

Agenda

Planning Committee Meeting

Date: Thursday, 8 February 2024

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

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 7 February 2024.

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1. Emergency Evacuation Procedure

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 8 February 2024 (Minute Nos. 550 - 558) 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

The Council operates a scheme of public speaking at meetings of the Planning Committee. All applications on which the public has registered to speak will be taken first. Requests to speak at the meeting must be registered with Democratic Services (democraticservices@swale.gov.uk or call 01795 417328) by noon on Wednesday 7 February 2024.

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|----|---|----------|
| 5. | 2.1 - 23/503984/FULL Danum, Stockers Hill, Rodmersham | 5 - 14 |
| 6. | 2.2 - 23/503564/FULL Manor House, Orchard Gate, Berkeley Close, Dunkirk | 15 - 24 |
| 7. | 2.3 - 23/502365/FULL 77 - 83 and 87 London Road, Sittingbourne | 25 - 70 |
| 8. | Part 5 applications | 71 - 126 |

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

Issued on Tuesday, 30 January 2024

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. To find out more about the work of this meeting, please visit 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

8 FEBRUARY 2024

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

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PART 2 Applications for which permission is recommended

PART 3 Applications for which refusal is recommended

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

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

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

ABBREVIATIONS: commonly used in this Agenda

CDA Crime and Disorder Act 1998

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

HRA Human Rights Act 1998

SBLP Swale Borough Local Plan 2017

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INDEX OF ITEMS FOR PLANNING COMMITTEE – 8 FEBRUARY 2024

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PART 2

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PART 5

5.1	23/502486/FULL	HALFWAY	201 Queenborough Road
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5.7	22/503876/FULL	SHEERNESS	Co-Op Sports and Social Club St George's Avenue
5.8	21/503124/OUT	MINSTER	Land To The North Of Elm Lane

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PLANNING COMMITTEE – 8 FEBRUARY 2024**PART 2**

Report of the Head of Planning

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

2.1 REFERENCE NO – 23/503984/FULL		
PROPOSAL Retrospective application for the siting of an oil tank and enclosure in front garden.		
SITE LOCATION Danum Stockers Hill Rodmersham Kent ME9 0PL		
RECOMMENDATION 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.		
APPLICATION TYPE Householder		
REASON FOR REFERRAL TO COMMITTEE Rodmersham Parish Council objection		
CASE OFFICER Julia Marshall		
WARD West Downs	PARISH/TOWN COUNCIL Rodmersham	APPLICANT Mr K Edwards AGENT Woodstock Associates
DATE REGISTERED 04/09/2023	TARGET DATE 30/10/2023	
BACKGROUND PAPERS AND INFORMATION: 23/503984/FULL Retrospective application for the siting of an oil tank and enclosure in front garden. Danum Stockers Hill Rodmersham Kent ME9 0PL (midkent.gov.uk)		

1. SITE LOCATION AND DESCRIPTION

- 1.1 Danum is a substantial two storey detached house on a large plot. The property is located within the built up area boundary of Rodmersham. It is set well back from the highway and is located on a section of Stockers Hill which is characterised by mainly large, detached dwellings of various designs and sizes. To the front, the site overlooks open countryside.
- 1.2 There is an element of soft landscaping either side of the entrance to the front, but for the most part there is mainly hardstanding to the front of the dwelling providing off road parking for a number of vehicles.
- 1.3 The oil tank is located to the front of the site set behind the Yew hedge and a large mature tree and a recently planted Beech hedge.

2. **PLANNING HISTORY**

- 2.1 **21/502899/NMAMD** – Planning permission was granted on 18.06.2021 for Non Material Amendment - Change the front elevation ground floor material from render to Wienerberger Topaz multi stock facing brickwork. Subject to 21/500007/FULL.
- 2.2 **21/500007/FULL** – Planning permission was granted on 26.02.2021 for erection of a two storey front and side extension and single storey rear extension.

3. **PROPOSED DEVELOPMENT**

- 3.1 This application seeks part retrospective planning permission for the siting of an oil tank and enclosure in front garden. The oil tank is already in situ.
- 3.2 The oil tank is on a concrete base and would be enclosed by a timber framed structure. The timber framed enclosure has a footprint of approximately 2.05m x 1.7m with a height of 1.36m. Doors are proposed on the side elevation to allow for maintenance.
- 3.3 The oil tank is 9.6m away from the dwelling, 1m away from the nearest boundary (shared with the adjacent property 'Highworth') and is set 9m back from the highway. As the structure would encase the oil tank, the structure itself would be 0.65m away from the boundary.
- 3.4 The proposed materials for the enclosure would be black Cedral boarding to match the existing property.

4. **CONSULTATION**

- 4.1 One round of consultation has been undertaken, and notification letters were sent to immediately adjoining neighbouring occupiers. A site notice was also displayed at the site.
- 4.2 No neighbour responses have been received in relation to the consultation.
- 4.3 **Rodmersham Parish Council** object to the application for the following summarised reasons (full details of representations are available online):
- The oil tank is situated in the front of the house, visible from the road and will affect the street scene.
 - Concerned with safety issues – a timber framed enclosure around the tank and its nearness to trees, foliage etc. all appear to breach safety regulations.
 - Lack of clarity regarding the roof of the enclosure.
 - No dimensions are shown on the drawings.
- 4.4 **Rodmersham Parish Council** were subsequently reconsulted on the basis of the agent stating the following:
- Materials being used would be a timber framed enclosure clad with a non-combustible material and the roof would be the same with mineralised felt for weathering purposes.
 - The tank complies with all safety legislation.

- The tank housing is drawn to scale with scale bars on the drawing so the size (which will be as small as possible) can be easily appreciated. The siting behind trees and the newly planted hedging will ensure that it is well screened from the road.

Rodmersham Parish Council responded to state their original objections still apply irrespective if a hedge is to be grown and also raise the issue that the structure could attract criminal activity and should only be installed by the correct regulator.

5. **DEVELOPMENT PLAN POLICIES**

5.1 **Bearing Fruits 2031: The Swale Borough Local Plan 2017**

ST 3 The Swale settlement strategy
CP 4 Requiring good design
DM 14 General development criteria

6. **ASSESSMENT**

6.1 This application is reported to the 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

- 6.2 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.
- 6.3 The National Planning Policy Framework (NPPF) 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.
- 6.4 Policy ST 3 of the Swale Local Plan 2017 supports the principle of development within the built-up area boundary of established towns and villages within the Borough.
- 6.5 The application site is located within the built-up area boundary of Rodmersham. Therefore the principle of development is considered acceptable subject to the consideration of other material planning considerations as discussed below.

Character and Appearance

- 6.6 The NPPF 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.
- 6.7 Policy CP4 of the Local Plan requires proposals to be of a high quality design that is appropriate to its surroundings in respect of materials, scale, height and massing.
- 6.8 The property benefits from a generous frontage and the oil tank and the enclosure are of a small scale, being limited to 1.36m in height. In addition, the oil tank is located behind a large mature tree and hedging. There is also recently planted hedging adjacent to the oil tank. Due to the limited scale of the structure, the appropriate use of materials which would be in keeping with the existing dwelling and the screening provided by planting it will not be prominent or give rise to harm to the streetscene and complies with policy CP4.

Living Conditions

- 6.9 The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers. Specifically, policy DM14 states that any new proposed developments should not cause significant harm to the amenities of surrounding uses or areas and due consideration will be given to the impact of the proposed development upon neighbouring properties. Any new proposed schemes should not result in significant overshadowing through a loss of daylight or sunlight.
- 6.10 The structure is located approximately 9.6m away from the closest property, 'Highworth'. Due to the limited scale of the structure and the distance from this neighbouring property the scheme would not give rise to harm to the living conditions of the occupants of this neighbouring dwelling through overshadowing, or a loss of daylight or sunlight. Therefore the scheme complies with policy DM14 of the Local Plan.

Other Matters

- 6.11 The comments from the Parish Council are noted in respect of the safety aspect of the proposal. Although this is not a planning matter, officers have discussed the matter with Building Control who have provided details in respect of the fire protection for oil storage tanks. The details provided set out the satisfactory protection depending upon the location of the tank. In this case, as the oil tank is at least 1800mm from the closest building and at least 760mm from a boundary the Building Regulations set out that that no further provisions are necessary. In addition, it is noted that the proposal includes encasing the oil tank in a non-combustible structure and the agent has also provided a signed document entitled '*Domestic Oil Storage Tank Spillage and Fire Risk Assessment*' provided by OFTEC which states that due to the size and siting of the tank that no fire protection measures are necessary. On this basis, although this is a separate matter from the planning process the details provided all suggest that this has been appropriately dealt with.

7. CONCLUSION

- 7.1 On the basis of the above, the scheme is considered to be in compliance with policies ST3, CP 4 and DM 14 of the Local Plan. As such, it is recommended that planning permission be granted.

8. CONDITIONS

- (1) The timber structure encasing the oil tank shall be constructed within 1 month of the date of this decision, stained in black and retained as such in situ for as long as the oil tank is sited on the land.

Reason: In the interests of visual amenities.

- (2) The development hereby approved shall be carried out in accordance with the following approved drawings: ED/20/146.01 OT and ED/20/146.02 OT.

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

The Council's approach to the application

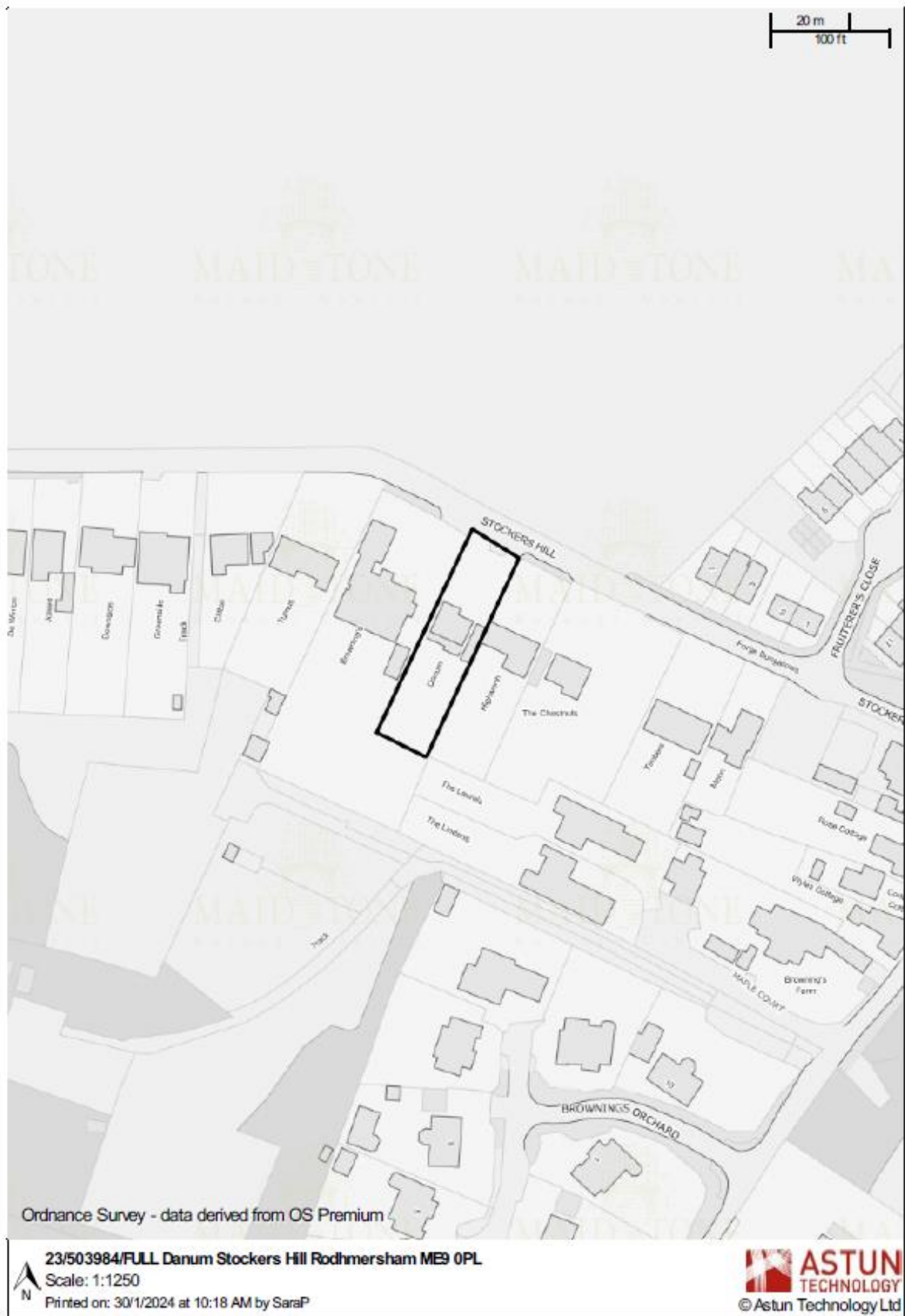
In accordance with paragraph 38 of the National Planning Policy Framework (NPPF) the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, 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.

In this instance:

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.



2.2 REFERENCE NO - 23/503564/FULL		
APPLICATION PROPOSAL Change of use of and conversion of existing shed into overnight holiday let (retrospective).		
ADDRESS Manor House Orchard Gate Berkeley Close Dunkirk Faversham Kent ME13 9FB		
RECOMMENDATION Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions and the payment of the SAMMS tariff 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.		
APPLICATION TYPE Change of use		
REASON FOR REFERRAL TO COMMITTEE Parish Council objection.		
Case Officer Claire Attaway		
WARD Boughton And Courtenay	PARISH/TOWN COUNCIL Dunkirk	APPLICANT Mr Mark Greenwood AGENT OSG Architecture Ltd
DECISION REGISTERED 03/08/23	TARGET DATE 15/02/24	
BACKGROUND PAPERS AND INFORMATION: 23/503564/FULL Change of use of and conversion of existing shed into overnight holiday let (retrospective). Manor House Orchard Gate Berkeley Close Dunkirk Faversham Kent ME13 9FB (midkent.gov.uk)		

1. SITE LOCATION AND DESCRIPTION

- 1.1 Manor House is a traditionally designed 3-bed detached dwelling with a detached garage (approx. 4.0m wide x 5.2m deep) and generous parking area to the side. To the rear of the dwelling is a good sized garden with a shallow pitched roofed shed (approx. 2.7m high) that was erected in 2017. The outbuilding is currently being used as a one-bed holiday let and garden shed.
- 1.2 The site occupies a corner plot within a cul-de-sac which is accessed off Berkeley Close. The site lies within the Local Plan defined built-up area boundary of Boughton under Blean and is surrounded by other residential properties.

2. PLANNING HISTORY

- 2.1 **17/501045/NMAMD** Non-material amendment granted on 29.03.2017 to move entrance porch from left of Manor House to existing entrance position. Replacing porch with window at ground floor. Slight enlargement of proposed first floor window to match those existing in form and size.
- 2.2 **15/500012/SUB** Submission of details granted on 15.12.2015 pursuant to conditions 3 - details of external finishing materials and joinery. 4 - details of existing and proposed finish floor levels of all units. 5 - details of mid-construction dust suppression measures.

6 - details of disposal of foul and surface waters. 7 - details of the foundation designs. 8 - details of hard and soft landscape works. 9 - detailed scheme of construction vehicle access. 11 - details of measures to prevent mud/debris deposits on public highway. 17 - details of bat protection strategy. 20 - details of tree protection measures.

- 2.3 **SW/14/0397** Planning permission granted on 09.07.20144 for the construction of six new dwellings along with the restoration of the existing Manor House.

3. PROPOSED DEVELOPMENT

- 3.1 Retrospective planning permission is sought for the change of use of and conversion of the existing shed into a one-bed holiday let. The building is situated approx. 0.5m away from the side boundary shared with No. 5 Orchard Gate. The accommodation comprises of a bedroom (16.8m²), a kitchenette (2.3m²) and ensuite (1.6m²). The remaining part of the building is used as a garden shed.
- 3.2 The existing parking area provides 3 off-road parking spaces (2.7m wide x 5m long) with an additional covered parking space (2.7m wide x 5m long) within the garage.
- 3.3 The application is supported by a small sites metric that recommends one of the shed roofs is refitted as an intensive green roof to provide a Biodiversity Net Gain (BNG) of 13.06% for the site.

4. CONSULTATION

- 4.1 One round of consultation was undertaken with neighbouring occupiers adjoining the site who were notified in writing, and a site notice was displayed at the site. Full details of representations are available online.
- 4.2 A total of 4 representations were received in relation to the consultation. 3 objected to the application on the following summarised grounds:
- There is a restrictive covenant which prevents the running of a business on this housing development, or to permit any matter which may become a nuisance, annoyance, disturbance, or inconvenience to adjacent occupiers.
 - The 2 visitor car parking spaces in the cul-de-sac are normally taken by guests staying in holiday accommodation.
 - This lodge was specifically built to be used as an Air B and B and is therefore not a conversion of an existing shed.
 - When guests arrive, several cars are parked on kerbs in Berkeley Close so as to allow them to park on the drive.
 - There are two holiday lets in Orchard Gate which results in on-street parking.
- 4.3 1 representation supported the application on the following summarised grounds:
- Our home is directly adjacent to the shed and we have not experienced any disturbance or impact on our residential amenity.

- At the time of booking, holiday guests are instructed of where to park - on the allocated space on the driveway so we do not have any issues with parking availability in the cul-de-sac.

4.4 **Dunkirk Parish Council:** Four consultations have been carried out, first on 9 August 2023 when the application was first submitted, second on 25 September 2023, third on 9 October 2023 with respect to a revised block plan and lastly on 5 December 2023 when additional information was submitted. They maintain an objection to the application on the grounds of overdevelopment, and cannot see that 4 spaces will meet the requirements of the residential house and that of the business when they previously required 5 to make it viable.

5. REPRESENTATIONS

5.1 **Natural England:** No objection subject to strategic mitigation (SAMMS) payment in respect of possible increased recreational disturbance to The Swale SPA/Ramsar site.

5.2 **KCC Ecology:** No objection subject to a condition requiring details on the type of green roof to be installed, and how it will be maintained.

5.3 **Kent Police:** Stated this application falls outside of their scope to comment on.

5.4 **Swale Environmental Health:** No objection.

6. DEVELOPMENT PLAN POLICIES

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

ST1 Delivering sustainable development in Swale

ST3 The Swale settlement strategy

CP4 Requiring good design

DM3 The rural economy

DM7 Vehicle parking

DM14 General development criteria

DM16 Alterations and extensions

DM24 Conserving and enhancing valued landscapes

DM28 Biodiversity and geological conservation

6.2 **Supplementary Planning Documents (SPD):**

- Parking Standards May 2020
- The Swale Landscape Character and Biodiversity Appraisal 2011.

6.3 **Boughton under Blean and Dunkirk Neighbourhood Plan:**

Policy H8: *Proposals for new residential development in the Plan area shall ensure that adequate on-site car parking provision is made in accordance with the Borough Council's approved Parking Standards SPD (adopted June 2020).*

Policy E8: *A minimum level of at least 10% Biodiversity Net Gain is required for proposed new developments in the Plan area against baseline conditions for the development sites concerned.*

7. **ASSESSMENT**

7.1 This application is reported to the Committee because Dunkirk 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 points: -

- Principle of development
- Transport and highways
- Living conditions
- Ecology

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 Swale Local Plan 2017 supports the principle of development within the built-up area boundary of established towns and villages within the Borough. The site is situated within the built-up area boundary of Boughton and therefore the principle of development is accepted. Further to this, policy DM3 supports rural business development, including tourism and leisure, with an emphasis on the appropriate re-use of existing buildings. The NPPF states that a positive approach should be taken to sustainable development to promote a prosperous rural economy.

7.5 Whilst the building is located in the built up area boundary, the proposal will re-use an existing building and support the economy, not only for the applicant, but most likely for nearby businesses and local tourist attractions both in the built up area and the countryside. On that basis, the conversion of an existing outbuilding into holiday let accommodation complies with policies ST3 and DM3 of the Local Plan.

Transport and highways

7.6 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.”

7.7 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.”

7.8 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.

7.9 The SBC Parking Standards SPD recommends parking requirements based upon the location of the site. As the site is located in the built up area boundary it is reasonable to apply the ‘suburban’ parking standards, which for 3 bedroom dwellings is 2 to 3 parking spaces. In addition to the existing dwelling, the holiday let use, being of a small scale and with 1 bedroom should be provided with 1 parking space. The gravelled parking area within the curtilage of Manor House can comfortably accommodate 3 parking spaces, as shown on the submitted drawings. In addition to this, there is a timber framed garage on the site.

7.10 As a result of the above, if the ‘suburban’ parking standards were applied, then the site would be able to accommodate the lower end of the requirements on the drive without the use of the garage. If the upper end of the parking standards were applied then the garage would be required to be used. It is noted that the garage is undersized when compared to the dimensions as set out in the SPD. As such, if a worst case scenario was applied (i.e. the upper end of the parking requirements and the garage was not used), there is the possibility that one vehicle would be required to park on the highway. In this respect, it is considered that one additional vehicle being parked in the surrounding residential streets would not give rise to significant harm to highway safety and convenience.

7.11 While it is noted that concerns have been raised in relation to the parking provision on site, for the reasons set out any impact is considered to be acceptable.

7.12 The amount of traffic generated by the proposal is unlikely to result in significant stress on local parking, and as such the proposal is considered to be in accordance with Policy DM7 of the Local Plan.

Living conditions

7.13 The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers. Specifically, policy DM14 states that any new proposed developments should not cause significant harm to the amenities of surrounding uses or areas and due consideration will be given to the impact of the proposed development upon neighbouring properties. Any new proposed schemes should not result in significant overshadowing through a loss of daylight or sunlight. Policy DM16 also requires that alternations or extensions to existing buildings protect residential amenity. The outbuilding is situated behind the garage and lies alongside the private rear garden to No.5 Orchard Gate.

- 7.14 The levels of noise generated from the proposed use will not be dissimilar from typical domestic noise and it is important to note that the Council's Environmental Health team have raised no concerns. The proposed change of use does not require any additional windows or doors to be installed and the existing openings face out towards the private amenity space of the applicant. Therefore, using the building as holiday let accommodation will not introduce privacy issues.
- 7.15 On that basis, there is found to be no identifiable harm to the living conditions of neighbouring properties and as such the proposal complies with policy DM14 and DM16 of the Local Plan.

Ecology

- 7.16 The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') affords protection to certain species or species groups, commonly known as European Protected Species (EPS), which are also protected by the Wildlife and Countryside Act 1981. This is endorsed by policies CP7 and DM28 of the Local Plan, which relates to the protection of sites of international conservation importance including Special Areas of Conservation (SAC), Special Protection Areas (SPA) or Ramsar sites.
- 7.17 An Appropriate Assessment has been carried out and adopted by the Council as the Competent Authority, which concludes that the proposed development will not adversely affect the integrity of the Swale SPA and Ramsar site, subject to a mitigation contribution of £314.05. This matter will need to be dealt with before any planning permission can be issued.
- 7.18 Under the Natural Environment and Rural Communities Act (2006), the authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions for the purpose of conserving biodiversity. Furthermore, the National Planning Policy Framework states that 'the planning system should contribute to and enhance the natural environment by minimising impacts on biodiversity and delivering net gains in biodiversity'. The National Planning Policy Framework states that 'if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or as a last resort, compensated for then planning permission should be refused'.
- 7.19 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".
- 7.20 In terms of the Local Plan policy DM28 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. Policy E8 of the BDNP requires at least a 10% BNG to be achieved within the site.
- 7.21 The BNG metric proposes to achieve a BNG of 13.06% by creating a biodiverse green roof on the existing shed. The KCC Ecologist is satisfied with the conclusions of the BNG metric and advises that additional information can be submitted as a condition of

planning permission. On this basis, the proposal satisfactorily deals with the requirements for a minimum BNG of 10% set out in the BNDP.

Other matters

- 7.22 The neighbour objection refers to a restrictive covenant for properties situated within Orchard Gate however this is a private legal matter. It is therefore not a material planning consideration and would have no bearing on the consideration of the planning application.

8. CONCLUSION

- 8.1 The proposal will re-use an existing outbuilding to provide holiday let accommodation in a sustainable location. The proposal therefore complies with national and local plan policies that promote tourism. If a shortfall in parking requirements was to occur this would be by a marginal amount, the result of which would not give rise to any serious harm to highway safety or convenience. The SBC Environmental Health team raise no concern with the proposal. The small sites metric demonstrates that the proposal will meet the relevant objective of the BNDP in respect of BNG. On this basis, it is recommended that planning permission be granted, subject to the conditions which have been included below and the receipt of the SAMMS payment.

CONDITIONS

- (1) The holiday let hereby permitted shall be used solely for the purpose of holiday accommodation; shall not be used by any person or persons as their 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.

Reason: In recognition of the applicant's intention and to protect the amenity of the area.

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

Site Block Plan & Site Location Plan 23-1413-01 Rev C
Ground Floor Plan 23-1413-02
North and South Elevations 23-1413-04
East and West Elevations 23-1413-05

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

- (3) The area shown on the site block plan (23-1413-01 Rev C) as vehicle parking spaces shall be provided before continued occupation of the holiday let hereby permitted, and this area shall at all times be retained for the use of the occupiers of the dwelling / holiday accommodation. No permanent development, whether or not permitted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to these areas.

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

- (4) The holiday let hereby approved shall not be further occupied until it has been provided with one electric vehicle charging point in accordance with the following specification:

All Electric Vehicle chargers provided must be to Mode 3 standard (providing a minimum of 7kw) and SMART (enabling Wifi connection). Approved models are shown on the Office for Low Emission Vehicles Homecharge Scheme approved chargepoint model list:

<https://www.gov.uk/government/publications/electric-vehicle-homecharge-scheme-approved-chargepoint-model-list>

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

- (5) The holiday accommodation unit hereby permitted shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and shall not be further occupied unless the Notice for that unit of accommodation of the potential consumption of water per person per day required by the Building Regulations 2015 (as amended) has been given to the Building Control Inspector (internal or external).

Reason: In the interests of water conservation and sustainability.

- (6) Within three months of planning permission being granted, a green roof plan shall be submitted to the Local Planning Authority to demonstrate a biodiversity net gain of a minimum of 13.06%. The plan shall provide details on the type of green roof to be installed, how it will be maintained and details of the species within the green roof. The species list shall include native species. The plan shall be implemented within three months of the details being approved.

Reason: In the interests of encouraging wildlife and biodiversity.

The Council's approach to the application

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

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

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

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

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

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

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

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

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

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

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

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

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

standard SAMMS tariff (which will be required to be secured prior to the determination of this application) will ensure that these impacts will not be significant or long-term. I therefore consider that, subject to mitigation, there will be no adverse effect on the integrity of the SPA.



2.3 REFERENCE NO - 23/502365/FULL		
PROPOSAL Demolition of 4 dwellings and erection of 20 dwellings with associated external amenity areas, site access improvements, internal access road, parking, landscaping and habitat creation. Retention of an existing block containing 7 dwellings for unrestricted residential use.		
SITE LOCATION 77 - 83 and 87 London Road Sittingbourne Kent ME10 1NL.		
RECOMMENDATION Delegate to the Head of Planning to grant planning permission subject to appropriate conditions and the completion of a Section 106 agreement securing Heads of Terms as set out in the report, with further delegation to the Head of Planning to negotiate the precise wording of conditions and obligations, including adding or amending such conditions and precise Heads of Terms as may be consequently necessary and appropriate.		
APPLICATION TYPE Major		
REASON FOR REFERRAL TO COMMITTEE Ward Councillor (Cllr Cheesman) requests the application be determined by the Committee.		
Case Officer Matt Duigan		
WARD Homewood	PARISH/TOWN COUNCIL	APPLICANT Mr M Salter AGENT Batcheller Monkhouse
DATE REGISTERED 23.05.2023	TARGET DATE 11.02.2024	
BACKGROUND PAPERS AND INFORMATION: 23/502365/FULL Demolition of 4 dwellings and erection of 20 flats with associated external amenity areas, site access improvements, internal access road, parking, landscaping and habitat creation. Retention of an existing block containing 7 flats for unrestricted residential use. 77 - 83 And 87 London Road Sittingbourne Kent ME10 1NL (midkent.gov.uk)		

1. SITE LOCATION AND DESCRIPTION

- 1.1. The application site is located on the southside of London Road, at the corner of Borden Lane. The site is within the boundary of the built-up area of Sittingbourne.
- 1.2. The site itself measures approximately 0.3ha in area and primarily forms a plateau area which falls away significantly on the northern and eastern boundaries. Most of the site lies at a higher level than both London Road and Borden Lane. The site is accessed directly from London Road via a sloping access drive, there is no access from Borden Lane. The current access from London Road is limited in terms of visibility due to the row of terraced houses adjoining the road.
- 1.3. The majority of the site formerly contained a care home which had been disused for a number of years and has since been demolished. On the London Road frontage there is a row of four terraced dwellings.

- 1.4. There is also an existing (vacant) block which had been used as residential accommodation (7 flats) for persons aged over 55 year old.
- 1.5. The site is not located within an area at risk of flooding and is not in a Conservation Area. None of the trees within the site or adjacent to the site boundary are subject to a Tree Protection Order.
- 1.6. A petrol filling station lies immediately to the north of the site behind an extensive retaining wall. The petrol filling station and London Road both lie at a much lower level than the majority of the application site. Borden Lane lies on the eastern boundary of the site.
- 1.7. There is a bus stop adjacent to the entrance to the petrol station on London Road with a range of buses providing access to Sittingbourne Town Centre, Faversham and Sheerness. The site is also located approximately 1 kilometre from Sittingbourne train station.
- 1.8. The site is located approximately 30m from Chalkwell House, a Grade II listed building. On Borden Lane is a Locally Listed brick wall with WWII defensive gun loops.

2. PLANNING HISTORY

- 2.1. Set out below is the history considered relevant to the determination of the current application:

Ref no: 15/510309/FULL: Borden Lodge, 2A Borden Lane Sittingbourne Kent ME10 1DB
Change of use from one private dwelling to retirement apartments comprising of one 2-bedroom unit and six 1-bedroom units with associated car parking and amenity area (Part Retrospective).

Approved Decision Date: 29.09.2016

[Planning case officer comment: This relates to the existing building on the site (described as Block B in the current application)].

Ref no: 14/502368/DMORIC: 87 London Road Sittingbourne Kent ME10 1NL
Prior notification of proposed demolition - A single private dwelling (last use NHS services) in a dilapidated state due to extensive fire damage.

Approved Decision Date: 19.11.2014

[Planning case officer comment: The former care home had been damaged by fire and was unsafe.]

Ref no: 14/500615/FULL: 87 London Road Sittingbourne Kent ME10 1NL
Demolition of existing fire-damaged property: 87 London Road, Sittingbourne, and proposed warden-assisted retirement flats comprising 24 x 1-bed units and 8 x 2-bed units including communal lounge, laundry, guest bedrooms, management facilities and associated car parking, together with improvement and realignment works to the A2.
Not determined

[Planning case officer comment: Minutes from the 26/11/2015 Planning Committee show that the application received a resolution for approval at the Planning Committee, however the required S106 legal agreement was never signed and the application was therefore not determined. In 2022, there being no further progress the case was closed.]

Ref no: SW/10/0510: 87 London Road, Sittingbourne, Kent ME10 1NL
Change of use of existing care home (Use Class C2) to a single dwelling (Use Class C3).
Approved Decision Date: 19.07.2010

3. PROPOSED DEVELOPMENT

- 3.1. Planning permission is sought for the demolition of the dwellings at 77 to 83 London Road and the construction of two blocks of flats (Block A and Block C).
- 3.2. Block A would be towards the southern portion of the site and would include a basement (for car parking and ancillary storage) with 13 dwellings above.
- 3.3. Block C would be located close to London Road and would accommodate 7 dwellings.
- 3.4. Block B is an existing building accommodating 7 dwellings. This would be retained and refurbished, accommodating 7 dwellings, with no age restriction.
- 3.5. The application proposes landscaping, creation of amenity space and enhancements to the access into and through the site. In total 26 car parking spaces are proposed along with space for motor cycle and cycle parking.
- 3.6. To the western end of the site is an area proposed to be designated as an ecological area (not accessible to future residents).

4. CONSULTATION

- 4.1. All immediate adjacent neighbours have been consulted, a site notice was erected near the site and an advert was published in the local press. Full details of representations are available online.
- 4.2. Three rounds of consultation have been carried out on 25/05/2023, 23/10/2023, and 27/11/2023.
- 4.3. First Round of consultation - neighbours
- 4.4. During the first round of consultation, 47 letters were sent to nearby occupiers. One representation was received in relation to the consultation. In summary, the submission stated:

Benefits:

- The current buildings are unsightly, the new development would help improve this part of London Road.
- The development has been carefully planned.

Disbenefits:

- Parking for London Road residents is already extremely difficult. This scheme would make it worse.
- Concerns over the noise during the construction of the development.
- Concerns over disruption to the traffic flow during the construction period.
- The existing development has remained unfinished for many years. Measures should be required to ensure the current proposals are actually progressed if approved.
- Concern was raised over the entry junction into the development from London Road and highway safety. The road and paths would need re-surfacing.
- Construction debris and rubbish may blow onto London Road.
- Overlooking from proposed flats to neighbouring properties would result in a loss of privacy. Trees on the boundary should be retained to prevent overlooking.
- The development may mean the drains would block more frequently.

- 4.5. Second round of consultation – neighbours

- 4.6. During the second round of consultation a further set of 47 letters were sent to nearby occupiers. In response 3 letters were received raising objection to the proposal on the basis

that insufficient on-site car parking is proposed and this could lead to on street parking pressure.

4.7. Third round of consultation – neighbours

4.8. Following receipt of revised information, a further round of consultation was undertaken. Letters were again sent to 47 nearby occupiers, in response 1 letter was received raising concern in relation to the potential for on street parking pressure to be exacerbated.

4.9. REPRESENTATIONS

4.10. As with neighbours, three rounds of consultation were carried out on 25/05/2023, 23/10/2023, and 27/11/2023. Set out below is a summary of matters raised in representations, with the comments reflecting the final position of the consultee.

4.11. **SBC Conservation Officer** - The SBC Conservation Officer advised that there was no objection to the demolition of 77 to 83 London Road.

The Conservation Officer advised that some harm (less than substantial) would be caused to the setting of Chalkwell House. If approved, the Conservation Officer requested conditions to secure:

- Formal recording 83 to 87 London Road prior to their demolition.
- Any repairs needed to the locally historically significant defensive loopoled wall to be carried out and interpretation measures installed.
- Details of materials.

4.12. **SBC Urban Design Officer** - Following receipt of amended and additional information, the Urban Design Officer advised that the applicant had responded positively to concerns raised in relation to the original proposals. The relationship with London Road was improved through a reduction in scale and through an increased set back with landscaping to the front that softens the hard edge.

Subject to conditions to secure details of materials, including samples, details of landscaping and landscape maintenance, external lighting and secure by design accreditation, no objection was raised.

4.13. **Mid Kent Environmental Health Officer** - In summary the Environmental Health Officer requested additional air quality information, which was subsequently provided. The final position of the Environmental Health Officer was that no objection was raised subject to conditions to secure:

- Remediation of potential contamination and to control impacts during the construction phase (construction management plan).
- The mitigation and recommendations in the air quality and noise assessments being delivered.

4.14. **Environment Agency** - No objection subject to conditions.

4.15. **Kent Police** - No objection subject to a condition to ensure the development meets Secure By Design Criteria. If approved, site security would be required for the construction phase.

4.16. **Natural England** – Advised that the Council as the Competent Authority must carry out a Habitat Regulations Assessment and Appropriate Assessment and adhere to the conclusions.

- 4.17. **SBC Affordable Housing** - In summary, the Affordable Housing Officer advised that 10% of the 20 newly proposed housing units should be affordable. With such a low number of affordable homes, it would be difficult to get a Registered Provider (RP) to take over the affordable homes. The Affordable Housing Officer advised therefore that 'First Homes' should be the affordable option (as this tenure doesn't rely on an RP).
- 4.18. **KCC Highways** - In summary, KCC Highways provided the following advice:
- Offsite highway works would need to be secured through a S278 agreement (including changes to access, footways and retaining walls).
 - No objection to trip generation or impact to the highway in terms of traffic generation.
 - A contribution of £36,000 is required towards recovering the HIF money associated with the Key Street highway improvement.
 - Conditions should be imposed on any consent to secure:
 - Construction Management Plan.
 - Provision and retention of parking spaces. Parking spaces to be fitted with electric vehicle chargers.
 - Provision and cycle storage spaces.
 - Provision and maintenance of visibility splays and vehicle turning areas.
- 4.19. **Lower Medway Internal Drainage Board** – Raised no objection.
- 4.20. **NHS (Swale)** - A financial contribution would be required to cover the cost of capacity enhancements made necessary by the development in local health care facilities.
- 4.21. **Southern Water** - In summary, Southern Water advised that they require a formal application for a connection to the public sewer to be made by the applicant or developer. The Southern Water advice also recommended a number of informatives that should be included on any planning permission. A request was made for details of foul and surface water disposal to be approved before development commences.
- 4.22. **KCC Lead Local Flood Authority (LLFA)** - In summary the LLFA advised that:
- A geotechnical report is required to demonstrate that infiltration is not feasible.
 - If infiltration is not feasible then the discharge from all other impermeable areas to the combined sewer is acceptable.
 - No objection subject to conditions.
- 4.23. **Kent County Council (KCC)** - In summary, KCC assessed the implications of the proposal in terms of the delivery of its community services and is of the opinion that it will have an additional impact on the delivery of its services. These impacts will require mitigation, either through the direct provision of infrastructure or the payment of an appropriate financial contributions.
- 4.24. **KCC Ecological Advice Service** - No objection subject to conditions being imposed on any consent to secure ecological mitigation and enhancement measures and a biodiversity enhancement strategy.
- 4.25. **Green Spaces Manager** – Required contributions towards capacity enhancements in off-site sports and open spaces.

4.26. **KCC Archaeology** – In summary KCC Archaeology advised that ground excavations could potentially impact archaeological remains of importance. Conditions should be imposed on any consent requiring appropriate archaeological investigation, preservation and recording, and well as recording of the existing houses on London Road.

5. DEVELOPMENT PLAN POLICIES

5.1. The following polices are relevant to the determination of the application.

Bearing Fruits 2031: The Swale Borough Council Local Plan 2017

- **ST1** Delivering sustainable development in Swale.
- **ST3** The Swale settlement strategy.
- **CP 2** Promoting sustainable transport.
- **CP 3** Delivering a wide choice of high quality homes.
- **CP 4** Requiring good design.
- **CP 5** Health and wellbeing.
- **CP 6** Community facilities and services to meet local needs.
- **CP 7** Conserving and enhancing the natural environment – providing for green infrastructure.
- **CP 8** Conserving and enhancing the historic environment.
- **DM 6** Managing transport demand and impact.
- **DM 7** Vehicle parking.
- **DM 8** Affordable housing.
- **DM 14** General development criteria.
- **DM 17** Open space, sports and recreation provision.
- **DM 19** Sustainable design and construction.
- **DM 21** Water, flooding and drainage.
- **DM 24** Conserving and enhancing valued landscapes.
- **DM 28** Biodiversity and geological conservation.
- **DM 29** Woodlands, trees and hedges.
- **DM 32** Development involving listed buildings.
- **DM 34** Scheduled Monuments and archaeological sites

National Planning Policy Framework (2023)

Supplementary Planning Documents

- KCC Developer Contributions Guide.
- Parking Standards (2020).
- Swale Borough Council's Noise and Vibration Planning Technical Guidance (2020).
- Planting on new development – a guide to developers.
- Kent design – A guide to sustainable development (2000).
- Air Quality Technical Guidance (2021).
- A Heritage Strategy for Swale (2020).
- National Planning Practice Guidance

6. ASSESSMENT

6.1. This application is reported to the Committee at the request of Councillor Cheesman. The main considerations involved in the assessment of the application are:

- The Principle of Development
- Size and Type of Housing
- Affordable Housing
- Landscape and Visual
- Heritage
- Archaeology
- Character and Appearance
- Trees
- Ecology
- Transport and Highways
- Air Quality
- Community Infrastructure
- Open Space
- Flood Risk, Drainage and Surface Water
- Contamination
- Living Conditions
- Sustainability / Energy

6.2. Principle

- 6.2.1. 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.
- 6.2.2. The National Planning Policy Framework (NPPF) 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.
- 6.2.3. The site formerly accommodated a dwelling (87 London Road), which was then converted into a care home. Local Plan Policy CP6 relates to community facilities and services to meet local need and in summary states that development proposals will, as appropriate safeguard existing community services and facilities (such as care homes) where they are viable or can be made so unless replacement facilities can be provided without leading to any shortfall in provision.
- 6.2.4. In this case, the care home had been owned by the NHS who sold the property approximately 10 years ago. The release of the site was part of the Public Sector Land Programme agreed by Parliament. The site was identified by the NHS as being surplus to requirements.
- 6.2.5. The building was subsequently damaged by fire and approval was given for demolition 2014. While there was a subsequent application to create another care home, the required S106 legal agreement was never finalised by the Applicant and the decision never issued. In 2022, there being no further progress the case was closed. Given the time past and situation overall, no objection is raised to the change of use from care home (community facility) to residential use.
- 6.2.6. In terms of the introduction of additional residential development at the site, it is noted that the site is within the built-up boundary of Sittingbourne. The Local Plan Policy ST1 (4) states that to deliver sustainable development in Swale, all development proposals will, as appropriate, accord with the Local Plan settlement strategy. Local Plan Policy ST3 (5) relates to the settlement strategy and states that the main Borough urban centre

of Sittingbourne will provide the primary urban focus for growth, where development will support town centre regeneration and underpin the town's role as the principal centre.

- 6.2.7. Policy CP2 of the Local Plan relates to sustainable transport and directs development to accord with the settlement strategy being locations that minimise the need to travel for employment and services and facilitate sustainable transport. The proposal for an uplift in residential accommodation at the site accords with Policies ST1, ST3 and CP2 of the Local Plan.
- 6.2.8. It is noted that 4 residential dwellings would be demolished, however the development would introduce 20 new dwellings and bring 7 vacant existing dwellings back into use. There would be no net loss of residential accommodation. The proposals accord with Local Plan Policies ST1, ST3, CP2, and CP6, as such no objection is raised in principle to the development.

6.3. Size and Type of Housing

- 6.3.1. The NPPF recognises that to create sustainable, inclusive and diverse communities, a mix of housing types, which is based on demographic trends, market trends and the needs of different groups, should be provided.
- 6.3.2. The Local Plan Policy CP3 requires the mix of tenures and sizes of homes provided in any development to reflect local needs and the Strategic Housing Market Assessment. The proposed mix of housing is set out below:

Tenure	1 Bed	2 Bed	3 Bed	Total
Market	14	8	3	25
Affordable	1	1		2
Total	15	9	3	27

- 6.3.3. The supporting text to Local Plan Policy CP3 sets out requirements for market and affordable housing by size. The table below shows the requirements set out in supporting text for Local Plan Policy CP3 and how the proposal compares with this.

Tenure – Local Plan	1 Bed	2 Bed	3 Bed	4 Bed	Total
Market Required	7%	36%	42%	15%	100%
Market Proposed	56%	32%	12%	0%	100%
Affordable Required	8%	20%	36%	36%	100%
Affordable Proposed	50%	50%	0%	0%	100%

- 6.3.4. The Council's Housing Market Assessment (HMA) was prepared in 2020, i.e., more recently than the Local Plan, and after the introduction of the standard method for calculating the objectively assessed need. As such officers have considered the proposed mix against that set out in the HMA.

Tenure - HMA	1 Bed	2 Bed	3 Bed	4 Bed	Total
Market Required	7%	33%	41%	19%	100%
Market Proposed	56%	32%	12%	0%	100%
Affordable Required	27%	23%	30%	20%	100%
Affordable Proposed	50%	50%	0%	0%	100%

- 6.3.5. The HMA (2020) broadly echoes the Local Plan requirements in terms of the mix of dwelling sizes. It should be remembered that this reflects the Borough wide need.
- 6.3.6. In terms of the affordable tenure, advice from the Council's Affordable Housing officer is that evidence from the housing register shows that in Sittingbourne there is considerable demand for 1 and 2 bed dwellings. Given this localised knowledge of demand no objection is raised to the size of affordable dwellings.
- 6.3.7. In terms of the private housing (market tenure), the proposal would deliver a greater proportion of 1 bed dwellings and fewer 3 and 4 bed dwellings than is indicated as being required by the supporting text to Policy CP3 or the HMA (2020).
- 6.3.8. Again, it is noted that the mix of dwellings set out in the HMA and Policy CP3 is borough wide and does not take account of localised differences in market housing need. To account for localised differences, local housing market areas have been established which relate to specific postcode evidence. For the town of Sittingbourne, the supporting text to Local Plan Policy CP3 states that Sittingbourne has the opportunity to provide a mix of quality housing types and unit sizes. Prices are affordable and there are reasonable levels of demand from a range of consumers.
- 6.3.9. In terms of consumers, the Local Plan and the HMA (2020) both identify that the highest forecast increases in the number households over the plan period will be one person and lone parent households (there is a growing demand for 1 bed and 2 bed dwellings).
- 6.3.10. Given the location of the site within Sittingbourne, along with evidence from the housing register (for demand for smaller flats), as well as expected increases in one person and lone parent households, it is considered that the proposed mix would provide an acceptable mix of quality housing types and unit sizes in Sittingbourne (in accordance with parts 1 and 2 of Policy CP3 of the Local Plan).
- 6.3.11. The proposal would bring vacant homes back into use and provide an acceptable level of affordable housing and accessible housing in accordance parts 4, 5, 6 and 7 of Policy CP3 of the Local Plan.
- 6.3.12. Officers have taken account of the context in which the site is set, policy requirements, the HMA, the housing register, the local housing market areas and overall analysis shows that the proposal to broadly complies with Local Plan Policy CP3.

6.4. Affordable Housing

- 6.4.1. The NPPF sets out the requirement for setting appropriate affordable housing levels for new development based on up-to-date evidence. Through Policy DM8, the Local Plan requires 10% of dwellings proposed in Sittingbourne to be delivered as affordable housing.
- 6.4.2. The development involves 20 new homes, which means 2 dwellings should be dedicated as affordable housing. The application proposes 1 x one bed flat and 1 x two bed flat (10% of dwellings would be affordable in accordance with Policy DM8 of the Local Plan).
- 6.4.3. The affordable housing would be indistinguishable from market housing in terms of design, materials and access to open space.
- 6.4.4. The HMA (2020) and Policy CP3 of the Local Plan set out the way in which overall affordable housing should be apportioned between different affordable housing products. However, in this case only 2 dwellings would be required to be delivered as

affordable (it becomes impractical to apportion such a low number of dwellings to multiple different tenures).

- 6.4.5. Concern was raised by the Affordable Housing Officer that Registered Providers (RP) would be highly unlikely to take on such a small number of dwellings. This issue has arisen on a number of development sites, as such it is prudent to provide for such a situation.
- 6.4.6. Local Plan Policy DM8 (part 5) states that where no RP is available, the full affordable housing provision requirement will be cascaded to another provider and/or site or via a commuted sum. The Council's the Affordable Housing Officer advised that in this case it is not preferable to take a commuted sum or look to deliver affordable housing on another site (there being no identified sites to direct funding or housing to), rather in this case, given the low number of dwellings required to be in the affordable tenure, the preference is that the affordable housing product be one which does not rely on an RP.
- 6.4.7. The Affordable Housing Officer advised that the tenure should be First Homes (an affordable housing product that doesn't involve an RP). First Homes are a specific kind of discounted market sale housing and meet the definition of 'affordable housing' for planning purposes. Specifically, First Homes are discounted market sale units which:
- a) must be discounted by a minimum of 30% against the market value;*
 - b) are sold to a person or persons meeting the First Homes eligibility criteria (see below);*
 - c) on their first sale, will have a restriction registered on the title at HM Land Registry to ensure this discount (as a percentage of current market value) and certain other restrictions are passed on at each subsequent title transfer; and,*
 - d) after the discount has been applied, the first sale must be at a price no higher than £250,000.*
- 6.4.8. First Homes are the Government's preferred discounted market tenure. The applicant has agreed to provide the affordable dwellings as 'First Homes'. This approach doesn't involve a commuted sum of delivery of the required affordable housing on another site (i.e., not clearly aligned with Policy DM8 (part 5)). However, in view of the limited number of affordable dwellings, advice from the Affordable Housing Officer and taking account of the situation overall, no objection is raised.
- 6.4.9. The First Homes would be secured as a planning obligation as part of any planning permission. Subject to this the application would accord with Local Plan Policy DM8.

6.5. Landscape and Visual

- 6.5.1. Local Plan Policy ST1 relates to delivering sustainable development in Swale and states (part 11) that the policy seeks to conserve and enhance the natural environment. Policy DM14 sets out general development criteria. Part 6 of this Policy refers to the desirability of conserving and enhancing the natural environment. Policy DM24 states that non-designated landscapes will be protected and enhanced.
- 6.5.2. The site is within the built-up area of Sittingbourne, set sufficiently far from the countryside and areas of high landscape value that there would be no harmful impact. The application accords with Local Plan Policy ST1, DM14 and DM24.

6.6. Heritage

- 6.6.1. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("PLBCAA") provides that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority

- shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
- 6.6.2. Local Plan Policy CP8 sets out various requirements proposals must accord with to sustain and enhance the significance of Swale's designated heritage assets. The policy states that development will sustain and enhance the significance of designated and non-designated heritage assets to sustain the historic environment whilst creating for all areas a sense of place and special identity.
- 6.6.3. Policy DM32 relates to development involving listed buildings and states that development proposals affecting a listed building or its setting will be permitted provided that the building's special architectural or historic interest, and its setting and any features of special architectural or historic interest which it possesses, are preserved.
- 6.6.4. The South Lakeland District Council v Secretary of State for the Environment case and the Barnwell Manor case (East Northamptonshire DC v SSCLG) establish that 'preserving' in s.66 means 'doing no harm'.
- 6.6.5. In assessing heritage impacts, the first step is for the decision-maker to consider each of the designated heritage assets which would be affected by the proposed development in turn and assess whether the proposed development would result in any harm to the significance of such an asset.
- 6.6.6. The NPPF makes it clear that the setting of a heritage asset is the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.
- 6.6.7. The following heritage assets have been identified as being impacted by the proposal:
- Chalkwell House (Grade II Listed Building),
 - Numbers 77 – 83 London Road (non-designated heritage asset),
 - Loopholed wall (defensive fortification) on Borden Lane (non-designated heritage asset),
 - 1 Borden Lane (non-designated heritage asset).
- 6.6.8. Chalkwell House is a Grade II Listed Building located on the south side of London Road, on the corner of Borden Lane, approximately 25m southeast of the application site. Chalkwell House is assessed to be a heritage asset of high significance as a building of special heritage interest, reflected in strong and coherent survival of key factors.
- 6.6.9. Chalkwell House is set back from Borden Lane and is screened to the west by mature planting in its garden. The impact from the proposed development would be to the setting of the house and the impact would be barely distinguishable from baseline conditions (less than substantial harm at the lower end of the spectrum).
- 6.6.10. For 77 – 83 London Road, the primary heritage interest stem from their age and survival. Built prior to 1799, these cottages would most likely have housed members of the agricultural labouring class and their families. The historic interest means these buildings have been identified as non-designated heritage assets. The heritage interest of these buildings is degraded as a result of modernisation work, resulting in little or no surviving heritage legibility (low significance).
- 6.6.11. The application seeks approval for the demolition of the non-designated heritage assets at 77 to 83 London Road. This would be direct harm to the non-designated heritage assets.

- 6.6.12. Bounding the eastern elevation of 77 London Road, is a brick wall that features WWII defensive gun loops. This is a remnant of an iconic period of British history, and therefore this is a Locally Listed feature (high significance). The applicant proposes to protect the wall and provide an interpretation board to explain its history (no adverse impact).
- 6.6.13. The dwelling at 1 Borden Lane is a two-storey cottage of mid-19th century origin and located on the entrance to Chalkwell House, 1 Borden Lane is assessed as having a low to medium significance in heritage terms (non-designated heritage asset). In terms of impact to 1 Borden Lane, the proposal is for residential development, and the closest element, Block C, is limited in height, so the visual impact to views from 1 Borden Lane would be limited.
- 6.6.14. Clear and convincing justification is required by NPPF paragraph 206 for any harm to the significance of a designated heritage asset (in this case the harm would be to the setting of Chalkwell House). Sections 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 amount to a statutory presumption against development that would harm the significance of a listed building.
- 6.6.15. The second step is therefore to balance that harm against the public benefits of the scheme, applying the requirements of NPPF paragraph 208 in the case of less than substantial harm.
- 6.6.16. For designated heritage assets, the balancing exercises required by NPPF is not a simple unweighted exercise in which the decision-maker is free to give heritage harm whatever degree of weight they wish. In Barnwell Manor the Court of Appeal identified that the decision-maker needed to give “considerable importance and weight” to any finding of harm to a listed building or its setting in order properly to perform the section 66 duty.
- 6.6.17. The presumption against development that would harm the significance of a listed building (including its setting) can be outweighed, but only if there are material considerations (which include a proposal’s public benefits) that are strong enough to do so.
- 6.6.18. The decision-maker needs to ensure that they give considerable importance and weight to any harm to the significance of a designated heritage asset, and ensure that the more important the asset, the more the weight that is given to the harm in the balancing exercise.
- 6.6.19. Paragraph 209 of the NPPF states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining any planning application. In weighing applications that affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
- 6.6.20. Unlike designated heritage assets, the balancing exercise for non-designated heritage assets is straightforward weighing of benefits and harms.
- 6.6.21. A public benefit can be anything that delivers economic, social or environmental objectives, which are the three overarching objectives of the planning system as set out in the NPPF. Benefits are discussed below:
- 6.6.22. The development would bring forward jobs and spending during the construction phase. Paragraph 85 of the NPPF advises that **significant weight** should be placed on the benefit a scheme offers in supporting economic growth and productivity.

- 6.6.23. The proposed development would be of a design that would positively respond to its surroundings. Conditions are recommended to ensure materials are well considered. The proposed soft landscaping would help to soften the appearance of the development and assist in relating it to the surrounding landscaping. **Moderate weight** can be given to the contribution the development would make to enhancing the appearance of the area, including through landscaping and good design.
- 6.6.24. The proposal would bring a brownfield site back into use, within the settlement of Sittingbourne, for homes. The proposal would also support remediation of contaminated land. Paragraph 124 of the NPPF states that **substantial weight** should be given to these benefits.
- 6.6.25. The proposal includes delivering housing including affordable housing in an accessible location within the built-up area of Sittingbourne. The Council doesn't have a 5-year supply of housing, the proposal would contribute to housing supply and **significant weight** can be afforded to this benefit.
- 6.6.26. The proposed development has been designed in accordance with sustainability principles, it would achieve more than the minimum Biodiversity Net Gain requirements and include measures to offset carbon. Block B is to be refurbished and measures would be included to improve the environmental performance of that existing building. **Moderate weight** has been afforded to this benefit.
- 6.6.27. Officers have been mindful of the statutory duty and have placed great weight and importance on the fact that less than substantial harm would be caused to the setting of Chalkwell House, and that non-designated heritage assets (i.e., the dwellings at 77 to 83 London Road) would be lost and the setting of 1 Borden Lane would be impacted. However, in this case the benefits are considerable and clearly outweigh the harm. Officers are of the view that the proposals comply with Local Plan Policy CP8, DM32, DM33 and the provisions of the NPPF.

6.7. Archaeology

- 6.7.1. The NPPF sets out that where development has the potential to affect heritage assets with archaeological interest, Local Planning Authorities should require developers to submit an appropriate desk-based assessment, and where necessary, a field evaluation.
- 6.7.2. Policy DM34 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.
- 6.7.3. Analysis of the available archaeological data has suggested that there is a medium potential of encountering complex or significant archaeological remains during the proposed development. These would most likely be remains of a Bronze Age field system or from the remains of the Chalkwell Cornmill. The potential remains may be of Medium Significance.
- 6.7.4. The proposed development would require the excavation to create foundations and a basement. This would have the potential to damage or disturb underlying archaeology. The impact would be localised within the footprint of the specific proposed buildings.
- 6.7.5. The proposal would also involve excavation of trenches for the provision of services and utilities. Again, impacts would be localised. There would be a degree of earth moving for landscaping and levelling and have the potential for the disturbance of underlying archaeology.

- 6.7.6. Due to the Medium potential for the survival of archaeological remains, it is recommended that a program of archaeological evaluation be carried out. This work should seek to define the date, character, state of preservation and the extent of the archaeological resource with the proposed site limits. The evaluation of the site should be secured by way of a planning condition on any consent (requiring a suitable project design / written scheme of investigation). Depending on the results, further archaeological mitigation could be required.
- 6.7.7. The application was referred to the KCC Archaeological Officer who advised that subject to conditions to secure the above no objection is raised. The relevant conditions are recommended and subject to this the application would accord with Local Plan Policy DM34.

6.8. Character and appearance

- 6.8.1. The NPPF 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.
- 6.8.2. Policy CP4 of the Local Plan requires good design and states that development proposals will enrich the qualities of the existing environment by promoting and reinforcing local distinctiveness and strengthening sense of place.
- 6.8.3. The Policy goes on to highlight that development proposals should be appropriate to the context in respect of materials, scale, height and massing.
- 6.8.4. Policy DM14 of the Local Plan states that development proposals will as appropriate reflect the positive characteristics and features of the site and locality.
- 6.8.5. Block B has already been constructed and it is proposed to retain this building. Whilst it is proposed to be refurbished the built form would be as existing.
- 6.8.6. Block A is proposed towards the southern end of the site, and would have a stepped form, lowering in height towards 2 Borden Lane. At its closest point (in relation to 2 Borden Lane) Block A would be 2-storeys in height, and subservient to the height of the neighbouring dwelling. Block A then sets away from 2 Borden Lane and rises to 3-storeys, a further set back is then introduced and the building rises to 4-storeys. The modulation of the built form means there would be an acceptable visual relationship with neighbouring property and responds in an acceptable way to initial concerns raised by the Urban Design Officer in relation to massing.
- 6.8.7. In terms of materiality, the lower portions of Block A would be brick, and upper portions in render.
- 6.8.8. Block C is a 3-storey building that would front London Road. In response to initial concerns about how the building addresses London Road, the form of the block has been modulated and set back. The proposed block is set back further than the frontage of the existing dwellings on the site (at 73 to 87 London Road), which means space between the foot way and built form would increase (a wider footway is to be introduced), which is considered an improvement over the existing situation.
- 6.8.9. In terms of materiality, as with Block A, the lower portions of the Block C would be brick, and upper portions in render. Block C is sited on a part of the site which slopes down from the west to the east (and slopes upward from the north to south). The design works with the gradient of the site and includes undercroft parking to the rear (southern) part of the ground floor.

- 6.8.10. The local context includes a number of developments that are of 3-storeys or more in height. The proposed layout of Block C enables an active frontage to be retained onto London Road whilst the location and position of Block A (towards the southern end of the site) reduces the visibility of this block from Borden Lane.
- 6.8.11. A more contemporary architectural style has been applied, with a flat roof form and more linear planes to the elevations. Adopting a more contemporary architectural style has allowed for the buildings to be redesigned to provide more appropriate form and reduced massing.
- 6.8.12. Bin and bike stores are proposed. For Block A, bicycles would be stored in the basement, for Block C cycle storage is proposed under the covered undercroft. Cycle storage for Block B is proposed externally. Bin stores are proposed to be clad with wood and feature green roofs. No objection is raised in relation to the appearance of bin, cycle stores or car port.
- 6.8.13. The application was referred to the Council's Urban Design Officer who raised no objection subject to conditions being imposed on any planning permission to ensure the final detail of landscaping and materials are acceptable.
- 6.8.14. The relevant conditions are recommended and subject to these the development would accord with Local Plan Policies CP4 and DM14.

6.9. Trees

- 6.9.1. The NPPF recognises the contribution of trees to the intrinsic character and beauty of the countryside. The Local Plan requirement is recognised through Policy DM29 of the Local Plan.
- 6.9.2. The existing trees growing along the northern boundary of the site adjacent to the petrol station are of value for the local landscape. The current proposals incorporate these trees into the design so they would be retained and protected.
- 6.9.3. One individual tree and one tree group are proposed to be removed to facilitate the proposals. These trees have been assessed as category C specimens of low quality and low amenity value.
- 6.9.4. The tree removal is required to create the access road improvement works and new parking bays, refuse store and turning head. To mitigate the loss of the trees, the landscape plan shows that 19 new trees will be planted.
- 6.9.5. The landscape plans also include a range of hedging, shrub planting and mixed turfing/seeding. As the proposed new planting establishes it would progressively make a positive contribution to the age and species diversity of trees in the area, the extent of local canopy cover and the amenity of the locality would improve.
- 6.9.6. The proposed foundations and basement parking access ramp for apartment Block A are to be located adjacent to the root protection areas of two trees. Specialist plant machinery would be required to create a pile wall to avoid over excavation in root protection areas. This would need to be secured as a condition on any planning permission.
- 6.9.7. Subject to the tree protection measures recommended within the Arboricultural Method Statement the proposals would not cause any unacceptable impact on the amenity of the locality in so far as it is contributed to by trees. The application complies with Local Plan Policy DM29.

6.10. Ecology

- 6.10.1. 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"*.
- 6.10.2. Local Plan Policy DM28 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.
- 6.10.3. The application is supported by a Preliminary Ecological Appraisal, a Phase 2 Ecological Survey Report and a Biodiversity Net Gain Design Stage Report. The information accurately sets out the likely impacts on designated sites, protected and priority species and habitats and that with appropriate mitigation measures secured, the development can be made acceptable in terms of protected species.
- 6.10.4. Whilst no bats were found during surveys, to ensure the proposal does not result in the loss or degradation of bat foraging and commuting habitat or sever important commuting routes or obstruct access between potential bat roosts and important foraging habitats; a lighting mitigation strategy is required to prevent harm to wildlife. Subject to the mitigation being secured by way of a condition on any planning permission, no objection is raised in terms impacts to bats.
- 6.10.5. The Phase 2 Ecological Survey Report identified that a single species of reptile, namely 'Anguis fragilis' (slow worms), was recorded within the site. The slow worms recorded were observed within the areas of scrub and grassland within the western part of the site.
- 6.10.6. The population of slow worms on site is low, which means that the site does not meet the registered criteria for a Key Reptile Site. The western part of the site is to be dedicated as a wilderness area for reptiles (not part of the useable amenity space for future residents). In addition, the following mitigation measures are proposed:
- Installation and maintenance of artificial bat bricks or bat tubes into new buildings and installation of bat boxes on to suitable retained trees.
 - Installation and maintenance of artificial bird nest boxes onto any retained trees and new buildings on site.
 - Incorporation of a 'Beebrick' into each new building.
- 6.10.7. The Biodiversity Net Gain Design Stage Report confirms that the development would achieve 27.87% net gain in biodiversity. The proposals accord with Policies CP7 and DM28 of the Local Plan.

Appropriate Assessment

- 6.10.8. This Appropriate Assessment has been undertaken without information provided by the applicant. The application site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).
- 6.10.9. SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any

disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

- 6.10.10. The proposal is for residential development and future occupiers may visit the protected site for recreational purposes (creating recreational pressure). Therefore, the proposal has the potential to affect the Medway Estuary and Marshes SPA's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.
- 6.10.11. In considering the European site interest, Natural England (NE) advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advise that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation, the proposal is unlikely to have significant effects on these sites.
- 6.10.12. The judgement (*People Over Wind v Coillte Teoranta*, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area,
- “it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.”*
- 6.10.13. The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between NE and the North Kent Environmental Planning Group.
- 6.10.14. However, the proposed development is of a small scale and, in itself and in combination with other development, would not have an adverse effect on the integrity of the SPA. Notwithstanding this, NE has stipulated that, when considering any residential development within 6km of the SPA, the Council should secure financial contributions to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMMS) in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG), and that such strategic mitigation must be in place before the dwelling is occupied.
- 6.10.15. Due to the size of the site, there is no scope to provide on-site mitigation such as an on-site dog walking area. Based on the correspondence with NE, off-site mitigation is required.
- 6.10.16. In this regard, whilst there are likely to be impacts upon the SPA arising from this development, the mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff will ensure that these impacts will not be significant or long-term. Officers have been mindful that there are 4 occupied dwellings at the site in calculating the tariff required. In this case a financial contribution of £7,223.15 is required.
- 6.10.17. Subject to mitigation (to be secured as a planning obligation), there would be no adverse effect on the integrity of the SPA and the development would comply with Local Plan Policy DM28.

6.11. Transport and Highways

- 6.11.1. 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.”

6.11.2. The NPPF at paragraph 115 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.”

6.11.3. Local Plan Policies CP2 and DM6 promote sustainable transport through utilising good design principles. Policy DM6 sets out that where highway capacity is exceeded and/ or safety standards are compromised proposals will need to mitigate harm.

6.11.4. The site is located in a sustainable location within the settlement boundary of Sittingbourne being walkable to the town centre and train station and is suitable for residential development.

6.11.5. The access road onto London Road would be improved as part of the development. This is achieved through the proposed demolition of 77-83 London Road to provide a new building (Block C) set further back from the A2/London Road. This allows an access to be created which would allow cars to enter/exit the site at the same time as well as a dedicated pedestrian route into the site.

6.11.6. Highway boundary data has been obtained and confirms that the steps up to the entrance to 77-83 London Road are within the land owned by the applicant. The proposal involves alterations to allow the footway to the front of 77-83 London Road to be extended and widened to achieve 2.5m width.

6.11.7. A visibility splay is also proposed so that drivers of vehicles entering and leaving the site have appropriate sightlines. A dedicated pedestrian crossing point over the driveway entrance to the site is proposed with tactile paving to direct pedestrians to cross in appropriate locations (and on the desire line).

6.11.8. The application was referred to KCC Highways who requested further information in relation to swept path analysis and to ensure parking spaces in the proposed car ports would be large enough. The further and revised information was provided and KCC Highways advised that the details are acceptable.

6.11.9. In relation to car parking, KCC Highways advised that the parking provision is acceptable, and this has been accompanied with swept path drawings which demonstrates there is sufficient manoeuvring space. The proposals include 24 parking spaces for future residents, in addition 2 visitor car parking spaces are proposed. Secure cycle storage for 30 bicycles is proposed and parking for 3 motor bikes is also included.

6.11.10. The Transport Statement accompanying the application considered the Council's parking standards and local car ownership rates in establishing the proposed number of car parking spaces.

6.11.11. Concerns have been raised in the consultation responses from residents that on-street parking in the area near the site is under pressure and therefore the development has the potential to worsen the situation. Whilst it is acknowledged that there are limited on street parking restrictions, the site is within walking distance of the town centre and railway station. There is a bus stop close to the site entrance on London Road. No objection has been raised by the Highway Authority in relation to the proposed parking (which includes parking for car, motor bikes and bicycles), while concerns raised in

neighbour objections to parking are acknowledged, in this case the proposed parking provision has been justified and considered to be in accordance with the Council's Parking Standards.

- 6.11.12. If approved, conditions should be imposed on any planning permission to ensure parking spaces are allocated appropriately to the new dwellings, and that the spaces are maintained for the life of the development. A Residential Travel Plan is also recommended to implement a package of measures designed to reduce the number of car journeys from the development through supporting sustainable modes of transport. This is to be secured as part of the s106 as set out in section 6.13 below.
- 6.11.13. In terms of trip generation and traffic congestion, the Transport Statement uses appropriate methods to establish trip rates and then established a baseline for existing traffic on the network, and anticipated traffic levels when the development could be occupied. The analysis shows that the development is expected to result in a negligible impact on the local highway network and certainly not a "severe" impact.
- 6.11.14. The KCC Highway Officer advised that based on the expected proportion of vehicle trips generated from the development that could be expected to travel through the Key Street roundabout a contribution of £36,000 is required towards recovering the HIF money associated with the Key Street highway improvement.
- 6.11.15. Subject to conditions and planning obligations (which are recommended) the proposal would comply with Local Plan Policies CP2, DM6 and DM7.

6.12. Air Quality

- 6.12.1. The importance of improving air quality in areas of the borough has become increasingly apparent over recent years. Legislation has been introduced at a European level and a national level in the past decade with the aim of protecting human health and the environment by avoiding, reducing or preventing harmful concentrations of air pollution.
- 6.12.2. The NPPF states that the planning system should contribute to and enhance the natural and local environment by preventing new/existing development from contributing to or being put at unacceptable risk from, or being adversely affected by, inter alia, unacceptable levels of air pollution. It also requires the effects of air pollution and the potential sensitivity of the area to its effects to be taken into account in planning decisions.
- 6.12.3. The Planning Practice Guidance on Air Quality (paragraph 005 Reference ID 32-005-20191101 states that:
"whether or not air quality is relevant to a planning decision will depend on the proposed development and its location. Concerns could arise if the development is likely to generate air quality impact in an area where air quality is known to be poor. They could also arise where the development is likely to adversely impact upon the implementation of air quality strategies and action plans and/or, in particular, lead to a breach of EU legislation....."
- 6.12.4. The Local Plan at Policy DM6 sets out that development proposals will integrate air quality management and environmental quality into the location and design of, and access to development and in so doing, demonstrate that proposals do not worsen air quality to an unacceptable degree.
- 6.12.5. The applicant has undertaken an Air Quality Assessment in support of this proposal, this sets out the likely sources of air quality impacts during the construction and operational

phases, subject to conditions to control dust during construction, impacts could be mitigated.

- 6.12.6. Modelling of emissions from traffic associated with the proposal was undertaken and the results show that air quality would remain within the relevant air quality standards with the development. From a technical standpoint the analysis in the Air Quality Assessment shows that traffic emissions would not be ‘significant’ (below the threshold for mitigation).
- 6.12.7. The Air Quality Assessment was referred to the Environmental Health Officer who accepted the findings. Subject to conditions to ensure dust created during the construction period was appropriately controlled, no objection was raised.
- 6.12.8. The Air Quality Assessment also modelled how future residents may be impacted by air quality and levels would be within Air Pollution Exposure Criteria ‘A’ (this is the criteria where air quality would not provide a ground for refusal).
- 6.12.9. Relevant conditions are recommended and subject to these the application would accord with Local Plan Policy DM6.

6.13. Community Infrastructure/Planning Obligations

- 6.13.1. The National Planning Policy Framework attaches importance to ensuring that a sufficient choice of school places are available to meet the needs of existing and new communities. This is reflected in Policies CP5 and CP6 of the Local Plan, which set out that provision shall be made to accommodate local community services, social care and health facilities within new developments.
- 6.13.2. As with any planning application, any request for financial contributions needs to be scrutinised in accordance with Regulation 122 of the Community Infrastructure Regulations 2010 (which were amended in 2014). These stipulate that an obligation can only be a reason for granting planning permission if it is:
- Necessary.
 - Related to the development.
 - Reasonably related in scale and kind.
- 6.13.3. The following table outline the financial and other planning obligations that have been sought by Kent County Council and Swale Borough Council and other relevant consultees to mitigate the impact of the development upon services, these obligations are for specific projects which have been identified and assessed by Officers to comply with the Regulations (as amended).

Requirement	Value	Towards
Ecology		
SAMMS payment	£7,223.15	North Kent Strategic Access Management and Monitoring Strategy.
Affordable housing		
	2 dwellings	First Homes
KCC		
Secondary Education Contribution	£20,952	Towards a new Secondary School
SEND Build	£2,099.40	SEND contribution to be applied towards additional places in Swale district

Community Learning	£547.36	Additional equipment and resources at Adult Education Centres including at Sittingbourne and outreach provision to increase capacity in the service.
Integrated Children's Service	£1,184.80	Additional resources and equipment to provide outreach services in the vicinity of the development.
Library Book stock	£1,002.08	Additional resources, equipment and book stock (including reconfiguration of space) at local libraries serving the development, including at Sittingbourne.
Adult Social Care	£2,894.08	Towards Specialist care accommodation, assistive technology systems and equipment to adapt homes, adapting Community facilities, sensory facilities, and Changing Places within the Borough All Homes built as Wheelchair Accessible & Adaptable Dwellings in accordance with Building Regs Part M 4 (2).
Waste	£3,106.08	Towards additional capacity at the Sittingbourne HWRC & WTS.
Bins	1 x 1100ltr refuse bin per 5 flats @ £903.60 per bin 1 x 1100ltr recycling bin per 5 flats @ £903.60 per bin 1 x 140ltr food bin per 5 flats @ £82.20 per bin 1 x 5ltr kitchen caddy per flat @ £10.80 (added). Total £10,494.36	Waste and recycling storage
Open space and sport		
Sport and open space	Formal Sports contribution - £681.81 per applicable dwelling. £15,681.63 Play, young people space contribution – £512.80 per dwelling. £11,794.40	Local areas of open space and play space, space for children and sports facilities
Highways		
Highways and transportation	Highway Authority will seek a contribution of £36,000 based on the recovery formula being applied to planning proposals.	Planned highway capacity improvements at the Key Street roundabout.

Highways and transportation	Residential Travel Plan	Promoting sustainable forms of travel
NHS		
Health	Total £13,708	Towards refurbishment, reconfiguration and/or extension of London Road Surgery and/or The Chestnuts Surgery and/or The Meads Surgery and/or Grovehurst Surgery and/or Greenporch Partnership Milton Regis Surgery and/or The Memorial Medical Centre and/or towards new healthcare facilities within the Sittingbourne area. The obligation should also include the provision for the re-imbursment of any legal costs incurred in completing the agreement.
Monitoring fee	5% of financial contributions	Monitoring of the legal agreement.

6.13.4. Officers have been mindful of the fact that there are 7 existing dwellings on site that are to be retained. A further 4 existing properties would be demolished. Officers have made an allowance for this in making sure the contributions are proportional to the additional impact of the development. Subject to securing the obligations, the application would accord with Policies CP5, CP6, DM8, DM17 and DM28 of the Local Plan.

6.14. Open Space

6.14.1. Local Plan Policy CP7 requires developments to promote the expansion of Swale's natural assets and green infrastructure. Policy DM17 of the Local Plan sets out that new housing development should make provision for appropriate outdoor recreation and play space proportionate to the likely number of people who will live there. This space should be fully accessible all year round.

6.14.2. The policy recognises that in some cases (such as smaller sites) it may not be appropriate to make provision for new open space and sports facilities on-site, make contributions to the off-site funding of facilities to meet local deficiencies or to the qualitative or quantitative improvement of existing provision.

6.14.3. On the site there is a communal amenity area west of Block A which would provide approximately 600sqm of external amenity for future residents. Further areas of open space and landscaping are proposed around the buildings.

6.14.4. Whilst more space could be provided, this has been reserved as a wildlife habitat area for protected species (slow worms) towards the western end of the site.

6.14.5. Balconies are also proposed. There are areas of flat roof, however these are proposed to be used as either green roof area or areas where solar voltaic panels would be located.

6.14.6. Policy DM17 of the Local Plan sets out various open space typologies and the amounts of space that would be required for residential development.

Typology	Policy DM17 requirement (ha per 1,000 person)	Scheme requirement (ha)	Proposed (ha)	Short fall (ha)
Parks and gardens	1.1	0.04	0	0.04
Natural and semi natural greenspace	4.36	0.17	0.18	No
Formal outdoor sport	1.09	0.04	0	0.04
Amenity Greenspace	0.45	0.02	0.06	No
Provision for children and young people	0.24	0.01	0	0.01
Formal Play facilities			off site	
Allotments	0.2	0.01	0	0.01

6.14.7. As the table above shows, there is a shortfall in the following open space typologies:

- Parks and gardens,
- Formal outdoor sport,
- Provision for children and young people,
- Formal play facilities, and
- Allotments.

6.14.8. Given the size of the site, parks, gardens, outdoor sport, provision for children and play space and allotments are not proposed on site. Policy DM17 of the Local Plan states that where provision for new open space and sports facilities on site isn't provided, contributions to off-site funding can be made.

6.14.9. The Council's Green Spaces Manager advised that financial contributions are required to ensure provision for formal sport, provision for children and young people, formal play facilities have sufficient capacity to cope with the future population living on site.

6.14.10. Officers have taken account of the fact that there are existing dwellings on the site. A financial contribution of £27,476.03 would be required.

6.14.11. There is publicly accessible open space approximately 100m to the east of the site (off Johnson Road), where funding can be directed to enhance the capacity of the park. Formal sporting facilities also exist in Sittingbourne (where funding can be directed to increase capacity to cope with additional population living in the scheme).

6.14.12. There would still be a shortfall on site for parks, gardens and allotments, in view of funding that would be directed to open space and play space in the nearby park (off Johnson Road) this could contribute towards wider enhancements of the park, no objection is raised in terms of the shortfall of on-site parks and gardens.

6.14.13. There are existing allotments at Homewood Road, and Staplehurst Road, which are in relative proximity to the site, it is considered these sites can provide suitable local provision.

6.14.14. Taking account of the on-site proposals and the proximity of existing public open space and subject to a planning obligation to fund capacity enhancements sufficient

to cater for the uplift in residents that would be living on the site, the proposal would accord with Policy DM17 of the Local Plan.

6.15. Flood Risk, Drainage and Surface Water

- 6.15.1. The NPPF states that local planning authorities should ensure that flood risk is not increased elsewhere and that any residual risk can be safely managed. This is reflected in Policy DM21 of the Local Plan.
- 6.15.2. The entire site is located in Flood Zone 1, which is the zone with the lowest probability of fluvial/tidal flooding, and access can be achieved from the adjacent road networks, that will be free from fluvial/tidal flooding.
- 6.15.3. Part 4 of Local Plan Policy DM21 states that development should include where possible, sustainable drainage systems (SuDS) to restrict runoff to an appropriate discharge rate, maintain or improve the quality of the receiving watercourse, to enhance biodiversity and amenity and increase the potential for grey water recycling.
- 6.15.4. The application is accompanied by a drainage strategy, which proposes to manage the surface water from the impermeable areas of the site through discharging it at a rate of 5l/s into the existing combined sewer.
- 6.15.5. The strategy has assumed that infiltration will not be viable due to risk from soluble rocks and the area being within a high groundwater vulnerability zone. The KCC LLFA has advised that whilst there are concerns around soluble rocks and groundwater vulnerability, further studies should be undertaken to demonstrate that infiltration is not feasible.
- 6.15.6. No objection has been raised to flood risk or drainage proposals by the Environment Agency or the KCC LLFA.
- 6.15.7. The KCC LLFA recommended a condition be imposed on any planning permission to secure a detailed sustainable surface water drainage scheme (to include further feasibility testing of infiltration). Further conditions should be imposed on any planning permission to verify that the drainage strategy (once implemented) actually functions as proposed. Subject to these conditions (which are recommended) the application would accord with Local Plan Policy DM21.

6.16. Contamination

- 6.16.1. The NPPF states that local planning authorities should ensure that the site is suitable for its new use taking account of various matters, including pollution arising from previous uses.
- 6.16.2. The Applicant has submitted a contamination assessment along with the application. This identifies that the main potential contamination sources on the site are from the probable asbestos roofing on several of the existing structures, gas canisters and several waste containers.
- 6.16.3. Further investigation for asbestos is required, along with remediation and removal if found.
- 6.16.4. A petrol station located adjacent to the site to the north stands as a potential off-site contamination source. However, the petrol station is at a lower elevation than the site and appears to be in good upkeep (there is a low risk that the site has been contaminated due to the petrol station).

- 6.16.5. The historic and current use of the site as housing is considered to be a Low/Moderate risk as a potential contamination source to off-site occupiers, future occupiers and construction workers.
- 6.16.6. The future use of the site as several residential structures, parking space and open land is considered to be a low risk for causing contamination to on or off-site users.
- 6.16.7. The actual presence of contamination in, on, or under the ground can only be confirmed by an intrusive site investigation. An intrusive site investigation, with analysis of soil samples, would confirm whether the site comes with a legacy of land contamination due to its historic uses. Subject to conditions to secure further testing and a remediation strategy should it be required, the application would accord with paragraph 189 of the NPPF and no objection is raised.

6.17. Living Conditions

Existing residents

- 6.17.1. The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers. Local Plan Policy DM14 sets out general design criteria and states in part that that all development proposals will be both well sited and of a scale, design, appearance and detail that is sympathetic and appropriate to the location. The policy also requires proposals to cause no significant harm to amenity and other sensitive uses or areas.
- 6.17.2. Construction activities generate noise and disturbance with the potential to harm the living conditions of existing residents. Conditions are recommended to secure a Construction Management Plan to mitigate impacts during construction.
- 6.17.3. Most of the proposed development is set well away from existing residential occupiers, however there are instances where there are close adjacencies, specifically where the site adjoins 2 Borden Lane.
- 6.17.4. The proposed southern elevation of Block A would be set back from the dwelling at 2 Borden Lane by approximately 6.5m. Whilst the set back is limited it is noted that there is a single window at ground floor level in the northern (side) elevation of 2 Borden Lane facing the application site. Windows in the proposed new building are proposed to be obscure glazed where they would directly face towards the side elevation of 2 Borden Lane. This would ensure there would be no undue loss of privacy of the dwelling at 2 Borden Lane.
- 6.17.5. As Block A increases in height, the massing is set back away from 2 Borden Lane, which improves the visual relationship between the buildings and reduces the bulk of the new block when viewed from the neighbouring property.
- 6.17.6. Block A extends approximately 18 beyond the rear of the dwelling at 2 Borden Lane, as Block A extends rearward, it also sets back away from the side (northern) elevation, such that the proposal is approximately 13m from the northern boundary with the rear garden of 2 Borden Lane. The set back and modulation of the proposed building (as it approaches the edge of the site) help to ensure there would be no overly dominant impact.
- 6.17.7. Given the position of the proposed Block A in relation to 2 Borden Lane, and the orientation and path of the sun, there would be no undue loss of sunlight or daylight to the existing building or to the rear garden.

- 6.17.8. Subject to conditions to control construction impacts and to ensure relevant windows are obscure glazed the proposal would accord with Local Plan Policy DM14, as such no objection is raised in terms of impacts to living conditions of existing occupiers.

Future residents

- 6.17.9. Policy DM14 of the Local Plan provides general development criteria and requires that development does not result in significant harm to amenity (including that of future occupiers of development).
- 6.17.10. New development is expected to offer future occupiers a sufficient standard of accommodation and to have regard to the Government's minimum internal space standards for new dwellings.
- 6.17.11. New residential development should generally provide dual-aspect accommodation and overlooking between dwellings on the site (as well as to neighbours) should be avoided.
- 6.17.12. The proposed new dwellings in Block A are dual aspect and the distances between proposed properties achieves at least 21m separation between facing windows. Flats in Block C would all be dual aspect.
- 6.17.13. The rear (southern) elevation of Block C would be approximately 8m from the northern elevation of Block B. However, there are no habitable room windows in the northern elevation of Block B and as such there would not be an opportunity for overlooking.
- 6.17.14. It is acknowledged that 4 of the flats to be retained in Block B would be single aspect, however none are single aspect north facing and as such would still receive good levels of natural light, and in view of the fact this is an existing situation, no objection is raised.
- 6.17.15. The Technical housing standards – nationally described space standard (2015) sets out internal space standards for new dwellings. All of the newly created dwellings would comply with relevant nationally described space standards.
- 6.17.16. There are 2 existing flats in Block B which do not meet the space standards, however looking at the situation, in some cases the shortfall is minor (e.g., approx. 1sqm) and officers acknowledge that this is an existing situation. In addition, the units are considered to be of a configuration that allows for adequate furniture to be accommodated and day-to-day activities within the units. The Borough has not adopted the Technical housing standards and taking account the fact that all new dwellings would comply, no objection is raised.
- 6.17.17. The flats all benefit from access to communal (external) amenity space. At the lower levels of Block C, rather than featuring balconies, the internal floor space is more generous. At the upper levels of Block C, the built form has been set back and balconies are proposed. The ground level changes around Block C mean that the ground floor flats would not be easily overlooked from London Road or the access road into the site.
- 6.17.18. The ground levels around Block A are more level, and it would be possible for overlooking of the ground floor flats to occur from external amenity space, as such a condition should be imposed on any planning permission to ensure there is a sufficient barrier (such as a railing and landscaping) between communally accessible amenity space and ground floor windows in Block A.

- 6.17.19. The ground floor habitable room windows of flats in the northern elevation of Block would look out over a landscaped area (but not an area used for external amenity space), these windows would not be overlooked by those using the external amenity space.
- 6.17.20. It is noted that it is proposed to have landscaping to the front of the main living room windows in flats 2 and 3 of Block A, this would provide a buffer between residents using external amenity space and occupants of flats 2 and 3 of Block A.
- 6.17.21. In conclusion, subject to conditions, the application is considered to accord with Local Plan Policy DM14 and as such no objection is raised in relation to living conditions of existing or future residents.

6.18. Sustainability / Energy

- 6.18.1. Policy DM19 of the Local Plan requires development proposals to include measures to address climate change. The Council requires residential developments to include a renewable energy assessment, and energy and carbon reduction proposals are set out in the Applicant's submission.
- 6.18.2. It is proposed that the new build elements of the scheme are designed with a 'fabric first' approach to accord with sustainable construction methods. The proposed scheme aims to achieve a high sustainability performance through the following means:
- Minimise energy consumption through passive design.
 - Maximise daylight whilst minimising unwanted solar gain.
 - Create visually, thermally and acoustically comfortable environments.
 - Employ high efficiency plant and distribution services to cut carbon emissions.
 - Water conservation.
- 6.18.3. Energy efficient light fittings, white goods and fixtures with water efficient fixtures and fitting are proposed. The building design is proposed to achieve high thermal performance (through a high standard of insulation). The overall sustainability strategy inherent within the design will accord with the objectives of the NPPF which supports the prudent use of natural resources and encourages the appropriate use of renewable energy sources.
- 6.18.4. Part (S) of Building Regulations (as from June 2022) requires all new build homes to have Electric Vehicle Charging Points, the Applicant has committed to this which is acceptable. Given that the provision of EVCP is a requirement of the Building Regulations, it is not necessary to impose a condition on any planning permission to secure this.
- 6.18.5. A condition should be imposed on any planning permission to ensure details are provided (prior to the construction of any dwelling) setting out the materials and measures to be used to increase energy efficiency and thermal performance and reduce carbon emissions and construction waste and reduce carbon emissions by 50% for new dwellings compared to current regulations (Building Regulations Part L1a 2013).
- 6.18.6. Further conditions should be imposed on any planning permission to control excessive water consumption. Subject to the conditions, the application would comply with Policy DM19 of the Local Plan, and as such no objection is raised.

6.19. Other matters6.19.1. Phasing

6.19.2. Concerns were raised in consultation responses that it would not be acceptable to allow the demolition of existing housing without some certainty that the proposed new housing (and associated benefits) will actually proceed. Previous attempts to develop the site to replace the building damaged by fire have stalled, and the site has been largely derelict for over a decade. Given that the dwellings to be demolished are non-designated heritage assets, it is important these buildings are not lost without some certainty that the benefits the new housing would bring will materialise.

6.19.3. In response to this concern the Applicant submitted a phasing plan, the phasing is logical, but lacks commitments to the timing for completion of each phase, nor has any contractual information been provided to confirm agreements are in place with building contractors.

6.19.4. A condition should be imposed on any planning permission to ensure the buildings at 77 to 83 London Road are not demolished before a contract is in place for carrying out the redevelopment of the site.

6.19.5. Equalities and Human Rights

6.19.6. The proposals include demolition of existing housing, and this would displace existing residents occupying the housing. As such consideration has been given to the implications of displacement in terms of equalities and human rights.

6.19.7. Human rights: overview

6.19.8. In line with the Human Rights Act 1998, it is unlawful for a public authority to act in a way which is incompatible with a Convention right, as per the European Convention on Human Rights. The human rights impacts that are most relevant to planning are Article 1 of the First Protocol (Protection of property), Article 8 (Right to respect for private and family life) and Article 14 (Prohibition of discrimination) of the Convention.

6.19.9. Where the peaceful enjoyment of someone's home and/or their private life is adversely affected, their Article 8 (Art 8) and/or Article 1 of the First Protocol (A1P1) rights may be engaged.

6.19.10. A1P1 and Art 8 rights are both what are known as 'qualified rights', that is, they are not absolute rights but involve some form of balancing exercise between the rights of the state to take various steps and the rights of the individual or other affected body/organisation.

6.19.11. In the case of RLT Built Environment Ltd v Cornwall Council (a judicial review from 2016), the Court drew out a number of points concerning how to approach the loss of a home in the context of the planning process. The points set out by the Court were as follows:

i) Article 8 does not give a right to a home, or to a home in any particular place.

ii) However, where someone has a home in a particular dwelling, it may interfere with the article 8 rights of him and/or his family to require him/them to move.

iii) Whilst those rights demand "respect", they are of course not guaranteed. In this context, as much as any other, the public interest and/or the rights and interests of others may justify interference with an individual's article 8 rights.

iv) Where article 8 rights are in play in a planning control context, they are a material consideration.

- 6.19.12. Any interference in such rights caused by a planning decision has to be balanced with and against all other material considerations. That balancing exercise is one of planning judgment.
- 6.19.13. Article 8 rights are important, but it is not to be assumed that, in an area of social policy such as planning, they will often outweigh the importance of having coherent control over town and country planning.
- 6.19.14. Equalities: overview
- 6.19.15. In line with the Public Sector Equality Duty ('PSED') the Council must have due regard to the need to eliminate discrimination and other forms of less favourable treatment such as harassment and victimisation, and to advance equality of opportunity and foster good relations as between persons who share a protected characteristic and persons who do not share it. The PSED is set out in section 149 of the Equality Act 2010. A protected characteristic for these purposes is age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- 6.19.16. In planning terms, the potential impacts of a proposal should be addressed by the decision-maker as a material consideration.
- 6.19.17. Existing occupiers
- 6.19.18. The development would result in the demolition of 4 dwellings that are immediately adjacent to London Road. The dwellings are currently occupied.
- 6.19.19. All existing tenants are on Assured Short Hold Tenancies which require the landlord to give a minimum of two months' notice. Notwithstanding this the applicant has advised that they would give tenants a longer period of notice (4 to 5 months). The applicant also highlights that if a tenant does not move out in the required notice period there is then another period of time given to tenants, whilst an adjudication is made through the eviction process.
- 6.19.20. The Applicant has advised that if the Planning Committee resolve to approve the application, the applicant would look to serve notice on tenants once a decision has been issued (following finalisation of any S106 legal agreement).
- 6.19.21. The Applicant advised that the tenants were made aware when they moved into the existing dwellings that redevelopment was proposed, and the tenants were informed again when the planning application was submitted.
- 6.19.22. Effect of displacement - residential occupiers
- 6.19.23. As regards Art 8 rights (that is, the right in respect of the home and private life), the application has been assessed on the basis that the right is engaged by the loss of the existing homes. The existing occupiers would be required to find alternative accommodation. The question is whether the interference with the rights of affected individuals can be considered proportionate and necessary and justified under the Art 8.
- 6.19.24. This involves weighing the interference against other material considerations in order to arrive at a fair balance between the interests of the individual and the interests of the community as a whole.
- 6.19.25. The occupiers would have to move and moving can be disruptive for those affected. Some groups (namely children, young people, older residents, those with disabilities and/or long-term health problems, pregnant women and those on maternity/paternity

absence, ethnic minorities, and low-income households) are likely to be more sensitive than others to displacement.

6.19.26. The benefits of the scheme include:

- The development would bring forward jobs and spending during the construction phase.
- The proposed development would be of a design that would positively respond to its surroundings.
- The proposal would bring a brownfield site back into use within the designated settlement boundary of Sittingbourne.
- The proposal includes delivering housing including affordable housing in an accessible location.
- The Council doesn't have a 5-year supply of housing, the proposal would contribute to meeting the objectively assessed need for housing in the borough.
- The proposed development has been designed in accordance with sustainability principles, it would achieve more than the minimum Biodiversity Net Gain requirements and include measures to offset carbon.
- Block B is to be refurbished and measures would be included to improve the environmental performance of that existing building.

6.19.27. Taking into account the nature of the impact on the existing occupiers, it is considered that the benefits of the proposed development, which are in the public interest, would outweigh any interference with the rights of the individual under Art 8.

6.19.28. In terms of A1P1 rights, officers have proceeded on the basis that this right is engaged by virtue of the loss of the existing residential dwellings. That interference can be regarded as being in the general interest (the operation of the planning system is a legitimate interest of the state).

6.19.29. In officers' assessment, taking account of the nature of the impact on existing residential occupiers and the public benefits of the scheme, a fair balance is arrived at between the protection of the rights of affected individuals and the interests of the wider community and a disproportionate or excessive burden would not be imposed.

6.20. Conclusion

6.20.1. The application would bring forward housing including affordable housing on what is a brownfield site within the built-up boundary of Sittingbourne.

6.20.2. The Council cannot demonstrate a 5-year supply of housing, as such the policies for the supply of housing are not up-to-date. In such circumstances, the so-called 'tilted balance' is engaged. Any adverse impacts identified would need to significantly and demonstrably outweigh the benefits of the scheme in order to overcome the tilted balance.

6.20.3. In this case, no adverse impacts have been identified that would significantly and demonstrably outweigh the benefits of the scheme.

6.20.4. Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 are clear that planning applications must be determined in accordance with the Statutory Development Plan unless material considerations indicate otherwise. Development that accords with the Development Plan should be allowed.

6.20.5. Officers are of the view that the proposed development accords with the Development Plan and would bring forward considerable benefits.

6.21. Recommendation

6.21.1. Approve subject to conditions and a S106 legal agreement to secure the necessary planning obligations.

CONDITIONS

1. The development to which this permission relates must be begun not later than the 3 years of the date of this planning permission.

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 take place in accordance with the following plans and documents:

Drawing numbers 7460-PD-02, 7460 - PD2-01, 7460-PD2-03 Rev D, 7460 - PD2-04 Rev B, 7460-PD2-05 Rev B, 7460 - PD2-06 Rev B, 7460 - PD2-07 Rev B, 7460 - PD-08, 7460 - PD2-09, 7460 - PD2-10 Rev A, 7460 - PD2-11 Rev B, 7460 - PD2-13, 7460 - PD2-14, 7460 - PD2-15, 7460 - PD2-20, 7460 - PD2-50 Rev B, ITL17299-GA -007 Rev B, PJC.1158.001 Rev D, PJC.1158.002 Rev D.

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

3. No development beyond the construction of foundations shall take place until details of the external finishing materials to be used on the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority.

Material samples and sample panels shall be placed/ erected on the site before the application to discharge the condition is submitted.

Thereafter the development shall be built in accordance with the approved details.

Reason: In the interest of visual amenity.

4. No development beyond the construction of foundations shall take place until full details of both hard and soft landscape works and a Landscape Management and Maintenance Plan for areas of landscaping (not included in the ecological area of retained scrub) have been submitted to and approved in writing by the Local Planning Authority. These details shall include:

- Existing trees, shrubs and other features;
- Planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity);
- Plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials;
- Hard landscaping
- Details of railings and soft landscaping to create a buffer to the front of ground floor windows to Block A to prevent undue overlooking of habitable room windows from the external amenity space.

- Timetable for implementation

All hard and soft landscape works shall be implemented in accordance with the approved details. Ongoing management and maintenance of landscaped areas shall thereafter accord with the approved management and maintenance details.

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 and within whatever planting season as may be agreed in writing with the Local Planning Authority.

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

6. No development shall take place until a strategy to deal with the potential risks associated with any contamination of the site has been submitted to, and approved in writing by, the Local Planning Authority. This strategy will include the following components:

1. A site investigation scheme, based on the Preliminary Risk Assessment to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
2. The results of the site investigation and the detailed risk assessment referred to in (1) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
3. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (2) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean. Any changes to these components require the written consent of the local planning authority.

The scheme shall be implemented as approved.

Reason: To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution. The objectives and purposes of this condition are such that it is required to be complied with before commencement. As such, those objectives and purposes would not be met if expressed other than as a pre-commencement condition.

7. Prior to any part of the development being occupied a verification report demonstrating the completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to, and

approved in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.

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

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

Reason: To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution from previously unidentified contamination sources at the development site.

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

Reason: To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution caused by mobilised contaminants.

10. No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The document shall be produced in accordance with the Code of Construction Practice and BS5228 Noise Vibration and Control on Construction and Open Sites, the Control of Dust from Construction Sites (BRE DTi Feb 2003) and the Institute of Air Quality Management (IAQM) 'Guidance on the Assessment of Dust from Demolition and Construction'. The Construction Management Plan shall include the following detail:

- (a) Routing of construction and delivery vehicles to / from site
- (b) Parking and turning areas for construction and delivery vehicles and site personnel
- (c) Timing of deliveries
- (d) Provision of wheel washing facilities
- (e) Temporary traffic management / signage

The construction of the development shall then be carried out in accordance with the approved methodology.

Reason: To protect the amenity of nearby occupiers and prevent pollution. The objectives and purposes of this condition are such that it is required to be complied with before commencement. As such, those objectives and purposes would not be met if expressed other than as a pre-commencement condition.

11. No construction work in connection with the development shall take place on any Sunday or Bank or Public 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: Reason: To protect the amenity of nearby occupiers.

12. No development shall take place until a detailed sustainable surface water drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The detailed drainage scheme shall demonstrate that due consideration has first been given to the possibility of utilising infiltration techniques (roof runoff areas only) and that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100-year storm) can be accommodated and disposed of within the curtilage of the site without increase to flood risk on or off-site. Should the use of infiltration prove to be beyond being reasonable practical then any surface water leaving site shall not exceed a discharge rate of 5l/s for all rainfall events. The drainage scheme shall also demonstrate that silt and pollutants resulting from the site use and construction can be adequately managed to ensure there is no pollution risk to receiving waters.

The development shall thereafter be implemented in accordance with the approved details.

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

13. No building hereby permitted shall be occupied until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority. The Verification Report shall demonstrate that the drainage system constructed is consistent with that which was approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.

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

14. The development hereby approved shall achieve 'Secured by Design' accreditation awarded by the Kent Police. The development shall not be occupied until accreditation has been achieved and details have been submitted to and approved in writing by the Local Planning Authority.

Reason: In pursuance of the Council's duty under section 17 of the Crime and Disorder Act 1998 to consider crime and disorder implications in excising its planning functions; to promote the well-being of the area in pursuance of the Council's powers under section 2 of the Local Government Act 2000 and the Construction (Design and Management) Regulations 2007.

15. No development shall take place above foundation level until details of the measures to be undertaken to achieve at least a 50% reduction in Dwelling Emission Rate compared to the Target Emission Rates as required under Part L1A of the Building Regulations 2013 (as amended) for the development of the 20 new dwellings has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.

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

16. Prior to commencement of works to Block B, details of the materials and measures to be used to increase energy efficiency, thermal performance and to reduce carbon emissions shall be submitted to and approved in writing by the local planning authority.

The development shall be carried out in accordance with the approved materials and measures.

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

17. The development hereby permitted shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and no residential unit(s) shall be occupied until details of the measures used to achieve the rate for that unit(s) have been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of water conservation and sustainability.

18. The development shall accord with the noise mitigation measures set out in the Acoustic Report (ref: 0053191-0820-EN-RP-0001 R01 dated 17/5/23).

The rating level of noise emitted from the proposed plant and equipment to be installed on the site (determined using the guidance of the current version of BS 4142 for rating and assessing industrial and commercial sound) shall be 5dB below the existing measured background noise level LA90, T.

Reason: To protect the amenity of future and existing occupiers.

19. Prior to the first use of the electricity substation an acoustic report assessing the impact of the substation shall be submitted to and approved in writing by the Local Planning Authority. The report shall address the issue of noise (including low frequency noise) and vibration from the substation to ensure that there is no loss of amenity to residential or commercial properties.

For residential accommodation, the scheme shall ensure that the low frequency noise emitted from the substation is controlled so that it does not exceed the Low Frequency Criterion Curve for the 10 to 160Hz third octave bands inside

residential accommodation as described in The DEFRA Procedure for the assessment of low frequency noise complaints 2011 (NANR45).

The electrical substation equipment shall be maintained in a condition so that it complies with the levels and mitigation measures specified in the approved acoustic report, whenever it is operating.

After installation of the approved plant no new plant shall be used without the written consent of the Local Planning Authority.

Reason: To protect the amenity of future and existing occupiers.

20. Prior to the first occupation of the development, a parking allocation plan shall be submitted to and approved by the Local Planning Authority. The vehicle parking spaces shown on approved plans (7460-PD2-03 Rev B and 7460 - PD2-05 Rev A) shall be completed, made available for use (in accordance with the parking allocation plan) and shall be retained thereafter.

Reason: To enable the Local Planning Authority to retain control of the development in the interests of highway safety.

21. Prior to the first occupation of the development, the cycle parking facilities shall be provided as shown on the approved plans (7460-PD2-03 Rev B, 7460 - PD2-50 Rev B and 7460 - PD2-05 Rev A) and thereafter retained for such use.

Reason: For the avoidance of doubt, and to enable the Local Planning Authority to retain control of the development in the interests of highway safety.

22. No of development shall take place until detailed designs for the vehicle access as indicatively shown on the submitted plans (drawing number: 7460-PD2-03) have been submitted to and approved by the Local Planning Authority.

No occupation of any dwellings shall take place until the approved vehicle access and any other associated highways works have been completed in accordance with a Section 278 agreement with the Highway Authority.

Reason: In the interests of highway safety and pedestrian amenity. The objectives and purposes of this condition are such that it is required to be complied with before commencement. As such, those objectives and purposes would not be met if expressed other than as a pre-commencement condition.

23. Before the first occupation of a dwelling / premises the following works between that dwelling / premises and the adopted highway shall be completed as follows:

- (A) Footways and/or footpaths shall be completed, with the exception of the wearing course;
- (B) Carriageways completed, with the exception of the wearing course, including the provision of a turning facility beyond the dwelling together with related:
 - (1) highway drainage, including off-site works,
 - (2) junction visibility splays (with no obstructions over 0.9metres above carriageway level within the splays),

Reason: In the interests of highway safety.

24. Prior to the occupation of any of the dwellings, details of all external lighting and a timetable for implementation shall be submitted to and approved by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details and retained thereafter.

Reason: To ensure no unacceptable impact on any protected bat species.

25. All mitigation and enhancement measures and works shall be carried out in accordance with the details contained in the Phase 2 Ecological Survey Report (PJC, October 2022). This shall include the appointment of an appropriately competent person e.g., an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

Reason: To conserve and enhance protected and Priority species and allow the LPA to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species).

26. No development shall take place above foundation level until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the Local Planning Authority. The LEMP shall set out a long-term strategy (minimum of 30 years) detailing how all habitat mitigation, compensation and enhancement measures (including habitat creation, enhancement and succession initiatives) used to inform the BNG Design Stage report (ref: 4862E/22/01), will be delivered through initial landscape works and long-term future management and monitoring of the development site. The LEMP will include measures to maximise biodiversity net gain on site and seek to achieve at least 10% biodiversity net gain where possible along with a timetable for implementation.

The development shall be implemented in accordance with the approved details.

Reason: In the interests of enhancing biodiversity and to positively address concerns regarding climate change.

27. No development shall take place until a Biodiversity Enhancement Strategy for Protected and Priority species has been submitted to and approved in writing by the Local Planning Authority. The content of the Biodiversity Enhancement Strategy shall include the following:
- a) purpose and conservation objectives for the proposed enhancement measures;
 - b) detailed designs to achieve stated objectives;
 - c) locations of proposed enhancement measures by appropriate maps and plans;
 - d) persons responsible for implementing the enhancement measures;
 - e) details of initial aftercare.
 - f) a statement demonstrating how the proposal will maximise biodiversity net gain on site and detailing how all habitat mitigation, compensation and enhancement measures (including habitat creation, enhancement and succession initiatives) used to inform the BNG Design Stage report (ref: 4862E/22/01), will be delivered through initial landscape works and long-term future management and monitoring of the development site.

The works shall be implemented in accordance with the approved details prior to occupation and shall be retained thereafter.

Reason: To enhance protected and Priority species & habitats and allow the LPA to discharge its duties under the s40 of the NERC Act 2006 (Priority habitats & species). The objectives and purposes of this condition are such that it is required to be complied with before commencement. As such, those objectives and purposes would not be met if expressed other than as a pre-commencement condition.

28. The development shall be carried out in accordance with the tree protection measures set out in the Arboricultural Impact Assessment PJC/6124/23-02 Rev 02 including:
- Initial tree works,
 - Tree protection barriers,
 - Storage and handling of harmful chemicals,
 - Contractor facilities,
 - Demolition of existing building adjacent to G13,
 - Excavating building footings and basement parking adjacent to the root protection areas of T7 and G9,
 - Replacing existing hardstanding within root protection area of G9,
 - Installing new permanent fencing within root protection areas,
 - Soft landscaping within root protection areas,
 - Pre-commencement arboricultural consultancy input,
 - Pre-commencement meeting,
 - Arboricultural supervision,
 - Arboricultural monitoring, and
 - Process if an unforeseen issue relating to trees arises.

Reason: To ensure tree of merit are not damaged and in the interests of visual amenity and biodiversity.

29. Prior to demolition of the 4 dwellings at 77 to 83 London Road, plans and details of phasing, including the order and timing of development, and a contract with a principle building contractor for the redevelopment of the site with the construction of Block C immediately following the demolition of the 4 dwelling at 77 to 83 London Road shall be submitted to and approved in writing by the Local Planning Authority.

The development shall thereafter accord with the approved details.

Reason: To secure the beneficial impacts of the development required to justify the loss of non-designated heritage assets.

30. No occupation of any building shall take place until a scheme of historical interpretation for the Locally Listed 'Loopholed Wall on Borden Lane' has been submitted to and approved in writing by the Local Planning Authority.

Examples of how to relay and interpret the history of the wall can include, but are not limited to, the use of an historical interpretation board. The details submitted pursuant to this condition shall include location, design, dimensions and materials of any fixed interpretation. The interpretation scheme shall be carried out in full accordance with the approved details prior to the first

occupation of any new dwelling and shall thereafter be retained and maintained in accordance with the approved details.

Reason: To ensure a satisfactory visual appearance and to ensure the development makes a positive contribution to local character and distinctiveness.

31. A) Prior to any development works the applicant (or their agents or successors in title) shall secure and have reported a programme of archaeological field evaluation works, in accordance with a specification and written timetable which has been submitted to and approved by the local planning authority.
- B) Following completion of archaeological evaluation works, no development shall take place until the applicant or their agents or successors in title, has secured the implementation of any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved by the local planning authority.
- C) The archaeological safeguarding measures, investigation and recording shall be carried out in accordance with the agreed specification and timetable.
- D) Within 6 months of the completion of archaeological works a Post-Excavation Assessment Report shall be submitted to and approved in writing by the local planning authority. The Post-Excavation Assessment Report shall be in accordance with Kent County Council's requirements and include:
- a. a description and assessment of the results of all archaeological investigations that have been undertaken in that part (or parts) of the development;
 - b. an Updated Project Design outlining measures to analyse and publish the findings of the archaeological investigations, together with an implementation strategy and timetable for the same;
 - c. a scheme detailing the arrangements for providing and maintaining an archaeological site archive and its deposition following completion.
- E) The measures outlined in the Post-Excavation Assessment Report shall be implemented in full and in accordance with the agreed timings.

Reason: To ensure that features of archaeological interest are properly examined and recorded. The objectives and purposes of this condition are such that it is required to be complied with before commencement. As such, those objectives and purposes would not be met if expressed other than as a pre-commencement condition.

32. The 20 new homes (in Block A and Block C) shall be provided as Part M4(2) standard (accessible and adaptable dwellings).

Reason: To provide inclusive access for future occupiers.

33. Prior to demolition of the dwellings at 77 to 83 London Road an appropriate programme of building recording and analysis shall be carried out in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that an appropriate record is made of the non-designated heritage assets.

34. Prior to the occupation of flats 12 and 13 the balcony privacy screen as shown on the third floor layout plan on drawing number 7460 - PD2-06 Rev B and in elevation 7460 - PD2-07 Rev B shall be installed. The balcony privacy screen shall thereafter be maintained.

Reason: To ensure adequate privacy for the occupiers of the development.

INFORMATIVES

The Council's approach to the application

1. In accordance with paragraph 38 of the National Planning Policy Framework (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.
2. The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

Secure By Design

3. Consideration should be given to the provision of informal association spaces for members of the community, particularly young people. These must be subject to surveillance but sited so that residents will not suffer from possible noise pollution, in particular the green spaces surrounding the site and the any parking areas/ courts serving the flats. These areas must be well lit and covered by natural surveillance from neighbouring properties.
4. Perimeter, boundary and divisional treatments must be a minimum of 1.8m high. Any alleyways must have secure side gates, which are lockable from both sides, located flush to the front building line.
5. Parking - To help address vehicle crime, security should be provided for Motorbikes, Mopeds, Electric bikes and similar. SBD or sold secure ground or wall anchors can help provide this. We recommend parking areas be covered by natural surveillance from an "active" window e.g. lounge or kitchen and sufficient lighting. In addition, we request appropriate signage for visitor bays to avoid conflict and misuse. For undercroft parking, we strongly recommend the space be gates with fob/ code access for residents only. Due to the lack of natural surveillance, these spaces can attract criminal activities without access control and be vulnerable to misuse and damage.
6. New trees should help protect and enhance security without reducing the opportunity for surveillance or the effectiveness of lighting. Tall slender trees with a crown of above 2m rather than low crowned species are more suitable than "round shaped" trees with a low

crown. New trees should not be planted within parking areas or too close to street lighting. Any hedges should be no higher than 1m, so that they do not obscure vulnerable areas.

7. Lighting. Please note, whilst we are not qualified lighting engineers, any lighting plan should be approved by a professional lighting engineer (e.g. a Member of the ILP), particularly where a lighting condition is imposed, to help avoid conflict and light pollution. Bollard lighting should be avoided, SBD Homes 2019 states: “18.3 Bollard lighting is purely for wayfinding and can be easily obscured. It does not project sufficient light at the right height making it difficult to recognise facial features and as a result causes an increase in the fear of crime. It should be avoided.” Lighting of all roads including main, side roads, cul de sacs and car parking areas should be to BS5489-1:2020 in accordance with SBD and the British Parking Association (BPA) Park Mark Safer Parking Scheme specifications and standards.
8. All external doorsets (a doorset is the door, fabrication, hinges, frame, installation and locks) including folding, sliding or patio doors to meet PAS 24: 2022 UKAS certified standard, STS 201 or LPS 2081 Security Rating B+.
9. Windows on the ground floor or potentially vulnerable e.g. from flat roofs or balconies to meet PAS 24: 2022 UKAS certified standard, STS 204 Issue 6:2016, LPS 1175 Issue 8:2018 Security Rating 1/A1, STS 202 Issue 7:2016 Burglary Rating 1 or LPS 2081 Issue 1.1:2016 Security Rating A. Glazing to be laminated. Toughened glass alone is not suitable for security purposes.
10. Bedroom windows on the ground floor require a defensive treatment to deflect loitering, especially second bedrooms often used by children.
11. We recommend “A GUIDE FOR SELECTING FLAT ENTRANCE DOORSETS 2019” for buildings featuring multiple units, any covered access must deflect loitering that can stop residents and their visitors from using it without fearing crime. Entrance doors must be lit and designed to provide no hiding place.
12. For the main communal doors audio/visual door entry systems are required. We strongly advise against trade buttons and timed-release mechanisms, as they permit unlawful access and have previously resulted in issues with Crime and ASB.
13. Cycle and Bin Stores must be well lit and lockable, with controlled access for the residents within the flats. We advise on the use of ground/ wall SBD or sold secure anchors within the cycle storage area.
14. Mail delivery to meet SBD TS009 are strongly recommended for buildings with multiple occupants along with a freestanding post box of SBD/Sold Secure approved Gold standard.. If mail is to be delivered within the lobby, there must be an access controlled door leading from the lobby to the apartments/ stairs on the ground floor to prevent access to all areas.
15. CCTV is advised for all communal entry points and to cover the mail delivery area.

Environmental Health

16. Adequate and suitable measures shall be carried out for the minimisation of asbestos fibres during demolition, so as to prevent airborne fibres from affecting workers carrying out the work, and nearby properties. Only contractors licensed by the Health and Safety Executive should be employed. Any redundant materials removed from the site shall be transported by a registered waste carrier and disposed of at an appropriate legal tipping site. As the development involves demolition and construction, it is recommended that the applicant

examine the Mid Kent Environmental Code of Development Practice. Broad compliance with this document is expected. This can be found at: <https://tunbridgewells.gov.uk/environmental-code-of-development-practice>

Environment Agency

17. The applicant may be required to apply for other consents directly from us. The term 'consent' covers consents, permissions or licenses for different activities (such as water abstraction or discharging to a stream), and we have a regulatory role in issuing and monitoring them. The applicant should contact 03708 506 506 or consult our website (<https://www.gov.uk/guidance/check-if-you-need-an-environmental-permit>) to establish whether a consent will be required.

Highways

18. It is important to note that planning permission does not convey any approval to carry out works on or affecting the public highway. Any changes to or affecting the public highway in Kent require the formal agreement of the Highway Authority, Kent County Council (KCC), and it should not be assumed that this will be a given because planning permission has been granted. For this reason, anyone considering works which may affect the public highway, including any highway-owned street furniture, is advised to engage with KCC Highways and Transportation at an early stage in the design process. Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the public highway. Some of this highway land is owned by Kent County Council whilst some is owned by third party owners. Irrespective of the ownership, this land may have highway rights over the topsoil.
19. Works on private land may also affect the public highway. These include works to cellars, to retaining walls which support the highway or land above the highway, and to balconies, signs or other structures which project over the highway. Such works also require the approval of the Highway Authority.
20. Kent County Council has now introduced a formal technical approval process for new or altered highway assets, with the aim of improving future maintainability. This process applies to all development works affecting the public highway other than applications for vehicle crossings, which are covered by a separate approval process.
21. Should the development be approved by the Planning Authority, it is the responsibility of the applicant to ensure, before the development is commenced, that all necessary highway approvals and consents have been obtained and that the limits of the highway boundary have been clearly established, since failure to do so may result in enforcement action being taken by the Highway Authority. The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under the relevant legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.
22. Guidance for applicants, including information about how to clarify the highway boundary and links to application forms for vehicular crossings and other highway matters, may be found on Kent County Council's website: <https://www.kent.gov.uk/roads-and-travel/highway-permits-and-licences/highways-permissions-and-technical-guidance>
23. Alternatively, KCC Highways and Transportation may be contacted by telephone: 03000 418181.

Southern Water

24. Under certain circumstances SuDS will be adopted by Southern Water should this be requested by the developer. Where SuDS form part of a continuous sewer system, and are not an isolated end of pipe SuDS component, adoption will be considered if such systems comply with the latest Design and Construction Guidance (Appendix C) and CIRIA guidance available here: water.org.uk/sewerage-sector-guidance-approved-documents/ciria.org/Memberships/The_SuDS_Manual_C753_Chapters.aspx
25. Where SuDS rely upon facilities which are not adoptable by sewerage undertakers the applicant will need to ensure that arrangements exist for the long-term maintenance of the SuDS facilities. It is critical that the effectiveness of these systems is maintained in perpetuity. Good management will avoid flooding from the proposed surface water system, which may result in the inundation of the foul sewerage system.
26. This initial assessment does not prejudice any future assessment or commit to any adoption agreements under Section 104 of the Water Industry Act 1991. Please note that non-compliance with the Design and Construction Guidance will preclude future adoption of the foul and surface water sewerage network on site. The design of drainage should ensure that no groundwater or land drainage is to enter public sewers.
27. Please Note: There is a private communication pipe within the development site.
28. 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.
29. Our investigations indicate that Southern Water can facilitate water supply to service the proposed development. Southern Water requires a formal application for a connection to the water supply to be made by the applicant or developer.
30. To make an application visit Southern Water's Get Connected service: developerservices.southernwater.co.uk and please read our New Connections Charging Arrangements documents which are available to read on our website via the following link southernwater.co.uk/developing-building/connection-charging-arrangements
31. For further advice, please contact Southern Water, Southern House, Yeoman Road, Worthing, West Sussex, BN13 3NX (Tel: 0330 303 0119).

Piling

32. Piling can result in risks to groundwater quality by mobilising contamination when boring through different bedrock layers and creating preferential pathways. Thus, it should be demonstrated that any proposed piling will not result in contamination of groundwater. If Piling is proposed, a Piling Risk Assessment must be submitted, written in accordance with EA guidance document "Piling and Penetrative Ground Improvement Methods on Land Affected by Contamination: Guidance on Pollution Prevention. National Groundwater & Contaminated Land Centre report NC/99/73.

Waste

33. Waste on-site The CLAIRE Definition of Waste: Development Industry Code of Practice (version 2) provides operators with a framework for determining whether or not excavated material arising from site during remediation and/or land development works are waste or have ceased to be waste. Under the Code of Practice:
- excavated materials that are recovered via a treatment operation can be re-used on-site providing they are treated to a standard such that they are fit for purpose and unlikely to cause pollution.
 - treated materials can be transferred between sites as part of a hub and cluster project formally agreed with the EA.
 - some naturally occurring clean material can be transferred directly between sites.
34. Developers should ensure that all contaminated materials are adequately characterised both chemically and physically, and that the permitting status of any proposed on site operations are clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays. The Environment Agency recommends that developers should refer to:
- the Position statement on the Definition of Waste: Development Industry Code of Practice and;
 - The Environmental regulations page on GOV.UK.
35. Contaminated soil that is, or must be disposed of, is waste. Therefore, its handling, transport, treatment and disposal is subject to waste management legislation, which includes:
- Duty of Care Regulations 1991
 - Hazardous Waste (England and Wales) Regulations 2005
 - Environmental Permitting (England and Wales) Regulations 2010
 - The Waste (England and Wales) Regulations 2011

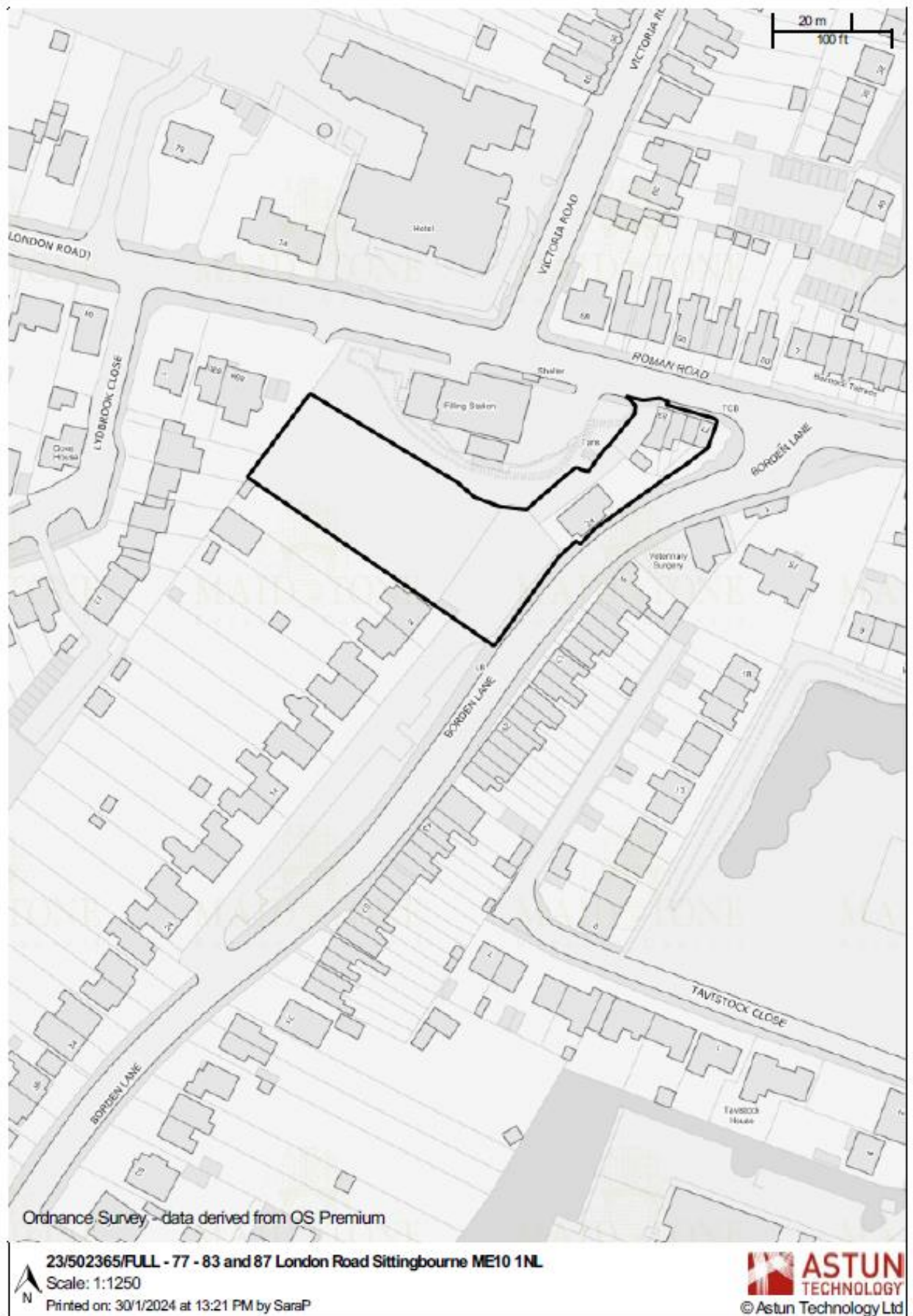
Developers should ensure that all contaminated materials are adequately characterised both chemically and physically in line with British Standard BS EN 14899:2005 'Characterization of Waste - Sampling of Waste Materials - Framework for the Preparation and Application of a Sampling Plan' and that the permitting status of any proposed treatment or disposal activity is clear.

If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays. If the total quantity of waste material to be produced at or taken off site is hazardous waste and is 500kg or greater in any 12 month period the developer will need to register with us as a hazardous waste producer.

36. As the development involves demolition and / or construction, I would recommend that the applicant is supplied with the Mid Kent Environmental Code of Development Practice. Broad compliance with this document is expect. This can be found at: <https://tunbridgewells.gov.uk/environmental-code-of-development-practice>

Asbestos

37. Adequate and suitable measures should be carried out for the minimisation of asbestos fibres during demolition, so as to prevent airborne fibres from affecting workers carrying out the work, and nearby properties. Only contractors licensed by the Health and Safety Executive should be employed. Any redundant materials removed from the site should be transported by a registered waste carrier and disposed of at an appropriate legal tipping site.



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PLANNING COMMITTEE – 8 FEBRUARY 2024

PART 5

Report of the Head of Planning

PART 5

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

- **Item 5.1 – 201 Queenborough Road Halfway**

APPEAL ALLOWED

DELEGATED REFUSAL

Observations

The Inspector acknowledged some conflict with the Council's SPG on house extensions, but determined that a large front dormer extension to a dwelling would not be harmful given it would not dominate the roof of the property and was in an area with buildings of varied character.

- **Item 5.2 – 32 Linden Drive and 67 Queens Way Sheerness**

APPEAL DISMISSED

NON-DETERMINATION

Observations

The Inspector agreed with the Council's position that the sequential test relating to flood risk submitted with the application was deficient, and failed to properly consider other sites reasonably available for residential development in a lower flood risk area.

- **Item 5.3 – St Saviours Church Whitstable Road Faversham**

APPEAL ALLOWED

APPEAL AGAINST CONDITION

Observations

The Inspector did not agree with the wording of conditions (1), (7) and (8) which the Council placed upon the approval. The Inspector determined that condition (1) relating to mechanical ventilation should be deleted since it did not meet any of the tests within paragraph 56 of the NPPF but agreed with the Council that there needed to be a condition for an appropriately worded Noise Management Plan (condition (8)). Condition (8) was re-worded with the Inspector stating the essential point is that it should focus on managing noise. The need for a specified number of events per year and a time period between events is questionable, since the aim should be to avoid noise nuisance, rather than have a limit on the number of occasions when noise nuisance may occur and the interval between them. The requirement for specifying the type of suitable event is imprecise. The Inspector also varied condition (7) to increase the hours of music until 11pm as it was stated that appropriate noise mitigation would be in place via the Noise Management Plan.

- **Item 5.4 – Hole Street Farm Kingsdown Road Lynsted**

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

The Inspector disagreed with the Council and found that neither the wording of the condition or the documents incorporated within the planning permission (which was considered by the Council in 1996), identified the location of Hole Street Farm Cottage. The location of that dwelling, and the object of the disputed condition, could not be identified with sufficient certainty by the 'reasonable reader'. The Inspector also concluded that the control imposed on the occupation of the farm cottage in Condition 5 of SW/96/0128 imposed a disproportionate and unjustified level of control on the occupancy of the cottage and potentially on land that was not in control of the applicant. On this basis, the Inspector allowed the appeal.

- **Item 5.5 – 124 East Street Sittingbourne**

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

The Inspector agreed with the Council's decision that the proposal represented an unacceptable form of backland development with resultant harm to the character and appearance of the area, failure to provide / maintain appropriate living conditions, failure to demonstrate impacts relating to an adjacent AQMA, and failure to mitigate impacts on the SPA through a SAMMS payment.

No. 124 East Street was a Grade II listed building at the time the Council determined the planning application. It was de-listed by Historic England during the appeal process. As such, a further reason relating to harmful impacts upon the setting of the listed building fell away.

- **Item 5.6 – Land South of Lees Court Rd Stocks Paddock Sheldwich**

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

The Inspector agreed with the Council's reasons for refusal in that the site was in an unsustainable location for residential use and the proposal would cause harm to heritage assets including the Sheldwich Conservation Area and nearby listed buildings. The Inspector gave the matter of self-build limited weight due to the scale of the proposal and the harm that was identified in relation to sustainability and heritage assets.

- **Item 5.7 – Co-Op Sports & Social Club St George’s Ave Sheerness**

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

The Inspector agreed with the Council that use of part of the site as a large storage compound would be harmful to the living conditions of neighbouring properties, and negatively impacted upon the open and undeveloped character of the area within the countryside and an Area of High Landscape Value.

- **Item 5.8 – Land To The North Of Elm Lane Minster**

APPEAL ALLOWED AND COSTS AWARDED AGAINST THE COUNCIL**NON-DETERMINATION****Observations**

The Inspector disagreed with the Council and considered that whilst the development is outside the built-up area and would alter the character and appearance of the site, the impact on character of the area and the countryside would be limited. The Inspector stated there would be social and economic benefits and the proposal could make a substantial difference to the overall supply of housing and would be likely to provide a local economic boost associated with construction.

The Inspector disagreed with the Council regarding the impact on the living conditions of neighbouring residents as a result of the creation of the access having taken account of the appellant’s noise survey and the proposed mitigation in the form of acoustic perimeter fencing.

Taking account of the NPPF as a whole and applying the planning balance, the Inspector found no adverse impact that would significantly and demonstrably outweigh the benefits and that the presumption in favour of sustainable development weighed in favour of the proposal.

The Inspector considered the appellant’s costs application and found that the Council’s decision notice and appeal statement did not properly substantiate the reason for refusal. The Inspector therefore found there to be unreasonable behaviour and a full award of costs justified.

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Appeal Decision

Site visit made on 7 December 2023

by C Shearing BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 December 2023

Appeal Ref: APP/V2255/D/23/3331117

**201 Queenborough Road, Halfway, Minster On Sea, Sheppey,
Kent ME12 3EL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr W Gaffney against the decision of Swale Borough Council.
- The application Ref 23/502486/FULL, dated 17 May 2023, was refused by notice dated 3 August 2023.
- The development proposed is installation of a pitched roof dormer to the front elevation.

Decision

1. The appeal is allowed and planning permission is granted for installation of a pitched roof dormer to the front elevation at 201 Queenborough Road, Halfway, Minster on Sea, Sheppey, Kent ME12 3EL in accordance with the terms of the application, Ref 23/502486/FULL, dated 17 May 2023, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the approved plans: DC/910, DC/911, DC/912, DC/913.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Main Issue

2. The main issue is the effect of the proposal on the character and appearance of the house and the surrounding area.

Reasons

3. The appeal relates to a detached house which forms part of a group of properties that line the south eastern side of Queenborough Road. The properties are set behind a grass verge, and vary in their design, materials and front building lines. The appeal property comprises two storeys with a large catslide roof to part of its front elevation. While the neighbouring properties to either side vary in their character, there are some other properties of the same design within this group. No.195 includes a front dormer to its catslide roof, of similar scale to the appeal scheme.
4. The Council refer to the document 'Designing an Extension: A Guide for Householders' (the Guidance) which states that dormers should be in

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

Appeal Decision APP/V2255/D/23/3331117

proportion with the roof and only as large as necessary to allow light into the roofspace, and goes on to describe guidelines for scale and proportions. The proposed dormer would be large, dominating much of the front cat slide roof and would appear to be larger than required to provide internal lighting to the proposed office. However, the dormer would be set in from the remaining roofslopes of the cat slide roof, allowing that roof form to remain apparent. Its eaves level would match that of the main house and its ridgeline would be well below that of the main roof. The proposed front window would adhere to the lines and proportions of those other windows in the front of the property. For these reasons together, the extension would not cause harm to the character of the property.

5. The extension would be apparent in views from the street. However, given the attributes of the proposal described above together with the varied character of the group in which the property lies, the proposal would not cause harm to the character or appearance of the area. While the front dormer at no.195 received planning permission before the Guidance was issued, it nonetheless forms part of the established character of this group of properties.
6. Overall, the proposal would be acceptable in terms of its effects on the host property and the character of the area. It would comply with policies CP4 and DM14 of the LP¹ which together require good design which is appropriate to its surroundings and the building being extended.
7. By reason of its scale, the proposal would not fully adhere to the Guidance cited above. In turn, the proposal would conflict with LP Policy DM14 which requires that development proposals adhere to adopted guidance. However, this conflict exists with guidance which clearly states its intention is to provide points for householders to consider, and which states that extensions should respect the character and appearance of the existing building, which I have found to be the case here. As such I attach limited weight to the conflict with the specific section of the Guidance mentioned and find the proposal to be compliant with the development plan taken as a whole.

Conditions

8. The Council has highlighted conditions that it considers would be appropriate and I have considered these in light of the Planning Practice Guidance (PPG). In addition to the standard time limit condition, it is necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty. In the interests of visual amenity, materials should be conditioned to match those existing.

Conclusion

9. Although the proposal would conflict with parts of the development plan, for the reasons given I afford those conflicts limited weight, and the proposal should be regarded as being compliant with the development plan when read as a whole. The appeal is therefore allowed.

C Shearing

INSPECTOR

¹ Bearing Fruits 2031: The Swale Borough Local Plan, adopted July 2017 (the LP)



Appeal Decision

Site visit made on 14 November 2023

by **A Wright BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 December 2023

Appeal Ref: APP/V2255/W/23/3315636

Land adjacent 32 Linden Drive and 67 Queens Way, Sheerness

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr M Barber against Swale Borough Council.
 - The application Ref 22/503617/OUT is dated 23 July 2022.
 - The development proposed is three number one bedroom new dwellings with dormers to the front elevation, with all living accommodation to first floors and above.
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Decision

1. The appeal is dismissed and planning permission for three number one bedroom new dwellings with dormers to the front elevation, with all living accommodation to first floors and above is refused.

Preliminary Matters

2. The appeal is against the non-determination of a planning application. The Council's appeal statement indicates that it would have refused planning permission for reasons relating to the location of the development in an area at high risk of flooding and its effect on the integrity of Special Protection Areas (SPAs). I note that the SPAs are also Ramsar sites. The appellant has subsequently completed a SAMMS¹ Mitigation Contribution Agreement (MCA) and paid a SAMMS fee to the Council. As such, the Council considers that the issue relating to the effect of the development on the integrity of SPAs has been addressed. The main issue below reflects the Council's position and I return to the SPA and Ramsar site issue later.
3. Outline planning permission is sought, with all matters reserved. Plans have been submitted with the application, showing a site layout, elevations, and floor plans. I have determined the appeal on the basis that the plans are for illustrative purposes only.

Main Issue

4. The main issue is whether the proposed development would be in a suitable location having regard to the risk of flooding.

Reasons

5. The appeal site is within Flood Zone 3 where there is a high risk from tidal and fluvial flooding. The National Planning Policy Framework (the Framework) seeks to avoid inappropriate development in areas at risk of flooding by directing it

¹ Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy 2014

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away from areas at highest risk. Policy DM21 of the Bearing Fruits 2031: The Swale Borough Local Plan 2017 (SBLP) reiterates national policy.

6. The Framework requires the application of a sequential approach to the location of development to avoid, where possible, flood risk to people and property. It states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
7. The Planning Practice Guidance (PPG) sets out further information on the application of the sequential approach. For planning applications, it states that the area to apply the test will be defined by local circumstances relating to the catchment area for the type of development proposed. It also outlines that reasonably available sites are those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development.
8. There is no dispute on the need to apply the sequential approach and, for residential development, the Council applies this across the whole Borough. The appellant's sequential test considers the sites in the Council's Strategic Housing Land Availability Assessment (SHLAA). It concludes that there are no sequentially preferable sites within the SHLAA as all available sites are considered too large for the proposed development and not reasonably comparable. However, the PPG states that reasonably available sites could include part of a larger site if it would be capable of accommodating the proposed development, but the sequential test fails to consider these.
9. The appellant's evidence from the Brownfield Land Register (BLR) and on local land for sale refers to sites in Sheerness but it does not consider sites in other parts of the Borough. Even given the relatively limited area of search, this evidence indicates that there may be other reasonably available sites, but these are not included in the sequential test. Furthermore, little consideration is given to sites with extant permission for similar development and allocated sites which may be reasonably available for residential use in a lower flood risk area.
10. Therefore, the evidence does not show that all reasonably available sites have been considered in the appellant's sequential test to determine whether the proposed development could be located in an area with a lower risk of flooding.
11. There are references to the Environment Agency's response on both this and a previous application for the site. However, as the proposal does not meet the sequential test, it is not necessary to consider the Flood Risk Assessment results and its implications for the proposed accommodation.
12. Consequently, I conclude that the proposed development would not be in a suitable location having regard to the risk of flooding. It would be contrary to Policies DM14 and DM21 of the SBLP where they seek to avoid inappropriate development in areas at risk of flooding and require proposals to respond to climate change and natural process constraints, amongst other things. It would also conflict with the approach to flood risk set out in the Framework.

Other Matters

13. The Council accepts that its current housing land supply stands at 4.83 years, which represents a shortfall against the required five years. This triggers the

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circumstances in paragraph 11(d) of the Framework. The proposal would be within an area at risk of flooding which provides a clear reason for refusing the development proposed in accordance with paragraph 11(d)(i). As such, the presumption in favour of sustainable development does not apply.

14. There would be several matters that may amount to benefits of the proposed development, including access to services and public transport, bicycle storage, a home office, energy efficient construction, water efficiency measures, and modest social and economic benefits associated with the provision of housing. Although some of these factors may be development plan requirements rather than benefits, even if all such matters were benefits, they do not outweigh the unsuitable location of the development having regard to the risk of flooding.
15. The proposal would have potential impacts on the integrity of the Swale, Medway Estuary and Marshes and Outer Thames Estuary SPAs and Ramsar sites due to its location within 6km of them. However, notwithstanding the SAMMS MCA and fee payment, there is no need to consider the implications of the proposal on the protected sites because the scheme is unacceptable for other reasons.
16. There are references to a previous proposal for dwellings on this site which was dismissed at appeal². I have had regard to this appeal decision. Nevertheless, I must determine the proposal on its merits based on the information before me.
17. The appellant has expressed general dissatisfaction with the Council's handling of the application. However, this is a matter between those parties, and it cannot have any bearing on my determination of this appeal.

Conclusion

18. For the reasons given above, I conclude that the proposal would conflict with the development plan as a whole and there are no material considerations, including the Framework, that would outweigh that conflict. Therefore, the appeal is dismissed and planning permission is refused.

A Wright

INSPECTOR

² Appeal Ref: APP/V2255/W/21/3277228

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The Planning Inspectorate

Appeal Decision

Site visit made on 17 October 2023

By Terrence Kemmann-Lane JP DipTP FRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 19 December 2023.

Appeal Ref: APP/V2255/W/23/3320427

St Saviours Church, Whitstable Road, Faversham, ME13 8BD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Ms Romana Bellinger against the decision of Swale Borough Council.
 - The application Ref 21/506027/FULL, dated 8 November 2021, was approved on 1 November 2022 and planning permission was granted subject to conditions.
 - The development permitted is "Section 73 - Application for removal of condition 8 (noise levels) pursuant to application 21/503772/FULL for - Section 73 - Application for Variation of condition 2 (permanent change of use), 4 (to allow external lighting) and 7 (to allow music to cease Sun-Thu at 10 PM Fri-Sat at 11 PM) pursuant to application 18/501494/FULL for - Change of Use of the space to reinstate it's previous early historical use for the local community and as a centre for the local cultural arts and to provide food and drink".
 - The conditions in dispute are Nos 1, 7 and 8 which state that: (1) Prior to the continued use of the venue, details of any mechanical ventilation system that are to be installed shall be submitted to and approved by the Local Planning Authority and upon approval shall be installed, maintained, and operated in a manner that prevents the transmission of odours, fumes, noise and vibration to neighbouring premises; (7) No recorded or live music or singing shall be permitted on the premises after 10pm on any day; and (8) Prior to the continued use of the venue, a noise management plan shall be submitted for assessment and approval by the local planning authority. The management plan shall include but not be limited to: The number of events per calendar year, the time period between each event, the type of event that is suitable for the venue, the termination time of any event, how sound levels will be assessed during any event, how this will be recorded, the actions taken if sound levels are found to be too high, what the threshold for taking action will be, the provision of information on the events program to residents, provision of contact details for residents in case of complaint, how complaints will be responded to and actioned as necessary, recording of complaints, provision of records to the council on request, triggers for update of the management plan.
 - The reasons given for the conditions are: 1 and 8 in the interests of residential amenity; and 7 in the interests of the amenities of the area.
-

Decision

1. The appeal is allowed and the planning permission Ref 21/506027/FULL for Section 73 - Application for removal of condition 8 (noise levels) pursuant to application 21/503772/FULL; for - Section 73 - Application for Variation of condition 2 (permanent change of use), 4 (to allow external lighting) and 7 (to allow music to cease Sun-Thu at 10 PM Fri-Sat at 11 PM) pursuant to

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application 18/501494/FULL for - Change of Use of the space to reinstate it's previous early historical use for the local community and as a centre for the local cultural arts and to provide food and drink at St Saviours Church, Whitstable Road, Faversham, ME13 8BD granted on 1 November 2022 by Swale Borough Council, is varied by deleting conditions 1, 7 and 8 and substituting for conditions 7 and 8, the following conditions:

7. No recorded or live music or singing shall be permitted on the premises after 11pm on any day.

8. Within 2 months of the date of this decision, a noise management plan shall be submitted to and approved by the Local Planning Authority. The management plan shall include but not be limited to: how sound levels will be assessed during any event; how this will be recorded; the actions taken if sound levels are found to be too high; what the threshold for taking action will be; the provision of information on the events programme to residents; provision of contact details for residents in case of complaint; how complaints will be responded to and actioned as necessary; recording of complaints; provision of records to the council on request; and triggers for update of the management plan. Following the approval of the noise management plan by the Local Planning Authority the use shall not be carried out other than in accordance with the plan.

Background and main issues

2. Temporary planning permission for the use of 'The Hot Tin' as a community café and arts centre was granted pursuant to reference 18/501494/FULL on 20 July 2018. That permission expired in July 2021. Immediately prior to that expiry of permission, an application was made under section 73 (of the Town and Country Planning Act 1990, reference 21/503772/FULL, to make it a permanent change of use (and in respect of 2 other conditions that need not be of concern at this point). Permanent permission was granted on that application, subject to conditions.
3. Following that grant of permission under reference 21/503772/FULL, an application to remove condition 8 was submitted, and permission granted under reference 21/506027/FULL, which is the subject of this appeal. The 3 conditions are set out in the banner heading above – the 2 new conditions 1 and 7, and the varied condition 8.
4. The main issues in this case follow from the 3 conditions imposed on that permission: i) whether condition 1 meets the 6 tests set out in paragraph 56 of the National Planning Policy Framework (the Framework); ii) the effect of removing condition 7 on the amenities of the area; and iii) the effect of removing condition 8 on the residential living conditions of neighbours.

Reasons

The appeal site and its surroundings

5. 'The Hot Tin' in Faversham is a community café and arts centre located within the St Saviour's church building. St. Saviour's is located at the junction of Whitstable Road and Cyprus Road within the Faversham Conservation Area. The building, comprising the main body of the church, the south porch and the

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living quarter/hall at the northwest corner of the church, is listed Grade II (List Entry No.1240313).

6. Whitstable Road is the B2040 and is a main road through the area. However, at this point it is passing through a primarily residential area. The immediate surroundings comprise rows of terraced housing dating to the turn of the 20th Century to the northeast, later 20th century semi-detached housing to the north and an area of recently completed development to the west. Opposite the site is a recreation ground and immediately to the west and north of the site are car parking areas associated with adjacent housing.

Condition 1 - whether it meets the 6 tests set out in the paragraph 56 of the Framework

7. The council's explanation for condition 1 in its appeal statement is that it will ensure that, if mechanical ventilation were to be installed on the building, details would be submitted prior to its continued use, so that the details could be assessed; the re-wording of this condition has not changed the fact that if no mechanical ventilation is proposed, then no details need to be submitted.
8. Since the use of the venue is continuing under a permanent permission, I cannot make sense of the wording of this condition. It is not possible to do something prior to the start of something that has already started under a permanent permission. As I understand the evidence, the use has lawfully continued since its inception. For this reason the condition must be deleted since it does not meet any of Framework paragraph 56 tests.

The effect of removing condition 7 on the amenities of the area

9. There have been previous noise nuisance complaints, and monitoring by the council's Environmental Protection Team has produced evidence of unreasonable noise, but this did not constitute a Statutory Nuisance bearing in mind the infrequency and short duration of these events.
10. The appellant largely denies that the venue is responsible for noise nuisance and emphasises the careful control that is exercised. The point is also made that the viability of the venue is at risk. I fully understand the last point, and that the upkeep of a listed building is of importance and that a successful business use is a way of enabling that to be achieved.
11. The council, whilst making clear points about potential noise nuisance, have not explained why 10pm was the chosen time throughout the week, and I note that condition 6 allows for the use of the premises to continue until 11pm, seven days a week. I have also decided, when dealing with the next issue – the disputed condition 8 concerning a Noise Management Plan – that a revised condition should be put in place requiring such a plan. In the light of that, which will enable the council to ensure that a plan is in place to deal with noise, I am satisfied that varying condition 7 to allow the upper limit of use to be 11pm, is justified.

Condition 8 - the effect of removal on the residential living conditions of neighbours

12. I can see the need for a Noise Management Plan (NMP) since the venue has been found to produce a short term nuisance due to noise on at least one occasion, and the nature of the 'tin' construction of the building means that it

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has no significant sound proofing. This problem is exacerbated by its listed status, which is likely to restrict the installation of any effective sound proofing.

13. However, the appellant points to a number of difficulties that the venue would have in meeting some of the requirements of the condition as imposed. The following specific elements of the condition are of concern.
- i. "The number of events per calendar year" - The Hot Tin is a café hosting live music in an intimate setting; it is not a dedicated music event akin to a concert hall or arena. Events are often booked on a flexible basis as opportunities for artists to perform present themselves. It is unreasonable to expect the venue to set out the number of events per calendar year that it will host. If the condition required an approximate number of events that could at least be estimated, however complying with this would be challenging. A strict 'maximum' number of events is likely to be too prohibitive given the need for the venue to be flexible and agile with regards to booking events.
 - ii. "The time period between each event" - It is unreasonable to require these details. There may be opportunities to host multiple performances in one day, or consecutive days, as artists schedules and the type of event allows.
 - iii. "The type event that is suitable for the venue" - Events vary in nature from artist performances, some incorporating music and/or singing, some which do not. Artistic creativity may give rise to a different 'type of event' not previously considered. It is not necessary for The Hot Tin to define what 'type' of events may take place.
14. I can understand the difficulties which I consider can be overcome. It is important that there should be an agreed noise management plan, but the essential point is that it should focus on managing noise. The need for a specified number of events per year and a time period between events is questionable, since the aim should be to avoid noise nuisance, rather than have a limit on the number of occasions when noise nuisance may occur and the interval between them. And the requirement for specifying the type of suitable event is imprecise.
15. Turning to the other elements, the following seem to me to be reasonable requirements: *how sound levels will be assessed during any event, how this will be recorded; the actions taken if sound levels are found to be too high; what the threshold for taking action will be; the provision of information on the events program to residents; provision of contact details for residents in case of complaint; how complaints will be responded to and actioned as necessary; recording of complaints; provision of records to the council on request; and triggers for update of the management plan.*
16. This leaves one other requirement of the council's list that I have not mentioned. This is the termination time of any event. The first point about this is that, since the NMP covers a substantial period of time, the termination time for any event would be multiple different times; that does not seem to me to be a practical requirement. Secondly, I have indicated above that, with a NMP in place, the hours of use can be extended to 11PM. Therefore, I do not consider that the termination time of any event is necessary in the NMP.

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17. There is a further matter regarding the text of the NMP condition. As it was imposed, the condition requires a NMP to be submitted, "Prior to the continued use of the venue", but has no requirement for it to be put into effect. Both of these points need to be rectified. The first is the same problem that I have dealt with in respect of condition 1, in paragraph 8 above. However, in the case of condition 8, I consider that it is possible for the preliminary clause to be reworded to stipulate a time in the future by which the NMP must be submitted. Whilst this necessarily means that it cannot 'bite' during that period, for the long term the condition will be in place.
18. It seems reasonable to me for the condition to require the submission of the NMP to the council within 2 months of the date of my decision. Since the submission and approval of an NMP cannot be instant, I judge that 'within 2 months' is reasonable, considering both the fact that, as now, the neighbouring occupiers will be without the protections given by the plan, and what length of time is reasonable for the MMP to be drafted.
19. As to ensuring that the condition is put into effect, this can be achieved by adding the requirement: following the approval of the NMP by the council, the use shall be conducted in accordance with the provisions of the plan.

Conclusions

20. For the reasons set out above, I will grant planning permission varying the existing permission by deleting conditions 1, 7 and 8 and substituting new conditions 7 (to require no music or singing after 11pm) and condition 8 (to require a noise management plan to be submitted and put into effect with fewer component parts).
21. As I have indicated in paragraph 8 above, condition 1 is deleted since it does not meet any of Framework paragraph 56 tests.
22. The 2 revised conditions are required for the following reasons: 7 - in the interests of the amenities of the area; and 8 - in the interests of residential amenity.
23. Since the appeal site is within Faversham Conservation Area, I am required by Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended, to have regard to the general duty - "...special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area". In this case I am satisfied that the matters that I have dealt with above will have a neutral effect on the conservation area.

Terrence Kemmann-Lane

INSPECTOR

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Appeal Decision

Site visit made on 3 October 2023

by **G Sylvester BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 December 2023

Appeal Ref: APP/V2255/W/23/3317534

Hole Street Farm, Kingsdown Road, Lynsted, Kent ME9 0QX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs Anderson against the decision of Swale Borough Council.
 - The application Ref 22/501217/OUT, dated 16 March 2022, was refused by notice dated 1 September 2022.
 - The application sought outline planning permission for a new dwellinghouse without complying with a condition attached to outline planning permission Ref SW/96/128, dated 20 May 1996.
 - The condition in dispute is No. 5 which states that: *The occupation of Hole Street Farm Cottage shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in Section 336 of the Town and Country Planning Act 1990, or in forestry, or a dependant of such a person residing with him or her or a widow or widower of such a person.*
 - The reason given for the condition is: *In approving this application the Planning Authority has accepted the contention that it is essential that two dwellings be available to meet the accommodation needs of the holding. In restricting occupancy of the existing farmhouse the Planning Authority is seeking to ensure that both dwellings remain available to meet agricultural needs in the future.*
-

Decision

1. The appeal is allowed and outline planning permission is granted for a new farmhouse at Hole Street Farm, Kingsdown Road, Lynsted, Kent ME9 0QX, in accordance with the application Ref 22/501217/OUT, dated 16 March 2022, without compliance with condition 5 previously imposed on planning permission SW/96/128, dated 20 May 1996, and subject to the following conditions:
 - 1) The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.
 - 2) The space shown on the approved drawings for the parking of cars shall be kept available at all times for the parking of cars.
 - 3) Notwithstanding the provisions of Classes A to D of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the dwelling permitted shall not be enlarged and no porch shall be added.

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Procedural Matters

2. In my decision I have used the site address from the application form, which accurately describes the location of the development, including by means of a postcode. This coincides with the site address used by the Council in determining the application and would not prejudice the interests of any party.

Background and Main Issue

3. The Council granted outline planning permission (ref. SW/96/128) in 1996 for a new dwellinghouse at the above site on the basis that the agricultural enterprise at the farm demonstrated a functional need for 2 farm workers to live on the farm. Landscaping was the only reserved matter. This dwelling was built and is now known as Hare Cottage.
4. In granting permission, the Council imposed the disputed planning condition restricting occupation of an existing dwellinghouse on the farm, named in the condition as Hole Street Farm Cottage. The drawings and documents from the planning application that are before me in this appeal do not show a dwelling bearing this exact name. However, they do show 'Farm Cottages' and 'Farm Oast' on the location plan. Furthermore, the building identified by the land edged red on the drawing in this appeal appears to correspond to the 'Farm Cottages' on the original location plan, and also to the buildings shown and described as 'Hole Street Farm Cottages' and '1 Hole Street Farm Cottages' on the drawings and decision notices for planning permissions SW/95/224 and SW/96/34. Due to the different names given to this dwelling, I have for clarity referred to it as the 'farm cottage' in this decision.
5. The appellant is seeking to remove the disputed condition on the basis that it does not meet the 6 tests set out in Paragraph 56 of the National Planning Policy Framework (the Framework) and the Planning Practice Guidance¹; the approved plans did not meet with legislative requirements at the time; removal of the condition would not result in an unacceptable and unsustainable dwelling in the countryside, and there are no policies that seek to restrict the removal of agricultural occupancy conditions.
6. Having regard to the background evidence, the main issue in this case is whether or not the disputed condition meets the 6 tests having regard to local and national planning policy, and the purpose of the condition in restricting occupancy of the existing farm cottage to a worker solely or mainly employed, or last employed, locally in agriculture, including by a dependant, or a widow/widower of that person.

Reasons

7. The evidence suggests that prior to the grant of the planning permission for the new build dwelling (Hare Cottage), the farm cottage the subject of the disputed condition was a lawful open market dwelling. In the period leading up to the planning permission being granted in 1996, it had been confirmed to the Council by the agent of the applicant at the time (letter dated 30 April 1996), that the farm cottage, which had been occupied as 2 dwellings, was now occupied as a single four-bedroom dwelling.

¹ Paragraph: 005 Reference ID: 21a-005-20190723

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8. As a single dwellinghouse, the farm cottage was meeting part of the essential accommodation need for workers at the farm. That the dwelling could have ceased to do so without any breach of planning control, thus severing the functional link between its occupation and the farm, appears to have been of some concern to the Council. This was particularly so as occupation of the farm cottage as a single dwellinghouse had reduced the number of dwellings within the applicant's farm ownership and an existing dwelling at the farm had reportedly been sold off previously. Therefore, at the time of determining the planning application in 1996, the Council appeared concerned about the prospect of the farm cottage, now subject to the disputed condition, being sold off and replaced by a further new dwelling in another location in the countryside.
9. The new build dwelling (Hare Cottage) was not described as a replacement for the dwelling 'lost' to the farm through the amalgamation of the 2 farm cottages into a single dwellinghouse. That had already occurred. The new build dwelling was deemed acceptable in this location because its occupancy could be restricted by condition to ensure it met an essential accommodation need of the agricultural enterprise. To my mind, given the Council had accepted that an essential functional need existed for the new build dwelling, it was acceptable without the disputed occupancy condition being imposed on the existing farm cottage. Therefore, the disputed condition was not necessary to make the new build dwelling acceptable, nor was it fairly and reasonably relevant to the planning considerations for the new build dwelling.
10. The planning policies relevant to the grant of the planning permission in 1996 are not before me in this appeal. The current development plan policies ST 3 and DM 12 of the Swale Borough Local Plan – Bearing Fruits 2031, Adopted July 2017, (the LP) seek to permit rural workers dwellings in the countryside where there is a clearly established, existing, essential need for the proper functioning of the enterprise for a full-time worker to be readily available at most times. These policies are broadly consistent with Paragraph 80 of the Framework, which sets out that planning policies and decisions should avoid the development of isolated homes in the countryside unless, amongst other requirements, there is an essential need for a rural worker to live permanently at or near their place of work in the countryside. These policies do not expressly seek to retrospectively restrict the occupancy of existing dwellings in the countryside, even where they are meeting such a need.
11. The farm cottage was likely to have been occupied by a farm worker at the time of the 1996 planning application. It already existed as an open market dwelling and therefore would not have increased the number of dwellings in the countryside, regardless of the outcome of that planning application, which was not described as a replacement for the farm cottage. As such, it was not necessary to retrospectively control the occupancy of the existing farm cottage to meet the wider planning objectives that restrain housing within the countryside. Consequently, on the evidence before me, the disputed condition was not necessary, relevant to planning or to the development permitted. For the same reasons it is not necessary or relevant now.
12. I have had regard to the case of *UBB Waste Essex Ltd*² and find that the intention of the disputed condition and its purpose would, on the face of the

² *UBB Waste Essex Ltd v Essex County Council* [2019] EWHC 1924 (Admin).

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decision notice, be clear to the 'reasonable reader' with some knowledge of planning law and the matter in question. However, neither the wording of the condition or the documents incorporated within the planning permission, or indeed any other documentation that is before me in this appeal, identify the location of Hole Street Farm Cottage. The location of that dwelling, and thus the object of the disputed condition, could not be identified with sufficient certainty by the 'reasonable reader'.

13. The Council contends that the dwelling commonly understood by the main parties to be Hole Street Farm Cottage was shown by the planning drawings as situated on land under the control of the applicant (land within the blue line of the submission) for the new dwelling granted permission. I note that the drawings for the withdrawn planning application for a new build dwelling (ref SW/95/471) may have shown land edged red and blue, as the applicant's agent at the time suggested that certain documents would need to be transferred to the new application (ref SW/96/128). However, the evidence before me in this appeal does not support this contention as there are no drawings showing land edged blue or red.
14. There appears to be little doubt between the parties as to which dwelling the disputed condition relates to. On the balance of probabilities, I concur with the parties that the disputed condition relates to the farm cottage that I observed at my site visit. Nonetheless, the Court judgements in *UBB Waste Essex Ltd* and *Dunnett Investments Ltd*³, drawn to my attention by the appellants, have advised that a cautious approach be taken to the interpretation of conditions. This is because it is essential for third parties unrelated to the original case to rely on the face of the planning permission and any documents referred to, and because a breach of a planning permission might have criminal sanctions.
15. To my mind, in adopting a cautious approach, the 'reasonable reader' would be likely to understand the purpose and intention behind the disputed condition. However, they would not be able to rely on the face of the planning permission and the documents within it to identify, with sufficient certainty and precision, the dwelling controlled by the disputed condition. Thus, the disputed condition is not precise. Even if the dwelling understood to be Hole Street Farm Cottage was shown to be within the same ownership as the new build dwelling at the time of the planning application, it would not alter my conclusions above.
16. As there is no dwelling of this name 'on the ground' or in a precise location explicitly identified by the condition it would not be reasonably possible for the Council to detect a breach of the disputed planning condition. Even if I am wrong on this point, and a breach could be detected, it would not alter my conclusion that the disputed condition fails the tests of necessity, relevance to planning and to the development being permitted.
17. Based on my findings above, and the evidence before me, the control imposed on the occupation of the farm cottage by the disputed condition goes beyond that which is necessary to make the development acceptable. As such, it imposes a disproportionate and unjustified level of control upon the occupancy of the farm cottage, and potentially did so on land that was not in the control of the applicant for planning permission.

³ *Dunnett Investments Ltd v SSCLG & East Dorset DC* [2016] EWHC 534 (Admin); 2017 EWCA Civ 192

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18. Whether or not the applicant for planning permission agreed to the disputed condition does not override the need for the condition to meet the 6 tests for imposing planning conditions. Furthermore, in the context of those tests, that the disputed condition has gone unchallenged since the grant of planning permission in 1996, is a neutral factor that weighs neither in favour or against this application.
19. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
20. Based on the development plan policies referred to above, I find that on the evidence before me, granting outline planning permission for the proposed dwelling would, without the disputed condition, be consistent with Policies ST 3 and DM 12 of the LP. These policies seek to ensure that housing is not permitted outside the built-up area boundaries shown on the Proposals Map in order to avoid isolated homes in the countryside unless, amongst other requirements, there is an essential need for a rural worker to live permanently at or near their place of work in the countryside. Even if I were to agree with the appellants that the development plan policies referred to above do not seek to restrict the removal of agricultural occupancy conditions, it would not alter my conclusion that the disputed condition fails the tests for imposing planning conditions.

Other Matters

21. Given my conclusions on the disputed condition it would not be reasonable or necessary to transfer it onto a different existing dwellinghouse as suggested by an interested party.
22. The appeal site, including the farm cottage, lies within the Kingsdown Conservation Area (CA) and is near to several listed buildings, the closest of which is the former Oast, granary and stores (listed at Grade II), followed by Hole Street House (Grade II listed Farmhouse), The Malt House (Grade II) and Kingsdown House (Grade II). The significance of the CA appears to be derived from the grouping of buildings, including several farm buildings and several substantial brick dwellinghouses, and a few thatched cottages, set within spacious grounds, which are arranged alongside the narrow road as it runs through the settlement.
23. I have had regard to my statutory duty under Section 66(1) of the Town and Planning (Listed Buildings and Conservation Areas) Act, to have special regard to the desirability of preserving the listed buildings or their setting or any features of special architectural or historic interest which the listed buildings possess. I have also had regard to my statutory duty under Section 72(1) of that Act to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. The removal of the disputed condition from a building that already exists and was likely to have existed prior to the listing of the nearby buildings and designation of the CA, would preserve (leave unharmed) the settings of the listed buildings and the character or appearance of the CA.

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Conditions

24. The guidance in the Planning Practice Guidance⁴ makes clear that decision notices for the grant of planning permission under Section 73 of the Town and Country Planning Act 1990, should also restate the conditions imposed on earlier permissions that continue to have effect.
25. I have no information before me about the status of the reserved matters condition and the time limit for submission of those details (conditions 1 and 2); the time limit for commencement of development (condition 3); nor the pre-commencement and compliance conditions (conditions 6 to 9) that were imposed on the original planning permission. However, these conditions are not in-dispute between the main parties, and I see no basis on the evidence before me, or my observations at the site visit, for concluding that those conditions were not complied with. Conditions 4, 10 and 11 remain relevant to enable the Council to retain control over the occupancy of the Hare Cottage, and any enlargement to it, and to ensure appropriate off-street parking provision. As such, I have imposed them.

Conclusion

26. For the reasons given I conclude that the appeal should succeed and planning permission should be granted without compliance with the disputed condition.

G Sylvester

INSPECTOR

⁴ Paragraph: 040 Reference ID: 21a-040-20190723



Appeal Decision

Site visit made on 5 December 2023

by **Robert Naylor BSc (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3 January 2024

Appeal Ref: APP/V2255/W/22/3312812

124 East Street, Sittingbourne, Kent ME10 4RX

- 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 Ashvin Properties Ltd against the decision of Swale Borough Council.
 - The application Ref 22/501612/FULL, dated 24 March 2022, was refused by notice dated 16 June 2022.
 - The development proposed is the erection of 2 bedroom bungalow.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. On the 19 December 2023 the Government published a revised National Planning Policy Framework (the Framework) accompanied by a written ministerial statement (WMS). All references to the Framework hereafter in this decision are to the December 2023 version.
3. The revised Framework is a material consideration which should be taken into account from the day of publication. I have familiarised myself with the content of the revised Framework and the accompanying WMS and none of the revisions to the Framework would be material to this appeal. Having considered the revisions and in light of the principles of natural justice, in this instance I do not consider it necessary to invite any submissions from the parties on the revised Framework.
4. The description of development cited in the planning application form differs to that contained within the decision notice. There is no evidence that this change was formally agreed. The latter more accurately reflects the scope of the proposed plans which were submitted, consulted upon, determined by the Council and are now the subject of this appeal. As no parties' interests would be prejudiced, in the interests of clarity I rely upon that latter description for the purposes of the heading above.
5. At the time of the application the property at 124 East Street was designated as a Grade II Listed Building, and the Council's second reason for refusal stated that the proposal would fail to preserve the setting of this Listed Building. However, during the appeal process this property was removed from the List of Buildings of Special Architectural or Historic Interest (delisted), following a reassessment by Historic England (HE).

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6. The main reasons why the property was to be delisted are cited in the HE Advice Report¹. HE considered that the rear extension and conversion into four self-contained flats meant that the original internal plan had been significantly altered, with any historic features being fragmentary. Also, the original windows had been replaced with uPVC units and that the property did not comprise part of an asset grouping. Therefore, HE considered that the building is no longer of special architectural or historic interest and has been delisted. In light of this, the Council has indicated that it will not be pursuing its second reason for refusal. Consequently, I will assess the proposal on the remaining refusal reasons only.

Main Issues

7. The main issues are the effects of the proposal on:
- The character and appearance of the area;
 - The living conditions of nearby occupiers with specific regard to private amenity space, noise and disturbance, overlooking and privacy;
 - The living conditions of future occupiers;
 - The adjoining Air Quality Management Area (AQMA); and
 - The integrity of the Swale Special Protection Area (SPA).

Reasons

Character and appearance

8. The appeal is located on the southern side of the busy thoroughfare of East Street (A2) in Sittingbourne. The surrounding area is mixed use with commercial, retail and services located amongst traditional detached, semi-detached and terrace residential units. The existing development at 124 East Street is a detached two-storey property subdivided into flats, and whilst having a traditional appearance, it has been modernised including an extension, a painted render finish and the provision of uPVC windows, hence its delisted status. Nevertheless, the property still has a positive contribution within the streetscene and the surrounding area.
9. The rear gardens in this section of East Street abuts the gardens of the properties in Orchard Place to the south of the site. This provides a general arrangement of relatively open domestic garden spaces, occupied by various residential paraphernalia including sheds and other outbuildings, albeit of modest domestic proportions. The appeal site would provide a new single storey 2-bedroom bungalow, accessed via the side of the existing property.
10. Whilst the appearance of properties in the area is mixed, their plots are generally similar in siting, layout, and form, with reasonable and largely undeveloped gardens to the rear. The proposal would occupy a significant proportion of the rear garden at No 124, which would not be commensurate with the existing open domestic gardens in the immediate vicinity. As a result, the significant built development would contrast with the pleasant and relatively open gardens, which contributes positively to the character and appearance of the area. Furthermore, the increased density would provide

¹ Historic England Advice Report Case Ref: 1484388 dated 21 February 2023

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limited curtilage for both the proposed and existing dwellings, providing a cramped appearance.

11. I acknowledge that there is a large, partially two-storey structure in the rear garden of No 120 which I observed on site. However, from the information before me this is not a separate dwelling, but an ancillary building dating from the mid-19th century in connection with the host property at No 120. Nevertheless, this structure is a limited example and does not represent an overriding influence over the existing character and appearance of the area.
12. Overall, I find the proposed development would be harmful to the character and appearance of the area. Accordingly, it would be contrary to Policies CP3, CP4 and DM14 of the Swale Borough Local Plan (SBLP), adopted July 2017 which, amongst other things, requires development to be of good design, providing appropriate densities determined by the context and the defining characteristics of the area, and reflecting the positive features of the site and locality. The proposal would also conflict with Paragraph 135 c) of the Framework insofar as it requires development to be sympathetic to local character.

Living conditions of nearby occupiers

13. The existing occupants at No 124 currently enjoy a generous garden area for the provision of private amenity space. The location of the proposal would significantly restrict the private space provided for the existing residents. It is acknowledged that the existing garden area is underutilised and somewhat unkempt, nevertheless this does provide suitable and needed private outdoor space, which would accord with the open garden character as indicated above. The reduction in private area for the existing flatted development would be modest for its density, and whilst small tables and chairs could be accommodated, there would be little room to store additional equipment, provide washing lines and other domestic items. Consequently, I do not consider the outdoor amenity area would accord with SBLP Policies CP4 and DM14 and could not reasonably be regarded as a high-quality living environment.
14. The Council are also concerned with potential noise generated from the comings and goings and general disturbances associated with the proposal. The existing property at No 124 is already a flatted development, and I have been supplied with no information indicating the room layout of these flats. Whilst an additional dwelling at the site is likely to intensify the use to an extent, given the existing multi occupant residential use at No 124, any minor increase in activities of occupants using the side accessway is unlikely to have any significant harm to the existing occupiers living conditions in terms of noise and disturbance than currently experienced.
15. The proposed refuse store is located some distance away from East Street where receptacles would need to be presented. As with existing occupants, any future occupiers would need to drag their refuse and recycling bins down the accessway, to the collection point at East Street. This is not uncommon in the area, and I am satisfied that the distance would not be inconvenient or contrary to what other occupants nearby are already doing and thus would not be harmful in this regard. Furthermore, the provision of a refuse store could be secured through a condition.

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16. In regard to privacy of nearby residents, it is acknowledged that the proposed dwelling would be single storey in nature, and the provision of a suitable boundary treatment could mitigate some overlooking and loss of privacy from the proposal to these adjoining properties. This could also be secured through a suitable condition.
17. Notwithstanding my findings in respect to the adequacy of privacy, noise and disturbance, the living conditions of existing occupiers would be unacceptable due to a significant reduction in private outdoor amenity space. Accordingly, with regard to this main issue the proposal would have an unacceptable effect upon the living conditions of neighbouring occupiers. In this respect it would not accord with SBLP Policies CP4 and DM14 insofar as they seek to ensure development proposals enrich the qualities of the existing environment and cause no significant harm to amenity. The proposal would also conflict with paragraph 135 f) of the Framework, which amongst other things, seeks a good standard of amenity for all existing and future occupants of buildings.

Living conditions of future occupiers

18. The proposed development would meet with the minimum internal space requirements for new dwellings contained in the Government's Nationally Described Space Standard, March 2015 (NDSS). However, SBLP Policies CP4 and DM14 among other things, require new development to provide high quality design and cause no significant harm to amenity and other sensitive uses or areas. In addition, the Framework expects planning decisions to ensure healthy living conditions and create better places to live, indicating that higher densities should not be at the expense of acceptable living standards².
19. The constraints of the site prevent any suitable private outdoor amenity space being located at the rear of the proposal, however a modest amenity space would be located at the front of the site instead. As stated above, the provision of the amenity space in this location would restrict and reduce the amenity space currently experienced by the existing residents at No 124 providing a cramped appearance. Furthermore, No 124 has several upper floor rear windows located in close proximity to the proposal. Given their elevated position, the modest garden size and separation distance between the properties, would provide significant overlooking from a higher vantage point to the detriment of the living conditions for any potential occupiers.
20. The proposed development would therefore have an unacceptably harmful effect upon the living conditions of its future occupiers, with particular reference to overlooking and privacy. The proposal is therefore contrary to the relevant provisions of SBLP Policies CP4 and DM14 and the Framework which, amongst other things, expects planning decisions to ensure healthy living conditions and create better places to live.

Air Quality

21. The appeal site adjoins the Swale#3 AQMA. SBLP Policy DM6 amongst other things, seeks development to integrate air quality management and environmental quality into the design, and demonstrate that proposals do not worsen air quality or are likely to impact on AQMAs. The appellant has supplied

² Paragraph 129 c) of the Framework

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little evidence to confirm whether or not the development would adversely impact on vehicle emissions in the area.

22. Taking a precautionary approach, it is reasonable to conclude that vehicles associated with the new development would be moving in and around the area and the AQMA, thus would invariably produce additional emissions. In the absence of any evidence to the contrary, these vehicle emissions could likely have a negative effect on the air quality within the area and in particular the adjoining AQMA.
23. Consequently, it has not been sufficiently demonstrated that the development does not have a harmful effect on the AQMA. As such, it is contrary to Policy DM6 of the SBLP and to the Swale Borough Council Air Quality and Planning Technical Guidance, updated May 2021 which collectively seek to minimise climate change and local air quality impacts.

Integrity of the Swale SPA

24. The Medway Estuary and Marshes SPA is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended ('the Habitats Regulations'). The Habitats Regulations impose a duty on me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA, either alone or in combination with other plans and projects.
25. The appeal site is located within 6km of the Medway Estuary and Marshes SPA. The conservation objectives for the SPA are to ensure that the integrity of the site is maintained or restored as appropriate and ensure that the site contributes to achieving the aims of the Wild Birds Directive. The qualifying features include its assemblage of breeding birds and waterbirds, including populations of dark-bellied brent goose, common shelduck, northern pintail, pied avocet, ringed plover, grey plover, red knot, dunlin, common redshank, and little tern.
26. I have been presented with no information in respect to any mitigation measures to conserve the integrity of the SPA, or whether any financial contribution (secured by planning obligation) should be considered as an appropriate mitigation measure. Nor is there a planning obligation before me. Nevertheless, as I'm dismissing the appeal for other matters, I do not need to consider this matter further, as no significant likely effects on the SPA would arise from my decision.

Planning Balance and Conclusion

27. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise.
28. I have found that the proposed development would harm the character and appearance of the area and would harm the living conditions for existing and potential occupiers. There is also insufficient evidence to demonstrate that the development does not have a harmful effect on the AQMA, nor is there any suitable information in respect to the protection of the integrity of the Medway Estuary and Marshes SPA, which collectively attract substantial weight against the scheme.

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29. It is not disputed that the Council cannot currently demonstrate a five-year supply of deliverable housing sites. Consequently, because of the provisions of footnote 8, paragraph 11 d) (ii) of the Framework should be applied.
30. Therefore, it is necessary for me to determine whether the adverse impacts of the development would significantly and demonstrably outweigh the benefits of the scheme. I find that the development would offer potential benefits in terms of providing a single modest dwelling to the Council's housing stock, given that this is a small site and could be brought forward relatively quickly. It would also have environmental, economic and social benefits, through potential energy efficiency measures, employment opportunities during the construction phase of the development, and future residents accessing and supporting local services. I have attached moderate weight to these factors in favour of the proposal.
31. Taking all of the above into account, in applying paragraph 11 d) (ii) of the Framework, the extent to which there would be adverse impacts of granting planning permission, relating to my findings on the main issues above, would significantly and demonstrably outweigh the above benefits of the proposed development, when assessed against the policies in the Framework taken as a whole.
32. For the reasons outlined above and having regard to the development plan as a whole, and all other relevant material considerations including the provisions of the Framework, the appeal is dismissed.

Robert Naylor

INSPECTOR



Appeal Decision

Site visit made on 16 November 2023

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 January 2024

Appeal Ref: APP/V2255/W/22/3308376

Land to the south of Lees Court Road, Stocks Paddock, Sheldwich, Faversham ME14 0LU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Charad of Eden (Sheldwich) Limited against the decision of Swale Borough Council.
 - The application Ref 22/500831/OUT, dated 28 January 2022, was refused by notice dated 4 May 2022.
 - The development proposed is described on the application form as 'outline application for the creation of four self-build plots on land at Stocks Paddock, Sheldwich with layout, scale, appearance and landscaping reserved for subsequent approval.'
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline with all matters reserved. I have had regard to the submitted plans but have regarded all elements of these drawings as indicative.
3. The proposed development relates to the setting of listed buildings and lies within a conservation area. Accordingly, I have had regard to the statutory duties set out in sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
4. On 22 November 2023, all designated Areas of Outstanding Natural Beauty (AONBs) in England and Wales became 'National Landscapes'. I have made reference to this in my decision as the site is located in the former Kent Downs AONB.

Main Issues

5. The main issues are:
 - whether the proposed development would provide a suitable location for housing, having regard to the accessibility of services and facilities;
 - the effect of the proposed development on the character and appearance of the surrounding area; and
 - whether the proposed development would preserve the settings of adjacent Grade II listed buildings, and the extent to which the

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development would preserve or enhance the character or appearance of the Sheldwich Conservation Area.

Reasons

Appropriateness of location

6. The appeal site forms a parcel of land positioned adjacent to Lees Court Road, near to established residential properties and Sheldwich Primary School. Nevertheless, the appeal site undisputedly falls outside of any defined settlement boundaries and therefore within the open countryside. Sheldwich and Sheldwich Lees provide very limited services including a primary school and church.
7. The nearest larger settlements are Faversham and Ashford, which provide a greater number of services including local shops, public houses, secondary schools and doctors' surgeries. These settlements are located approximately 3 and 10 miles away.
8. I accept that the distance between the appeal site and those settlements is similar to that of nearby residential properties, including neighbouring Stocks Cottage. However, to reach services in those settlements by public transport, individuals would need to proceed along Lees Court Road and Ashford Road by foot or cycle. Those roads have limited footways and street lighting. To access the northbound services, individuals would also need to cross the busy Ashford Road, which has no dedicated crossing point. This would be particularly undesirable in winter months, after dusk or during inclement weather conditions. Moreover, the nearest bus stops provide only very limited services and could not be relied on to access services further afield. The appellant sets out that train stations, located approximately 2 miles away are within walking distance. However, I disagree. To reach those stations, individuals would need to use the same unsatisfactory routes as described above.
9. I acknowledge the appellant's comments in respect of electric car use. However, there is no certainty, or mechanism before me to ensure, that future occupiers would use electric vehicles, regardless of the provision of an electric vehicle point.
10. Paragraph 109 of the National Planning Policy Framework (the Framework) acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural locations. However, in this location, the occupants of the proposed dwellings would be highly reliant on the use of private vehicles to access most services and facilities due to a lack of satisfactory cycling and walking routes and a lack of reliable public transport facilities within a reasonable distance of the site.
11. I have also had regard to the relevant provisions of paragraph 83 of the Framework, which relates to rural development. This aims to promote sustainable development in rural areas by ensuring that it is located where it will enhance or maintain the viability of rural communities. Notwithstanding the presence of a primary school near to the site, which may be supported by future residents, for the reasons given above in respect of accessibility, I find that the Framework's advice on rural development would not provide support for the dwellings proposed at the appeal site.

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12. For the above reasons, I conclude that the appeal site forms an inappropriate location for the development, contrary to the relevant provisions of Policies ST1, ST3, CP3 and DM14 of Bearing Fruits 2031: The Swale Borough Local Plan (LP, adopted 2017). These policies, when taken as a whole, seek to deliver sustainable development in appropriate places and to minimise the need to travel, as well as to facilitate sustainable transport options. This is in a similar vein to the objectives of the Framework insofar as sustainable transport is concerned.

Character and appearance

13. Although details are reserved, an indication of the proposed scheme has been put forward by the appellant. This sets out that it is anticipated that the site would provide a mixture of single-storey, 1.5 storey and two storey dwellings, although there is some conflicting evidence on this, with the design code specifying a maximum height of 1.5 storeys. Nevertheless, the proposed development would, in all likelihood, be visible from Lees Court Road, and from private vantage points. Despite some mature landscaping along Lees Court Road and the intended increase in planting, the proposed dwellings would likely be visible through gaps in that landscaping, with occasional breaks in coverage. Where visible, it would have a significant presence in front of the mature treeline that sits behind the site. I acknowledge the submitted landscape appraisal, which considers that effects would vary from no change to low/slight adverse to moderate adverse. I also acknowledge the appellant's proposal to infill gaps in landscaping. However, harmful change would occur to the site and its immediately surrounding area and, in any case, planting and boundary features cannot be relied on in perpetuity to give the same level of screening as at present, including during winter months.
14. As a result of the proposed development, the currently open and verdant nature of the site would be damaged and the development would have a harmful urbanising effect. The site is, at present, consistent with much of the countryside within the surrounding area, irrespective of the existence of some built form. Although the proposed dwellings would potentially be of a similar scale to those that exist to the immediate south and west, their presence would have a detrimental impact on the rural character of Sheldwich and surrounding area. I also note paragraph 182 of the Framework is clear that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and AONBs. This is particularly pertinent given the site's location within a National Landscape (formerly the Kent Downs AONB).
15. The appellant sets out that the site, together with adjoining built form, presents a strong entrance to Sheldwich Lees. Irrespective of the position of the nearby primary school, which I accept is at odds with the prevailing pattern and appearance of development within Sheldwich, it is evident that established built form peters out as you travel west along Lees Court Road from Sheldwich Lees. Accordingly, the scheme would fail to maintain what I see as the pleasant rural transition that currently occurs here. There is also a sense of separation between the cluster of properties at the junction of Lees Court Road with Ashford Road and those at Sheldwich Lees.
16. I accept that the appellant proposes a design with some sensitivity to rural vernacular building forms and layout, in particular noting the submitted design code, which would provide greater certainty post-permission. Nevertheless, the

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inclusion of built form here, consisting of multiple dwellings arranged around a central cul-de-sac within the site, would appear contrived and out of keeping with the prevailing pattern of development within the surrounding area.

17. For the above reasons, I conclude that the proposed development would be contrary to the relevant provisions of LP Policies ST1, CP3, and DM14 which, in summary, seek to achieve high quality design in development, including the conservation and enhancement of the natural environment.

Heritage assets – special interest and significance

The Stocks

18. The Stocks lies to the west of the site. It is a Grade II listed building¹ which dates from the 16th century. It is timber framed with plaster infill, painted brick and weatherboarding. It has a tiled hipped roof over with a catslide projection to the front. The building is thought to have been both a garage and a public house at some point in the past.
19. The special interest and significance of the listed building is largely derived from its historic and architectural interests. Important contributors in these regards are its age, illustration as a vernacular property that has evolved over time, and the use of traditional materials and building methods.
20. Pertinent to this appeal, the building's special interest and significance are also derived, in part, from its setting. The open but clearly defined front garden, together with enclosed rear garden, have an historic, visual and functional connection with the heritage asset. It is from these grounds that the asset is best appreciated. They form the asset's immediate setting. This immediate setting contributes considerably to the asset's special interest and significance. Beyond this, the surrounding area is made up of open countryside, with some development to the north and east. This surrounding area forms the asset's wider setting, from which only limited or fleeting views of the asset are possible. The development to the rear of the site has altered how the asset is experienced and thus has moderated the contribution the wider setting, which includes the appeal site, makes to its special interest and significance.

Barn (named as 'Barn, Now Garage About 10 Metres East of The Stocks' hereafter referenced as 'the Barn')

21. The barn is a Grade II² listed building. Its origins lie in the 17th century. It is a timber framed building built over a flint base with weatherboarding and a half-hipped roof over. The building is now in residential use.
22. The special interest and significance of the listed building is largely derived from its historic and architectural interests. Important contributors in these regards are its illustration as a vernacular former agricultural building and the use of traditional building materials and methods.
23. Pertinent to this appeal, the building's special interest and significance are also derived, in part, from its setting. The enclosed yard/driveway associated with the Barn, shared with Stocks Cottage and setback off Lees Court Road, forms the asset's immediate setting and it is from here that the asset is best appreciated. This contributes somewhat to the asset's special interest and

¹ List Entry Number: 1069083

² List Entry Number: 1069084

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significance. Beyond this, the surrounding area is made up of modest residential development, with a verdant and open field behind (the appeal site). There is considerable intervisibility between the appeal site and the Barn. The appellant's heritage statement illustrates the appeal site's likely historic functional connection with the Barn, as part of an historic former farmstead. The submitted map from 1887 illustrates the Barn as being open onto the land which now, in part, forms the appeal site, with no boundary separating the two. A later map, from 1908, shows a boundary having been created around the land which now forms the appeal site and between it and the Barn. It is evident that the Barn and appeal site are, today, severed from one another, at least in terms of ownership and use. Nevertheless, a clear visual and historically functional connection remains. This surrounding area, which includes the appeal site, forms the asset's wider setting. This wider setting makes a positive contribution to the asset's special interest and significance.

The Manor House

24. The Manor House is a Grade II listed building³. It has origins in the 16th century, with later alterations and restoration. It is a timber-framed building with exposed plaster infill and red brick, with a plain tiled roof over.
25. The special interest and significance of the listed building is largely derived from its historic and architectural interests. Important contributors in these regards are its illustration as a vernacular domestic building and use of traditional building materials and methods.
26. Pertinent to this appeal, the building's special interest and significance are also derived, in part, from its setting. The well enclosed and landscaped grounds of The Manor House are set away from public views. It is from these closely related grounds that the asset is best appreciated. This forms the asset's immediate setting. This immediate setting contributes somewhat to the asset's special interest and significance. Beyond this, the surrounding area is made up, to the north, of low-key residential development and to the north east, with a verdant and open field (the appeal site). This surrounding area forms the asset's wider setting. Although the heritage statement sets out the appeal site's historic functional relationship with The Manor House, there is now limited intervisibility between the sites. This has altered how the asset is experienced and thus has moderated the contribution the wider setting, which includes the appeal site, makes to its special interest and significance.

Conservation Area

27. The special interest and significance of Sheldwich Conservation Area (CA) is largely derived from its historic townscape, all set within rural surroundings. There is variation in dwelling style and period but the material palette is typically limited to timber, brick and tile. Dwellings are typically positioned within large, spacious plots which have a direct relationship with nearby roads.
28. The open, verdant and undeveloped nature of the appeal site contributes to the transition from semi-rural to rural as you move along Lees Court Road. The appeal site's positive traits make a meaningful contribution to the character and appearance of the CA as a whole and thus to its significance as a designated heritage asset.

³ 1051678

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Heritage assets – appeal proposal and effects

Settings of The Stocks and The Manor House

29. The position and nature of the proposed development, together with the limited intervisibility between the appeal site and The Stocks and The Manor House, would mean that the visually and physically separate relationship between the appeal site and those assets would be maintained. The historic and architectural interests of the assets would remain unaffected. The retention of a reasonable separation distance and intervening landscaping features, in particular, would reinforce this. Ultimately, the immediate and most of the wider settings that contribute to the significance of those assets would remain undisturbed by the proposed scheme.
30. Taking these factors into account, the proposed development would not compromise the settings of The Stocks or The Manor House, rather it would have a neutral effect that would not determinably alter how the asset would be experienced and would not adversely affect the ability to appreciate the significance of the assets. Consequently, the settings of The Stocks and The Manor House, and the contribution those settings make to the significance of the assets, would be preserved.

Setting of the Barn

31. The Barn currently retains a visual and historically functional relationship with the appeal site. This would be markedly compromised as a result of the proposed development.
32. The proposed development would appear as a dominant feature in the site, introducing built form where there is currently none. The cumulative totality of the proposed development, when taking into consideration the likely associated paraphernalia of domestic gardens, sheds and parked cars, as well as inevitable items such as bin stores and boundary treatments, would harmfully erode the historic and rural setting of the Barn. The proposed areas of hardstanding for the access and parking spaces would considerably reduce the verdant character of the site. Moreover, the visual connection between the site and the Barn would be lost. Although the Barn has been modified in the past, losing its historic use, it retains an agrarian character which is seen in the context of surrounding agricultural land (the appeal site). The proposed development would compromise this. It would have a harmful urbanising effect and diminish the ability to appreciate the significance of the Barn, weakening the contribution that the wider setting makes to the significance of the heritage asset.
33. Overall, I conclude that whilst the proposed development would preserve the setting of Grade II listed buildings, The Stocks and The Manor House, it would fail to preserve the setting of Grade II listed building, the Barn. Consequently, the development would harm the significance of this designated heritage asset. In doing so, it would be contrary to the requirements of Section 66(1) of the Act.

Conservation Area

34. The proposed development would be at odds with the prevailing character of the area and would erode the open and spacious character of the site.

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Accordingly, it would have a harmful effect on, and thereby fail to preserve, the character and appearance of the CA as a whole.

35. I accept that the nearby primary school is atypical and uncharacteristic in terms of its layout, scale and appearance. However, its existence does not automatically mean that all future development must be allowed where this is found to be harmful. Overall, the proposed development would fail to preserve or enhance the character or appearance of the CA, in conflict with the requirements of Section 72(1) of the Act.

Public benefits and balance

36. Paragraph 205 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 206 goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting and that this should have clear and convincing justification.
37. With reference to Paragraphs 207 and 208 of the Framework, in finding harm to the significance of designated heritage assets, the magnitude of that harm should be assessed. Given the extent of the development relative to the listed buildings and their settings, as a whole, and to the CA, I find the harm to be 'less than substantial' in this instance but, nevertheless, of considerable importance and weight. Under such circumstances, Paragraph 208 advises that this harm should be weighed against the public benefits of the development, which includes securing the asset's optimum viable use.
38. The scheme would result in a net increase of four dwellings at the site, which would be a public benefit given that the Council cannot currently demonstrate a five-year supply of deliverable housing sites. Moreover, the self-build status of the dwellings would provide a beneficial choice of homes in the borough. There would also be some economic benefits, including employment during the construction process and the increase in trade to local services and facilities following occupation, potentially assisting the vitality and viability of the settlement and its community. Nevertheless, these benefits would be relatively limited by reason of the limited extent of the proposed development.
39. Overall, the weight that I ascribe to the public benefits that would accrue from the proposed development is not sufficient to outweigh the considerable importance and weight that I attach to the harm I have found. Overall, the proposed development would fail to preserve the setting of Grade II listed building, the Barn, and would fail to preserve or enhance the character or appearance of the CA.
40. Consequently, it would be contrary to the requirements of sections 66(1) and 72(1) of the Act, and the relevant provisions of the Framework which seek to conserve and enhance the historic environment. The proposed development also conflicts with the relevant provisions of LP Policies CP8, DM14, DM32 and DM33 which, in summary, seek to achieve high quality design in development and to protect heritage assets.

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Other Matters

Heritage

41. The appeal site is located within the wider surroundings of two Grade II* listed buildings, Church of St James⁴ and Throwley House⁵ in the north, and Grade II listed building Colbrahamsole Farmhouse and Garden Wall⁶ to the south. Mindful of the statutory duty set out in section 66(1) of the Act, I have had special regard to the desirability of preserving their settings. The historic, albeit scattered and low-key, built backdrop and verdant rural surroundings of these buildings, of which the appeal site forms a part, positively contribute to their significance. Nevertheless, given the location and extent of the proposed development, together with the considerable separation distance and limited intervisibility between the sites, I consider that the proposed development would preserve the settings of these listed buildings and the contribution they make to their significance. I note the Council had no concerns in this regard either.

Housing Supply

42. As noted above, the Council cannot currently demonstrate a five-year housing land supply of deliverable housing sites. This means that the policies which are most important for determining the proposed development are deemed to be out of date in accordance with paragraph 11.d of the Framework. This states that in such a situation where development plan policies are deemed out-of-date, planning permission should be granted unless one of two criteria apply. One of these, and which is pertinent to the appeal scheme before me, is if the application of policies of the Framework that protect areas or assets of particular importance, including designated heritage assets, provide a clear reason for refusing the development. As I have explained above, there would be harm to the setting of a Grade II listed building and to a conservation area that would not clearly be outweighed. Therefore, the proposed development would not benefit from the presumption in favour of sustainable development in this instance.

Self-build

43. The appellant's evidence sets out that the proposed development would be a self-build scheme. In considering this matter, I have had regard to the Council's duties under the Self Build and Custom Housebuilding Act 2015. The Council is required, under this legislation, to keep a register of individuals or associations who are seeking to acquire serviced plots of land in the district on which to build their own home.
44. The appellant states that there is no evidence available to suggest that the Council is currently contributing toward meeting the borough's requirement. The Council has not responded on this matter. I therefore remain unclear as to the status of the demand for self-build in the borough and in respect of any planning permissions, allocated sites or numbers of plots overall.
45. Therefore, taking into account all of the evidence before me, the proposed development would likely contribute to the Council's requirement to make

⁴ List Entry Number: 1049130

⁵ List Entry Number: 1344050

⁶ List Entry Number: 1069086

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adequate provision for self-build dwellings, albeit this would be limited due to the nature of scale of the proposal. Accordingly, this is a consideration to which I afford limited weight and which does not outweigh or overcome the harm that I have identified under the main issues.

Other considerations

46. The appellant sets out that the scheme would meet other planning objectives, including in respect of living accommodation, private amenity space, parking or highways, trees, drainage, sustainability and ecology. However, there is no dispute between the appellant and Council on these matters and these have not led me to an alternative conclusion on the main issues.
47. I also accept that the proposed development would make efficient use of a small site, which is supported by the Framework. Nevertheless, this is not at any cost, and it does not lead me to an alternative conclusion on the main issues.
48. I note the appellant's difficulties in communicating with the Council. Such matters do not affect the outcome of this decision, which has been based on the evidence before me. These matters would be best dealt with under a Costs Application.
49. The site lies within the zone of influence of The Swale Special Protection Area, a European designated site. I note that a mitigation payment has been made by the appellant. Habitats Regulation 63(1) states that a competent authority, before deciding to give any consent or permission must make an appropriate assessment of the implications of the plan or project for that site. However, given my reasoning in respect of the main issues and that the appeal is dismissed, there is therefore no requirement upon me in that regard, and even were I to find that the proposal was acceptable in this respect, it would be neutral in my determination of the case.

Conclusion

50. For the reasons above, having regard to the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be dismissed.

A Price

INSPECTOR

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The Planning Inspectorate

Appeal Decision

Site visit made on 18 December 2023

by **N Davies BA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17th January 2024

Appeal Ref: APP/V2255/W/23/3321274

Co-Op Sports & Social Club, St. George's Avenue, Sheerness,

Kent ME12 1EJ

- 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 M L Harris on behalf of the Co-op Sports & Social Club against the decision of Swale Borough Council.
 - The application Ref 22/503876/FULL, dated 04 September 2022, was refused by notice dated 13 February 2023.
 - The development proposed is a storage compound.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Revised versions of the National Planning Policy Framework (the Framework) have been published since the planning application was determined by the Council. Both main parties have had the opportunity to comment on any relevant implications for the appeal. I have had regard to the latest version of the Framework in reaching my decision.
3. The description of the proposed development provided on the planning application form indicates that the development has already taken place. Therefore, I was able to view the storage compound at the time of my visit.

Main Issues

4. The main issues raised by this appeal are the effect of the proposed development on the:
 - a) Living conditions of existing neighbouring occupiers;
 - b) Character and appearance of the area; and
 - c) The Coastal Change Management Area.

Reasons

Living conditions

5. The site is located within extremely close proximity to residential properties at both Wheatshaf Gardens and St Georges Court. There is some vegetation

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between the site and properties at Wheatsheaf Gardens. This would reduce the visibility of the site in the outlook from these neighbouring dwellings. Notwithstanding this, St Georges Court hosts first floor openings that provide outlook directly toward the storage compound, although the ground floor flats have outlook toward an existing boundary.

6. The occupiers of neighbour properties should reasonably expect to enjoy an acceptable outlook as part of their residential lives. Unlike the existing carpark or the site's previous use to park cars, its intended purpose is to store members' caravans and boats, amongst other things. These would be larger than most cars. Direct outlook of the compound with its visually cluttered appearance would provide the occupiers a poor outlook. This is not an outlook that the occupiers of neighbouring properties should be expected to endure as part of the enjoyment of their residential lives. Such an outlook would be harmful to the living conditions of existing residential occupiers, even if the harm would be limited to only a small number of flats.
7. Furthermore, the compound is of some size. Activities related to storage at the compound would likely give rise to noise from time to time most likely during the daytime. The site may previously have been used for parking associated with the club. Nonetheless, given the compounds close proximity to adjoining residential properties noise would be extremely likely to increase creating disturbance to existing residential occupiers, even if this would be limited to those movements of members taking and returning their property. This would be harmful to the living conditions of the existing occupiers and would diminish the residential enjoyment the occupiers should reasonably expect to enjoy as part of their home life.
8. For these reasons, I conclude that the proposed development would be harmful to the living conditions of existing neighbouring occupiers. The proposal would, therefore conflict with Policy DM14 of the Bearing Fruits 2031: The Swale Borough Local Plan 2017 (the Local Plan). That policy seeks, amongst other matters, development not to cause harm to the amenities of surrounding uses or areas.

Character and appearance

9. The site lies outside of the built up area boundary and, as such, falls within landscape that is designated as both countryside and an Area of High Landscape Value. It also falls within a designated Important Local Countryside Gap.
10. The local planning authority explains that the development would take place on land that was previously used for formal outdoor sport, although the appellant has advised that the land has been used for vehicle parking by members associated with the club. Either way, the site would not have had a conventionally rural character. Nonetheless, it would have had an open and relatively undeveloped appearance. The proposal would represent a piecemeal erosion and encroachment of the countryside that forms part of the wider rural landscape by virtue of intensifying urban related clutter within the site. As such, the proposal would negatively impact upon the open character of the area. Enclosing the compound with fencing would not ameliorate this visual harm. Consequently, the proposed development would be harmful to the character and appearance of this rural landscape and would undermine those designations that are in place that seek to protect its rural characteristics.

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11. The use could generate income for the club and would provide a secure storage facility for member's property. There may also be a value to the community as existing roads and driveways would be less parked up as a result of providing this storage facility. This could bring about a visual benefit for streets in the locality. Nonetheless, these benefits would not overcome my above concerns or justify the proposal.
12. For these reasons, I conclude that the proposed development would be harmful to the character and appearance of the area and those landscape designations that are in place to protect the area. The proposal would, therefore conflict with Policies DM3, DM14, DM24 and DM25 of the Local Plan. These policies seek, amongst other matters, development to be sympathetic to its rural location.

Coastal Change Management Area (the CCMA)

13. The site falls within the CCMA. Policy DM23 of the Local Plan provides a list of appropriate forms of development in such locations. The local planning authority have advised that the proposed use does not fall within the list and as such is not an appropriate development within the CCMA designation area. This would bring the proposal into conflict with Policy DM23. Notwithstanding this, given that I am dismissing this appeal for other reasons it has not been necessary for me to consider this matter in any further detail.

Conclusion

14. Having regard to the above findings, the appeal should be dismissed.

Nicola Davies

INSPECTOR

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Appeal Decision

Site visit made on 9 October 2023

by **T Burnham BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 January 2024

Appeal Ref: APP/V2255/W/22/3308462

Land North of Elm Lane, Minster on Sea Easting (x) 595803 Northing (y) 172261

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr S Naish (Provectus Holdings Limited) against the decision of Swale Borough Council.
 - The application Ref 21/503124/OUT, dated 25 June 2021, was refused by notice dated 15 September 2022.
 - The development proposed is residential development for up to 44 dwellings with vehicle and pedestrian access off Drake Avenue (Outline with means of access for approval).
-

Decision

1. The appeal is allowed. Planning permission is granted for residential development for up to 44 dwellings with vehicle and pedestrian access off Drake Avenue (Outline with means of access for approval) at Land North of Elm Lane, Minster on Sea Easting (x) 595803 Northing (y) 172261 in accordance with the terms of the application Ref 21/503124/OUT, dated 25 June 2021 subject to the conditions set out in the attached schedule.

Procedural Matters

2. The Council decision notice before me is dated 15 September 2023, however this cannot be correct as this post dates the date of the appeal. That submitted by the appellant is undated. I have therefore taken the date of the application from the appeal form.
3. The application is made in outline with only reserved matters of access before me. Matters of appearance, landscaping, layout, and scale are reserved for future consideration. Only some plans form the basis of the planning permission¹. I have considered the layout/housing mix of the development shown on plan SK001 Rev F and SK002 Rev C as being for illustrative purposes only.
4. The decision notice makes no reference to any development plan or other planning policy. The submitted committee report from the Council does identify a range of policies within Bearing Fruits 2031 (the Swale Borough Local Plan) (2017) (LP). Those policies have been supplied for me.

¹ Site Location Plan SK002 A, Access for Approval SK001 F (Access only) & Proposed access design 66200254-SWE-ZZ-XX-DR-TP-0001 Revision P01.

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5. Drawing on the refusal reason, the main issues identified by the Council appear to relate to harm from loss of countryside and impact on living conditions arising from the proposed site access onto Drake Avenue. In the absence of any LP policy being specifically drawn to my attention regarding the main issues I have identified these myself.
6. The policies which I consider most important are ST 3 relating to the Swale Settlement Strategy, CP 4 relating to Design, DM 14 General Development Criteria and DM 28 Biodiversity and geological conservation.
7. A completed planning obligation has been submitted alongside the appeal. It relates to financial contributions towards community learning, healthcare, highways, libraries, primary/secondary education, refuse bins, social care, waste and youth services. It also makes provision for a Special Protection Area Mitigation Contribution.
8. The evidence indicates that the submitted undertaking is necessary to make the development acceptable in planning terms to enable the proposal to accord with the LP.
9. It is directly related to the development and fairly and reasonably related in scale and kind to the development. The planning obligation therefore meets the tests within Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and at Paragraph 57 of the Framework².

Application for costs

10. An application for costs was made by Mr S Naish (Provectus Holdings Limited) against Swale Borough Council. This application is the subject of a separate Decision.

Main Issues

11. The first main issue therefore is the principle of the development in this location including the effect of the proposal on the character and appearance of the area. The second is the effect of the proposal on the living conditions of occupiers at No. 65 & No. 69 Drake Avenue (No.s 65 & 69). The third is the effect of the proposal on the North Kent Marshes Special Protection Areas (SPA's).

Reasons

Principle of Development/Character and Appearance

12. The appeal site sits to the immediate south-west of Nelson Avenue and Drake Avenue, which are residential streets incorporating established and closely spaced residential properties. These streets form a finger extending outwards from the main body of Minster-on-Sea (Minster) to the north-west.
13. To the north of Nelson Avenue, land levels make a steady and pronounced rise upwards. However, the appeal site sits at a broadly similar level to Nelson Avenue and Drake Avenue. The raised area within the site along its north-eastern boundary is associated with the remnants of the former Sheppey Light Railway.

² National Planning Policy Framework December 2023.

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14. The site, which appears to largely support equestrian use, is enclosed by Elm Lane to the south-west, which separates the appeal site from extensive arable land beyond. The land is however unallocated and outside of the built up area boundary for Minster, effectively considered as within the open countryside. There is therefore conflict with the requirements of Policy ST 3 which limits development that is permitted at locations in the open countryside, outside of the built-up area boundaries.
15. Although this is the case, as well as the differentiation from that arable land beyond to the south in terms of use, the site is further visually separated from the arable land beyond by the extensive planting along its south-western boundary fronting onto Elm Lane as well as planting on the other side of Elm Lane.
16. From the majority of surrounding public areas and viewpoints, the site would be viewed as an easily understood continuation of the Nelson Avenue and Drake Avenue block of housing, and distinctly separate from the arable farmland beyond.
17. The development would alter the character and appearance of the site through the introduction of housing onto a site which contains very limited development. This would result in some alteration and slight harm to the character and appearance of the area.
18. However, with the proposed measures and mitigation, including setting back properties from Elm Lane, limited density of development allowing for undeveloped areas within the site and along with retention and provision of additional planting, the proposal would be able to limit its impact on the intrinsic value, landscape setting, tranquillity, and beauty of the countryside.
19. The site is directly adjacent to Minster which is included as a tier 3 other urban local centre, which in combination with other nearby centres provides a reasonable range of services.
20. There would therefore be some conflict with Policy ST 3 in terms of the principle of the location and in terms of the effect of the proposal on the character and appearance of the area.
21. There would also be some conflict with Policy CP 4 of the LP which overall requires development proposals of a high quality design that is appropriate to its surroundings including assessing and responding to local landscape character, condition and sensitivity.
22. However due to the particular existing characteristics of the site and given its location closely adjacent to Drake Avenue and Nelson Avenue, the harm associated with that conflict would be limited.

Living Conditions

23. The proposal would see an access created onto the site at the site of the existing residential property at 67 Drake Avenue which would be demolished. The creation of an access would be noticeable to the occupants of No. s 65 & 69 either side of the proposed access.
24. However, the majority of habitable windows on both of those properties appear orientated to the front and rear to overlook the front and rear gardens. The

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appellant has also submitted a noise survey which concludes that the impact of noise from cars using the new access road could be adequately attenuated by the provision of 1.8m high acoustic perimeter fencing along the boundaries of these dwellings. That requirement is conditioned.

25. There would therefore be no conflict with Policy DM 14 which amongst other matters requires that all development proposals will cause no significant harm to amenity.

North Kent Marshes Special Protection Areas

26. The site is located within the Strategic Access Management and Monitoring Strategy (SAMM) area for the SPA's. The SPA's include habitats such as mudflats, saltmarsh and freshwater grazing marsh which support a range of breeding and wintering birds.
27. The proposal would involve new residential accommodation within close proximity to the sites and could therefore result in impacts on the designated sites arising from increased recreational disturbance. An impact pathway is therefore present.
28. Therefore, adopting the precautionary principle, and in the absence of any evidence to the contrary, I consider that as a result of the proposal, likely significant effects on the protected habitats sites cannot be ruled out.
29. I am therefore required to carry out an Appropriate Assessment. Increases in recreational pressure would be likely to have a detrimental impact on the bird populations present as a result of disturbance to habitat. As such, the favourable conservation status of the species would not be likely to be maintained. The development would be likely to have a detrimental impact on the delivery of the sites objectives, adversely affecting their integrity.
30. However, there is a tariff system in place to pay into a mitigation scheme relating to such potential impacts. The SNCB agree that this scheme is ecologically sound. The relevant payment is proposed as part of the planning obligation and given that this would be secured, such potential impacts would be adequately mitigated.
31. There would therefore be no conflict with Policy DM 28 of the LP, which amongst other things seeks to protect the SPA's.

Main Issues and the LP

32. When the main issues are considered against the LP the proposal would accord with Policies DM 14 and DM 28 of the LP. There would be some conflict with policies ST 3 and CP 4 as the site is unallocated and outside of the built up area boundary for Minster. There would therefore be conflict with the Swale Settlement Strategy along with some harm to the character and appearance of the area. However, the harm associated with those conflicts would be limited due to the particular characteristics of the site outlined above.

Other Matters

33. There is nothing compelling to indicate that there will be any unacceptable impacts of the development in terms of highway safety. Given the setting of the site and its land levels which would mean it would read as a logical extension of the existing area of housing and I have not identified any harm to

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the setting of the Grade I listed Abbey and Gatehouse to the north within the main body of Minster. There is no compelling evidence that the proposal would give rise to unacceptable impacts on local services and facilities and financial contributions are included within the planning obligation to address these matters.

34. My attention has been drawn to another planning appeal but that appeal has not been clearly referenced. There is nothing to indicate that all the circumstances relating to that appeal are the same as at the site before me, especially as the site for that appeal appeared to be 250 yards to the north, where land levels increase leading to very different characteristics to this site. I accept that the proposal would lead be likely to lead to some diminishment of views over the land especially from the rear of properties on the southern side of Drake Avenue. There is nothing to indicate that the proposal would have a significant adverse impact regarding flooding and conditions are proposed in this respect.

Conditions

35. There is no adequate justification before me for removing permitted development rights via a condition. The provision of EV Charging points is covered by buildings regulations and a condition is therefore not necessary. No proper justification has been put forward for a condition relating to energy efficiency/thermal performance/emissions or for a condition relating to water efficiency or relating to accessible housing and I cannot be sure that they meet the relevant tests. A condition relating to high speed broadband has not been adequately justified.
36. Standard conditions relating to time limits and approved plans are necessary to define the permission. Condition 5 is necessary as the access would need to be provided prior to the first residential occupation. Conditions 6, 7 and 9 are necessary in the interests of the character and appearance of the area. Details of cycle parking are required in the interests of promoting the use of more sustainable modes of transport.
37. Conditions 10 and 15 are required in the interests of biodiversity at the site. Conditions 11, 19 and 20 are necessary in the interests of Highway Safety. Conditions 12, 13 and 14 are necessary to ensure proper drainage of the site. Conditions 16, 17, 18 and 21 are necessary in the interests of the living conditions of nearby occupiers.

Other Considerations

38. Set against the harm identified there would be social and economic benefits associated with the proposal. Up to 44 dwellings could make a substantial difference to the overall supply of housing and would be likely to provide a local economic boost associated with construction. The support those extra households would provide to the local economy were a significant amount of those dwellings to be realised would be substantial.

Planning Balance

39. Paragraph 225 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework.

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40. The Framework places significant emphasis on achieving well designed places. At paragraph 130, amongst other things, it seeks to support proposals that are sustainably located in terms of their access to services and facilities. The proposal accords with the Framework in this respect.
41. With regard to Policy ST 3, the Framework does not indicate that the use of settlement boundaries is an inappropriate policy response. The Framework states that planning decisions should ensure that developments are sympathetic to local character and history including landscape setting. There is some conflict with Policy CP 4.
42. Given that Policies ST 3 and CP 4 are not inconsistent with the Framework those policies should not be considered out of date. There would be conflict with the development plan as a whole.
43. The Council cannot demonstrate a five-year housing land supply. The Council within their statement indicate that the supply is 4.83 years, while the appellant suggests the supply is 3.7 years. Whichever is the case, the shortfall is of substance. Paragraph 11 d) of the Framework is applicable.
44. Permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The site is not within a protected area.
45. I have not identified any adverse impacts which would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development weighs in favour of the proposal.

Conclusion

46. The proposal would conflict with the development plan as a whole, however the harm that would arise in association with that conflict would be limited. There would be substantial social and economic benefit to the proposal which weighs in its favour as does the presumption in favour of sustainable development. Therefore, considerations indicate the decision should be taken otherwise than in accordance with the development plan. The appeal is therefore allowed.

T Burnham

INSPECTOR

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SCHEDULE OF CONDITIONS

1)Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.

2)Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.

3)The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

4)The development hereby approved shall be carried out in accordance with the following approved plans:

-Site Location Plan SK002 A

-Access for Approval SK001 F (Access only)

-Proposed access design 66200254-SWE-ZZ-XX-DR-TP-0001 Revision P01

5)The access shown on the hereby approved plans - Access for Approval 66200254-SWE-ZZ-XX-DR-TP-0001 Revision P02 -shall be completed and available for use prior to the first residential occupation of the site. The gradient of the access shall be no steeper than 1 in 10 for the first 1.5 metres from the highway boundary and no steeper than 1 in 8 thereafter.

6)Prior to or alongside the submission of the reserved matters a site-specific design code shall be submitted to and approved by the Local Planning Authority showing the scheme layout, finished site levels, building heights, a landscape and open space masterplan and the palette of building materials and elevational designs. Any subsequent reserved matters approval or variation shall be in accordance with the approved site specific design code.

7)No development beyond the construction of foundations shall take place until details of the external finishing materials of the dwellings has been submitted to and agreed in writing by the Local Planning Authority. The details shall include brick, stone and roof tiles. The details as approved shall thereafter be implemented.

8) The reserved matters shall include details of the provision of vehicle parking and permanent retention of secure covered cycle parking facilities details of which shall be submitted to and approved in writing by the Local Planning Authority. The agreed facilities shall be made available for the dwelling to which they relate prior to the first occupation of that dwelling.

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9) The reserved matters shall include details of both hard and soft landscape works. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials. The agreed details must be implemented prior to the first occupation of the dwelling to which they relate.

10) The reserved matters shall include a Landscape and Ecological Management Plan (LEMP). The content of the LEMP shall be based on the details in appendix C of the 'Biodiversity Unit Calculations' (KB Ecology April 2022) and include the following:

- a) Description and evaluation of features to be managed;
- b) Ecological trends and constraints on site that might influence management;
- c) Aims and objectives of management;
- d) Appropriate management prescriptions for achieving aims and objectives;
- e) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
- f) Details of the body or organisation responsible for implementation of the plan;
- g) Ongoing monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The approved plan will be implemented in accordance with the approved details.

The Landscape and Ecological Management Plan shall include the landscape buffer along the south-eastern and south-western boundaries and communal amenity landscape areas outside of private resident ownership within the proposed development. The development shall then be carried out in complete accordance with the approved details.

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, or ten years for the structural planting along the southern and eastern boundaries, 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.

11) Prior to first occupation of each of the dwellings hereby approved, the following works between that dwelling and the adopted highway shall have been completed:

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(a) Footways and/or footpaths, with the exception of the wearing course;
(b) Carriageways, with the exception of the wearing course but including a turning facility, highway drainage, visibility splays, street lighting, street nameplates and highway structures (if any).

12) No development shall take place until details have been submitted to and agreed in writing by the Local Planning Authority that:

(a) demonstrate that requirements for surface water drainage for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm can be accommodated within the proposed development layout.

(b) demonstrate that an effective outfall for surface water is provided for the development layout. This information may include details of surveys of watercourses and culverts and / or details of any works that may be necessary to deliver an effective outfall for surface water.

The surface water scheme shall be implemented in full accordance with the approved details.

13) No development shall take place until a sustainable surface water drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The detailed drainage scheme shall be based upon the Sustainable Drainage Assessment dated 13th January 2022 and shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site.

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

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

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

14) The development hereby permitted shall not be occupied until a Verification Report, has been submitted to and approved by the Local Planning Authority. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing and the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.

15) Development shall not commence until a biodiversity gain plan has been submitted to and approved by the Local Planning Authority; to demonstrate how the proposal shall contribute to the development achieving a post development biodiversity value which will be a minimum of 20% higher than site pre-development biodiversity value. The calculation shall be in accordance with biodiversity metric 2.

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The post development biodiversity value may include off-site biodiversity gain under the control of the applicant and purchased biodiversity credits. This gain shall thereafter be maintained for a minimum period of 30 years in line with the biodiversity gain plan.

The development shall be carried out in full accordance with the approved biodiversity gain plan.

Any off-site credits must demonstrate in the biodiversity gain plan -

- That it is on land made available by a site provider with sufficient rights to the land;
- That it will be delivered by a specified person or body considered fit and proper to undertake the enhancement works;
- The land will be suitably managed to meet the required enhancement;
- That Work commenced 30 January 2020 or later;
- That the enhancement will be maintained for at least 30 years after the completion of those works;
- That the credit is measured using the most up to date biodiversity metric against a baseline metric assessment;
- That the credit may be allocated to development in accordance with the terms of the conservation covenant or planning obligation;
- That the credit is available to be allocated to this development;
- That it complies with rules on additionality and stacking including on protected sites;
- That it is in England, and;
- Monitoring and reporting for that site over the 30 year period.

16) 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.

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

18) Prior to the commencement of the development, a Construction Environment Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall include:

- Hours of working and timing of deliveries
- An indicative programme for carrying out the works Measures to minimise the production of dust on the site(s)

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- Measures to minimise the noise (including vibration) generated by the construction process to include the careful selection of plant and machinery and use of noise mitigation barrier(s)
- Maximum noise levels expected 1 metre from the affected façade of any residential unit adjacent to the site(s)
- Design and provision of site hoardings
- Management of traffic visiting the site(s) including temporary parking or holding areas
- Provision of off-road parking for all site operatives
- Measures to prevent the transfer of mud and extraneous material onto the public highway
- Routing of construction and delivery vehicles to / from site, including the number of vehicles
- Measures to manage the production of waste and to maximise the re-use of materials
- Measures to minimise the potential for pollution of groundwater and surface water
- Provision of wheel washing facilities
- Temporary traffic management / signage
- The location and design of site office(s) and storage compounds
- The location of temporary vehicle access points to the site(s) during the construction works

Construction shall thereafter take place in accordance with the CEMP.

19) Prior to the commencement of any development on site a Construction Logistics Management Plan shall be submitted to and agreed in writing by the Local Planning Authority to include the following:

- (a) Routing of construction and delivery vehicles to / from site
- (b) Parking and turning areas for construction and delivery vehicles and site personnel
- (c) Timing of deliveries
- (d) Provision of wheel washing facilities
- (e) Temporary traffic management / signage

The development shall proceed only in accordance with the agreed details.

20) The reserved matters shall include details of the following; proposed roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, driveway gradients, car parking and street furniture. All such features shall be laid out/constructed in accordance with the approved details.

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21) Prior to the first use of the access to the site, the scheme of noise mitigation measures outlined in Part 4.0 of the report by MRL Acoustics dated October 2022 shall be installed and available for use. They shall thereafter be retained for the lifetime of the development.



Costs Decision

Site visit made on 9 October 2023

by **T Burnham BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 January 2024

Costs application in relation to Appeal Ref: **APP/V2255/W/22/3308462** **Land North of Elm Lane, Minster on Sea Easting (x) 595803 Northing (y) 172261**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr S Naish (Provectus Holdings Limited) for a full/partial award of costs against Swale Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for a residential development for up to 44 dwellings with vehicle and pedestrian access off Drake Avenue (Outline with means of access for approval).
-

Decision

1. The costs application is allowed and full costs are awarded.

Reasons

2. The Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded where a party has behaved unreasonably and that unreasonable behaviour on a substantive or procedural basis has directly caused another party to incur unnecessary or wasted expense in the appeal process.
3. The claimant considers that the decision notice is vague and poorly worded and is unsubstantiated. The reason for refusal on the decision notice simply states that 'In applying the tilted balance the harm to loss of countryside, and loss of amenity from the construction and use of the access outweighed the planning benefits'. It makes no reference to the development plan nor the Framework¹.
4. That harm has not been properly substantiated either within the Council's reason for refusal or appeal statement. This is set against the detailed assessment of those matters put forward by the claimant. Those issues were not identified as being significant or concerning within the Officer Report. Whilst the committee were entitled to come to a different conclusion, thorough analysis to support and justify such a position should have been supplied by the Council.
5. The PPG advises that Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples include failure to produce evidence to substantiate each reason for refusal on appeal or making vague, generalised, or inaccurate

¹ National Planning Policy Framework 2023.

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assertions about a proposal's impact, which are unsupported by any objective analysis. It is against this background that a full award of costs is justified.

Conclusion

6. Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to procedural matters relating to the process or substantive matters relating to the issues arising from the merits of the appeal.
7. I therefore find unreasonable behaviour on substantive grounds that has resulted in unnecessary and wasted expense in the appeals process. A full award of costs is subsequently justified.

Costs Order

8. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Swale Borough Council shall pay to Mr S Naish (Provectus Holdings Limited) the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
9. The applicant is now invited to submit to Swale Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

T Burnham

INSPECTOR