than the first implementation of the planning permission, which is not defined in the UU.
25. However, the ordinary meaning of 'first implementation' is clear; the undertaking of a material operation in accordance with Section 56 of the Town and Country Planning Act 1990 as set out in the definition of 'commencement of development' in the UU. I am satisfied that this is an appropriate trigger point for the payment of the contribution. The Council also requests the interest rate on overdue payments to be 4% above the base rate not 1% as stipulated in the UU but has not provided any justification for the higher figure.
26. I consider therefore that this obligation meets the tests of Regulation 122 (2) of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 57 of the Framework. In its comments on the application, NE confirmed that if this contribution was secured, it would be satisfied that the potential recreational impacts of the scheme would be adequately mitigated.
27. I am therefore satisfied that the proposed development would not have an adverse effect on the integrity of the SPA. Accordingly, in this respect, the proposals would comply with Policies ST 1, DM 14 and DM 28 of the Local Plan which, in combination and amongst other things, promote sustainable development and seek to conserve and enhance the natural environment.

Other Matters

Biodiversity

28. The proposals attracted objections from local residents in which a common theme was the effect on wildlife. Traditional orchards are a Biodiversity Action Plan habitat that should be conserved under Section 41 (England) of the *Natural Environment and Rural Communities Act 2006*. This is noted in paragraph 6.5.38 of the supporting text to Policy A12 of the Local Plan and appears to be the purpose of clause 1 c. The proposed development would not retain all the site and is therefore in limited conflict with the clause.
29. A single Great Crested Newt (GCN) was surveyed at a pond in the south-east corner of the site and a good population of GCN has been recorded within a pond 60m from the site. Reptiles are known to be present in the adjacent habitats. However, the amended Preliminary Ecology Appraisal Report (Corylus Ecology April 2021) (the PEAR) submitted during the course of the application sets out detailed mitigation strategies for these species. The PEAR also recommends other mitigation measures for the effect on other wildlife.
30. The Biodiversity Net Gain Report (Corylus Ecology April 2021) submitted during the course of the application indicates that the proposed development would result in biodiversity net gain of 0.14% for habitat units based on Biodiversity Metric 2.0. At the time of writing this decision there is no requirement in national or adopted local policy for a higher percentage increase.

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31. I am satisfied therefore that, subject to the securing of biodiversity enhancement measures by condition, the proposed development would enhance biodiversity on the site, albeit to a very limited extent. I therefore give limited weight to the conflict with Policy A12. I note that the Council considers that the requirement of clause 1 c. is no longer critical given the allowing on appeal of the development of the majority of the allocated site.

Living conditions

32. The occupiers of Nos 79 and 85 Parsonage Chase objected to the proposals on the grounds, amongst others, of a loss of privacy and peace. As part of my site visit, I assessed the site from the rear gardens of these properties. The proposed access to the site would run between these properties but the vehicle movements associated with 9 dwellings would be unlikely to be excessive or cause undue disturbance from noise or headlights.

33. The indicative layout plan confirms that sufficient room on the appeal site exists to provide a good degree of separation from the rear elevations of the properties on the south side of Parsonage Chase and boundary landscaping. There is also scope for the layout and orientation of the proposed dwellings to reduce the potential for overlooking. I am therefore satisfied that reasonable levels of privacy could be achieved for existing occupiers of neighbouring properties.

34. Disturbance during construction would be inevitable but would be temporary and could be minimised through a Construction Method Statement and a restriction on hours of working, both of which could be secured through conditions. I therefore find that the proposed development would not be unduly harmful to the living conditions of the occupiers of existing dwellings on Parsonage Chase.

Other considerations

35. I am satisfied that concerns raised by local residents over parking and the access can be addressed by a condition and when the layout is submitted for approval. I have no evidence that local facilities and services would not be able to cope with the occupiers of an additional 9 houses or that drainage is inadequate. None of the other concerns raised, including property value and loss of views, have been determinative in this appeal.

36. I note that Kent County Council has requested infrastructure contributions but that Policy CP 6 of the Local Plan states that such contributions will only be sought on developments of 10 or more dwellings. There is therefore no policy basis for requiring these contributions and I do not find them necessary to make the development acceptable.

Planning Balance

37. It is common ground that the Council cannot demonstrate a 5-year supply of deliverable housing sites. The shortfall is described by the appellants as 'significant' although I have no indication of its actual extent. Consequently, paragraph 11 d) of the Framework is engaged and the most important policies of the development plan for determining this application are deemed to be out of date.

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38. I have found above that the proposed development would preserve the setting of Parsonage Farm and would not harm the integrity of the Swale Special Protection Area. Accordingly, planning permission should be granted unless the adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole.
39. Although the contribution of 9 dwellings would make only a modest contribution to the housing supply of the borough, their provision would accord with the Government's aim of significantly boosting the supply of homes as set out in the Framework. The Framework also supports the development of small-medium and windfall sites.
40. The Framework also requires development proposals to respect local character, to conserve and enhance heritage assets and biodiversity and to provide a high standard of amenity for existing and future users. The proposed development would satisfy each of these requirements. I therefore find that there would be no adverse effects of granting permission that would significantly and demonstrably outweigh the benefits. Consequently the proposals would represent sustainable development for which paragraph 11 of the Framework indicates a presumption in favour and planning permission should be granted.

Conditions

41. The Council has suggested a list of conditions in the event that the appeal is allowed in addition to the standard commencement conditions. I have considered these against paragraph 56 of the Framework and amended and reordered them slightly for consistency, precision, concision and logicity.
42. I have not imposed a condition regarding contaminated land as requested by the Council's Environmental Health adviser as I do not find this necessary given that the historic and current use of the site suggests that contamination is unlikely. However, I have added a condition regarding archaeological investigation as requested by Kent County Council which I consider necessary to ensure that features of archaeological interest are properly examined and recorded. I have also added a plans condition to provide certainty and a condition regarding mitigation measures for protected species during construction in the interests of biodiversity.
43. In addition, I have imposed conditions regarding the proposed access and parking provision / vehicle turning facilities in the interests of highway safety and, for cycles, to encourage travel other than by the private car. In addition to landscaping, appearance, layout and scale are also matters reserved for future approval and I have amended condition 1 accordingly. The appellants have confirmed their agreement to these additional and amended conditions (email dated 9 August 2022).
44. A Construction Method Statement (CMS) and a restriction on hours of working are necessary to protect the living conditions of the occupiers of nearby dwellings. Both the archaeological investigation and the CMS need to be pre-commencement conditions to ensure that the development is undertaken in a satisfactory manner.
45. The approval of materials, landscaping details and biodiversity enhancement measures are necessary in the interests of character and appearance and / or

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biodiversity. Sustainable design measures and electric vehicle charging points are necessary in the interests of addressing climate change, promoting energy efficiency, water conservation and air quality. Details of refuse and recycling proposals are required to ensure the satisfactory provision of these facilities.

Conclusion

46. Notwithstanding the limited conflict with Policy A12, for the reasons given above, the proposed development would comply with the development plan taken as a whole. There are no considerations, including the representations from interested parties, that indicate that a decision should be made other than in accordance with the development plan.
47. For this reason, the appeal is allowed.

Martin Small

INSPECTOR

Schedule of Conditions

1. Details of appearance, landscaping, layout and scale (hereinafter called the "reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
2. Application for the approval of reserved matters referred to in Condition 1 shall be made to the local planning authority not later than 3 years from the date of this permission.
3. The development to which this permission relates shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the Site Location Plan.
5. No development shall take place until the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved in writing by the local planning authority has been secured.
6. No development shall take place, including any works of site clearance, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The Statement shall provide for matters including:

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- i. details of the parking and turning areas for construction and delivery vehicles and site personnel, including loading and unloading of plant and materials;
- ii. storage of plant and materials used in constructing the development;
- iii. measures to control the emission of dust and dirt during construction;
- iv. wheel washing facilities; and
- v. a scheme for recycling/disposing of waste arising from construction works.

The approved Statement shall be adhered to throughout the construction period for the development.

7. No site clearance or 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.
8. All works of site clearance and construction shall be in accordance with the detailed mitigation strategies for protected species contained within the Amended Preliminary Ecology Appraisal Report (Corylus Ecology April 2021) unless otherwise agreed, in writing, with the local planning authority.
9. No development beyond the construction of foundations shall take place until details of the external finishing materials, including samples or sample panels, to be used on the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be constructed and retained for the lifetime of the development in full accordance with the approved details.
10. No development beyond the construction of foundations shall take place until details setting out what measures have been taken to ensure that the development incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the inclusion of solar thermal or solar photo voltaic installations, and energy efficiency measures have been submitted to the local planning authority and approved in writing. The approved details shall be incorporated into the development prior to the first occupation of any dwelling hereby permitted.
11. The dwellings hereby permitted shall be constructed and tested to achieve at least a 50% reduction in Dwelling Emission Rate compared to the Target Emission Rates as required under Part L1A of the Building Regulations 2013 (as amended). No development beyond the construction of foundations shall take place until details of the measures to be undertaken to secure compliance with this condition have been submitted to and approved in

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

12. The development hereby permitted shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the dwellings hereby permitted shall not be first occupied unless the notice for the dwellings of the potential consumption of water per person per day required by the Building Regulations 2015 (as amended) has been given to the Building Control Inspector (internal or external).
13. No gas boilers shall be fitted in the dwellings hereby permitted other than a low emission boiler of a minimum standard of <40mgNO_x/kWh. No dwellings hereby permitted shall be first occupied until details of the boilers to be installed have been submitted to and approved in writing by the local planning authority, and the development shall be carried out in accordance with such details.
14. Electric vehicle charging points (EVCP) shall be installed in full prior to the first occupation of the dwellings hereby permitted and they shall be retained thereafter.
15. Details of the proposed access, including the use of a bound surface for the first 5 metres of the access from the edge of the highway, measures to prevent the discharge of surface water onto the highway and pedestrian visibility splays with no obstructions over 0.9 metres above carriageway level within the splays, shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the dwellings hereby permitted. The development shall be carried out in accordance with such details and thereafter retained.
16. The details submitted for the approval of reserved matters shall include details of vehicle and cycle parking spaces and/or garages for each dwelling in accordance with Swale Borough Parking Standards and vehicle turning facilities. The spaces and turning facilities shall be provided prior to the first occupation of the dwellings hereby permitted and thereafter retained.
17. The details submitted for landscaping pursuant to condition 1 shall include an orchard and provisions for its management, an arboricultural impact assessment and tree protection measures for any trees to be retained. All hard and soft landscape works shall be carried out in accordance with the approved details submitted pursuant to condition 1. The works shall be carried out prior to the first occupation of any part of the development or in accordance with the programme agreed in writing with the local planning authority. Any trees or shrubs that are removed, die, are severely damaged or become 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.

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18. Prior to the first occupation of the dwellings hereby permitted, a scheme of biodiversity enhancements including to the existing pond on the site shall be submitted to and approved in writing by the local planning authority. The biodiversity enhancements shall be completed in accordance with the approved details prior to the first occupation of the dwellings hereby permitted and retained thereafter.
19. The details submitted pursuant to condition 1 shall include further elevational details of the storage proposals for refuse and recycling purposes. Such facilities shall be provided prior to first occupation of the dwellings hereby permitted and retained for such use thereafter.

End of Schedule

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Appeal Decision

Hearing held on 31 March 2022

Site visit made on 31 March 2022

by **Timothy C King BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 August 2022

Appeal Ref: APP/V2255/W/19/3220060

St Thomas Yard, Holywell Lane, Upchurch, Kent ME9 7HP

- 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 Messrs P and T Delaney against the decision of Swale Borough Council.
 - The application Ref 17/503860/FULL, dated 24 July 2017, was refused by notice dated 2 January 2019.
 - The development proposed is described as 'Change of use of land for the stationing of caravans for residential occupation with associated hardstanding, steps to the mobile homes, fencing, utility building, cesspools and new access without compliance with Condition 1 of the 2002 appeal decision (personal condition) for one mobile home and one touring van;
Condition 1 of the 2004 decision which restricted the number of caravans on the land to 2 mobile homes and one touring caravan;
Condition 4 of the 2002 appeal decision which restricted the number of vehicles on the land to those incidental to the use of the site by one family only;
Condition 6 of the 2002 appeal decision which prevented the external storage of materials of any kind (to include vehicles or trailers) other than Mr Friend's trotting cart and would preclude the external storage of domestic paraphernalia including bins, seating, children's play houses/swings etc, works trailers, washing lines etc.'
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use of land for the stationing of 3 no. mobile homes and 3 no. touring caravans for residential occupation with associated utility building, hardstanding, steps to mobile homes, fencing, cesspools and new access (retrospective) at St Thomas Yard, Holywell Lane, Upchurch, Kent ME9 7HP, in accordance with the terms of the application Ref 17/503860/FULL, dated 24 July 2017, subject to the conditions in the attached Schedule.

Preliminary Matters

2. At the Hearing both main parties agreed that the description of the development, as set out on the Council's decision notice was a more concisely worded representation of the development involved than that on the application form. Accordingly, in granting planning permission, I have used this description as it better focusses on the development itself.
3. At the Hearing it was confirmed that the Delaneys have lived at the site, or rather within the wider Greenacres site, for a number of years. It is not disputed that they satisfy the PPTS definition of gypsies and travellers. They

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claim they are in need of a site which they can use as a settled base, and retrospective planning permission is sought.

Background

4. The site, set in the open countryside, once formed part of a larger site known as Greenacres which, following a successful appeal in 2002, was granted planning permission for a change of use from grazing land to residential use comprising one mobile home, touring caravan, utility room, store, toilet, poultry shed and feed store. The permission was subject to several conditions; one of which made the permission personal to the appellant's husband, Robert Friend, and his dependents. A subsequent planning permission (ref 04/1049) varied the above consent to allow for an additional static caravan.
5. Following subsequent planning permissions granted the original site was sub-divided into three distinct and demarcated pieces of land, known today as 'Greenacres', an adjoining site 'The Orchard' and 'St Thomas Yard' immediately beyond.
6. By way of planning permission 15/505703/FULL, granted in 2016, Greenacres now enjoys planning permission for a total of 3 mobile homes and a second utility block. The Orchard, through planning permissions 16/503808/FULL and 18/505468/FULL, granted in 2018 and 2019, respectively has permission for 4 static caravans and 2 tourers, with a dayroom and utility block.
7. The current appeal, which relates only to the St Thomas Yard site, follows the refusal of the application which was made retrospectively. The site which, due to fencing erected, is now physically demarcated from The Orchard, was originally reached by way of the access point serving the Orchard but in 2015, following a new, independent vehicular access created from Holywell Lane, the Council issued an enforcement notice against this development.
8. The notice required that the land be restored to its original condition, effectively closing the access. At appeal the Inspector commented that the entrance is wide, is located at the point where the embankment is at its highest, and detracts from the area's character and appearance. Although noting the presence of other access points along Holywell Lane, she considered these as less obtrusive. Accordingly, she dismissed the appeal and upheld the notice. However, the said access remains and, when questioned on this point, the Council witness at the Hearing indicated that any consequent legal action had been delayed pending the outcome of the current appeal.

Main Issues

9. These are whether the proposal represents an acceptable form of development having regard to the following matters:
 - national policy, and the objectives of the development plan in respect of gypsy and traveller accommodation; and
 - the effect on the character and appearance of the area, having regard to the site's degree of visibility from surrounding land, any cumulative effects arising from the development, and also the positioning and scale of the access point from Holywell Lane.

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Reasons

Policy matters

10. National policy is contained in the government's Planning Policy for Traveller Sites, 2015 (PPTS) which states that applications should be assessed and determined in accordance with the presumption in favour of sustainable development. In addition, Councils should very strictly limit new traveller site developments in the open countryside that is away from existing settlements.
11. Policy H of the PPTS says that Councils should, amongst other things, consider the level of need for additional gypsy and traveller accommodation and the availability of alternative accommodation.
12. The Swale Borough Local Plan (LP), adopted in 2017, seeks the provision of a minimum of 61 gypsy and traveller pitches over the plan period to 2031. The LP does not allocate any pitches but instead relies on a windfall based approach using the criteria in policy DM 10. It is common ground between the parties that the Inspector for the LP's examination did not consider it was necessary for a policy to allocate sites, based on the need evidence from the GTAA (2013) used at the time of the examination in public.
13. Policy DM10 indicates that for land in the open countryside, outside the built-up area boundaries, says that the Council will grant planning permission for gypsy & traveller sites where, amongst other things, it is demonstrated that there are exceptional mitigating and/or personal circumstances where it has been demonstrated that a particular site is required to meet their needs and where there is no overriding harm to the locality, or the proposal is for an extension to, or stationing of, additional caravans at an existing site. A further requirement is that the development should be of a scale appropriate to meet the accommodation need identified and not introduce a scale of development that singularly or cumulatively dominates the nearest settlement or causes significant harm to the character of an area or its landscape.
14. In updating the 2013 GTAA an ARC 4 Gypsy, Traveller and Travelling Showpeople Accommodation Assessment was published in November 2018, based on fieldwork carried out in January to March 2018. This confirmed an immediate need for at least 30 pitches in Swale within the first five years. The GTAA identified a total pitch need to 2037/38 of 76 pitches, of which 59 would be to persons meeting the definition within the PPTS, and a residual pitch requirement (taking into account the expected turnover on pitches on Council sites) to 2037/38 of 68 pitches.
15. The above figures do not take into account the Brotherhood Woodyard site, mentioned by both main parties, where controversy exists as to whether or not it is suitable for gypsies/travellers and, consequently, whether it should contribute to the supply. This could potentially provide 40 additional pitches. In this connection the Council cites previous appeal decision letters, all from 2018, and relating to different sites within the borough, where the respective Inspectors have commented on this matter; one saying that there is not now significant doubt as to the deliverability of the pitches on the Brotherhood Woodyard site. Nonetheless, the latest representations from the Council, dated 25 March 2022, still refer to 'considerable debate' as to whether the site should be included. Some four years after the said appeal decisions, the Council's comments are still not unequivocal on this matter.

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16. In September 2019, in response to the appeal, the Council's initial representations indicated that it could demonstrate a 5 year supply of deliverable sites. Subsequently, its Supplementary Statement dated 25 March 2022, indicated that the Council had so far approved over 58% of pitches needed for the entire GTAA period (2037/38) through its windfall policy and, should this approval rate continue, up to 150 pitches would have been approved by the expiry of the period. However, this is not guaranteed and the Council now accepts that it has only a 3.5 year land supply.
17. Accordingly, a signed Statement of Common Ground (SOCG), produced at the Hearing, showed an agreement between the main parties that a 5 year supply of viable gypsy sites cannot currently be demonstrated.
18. The unmet need for gypsy & traveller sites within the borough is a matter to which I ascribe considerable weight.

Character and appearance

19. By way of the Swale Landscape and Biodiversity Appraisal Supplementary Planning Document (SPD) the appeal site falls within the Upchurch and Lower Halstow Fruit Belt. A key characteristic of this designated area is an undulating landscape with some long views both northwards and southwards. The Upchurch area also has a fragmented structure of mature hedgerows with pasture and arable fields. The SPD seeks to conserve such landscape as does policy DM 24 of the Swale Local Plan (LP), which also seeks to enhance the landscape where possible. In this regard, though, the Council's case report says that landscape impact is not a significant objection to this development.
20. Although in 2018 the Council granted planning permission (16/503808/FULL) to allow for additional caravans, both static and tourers on The Orchards, the Council witness at the Hearing drew a distinction to the planning position at the appeal site in that no new access was being created and the bank to The Orchard site is well screened. In contrast, he described the appeal site as a locational high point. That said the Council's Reason for Refusal indicates that the site is "...reasonably well screened from views from Holywell Lane". Instead, the Council's primary concerns appear to arise from the consideration that the site is located between two public footpaths which both climb from Holywell Lane, allowing for "far reaching views of the site from public vantage points"
21. Immediately to the south of the appeal site, but at a lower land level than St Thomas Yard is a small area of land known as 'Hedgerows', accommodating two mobile homes, with a tourer caravan present at the time of my site visit. I understand that this site enjoys planning permission, granted in 2013. A footpath (PROW ZR23) is accessed from Holywell Lane at a point just beyond this site, and then climbs upwards where it converges with a second footpath (PROW ZR24). This footpath also starts from Holywell Lane, just beyond the northern boundary of Greenacres. At my site visit I walked up ZR23 where I had long views, across a number of fields, over which there are a number of buildings sporadically sited, mainly agricultural, but with a splattering of residential development, which also includes mobile homes. Looking back down eastwards to the Hedgerows and the appeal site, both are visible from the higher ground. Crossing over to ZR24, there are wide views across the River Thames and, in descending this footpath, there are clear views

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southwards towards Greenacres with the footpath, at its lowest stretch, running parallel to this site.

22. The Council's first Reason for Refusal refers to a degradation of the previously unspoiled rural character. However, the series of planning permissions granted since 2002 have established these sites, one of which, Hedgerows, is particularly visible from PROW ZR23 whereas the appeal development appears more of an add-on to the development at The Orchard and Greenacres sites and, in fact, was part of the previously larger Greenacres site, before its subdivision. Accordingly, it is a brownfield site, for which PPTS paragraph 26(a) says should be ascribed weight when considering applications. Taken together, the sites form a pocket of traveller development, and this might form the basis of the cumulative argument although my observations showed that the rural character of the wider surrounding area remains largely intact.
23. In creating the site entrance a significant amount of earth forming the side embankment on this stretch of Holywell Lane has been removed. In this regard the previous Inspector, in dismissing the appeal and upholding the enforcement notice requiring for the land to be restored to its previous condition, commented that the works have left an unattractive and prominent scar which detracts from the character and appearance of the surroundings.
24. In her decision letter, from February 2016, the Inspector mentions that her understanding was that both sites (St Thomas Yard and The Orchard) were, at the time, unauthorised. With her remit limited only to the new access created she commented that, although planting could reduce the impact of the cutting and soften the entrance's harsh appearance, there was no justification for the development.
25. Turning to the site's splayed access, it is flanked by 2m high close-boarded, timber fencing and winds upwards to the site. This is the sole vehicular access point into the site. The fencing, which has been treated, sits below the embankment, over which another section of fencing, that screens the site itself, winds round onto Holywell Lane and runs along the top of the embankment to The Orchard's site entrance. However, this fencing is screened by a line of trees and general foliage, and is not readily visible from Holywell Lane.
26. Over six years have elapsed since the appeal decision on the access, during which time new vegetation has taken hold around the entrance to the site. At my site visit I observed that this has ameliorated the harshness of the development that would have been apparent when first carried out. This has enabled it to now integrate better into its contextual setting.
27. Similar close-boarded fencing is present on the opposite side of Holywell Lane. The Inspector, in her decision letter, did mention other access points along Holywell Lane which she considered were less obtrusive. The entrance to Greenacres is relatively discreet, but the access point to The Orchard is similarly flanked by wooden fencing and, from my observations, I am satisfied that there are visual comparisons. Accordingly, I consider that, over time, the harm that was initially apparent has now been tempered and the character of the rural lane has not been compromised.
28. Although there would be some degree of harm to the character of the landscape I consider that, in the setting I have described, this would be

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minimised. As such, with limited undue visual intrusion, I consider that the development is not significantly harmful to the surrounding rural character. Accordingly, I find that the objectives and requirements of LP policy DM 10 and DM24 would not be compromised. Further, I am also satisfied that the advice in PPTS paragraph 25 is here met.

Other considerations

Personal circumstances

29. As mentioned, the appellants have local connections, not least with Miley Cash who owns the adjoining site. He is the brother of Kathleen Delaney who is married to Thomas Delaney snr. They are the parents of the appellants, Paddy Delaney and Thomas Delaney jnr. All currently live at the site along with their dependents in the 3 mobile homes.
30. In total, there are 11 persons resident, 3 of which are children who attend local schools. A settled base would be in the best interests of the children, securing access to medical facilities and education which are difficult to achieve by the roadside without a fixed address. The best interests of the children, that is the need to safeguard and promote their welfare, are a primary consideration, particularly as their education would be likely to be interrupted if the family were forced to move from the site. Further, the accessibility to health care that a settled base secures is a benefit to the family as a whole.
31. Given the absence of available gypsy sites in the borough it is hardly surprising that no viable alternative accommodation has been suggested that might be suitable. Indeed, I have received no details as to the existence of any such accommodation. In this connection it was held in the judgement of *South Cambridgeshire DC v SSCLG & Brown* [2008] EWCA Civ 1010 that in seeking to determine the availability of alternative sites for residential Gypsy use, there is no requirement in planning policy, or case law, for an applicant to prove that no other sites are available or that particular needs could not be met from another site. The lack of alternative sites is therefore a consideration that weighs in favour of the appellants.
32. It is clear that the shortfall of gypsy and traveller sites is significant. Accommodation by way of a settled base, rather than a roadside existence, can only be beneficial, and I consider that the development provides suitable accommodation consistent with this. The best interests of the child must be afforded substantial weight.

Other representations

33. In reaching my decision I have had regard to the objections to the development put forward by Upchurch Parish Council. The Parish Council has commented that the sub-division of the parcel of land has caused a proliferation of travellers in the area which is already overburdened by traveller sites. As mentioned, the original Greenacres parcel of land has been subdivided to form three distinct sites and more caravans are now permitted than were first granted permission in 2002. The small adjacent site, Hedgerows, also has planning permission for two static caravans but I have seen no evidence, either from that supplied to the Hearing or from my wider site visit observations, that the surrounding area is 'overburdened' by traveller sites. Although within the envelope of the original Greenacres site I am

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effectively treating the development as an extension to that of the existing permitted Greenacres and Orchard caravan sites.

34. In this context I am satisfied that the development accords with the advice in PPTS paragraph 14.

Planning Balance

35. The proposal would contribute to meeting the identified local need for gypsy and traveller accommodation. The appellants have also demonstrated that their families' personal circumstances are such that a settled base would be in the best interests of the children present and beneficial to the family as a whole. The appeal site is their home and there is no alternative accommodation available. These are matters to which I afford significant weight.
36. I am satisfied that the development is of a scale appropriate to meet the accommodation need identified, and its location would not, either singularly or cumulatively, cause significant harm to the character of the area or its landscape. This is consistent with the advice in PPTS paragraphs 14 and 25. Further, LP Policy DM 24 says that non-designated landscapes such as this will be protected and enhanced and planning permission will be granted subject to the minimisation and mitigation of adverse landscape impacts.
37. In its setting, as mentioned, I do not find that significant adverse effects have resulted from the development. In this regard, the Council's case report, notwithstanding the wording of the first refusal reason, says that landscape impact is not a significant objection to this development.
38. Further, mitigation can be achieved through suitable landscaping, both to the rear of the site, where the development is visible from PROW ZR23, around the side of the access point off Holywell Lane which, since its creation, has better integrated into its setting. The landscape has not been enhanced by the development, but as this is a relatively small-scale development, adding on to the Orchard and Greenacres sites, the harm arising can be mitigated to some degree.
39. I find that the development is in accordance with the national PPTS and, in the circumstances, is not in material conflict with Policies DM 10, DM 24, DM 26 and CP 4 of the Swale development plan, nor its SPD. Neither is it in conflict with paragraphs 8, 79, 80 and 174 of the National Planning Policy Framework (July 2021)

Conclusion and Conditions

40. For the above reasons I conclude that the appeal should be allowed and planning permission granted.
41. In terms of conditions I have had regard to those agreed by both main parties and also advice within the planning practice guidance. Although the personal circumstances would justify that the permission be made personal to the appellants and their families I am satisfied that, as any visual harm is limited and is outweighed by my findings on the other factors as discussed, such a condition is unnecessary. Indeed, the Council, in its representations, did not suggest that such a condition be imposed. However, I shall impose a condition limiting occupation to gypsies and travellers, as defined in the PPTS glossary.

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42. In addition to this, in order to safeguard the character and appearance of the area, the number and type of caravans should be specified. For the same reason any external lighting scheme should be submitted for approval, and no commercial activities or parking of vehicles over 3.5 tonnes should take place on the land.
43. A condition requiring the submission of details of an appropriate landscaping scheme is also imposed to provide screening, where considered necessary, as discussed.
44. All these conditions are reasonable and necessary given the circumstances.

Timothy C King

INSPECTOR

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SCHEDULE OF CONDITIONS

- 1) The site shall not be occupied by any persons other than gypsies and travellers as defined in Annex 1: Glossary of Planning Policy for Traveller Sites (or its equivalent in replacement national policy).
- 2) No more than three static caravans and three touring caravans shall be stationed on the site at any one time.
- 3) No vehicles over 3.5 tonnes shall be stationed, parked or stored on this site.
- 4) No commercial activities shall take place on the land, including the storage of materials.
- 5) No floodlighting, security lighting or other external lighting shall be installed or operated at the site, other than in accordance with details that have first been submitted to and agreed in writing by the local planning authority.
- 6) The use hereby permitted shall cease and any caravans, sheds, structures hard-standings, fences, materials and equipment on the site and connected with the use, together with all ancillary vehicles and equipment, shall be removed within 28 days of any one of the following requirements not being met:
 - (i) within 3 months of the date of this decision there shall have been submitted for the approval of the local planning authority a landscaping scheme comprising full details of both hard and soft landscape works. These details shall include existing trees, shrubs and other features, planting schedules, noting species, plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme;
 - (ii) within 11 months of the date of this decision the landscaping scheme shall have been approved by the local planning authority or, if the local planning authority fail to approve such a scheme, or fail to give a decision within the prescribed period an appeal shall have been lodged and accepted as validly made, by the Secretary of State;
 - (iii) if an appeal is made in pursuance of requirement (ii) above, that appeal shall have been approved by the Secretary of State;
 - (iv) all works comprised in the landscaping scheme as approved shall have been implemented and completed within the timetable set out in the approved scheme;

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APPEARANCES

For the Appellant

Alison Heine Agent for the appellant
Patrick Delaney Appellant
Thomas Delaney Appellant

For the Council

Andrew Byrne Area Planning Officer, Swale Borough Council
Jill Peet Planning Policy Manager

Other Interested Parties

Gary Rosewell Upchurch Parish Council
Kathleen Delaney
Tom Delaney

Documents produced at the Hearing

1. Council's notification letters of appeal and the Hearing event.
2. Signed Statement of Common Ground
3. Extract from Swale Landscape and Biodiversity Appraisal



Appeal Decision

Site visit made on 17 August 2022

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 August 2022

Appeal Ref: APP/V2255/W/21/3284390
2 Larkfield Avenue, Sittingbourne, ME10 2DP

- 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 Katie Fryer against the decision of Swale Borough Council.
 - The application Ref 21/501324/FULL, dated 10 March 2021, was refused by notice dated 25 August 2021.
 - The development proposed is erection of a three bed detached dwelling with associated amenity space.
-

Decision

1. The appeal is dismissed.

Main Issues

2. These are the effect of the proposed side garden on the character and appearance of the area and whether living conditions for future occupiers would be satisfactory with particular reference to the provision of outdoor space.

Reasons

Character and appearance

3. The appeal site is on the corner of Larkfield Avenue and Dean Road within an extensive residential estate. It is proposed to build an additional dwelling to the side of the existing semi-detached house. As part of the proposal an enclosed garden area would be formed to the side of the proposed property.
4. This would be set back from the pavement along Dean Road by some 2m but would nevertheless project in front of the line of buildings along both roads. The garden would be surrounded by a 1.6m high close boarded fence at the front and a 1.6m high hedge along the return boundary.
5. Although there is some hedging and low means of enclosure, the surrounding area is largely characterised by open frontages with generous space on many of the corners. The proposed area would jut out and would significantly disrupt this positive aspect of the locality. In particular, the position and harsh appearance of the proposed fencing, forward of the proposed dwelling, would be odd and incongruous in this setting. Overall the visual impact would be a negative one.
6. Whilst this area is already the side garden to the house at No 2, it is open and unenclosed and so contributes to the sense of spaciousness. The appellant is willing to accept a condition requiring further details to be submitted.

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However, given the need to provide privacy, it is difficult to see how this could overcome the objection identified without reducing the size of the garden.

7. The built form would fit in well because of its siting and design. However, due to the garden's location, the proposal as a whole would harm the character and appearance of the area. It would be contrary to the general development criteria in Policy DM14 of the Swale Borough Local Plan as it would not reflect the positive characteristics and features of the site and locality. As one aspect of the proposal would not be appropriate to its surroundings, there would also be conflict with Policy CP4 which requires good design.

Future living conditions

8. The proposed garden would have dimensions of around 11.8m by 4.5m. As such, it would exceed the Council's 'rule of thumb' of a depth of 10m in one direction. Moreover, there is no local policy basis against which to judge the size of the external area and none of the development plan policies cited refer to this matter. The proposed hedging and fencing would ensure privacy.
9. However, other than the bungalow at 1 Larkfield Avenue on the opposite corner, the garden would be much smaller than those of other properties nearby. The private space proposed would allow a modest area for sitting out and clothes drying but it would not be generous for a family and the positioning near to the road would not be especially attractive. The National Planning Policy Framework indicates that developments should create places with a high standard of amenity for future users. When judged against this yardstick, the provision of private external space would be inadequate. Living conditions for future occupiers would therefore be unsatisfactory.

Other Considerations

10. The Swale settlement strategy, as set out in Local Plan Policy ST3, establishes that Sittingbourne will provide the primary urban focus for growth. According to Policy CP3, development proposals will be steered to location identified in Policy ST3. This includes windfall sites, except where the character of the site, its local context or environmental value determines otherwise. Whilst there are objections in these respects, there is nevertheless broad policy acceptance of a new single dwelling within the town.
11. Moreover, the Framework points out that small sites can make an important contribution to the housing requirement of an area. Great weight should be given to the benefits of using suitable sites within existing settlements for homes. As with the development plan policies, this support is qualified by the need for the sites to be "suitable". Nevertheless, the proposed dwelling would be in line with these policies and this is in its favour.
12. The Council is unable to demonstrate a five year supply of specific deliverable housing sites. When judged against its housing requirement, it has an equivalence of 4.6 years supply. This shortfall amounts to about 400 additional dwellings per annum. Therefore a large number of homes are not provided for and this gives significant weight to the delivery of even one extra unit.
13. A local resident has raised further concerns including parking, construction disruption, property values, impact on vision and sunlight and overcrowding but none of these amount to objections to the scheme.

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Final Balance

14. The proposal would have an adverse impact on the character and appearance of the area and because of the limited provision of private outdoor space, living conditions for future occupiers would be unsatisfactory. Significant weight should be given to the consequent conflict with the development plan.
15. Set against this, the proposed dwelling would be within the built-up area of Sittingbourne and the Framework indicates that windfall sites should be supported. There is a deficit in the supply of housing sites in Swale which the proposal would go some way towards addressing. However, the support for the proposal in the Framework is countered by the importance it attaches to design which is a key aspect of sustainable development. Furthermore, as part of achieving well-designed places, developments should promote health and well-being. The proposal falls down in both these respects.
16. Therefore the adverse impacts of the proposal significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result the presumption in favour of sustainable development does not apply.
17. The appellant has paid the requisite contribution to mitigate the effect on the Medway Estuary and Marshes Special Protection Areas in line with the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy. However, as the appeal is to be dismissed, there is no need for further consideration to be given to whether this would be effective or to the Conservation of Habitats and Species Regulations.

Conclusion

18. The proposed development would be contrary to the development plan and there are no other material considerations, including the provisions of the Framework, that outweigh this finding. Therefore, for the reasons given, the proposal is unacceptable and the appeal should not succeed.

David Smith

INSPECTOR

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