

# Agenda

## Planning Committee Meeting

Date: Thursday, 12 October 2023

Time 7.00 pm

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

Membership:

Councillors Mike Baldock (Chair), Andy Booth, Simon Clark, Kieran Golding, James Hall, Mike Henderson, James Hunt, Elliott Jayes (Vice-Chair), Peter Marchington, Claire Martin, Charlie Miller, Julien Speed, Paul Stephen, Terry Thompson, Angie Valls, Karen Watson and Tony Winckless.

Quorum = 6

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Pages

### Information about this meeting

\*Members of the press and public can listen to this meeting live. Details of how to join the meeting will be added to the website by 11 October 2023.

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Visitors and members of the public who are unfamiliar with the building and procedures are advised that:

- (a) The fire alarm is a continuous loud ringing. In the event that a fire drill is planned during the meeting, the Chair will advise of this.

- (b) Exit routes from the chamber are located on each side of the room, one directly to a fire escape, the other to the stairs opposite the lifts.
  - (c) In the event of the alarm sounding, leave the building via the nearest safe exit and gather at the assembly point on the far side of the car park. Do not leave the assembly point or re-enter the building until advised to do so. Do not use the lifts.
  - (d) Anyone unable to use the stairs should make themselves known during this agenda item.
2. Apologies for Absence
  3. Minutes

To approve the [Minutes](#) of the Meeting held on 14 September 2023 (Minute Nos. 287 - 291) 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, their families or friends.

The Chair will ask Members if they have any disclosable pecuniary interests (DPIs) or disclosable non-pecuniary interests (DNPIs) to declare in respect of items on the agenda. Members with a DPI in an item must leave the room for that item and may not participate in the debate or vote.

Aside from disclosable interests, where a fair-minded and informed observer would think there was a real possibility that a Member might be biased or predetermined on an item, the Member should declare this and leave the room while that item is considered.

Members who are in any doubt about interests, bias or predetermination should contact the monitoring officer for advice prior to the meeting.

## **Part B Reports for the Planning Committee to decide**

5. Report of the Head of Planning Services

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To consider the attached report (Parts 2, 3 and 5).

The Council operates a scheme of public speaking at meetings of the Planning Committee. All applications on which the public has registered to speak will be taken first. Requests to speak at the meeting must be registered with Democratic Services ([democraticservices@swale.gov.uk](mailto:democraticservices@swale.gov.uk) or call 01795 417328) by noon on Wednesday 11 October 2023.

**Issued on Tuesday, 3 October 2023**

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** at [democraticservices@swale.gov.uk](mailto:democraticservices@swale.gov.uk). To find out more about the work of this meeting, please visit [www.swale.gov.uk](http://www.swale.gov.uk)

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

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## SWALE BOROUGH COUNCIL

### PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

**12 OCTOBER 2023**

#### Standard Index to Contents

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

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

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

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

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

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

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

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ABBREVIATIONS: commonly used in this Agenda

CDA Crime and Disorder Act 1998

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

HRA Human Rights Act 1998

SBLP Swale Borough Local Plan 2017

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## INDEX OF ITEMS FOR PLANNING COMMITTEE – 12 OCTOBER 2023

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

### PART 2

- |     |                |               |                          |
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| 2.1 | 23/502632/FULL | EASTCHURCH    | 8 Oak Tree Close         |
| 2.2 | 23/502598/FULL | Sittingbourne | Chalkpit 1 Highsted Road |

### PART 3

- |     |                |               |                             |
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| 3.1 | 23/502886/FULL | SITTINGBOURNE | 2 Walnut Court Lammas Drive |
|-----|----------------|---------------|-----------------------------|

### PART 5

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| 5.1 | 21/503049/FULL | Borden  | Fifield Lodge School Lane |
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**PLANNING COMMITTEE – 12 OCTOBER 2023****PART 2**

Report of the Head of Planning

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

<b>2.1 REFERENCE NO – 23/502632/FULL</b>		
<b>PROPOSAL</b> Increase roof height of existing garage, creating a first floor link extension with insertion of front and side dormers. Erection of 2.5m high retractable pool roof enclosure.		
<b>SITE LOCATION</b> 8 Oak Tree Close Eastchurch Sheerness Kent ME12 4JY		
<b>RECOMMENDATION</b> Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions as set out in the report, with further delegation to the Head of Planning to negotiate the precise wording of conditions, including adding or amending such conditions.		
<b>APPLICATION TYPE</b> Householder		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Eastchurch Parish Council have raised objections to the proposal on relevant planning considerations in the view of the Interim Head of Planning.		
<b>Case Officer</b> Megan Harris		
<b>WARD</b> Sheppey East	<b>PARISH/TOWN COUNCIL</b> Eastchurch	<b>APPLICANT</b> Mr & Mrs Oyeniya Oyelade <b>AGENT</b> JAT-Surv Ltd
<b>DATE REGISTERED</b> 14/06/23	<b>TARGET DATE</b> 18/09/23	
<b>BACKGROUND PAPERS AND INFORMATION:</b> <a href="https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=RVRQEVTYIFX00">https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=RVRQEVTYIFX00</a>		

**1. SITE LOCATION AND DESCRIPTION**

- 1.1 8 Oak Tree Close is a large detached two storey property located within the built up area boundary of Eastchurch. The property has a single storey extension to the eastern side of the property, which contains a double garage which has been partially converted to a utility room. A large driveway is located to the front of this. On the rear elevation of the property is a conservatory. The rear garden contains a swimming pool and associated outbuilding.

1.2 The property is located on a modern housing estate, surrounded by large detached dwellings of various designs. The site also lies within an area of Potential Archaeological Importance. The site is set on slightly higher ground than No. 7 Oak Tree Close to the east and Oak Tree Close itself.

## 2. PLANNING HISTORY

2.1 **SW/11/1529** – Planning permission granted on 20.01.2012 for a ‘Single storey side extension.’

## 3. PROPOSED DEVELOPMENT

3.1 This application seeks planning permission to raise the height of the garage roof to create a first floor, including a first floor link extension above the single storey side extension at the property. The first floor would be largely contained within the enlarged roof space. To facilitate this, the eaves of the extension will be raised to 3.7m, whilst the ridge height will be raised to 6.6m. Three pitched roof dormer windows are proposed on the first floor extension, one on the north west elevation and two on the north east elevation. Five rooflights are also proposed on the rear facing roof slopes of the extension. A large glazed window is proposed in the apex of the roof of the extension. The development will facilitate the creation of an additional bedroom with en-suite within the roof space of the extension.

3.2 The erection of a 2.5m high retractable swimming pool roof enclosure is also proposed. It will connect to the existing outbuilding to the side of the pool, and will have a footprint of 14.6m x 7.7m.

## 4. CONSULTATION

4.1 The application was advertised via a site notice and neighbour notification letters. Two rounds of consultation were undertaken, one of which was following amendments to the block plan to show the proposed rooflights in the link extension. One neighbour letter objection was received, raising the following summarised concerns. The representations are available to view in full online.

- Overlooking concerns from dormer windows.
- Increase in height of garage will be imposing to No. 7, especially when taking into account the existing garage is 1m higher than neighbour.
- Concerned additional bathroom will put additional pressure on drains.

4.2 **Eastchurch Parish Council** object to the application for the following reason:

- Proposal represents an overdevelopment of the area.
- Note they have no objection to the retractable pool roof enclosures.

## 5. REPRESENTATIONS

- 5.1 **KCC Archaeology** – Advise that given the limited ground excavations involved, no archaeological measures are required.

## 6. DEVELOPMENT PLAN POLICIES

### 6.1 **Bearing Fruits 2031: The Swale Borough Council Local Plan 2017**

**ST 3** The Swale settlement strategy

**CP 4** Requiring good design

**DM 7** Vehicle parking

**DM 14** General development criteria

**DM 16** Alterations and extensions

**DM 34** Scheduled Monuments and archaeological sites

### 6.2 **Supplementary Planning Guidance/Documents**

Supplementary Planning Guidance – ‘Designing an Extension – A guide for Householders’

Supplementary Planning Document – ‘Swale Parking Standards’

## 7. ASSESSMENT

- 7.1 This application is reported to the planning committee because the Parish Council has objected to the proposal. Considering these comments and the proposal that has been submitted, the committee is recommended to carefully consider the following main points:

- The Principle of Development
- Character and Appearance
- Living Conditions

### **Principle**

- 7.2 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 sets out that the starting point for decision making is the development plan unless material considerations indicate otherwise.
- 7.3 The National Planning Policy Framework provides the national policy context for the proposed development and is a material consideration of considerable weight in the determination of the application. The NPPF states that any proposed development that accords with an up-to-date local plan should be approved without delay. At the heart of the NPPF is a presumption in favour of sustainable development and for decision-taking this means approving development that accords with the development plan.
- 7.4 Policy ST 3 of the Local Plan 2017 supports the principle of development within the built up area boundary of established towns and villages within the Borough.

- 7.5 The site lies within built confines of Eastchurch and therefore the principle of development is considered acceptable subject to the consideration of other material planning considerations.

### **Character and Appearance**

- 7.6 The National Planning Policy Framework attaches great importance to the design of the built environment and that design should contribute positively to making places better for people. The Local Plan reinforces this requirement.
- 7.7 Policy DM16 of the Local Plan requires extension to be of appropriate scale, design and quality in relation to their surroundings. The Council's SPG entitled "*Designing an Extension – A Guide for Household*" sets out that extensions should be subservient to the main dwelling. Whilst the extension will increase the bulk of the property on its eastern side, it has been designed to appear subservient to the main dwelling, with both the eaves and ridge height of the extension set lower than the roof of the main house. The pitched roof dormers proposed on the eastern and western elevations of the extension would be modest in form and of appropriate pitched roof design, which accords with the SPG in design terms.
- 7.8 The proposed first floor extension will be set to the side of the property and as such will be visible in the streetscene. The SPG recommends that for two storey side extensions, a gap of at least 2 metres is normally maintained to a side boundary. In this case, the extension will lie approximately 2.6m from the eastern boundary of the site. In addition, the extension would not be closer to the road than the two storey dwellings on either side of the site. It therefore accords with the SPG and whilst it will increase the bulk and scale of the property, this would not be harmful taking into account the above factors and the considerable size of the application site. Whilst the application site is on a higher land level to the neighbouring dwelling, the extension would remain subservient to the existing main dwelling and it is not envisaged this will cause harm to the character and appearance of the area. It should also be noted that there are a number of examples of similar extensions within the Kingsborough Manor estate.
- 7.9 The pool enclosure is modest in height and will not be visible from public vantage points and as such has no wider visual impact on the character and appearance of the area. It is important to note that at 2.5 metres in height, the pool enclosure could be erected under permitted development rights without the need for planning permission.
- 7.10 The application forms sets out that the extension to the property will be constructed of materials that match the main dwelling, whilst the pool enclosure will be glazed. The use of matching materials will ensure the extension blends in with the main property, and the glazed structure will not be visible from public vantage points so no concerns are raised in that respect. A condition is imposed below to secure the use of these materials.
- 7.11 Taking the above into account, in respect of the character and appearance of the proposal the scheme is considered to comply with policies CP 4 and DM 16 of the Local Plan and the NPPF.

### **Living Conditions**

- 7.12 The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers.
- 7.13 The proposed development will be located on the eastern side of the property, at least 21 metres distant from no 9 Oak Tree Close. As such it would not cause any harmful impacts to the living conditions of this neighbouring property.
- 7.14 No. 7 Oak Tree Close lies to the east of the site, and the side extension will be sited approximately 2.6m from the common boundary between the properties, and 12.6m from the property itself. No. 7 has a detached double garage which is located closer to the proposed extension, approximately 5.2m away. Whilst it is noted the site is on slightly higher ground than No. 7, due to the limited scale and height of the extension and the distance of 12.6m between No. 7 and the extension, the development will have no unacceptable overbearing or overshadowing impacts on No. 7.
- 7.15 The rooflights proposed in the rear facing roof slopes of the extension will be high level, serving the kitchen/diner on the ground floor and as such will not cause any overlooking issues. The two dormer windows proposed in the north east elevation of the extension would face towards the garage, driveway and front garden at No. 7. The garage would obscure views towards the dwelling, and it is noted that the front of the property (as with the rest of the estate) is open plan and visible from the street. Due to the orientation of the windows in relation to No. 7, views of the property itself or its rear garden will not be provided. As such, No. 7 will still be afforded a good standard of privacy.
- 7.16 The proposed pool enclosure is limited in height and will lie a minimum of approximately 18m from the closest neighbouring dwelling. Due to this, it is not considered that the enclosure will cause any harm to the living conditions of neighbours.
- 7.17 Taking the above into account the proposal is considered to have an acceptable impact upon the living conditions of surrounding dwellings in accordance with policies DM 14 and DM 16 of the Local Plan 2017 and the NPPF.

### **Transport and Highways**

- 7.18 The NPPF promotes sustainable patterns of development and expects land use and transport planning to work in parallel in order to deliver such. A core principle of the NPPF is that development should:

*“Actively manage patterns of growth to make the fullest use of public transport, walking and cycling and to focus development in locations which are sustainable.”*

- 7.19 The NPPF also states that:

*“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative*

*impacts on the road network would be severe.”*

7.20 Local Plan policy promotes sustainable transport through utilising good design principles. It sets out that where highway capacity is exceeded and/ or safety standards are compromised proposals will need to mitigate harm.

7.21 In this case, the development will increase the number of bedrooms at the property to five. To accord with the adopted Parking Standards SPD, a five bedroom dwelling proposed in this location should provide three parking spaces. The large driveway is sufficient to comfortably park three vehicles and as such the proposal is acceptable in this regard, and in accordance with the Council’s Parking SPD and policy DM 7.

### **Archaeology**

7.22 The NPPF sets out that where development has the potential to affect heritage assets with archaeological interest, LPAs should require developers to submit an appropriate desk-based assessment, and where necessary, a field evaluation.

7.23 Policy DM 34 of the Local Plan sets out that planning applications on sites where there is or is the potential for an archaeological heritage asset, there is a preference to preserve important archaeological features in situ, however, where this is not justified suitable mitigation must be achieved.

7.24 The site lies in an area of potential archaeological importance and KCC Archaeology have reviewed the scheme and confirmed no archaeological measures are required due to the limited groundworks involved in the development. As such, this matter has been adequately addressed.

### **Other Matters**

7.25 The majority of the concerns raised by the neighbour have been addressed by virtue of the discussion above. In respect of the matter that remains in relation to increased pressure on drainage, it is considered that one additional domestic bathroom would not have a material impact upon drainage capacity / infrastructure.

## **8. CONCLUSION**

8.1 On the basis of the above, the scheme is considered to be in compliance with policies CP 4, DM 7, DM 14 and DM 16 of the Local Plan and the SPG. It is recommended that planning permission be granted.

## **9. 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.

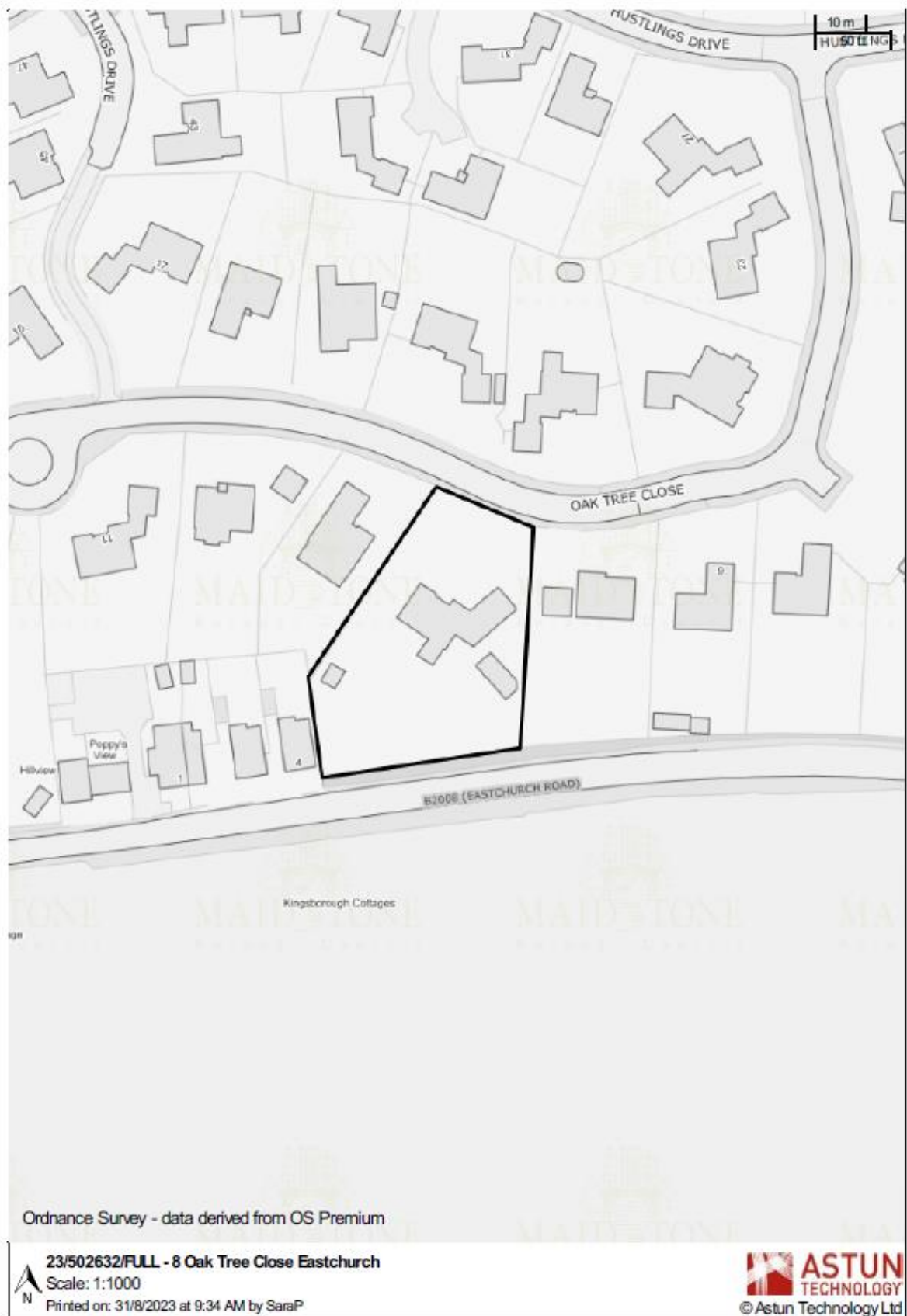
Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those listed on the application form.

Reason: In the interests of visual amenity.

- (3) The development hereby permitted shall be carried out in accordance with the following approved plans: PL02 Rev B, PL03 Rev A and PL04 Rev B.

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





<b>2.2 REFERENCE NO – 23/502598/FULL</b>		
<b>PROPOSAL</b> Replacement of existing chain link and concrete post fencing with 2.4-meter-high palisade fence (green in colour).		
<b>SITE LOCATION</b> Chalkpit 1 Highsted Road Sittingbourne Kent ME10 4BE		
<b>RECOMMENDATION</b> Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions as set out in the report, with further delegation to the Head of Planning to negotiate the precise wording of conditions, including adding or amending such conditions as may be consequently necessary and appropriate.		
<b>APPLICATION TYPE</b> Major		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Councillor Bonney has requested that this application be determined by the Planning Committee.		
<b>CASE OFFICER</b> Matt Duigan		
<b>WARD</b> West Downs	<b>PARISH/TOWN COUNCIL</b> Rodmersham	<b>APPLICANT</b> Miss Julie Hadlow <b>AGENT</b> Miss Julie Hadlow, GH Dean and Co.
<b>DATE REGISTERED</b> 07/06/2023	<b>TARGET DATE</b> 06/09/2023	
<b>BACKGROUND PAPERS AND INFORMATION:</b> <a href="#">23/502598/FULL   Replacement of existing chainlink and concrete post fencing with 2.4 meter high palisade fence (green in colour).   Chalkpit 1 Highsted Road Sittingbourne Kent ME10 4BE (midkent.gov.uk)</a>		

## 1. **SITE LOCATION AND DESCRIPTION**

- 1.1. The site is to the east of Highsted Road and is the northern most of three disused chalk quarries. The former quarries are subject to non-statutory designation as Highsted Quarries Local Wildlife Sites. The former quarry is dominated by secondary woodland, with a near continuous woodland canopy present.
- 1.2. Between Highsted Road and the northern most quarry is a fence to prevent access from the road to the disused quarry. The fence is supported by concrete pillars with chain link fence between the pillars and barbed wire to the top. The existing boundary treatment is 2.4m in height.
- 1.3. The fence is set approximately 1m to the east of Highsted Road. Beyond the fence is scrub and trees, extending for approximately 1m beyond the fence, there after the land drops into the former quarry. The former quarry is approximately 12m deep.
- 1.4. While the overall size of the former quarry extends to 5.4Ha, the application relates to the portion of fencing along the side of the quarry adjacent to Highsted Road.

- 1.5. The existing and proposed replacement fence run to the side of Highsted Road, which is designated as a rural Lane. While the site itself is not within an area designated as an Area of High Landscape Value (AHLV), the eastern boundary of the site does adjoin an AHLV. It should be noted the proposed fence is along the western boundary of the site, as such it is set some distance from the AHLV.

## 2. **PLANNING HISTORY**

- 2.1. None relevant.

## 3. **PROPOSED DEVELOPMENT**

- 3.1. Planning permission is sought for the replacement of existing chain-link and concrete post fencing with 2.4-metre-high palisade fence (green in color).
- 3.2. The existing fence has failed in many places, due in part to damage from vehicles and it has also been cut in places. The Applicant has advised that at times people have sought to damage the fence to gain unauthorised access to the former quarry.

## 4. **CONSULTATION**

- 4.1. One round of consultation was undertaken, during which letters were sent to neighbouring occupiers; a notice was displayed at the application site and the application was advertised in the local newspaper. Full details of representations are available online.
- 4.2. No letters of representation were received from neighbours in response to the consultation.
- 4.3. **Rodmersham Parish Council**:- objected to the application on the following grounds: In summary, Rodmersham Parish Council raised concern over the appearance of the proposed fencing as it would have an industrial appearance. Concern was also raised that the fence would cause harm to valued landscapes, Highsted Road (as a designated rural lane) and a designated Important Local Countryside Gap..
- 4.4. The Ward Cllr (Cllr Bonney) also made representations, raising concern with the appearance of the proposed fence and the need to ensure protected species would not be harmed. While the need to prevent unauthorised access was understood, the Cllr requested that the type of fencing be reconsidered to improve the visual appearance of the replacement fencing.

## 5. **REPRESENTATIONS**

**SBC Conservation**: - No objection to the proposal

**Mid Kent Environmental Health**: - No objection subject to a condition relating to the hours of operation being restricted to protect the amenity of neighbouring occupiers.

**KCC Ecology**: - No objection to the proposal as the fence does not provide an optimum habitat for dormouse, badger, reptiles, foraging/ communing bats and bat roosts. A condition should be imposed requiring a watching brief to be undertaken during construction works to ensure that the works do not result in a breach of wildlife legislation.

**KCC Flood and Water Management:** - No objection to the proposal

**KCC Highways:** - No objection to the proposal

**Lower Medway Internal Drainage Board:** - No objection to the proposal

**Environment Agency:** - No objection to the proposal

**Natural England:** - No objection to the proposal

**Southern Water:** - No objection, however, it is noted that it is possible that a sewer now deemed to be public could be crossing the development site. Therefore, should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its ownership before any further works commence on site

**Kent Police:** - No objection

## 6. **DEVELOPMENT PLAN POLICIES**

Bearing Fruits 2031: The Swale Borough Council Local Plan 2017

**ST 1** Delivering sustainable development in Swale

**CP 4** Requiring good design

**CP 7** Conserving and enhancing the natural environment

**DM 14** General development criteria

**DM 24** Conserving and Enhancing Valued Landscapes

**DM 25** The separation of settlements - Important Local Countryside Gaps

**DM 26** Rural lanes

**DM 28** Biodiversity and geological conservation

**DM 29** Woodlands, trees, and hedges

## 7. **ASSESSMENT**

7.1. The main considerations involved in the assessment of the application are:

- Character and appearance
- Trees
- Ecology
- Transport and highways
- Living conditions

### 7.2. **Principle**

7.2.1. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 sets out that the starting point for decision making is the development plan unless material considerations indicate otherwise.

7.2.2. The National Planning Policy Framework provides the national policy context for the proposed development and is a material consideration of considerable weight in the determination of the application. The NPPF states that any proposed development that accords with an up-to-date local plan should be approved without delay. At the heart of the NPPF is a presumption in favour of sustainable development and for decision-taking this means approving development that accords with the development plan.

7.2.3. The proposal to replace the existing fence with a new fence does not raise issues or objections in principle. However, it should be noted that the NPPF seeks to promote public safety, it is considered that the replacement of the fence given its current condition will mitigate the risk of a member of the public falling into the former quarry.

### **7.3. Character and appearance**

7.3.1. The application site is not located within a designated landscape, while the site is located adjacent to Kent and Swale Level Area of High Landscape Value (AHLV), the fence itself will be located on the opposite side of the site. As part of the evidence base of the emerging Local Plan the boundary of the AHLV was recommended to include the Chalk Pits. However, given the stage at which the emerging plans is, very limited weight can be afforded to this. For non-designated landscapes, the Local Plan seeks to minimise and mitigate adverse landscape impacts. Where adverse landscape impact remains, this impact needs to be weighed up against the social and economic benefits. Further to this, the site is located along a designated rural lane, the Local Plan seeks to avoid significant harm to the character of these lanes.

7.3.2. The application proposes a replacement fence that will stand at the same height as the existing boundary treatment. While it is accepted that the proposed fence will be less visually permeable, its impact upon the wider landscape and rural lane can be suitably mitigated by way of safeguarding conditions requiring the fence to be painted green and details of a landscaping scheme to be submitted.

7.3.3. It is noted that some concern has been raised by the Parish Council in relation to the conflict the Council's Countryside Gap policy (DM 25). This policy seeks to avoid the coalesce of settlements, given that the application proposes a replacement fence, it is considered that this policy is not applicable to the consideration of this application.

7.3.4. Taking the above into account, the proposal is considered to accord with policies DM24 and DM 26 of the Local Plan 2017 and the NPPF.

### **7.4. Trees**

7.4.1. The NPPF recognises the contribution of trees to the intrinsic character and beauty of the countryside.

7.4.2. The proposal would replace the existing fence in situ and would not require removal of trees of merit. There is scope for planting to the front of the fence to help soften its appearance and integrate the new fence into the verge, this can be secured by way of condition.

### **7.5. Ecology**

7.5.1. National planning policy aims to conserve and enhance biodiversity and encourages opportunities to incorporate biodiversity in and around developments. Under the Natural Environment and Rural Communities Act (2006), "every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of these function, to the purpose of conserving biodiversity".

7.5.2. In terms of the Local Plan, Policy DM 28 sets out that development proposals will conserve, enhance, and extend biodiversity, provide for net gains where possible, minimise any adverse impacts and compensate where impacts cannot be mitigated.

7.5.3. The site is designated as a local wildlife site, with the quarry itself being capable of supporting dormouse, badger, foraging/ commuting bats, trees with medium to high potential for roosting bats and bats. The application has been accompanied by ecological surveys, which set out that a desk study has been undertaken and that the site has been surveyed in accordance with Natural England's guidance.

7.5.4. KCC have been consulted and have reviewed the applicant's appraisal. It is acknowledged that while the area to which the works relate does not constitute optimum habitat a watching brief is required to ensure that the works proposed do not harm protected species. This can be reasonably secured by way of safeguarding condition.

7.5.5. Taking this into account the application is considered to accord with policy DM 28 of the Local Plan 2017 and NPPF.

## **7.6. Transport and Highways**

7.6.1. The proposed fence would not in itself lead to any traffic generation once installed. There will be some construction traffic associated with the proposal, however, this is not considered to have a harmful impact upon the wider highways network. Taking this into account the proposal is considered to accord with policy DM 6 of the Local Plan 2017 and the NPPF.

## **7.7. Living conditions**

### *Existing residents*

7.7.1. The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers. There would be the potential for noise during the construction phase (once installed the new fence would not generate any noise of disturbance).

7.7.2. Given the application proposes a replacement fence of the same height as the existing coupled with the distance of separation from adjoining dwellings, any impact of the proposal upon the living conditions of dwellings in terms of loss of light, outlook, privacy, and increased overshadowing is considered to be acceptable.

7.7.3. In terms of the construction phase of development, Environmental Health has recommended that a condition be imposed restricting the hours of operation during construction to avoid any unacceptable noise impact upon nearby dwellings. This can be secured by way of safeguarding conditions.

## **7.8. Conclusion**

7.8.1. The impact of the proposal upon the rural lane and wider landscape can be reasonably mitigated by way of safeguarding conditions. Furthermore, while the site is located within a Local Wildlife site, the area where the fence is located is not considered to be optimum habitat therefore any impact upon ecology can be suitably mitigated by way of safeguarding conditions.

7.8.2. Taking this into account coupled with the public safety benefit the proposal is considered to accord with policies ST1, CP4, CP7, DM14, DM24, DM25, DM26, DM28, and DM29 of the Local Plan 2017 and the NPPF. It is recommended that planning permission for the proposal be granted subject to safeguarding 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 details and drawings: Planning Addendum 29/06/2023 (RAL 6005 moss green powder coating), Highsted Chalk Pit 1 Road Side Fencing Plan; Highsted Chalk Pit 1 Site Location Plan, Highsted Chalk Pits 1, 2 and 3; BBF-HR-PF 10; BBF-HR-PF 11; Site Boundary Replacement Fencing Location Plan, Highsted Chalkpit 1 Site Boundary.

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

- 3 No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times: Monday to Friday 0730 – 1800 hours, Saturdays 0800 – 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- 4 No development beyond the construction of foundations shall take place until full details of soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include 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, and an implementation programme.

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

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

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

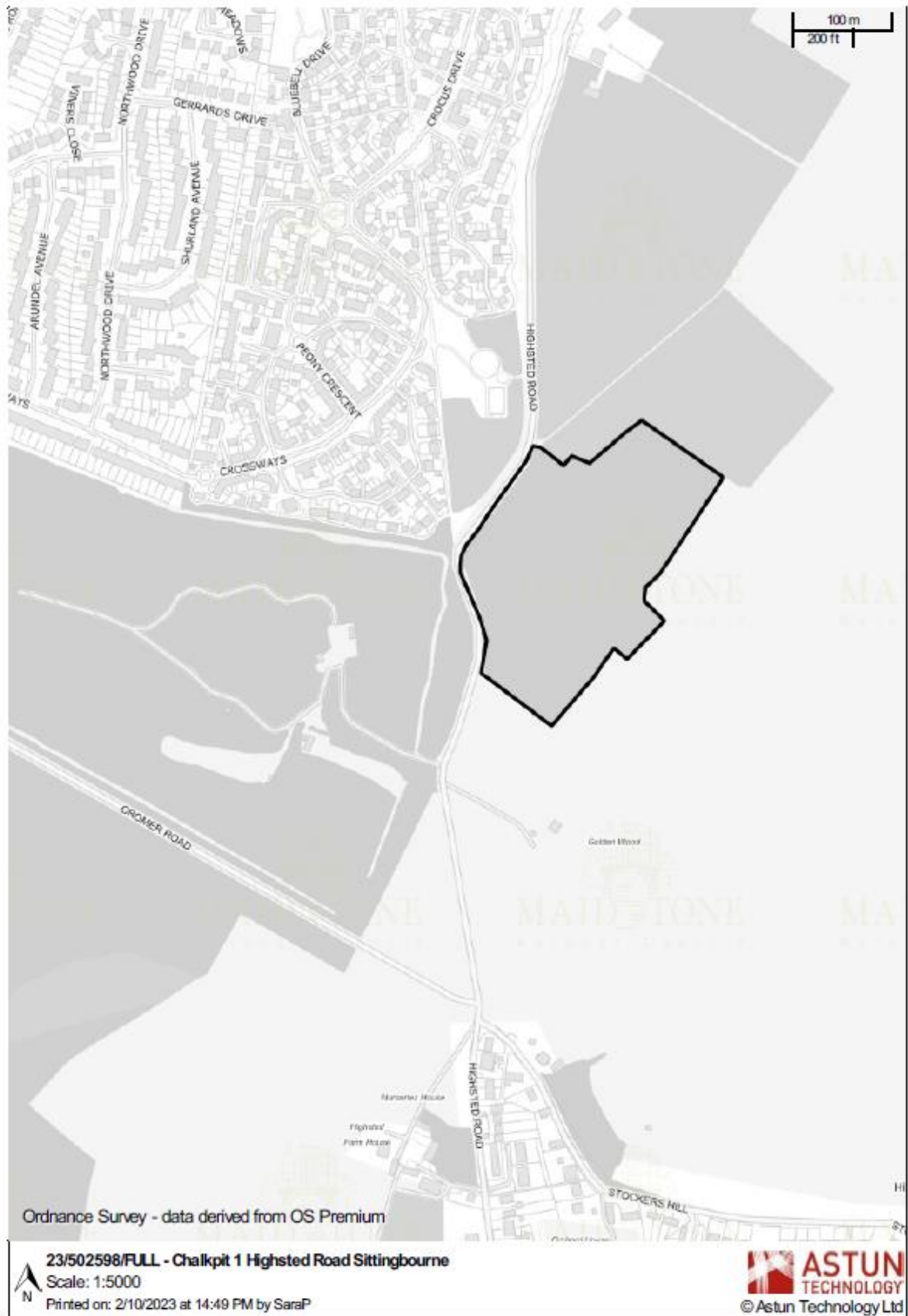
- 6 No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a watching brief to be undertaken by an Ecological Clerk of Works so that development is observed and protected species are not harmed. The watching brief shall be in accordance with a written specification and timetable which has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that protected species are not harmed during construction.

INFORMATIVE

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

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





**PLANNING COMMITTEE – 12 OCTOBER 2023****PART 3**

Report of the Head of Planning

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

<b>3.1 REFERENCE NO: 23/502886/FULL</b>		
<b>PROPOSAL</b> Insertion of replacement windows and doors.		
<b>SITE LOCATION</b> 2 Walnut Court Lammas Drive Sittingbourne Kent ME10 2DR		
<b>RECOMMENDATION</b> REFUSE.		
<b>APPLICATION TYPE</b> Householder		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Cllr Tony Winckless has referred the application to the Planning Committee based upon the relationship of the scheme with heritage assets.		
<b>Case Officer</b> Julia Marshall		
<b>WARD</b> Milton Regis	<b>PARISH/TOWN COUNCIL</b> N/A	<b>APPLICANT</b> Miss Esther Owusu <b>AGENT</b> Blackrock Architecture Ltd
<b>DATE REGISTERED</b> 23/6/2023	<b>TARGET DATE</b> 18/8/2023	
<b>BACKGROUND PAPERS AND INFORMATION:</b> <a href="#">23/502886/FULL   Insertion of replacement windows and doors.   2 Walnut Court Lammas Drive Sittingbourne Kent ME10 2DR (midkent.gov.uk)</a>		

**1. SITE LOCATION AND DESCRIPTION**

- 1.1 2 Walnut Court is a two storey detached dwelling located within the built-up area of Sittingbourne. It forms part of a small housing development approved in 1990.
- 1.2 The surrounding area is characterised in part by residential development of mostly semi-detached dwellings. The dwelling is sited immediately to the rear of buildings fronting the High Street, most of which are listed buildings. Land and buildings to the east and south fall within the Milton Regis High Street Conservation Area, and this boundary partially covers the application site itself.

**2. PLANNING HISTORY**

- 2.1 **SW/90/1485** – Planning permission granted on 07.02.1991 for “Three 4-bedroom detached chalet bungalows with associated garages, access drives, turning area, landscaping.”

### 3. PROPOSED DEVELOPMENT

- 3.1 This application seeks planning permission to replace all windows and the entrance door to the property (excluding the roof lights). The single glazed, painted timber windows and front door are proposed to be replaced with brown coloured UPVC units.

### 4. CONSULTATION

- 4.1 One round of notification and publicity has been undertaken, during which letters were sent to neighbouring occupiers; a notice was displayed at the application site and the application was advertised in the local newspaper.

- 4.2 No responses were received in relation to the notification and publicity process.

### 5. REPRESENTATIONS

- 5.1 **SBC Conservation:** - advise that the application property was one of a small development of houses designed to quite a high standard, in large part reflecting its sensitive location in heritage terms. Whilst a double glazed window design could almost certainly be supported, the need to respect the heritage sensitivity of the site and maintain a high standard of design dictates against the use of UPVC. The additional supporting information does not justify replacing the current timber windows with uPVC replacement windows, and refusal is recommended.

### 6. DEVELOPMENT PLAN POLICIES

#### 6.1 **Bearing Fruits 2031: The Swale Borough Council Local Plan 2017**

**ST 3** The Swale settlement strategy

**CP 4** Requiring good design

**DM 14** General development criteria

**DM 16** Alterations and extensions

**DM 32** Development involving listed buildings

**DM 33** Development affecting a conservation area

#### 6.2 **Supplementary Planning Guidance (SPG)**

Supplementary Planning Guidance – ‘Designing an Extension – A guide for Householders’

- 6.3 The Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 (TCP Act)

### 7. ASSESSMENT

- 7.1 This application is reported to the Committee at the request of Cllr Winckless.

- 7.2 The main considerations involved in the assessment of the application are:

- The Principle of Development
- Design of the proposed development
- Heritage

#### **Principle**

- 7.3 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 sets out that the starting point for decision making is the development plan unless material considerations indicate otherwise.

- 7.4 The National Planning Policy Framework provides the national policy context for the proposed development and is a material consideration of considerable weight in the determination of the application. The NPPF states that any proposed development that accords with an up-to-date local plan should be approved without delay. At the heart of the NPPF is a presumption in favour of sustainable development and for decision-taking this means approving development that accords with the development plan.
- 7.5 Policy ST 3 of the Local Plan 2017 supports the principle of development within the built up area boundary of established towns and villages within the Borough.
- 7.6 The principle of replacing windows and doors is not at issue here. The key consideration is whether the design and style of the replacement windows and door would preserve or enhance the character and appearance of the conservation area and the setting of nearby listed buildings, as well as its impact on the wider character and appearance of the area.

#### **Design of the proposed development / Heritage**

- 7.7 Sections 66 and 72 of the TCP Act place a duty on Local Planning Authorities to have special regard to the desirability of preserving the special character or appearance of conservation areas and preserving listed buildings (including their setting). The National Planning Policy Framework states that local planning authorities should identify and assess the particular significance of any heritage asset and consider the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal. Great weight should be given to the asset's conservation, irrespective of the level of harm. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits that may arise. Policies DM32 and DM33 of the Local Plan place similar requirements on development proposals.
- 7.8 The application property forms part of a small development of 3 houses within the immediate setting of Milton Regis High Street Conservation Area and a number of Grade II listed buildings are located immediately adjacent to the site on the west side of the High Street. In addition, the conservation area boundary partially crosses the application site and cuts through the existing dwelling. The application property and other dwellings within this small development approved in 1990 were designed to a higher standard of architectural design and associated contextual sensitivity than the other dwellings on Lammis Drive that are sited further away from the above heritage assets. The existing timber windows are in keeping with the rustic, semi-vernacular form and appearance of the dwellings. It is also noted that the planning permission for the development removed permitted development rights for alterations and extensions to the dwellings, to control impacts on the setting of heritage assets.
- 7.9 It is considered that replacing the windows at the application property with uPVC frames would materially diminish the design quality of the building and in turn impact negatively on the design quality of this small development and views into and across the western edge of the Milton Regis High Street Conservation Area. It would also impact negatively on the setting of the listed buildings backing onto the application property at nos. 67 to 97 (odds, inclusive) High Street. As such, the proposed development would fail to comply with the requirements of policies DM32 (Development involving listed buildings) and DM33 (Development affecting a conservation area) of the Local Plan, which inter-alia, require the Borough Council to sensitively manage the setting of listed buildings and conservation areas when considering development proposals.

- 7.10 In terms of the National Planning Policy Framework, the level of harm arising to the setting of the aforementioned designated heritage assets from the development, through a change to their setting, is of a relatively low order and would fall within the realm of less than substantial harm. However, as officers consider that double-glazed windows would be acceptable in principle, but not uPVC variants as proposed, the level of public benefit arising from the proposed change to the property is, in accordance with paragraph 202 of the NPPF, not considered to be sufficient to outweigh the identified heritage harm. It should be noted that officers have sought amendments to the application, but that the applicant has declined to do so.
- 7.11 Overall and for the above reasons, the development would fail to preserve the character, appearance and setting of the conservation area and adjacent listed buildings, contrary to the NPPF and to the Local Plan.

### **Conclusion**

- 7.12 The proposed uPVC windows and composite door would fail to preserve or enhance the character and appearance of the development at Walnut Court, the Milton Regis High Street Conservation Area and the setting of adjacent listed buildings. It is recommended that the application be refused.

### **REASON FOR REFUSAL**

1. The proposed replacement windows and door would, by virtue of their design, appearance and use of inappropriate materials, detract from the traditional character and appearance of this property and would impact negatively on views into and across the western edge of the Milton Regis High Street Conservation Area and the setting of listed buildings backing onto the application property at Nos 67-97 (odds) High Street. As such, the development would fail to preserve or enhance these heritage assets and their settings and the character and appearance of the area, contrary to policies CP4, DM14, DM16, DM32 and DM33 of Bearing Fruits 2031 - The Swale Borough Local Plan (2017) and Chapter 16 of the National Planning Policy Framework.

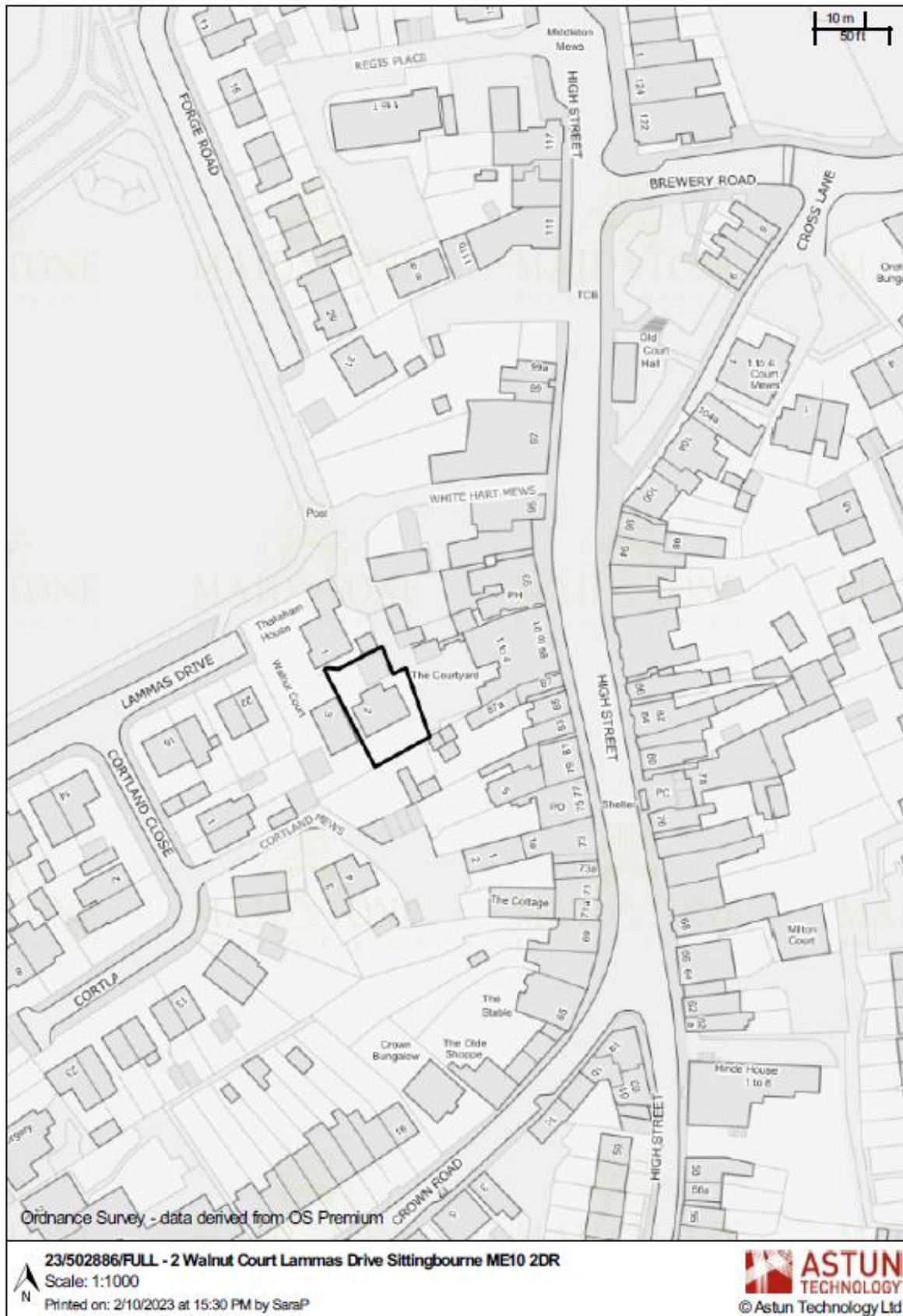
### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), September 2023 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 – 12 OCTOBER 2023****PART 5**

Report of the Head of Planning

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

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- **Item 5.1 – Fifield Lodge School Lane Borden**

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

In allowing the appeal, the Inspector did not consider the site to be remote as guests would be able to walk or cycle into Borden village, where there is a pub, a church and bus stops. The Inspector concluded that the proposal would have economic benefits and as such complies with Policy ST1 of the Local Plan and Paragraph 84 of the NPPF. Despite the proposal not being one of the types of development identified in the supporting text to Policy DM25 (Important Local Countryside Gaps), the Inspector considered these to be examples rather than a closed list of acceptable development types and concluded there would not be unacceptable harm to the character and appearance of the area.

- **Item 5.2 – Land at Cellar Hill Teynham**

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

The Inspector did not consider the proposed development would harm highway safety or the character and appearance of the countryside, or the rural lane. Neither did they consider the proposed development would result in unacceptable harm to biodiversity, but instead would be capable of achieving a net gain in this respect. The Inspector also reached the view that the site was sustainable. However, the Inspector agreed with the Council that the proposed development would cause harm to the character, appearance, and significance of the conservation area and to the setting of the adjacent listed buildings. The Inspector considered that this harm outweighed the public benefits identified as housing provision, a net gain in biodiversity, and economic and social benefits and dismissed the appeal on this basis.

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## Appeal Decision

Site visit made on 7 August 2023

by **F Wilkinson BSc (Hons), MRTPI**

an Inspector appointed by the Secretary of State

Decision date: **12 September 2023**

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### Appeal Ref: **APP/V2255/W/22/3294231**

#### **Fifield Lodge, School Lane, Borden, Sittingbourne, Kent ME9 8JS**

- 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 Tina Green against the decision of Swale Borough Council.
  - The application Ref 21/503049/FULL, dated 7 June 2021, was refused by notice dated 30 September 2021.
  - The development proposed is a total of four handmade timber glamping pods for guests along with recycling/waste, cycle store area and a shower/toilet and communal kitchen block. One parking bay per pod is proposed, with an existing entrance and parking/turning area. Each guest pod will have a small area of decking to the front.
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#### **Decision**

1. The appeal is allowed and planning permission is granted for the siting of 4no. handmade timber glamping pods with decked area to front with associated recycling/waste, cycle store area and a shower/toilet and communal kitchen block, 1no. parking bay per pod, with an existing entrance and parking/turning area at Fifield Lodge, School Lane, Borden, Sittingbourne, Kent, ME9 8JS in accordance with the terms of the application, Ref 21/503049/FULL, dated 7 June 2021, subject to the conditions in the attached schedule.

#### **Preliminary Matters**

2. Notwithstanding the description of development in the heading above which has been taken from the application form, the development is more fully described on the decision notice as 'siting of 4no. handmade timber glamping pods with decked area to front with associated recycling/waste, cycle store area and a shower/toilet and communal kitchen block, 1no. parking bay per pod, with an existing entrance and parking/turning area'. The Council determined the application on that basis, and I have therefore used that description in my decision. The development is part retrospective as one pod and the shower/toilet and communal kitchen block are in place.

#### **Main Issues**

3. The main issues are:
  - whether the development would be in an appropriate location with regard to the development strategy for the area and the character and appearance of the area; and
  - the effect of the development on the living conditions of nearby residents with regard to disturbance.

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## Reasons

### *Development Strategy*

4. The site is located on land regarded as being within the open countryside under the terms of Policy ST3 of the 2017 adopted Swale Borough Local Plan (the LP). In such locations, Policy ST3 states that 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.
5. In addition to the settlement strategy defined in Policy ST3, which seeks to focus new development in accessible locations with good access to services, facilities and public transport, Policy ST1 of the LP sets out a number of sustainable development principles. These include building a strong competitive economy and supporting a prosperous rural economy; achieving good design through reflecting the best of an area's defining characteristics; meeting the challenge of climate change including through managing emissions; and conserving and enhancing the natural environment through a number of measures such as protecting, and where possible, enhancing, the intrinsic character, beauty and tranquillity of the countryside.
6. The National Planning Policy Framework (the Framework) seeks to achieve sustainable development, with paragraph 8 setting out that the planning system has three overarching economic, social and environmental objectives to achieve this.
7. Paragraph 80 of the Framework states that planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the specified circumstances apply. Although the site is positioned within an area of countryside for development plan purposes, it is nonetheless close to Borden which falls within the 'other villages with built-up area boundaries' settlement tier as set by Policy ST3. In addition, the Borden Primary School is adjacent to the site, with the pre-school located across the road, and there are a number of dwellings positioned on the road between the site and Borden, including two close to the entrance to Fifield Lodge.
8. In light of this context, and being mindful of the Braintree<sup>1</sup> judgement, in my judgement, and for the purposes of considering paragraph 80 of the Framework, I find that the site is not remote from a settlement. As such, the proposal would not represent isolated homes in the countryside.
9. There is a pavement between the site and the village, the topography is generally level and the speed limit along the road is 30mph. The environment would not therefore inhibit guests from walking or cycling to the facilities within the village, which although limited, do include a pub, a church and bus stops.
10. Given these circumstances, in my judgement, the proposal would not undermine the locational aims of the LP or the Framework to avoid unsustainable patterns of development.
11. The Framework, and the LP through Policy DM3, seek to support sustainable tourism development and existing businesses in appropriate locations in rural

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<sup>1</sup> Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610

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areas. The appellant has provided information on visitor spend within the borough and the potential local spend that could be generated by the proposal, which is not insubstantial. No substantive evidence has been provided to contradict this.

12. The proposal would not re-use an existing building, which Policy DM3 of the LP states should firstly be considered for rural based employment development. However, it would be difficult to provide the accommodation model proposed in an existing building. In this regard, I am mindful of the consultation response of the Council's Economy and Community Services Manager which identifies that the development would provide a type and style of accommodation that is relatively unique in the area and would *'attract a market that is seeking a specialist product and willing to pay a premium price for the qualities as set out, location and security of space'*.
13. Overall, the proposal would have economic benefits and would gain support from LP Policy ST1 and paragraph 84 of the Framework, which support the principle of a prosperous rural economy.
14. I therefore conclude that the development would be in an appropriate location, with regard to the development strategy for the area. Accordingly, the proposal would not conflict with the requirements of Policies ST1, ST3 or DM3 of the LP in this regard, as summarised above, or paragraph 80 of the Framework.

#### *Character and Appearance*

15. As set out above, Policies ST1 and ST3 also require that proposals in the countryside should contribute to protecting the character and appearance of the countryside. The site also lies in an Important Local Countryside Gap (ILCG) as defined in Policy DM25 of the LP. The purposes of the ILCGs include maintaining the separate identities and character of settlements by preventing their merging, which in this case would be Sittingbourne and the satellite villages which includes Borden; safeguarding the open and undeveloped character of the areas; and preventing encroachment and piecemeal erosion by built development or changes to the rural open character.
16. The site falls within the Borden Mixed Farmlands character area as defined in the 2011 Swale Landscape Character and Biodiversity Appraisal Supplementary Planning Document (the SPD). Its characteristics include a rolling topography; an enclosed landscape with hedgerows, isolated woodland and orchards; small scale fields; urbanised ribbon development along its western boundary; and traditional land uses.
17. A number of these characteristics are present within the area surrounding the appeal site. Relatively narrow hedge lined roads, fields bounded by hedgerows and a gently undulating topography are apparent.
18. However, the character and appearance of the appeal site is not one of open undeveloped countryside. It forms part of the large rear garden of Fifield Lodge. Within the wider site at Fifield Lodge is an existing holiday unit, an open fronted barn which holiday guests can use as a dining space and games area, and an indoor swimming pool which is also available to holiday guests. Consequently, the appeal site appears to relate more to the built form associated with Fifield Lodge than it does to the surrounding countryside, being

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more domestic in character and appearance rather than exhibiting the characteristics of the surrounding rural landscape.

19. This is compounded by the strong sense of containment from the surrounding countryside that is afforded by the existing boundary features. The appeal site is bounded by tall and fairly densely planted trees along its northern boundary and much of its western boundary. This tree line extends along the north and east boundaries of the wider site. It forms a clear and pronounced boundary between both the appeal site and the wider grounds of Fifield Lodge, and the open countryside to the north.
20. This is clearly apparent when viewed from the Public Right of Way (PRoW) that runs to the north east of the site. From vantage points along this PRoW, the development would be screened from view by the line of tall trees. I appreciate that views may be more apparent during winter months when the trees are not in leaf, although they would likely still provide a degree of screening due to the high density of branches. If visible from the PRoW during winter months, the development would be read within the context of Fifield Lodge and other built development on the north side of School Lane. The use of dark timber boarding on the pods would additionally help to minimise the prominence of the development in these views.
21. Views from School Lane are restricted by the screening afforded by the built development associated with Fifield Lodge and the boundary fence. The site is screened by thickly planted vegetation and trees in longer distance views from the south and west, including from Munsgore Lane and the PRoW that extends westwards from Borden Primary School. As with views from the north, while the development may be more discernible in winter months, it would be viewed as part of the cluster of buildings here. Further to the west, the development would not be readily discernible due to the screening effect of intervening buildings and vegetation and the rolling topography which foreshortens views.
22. I appreciate that the proposal is not one of the types of development identified in the supporting text to LP Policy DM25 as more likely to be approved in an ILCG. However, these appear to be examples rather than a closed list of acceptable development types.
23. For the above reasons, the development would not read as an encroachment into the open countryside, would not undermine the purposes of the ILCG and would conserve the landscape character of the area. I therefore conclude that the development would not unacceptably harm the character and appearance of the area. Accordingly, it would not conflict with the requirements of Policies ST1, ST3 and DM25 as summarised above, or Policy DM14 of the LP which requires development to be both well sited and of a scale, design, appearance, and detail that is sympathetic and appropriate to the location, amongst other matters.

#### *Living Conditions*

24. The Council has raised concern that the proposal would alter the tranquil character of the site to the detriment of the amenities of occupiers of the host property and surrounding neighbouring properties.
25. There would be some intensification of traffic movements at the site. However, the additional vehicle movements likely to be generated would not increase

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noise or disturbance to a point that would significantly harm the living conditions of nearby residents including those of the host property. There would be some increase in noise and disturbance from the parking area arising from engine noise, slamming doors and voices. However, there would be a reasonable separation between this area and the host dwelling and a greater separation distance to other nearby dwellings.

26. Although the adjacent primary school would contribute to background noise levels, particularly when children would be using the outdoor areas, noticeable noise would be concentrated during school hours. Nevertheless, given the scale of the proposal, the separation distance from nearby residential properties including the host dwelling, and the boundary features, the intensity of use would not be such that the proposal would harm the tranquil character of the site to the detriment of the living conditions of nearby residents.
27. I therefore conclude that the proposal would not have an unacceptable effect on the living conditions of nearby residents with regard to disturbance. Accordingly, the proposal would not conflict with the amenity requirements of Policy DM14 of the LP.

#### **Other Considerations – Effect on the Swale Special Protection Area (SPA)**

28. The Council identifies that the site lies within 6km of the Swale SPA. The SPA is a wetland classified for its assemblages of breeding bird and waterbird. The evidence indicates that birds are at risk of disturbance from recreational activities. Due to the proximity of the site, there is a reasonable likelihood that the SPA would be accessed for recreational purposes by future visitors.
29. There is no basis for me to dispute Natural England's advice on the proposal's likely impact on the SPA's qualifying features in view of its conservation objectives. Consequently, when considered in combination with other developments in the area, there would be a likely significant effect on the qualifying features of the SPA from the proposal. Therefore, as the competent authority, it is necessary for me to undertake an Appropriate Assessment (AA). Having consulted Natural England through the course of this appeal, I have had regard to its consultation response in undertaking the AA.
30. Considering the conservation objectives, there would be adverse effects on the integrity of the SPA from the proposal through increased disturbance to the qualifying features from recreational activity. I must therefore consider whether measures could be put in place to avoid or mitigate the impacts.
31. In its consultation response on the planning application, Natural England confirmed that the Council has measures in place to manage the potential impacts that may result from increased recreational disturbance through an agreed strategic solution which requires financial contributions from developments towards mitigation measures. Natural England considers the Council's approach to be ecologically sound. This response also confirmed that if appropriate financial contributions were secured, mitigation measures would be in place to avoid adverse impact in terms of recreational disturbance.
32. As part of the appeal documentation, the appellant submitted a completed unilateral undertaking (UU) under section 106 of the Town and Country Planning Act 1990. This would provide a financial contribution of £275.88 per holiday unit to be made in accordance with the mitigation strategy. This figure

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coincides with that identified in the Council's appeal statement. Natural England has confirmed that the proposed financial contribution to mitigate the effect on the SPA would be sufficient to avoid an adverse impact to its integrity.

33. Paragraph 57 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations) sets out three tests that planning obligations must meet. I am satisfied that the financial contribution is necessary to make the proposal acceptable in planning terms as the obligation would contribute towards the provision of mitigation services. Given the location of the appeal site within 6km of the SPA, the contribution would be directly related to the appeal proposal. In addition, as it relates to a standard charge based on the scale and type of development proposed, it would be fairly and reasonably related to the proposal in scale and kind.
34. For the above reasons, I am satisfied that the planning obligation would meet the requirements of the Framework and the CIL Regulations. I therefore give it significant weight in the determination of this appeal.
35. In conclusion, I am satisfied that with the proposed mitigation measures contained in the UU, the development would not have an adverse effect on the integrity of the SPA either alone or in combination with other plans and projects.

#### **Other Matters**

36. The Council has drawn attention to an appeal decision<sup>2</sup> for holiday accommodation which it contends is relevant to the appeal proposal. From the submitted evidence, the nearest settlement in that case was within settlement tier 6 in the settlement hierarchy in LP Policy ST3 which are defined as having limited or non-existent services, whereas Borden is in tier 5, with more services and facilities. In addition, the nearest larger settlement was located further from the site than is the case here. On the basis of the available evidence therefore, I do not find this example to be directly analogous to the appeal proposal. In any event, I have evaluated the appeal proposal on its individual planning merits.

#### **Conditions**

37. I have considered the conditions suggested by the Council and have amended the wording of certain conditions in the interests of precision.
38. As the appeal proposal is part retrospective, it is not necessary to impose the standard time condition. However, for certainty, one is required to ensure that the development is carried out in accordance with the approved plans. In the interests of the character and appearance of the area, conditions are necessary to require a landscaping scheme and appropriate replacement planting. A condition to limit the times for construction work is necessary in the interests of the living conditions of nearby residents. In the interests of highways safety, a condition is necessary to ensure adequate parking provision. To encourage more sustainable travel options, conditions are necessary to secure the provision of cycle parking and electric vehicle charging points. As the proposal is for tourism purposes, it is necessary to restrict it to this use.

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<sup>2</sup> Appeal reference APP/V2255/W/20/3271083

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**Conclusion**

39. The proposal would accord with the development plan as a whole, and there are no material considerations of sufficient weight to indicate that permission should be withheld. I therefore conclude that the appeal should be allowed.

*F Wilkinson BSc (Hons), MRTP*

INSPECTOR

Appeal Decision APP/V2255/W/22/3294231

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#### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 210322-01-01 Rev B; 210322-01-02 Rev B; 210322-01-02a Rev B; 210322-01-04 Rev B; 210322-01-05; 210322-01-06; 210322-01-06 Rev B; 210322-01-08; 210322-01-09; and 210322-01-11.
- 2) Within three months of the date of this decision, details of both hard and soft landscape works shall be submitted to the Local Planning Authority for approval in writing. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which should be native species and of a type that will enhance or encourage local biodiversity and wildlife), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme. All hard and soft landscape works shall be carried out in accordance with the approved details and implementation programme.
- 3) Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, die, or become severely damaged or seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species and within the planting season as approved in writing by the Local Planning Authority.
- 4) No construction work in connection with the development shall take place except between 7.30am to 6pm Monday to Friday and 8am to 1pm on Saturdays, and at no time on Sundays or Bank Holidays, unless in association with an emergency or with the prior written approval of the Local Planning Authority.
- 5) The area shown on the approved plans as vehicle parking spaces shall be provided within three months of the date of this decision, and this area shall at all times be retained for the use of the occupiers of the holiday accommodation. No permanent development, whether or not permitted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), shall be carried out on this area of land so shown or in such a position as to preclude vehicular access to this area.
- 6) Within three months of the date of this decision an implementation programme for the provision of one electric vehicle charging point for each glamping pod shall be submitted to the Local Planning Authority for approval in writing. The electric vehicle charging points shall be installed in accordance with the approved details.
- 7) Within three months of the date of this decision an implementation programme for the provision of secure, covered cycle parking facilities for each glamping pod shall be submitted to the Local Planning Authority for approval in writing. The cycle parking facilities shall be installed in accordance with the approved details.
- 8) The glamping pods hereby permitted shall be used solely for the purpose of holiday accommodation; shall not be used by any person or persons as their



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sole or main residence and the accommodation shall not be occupied by any person or group of persons for more than four weeks in any calendar year.

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## Appeal Decision

Site visit made on 2 August 2023

by **John Felgate BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 13<sup>th</sup> September 2023

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**Appeal Ref: APP/V2255/W/22/3306232**

**Land at Cellar Hill, Teynham, Kent**

- 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 Maidfish Limited against the decision of Swale Borough Council.
  - The application Ref 21/505794/FULL, dated 1 November 2021, was refused by notice dated 10 March 2022.
  - The development proposed is "erection of 5 no. dwellings, with associated amenity, landscaping and access".
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### Decision

1. The appeal is dismissed.

### The appeal site

2. For the avoidance of doubt, the appeal site lies on the eastern side of Cellar Hill, between No 27 and Cellar Hill Barn.
3. The site is located on the edge of the settlement of Teynham. It also falls within the boundary of the Parish of Lynstead, but outside the village of that name.

### Planning background and agreed matters

4. The development plan for the area includes the Swale Borough Local Plan (the SBLP), adopted in July 2017. On the Policies Map, the appeal site is located outside the Teynham built-up area boundary, and therefore in the countryside. Policy ST3 sets out the development strategy, based on a 4-tier settlement hierarchy. In all cases, development is expected to be either on allocated sites or on previously developed land within settlement boundaries. In the countryside, development is generally not permitted. In the present case, it is acknowledged by the appellants<sup>1</sup> that the appeal proposal would be contrary to this policy.
5. The National Planning Policy Framework (the NPPF) requires authorities to be able to identify a minimum of five years' worth of sites for housing development. In the present appeal, it is agreed between the parties that the supply in Swale Borough falls below this requirement, at around 4.8 years.

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<sup>1</sup> Appellants' Statement of Case, paragraph 4.2.4

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### **Main issues**

6. In the light of all the written the submissions made, I consider the main issues in the appeal to be as follows:
- the effects of the proposed development on heritage assets;
  - the effects on highway safety;
  - whether the site is suitably located for access to local facilities;
  - and the development's effects on biodiversity.

### **Reasons for decision**

#### *Impact on heritage assets*

7. The appeal site falls within the Cellar Hill and Greenstreet Conservation Area (the CA). In Cellar Hill itself, this includes a series of thatched and timber-framed houses with 16<sup>th</sup> century or earlier origins, now known as Tudor Cottage, Cellar Hill Cottage, and The Old Thatched Cottage, all of which are listed; together with the elegant 18<sup>th</sup> century Cellar Hill Farmhouse (also known as Waylands), which is also listed. Alongside and between these are a number of attractive unlisted properties including the thatched, 18<sup>th</sup> century Cellar Hill Barn, and the 19<sup>th</sup> century The Burrs and the row of terraced cottages at Nos 4-14 Cellar Hill. Beyond these are further historic buildings, listed and unlisted, around the entrance to Cellar Hill from Greenstreet (also known as London Road).
8. Together, this grouping of historic buildings illustrates the history of the area's settlement pattern, from its origins as a loosely connected string of individual houses, associated with small-scale horticulture and fruit-growing, to larger-scale farming and orchards, and then some rather more intensive development in the railway era. Although now interspersed with some more recent 20<sup>th</sup> century developments of lesser quality, the historic relationship between these older buildings remains evident, as are their obvious aesthetic and visual qualities as examples of the Kentish vernacular. In particular, the survival of so many thatched properties in close proximity is said to be a rarity in this area due to the early adoption of clay tiles. To my mind, the significance of the CA, and of the listed buildings (LBs) in this part of it, is derived from their combined evidential value as to the area's history and from their architectural and visual interest.
9. The present appeal site lies centrally within this part of the CA, with two of the LBs being a short way to the north and two to the south, and the other, non-designated buildings that I have identified likewise distributed in both directions. Given the interrelationships between all of these older buildings, both historical and visual, it seems to me that, in so far as they are now experienced as heritage assets, they are enjoyed primarily as a composite group, rather than as individuals. Part of that experience is therefore in the viewer's progression along the gently curving rural lane of Cellar Hill, much of it between banked verges and hedges, with the sense of a sequence of new views and buildings being revealed at each stage. Although the road becomes slightly more urbanised to the north of the site, at least as far as Tudor cottage, its character remains semi-rural. The appeal site, due to its central position, forms an integral part of this route, and of the overall experience of

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the heritage assets. As such, the site seems to me to lie clearly within the settings of all four of the LBs identified above, as well as within the CA itself.

10. The appeal site comprises former orchard land, which has evidently been disused for many years, and is now largely overgrown. The appearance of the land is not especially attractive, and its previous connection to fruit-growing is no longer obvious in visual terms. Nor does the site offer any through views to connect with the open fields beyond. But nevertheless, as a surviving parcel of undeveloped land, the site does serve as a reminder of an important aspect of the historic settlement pattern, in terms of the wider and more irregular spacing of the buildings, with productive land surrounding them on one or more sides, and extending up to the lane itself. In addition, the unmanaged nature of the vegetation along the site frontage reinforces the distinctively rural character of this part of the lane itself. As a result the site's existing contribution to the character of the CA, and to the settings of the relevant LBs, is a positive one.
11. The development now proposed would involve five new houses, in four buildings. All would be two-storey, with a variety of roof forms, including some with gables and dormers. There would also be a mixture of single, double and triple garages or car barns, mostly placed in front of the dwellings, and all having pitched roofs. Purely in terms of design, the scheme seems to me in many respects exemplary; the individual designs are tasteful and well detailed, and the layout would make for an attractive overall grouping. However, to judge the scheme only in these terms would be to disregard the positive value that the site brings to the CA and LB settings in its existing condition.
12. As now proposed, the houses and garages would appear to fill almost the whole width of the site. The size of the buildings, in relation to the space around them, would be quite large. The paved, shared driveway area would likewise extend across the site's full width. And the space available for any greenery to the front of the site, either new or retained, would be limited in comparison to the size of the buildings and the extent of the hard surfacing, especially with the need for visibility splays. Consequently, notwithstanding the merits of the individual house designs, the effect would be that the whole site would be developed, and its existing open and undeveloped character would be entirely lost; and so too therefore, would be the positive contribution that the site currently makes to the significance of the heritage assets and their settings.
13. I note the suggestion that orchard planting could be carried out in the front part of the site. However, whilst fruit trees could possibly be incorporated into a landscaping scheme, it seems unlikely that this would give the frontage area the character of an orchard. I note also the contention that glimpsed views would be opened up to the new and retained orchard trees in the rear gardens. But this seems rather fanciful, given the narrowness of the gaps between the proposed new buildings, and the likelihood that the rear gardens will in time contain other planting, together with the usual sheds, furniture and play equipment. Consequently, the proposed landscaping scheme would not in my view make up for the loss of the site's openness.
14. The Council has identified the Cellar Hill and Greenstreet CA as one that is 'at risk', due to unsympathetic developments in the past. I note the appellants' contention that this represents an acknowledgement that its quality has diminished. But the area remains designated as a CA, and there is no

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indication that this is likely to change. As far as I am aware, 'at risk' CAs are not excluded from any of the relevant policies or statutory duties<sup>2</sup>. As the appellants point out, none of those policies or duties completely rule out development in CAs, or in LBs' settings. But even so, the NPPF makes it clear at paragraph 189 that heritage assets are an irreplaceable resource, which should be conserved in a manner appropriate to their significance.

15. Having regard to all the above matters, I conclude that the development now proposed would cause harm to the character, appearance and significance of the Cellar Hill and Greenstreet CA, and to the settings of Tudor Cottage, Cellar Hill Cottage, Cellar Hill Farmhouse/Waylands and The Old Thatched Cottage, due to the loss of the site's undeveloped nature, and the visual contribution that the site makes to these heritage assets in that regard. As such, the scheme would conflict with SBLP Policies CP8, DM32 and DM33, which together seek to sustain, preserve and enhance the significance of heritage assets and their settings, and all features that contribute positively to a CA's special character or appearance, including the layout of streets and spaces.
16. In terms of the distinction made in the NPPF between substantial and less than substantial harm, this case falls into the latter category. However, NPPF paragraph 200 makes it clear that any harm of either kind requires clear and convincing justification, and in this case the extent of the harm has not been justified. In so far as the NPPF also requires such harm to be weighed against any public benefits, that is a matter I shall return to later in my decision.

#### *Highway safety*

17. Cellar Hill, for much of its length, is narrow and winding, so that forward visibility is limited. Passing places are infrequent. Cambridge Lane, which continues southwards towards Lynstead, is similar. Both are said to form part of a popular leisure route for walkers, cyclists and horse riders. Whilst there is no evidence of any accident record on either Cellar Hill or Cambridge Lane, care is clearly needed by all users. The Council's concerns about safety are therefore understandable.
18. However, the proposed development would comprise only five properties. The appellants' Transport Statement (the TS) estimates the likely traffic generation as 25 additional vehicle movements per weekday, with only around 2-3 of these in each peak hour, and slightly less than 2 per hour throughout the remainder of the day. At weekends, when leisure users are most likely to be present, the traffic generation would be expected to be even lower than this. I note the Council's reservations about these figures, but the TS's methodology and assumptions have not been challenged, and no alternative technical assessment has been advanced. The Council refers to the potential use of home delivery services, but there is no evidence that these are not accounted for. In the absence of any substantiated counter-evidence, I see no reason to disagree with the appellants' calculations. I accept that there is always a margin for error, but in this case, even in a worst case scenario, it seems likely that the numbers of vehicles involved would still be quite small.
19. Furthermore, it is clear that the traffic movements to and from the proposed development would be split between those turning to the north as they leave the site, and those to the south. It follows that neither the northern nor the

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<sup>2</sup> Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

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southern sections of Cellar Hill, or Cambridge Lane, would take the full number of daily movements generated. For trips to Teynham village, and to the nearest towns of Sittingbourne and Faversham, the most logical choice would appear to be the route to the north of the site. For more distant destinations, traffic could take either direction, but the proximity of the A2 London Road, with access from there to the strategic network, would again be likely to attract many of these other movements to take the northern route from the site, rather than travelling on the rural lanes to the south. Overall therefore, it seems most likely that the majority of all trips generated by the development would be likely to use the northern section of Cellar Hill, where for the most part the road is straighter and wider. On Cellar Hill's southern section and Cambridge Lane, the movements generated would therefore be likely to be less than half the total number.

20. With regard to those that would initially travel north, these journeys would have to pass through Cellar Hill's junction with the A2, and I saw on my visit that traffic on this part of the road can be heavy, especially in the peak hours, and drivers coming from Cellar Hill may therefore have to wait some time for an opportunity to join the main flow. It appears from the details provided by local residents that, over the years, this junction has been the scene of several accidents resulting in injuries, including more than one fatality. Whilst some of these accidents appear to have occurred before the safety improvements carried out by Kent County Council some years ago, others have occurred since then. This record is not to be taken lightly.
21. However, the junction is within the 30mph speed limit, and it is not disputed that the visibility available in both directions meets the standards for this class and speed of road, as set out in Manual for Streets. Although there is a brow to the west, towards the village centre, this seems to me to be far enough away to allow sufficient time and slowing distance for a vehicle from that direction, travelling within the legal limit. If better enforcement of the speed limit is needed, that is a separate matter from the present appeal. Approaching from the east, the turn into Cellar Hill is tight, but the speed limit sign is set some 60m or so before the junction, and is visible long before this; and the slowing of vehicles from this direction is also assisted by the steep gradient. The development now proposed would increase the number of movements through the junction. However, for the reasons already set out, those numbers would be relatively small. Whilst it is never possible to rule out the possibility of future accidents, in the light of the above considerations, it seems to me that the development's impact on the operation of the junction would be only marginal. In these circumstances, the risk of an increase in accidents at the junction would not be so substantial as to warrant refusal on this ground.
22. As for the route to the south of the appeal site, via the southern part of Cellar Hill and Cambridge Lane, at the time of my visit, it was evident that both vehicle numbers and speeds were quite low. And as already noted, despite its fairly tortuous alignment, there is no evidence of any actual accident record on this route. This appears to include Cambridge Lane's junction with Lynstead Lane, at the southern end of the route. For the reasons already outlined, it seems to me that the additional vehicle movements generated in this southern direction would be few in number, and therefore would not noticeably change the existing situation. I note the suggestion that the additional vehicles from the development now proposed would force walkers and cyclists to change

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their mode of transport in favour of the car; but this seems improbable, especially given the evidence that such trips are mainly for leisure purposes. To my mind, it seems likely that the small increase in usage that the development would generate towards the south could be accommodated without adding any significant element of new risk.

23. I appreciate that highway matters were considered in two previous appeals, in 2004 and 2008, but those appeals were now a considerable time ago, and prior to the first appearance in 2012 of the NPPF's advice that development should only be prevented on highway grounds where the effect on safety would be unacceptable, or where the impact on the network would be severe. In the present case, for the reasons already stated, I do not find either of these thresholds to be reached.
24. I note that the highway authority is said to be supportive of the Council's position, but in the absence of any direct evidence from that authority, I can give little weight to reported views of this kind.
25. Having regard to all of the above matters, I conclude that the proposed development would not have any significant adverse effects on highway safety. In this respect the scheme would therefore avoid conflict with SBLP Policies DM6 and DM14, which seek amongst other things to manage transport demand and impact, and to ensure safe access and convenient routes for all users.

#### *Accessibility to local facilities*

26. In the SBLP, Teynham is designated as a Rural Local Service Centre (RLSC), which is the third tier of the district's settlement hierarchy. The RLSCs are broadly described as providing most or all out of a specified range of health, education, recreation, shopping, service and transport facilities, albeit that residents will also need to travel to larger centres for major retail, leisure and employment. In Policy ST3, the RLSCs' role is to be a tertiary focus for growth across the Borough, and a primary focus for the rural areas.
27. Whilst not within the RLSC's defined boundary, the appeal site is located directly adjacent to that boundary, and within reasonable walking distance of most of the village's local facilities. These include the primary school, the library, the Co-op supermarket and various other local shops, plus the railway station and bus stops. Most of these facilities require the crossing of London Road, as it passes through the village centre, but this part of the road is not unduly wide, and is covered by the 30mph speed limit, and a signalised pedestrian crossing is also available. In a built-up area, the need to cross a road of this nature is neither unusual nor unacceptable. The first few metres of the route from the appeal site, along Cellar Hill, has no footway. But the length of that section is quite short, and given the apparently small volume and low speed of the traffic on it, this seems unlikely to deter occupiers of the development from walking into the village if they are so minded.
28. Since the adoption of the SBLP in 2017, some changes have evidently occurred with regard to local facilities, including the relocation of the local medical centre to Sittingbourne. But it seems to me that part of the reason behind the designation of the RLSCs is so that existing villages services can be given the support that they need, and that in time additional ones can be encouraged as well. In this context, I also note that other new developments are taking place in the area, including some of a substantial scale. This strategy for the rural



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areas is evidently one that will require consistency over the long term, and consequently I see no reason to anticipate any changes to Teynham's RLSC status in the foreseeable future.

29. I conclude that the proposed development would be acceptably located with regard to its accessibility to local services and facilities. In this respect, no conflict would arise in relation to SBLP Policy ST1, which aims amongst other things to support the rural economy, and the vitality of the rural communities.

#### *Biodiversity*

30. The appeal site is identified as a habitat falling within the general category of traditional orchard, which is a habitat type of principal importance, also known as a priority habitat. The proposed development would necessarily mean that the majority of this existing habitat would be lost. In the SBLP, Policy DM28 requires all developments to conserve, enhance and extend biodiversity, to minimise any adverse impacts and either mitigate or compensate for them, and also to provide net gains where possible. This approach is broadly consistent with the advice in paragraph 174(d) of the NPPF.
31. However, the appeal scheme is supported by a Preliminary Ecological Appraisal (the PEA), an Ecological Impact Assessment (the EcIA), and a Biodiversity Net Gain Report (the BNGR). The EcIA also includes, in summary form, the results of bat emergence and reptile surveys undertaken at the site, and sets out in some detail a mitigation strategy for the development's impacts as a whole. This mitigation strategy includes proposals for the retention and enhancement of some existing on-site features, and for the creation of new habitat areas both on and off site, comprising new wildflower meadows, mixed scrub, neutral grassland, a pond, new fruit trees and other native trees, and new sections of hedgerow. Within these, a number of new bat and bird boxes are also proposed, together with log piles and hibernacula. According to the appellants' calculations, using the DEFRA Biodiversity Metric, the resulting effect would be a net biodiversity gain of just over 25%, as well as a net gain in hedgerow units of over 350%.
32. I note the various criticisms and reservations expressed by the Council. The site currently has a large population of slow worm. The success of the mitigation strategy would depend on being able to move these, or a sufficient number, to the proposed new habitat area, straddling the site's rear boundary, and extending into what is now agricultural land, after having first established suitable conditions in that area. I agree that this would rely on the necessary sequence of operations being carried out, by suitably qualified and experienced personnel, with great care and diligence. But the techniques proposed are well proven, and there is no reason to think that they would fail here.
33. The receptor site would be a relatively narrow strip, but its elongated shape would allow the new habitat area to connect with offsite hedgerows, and thus facilitate movement corridors. There is no evidence that the width, or the overall area, would be insufficient to sustain wildlife. The area would abut the rear boundaries of the new dwellings, and this might mean some risk of interference by humans or domestic pets. But the appeal site already adjoins residential properties, and this has evidently not prevented it from supporting wildlife in the past.

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34. All of the mitigation measures provided, both on and off site, would need to be managed and protected on an on-going basis, and the arrangements for this have not been spelt out in detail. Some elements would be within the private gardens of the new properties, and the means by which these would be secured for the long term would need particular consideration. Provision would be needed for monitoring, reporting and inspection by the Council. But such requirements seem likely to become increasingly needed in future developments. In the present case there seems no reason why suitable arrangements could not be agreed, pursuant to a condition.
35. As the Council point out, the information provided in respect of the bat surveys does not include all of the raw data. But the surveys have evidently been carried out by an accredited professional team, and I see no reason to doubt the reported results, or the recommended actions. Although no survey has been carried out for invertebrates, it seems likely that the proposed measures would allow for any required mitigation in this regard. Whilst no measures are proposed in respect of the lone Little Owl observed, such measures do not appear to be required, as the species is non-native, and not subject to any specific protective legislation in this country; but in any event, the Little Owl is protected during the nesting season by the general provisions relating to all nesting birds.
36. I conclude on this issue that, subject to necessary conditions, the proposed development could be carried out without unacceptable harm to biodiversity, and indeed would be capable of achieving a net gain in this respect, as required by SBLP Policy DM28. As such, the scheme would comply with that policy.

#### **Other matters**

##### *SPA mitigation*

37. The appeal site lies within 6km of the Swale Special Protection Area (the SPA), which is designated under the Conservation of Habitats and Species Regulations 2017, because of its importance for birdlife. It is acknowledged by the appellants that, in order to mitigate the development's potential impacts on the SPA, a legal undertaking would be needed, to secure a contribution to the Council's Strategic Access, Management and Monitoring scheme. However, no such undertaking appears to have been entered into.
38. The Planning Inspectorate's procedural guidance makes it clear that any planning obligations on which the parties wish to rely should normally be executed and submitted no later than seven weeks after the start date of the appeal, and that the appeal decision will not normally be delayed to allow for this. In the present case, that date has long passed. There is no evidence that the required mitigation could be provided in any other way. In the absence of any means of securing any form of mitigation, I cannot rule out the possibility of a significant adverse effect on the SPA. This potential adverse impact weighs clearly against the development.

##### *Effects on the wider countryside*

39. In addition to the matters discussed above, the Council's Refusal Reason No 1 (RR1) alleges that the proposed development would be harmful to the character and appearance of the countryside, due to being prominent and intrusive. However, this part of RR1 has not been further amplified or explained.

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

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40. From my observations, the appeal site is seen publicly only from Cellar Hill. In those views, the site appears as a self-contained parcel, framed by the existing development on either side. The open farmland beyond is not visible, and the appeal site is not seen in the same views as any other part of the wider landscape. To my mind, the proposed development would be viewed in much the same way, and would thus have no effect on the wider countryside.
41. In the absence of any further evidence therefore, this part of RR1 is unsubstantiated.

*Rural lane designation*

42. I note that Cellar Hill is designated in the SBLP as a rural lane, and that Policy DM26 seeks to protect the character of such lanes. In the present case however, the physical works proposed would be limited to the formation of a new site access, and the installation of a single lighting fixture. The length of hedge which would need to be removed would be relatively short. These features would not unduly harm the lane's character. There is no evidence that any other alterations would be needed for highway safety reasons, nor that any damage would be caused to the roadside banks. In addition, for the reasons already set out, I consider that the additional traffic generated on the lane would be relatively small; this would have no significant effect with regard to character.
43. I therefore find no evidence of any adverse effects on the character of Cellar Hill as a designated rural lane, and no conflict with Policy DM26. My findings on this matter appear to differ somewhat from those of the inspector in the 2004 appeal, but I note that he was considering the matter under a different policy, details of which are not before me. In any event, each case is decided on its own facts and planning merits.

*Other policies*

44. In addition to the SBLP policies considered above, both the Council and the appellants have made reference to a number of others, including SBLP Policies CP2, CP3, CP4, CP7, DM7, DM 29 and DM 31. However, I am satisfied that the policies on which I have based my decision are the most relevant to the issues in this appeal.

*Other considerations*

45. The appeal site was apparently included within a possible Area of Opportunity which was suggested in an early draft of the local plan review. However, there is no certainty that that proposal will proceed. It appears that the review process has since been delayed, and in the meantime, both the appellants and the Council appear to agree that the previous draft proposals carry little weight. I agree with that view.
46. The appeal site was assessed in the Strategic Housing Land Availability Assessment (the SHLAA), and found to be suitable and deliverable. But that assessment seems to me essentially concerned with establishing the District's overall capacity, rather than the planning merits of any particular scheme. In my view the SHLAA does not imply that planning permission should be granted.
47. The Council is said to have supported development on a site at Lynstead Lane, outside the settlement boundary, but it is not clear whether that site has any

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other similarities to the present appeal site. I must deal with the present appeal on its own merits.

48. The appeal proposal would have some economic and social benefits in terms of local employment and household expenditure, and it would help to sustain the vitality of the local community. I have taken these into account.

#### **Planning balance and conclusion**

49. The proposed development would conflict with the SBLP's Policy ST3, due to its location in the countryside, contrary to the Local Plan's development strategy. It would also conflict with Policies CP8, DM32 and DM33, because of its adverse effects on the Conservation Area and the settings of four Listed Buildings. There are no SBLP policies that give positive support to housing development on this particular site. The scheme is therefore contrary to the development plan as a whole.
50. This conflict with the development plan must be weighed against all the other relevant material considerations. The district does not have a 5-year supply of land for housing. In these circumstances, NPPF footnote 8 provides that the most important policies may be treated as out-of-date. In the light of this advice, it seems to me that the conflict with Policy ST3 must carry limited weight, because the provisions of that policy, and in particular those which prevent development outside settlement boundaries, are likely to act as an impediment to the Council being able to make good the housing supply shortfall.
51. However, that still leaves the matter of the harm that would be caused to designated heritage assets. That harm would be 'less than substantial', but nevertheless real. NPPF paragraph 199 requires that great weight is given to the conservation of heritage assets. In the present case, whilst the proposed scheme would have some public benefits, in the form of housing provision, plus a net gain in biodiversity, and the economic and social benefits that I have referred to, these are clearly outweighed by the substantial harm that I have identified to the CA and LBs, and their significance.
52. Consequently, having regard to NPPF footnote 7, the application of the relevant NPPF policies, including paragraphs 189, 199 and 200, provides a clear reason for refusing permission. It follows that the appeal proposal does not benefit from the NPPF's presumption in favour of sustainable development.
53. The lack of mitigation for the development's potential impact on the SPA adds further weight against the scheme. Apart from the matters identified above, I have found nothing else that weighs in favour. The development would not harm highway safety, or the character and appearance of the countryside, or of Cellar Hill as a rural lane, but all of these matters are neutral. Overall, despite the District's need for more housing sites, in this case the conflict that I have found with the development plan is not outweighed by this or any of the other material considerations.
54. The appeal therefore fails and is dismissed.

*J Felgate*

INSPECTOR