

# Agenda

## Planning Committee Meeting

Date: Thursday, 11 April 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 10 April 2024.

### Recording and Privacy Notice

Swale Borough Council is committed to protecting the security of your personal information. As data controller we process data in accordance with the Data Protection Act 2018 and the UK General Data Protection Regulation.

This meeting may be recorded. The recording will be retained in accordance with the Council's data retention policy and may be published on the Council's website. By entering the chamber and by speaking at a meeting, whether in person or online, you are consenting to being recorded and to the recording being published.

When joining a meeting online, your username will be visible to others in attendance. In joining the meeting you are consenting to us processing your username. You may use a pseudonym as your username but the use of an inappropriate name may lead to removal from the meeting.

If you have any questions about how we look after your personal information or your rights under the legislation, please email [dataprotectionofficer@swale.gov.uk](mailto:dataprotectionofficer@swale.gov.uk).

#### 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. 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.

4. Minutes

To approve the [Minutes](#) of the meeting held on 7 March 2024 (Minute Nos. 746 – 752) as a correct record.

**Part B reports for the Planning Committee to decide**

5 - 8

The Council operates a scheme of public speaking at meetings of the Planning Committee. All applications on which the public has registered to speak will be taken first. Requests to speak at the meeting must be registered with Democratic Services ([democraticservices@swale.gov.uk](mailto:democraticservices@swale.gov.uk) or call 01795 417328) by noon on Wednesday 10 April 2024.

- |    |  |              |
|----|--|--------------|
| 5. | Deferred Item 1 - Land 77 - 83 &87 London Road           | 9 - 78       |
| 6. | Deferred Item 2 - Nicholls Transport Yard Lydbrook Close | 79 - 106     |
| 7. | 2.1 - Ash Tree Villa, Parsonage Chase, Minster           | 107 -<br>120 |
| 8. | 2.2 - 7 Chegworth Gardens, Sittingbourne                 | 121 -<br>128 |

9.	2.3 - Land at School Lane, Iwade	129 - 142
10.	2.4 - 37 Abbey Street, Faversham	143 - 152
11.	2.5 - Land at Wises Lane, Borden	153 - 160
12.	3.1 - Beverley Camp Warden Road	161 - 186
13.	Part 5 Applications	187 - 216

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

### **Issued on Wednesday, 3 April 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 [democraticservices@swale.gov.uk](mailto:democraticservices@swale.gov.uk). To find out more about the work of this meeting, please visit [www.swale.gov.uk](http://www.swale.gov.uk)

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

This page is intentionally left blank

## SWALE BOROUGH COUNCIL

### PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

**11 APRIL 2024**

#### Standard Index to Contents

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

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

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

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

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

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

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

---

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

This page is intentionally left blank

## INDEX OF ITEMS FOR PLANNING COMMITTEE – 11 APRIL 2024

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

### WORKING GROUP / DEFERRED ITEMS

Item 1	23/502365/FULL	SITTINGBOURNE	77 - 83 & 87 London Road
Item 2	20/501573/FULL	SITTINGBOURNE	Nicholls Transport Yard Lydbrook Close

### PART 2

2.1	23/505480/FULL	MINSTER	Ash Tree Villa Parsonage Chase
2.2	23/503055/FULL	SITTINGBOURNE	7 Chegworth Gardens
2.3	22/504543/FULL	IWADE	Land at School Lane
2.4	23/504657/FULL	FAVERSHAM	37 Abbey Street
2.5	23/505421/NMAMD	BORDEN	Land At Wises Lane

### PART 3

3.1	22/505778/FULL	EASTCHURCH	Beverley Camp Warden Road
-----	----------------	------------	---------------------------

### PART 5

5.1	22/504606/LAWPRO	SITTINGBOURNE	Security Gatehouse Guillat Ave Kent Science Park
5.2	ENFORCEMENT	WARDEN	Land Adj to Cat-C-Vu Preston Hall Gardens
5.3	20/500812/FULL	WARDEN	Cliff End Mobile Home Preston Hall Gardens
5.4	22/504144/FULL	BOUGHTON	Bounds Farm Land to rear of 142 - 146 The Street
5.5	22/505438/FULL	IWADE	School Lane Farm School Lane

This page is intentionally left blank



**PLANNING COMMITTEE – 11 APRIL 2024**

Working Group Item

<b>ITEM 1      REFERENCE NO - 23/502365/FULL</b>		
<b>PROPOSAL</b> 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.		
<b>SITE LOCATION</b> 77 - 83 and 87 London Road Sittingbourne Kent ME10 1NL		
<b>RECOMMENDATION</b> 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 this report and the original report attached at Appendix C, 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.		
<b>APPLICATION TYPE</b> Major		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Ward Councillor (Cllr Cheesman) requests the application be determined by the Committee.		
<b>Case Officer</b> Matt Duigan		
<b>WARD</b> Homewood	<b>PARISH/TOWN COUNCIL</b> None	<b>APPLICANT</b> Mr M Salter <b>AGENT</b> Batcheller Monkhouse
<b>DATE REGISTERED</b> 23.05.2023		<b>TARGET DATE</b> 12.04.2024
<b>BACKGROUND PAPERS AND INFORMATION:</b> <a href="#">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)</a>		

**1. INTRODUCTION**

- 1.1 This application was initially reported to Planning Committee on 8 February 2024, with a recommendation that permission be granted. The original Committee report is attached at Appendix C.
- 1.2 The Planning Committee resolved to defer the determination of the application to allow the Committee to undertake a site visit to better understand level changes, how a more sustainable build could be provided on site, examine highway and parking concerns on site.

- 1.3 The minutes from the 8 February 2024 Committee meeting are attached at Appendix B of this report and set out the following resolution:

*Resolved: That application 23/502365/FULL be deferred to allow the Planning Working Group to meet on site.*

- 1.4 The Planning Working Group met on site on 22 February 2024. The minutes from the Planning Working Group site visit are attached at Appendix A.

## **2. REVISED PROPOSALS**

- 2.1 The applicant has updated the application in response to the matters raised in the site visit, including:

- To address member concerns that the site could remain undeveloped, the Applicant proposes to undertake certain works ahead of demolition.
- To address concerns that future residents would park on Borden Lane, the Applicant has revised the boundary treatment to prevent access to all but one of the dwellings in Block B from being able to directly access Borden Lane.

## **3. APPRASIAL**

- 3.1 In terms of phasing, the original Committee report included a Condition (29) that required a phasing plan to be provided to ensure a developer was engaged to deliver the rest of the development if the houses at 77 to 83 London Road were demolished.
- 3.2 During the site visit, a member of the Planning Working Group requested a greater commitment be given to ensuring that development would not stall, namely, to require the development to be substantially underway before allowing demolition.
- 3.3 The Applicant has explained that this is complicated by the need to widen the site access so it is safe (in terms of sightlines and width) for construction vehicles ahead of building Block A. To make the adjustments to the site access, demolition of the dwellings on London Road would be required.
- 3.4 To demonstrate the developer is committed to completing the development, the Applicant proposes that the following works would be undertaken ahead of demolition:
- Pre-construction works, including:
    - Submission of discharge of pre-commencement planning conditions within 8 months of grant of planning permission.
    - Commence initial archaeological trial trenching as required by condition 31 to be undertaken within 8 months of grant of planning permission.
    - Site Investigations as required by condition 6 to take place within 8 months of grant of planning permission.
    - Slowworm translocation works to occur in April-May 2025
    - Installation of protective fencing and pre-commencement meeting with arboriculturist to take place in April-May 2025.
    - Building recording and analysis of 77-83 London Road as required by condition 33 to take place in April-May 2025.
  - Refurbishment of the locally listed wall on Borden Lane and installation of a scheme of interpretation.

- 3.5 The aim of this is to provide assurance that the development is being meaningfully progressed ahead of demolition of the dwellings fronting London Road. Officers recommend that an additional Head of Term be added to the S106 legal agreement to require the details the above works to form the first phase of development. Condition 29 has therefore been removed.
- 3.6 The applicant has adjusted the plans for boundary treatment to prevent access from Borden Lane to all but one dwelling.
- 3.7 Block B is an existing building, the lower level directly faces Borden Lane, one of the flats (Flat 1) has a front door opening out to Borden Lane, and it would not be practicable to restrict access to Flat 1 from Borden Lane. This relates only to a single flat in Block B and is an existing situation.
- 3.8 Access to all other dwellings would be from London Road only. A condition is recommended to require further details of the boundary treatment, as this would need to allow convenient access for the occupants of Flat 1 in Block B to the communal facilities within the site (e.g., bin and bike stores, parking areas and open space), while preventing wider access to the site from Borden Lane for other occupiers.

#### **4. CONCLUSION**

- 4.1 The Applicant has responded positively to matters raised during the Planning Working Group site visit. The proposal accords with the Local Plan and the NPPF. It is recommended for that the application be approved.

#### **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-PD2-02, 7460 - PD2-01, 7460-PD2-03 Rev E, 7460 - PD2-04 Rev D, 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. No occupation of any building shall take place until a scheme for the restoration and of historical interpretation of 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 restoration and interpretation scheme shall be carried out in full accordance with the approved details prior to the demolition of the dwellings at 77 - 83 London Road 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. Prior to first occupation of the development, a travel plan which shall include clear objectives and modal split targets, together with a time-bound programme of implementation, monitoring, regular review and update; and be based on the particulars contained within the approved development, shall be submitted to and approved in writing by the local planning authority and thereafter operated in accordance with the agreed details.

Reason: To reduce vehicle usage and associated traffic congestion, emissions and to promote sustainable transport.

35. Prior to works to Block B, plans and details of boundary treatment and an access controlled gate at Borden Lane and the interface with Block B shall be submitted to and approved in writing by the Local Planning Authority.

The boundary treatment and an access controlled gate shall be designed to prevent access to the site from Borden Lane other than for the occupants of Flat 1 of Block B.

The boundary treatment and an access controlled gate shall be installed in accordance with the approved details, prior to the occupation of any dwellings and thereafter maintained for the life of the development.

Reason: To reduce vehicle usage and associated traffic congestion, emissions and to promote sustainable transport.

## **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 solid 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 gated 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 expect. 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](http://www.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](https://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](https://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



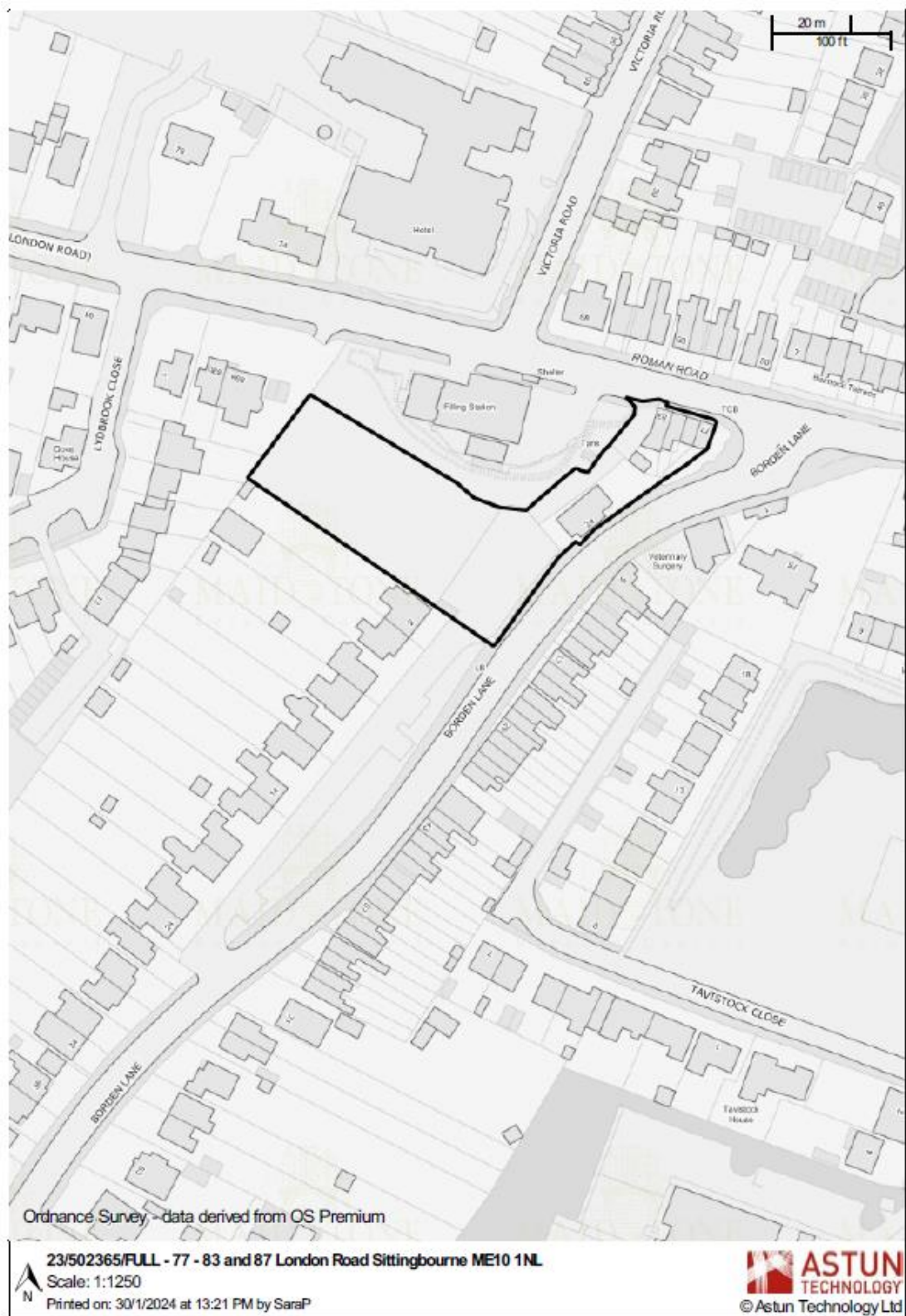
Developers should ensure that all contaminated materials are adequately characterised both chemically and physically in line with British Standard BS EN 14899:2005 'Characterization of Waste - Sampling of Waste Materials - Framework for the Preparation and Application of a Sampling Plan' and that the 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 expected. 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.



**APPENDIX A**

---

**Planning Working Group**

---

**MINUTES** of the Meeting held at the site listed below on Thursday, 22 February 2024 from 10.00 am - 10.38 am.

**PRESENT:** Councillors Mike Baldock (Chair), Simon Clark, Paul Stephen, Terry Thompson, Karen Watson and Tony Winckless.

**OFFICERS PRESENT:** Philippa Davies and Matt Duigan.

**ALSO IN ATTENDANCE:** Councillor Shelley Cheesman.

**APOLOGIES:** Councillors Andy Booth, Kieran Golding, James Hall, Mike Henderson, James Hunt, Charlie Miller, Julien Speed and Angie Valls.

682 **Declarations of Interest**

No interests were declared.

683 **23/502365/FULL 77 - 83 and 87 London Road, Sittingbourne ME10 1NL**

The Chair welcomed the applicant, the applicant's agent, members of the public and Members to the meeting.

The Planning Consultant introduced the application which sought the demolition of four dwellings and the erection of 20 dwellings with associated external amenity areas, site access improvements, internal access road, parking, landscaping and habitat creation, as set out in the report submitted to the Planning Committee on 8 February 2024. He outlined the reasons why the Committee had agreed a site meeting and said that although invited, an officer from Kent County Council (KCC) Highways and Transportation was not in attendance at the site meeting.

The Planning Consultant gave a brief history of the site.

Members of the public spoke on the application and raised points which included:

- Considered there was insufficient parking on-site for residents;
- concerned with the position of the electricity substation and whether it would be visible from Borden Lane;
- clarification sought on the status of the existing wall which ran alongside Borden Lane; and
- access and egress from the site was dangerous.

In response, the Planning Consultant said there were 27 flats and 26 parking spaces. He said that officers had reviewed car ownership in the surrounding area. There was a bus stop nearby and the site was close enough to walk to the town centre and railway station. The Planning Consultant confirmed that KCC Highways and Transportation were satisfied with the amount of parking proposed on the site.

The Planning Consultant referred to the substation concerns and said that it would not be visible from Borden Lane and although there would be a low humming noise, this would be monitored and tested to ensure it was at an acceptable level. He said the

## APPENDIX A

Planning Working GroupThursday, 22 February 2024

existing wall on the Borden Lane site would remain and explained that it was locally listed with WWII defensive gun loops.

A Member referred to Block B on the site and said that it had been empty for a number of years. He sought reassurance that the scheme would go ahead if permission was granted and the site not lay empty for a further number of years with no development taking place.

In response, the Applicant confirmed that their intention was to go ahead with the build as soon as possible after permission was granted, within a year to 18 months. The Planning Consultant further explained that the houses at the entrance to the development site would not be demolished, unless there was absolute certainty that the scheme would go ahead.

A Member sought clarification on the height of the new buildings in relation to the existing block and the dwellings along Borden Lane. The Planning Consultant said the elevations would be in-line with no. 2 Borden Lane, and he indicated where the new blocks would be sited, set lower than neighbouring dwellings due to the ground levelling off. He explained that refuse collection lorries would be able to access the site and also carry out a three-point turn on-site.

A Member sought clarification on the bio-diversity aspects of the application and when protected species would be re-located. The Planning Consultant said this would be strictly controlled by KCC Ecology.

A Member asked why the site could not be used to house the elderly and the developer explained that there were already sites that offered elderly living provision in Sittingbourne.

In response to a further question, the Planning Consultant explained that new developments were required to include measures to address climate change.

The Planning Working Group moved to the entrance of the site. The Planning Consultant explained that there would be a bell mouth entrance to the site and vehicles would be able to enter and exit the site at the same time. There were some concerns with the access having a blind spot when exiting the site, but the Planning Consultant said once the properties along London Road had been demolished, the sight lines would improve.

Members also walked along Borden Lane and looked at the site from there and they were advised that the historic wall would be repaired, and there would be access for pedestrians from Borden Lane to the application site.

Chair

Copies of this document are available on the Council website <http://www.swale.gov.uk/dso/>. If you would like hard copies or alternative versions (i.e. large print, audio, different language) we will do our best to accommodate your request please contact Swale Borough Council at Swale House, East Street, Sittingbourne, Kent, ME10 3HT or telephone the Customer Service Centre 01795 417850.

All minutes are draft until agreed at the next meeting of the Committee/Panel

## APPENDIX B

Planning Committee

Thursday, 8 February 2024

## 621 2.3 – 23/502365/FULL 77 – 83 and 87 London Road, Sittingbourne

<b>2.3 REFERENCE NO – 23/502365/FULL</b>		
<b>APPLICATION PROPOSAL</b>		
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.		
<b>ADDRESS</b> 77 - 83 and 87 London Road Sittingbourne Kent ME10 1NL.		
<b>WARD</b>	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Mr M Salter
Homewood		<b>AGENT</b> Batcheller Monkhouse

The Planning Consultant introduced the report as set out in the agenda papers.

Christine Dadswell, the Agent, spoke in support of the application.

The Chair moved the officer recommendation to approve the application, and this was seconded by the Vice-Chair.

The ward Members, also Members of the Planning Committee spoke against the application and raised points which included:

- Concerned that existing residents would be displaced;
- the site had been derelict for over a decade and concerned the current proposal would see demolition of houses (with associated displacement of residents) and still remain undeveloped;
- the area was susceptible to flooding and the proposal would worsen the situation;
- the application would exacerbate existing foul water drainage issues in the area;
- the additional traffic from the development would worsen congestion in the area;
- 27 more dwellings in the area would exacerbate issues in general;
- the access and egress from the site was unsafe; and
- considered that given the complexities of the site members should view it before making a decision on the application.

Councillor Simon Clark moved the following motion: That the application be deferred to allow the Planning Working Group to meet on site. This was seconded by the Chair.

Members considered the motion for a site meeting and points raised included:

- The site visit would allow Members to view the level changes;
- As Kent County Council (KCC) Highways and Transportation raised no objection could not support a site meeting on highway grounds;
- given the size of the site a more sustainable build could be provided and supported a site meeting;
- clear it was a complex site and the site meeting may help to resolve some of the issues raised; and
- supported the site meeting and the opportunity to view the site and considered not enough parking spaces were being provided.

On being put to the vote the motion was approved.

A Ward Member asked that an officer from KCC Highways and Transportation be invited to attend the site meeting.

**Resolved: That application 23/502365/FULL be deferred to allow the Planning Working Group to meet on site.**

This page is intentionally left blank

## APPENDIX C

<b>2.3 REFERENCE NO - 23/502365/FULL</b>		
<b>PROPOSAL</b> 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.		
<b>SITE LOCATION</b> 77 - 83 and 87 London Road Sittingbourne Kent ME10 1NL.		
<b>RECOMMENDATION</b> 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.		
<b>APPLICATION TYPE</b> Major		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Ward Councillor (Cllr Cheesman) requests the application be determined by the Committee.		
<b>Case Officer</b> Matt Duigan		
<b>WARD</b> Homewood	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Mr M Salter <b>AGENT</b> Batcheller Monkhouse
<b>DATE REGISTERED</b> 23.05.2023		<b>TARGET DATE</b> 11.02.2024
<b>BACKGROUND PAPERS AND INFORMATION:</b> <a href="#">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)</a>		

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

**APPENDIX C**

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



**APPENDIX C**

[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.

**APPENDIX C**

- 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 looped 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

**APPENDIX C**

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.

**APPENDIX C**

- 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.

**APPENDIX C**

- **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

**APPENDIX C**

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
--------	-------	-------	-------	-------

**APPENDIX C**

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.

**APPENDIX C**

- 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



**APPENDIX C**

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.

**APPENDIX C**

- 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 stems 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

**APPENDIX C**

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

**APPENDIX C**

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.

**APPENDIX C**

- 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

**APPENDIX C**

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.

**APPENDIX C**

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

**APPENDIX C**

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



**APPENDIX C**

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

**APPENDIX C**

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.

**APPENDIX C**

- 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.

**APPENDIX C**

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).

<b>Requirement</b>	<b>Value</b>	<b>Towards</b>
<b>Ecology</b>		
SAMMS payment	£7,223.15	North Kent Strategic Access Management and Monitoring Strategy.
<b>Affordable housing</b>		
	2 dwellings	First Homes
<b>KCC</b>		
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.

## APPENDIX C

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 in incurred in completing the agreement.
Monitoring fee	5% of financial contributions	Monitoring of the legal agreement.

**APPENDIX C**

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:

**APPENDIX C**

- 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.

**APPENDIX C**

- 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.



**APPENDIX C****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).

**APPENDIX C**

- 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.

**APPENDIX C**

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 matters**

6.19.1. Phasing

## APPENDIX C

- 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.*

**APPENDIX C**

- 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.

**APPENDIX C**

- 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.

**APPENDIX C**

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:

**APPENDIX C**

- 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.



**APPENDIX C**

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

**APPENDIX C**

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.

**APPENDIX C**

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 exercising 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

**APPENDIX C**

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.

**APPENDIX C**

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).

**APPENDIX C**

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,

**APPENDIX C**

- 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.

**APPENDIX C**

- 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.



**APPENDIX C**

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

**APPENDIX C**

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

**APPENDIX C**

with this document is expect. 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>

**APPENDIX C**

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/sewage-sector-guidance-approved-documents/ciria.org/Memberships/The\\_SuDS\\_Manual\\_C753\\_Chapters.aspx](http://water.org.uk/sewage-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](http://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](http://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

**APPENDIX C**

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>

**APPENDIX C**

**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.



<b>ITEM 2 REFERENCE NO - 20/501573/FULL</b>			
<b>PROPOSAL</b>			
Minor material amendment to SW/01/0623 (Approval of Reserved Matters for Residential Development Pursuant to Outline Planning Permission SW/97/0623) to allow changes to approved site levels and landscaping.			
<b>SITE LOCATION</b>			
Nichols Transport Lydbrook Close Sittingbourne Kent ME10 1NW			
<b>RECOMMENDATION</b> Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions as set out in the report, with further delegation to the Head of Planning to negotiate the precise wording of conditions, including adding or amending such conditions as may be consequently necessary and appropriate.			
<b>APPLICATION TYPE</b> Major			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
The application was reported to the Planning Committee on 7 <sup>th</sup> December 2023 and was subject to a Planning Working Group site meeting on 19 <sup>th</sup> December 2023.			
<b>CASE OFFICER</b> Andrew Byrne			
<b>WARD</b> Homewood	<b>PARISH/TOWN</b> N/A	<b>COUNCIL</b>	<b>APPLICANT</b> Ms Rachael Miller <b>AGENT</b> Jefferson Sheard Architects
<b>DATE REGISTERED</b> 03/06/20		<b>TARGET DATE</b>	
<b>BACKGROUND PAPERS AND INFORMATION:</b>			
Documents referenced in report are as follows: -			
All drawings submitted.			
All representations received.			
Landscape Report dated 06/02/24.			
The full suite of documents submitted pursuant to the above application are available via the link below: -			
<a href="https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=Q87IXQTYHUC00">https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=Q87IXQTYHUC00</a>			

1. **BACKGROUND**

- 1.1 This application was reported to the Planning Committee on 7<sup>th</sup> December 2023. It was deferred for a site meeting which took place on the 20<sup>th</sup> December 2023. Following comments and concerns raised by councillors and members of the public at the

committee meeting and site visit, amendments were made to the application and further consultation exercises have been undertaken. The additional comments received are set out in section 2 below.

- 1.2 The December committee report is attached as Appendix A and the Planning Working Group minutes are attached as Appendix B.
- 1.3 This update supplements the December committee report and provides a further appraisal of the amendments made to the scheme and comments received.
- 1.4 The amendments incorporate changes to the layout to introduce additional landscaping adjacent to plots 3-5, amendments to retaining structures to some areas of the bank around the boundaries of the site, an amendment to the boundary treatment by the site access, and further detail relating to access to areas around the site boundaries that do not fall within the residential gardens of the proposed dwellings. The revised plans also include updated drawings of the “as built” development on plots 3-5 and the relationship with existing neighbouring dwellings on Lydbrook Close. This has followed concerns raised that the dwellings as built do not conform with the drawings submitted.

## 2. REPRESENTATIONS

- 2.1 Two further rounds of consultation have been undertaken since the December Planning Committee. A further 17 representations have been received raising objection to the scheme. Some of these repeat objections listed in the December committee report and are not repeated again here. The new planning issues raised are as follows –

<b>Comment</b>	<b>Report reference</b>
The fencing installed on the site boundary near the site entrance causes visibility issues for vehicles using the access serving existing dwellings at 26-36 Lydbrook Close.	See paragraph 4.16 below
Plots 3-5 have not been built in the correct location and cause unacceptable impacts to existing dwellings on Lydbrook Close.	See amended plans and paragraphs 4.7-4.15 below
Lack of landscaping	See amended landscape drawing and paragraph 4.14 below
Overlooking of properties on Borden Lane, Hobart Gardens and Adelaide Drive	See paragraphs 7.15-7.19 of December Committee report
Stability of banks and maintenance of boundary walls and fences	See paragraphs 4.17-4.19 below
Lack of sufficient planting / loss of trees and fauna	See landscaping plans and paragraph 7.22 of December committee report. Additional planting also referred to in paragraph 4.14 below.



Lack of measures to deter persons climbing on the bank	See paragraph 4.20 below
That the development does not represent a minor material amendment	See paragraphs 4.2 and 4.3 below
The development is cramped and too much for the site. Impact of traffic on the A2	Permission has already been granted for 49 units, and the principle of the development is not a matter for this minor material amendment application – see paragraph 7.2 of December committee report
Flooding and drainage	See paragraph 7.23 of the December committee report and paragraph 4.22 below.
Lack of parking	See paragraph 7.2 of December committee report and paragraph 4.21 below.

### 3. FURTHER CONSULTATION RESPONSES

- 3.1 **Environment Agency** – Raise no objection to the Remediation Validation Report submitted but advise that validation of topsoil to be imported is required.
- 3.2 **Environmental Health** – Raise no objection to the remediation measures set out in the Ecological contamination report and advise that this report addresses the hotspot contamination areas identified in the original contaminated land report. Advise that the details of the material imported onto the site to deal with levels changes is acceptable, however further validation of topsoil yet to be imported will be required.

### 4. ASSESSMENT

- 4.1 This report deals specifically with the impact of the amendments made to the scheme and further comments received, and to specific points raised by Members of the Planning Committee in December. The wider overarching assessment of the development is set out in the December Committee report.

#### *Whether the development can be considered under an application for a minor material amendment*

- 4.2 This question was raised by some Members at the December planning committee meeting, at the subsequent site meeting, and in some of the representations subsequently received. Planning officers have taken the view that the development falls to be considered as a minor material amendment, primarily because the changes do not take the proposal outside of the definition of the development as approved under the 1997 and 2001 permissions – and which remains as an extant permission for the reasons set out in the December committee report.

- 4.3 Legal advice has now been received on this matter which reaffirms that the application can be considered as a minor material amendment under S73 of the Town and Country Planning Act. Relevant caselaw on this subject includes *Armstrong v Secretary of State for Levelling-Up, Housing and Communities & Anor [2023]*, and which sets out that the scope of amendments made under a S73 application can be wide, provided that the “operative part” of a planning permission (i.e where the development permitted is described) does not change.

*Measures to deal with Contamination*

- 4.4 Concern has been raised that as the development has not been carried out in accordance with the original approved plans, the risks from contamination originally identified have not been appropriately dealt with.
- 4.5 A Remediation Validation report has been submitted, detailing the measures undertaken to address risks from contamination. This includes investigation and remediation of previously identified hot spot areas in the historic contamination report submitted under the original planning permission, ground gas monitoring, and management / remediation / monitoring of on-site re-used material and material imported to the site.
- 4.6 The Mid Kent Environmental Health team and the Environment Agency are both satisfied with the report. It is therefore considered that risks from contamination have been properly addressed.

*That plots 3-5 have not been built in the correct location and landscaping previously approved on the boundary of these plots has been removed.*

- 4.7 At the site meeting concern was raised that plots 3-5 had not been constructed in the correct position. Officers subsequently took site measurements between these plots and the closest neighbouring dwellings at 23 and 25 Lydbrook Close, and identified that the distance between the new and existing houses was less than shown on the submitted and previously approved plans. For example, the distance between the main rear corner of plot 5 and the closest existing dwelling at 25 Lydbrook Close measures 18.2m on the last approved plans (under 18/505356/NMAMD), but as built this distance is 16.8m. Likewise, the distance between the main rear corner of plot 3 and the corner of the dwelling at 23 Lydbrook Close is 20.3m as built, compared to 20.8m on the last approved plans.
- 4.8 The applicant has surveyed the position of plots 3-5 and has confirmed that these plots are in the correct approved position on the site. However they have also advised that the position of the properties on Lydbrook Close as shown on previous drawings would have been taken from OS data, which is not always accurate. The applicant has now provided a detailed survey drawing and has updated the application drawings to provide an accurate representation of the siting of plots 3-5 in relation to the nearby dwellings at Lydbrook Close, and which conforms with the dimensions taken on site by officers in December.
- 4.9 This therefore raises an unusual scenario whereby the siting and construction of the

development within the site accords with the approved plans, but not with the way in which the same plans depict the relationship with neighbouring buildings. There is competing caselaw on the extent to which this may or may not represent a breach of planning control capable of enforcement proceedings.

- 4.10 The latest amended drawings now show the accurate location of plots 3-5 in relation to the existing dwellings at Lydbrook Close. The rear corner of plot 3 (excluding the small single storey rear projection) is sited between 16.8m and 20.3m from the rear of the dwellings at 23-25 Lydbrook Close. Plots 3-5 do not directly face the existing dwellings at Lydbrook Close, but are sited at an angle to these properties.
- 4.11 The Council would normally apply distances in the region of 21m between dwellings in a “back to back” relationship, i.e. where the rear elevations directly face each other. A minimum distance in the region of 11 metres is normally applied when dwellings are sited at a 90 degree angle to each other, i.e when the rear elevation of a dwelling faces the side elevation of another dwelling. The development as built does not directly face the dwellings at 23-25 Lydbrook Close in a “back to back” relationship, but is at an angle to it. Although there are angled views from the first floor windows of plot 3 towards the dwelling at No 23, this is at a distance of between 19 and 21 metres. The angle from the window of plot 3 towards No 25 is more acute and is considered acceptable for this reason. Any overlooking towards dwellings to the west of No 23 would be in excess of 21 metres.
- 4.12 Although the as-built relationship between plots 3-5 and the existing dwellings is 1.4m closer than depicted on the approved plans, it is considered that the difference in terms of overlooking is relatively minor. Given the minimum distance of 16.8 metres between plots 3-5 and the dwellings at 23-25 Lydbrook Close, no significant loss of light or outlook would occur.
- 4.13 Overall, given the orientation of the buildings and distance involved, the development is not considered to be in conflict with Policy DM14 of the Local Plan
- 4.14 Concern has also been raised that soft landscaping proposed on the boundary as previously approved has been removed. The amended plans now include two areas for soft landscaping on the boundary with No.s 23-25 Lydbrook Close. These areas would be provided outside of any private garden and would incorporate trees to help soften the development.
- 4.15 The relationship between the remainder of the development and neighbouring boundaries is set out in the December report.

Visibility at site access

- 4.16 Concerns have been raised that vehicles exiting the access road immediately adjacent to the site entrance are hampered by lack of visibility due to boundary fencing installed on the boundary with plot 49. The amended landscape drawing identifies that the fence will be reduced to 900mm in height, and this is subject to recommended condition 8 below.

### Bank stability

- 4.17 Concerns have been raised that previous works to stabilize the banks have been altered and removed, that new retaining structures are now proposed, and that the gradient of the banks will undermine the rear gardens of adjacent properties and cause problems maintaining boundaries.
- 4.18 The applicant previously submitted a slope assessment report which provided details of measures to stabilize the banks around the site. However it was evident from the site meeting that some of the measures proposed have subsequently been altered or removed, and the assessment was based on the condition of the banks in 2018 and not on the current condition of the banks. The application includes further details of retaining walls to be added / strengthened in parts of the site, and cross sections of the banks. However, in light of subsequent changes to the banks, it is considered that a further assessment is necessary to ensure that the slopes as constructed are stable, or whether further mitigation is necessary. Planning condition (9) is recommended to deal with this, and is worded to prevent occupation of the development until the stability of the banks is demonstrated.
- 4.19 The maintenance of buildings and structures from third party land is not a matter for planning control.

### Access to areas around the banks

- 4.20 Concern has been raised about the potential for unauthorised access from within the site onto the banks around the perimeter of the site. These banks are not incorporated within individual garden areas. An access way has been incorporated between the dwellings and the banks for maintenance purposes. Access to this area is secured by 1.8m high fencing and gates to deter access. This will be maintained by Moat Homes who will remain in control of the site.

### Highways / Parking

- 4.21 Concern has been raised that there is insufficient parking within the site, that there is a lack of visitor parking and that garages will not be used for parking. Each property would be provided with a minimum of two parking spaces. Some are contained within garages, however the 2001 extant permission included much more garaging than is now the case, and as such the parking spaces now shown (and previously approved as an amendment to the scheme in 2018) are considered more likely to be used for parking. The original layout for the 2001 extant permission did not incorporate any visitor parking, as such the provision of 2 spaces is considered to be an improvement to the parking layout.

### Drainage

- 4.22 Concerns have been raised that the site has exacerbated flooding and caused drainage issues on Lydbrook Close. The drainage scheme installed for the site is set out in paragraph 7.24 of the December report. The applicant states that the drainage problems on Lydbrook Close by the site entrance were caused by a defective gully that has since

been resolved and approved by KCC Highways.

## 5. CONCLUSION

- 5.1 For the reasons set out in the reports associated with this application, officers are satisfied that the proposed revisions constitute a minor material amendment. Taking this into account it is recommended that the application be granted subject to the conditions set out below.

## 6. CONDITIONS

- (1) The development hereby permitted shall be carried out in accordance with the following approved plans: 04, 05, 06, 07, 08, 09, 10, 11, 12 Rev A, 13, 19, 1292-JSA-XX-XX-DR-A-03201 Rev P1, 1292-JSA-XX-XX-DR-A-91201 Rev C2, 1292-JSA-XX-XX-DR-A-02004 Rev C18, 1292-JSA-XX-XX-DR-A-02005 Rev C6, 1292-JSA-XX-XX-DR-A-02501 Rev C13, 1292-JSA-XX-XX-DR-A-02502 Rev C10, 1292-JSA-XX-XX-DR-A-02503 Rev C10, 1292-JSA-XX-XX-DR-A-02504 Rev C11, S16-SFL-EX-00-DR-L-0501 P12 S16-SFL-EX-00-DR-L-0502 P02, 5366-D1 Rev A, 5366-D10 Rev A, 5366-D11 Rev A, 5366-D4 Rev A.

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

- (2) The external finishing materials to be used on the dwellings hereby permitted shall be as approved by the local planning authority under 18/506405/SUB.

Reason: In the interests of visual amenity.

- (3) The hard and soft landscape works shall be carried out in accordance with the approved details as shown on drawings 1292-JSA-XX-XX-DR-A-02004 Rev C18, 1292-JSA-XX-XX-DR-A-02005 Rev C6, 1292-JSA-XX-XX-DR-A-02501 Rev C13, 1292-JSA-XX-XX-DR-A-02502 Rev C11, 1292-JSA-XX-XX-DR-A-02503 Rev C10, 1292-JSA-XX-XX-DR-A-02504 Rev C10, S16-SFL-EX-00-DR-L-0501 P12, S16-SFL-EX-00-DR-L-0502 P02, 21276-DR-S-200-C1 and 21726-DR-S-201-C1. Hard landscaping shall be completed in accordance with the approved details prior to first occupation of the development. Soft landscaping shall be completed in accordance with the approved details within 6 months following the completion of the development or occupation of the first dwelling (whichever is sooner). Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within ten years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

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

- (4) The proposed estate road, footways, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, access, carriage gradients as appropriate, shall be constructed and laid out in accordance with the details approved by the Local Planning Authority under 18/505321/SUB and 18/505486/SUB.

Reason: To ensure that the roads are constructed and laid out in a satisfactory manner.

- (5) The proposed roads, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that each dwelling, before it is occupied, shall be served by a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.

Reason: To ensure the development is served by an adequate means of access.

- (6) The development hereby approved shall not be brought into use until that part of the service road which provides access to it has been constructed in accordance with the approved plans.

Reason: To ensure that the development is served by an adequate means of access.

- (7) Unless specifically shown on the approved plans, no walls or fences shall be erected fronting onto any road, square, footway or other open area without the express consent of the local planning authority.

Reason: In the interests of visual amenity

- (8) No dwelling shall be occupied until the fence adjacent to plot 49 and identified as F3A and by the dotted line on the soft landscaping plan has been reduced to a height of 900mm. The fence shall thereafter be maintained at or below such height.

Reason: To provide intervisibility between vehicles exiting the development and vehicles using the existing access serving 26-36 Lydbrook Close, in the interests of highways safety

- (9) No dwelling shall be occupied until a slope stability assessment prepared by a suitably qualified person has been submitted to and approved in writing by the Local Planning Authority. The assessment shall identify the slope gradients and measures undertaken to manage the slopes surrounding the perimeter of the site to prevent destabilization and erosion, including measures to prevent erosion of the bank at the boundary with surrounding neighbouring dwellings. The assessment shall identify any further mitigation required to stabilize the banks. The development shall be carried out in accordance with the approved details and mitigation prior to the first occupation of any dwelling.

Reason: To ensure the stability of the slopes surrounding the site, in the interests of safety and amenity.

- (10) No dwelling shall be occupied until a validation report for any topsoil imported to the site has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure that any imported material is appropriate for the use of the site, in the interests of pollution protection and human health.

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

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), September 2023 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

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

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

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

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

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

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

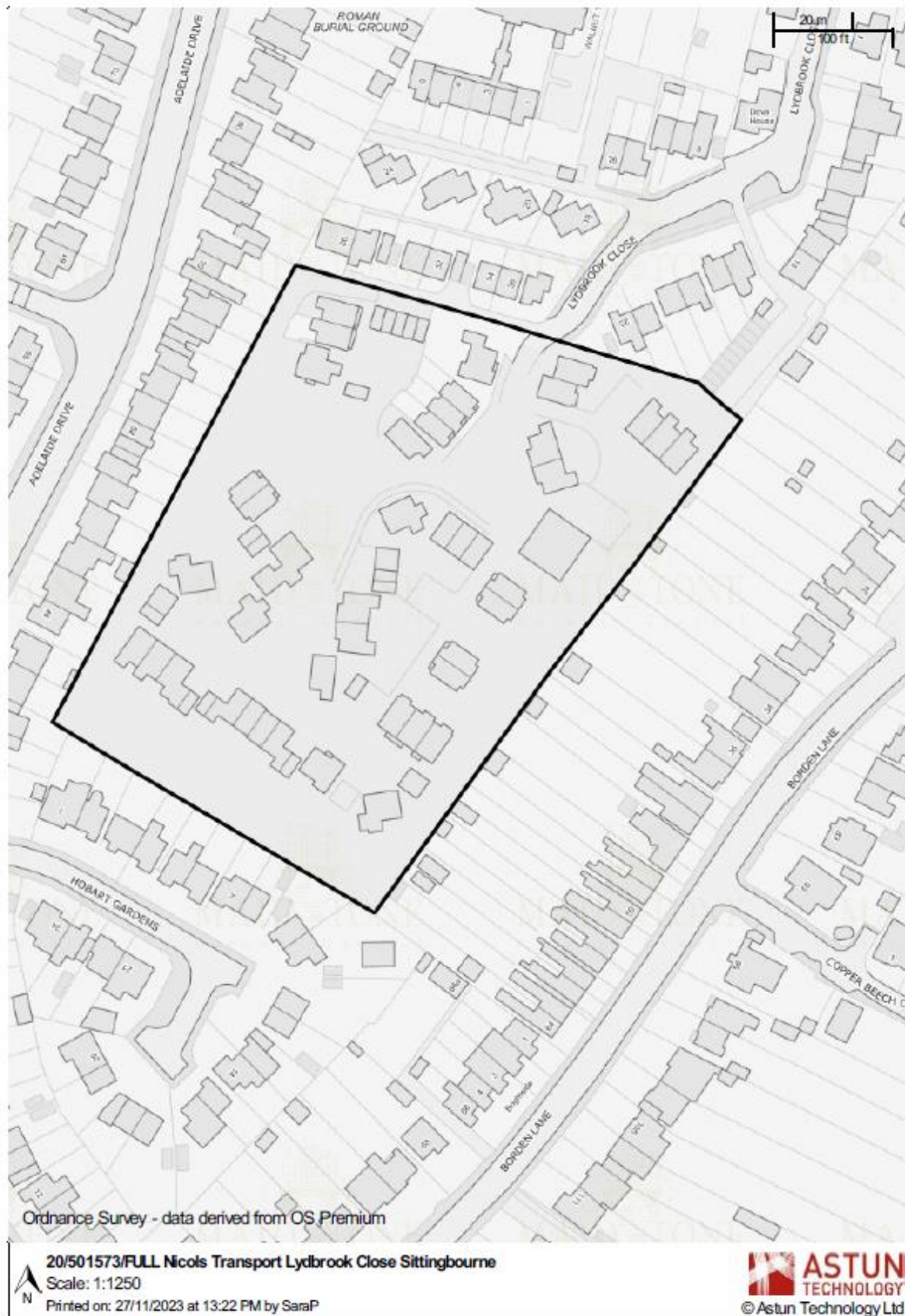
In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advise that the proposal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

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

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

However, this application has been made under S73 of the Planning Act to make minor material amendments to an existing permitted scheme for 49 dwellings. Whilst the permitted scheme does not make any contributions to mitigate impacts upon the SPA, the nature of the amendments sought under the S73 application would not be likely to increase any impacts or pressure on the SPA over and above those that would occur from the existing permission. Based on this and the correspondence with Natural England in relation to this application, it is concluded that off-site mitigation is not required.





This page is intentionally left blank

**APPENDIX A**

<b>2.5 REFERENCE NO – 20/501573/FULL</b>		
<b>PROPOSAL</b> Minor material amendment to SW/01/0623 (Approval of Reserved Matters for Residential Development Pursuant to Outline Planning Permission SW/97/0623) to allow changes to approved site levels and landscaping.		
<b>SITE LOCATION</b> Nichols Transport Lydbrook Close Sittingbourne Kent ME10 1NW		
<b>RECOMMENDATION</b> Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions as set out in the report, with further delegation to the Head of Planning to negotiate the precise wording of conditions, including adding or amending such conditions as may be consequently necessary and appropriate.		
<b>APPLICATION TYPE</b> Major		
<b>REASON FOR REFERRAL TO COMMITTEE</b> The application has been referred to Committee by a local councillor		
<b>CASE OFFICER</b> Andrew Byrne		
<b>WARD</b> Homewood	<b>PARISH/TOWN COUNCIL</b> N/A	<b>APPLICANT</b> Ms Rachael Miller <b>AGENT</b> Jefferson Sheard Architects
<b>DATE REGISTERED</b> 03/06/20		<b>TARGET DATE</b>
<b>BACKGROUND PAPERS AND INFORMATION:</b> <a href="https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=Q87IXQTYHUC00">https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=Q87IXQTYHUC00</a>		

1. SITE LOCATION AND DESCRIPTION

- 1.1 The application site relates to a parcel of land of approximately 1.6 Ha and is roughly rectangular in shape. It is located at the end of Lydbrook Close and was formerly part of a brick works and chalk pit, later used for many years as a haulage depot, which has now closed.
- 1.2 The site is located within the built confines of Sittingbourne and is surrounded by residential development on all sides. Due to levels changes and the former use of the site as a chalk pit, the site lies at a considerably lower level than adjacent properties on Borden Lane, Hobart Gardens and Adelaide Drive. The site is located within a Groundwater Source Protection Zone and is allocated in the Local Plan as a housing site (Policy A20).
- 1.2 The site is being developed for housing under planning permission granted in 1997 and 2001 (see paragraph 2.10 onwards for further detail relating to this and why these historic permissions remain extant).

**APPENDIX A****2. PLANNING HISTORY**

- 2.1 **SW/97/0623** – outline application for residential redevelopment of the site – Granted  
24.06.1998
- 2.2 **SW/01/0623** - Approval of Reserved Matters for Residential Development Pursuant to Outline Planning Permission SW/97/0623. Granted 22.06.2001:
- 2.3 **18/503416/NMAMD** - Non-material amendment to planning permission SW/01/623 - to omit some of the garages as boxed in red on the submitted plan and to remove the proposed tree from the road/'block paved square' outside of plots 6 & 7 circled in red. Approved.  
Decision Date: 11.10.2018
- 2.4 **18/505356/NMAMD** - Non-material amendment to planning permission SW/01/623, consisting of minor changes to the siting of the proposed dwellings at Lydbrook Close, Sittingbourne. Approved Decision Date: 31.01.2019
- 2.5 **19/500487/NMAMD** - Non-Material Amendment to amend the gable details from a timber Barge board detail to a dry verge detail subject to SW/01/0623. Approved Decision Date: 04.03.2019
- 2.6 **19/500505/NMAMD** - Non-Material Amendment to seek approval for the removal of the brick plinths to House Types C, D, E, F, G, H, J and the Flats subject to SW/01/0623. Approved Decision Date: 05.03.2019
- 2.7 **19/500680/NMAMD** - Non-Material Amendment for minor alteration to position of plots 3 - 5 (north-east corner of site) subject to SW/01/0623. Refused Decision Date: 05.03.2019
- 2.8 **20/500892/NMAMD** - Non-material amendment in relation to planning permission SW/01/0623. Update the reserved matters to include a list of the drawings included within the original planning application. So that the works are carried out in accordance with those drawings. Approved Decision Date: 27.03.2020
- 2.9 **20/504103/NMAMD** - Non-material amendment in relation to planning permission SW/01/623. Inclusion of bin and bike store to rear of flats. As amended by revised site plan received on 27/10/20. Approved Decision Date: 23.12.2020
- 2.10 This site has a rather unusual planning history. Outline planning permission for residential development was granted for the site under SW/97/0623 and reserved matters approval for the erection of 49 dwellings was granted under SW/01/0623 in 2001. Pre-commencement conditions were subsequently discharged and the foundations for one unit were excavated and laid. The works were covered, and the site then subsequently continued its longstanding use as a haulage yard. The council sought and received a legal opinion at the time, which confirmed that the works undertaken had represented a material and lawful commencement of the development, and that the development could be re-started later when the haulage yard use ended. Confirmation was given by letter to the developer at the time that the development had been lawfully commenced.
- 2.11 The haulage yard use ended a few years ago. Although a planning application for a higher density residential development was submitted in 2017, this was subsequently withdrawn

**APPENDIX A**

following agreement to sell the land to another developer (the current applicant), who intended to carry out the development in accordance with the permissions granted under SW/97/0623 and SW/01/0623 and which had been commenced on the site as set out above.

- 2.12 Several applications for non-material amendments to the approved development have also subsequently been submitted to and determined by the Council, the majority of which were determined not to materially affect or change the approved scheme.
- 2.13 Development of the site re-commenced in/around 2019. However, during the course of the construction, it became evident that the land levels within the site had been raised, the extent of which were materially different to the levels as approved under the historic planning permissions. It is primarily the effects of this change that requires permission, as well as amendments to landscaping.

### 3. PROPOSED DEVELOPMENT

- 3.1 This application seeks amendments to a reserved matters approval for the erection of 49 dwellings (including a small number of flats) on the site. Outline Planning permission had been granted under SW/97/0623 and subsequently the reserved matters approval under SW/01/0623. Construction of the development is almost complete. The approved scheme is for a range of detached, semi-detached and terraced units, consisting mainly of 2 storey dwellings with some limited 3 storey dwellings, and is being delivered as an affordable housing scheme by Moat Housing.
- 3.2 The current application seeks amendments to the site levels and landscaping of the site and is retrospective. Whilst the general layout and design of the houses has remained essentially as permitted (with some changes approved as non-material amendments), the development has not proceeded in accordance with the approved site levels. These have been raised across the majority of the site with levels progressively increasing in height from north to south, and generally raised by between 300mm and 1800mm. The application seeks the approval of this change as a minor material amendment to the approved scheme. The application states that the primary reason for raising levels has been to accommodate statutory services and drainage for the development – which can only enter via Lydbrook Close, and to enable better structural stability to the banks around the perimeter of the site.
- 3.3 The application also seeks amendments to the landscaping of the site, and it is noted that several trees and shrubs on the raised banks around the edges of the site have been removed. The application submits that this was due to works required to the bank, and the current application includes new landscaping on the slope and at the top of the bank (where appropriate) as well as within the development.

### 4. REPRESENTATIONS

- 4.1 Two rounds of consultation with neighbours have been undertaken. A site notice was also displayed at the site. Full details of representations are available online.

**APPENDIX A**

## 4.2 Six letters of objection have been received in objection to the development

- Lack of information to explain changes sought (the applicant subsequently provided more detailed information)
- Removal of trees along the boundary and impact upon privacy
- Flooding impacts on Lydbrook Close
- Need for fencing / screening on boundaries
- Damage to existing road and footpath
- Additional visual impact of development from land raising

4.3 Former Councillor Truelove referred this application to Planning Committee. Whilst he is no longer a serving councillor, the referral was made when he was a councillor and triggers the requirement to report the application to committee under the Council's Scheme of Delegation.

5. CONSULTATIONS

5.1 **Environment Agency** – No objection provided that the surface water strategy remains as agreed previously with the developer. Advise that as agreed, no surface water will discharge into land impacted by contamination, an unsaturated zone of at least 8m will be maintained below the infiltration system, and water entering the infiltration system will pass through pollution prevention measures.

5.2 **KCC Drainage** – No objection raised

5.3 **Natural England:** – Advise that as the application is for a minor material amendment to an existing approved residential development, it would not be reasonable to require a retrospective contribution to the SAMMS strategy.

5.4 **SBC Tree Officer** – No objection to the landscaping proposals

5.5 **Southern Water** – advise that there is an increased risk of flooding arising from foul sewerage flows unless network reinforcement is provided by Southern Water. This will be part funded through the New Infrastructure Charge, and Southern Water's Capital Works programme. Advise that a condition is imposed to ensure occupation of the development is phased to align with network reinforcement.

*Officer note: Conditions relating to foul drainage were not imposed on either the outline or reserved matters approvals previously granted. In the context of this S73 application for minor amendments to the approved reserved matters, it is not considered reasonable to impose the condition requested, given the nature of the changes proposed and that the number of dwellings has not changed.*

**APPENDIX A****6. DEVELOPMENT PLAN POLICIES****6.1 Bearing Fruits 2031: The Swale Borough Local Plan 2017**

- ST 1** (Delivering sustainable development)
- ST 3** (The Swale settlement strategy)
- ST 5** (The Sittingbourne area strategy)
- CP 3** (Delivering a wide choice of high-quality homes)
- CP 4** (Good design)
- A 20** (new allocations on sites within existing settlements)
- DM 6** (Managing transport demand and impact)
- DM 7** (Vehicle parking)
- DM 14** (General development criteria)
- DM 19** (Sustainable design and construction)
- DM 28** (Biodiversity and geological conservation)

**6.2 Supplementary Planning Guidance (SPG)**

Supplementary Planning Guidance Designing an Extension – A guide for Householders  
Supplementary Planning Document - Swale Parking Standards

**7. ASSESSMENT**

- 7.1 This application is reported to the Committee following referral by a Councillor (serving at the time of referral).
- 7.2 This application has been made under S73 of the Town and Country Planning Act, which specifically relates to the development of land without compliance with conditions previously attached, and is also the mechanism to determine applications for minor material amendments to planning applications. It is important to note that on such applications, the local planning authority can only consider the question of the conditions subject to which planning permission should be granted. Matters relating to the principle of residential development and wider related impacts are already accepted under the terms of the existing outline permission (SW/97/0623) and are not for further consideration under this S73 application which seeks amendments only to the reserved matters approved under SW/01/0623. Likewise, it is only the specific changes sought to the approved reserved matters that should be considered - and this is not an opportunity to re-consider the reserved matters including design and layout in detail – and which remain the same as approved (although some non-material amendments to the scheme have been approved, as set out in the planning history section). The key changes for consideration by the council are to land levels and landscaping. As the surface water drainage has been revised following the levels changes, this is also subject to consideration (as such details were required to be provided with the reserved matters application under the terms of the outline permission).

**APPENDIX A**

- 7.3 The original permission was not subject to any S106 Agreement and as such no contributions towards infrastructure, affordable housing or a SAMMS payment in relation to impacts upon the SPA are secured. Again, these matters are not material to the specific changes sought under the current application and cannot be required or negotiated into the S73 application – given the existing permission was for the same number of dwellings without such infrastructure and obligations. However, it should be noted that the applicant is Moat Homes, a local affordable housing provider, and these units are being constructed as an affordable housing development, albeit outside of any requirement to provide affordable housing through the planning process.
- 7.4 An Appropriate Assessment is included at the end of this report, which confirms that this S73 application would not have any likely impacts beyond those related to the development that already benefits from planning permission.
- 7.5 Considering 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
  - Landscaping

**Principle**

- 7.6 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.
- 7.7 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.
- 7.8 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. Policy A20 specifically allocates this site for housing development. The principle of residential development is clearly established both through the local plan and the planning history of the site, including the ability to continue with the extant permissions granted in 1997 and 2001.

**Character and Appearance**



**APPENDIX A**

- 7.9 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.
- 7.10 The key visual change relates to the effect of raising land levels across much of the site. In this respect, it is important to note that much of the site lies considerably below the levels of adjacent dwellings Adelaide Drive, Hobart Gardens and Borden Lane. The exception to this is the relationship with Lydbrook Close which is roughly at the same level at the point of access.
- 7.11 The changes in levels that have been undertaken and are now subject to this application have progressively raised land levels across the site from north to south (other than a section on the north west corner where three dwellings have been constructed at a level approximately 700mm lower than the approved level). This has resulted in levels changes ranging from approx. 100mm to “Building B” in the north east corner and adjacent to Lydbrook Close, increasing to raised levels of approximately 1.8 metres to the land and buildings on the southern boundary of the site. However, it can be seen from the drawings that despite such significant changes, the levels remain considerably lower than adjacent land levels and that in wider visual terms, the raised levels do not result in the dwellings being visually prominent or dominant in the surrounding area. On the eastern and southern boundaries, the floor levels of dwellings closest to these boundaries as built are approximately 4-5 metres below the land levels on Borden Lane and Hobart Gardens. Likewise, the dwellings close to the west boundary are approximately 3.6-4 metres below the levels of properties on Adelaide Drive. The levels change on the north boundary is much more subtle and between 100mm-300mm.
- 7.12 It is also considered that arguably the increase in levels has improved the relationship between the new dwellings and the banks on the site boundaries – as these banks are no longer quite as high or substantial in scale in relation to the new development as they were under the approved scheme. Some parts of the bank are now held back with gabion and retaining walls to help manage the levels changes, as well as use of a geocell material designed to be laid over sloping land to stabilize it.
- 7.13 Overall, the levels changes are not considered to be harmful to the wider character and appearance of the area in accordance with the Local Plan 2017 and the NPPF.

**Living Conditions**

- 7.14 The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers.
- 7.15 Despite the site level changes, the dwellings built on the raised levels remain considerably lower than the land levels of surrounding dwellings on the east, south and west boundaries. As set out in the section above, the drawings demonstrate that the floor levels of the dwellings adjacent to the eastern boundary are approximately 4-5m lower than the land levels to rear gardens of adjacent properties on Borden Lane. In addition, these adjacent

**APPENDIX A**

rear gardens are over 40 metres in length, with boundary enclosures and screening, meaning that views and impacts arising from the development are very limited.

- 7.16 Likewise levels on the west boundary are some 3.6m-4m lower than the rear gardens of adjacent dwellings on Adelaide Drive, albeit that the garden lengths to these properties are more modest at 13 metres. A similar levels difference of 4-5m would be maintained to Hobart Gardens to the south.
- 7.17 Much of the development is two storeys in scale. Given the difference in levels, and the existence of existing boundary fencing and screening, this has not resulted in any material loss of privacy or light to neighbouring properties. Whilst it is true that the roofs of parts of the new development are more visible above some fence lines, this does not amount to an unacceptable visual impact.
- 7.18 There are some three storey elements within the scheme, notably Block N towards the southern boundary and Block D to the east boundary. In both instances, the effect of the levels changes does increase inter-visibility between the development and existing properties. In the case of Block D, the top floor windows enable some limited views towards the rear of a small number of dwellings on Borden Lane. This would be at a distance in excess of 50 metres, which is not considered to be unacceptable (considering that privacy distances applied are typically 21m). Furthermore, landscaping is proposed to further reduce this impact.
- 7.19 In the case of Block N, the top floor would face some dwellings on Hobart Gardens at a distance of approx. 33 metres. Again, this is not considered to be unacceptable, and landscaping is proposed on the bank to mitigate this further.
- 7.20 The difference in levels changes between the approved scheme and the “as built” scheme on the north boundary with existing dwellings on Lydbrook Close is much more subtle, with the differences being between 100mm and 300mm. The dwellings on the west side of Lydbrook Close are again sited progressively at a higher level than the application site, whereas the dwellings on the east side of Lydbrook Close are at a similar level. The closest existing dwelling at 21 Lydbrook Close is sited 9.4, and 16.5m respectively from buildings A and B within the development site which are both two storey dwellings. Given this distance and the orientation of these buildings, the minor increase in height arising from the levels changes is not considered to be unacceptable.
- 7.21 As such, the development is not considered to cause any unacceptable impacts on living conditions, and would accord with Policy DM14 of the Local Plan.

**APPENDIX A****Landscaping**

7.22 The proposed landscaping includes tree, hedge and shrub planting within the development layout, a scheme of landscaping to the sloped embankments and, where appropriate, further landscaping at the top of the bank, as well as hard landscaping details including boundary enclosures and surface treatments. The soft landscaping proposals have been designed for the sloping land and a maintenance route has been devised to ensure that the landscaping can be properly managed. The landscaping would further soften and screen the development from surrounding neighbouring properties. The Council's Tree Officer is satisfied with the landscaping details proposed, and these are considered acceptable.

**Drainage**

7.23 Although not part of the list of reserved matters, the outline planning permission granted under SW/97/0623 required details of surface water drainage to be submitted with the reserved matters application. The changes to site levels have brought about amendments to the surface water drainage scheme previously approved under SW/97/0623.

7.24 The surface water drainage scheme as installed is a soakaway system including the installation of a cellular storage system under the area of open space. This system is acceptable to both the KCC Drainage team and the Environment Agency.

**8. CONCLUSION**

8.1 The minor material amendments are to the reserved matters previously approved under SW/01/0623 and specifically to levels changes and landscaping, and related changes to the drainage proposals. Taking into account that the development of 49 dwellings has the benefit of an extant planning permission and that this application is only seeking the specific changes above, the development is considered acceptable and in accordance with the local plan. As such, it is recommended that planning permission be granted.

**9. CONDITIONS**

(1) The development hereby permitted shall be carried out in accordance with the following approved plans: 04, 05, 06, 07, 08, 09, 10, 11, 12 Rev A, 13, 19, 1292-JSA-XX-XX-DR-A-03201 Rev P1, 1292-JSA-XX-XX-DR-A-91201 Rev C2, 1292-JSA-XX-XX-DR-A-02004 Rev C16, 1292-JSA-XX-XX-DR-A-02005 Rev C5, 1292-JSA-XX-XX-DR-A-02501 Rev C11, 1292-JSA-XX-XX-DR-A-02502 Rev C10, 1292-JSA-XX-XX-DR-A-02503 Rev C10, 1292-JSA-XX-XX-DR-A-02504 Rev C10, S16-SFL-EX-00-DR-L-0501 P10, S16-SFL-EX-00-DR-L-0502 P02, 5366-D1 Rev A, 5366-D10 Rev A, 5366-D11 Rev A, 5366-D4 Rev A.

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

(2) The external finishing materials to be used on the dwellings hereby permitted shall be

**APPENDIX A**

as approved by the local planning authority under 18/506405/SUB.

Reason: In the interests of visual amenity.

- (3) The hard and soft landscape works shall be carried out in accordance with the approved details as shown on drawings 1292-JSA-XX-XX-DR-A-02004 Rev C16 (for hard and soft landscaping within the development layout), 1292-JSA-XX-XX-DR-A-02005 Rev C5, 1292-JSA-XX-XX-DR-A-02501 Rev C11, 1292-JSA-XX-XX-DR-A-02502 Rev C10, 1292-JSA-XX-XX-DR-A-02503 Rev C10, 1292-JSA-XX-XX-DR-A-02504 Rev C10, S16-SFL-EX-00-DR-L-0501 P10 (for landscaping on the banks around the edges of the site), S16-SFL-EX-00-DR-L-0502 P02. Hard landscaping shall be completed in accordance with the approved details prior to first occupation of the development. Soft landscaping shall be completed in accordance with the approved details within 6 months following the completion of the development or occupation of the first dwelling (whichever is sooner). Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within ten years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

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

- (4) The proposed estate road, footways, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, access, carriage gradients as appropriate, shall be constructed and laid out in accordance with the details approved by the Local Planning Authority under 18/505321/SUB and 18/505486/SUB.

Reason: To ensure that the roads are constructed and laid out in a satisfactory manner.

- (5) The proposed roads, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that each dwelling, before it is occupied, shall be served by a properly consolidated and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.

Reason: To ensure the development is served by an adequate means of access.

- (6) The development hereby approved shall not be brought into use until that part of the service road which provides access to it has been constructed in accordance with the approved plans.

Reason: To ensure that the development is served by an adequate means of access.

- (7) Unless specifically shown on the approved plans, no walls or fences shall be erected fronting onto any road, square, footway or other open area without the express consent of the local planning authority.

Reason: In the interests of visual amenity

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

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), September 2023 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

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

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

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

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

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

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

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

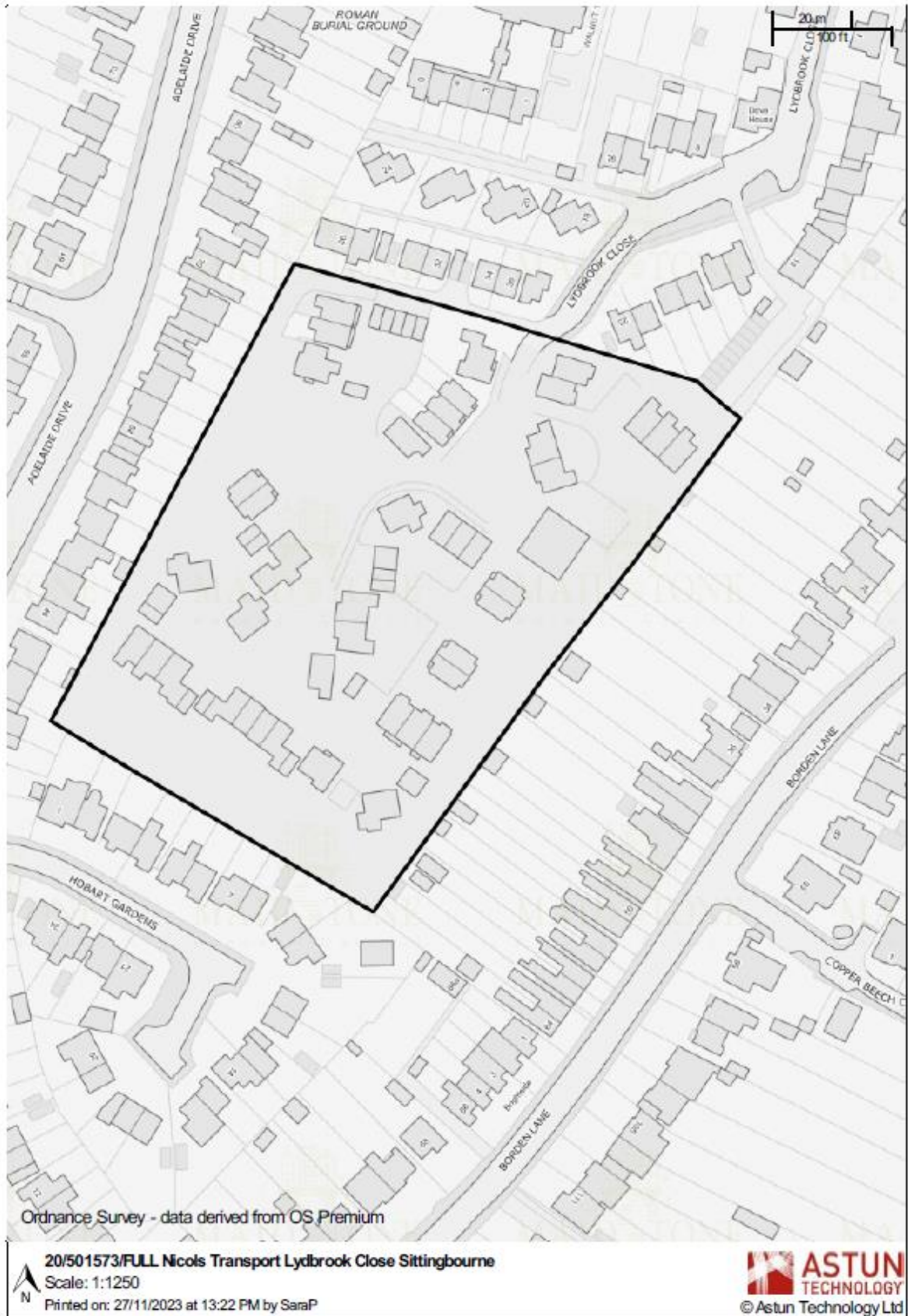
The recent (April 2018) judgement (*People Over Wind v Coillte Teoranta*, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, *"it is not appropriate, at the screening stage, to take account of the measures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

**APPENDIX A**

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

However, this application has been made under S73 of the Planning Act to make minor material amendments to an existing permitted scheme for 49 dwellings. Whilst the permitted scheme does not make any contributions to impacts upon the SPA, the nature of the amendments sought under the S73 application would not be likely to increase any impacts or pressure on the SPA over and above those that would occur from the existing permission. Based on this and the correspondence with Natural England in relation to this application, it is concluded that off-site mitigation is not required.

**APPENDIX A**



This page is intentionally left blank



## APPENDIX B

530 20/501573/FULL NICHOLLS TRANSPORT, LYDBROOK CLOSE, SITTINGBOURNE, KENT, ME10 1NW

**PRESENT:** Councillors Mike Baldock (Chair), Simon Clark, Kieran Golding, Terry Thompson, Angie Valls, and Karen Watson.

**OFFICERS PRESENT:** Gemma Bryant, Andrew Byrne, and Kellie Mackenzie.

**ALSO IN ATTENDANCE:** Councillor Shelley Cheesman.

**APOLOGIES:** Councillors Andy Booth, Mike Henderson, James Hunt, Charlie Miller, Julien Speed and Tony Winckless.

The Chair welcomed the applicant, the applicant's architect, members of the public and Members to the meeting.

*Planning Working Group*

*20 December 2023*

The Area Planning Officer introduced the application which sought a minor material amendment to SW/01/0623 for the erection of 49 dwellings (Approval of Reserved Matters for Residential Development Pursuant to Outline planning permission SW/97/0623) to allow changes to approved site levels and landscaping and was retrospective. The site levels had been raised generally by between 300mm and 180mm across the site compared to the approved scheme and some of the landscaping on the raised banks had been removed, and replacement planting was now proposed.

A Ward Member asked the Area Planning Officer whether he considered the proposed amendments were a significant change to the application? The Area Planning Officer said he did not as the development was for the same number of dwellings and could be considered as a minor amendment.

Members of the public spoke against the application and raised points which included:

- The development had impacted detrimentally on local residents;
- the boundary line between the application site and no. 26 Lydbrook Close was too close and needed moving as it made it impossible to reverse off the drive;
- the dwellings erected were not built in accordance with the approved plans;
- the dwellings had not been built in line with building control regulations;
- Moat Housing and the contractors had shown no compassion towards local residents;
- could not understand how professional builders and architects should need to apply retrospectively;
- change of tenure at the site was a significant change;
- concerned that originally 25 of the affordable dwellings were to be for young professionals under the part-buy party-rent scheme, but were now all social housing;
- the footings previously dug at the site were for a private garage, not this development, so the previous planning permission had lapsed;
- did not understand why Moat Housing were not still offering the part-buy scheme;
- concerned regarding the site boundary line with properties in Hobart Gardens, it was not in the correct place;
- the applicant should ensure adequate security fencing was installed between the boundary of the new dwellings and properties in Hobart Gardens;
- the local wildlife had been detrimentally impacted by the development;
- the applicant should consult with local residents on what could be included within the landscaping scheme; and
- who was responsible for the land between the rear of 40 Borden Lane and the development site as it was prone to being overgrown.

**APPENDIX B**

*Planning Working Group*

*20 December 2023*

---

A representative from Moat Housing, explained that the Part Buy Part Rent scheme had been a marketing scheme with their previous contractor PDR however that had changed since PDR, had gone into liquidation. She confirmed that the dwellings would be signed-off in line with the standard building control regulations. She said that Moat Housing were happy to organise a residents meeting with local Ward

Members to address concerns raised. The representative confirmed that Moat Housing owned the strip of land between Borden Lane and the application site, and it was in their interests to ensure that it was correctly maintained.

A Ward Member, also a member of the Planning Committee, queried why the applicants had not submitted a planning application when they knew the site levels had increased? and why had they changed? He said that the site managers were professional and would have known the site levels had changed. He was concerned that the new dwellings might be subject to subsidence.

The applicant's Architect explained that the site and plot levels had been increased due to the topography of the site.

In response to questions from residents, the Area Planning Officer said that officers would carry out site measurements to establish if the dwellings at plots 3-5 had been built in the correct locations. He said that the occupation of the dwellings for affordable housing was not controlled under the planning permission and was a matter for Moat Housing. The Area Planning Officer confirmed that the Council had already accepted that the footings laid in 2001 were a material and lawful commencement of the development. He advised that local residents had been consulted on the application, including the proposed landscaping scheme in summer 2023.

Members viewed the site from 23 Lydbrook Close with officers, following concerns that the dwellings had not been built in the correct location. They also viewed the application site with the applicants and officers and viewed the site from properties in Hobart Gardens.

Chair

**PLANNING COMMITTEE –**

**PART 2**

Report of the Head of Planning

**PART 2**

Applications for which **PERMISSION** is recommended

<b>2.1 REFERENCE NO - 23/505480/FULL</b>		
<b>PROPOSAL</b> Erection of detached chalet bungalow with dormer window, including associated parking and cycle store, demolition of existing carport, widening of existing access, and creation of new parking for the existing dwelling.		
<b>SITE LOCATION</b> Ash Tree Villa Parsonage Chase Minster-on-sea Sheerness Kent ME12 3JX		
<b>RECOMMENDATION</b> Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions as set out in the report, with further delegation to the Head of Planning to negotiate the precise wording of conditions, including adding or amending such conditions.		
<b>APPLICATION TYPE</b> Minor		
<b>REASON FOR REFERRAL TO COMMITTEE</b> The applicant is member of staff		
<b>Case Officer</b> Megan Harris		
<b>WARD</b> Sheppey Central	<b>PARISH/TOWN COUNCIL</b> Minster-On-Sea	<b>APPLICANT</b> Ms Eva Harris <b>AGENT</b> Mr Keith Plumb
<b>DATE REGISTERED</b> 24/01/24	<b>TARGET DATE</b> 29/02/24	
<b>BACKGROUND PAPERS AND INFORMATION:</b>  Documents referenced in report are as follows: -  All drawings submitted All representations received  The full suite of documents submitted pursuant to the above application are available via the link below: -  <a href="https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=S4ZAIUTYHWP00">https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=S4ZAIUTYHWP00</a>		

1. SITE LOCATION AND DESCRIPTION

1.1 The application site is comprised of part of the side and rear garden at Ash Tree Villa, a semi-detached two storey property located within the built up area boundary of Minster. The property is accessed from a small access track to the north, which also serves several neighbouring dwellings. Private amenity space is located to the side and rear of the property. At the rear of the site is a dropped kerb and driveway, accessed directly from Parsonage Chase. A car port is located in the rear garden, accessed from this driveway.

1.2 The surrounding area is characterised by residential development of various scales and designs. Immediately west of the site is a row of small bungalows, known as 'The Old Bakery'. These bungalows are sited on higher ground, and are currently screened from the site by a row of dense conifers.

## 2. PLANNING HISTORY

2.1 **SW/10/1091** – Planning permission granted on 18.10.2010 for 'Two storey side and rear extension to dwelling house to accommodate new lounge and dining area and first floor bedrooms'. Permission was not implemented.

## 3. PROPOSED DEVELOPMENT

3.1 This application seeks planning permission for the erection of detached three bedroom chalet bungalow with associated parking and cycle store, including demolition of existing carport, widening of existing access, and creation of new parking for the existing dwelling.

3.2 The plot will be subdivided and the new dwelling will be located within the side garden of Ash Tree Villa. The property will have a width of 5.6m and a length 9.7m and will feature a small single storey rear projection that measures 2m x 3.8m in footprint. The chalet bungalow will have a gable roof with an eaves height of 2.9m and a ridge height of 6.2m. The roof space of the chalet bungalow will be used as habitable space and will feature a hipped roof dormer window in the western roof slope, to provide sufficient internal space to create a bathroom on the first floor.

3.3 Parking for both the new and existing property will be provided within the rear gardens, accessed from Parsonage Chase to the rear of the site. Additional hardstanding will be required to provide access to the spaces, and the existing dropped kerb will be extended. Two parking spaces will be provided for the existing and proposed dwelling.

## 4. CONSULTATION

4.1 Two rounds of consultation with neighbours has been undertaken. A site notice was also displayed at the site. No comments from neighbours have been received.

4.2 **Minster Parish Council** support the application.

## 5. REPRESENTATIONS

- 5.1 **SBC Environmental Health** – No objection subject to conditions being imposed in relation to contaminated land as the site lies close to a possible source of land contamination. An informative relating to the Mid Kent Environmental Code of Practice to control any noise and dust arising from the construction phase is also suggested.

## 6. DEVELOPMENT PLAN POLICIES

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

- ST 1** (Delivering sustainable development)
- ST 3** (The Swale settlement strategy)
- ST 6** (The Isle of Sheppey area strategy)
- CP 3** (Delivering a wide choice of high quality homes)
- CP 4** (Good design)
- DM 6** (Managing transport demand and impact)
- DM 7** (Vehicle parking)
- DM 14** (General development criteria)
- DM 19** (Sustainable design and construction)
- DM 28** (Biodiversity and geological conservation)

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

Supplementary Planning Guidance Designing an Extension – A Guide for Householders  
Supplementary Planning Document - Swale Parking Standards  
Nationally Described Space Standards

## 7. ASSESSMENT

- 7.1 This application is reported to the planning committee because the applicant is a member of staff. Considering 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
- Transport and Highways

### **Principle**

- 7.2 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 sets out that the starting point for decision making is the development plan unless material considerations indicate otherwise.
- 7.3 The National Planning Policy Framework provides the national policy context for the proposed development and is a material consideration of considerable weight in the

determination of the application. The NPPF states that any proposed development that accords with an up-to-date local plan should be approved without delay. At the heart of the NPPF is a presumption in favour of sustainable development and for decision-taking this means approving development that accords with the development plan.

- 7.4 Policy ST 3 of the Local Plan 2017 supports the principle of development within the built up area boundary of established towns and villages within the Borough.
- 7.5 The application site is located within the built-up area boundary of Minster and as such the proposal is suitably located for residential development. The development would be consistent with policies ST 1, ST 3, CP 3 of the Local Plan (2017) due to its location within the built-up area boundary, subject to the considerations set out in further detail below.

### **Character and Appearance**

- 7.6 The National Planning Policy Framework attaches great importance to the design of the built environment and that design should contribute positively to making places better for people. The Local Plan reinforces this requirement.
- 7.7 The proposal will involve the subdivision of the plot and erection of a chalet bungalow with rooms in the roof space. The scale of the subdivided plot is similar to others in the immediate streetscene, with similar gaps between the properties. Therefore the proposal will not appear cramped or out of place, given the pattern of development in the surrounding area.
- 7.8 The chalet bungalow itself will provide rooms in the roof space, and does represent a different design to that of Ash Tree Villa, which is a two storey Victorian property. Parsonage Chase does feature a mixture of dwelling types and styles, and taking into account the bungalows to the west of the site and the variety of housing types in the surrounding area, the erection of a chalet bungalow would not be out of keeping with the street scene.
- 7.9 The application form sets out external materials will include stock brickwork and Cedral cladding to the elevations, and plain concrete tiles to the roof. The use of a mixture of brickwork and cladding is acceptable here given the mixed street scene, but as no specific material details have been provided, a condition is imposed below to ensure these details are submitted to the Council for approval.
- 7.10 Due to the location of the proposed chalet bungalow, the row of conifers that currently run along the boundary with The Old Bakery bungalows to the west will need to be removed. The trees are not prominent in views from Parsonage Chase due to their position, set back from the road, and as such their loss will not be significantly harmful to the character and appearance of the area. Due to the proximity of the new dwelling to the western side boundary, there will not be room for any replacement tree planting here, but it is considered additional planting can take place within the rear garden to partly compensate for this loss. A hard and soft landscaping condition is imposed below to require full details of this.

- 7.11 The development will include the addition of an area of hardstanding at the end of the rear gardens, in order to facilitate the creation of two off-road parking spaces per dwelling. There is already a driveway in situ at the rear of the site, providing parking for the existing dwelling, and Nos. 1 and 2 Laburnum Mews to the east of the site also have driveways at the rear of their gardens. As such, the provision of an enlarged driveway and additional hardstanding in this location will not appear out of character with the surrounding streetscene. The hard and soft landscaping condition imposed below will ensure details of the hardstanding are submitted to the Council for approval.
- 7.12 Taking the above into account, in respect of the character and appearance of the proposal the scheme is considered to comply with policies CP 4 and DM 14 of the Local Plan and the NPPF.

### **Living Conditions**

#### *Existing residents*

- 7.13 The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers.
- 7.14 First considering the impact to Ash Tree Villa, the chalet bungalow will lie approx. 1m from the side elevation of this property. It will be set in roughly the same position as Ash Tree Villa, projecting a similar distance to the projecting wing at the existing property. Due to Ash Tree Villa having a stepped rear elevation, the new dwelling will project 3m to the rear of the dining room window, and this could have an impact on amount of light reaching this window. A 45 degree BRE light test has been undertaken, which demonstrates that the proposal passes this test and as such, whilst there will be some impact upon this window, it is not envisaged this will be significantly harmful to neighbouring occupiers. The new bungalow is also stepped at the rear and taking into account the projecting element is set away from the boundary with Ash Tree Villa by approximately 1.7m, this projection will not result in any significantly harmful overshadowing or overbearing impacts.
- 7.15 The subdivision of the site will result in the rear garden at Ash Tree Villa being reduced in scale, however it will still be of an adequate scale for a family home, with a depth of around 15m. As such a good standard of outdoor amenity space will still be afforded at the property.
- 7.16 The new dwelling will be sited roughly 5.8m from the front elevations of the bungalows to the west of the site at The Old Bakery. The erection of the new dwelling would have some impact on these neighbouring properties due to this distance. However, the neighbouring properties are on a slightly higher land level to the application site, and the submitted drawings demonstrate that the development would pass the 25 degree BRE light test, other than a very small part of the proposed dormer roof. The impact of this roof has been amended to incorporate a hipped element, and whilst this does still clip the 25 degree line, this is minimal and the as such impact on the amount of light that reaches the neighbouring windows will be limited. On balance, the impact on outlook is

considered to be acceptable based on the design of the dwelling and compliance with BRE guidelines. Overall, and despite the short separation distance, due to the design and scale of the new dwelling, it is envisaged that the impact on the living conditions of these neighbouring properties will be acceptable.

- 7.17 The new dwelling will lie approximately 18m from Fairmile House to the north and 40m from No. 71 Parsonage Chase to south of the site, and due to these separation distances, it is not envisaged there will be any harmful impacts to the living conditions of occupiers of these dwellings.
- 7.18 There will be two windows in the side elevations of the new bungalow, which could potentially lead to overlooking of neighbouring properties. One of the windows will be located in the dormer window on the western roof slope, which will serve a bathroom. This will provide views of the bungalows to the west and as such a condition is imposed to ensure the window is obscure glazed and non-opening below 1.7m from the internal floor height. This will mitigate any overlooking impact. There will also be a high-level window in the eastern side elevation, serving the kitchen. As it will be high level, it is not considered that there will be any harmful overlooking of Ash Tree Villa to the east.
- 7.19 Given the close proximity of the new dwelling to neighbours, a condition is imposed below to remove permitted development rights to further extend the chalet bungalow or enlarge the roof space. This will ensure the Council has control over any future extensions to the property.

#### *Future residents*

- 7.20 New development is expected to offer future occupiers a sufficient standard of accommodation. The dwelling falls slightly below the Government's national space standards, providing 82.3 square metres of floorspace, whilst the space standards set out that a three bedroom, four person dwelling should provide a floorspace of 84 square metres. Taking into account the floorspace is only marginally below the standard, and the fact that the standards have not been adopted by reference to them in the Local Plan, the layout and standard of accommodation is considered acceptable.
- 7.21 All habitable rooms are served by windows which will provide adequate outlook, light and ventilation. The rear garden is large in depth and will provide a good standard of outdoor amenity space.
- 7.22 Due to the position of all surrounding properties, the new bungalow will not be subject to any significant overshadowing or overbearing impacts. There are windows in the side elevation of Ash Tree Villa which will face onto the new bungalow. One window is on the ground floor, serving the kitchen and will face onto the side of the new dwelling. Whilst there is a window in this elevation in the new bungalow, it is a high level kitchen window and as such, there is not considered to be any harmful overlooking from this neighbouring kitchen window. There is also a bedroom window in the first floor side elevation of Ash Tree Villa, and whilst this window will provide views of the new dwelling, it will face the new dwelling itself rather than the garden area, and as such any overlooking will not be significantly harmful.



7.23 The existing 1.8m boundary fence that runs along the western boundary of the site will limit any views into the site from The Old Bakery bungalows, and therefore overlooking from these neighbouring properties is not a concern.

7.24 Taking the above into account, the scheme is considered to be acceptable, and would accord with Policy DM 14 of the Local Plan.

### **Transport and Highways**

7.25 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.”*

7.26 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.”*

7.27 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.

7.28 The development will result in the creation of one dwelling and given the limited vehicle movements typically associated with one dwelling, the proposal will not have any harmful impacts on the wider road network.

7.29 Parking for both the new and existing dwelling will be provided at the end of the rear gardens, accessed from Parsonage Chase. Two parking spaces will be provided for each dwelling. In line with the SBC Parking Standards SPD, three-bedroom properties in this location should provide two to three parking spaces. Whilst the proposal will only satisfy the lower end of the provision, it does accord with the SPD and as such provides an adequate parking provision. Additional traffic generation would be limited and would not be harmful to the existing network.

7.30 Conditions are imposed below to secure the parking spaces and to require the installation of an electric vehicle charging point at the new dwelling.

### **SPA Payment**

7.31 An Appropriate Assessment is set out below. Since this application will result in a net increase in residential accommodation on the site, impacts to the SPA and Ramsar sites may occur from increased recreational disturbance. Due to the scale of the development there is no scope to provide on-site mitigation and therefore off site mitigation is required

by means of developer contributions at the rate of £328.27 per new dwelling. As the development will result in an uplift of one dwelling at the site, only one fee is required. This fee will be secured prior to the determination of the application.

### **Contamination**

- 7.32 Environmental Health recommend that a Phase 1 contamination investigation be undertaken prior to the commencement of the development to ascertain the presence of any contaminants that may be present from the historic use of a nearby site as a laundry. A condition is imposed below to secure this. At the recommendation of the Environmental Health team, an informative is also imposed below relating to the Mid Kent Environmental Code of Practice, which will mitigate any noise and dust issues from the construction phase.

## **8. CONCLUSION**

- 8.1 On the basis of the above, the scheme is considered to be in compliance with policies CP3, CP4, DM7, and DM14 of the Local Plan. It is therefore recommended that planning permission be granted.

## **9. CONDITIONS**

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

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

2. The development hereby permitted shall be carried out in accordance with the following approved drawings: HA/23/125.01A, HA/23/125.02A and HA/23/125.03A.

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

3. The dwelling hereby approved shall be constructed and tested to achieve the following measure:

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

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

Reason: In the interest of promoting energy efficiency and sustainable

development.

4. The development hereby permitted shall not be commenced until the following components of a scheme to deal with the risks associated with contamination of the site shall have been submitted to and approved, in writing, by the Local Planning Authority:
  - 1) A preliminary risk assessment which has identified:
    - all previous uses
    - potential contaminants associated with those uses
    - a conceptual model of the site indicating sources, pathways and receptors
    - potentially unacceptable risks arising from contamination at the site.
  - 2) A site investigation, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
  - 3) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (2). This should give full details of the remediation measures required and how they are to be undertaken. The RMS should also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
  - 4) A Closure Report is submitted upon completion of the works. The closure report shall include full verification details as set out in (3). This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean;

Any changes to these components require the express consent of the Local Planning Authority. The scheme shall thereafter be implemented as approved.

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

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

Reason: In the interests of visual amenity.

6. No development beyond the construction of foundations shall take place until full details of both hard and soft landscape works have been submitted to and

approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme. The development shall be carried out in accordance with the approved details.

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

7. The area shown on approved plan numbered HA/23/125.01A as vehicle parking shall be retained for the use of the occupiers of, and visitors to, the dwellings, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to this reserved parking space.

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

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

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

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

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

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

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

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

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

Reason: In the interests of residential amenity.

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

Reason: In the interests of water conservation and sustainability.

13. Before the development hereby permitted is first occupied, the window opening on the west facing side elevation serving the bathroom on the first floor shall be obscure glazed to not less than the equivalent of Pilkington Glass Privacy Level 3 and shall be incapable of being opened except for a high level fanlight opening of at least 1.7m above inside floor level and shall subsequently be maintained as such in perpetuity.

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

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

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

#### INFORMATIVE

1. The Mid Kent Environmental Code of Development Practice should be compiled with during the construction of the development.

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

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

The application site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) which is a European designated sites afforded protection under the

Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

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

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

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

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

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

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

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

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

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

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

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

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

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





<b>2.2 REFERENCE NO - 23/503055/FULL</b>		
<b>PROPOSAL</b> Change of use of Garden Studio to a Health Clinic (Class E) (Retrospective).		
<b>SITE LOCATION</b> 7 Chegworth Gardens Sittingbourne Kent ME10 1RJ		
<b>RECOMMENDATION</b> Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions, and the completion of a Section 106 agreement as set out in the report, with further delegation to the Head of Planning/Head of Legal Services (as appropriate) to negotiate the precise wording of conditions, including adding or amending such conditions and precise Heads of Terms as may be consequently necessary and appropriate.		
<b>APPLICATION TYPE</b> Change of use		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Applicant is related to SBC employee.		
<b>CASE OFFICER</b> Claire Attaway		
<b>WARD</b> Woodstock	<b>PARISH/TOWN COUNCIL</b> Tunstall	<b>APPLICANT</b> Mr David Sawyer <b>AGENT</b>
<b>DECISION REGISTERED</b> 28/07/23	<b>TARGET DATE</b> 22/09/23	
<b>BACKGROUND PAPERS AND INFORMATION:</b> <b>Documents referenced in report are as follows: -</b>  All drawings submitted All representations received Applicant's Supporting Statement dated 25.08.2023 and comments uploaded 07.09.2023  <b>The full suite of documents submitted pursuant to the above application are available via the link below: -</b> <a href="https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=document&amp;keyVal=RX210KTYN1N00">https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=document&amp;keyVal=RX210KTYN1N00</a>		

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

- 1.1 No. 7 Chegworth Gardens is a two storey 4 bedroom detached dwelling located within the built up area boundary of Sittingbourne. The site lies within a residential area and backs onto the King George V Recreation Ground. The surrounding properties are mainly detached and semi-detached dwellings with off-street parking and landscaped front gardens. There are no on-street parking restrictions in place in Chegworth Gardens.
- 1.2 There is a side gate in-between No's 5 and 7 Chegworth Gardens which provides access to a walkway. This walkway runs along the side boundary of the rear garden to No. 5 and leads to a large timber outbuilding at No.7. The outbuilding (approx. 11.6m x 3.8m) is situated at the end of the rear garden and is currently being used by The Kent Detox and Well Being Clinic as a health clinic. There is no planning history for the outbuilding although the structure itself has become lawful through the passage of time.

The information provided as part of the application sets out that the outbuilding was used by the applicant as a tattoo studio from 2014 until 2019, although that specific use never benefitted from planning permission.

## 2. **PLANNING HISTORY**

- 2.1 **17/502101/FULL** Planning permission granted on 26.05.2017 for a first floor front extension with pitched roof.
- 2.2 **SW/08/1315** Lawful Development Certificate granted on 04.02.2009 for a single storey rear extension.
- 2.3 Both of the above developments relate to the property itself rather than the outbuilding.

## 3. **PROPOSED DEVELOPMENT**

- 3.1 Retrospective planning permission is sought for the change of use of the Garden Studio to a Health Clinic (Class E).
- 3.2 The use of the building as a health clinic started on 01.07.2022 and provides blood testing, ear irrigation, DNA testing, workplace health screening, COVID antibody testing, medical screening, and colonic irrigation.
- 3.3 The opening hours of the health clinic are 8am to 6pm Monday to Friday, and 8am to 1pm on Saturdays. The health clinic is closed on Sundays and bank holidays.
- 3.4 The application sets out that one client visits the clinic at a time (sometimes with a carer) and all appointments are scheduled with a 20-30 minute break in-between. The clients are given details of where to park when booking their appointment, and a reminder is sent on the day.

## 4. **CONSULTATION**

- 4.1 Neighbouring occupiers adjoining the site were notified in writing and a site notice was displayed at the application site. Full details of representations are available online.
- 4.2 Letters of representations were received from 4 separate addresses in relation to the consultation. Objections were received from two separate addresses, and concerns/comments were raised in relation to the following matters: -

<b>Comment</b>	<b>Report reference</b>
Impact of parking on surrounding roads, including outside of the opening hours and on pavements making access difficult.	Paragraph 7.10
Potential for the clinic to expand which will also increase the amount of cars parked in a quiet residential area.	Paragraph 7.18
The use has been operating outside of the hours which neighbours had originally been informed of.	Paragraph 7.15
Noise concerns related to conversations in the outbuilding when	Paragraph 7.14

the door is left open and due to the access path being located close to the neighbouring dwelling.	
--	--

4.3 2 letters were received supporting the application on the following grounds:

<b>Comment</b>	<b>Report reference</b>
Clients are given instructions on where to park.	Paragraph 3.4
The Recreation Ground behind the building opens at 6am with dog walkers that can be noisier.	Paragraph 7.14
When the clinic moved to this site, the availability for evening appointments reduced to respect neighbours amenity.	Paragraph 3.3
Understood that the amount of treatments may reduce as time goes on.	Paragraph 3.4
The complaints have only happened recently despite the clinic open less now than when it first started.	Paragraph 3.3

4.4 **Tunstall Parish Council:** No response.

## 5. **REPRESENTATIONS**

5.1 **KCC Highways and Transportation:** The proposal does not meet their criteria for comment.

5.2 **KCC Archaeology:** No archaeological measures are necessary.

5.3 **NHS Kent and Medway:** No comment.

5.4 **SBC Environmental Health:** The hours of use are acceptable for this location and limiting the hours by condition would address resident's concerns. The use of the outbuilding as a tattoo studio received a complaint in relation to whether the tattooist was registered or not.

## 6. **DEVELOPMENT PLAN POLICIES**

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

**ST3** The Swale settlement strategy

**CP1** Building a strong, competitive economy

**CP5** Health and wellbeing

**DM7** Vehicle parking

**DM14** General development criteria

6.2 **Supplementary Planning Document (SPD):** Parking Standards May 2020.

## 7. **ASSESSMENT**

7.1 This application is reported to the Committee because the applicant is related to a Council employee.

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

- The Principle of Development
- Highway safety and parking
- Living Conditions

### **Principle**

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

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

7.5 The application site lies within the built-up area boundary of Sittingbourne, within a residential area and in a sustainable location. Policy ST3 of the Local Plan states that the primary focus for growth will be in the main urban centre of Sittingbourne. Policy CP1 is generally supportive of home-grown business creations. In addition, paragraph 81 of the NPPF states that *“Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.”* The outbuilding was used as a tattoo studio for five years (without planning permission), but the applicant is now seeking to regularise its use as a health clinic. The proposal provides a small business opportunity within Sittingbourne and as such complies with policies ST3 and CP1 of the Local Plan.

### **Highway safety and parking**

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 3+ parking spaces for a four bedroom dwelling situated in a suburban location. The gravelled area in front of No.7 extends across the entire frontage of the property, and as such can accommodate at least three off-road parking spaces for the occupiers of the dwelling. However, the staff member that operates the business from the outbuilding does not reside at the property, and as a result, there is no guarantee that driveway parking will be available. Nonetheless, any road parking would be likely limited to 2 vehicles, being one for the employee and one for a client.
- 7.10 Local objectors raise concern that the proposal generates an increase in on-street parking from clients visiting the health clinic. The supporting statement sets out that between 5 and 8 clients visit the health clinic per day with a scheduled break in-between appointments. This amount of traffic would not result in significant stress on local parking. Chegworth Gardens is a wide road where on-street parking appears common without significantly prejudicing highway safety. The scale of development falls below the threshold for KCC Highways and Transportation to comment, however it is considered that a potential slight increase in on street parking here is unobjectionable. As such the proposal is considered to be in accordance with Policy DM7 of the Local Plan.

### **Living conditions**

- 7.11 The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers.
- 7.12 Policy DM14 states that any new proposed developments should not cause significant harm to the amenities of surrounding uses or areas and due consideration will be given to the impact of the proposed development upon neighbouring properties. Any new proposed schemes should not result in significant overshadowing through a loss of daylight or sunlight, in an unreasonable loss of privacy, in an unreasonable loss of outlook or in excessive noise or odour pollution.
- 7.13 There is potential for additional noise/disturbance from the day to day use of the health clinic and also generated by vehicles coming and going.
- 7.14 The outbuilding is situated at the rearmost end of the garden away from the rear elevations of neighbouring properties. The levels of noise generated from the proposed use will not be dissimilar from typical domestic noise. However, the comings and goings of clients could potentially result in noise and disturbance to No.5, particularly given that the access to the health clinic is alongside their private rear garden, separated by a close boarded fence.
- 7.15 The main control over the potential impact in this respect will be the hours of use proposed by the applicant and the number of clients visiting the site at any one time, which is limited to one. The SBC Environmental Health team raises no objection to the proposed opening hours, which are 8am – 6pm Monday to Friday and 8am – 1pm on

Saturdays (with the business being closed on Sundays and Bank Holidays). Condition (2) has been recommended to control the hours to ensure that there would be no significant impact on the residents nearby because of the proposed use. A further condition, requiring the use to operate in accordance with the statement submitted by the applicant has also been recommended. This includes matters such as the number of clients per visit, the break between appointments and the parking information to be provided to clients.

7.16 It is often the case that when a business use is proposed in an outbuilding within a rear garden of a residential dwelling, the applicant and the operator of the business is one and the same. As a result, in those scenarios a condition would likely be imposed restricting the business use to the applicant only, in order to protect amenity, including the living conditions of the occupiers of the host dwelling. However, a condition restricting the use to the applicant only (who resides at 7 Chegworth Gardens) cannot be imposed in this case as the operator of the health clinic does not reside at No.7 Chegworth Gardens. However, due to the very close relationship between the outbuilding and No.7 Chegworth Gardens, in that it is located within the private amenity space, there would be concern that if the land was severed, and the property was sold separately from the outbuilding, that the living conditions of future occupants of the dwelling would be unacceptably impacted due to this proximity. Therefore, the applicant has agreed to enter into a legal agreement to ensure the land having benefit of this permission cannot be severed from the main dwelling.

7.17 On this basis, the opening hours and use of the clinic would not seriously harm the living conditions of nearby residents and as such complies with Policy DM14 of the Local Plan.

#### **Other Matters**

7.18 The neighbour objection raises concern about the clinic expanding. The clinic is operated by a therapist and the proposal does not seek to increase the number of employees. Condition (5) restricts the number of staff employed at the clinic to ensure this is the case.

### **8. CONCLUSION**

8.1 The proposal provides a small business opportunity situated in a sustainable location which generates low levels of noise and additional vehicular movement. The SBC Environmental Health team consider the opening hours to be acceptable. Conditions restricting the opening hours and use of the building will ensure that the living conditions of the neighbouring properties will not be adversely impacted. On the basis of the above, the proposal is considered to be in compliance with Policies ST3, CP1, DM7 and DM14 of the Local Plan and the NPPF.

8.2 The application is therefore recommended for approval subject to safeguarding conditions and a legal agreement precluding the land upon which the outbuilding is situated being severed from the dwelling and the remainder of its curtilage.

### **9. RECOMMENDATION**

GRANT subject to the following conditions and completion of a legal agreement:

## CONDITIONS

- (1) The premises shall be used for the purpose of a health clinic only and not for any other purpose, including any other uses otherwise provided for under Class E of The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020, The Town and Country Planning (Use Classes) Order 1987 (as amended), or The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) other than if reverted to a use for purposes incidental to the enjoyment of No. 7 Chegworth Gardens as a dwellinghouse.

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

- (2) The use of the outbuilding as a health clinic shall be restricted to the hours of 8am to 6pm on weekdays, 8am to 1pm on Saturdays and shall not take place at any time on Sundays or Bank Holidays.

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

- (3) The premises shall be operated only in accordance with the statement submitted by the applicant received on 25 August 2023.

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

- (4) No more than 1 staff member shall be employed at the premises hereby permitted.

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

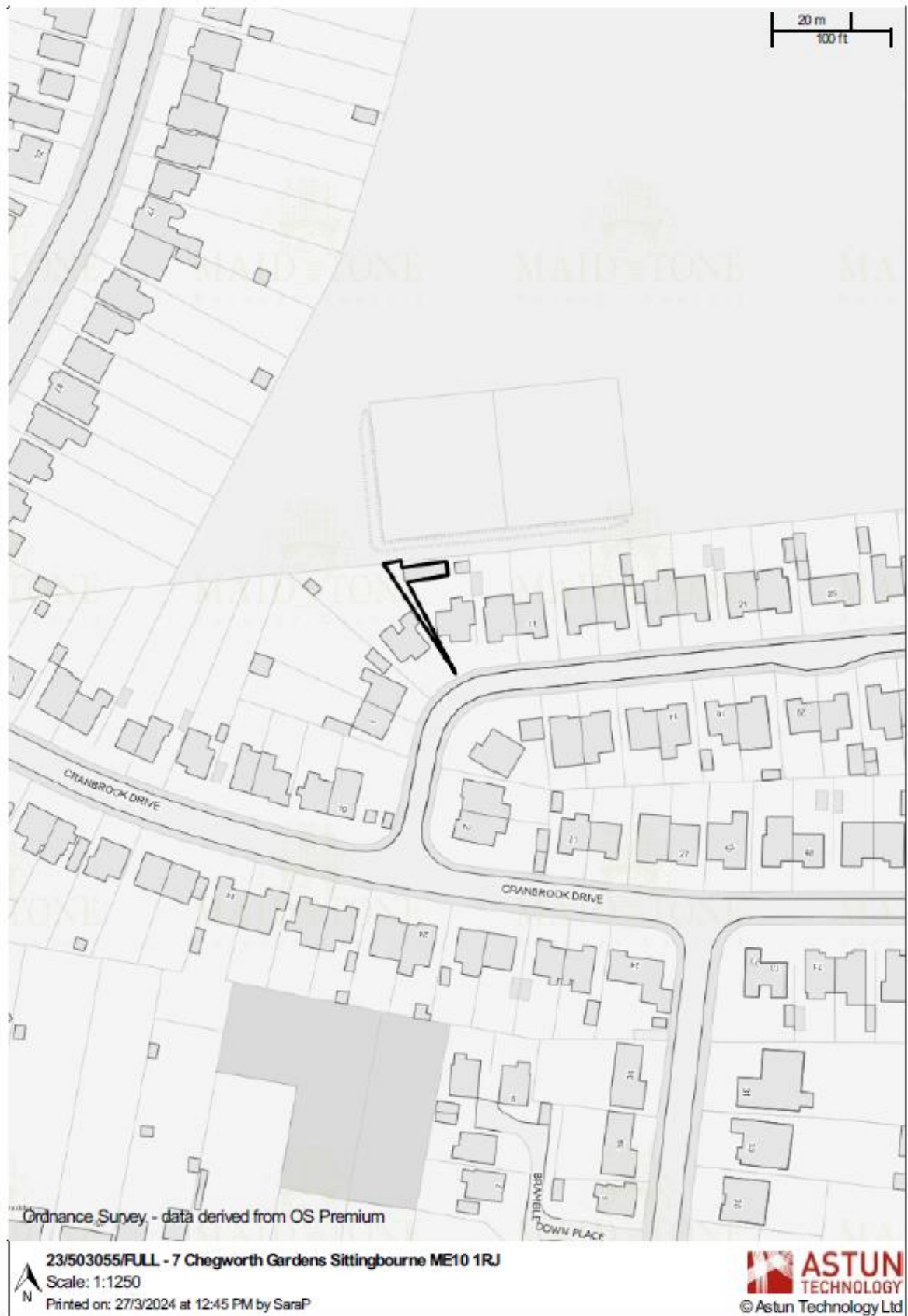
### **The Council's approach to the application**

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.





<b>2.3 REFERENCE NO 22/504543/FULL</b>		
<b>PROPOSAL</b> Extension of existing gypsy/travellers site and siting of 4no. additional mobile homes.		
<b>SITE LOCATION</b> Land At School Lane Iwade Kent ME9 8QE		
<b>RECOMMENDATION</b> Delegate to the Head of Planning to grant planning permission subject to securing an additional SAMMS payment and subject to appropriate safeguarding conditions as set out in the report, with further delegation to the Head of Planning to negotiate the precise wording of conditions, including adding or amending such conditions as may be consequently necessary and appropriate.		
<b>APPLICATION TYPE</b> Minor Gypsy and Traveller Sites		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Iwade Parish Council objection		
<b>CASE OFFICER</b> Guy Martin		
<b>WARD</b> Bobbing, Iwade and Lower Halstow Ward	<b>PARISH/TOWN COUNCIL</b> Iwade Parish Council	<b>APPLICANT</b> Mr J Smith <b>AGENT</b> A T Russell
<b>DATE REGISTERED</b> 10.10.22	<b>TARGET DATE</b> 15.12.22	
<b>BACKGROUND PAPERS AND INFORMATION:</b>  Documents referenced in report are as follows: -  Planning Statement  All drawings submitted:  AL100A Site Location Plan (uploaded 03.10.22) AL101A Existing Block Plan (uploaded 03.10.22) AL102C Proposed Block Plan (uploaded 10.11.23) AL103 Proposed Plans and Elevations (uploaded 03.10.22)  The full suite of documents submitted pursuant to the above application are available via the link below: -  <a href="https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=RIB0DWTYHK400">https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=RIB0DWTYHK400</a>		

## 1. SITE LOCATION AND DESCRIPTION

- 1.1 The site is located within the countryside, approximately midway between the settlements of Iwade and Lower Halstow. The site lies within an Area of High Landscape Value (Swale Level) with School Lane being a designated rural lane. The site lies immediately to the north-east of an existing gypsy/traveller site which is bound by mature hedges adjacent to School Lane and along the north-eastern boundary. It is largely surrounded by agricultural fields to the north and east, a solar farm to the south, and a dwelling to the west of the existing Gypsy site. Another Gypsy site and Bassier Hill Farm are located nearby. The site is located approximately 1.6km to the east of Lower Halstow and 1.7km to the west of Iwade.

## 2. PLANNING HISTORY

SW/05/1477

- 2.1 Change of use to caravan site for five gypsy families and use of barn for ancillary storage and storage of touring caravans.

Grant of Conditional PP Decision Date: 02.07.2012

## 3. PROPOSED DEVELOPMENT

- 3.1 This application seeks planning permission for the extension of an existing gypsy/travellers site and siting of 4no. additional mobile homes.

- 3.2 The additional mobile homes would be located to the northeast of the existing traveller site with a new Hawthorn hedgerow to be planted to the northwest, northeast and southeast of the proposed mobile homes. Access would be via the existing vehicular entrance to the site. The extension is to accommodate family already on the approved site.

## 4. CONSULTATION

- 4.1 Two rounds of consultation have been undertaken, during which letters were sent to neighbouring occupiers and a notice was displayed at the application site. Full details of representations are available online.

- 4.2 No representations were received from neighbours.

- 4.3 Iwade Parish Council objected to the application on the following grounds: -

Comment	Report reference/
The Iwade area has already taken its fair share of Gypsy and Traveller sites in the borough.	See paragraph 7.10
Concern is raised that the site would become more permanent development siting the adjacent Basser Hill Farm site as an example.	Each application is determined on its own merits and the assessment for this proposal is set out below.

## 5. REPRESENTATIONS

- 5.1 **Health and Safety Executive** – No comment provided that the development is not a vulnerable building.

- 5.2 **KCC Highways** – No objection subject to a strategy for the delivery of the mobile homes to the site.

- 5.3 **KCC Minerals** – No objections.

- 5.4 **Natural England** – No objection subject to securing appropriate mitigation for recreational pressure impacts on habitat site (SAMMS payment).

## 6.0 DEVELOPMENT PLAN POLICIES

- 6.1 The following policies, national guidance and supplementary / evidence documents are relevant to determination of the application:

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

<b>ST1</b>	Delivering sustainable development in Swale
<b>ST3</b>	The Swale settlement strategy
<b>DM6</b>	Managing transport demand and impact
<b>DM7</b>	Vehicle parking
<b>DM10</b>	Gypsy and Traveller sites
<b>DM14</b>	General development criteria
<b>DM24</b>	Conserving and enhancing valued landscapes
<b>DM26</b>	Rural Lanes
<b>DM28</b>	Biodiversity and geological conservation
<b>DM31</b>	Agricultural land

- 6.2 Local Plan policy DM10 is most relevant and is a criteria-based policy for consideration of the acceptability of sites for use as Gypsy / Traveller accommodation. The Local Plan does not contain any site allocations for Gypsy / Traveller sites.

### **The National Planning Policy Framework (NPPF)**

- 6.3 The national policy position comprises the National Planning Policy Framework (NPPF) and Planning Policy for Traveller Sites (PPTS). Together they provide national guidance for Local Planning Authorities on plan making and determining planning applications for gypsy and traveller sites. A presumption in favour of sustainable development runs throughout both documents and this presumption is an important part of both the plan-making process and in determining planning applications. In addition, there is a requirement in both documents that makes clear that Councils should set pitch targets which address the likely need for pitches over the plan period and maintain a rolling five year supply of sites which are in suitable locations and available immediately.
- 6.4 Paragraph 11 of the NPPF sets a presumption in favour of sustainable development. For decision taking, it states that development should be approved if in accordance with an up to date development plan. Where there are no relevant development plan policies or those most important for determining an application are out of date, permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the NPPF as a whole.
- 6.5 Paragraph 63 sets out that to determine the minimum number of homes required, policies should be informed by housing needs assessments, and the size, type and tenure of housing needed for different groups should be assessed and reflected in planning policies – including travellers.

### **Planning Policy for Traveller Sites (PPTS) – Department for Communities and Local Government 2023**

- 6.6 Paragraph 3 states - *“The Government’s overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.”*
- 6.7 Paragraph 4 sets out (inter-alia) that LPA’s should make their own assessment of need for the purposes of planning, that private traveller site provision should be promoted, that the number of traveller sites in appropriate locations should be increased, that

travellers should have access to schools, healthcare and employment infrastructure, and that LPA's should have due regard for the protection of local amenity and the local environment.

- 6.8 Paragraph 10 states that Local Plans should identify and update annually a 5 year supply of Gypsy and Traveller sites against locally set targets.
- 6.9 Paragraph 14 states that *“When assessing the suitability of sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community.”*
- 6.10 Paragraph 25 states that LPA's should consider the following issues when considering planning applications for traveller sites:
- a) *the existing level of local provision and need for sites*
  - b) *the availability (or lack) of alternative accommodation for the applicants*
  - c) *other personal circumstances of the applicant*
  - d) *that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites*
  - e) *that they should determine applications for sites from any travellers and not just those with local connections”*
- c) *“Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate the nearest settled community, and avoid placing an undue pressure on the local infrastructure.”*
- 6.11 Paragraph 27 states *“If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary permission. The exception to this is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and / or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).”*

### **The Swale Borough Council Gypsy and Traveller Accommodation Assessment 2023 (GTAA)**

- 6.12 The GTAA comprises the latest available evidence to identify the accommodation needs of Gypsies and Travellers across the Borough. The GTAA identifies the forecast pitch requirements for Gypsies and Travellers that meet the definition in the PPTS. The Councils GTAA published December 2023 has identified an overall need for 114 additional Gypsy and Traveller pitches across Swale Borough over the period 2022/23 to 2037/38, with 80 in the five-year period 2022/23 to 2026/27 and 34 in the longer-term 2027/28 to 2037/38).
- 6.13 The report advises that the Council should consider the following to help meet identified residential pitch need. Firstly, regularising of sites that are not permanently authorised. Secondly, additional pitch provision through the use of existing sites.

### **Supplementary Planning Documents (SPD)**

- 6.14 Swale Landscape Character and Biodiversity Appraisal

## 6.15 Swale Car Parking Standards

**Other relevant legislation and Court Judgements**

6.16 The Human Rights Act 1998 Article 8: Respect for your private and family life, and home

6.17 The Equality Act 2010

6.18 In *Smith v Secretary of State for Housing, Levelling Up and Communities [2022]*, the Court of Appeal ruled that the PPTS definition in 2015, which excluded Gypsies and Travellers who had permanently ceased to travel due to old age or illness from the PPTS definition, was unjustified and discriminatory. The Court determined that this discriminated against the ethnic and cultural identity of Gypsies who, as a result of age, illness or disability, are no longer able to travel. The PPTS definition was amended in 2023 as a result of this judgement.

7.0 ASSESSMENT

7.1 This application is reported to the Committee because Iwade 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  
 Impact upon the Landscape  
 Supply of G&T sites in the Borough  
 Residential Amenity  
 Highways and Access  
 Impact upon Special Protection Area (SPA)  
 Other Matters

**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. The PPTS is also a significant material consideration, representing the national policy position on Gypsy and Traveller sites.

7.4 The site falls within open countryside and as such development within this location is generally restricted. However, Gypsy and Traveller sites are invariably found in rural locations. Key issues with such sites generally relate to visual impact and sustainability objectives. Policy DM10 of the Local Plan sets out the circumstances under which Gypsy and Traveller sites will be acceptable, and requires such development to comply with criteria listed in the policy. The extent to which the application meets the criteria is set out in the sections below.

- 7.5 The GTAA identifies a significant need for 114 Gypsy and Traveller Sites in the Borough, with an immediate need over a 5 year period for 80 sites. The Council can only currently identify a 1.3 year supply of Gypsy sites. The significant need and shortfall in site provision are also highly material in the consideration of this application.

#### **Location of development**

- 7.6 Policy DM10 (1) sets out that proposals should accord with the settlement strategy under policy ST3 unless (inter-alia) the proposal is for an extension to or stationing of additional caravans at an existing site. The proposal would extend an existing site and meets this criteria. The existing site was found to be suitably located by the Council in granting permission in 2005.

#### **Gypsy status**

- 7.7 The proposed occupants of the mobile homes comprise of the son and nephews of the applicant. All the proposed occupants currently live on the site and have done so for over 17 years. The names provided are consistent with the names of children who were named on the 2005 application, when the gypsy status of the applicants was accepted and in consequence, it is considered that the applicant and the proposed occupiers of the mobile homes are Gypsies.

#### **That the development can achieve an integrated co-existence between all communities**

- 7.8 The site occupants have lived in this location for many years and seek an extension to allow family members who are now adults to have their own caravans and pitches.

#### **Scale and impact on character of area**

- 7.9 Criteria 4 of Policy DM10 states that Gypsy and Traveller sites should be of a scale to meet the accommodation need identified and not introduce a scale of development that singularly or cumulatively dominates the nearest settlement or causes significant harm to the character of an area.
- 7.10 The size of the extended area is appropriate to the needs for 4 additional pitches. The site would remain relatively modest and discreet in scale and appearance. There is another Gypsy and Traveller site further to the west on School Lane, however the cumulative impact is not so large that the scale and impact would be dominating, taking into account the reasonably discreet nature of the existing site and limited landscape impacts as set out in the following sub-section. The Parish Council has commented that there are a number of Traveller sites in the local area. However, given high level constraints in large parts of the borough (e.g. AONB, areas liable to flooding). Gypsy and Traveller sites do tend to form in certain pockets of the Borough.

#### **Landscape Impacts**

- 7.11 The National Planning Policy Framework states amongst other matters that, planning policies and decisions should contribute to and enhance the natural and local environment by (inter-alia) protecting and enhancing valued landscapes.
- 7.12 Policy DM24 of the Swale Local Plan states that the value, character, amenity and tranquility of the Borough's landscapes will be protected, enhanced and, where appropriate, managed.

- 7.13 Areas of High Landscape Value (Kent and Swale Level) are designated as being of significance to Kent or Swale respectively, where planning permission will be granted subject to the:
1. conservation and enhancement of the landscape being demonstrated;
  2. avoidance, minimisation and mitigation of adverse landscape impacts as appropriate and, when significant adverse impacts remain, that the social and or economic benefits of the proposal significantly and demonstrably outweigh harm to the Kent or Swale level landscape value of the designation concerned.
- 7.14 Criteria 7 of Policy DM10 states that Gypsy and Traveller development should not cause significant harm to local landscape designations that cannot be adequately mitigated.
- 7.15 As set out within the Swale Landscape Character and Biodiversity Appraisal the site is located within the Fruit Belt Type and lies within the Lower Halstow Clay Farmlands Character Area. The key characteristics of this area comprises of mixed agricultural land used for small-scale fields of pasture and localised orchards with settlements limited to isolated cottages, fixed mobile homes and isolated farms.
- 7.16 The guidelines for development is to conserve the landscape structure of enclosed small-scale fields, hedges, localised orchards, scattered trees and shelterbelts with the encouragement of appropriate planting of hedges such hawthorn, blackthorn, field maple and pedunculate oak standards. It is noted that the restoration and extension of the hedgerow network and arable field margins/buffers would provide improved habitat connectivity at the local scale, and that lower intensity farming practices should be encouraged.
- 7.17 In addition, School Lane is a Rural Lane, as identified under Policy DM26 of the Swale Local Plan. This policy states, '*planning permission will not be granted for development that would either physically, or as a result of traffic levels, significantly harm the character of rural lanes...development proposals should have particular regard to their landscape, amenity, biodiversity and historic or archaeological importance.*'
- 7.18 The proposal would result in the extension of the existing gypsy site and the siting of four mobile homes in a U shape. The site slopes upward from School Lane, with the existing gypsy site located on the southwestern side of the site with the proposal extending the site to the northeast. The whole of the existing site is screened by a mature hedge extending along School Lane with the hedge then extending along the north-eastern boundary of the site.
- 7.19 Currently there are views from the access to the site and oblique and limited views from School Lane to the north of the site. The proposal would result in encroachment into the underdeveloped countryside and landscape. However the proposal would benefit from existing screening and would incorporate additional screening, with the inclusion of a Hawthorn hedge around the extended site which would further act to screen and limit views of the new mobile homes and of the existing gypsy site. A condition can be imposed to ensure that the hedge is planted in the next planting season.
- 7.20 The proposed caravans would provide accommodation for existing residents of the site which would not result in any significant increase in traffic ensuring that there would not be any adverse impacts upon the rural lane.
- 7.21 The additional screening would ensure that the proposal would conserve the landscape character of the site and the proposal would not have an adverse impact upon the

adjacent rural lane ensuring the requirements of national and local planning policies are met.

### **Impact on amenities of occupants and neighbours**

- 7.22 Policy DM14 of the Local Plan requires amongst other matters that development proposals will cause no significant harm to amenity. Criteria 6 of policy DM10 states that the site should cause no significant harm to occupants or others through noise, disturbance, air quality of other circumstances.
- 7.23 The proposal would extend the existing gypsy site to the northwest of the current site. The closest neighbouring property to the site, Tiptree Bungalow lies approximately 60m to the southwest at which distance the proposal would not adversely impact upon this neighbor's amenities. The site is otherwise considered to provide a suitable environment for occupants In consequence the proposal would meet the requirements of policies DM10 (6) and DM14 of the Local Plan.

### **Providing for Healthy lifestyles**

- 7.24 The extended site is of sufficient size to accommodate amenity space, and play areas for each pitch, in accordance with criteria 9 of Policy DM10

### **Flooding**

- 7.25 The site lies within flood zone 1 where there is a low probability of flooding, as such the proposal would accord with criteria 10 of Policy DM10.

### **Access and parking**

- 7.26 The NPPF 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.”*
- 7.27 Criteria 11 of Policy DM10 states that sites should provide safe parking and access without unacceptable impacts on highways safety.
- 7.28 The proposal would use the existing access onto the site. Whilst the proposal would result in an additional four mobile homes on the site, this would be to house existing occupants of the site which would mean that additional traffic movements would be unlikely to occur. Each caravan would be sited with sufficient parking for the additional mobile homes.
- 7.29 KCC Highways have confirmed that they have no objections to the proposal subject to a condition relating to a strategy providing details of how the mobile homes would access the site due to the traffic calming/priority system that is in place on School Lane. However, details of how mobile homes would be able to access the site using surrounding routes would fail the test of being enforceable, as the Council would have no powers to deal with this matter if the condition was breached. On this basis the condition would not be reasonable.
- 7.30 In consequence the proposal would not have an adverse impact upon the highway with sufficient parking on site.
- 7.31 Taking the above factors into account, it is considered that the extension to this site with appropriate further landscaping would accord with policy DM10 of the Local Plan.



### **Biodiversity and Impacts upon SPA**

- 7.32 The NPPF states amongst other matters that planning decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity.
- 7.33 Policy DM28 states that development proposals will conserve, enhance and extend biodiversity, provide for net gains in biodiversity where possible, minimise any adverse impacts and compensate where impacts cannot be mitigated.
- 7.34 The proposal comprises of the siting of four mobile homes within a maintained open field which due to the nature of the proposal would not have any adverse impacts upon biodiversity. No existing hedges or trees are to be removed. The planting of additional hedges within the site will result in an enhancement on site.
- 7.35 An Appropriate Assessment is set out below. Since this application will result in a net increase in residential accommodation on the site, impacts to the SPA and Ramsar sites may occur from increased recreational disturbance. Due to the scale of the development, there is no scope to provide on-site mitigation and therefore off site mitigation is required by means of developer contributions at the rate of £328.27 per pitch. A fee equating to £314.05 per pitch has been received and the required top up has been requested.

### **Loss of agricultural land**

- 7.36 The site of the proposed extension comprises of a mix of grade 1 and grade 3 agricultural land. Iwade Parish Council have raised concerns regarding the loss of agricultural land. The site comprises of the existing gypsy site and the associated land under the same ownership which from the information available is not farmed and through its limited size would be unlikely to represent a viable agricultural unit. Policy DM10 of the Local Plan does expressly permit extensions to existing sites, although this also has to be weighed against Policy DM31 of the Local Plan which seeks to protect best and most versatile agricultural land.
- 7.37 Taking into account that the proposal is for an extension to the existing site to enable the extended family to continue to live together, the relatively limited size of the extended area, and the fact that this is not a new site but an extension to an existing site which is generally supported under Policy DM10, I consider that the harm arising through the loss of agricultural land and conflict with Policy DM31 would be limited.

## **8 Conclusion**

- 8.1 The proposal would represent an extension to an existing site. Although the site is within an Area of High Landscape Value and would invariably encroach into the countryside and landscape, its visual impact is limited by the location next to an existing longstanding site and presence of existing landscaping, and can be further limited by additional landscaping as proposed. The development is considered to comply with the criteria under Policy DM10 of the Local Plan
- 8.2 The Council cannot demonstrate a 5-year supply of Gypsy and Traveller sites. The current supply figure is 1.3 years and as such the shortfall is significant. In addition, the latest GTAA demonstrates a significant need for sites, particularly for 80 pitches in the next 5 years. The provision of 4 units would make a modest contribution to the identified need for sites and is given significant weight.

- 8.3 The site would result in the loss of BMV land but this would be limited in size. Nonetheless, there would be conflict with policy DM31, albeit that extensions to sites are generally supported under Policy DM10.. Taking into account that the proposal is an extension to an existing site, together with the significant shortfall in site supply and the high need for sites, the loss of BMV land in this instance is not considered to outweigh the benefits of granting permission.
- 8.4 On the basis of the above, it is recommended that planning permission be granted, subject to the conditions below and securing the additional SAMMS payment for the additional pitches.

## 9 Conditions

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

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

- 2) The development hereby permitted shall be carried out in accordance with the following approved drawings: AL100 revision A, AL101 revision A, AL102 revision C, AL103,

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

- (3) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.

Reason: In recognition of the terms of the application, and because an uncontrolled use of the land would be unacceptably detrimental to the character and amenities of the area.

- (4) No more than eight caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, as amended) shall be stationed on the site at any one time, of which only four caravans shall be a static caravan/mobile home.

Reason: In recognition of the terms of the application, and because an uncontrolled use of the land would be unacceptably detrimental to the character and amenities of the area.

- (5) The mobile homes shall only be positioned in the location shown on the Block Plan drawing AL102 revision C – Proposed Block Plan.

Reason: In the interest of visual amenity.

- (6) The site shall only be used for residential purposes and not for any industrial or commercial use. In this regard no open storage of plant, products or waste may take place on the land and no vehicle over 3.5 tonnes shall be kept on the site.

Reason: In the interest of residential amenity of the area.

- (7) Prior to occupation, a scheme of hard and soft landscape works shall be 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.
- any other means of enclosure and hard surfacing areas;
- a programme of implementation.

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

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

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

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

- (9) No floodlighting, security lighting or other external lighting shall be installed or operated on the site other than in accordance with details which shall have been previously submitted to and agreed in writing by the Local Planning Authority.

Reason: In the interests of visual amenity and biodiversity

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

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

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

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

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

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

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

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

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

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

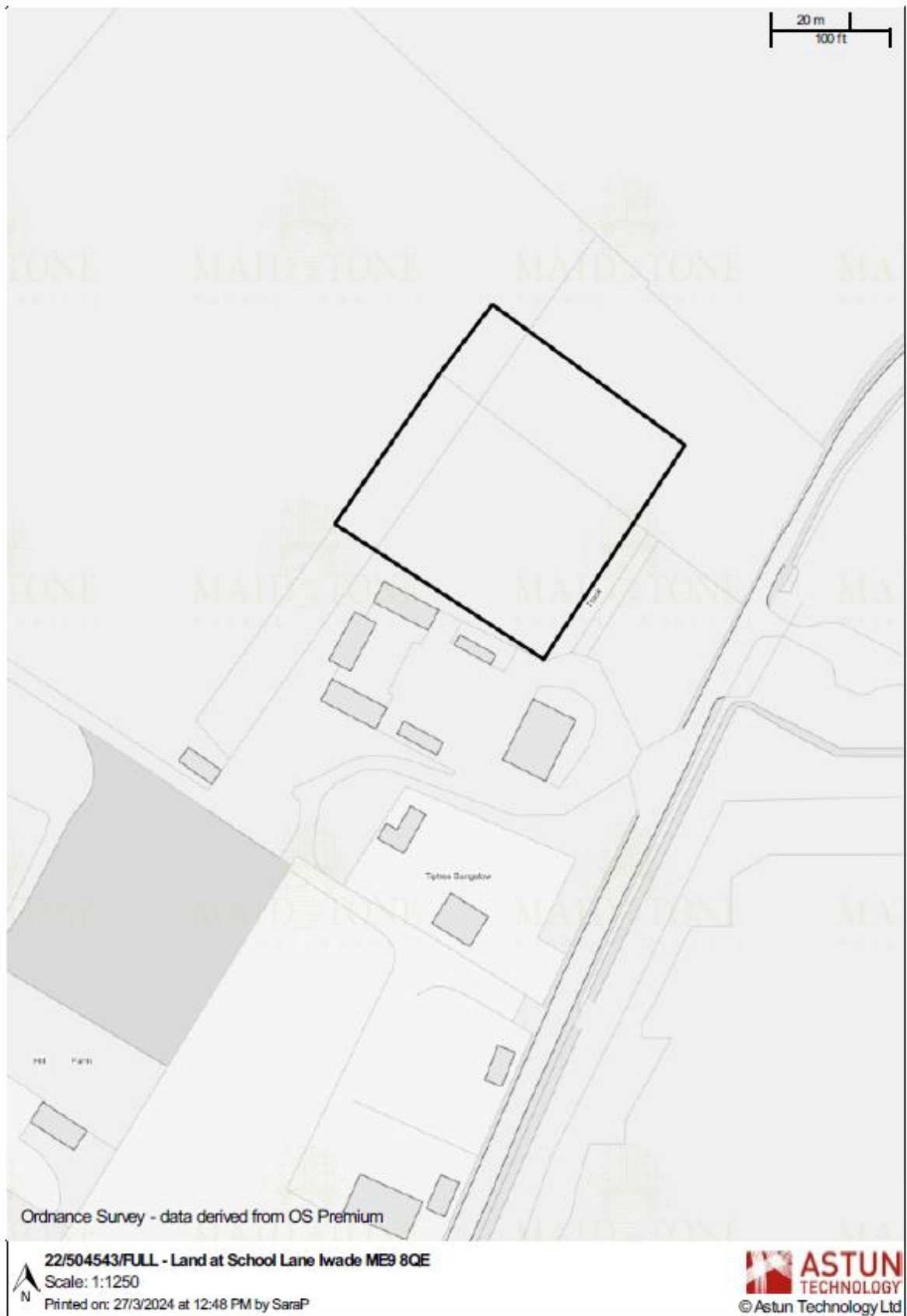
In this regard, whilst there are likely to be impacts upon the SPA arising from this development, the mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff (which will be secured prior to the determination of this application) will ensure that these impacts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

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

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

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



This page is intentionally left blank

<b>2.4 REFERENCE NO - 23/504657/FULL</b>		
<b>PROPOSAL</b> Erection of single storey rear extension, insertion of rooflights and side extension under existing first floor undercroft.		
<b>SITE LOCATION</b> 37 Abbey Street Faversham Kent ME13 7BP		
<b>RECOMMENDATION</b> Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions as set out in the report, with further delegation to the Head of Planning to negotiate the precise wording of conditions, including adding or amending such conditions.		
<b>APPLICATION TYPE</b> Householder		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Faversham Town Council Objection		
<b>CASE OFFICER</b> Mandi Pilcher		
<b>WARD</b> Abbey	<b>PARISH/TOWN COUNCIL</b> Faversham Town	<b>APPLICANT</b> Dr P Wilkinson <b>AGENT</b> Alpha Design Studio Limited
<b>DECISION REGISTERED</b> 17/10/2023	<b>TARGET DATE</b> 12/12/2023	
<b>BACKGROUND PAPERS AND INFORMATION:</b> <b>Documents referenced in report are as follows: -</b>  All drawings submitted All representations received  The full suite of documents submitted pursuant to the above application are available via the link below: - <a href="https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=S2ERY6TYJ3I00">https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=S2ERY6TYJ3I00</a>		

## 1. SITE LOCATION AND DESCRIPTION

- 1.1 No. 37 Abbey Street is a two storey terraced property within the built up area of Faversham and the Faversham Conservation Area. The property is within an area subject to an Article 4(2) Direction which removes specific permitted development rights.
- 1.2 Although much of Abbey Street is comprised of historic buildings this is not exclusively the case and the host property and the dwellings that immediately neighbour the site are more recent additions to the streetscene.

## 2. PLANNING HISTORY

- 2.1 **23/501179/FULL** Planning permission granted on 30.06.23 for a Garage conversion into a home office and removal of the front facing dormer and replace with tiles to match the existing. The brickwork to the front elevation of the property is also to be painted dark

stone (as per material finishes on the proposed drawings) New access gates will be installed under the underpass and a flue to the rear.

- 2.2 **SW/13/0365** Planning permission granted on 28.05.2013 to replace timber windows with timber windows.
- 2.3 **SW/12/0865** Planning permission refused on 12.10.2012 for authentic replacement uPVC windows to front elevation.
- 2.4 **SW/95/1025** Planning permission granted on 15.01.1996 for extension to study and main bedroom.

### 3. **PROPOSED DEVELOPMENT**

- 3.1 The application seeks planning permission for the erection of a single storey rear extension, insertion of rooflights and side extension under the existing first floor undercroft.
- 3.2 The property has an existing staggered rear projection which will be extended sideways by 1.3m, at a depth of 2.5m. The height to the eaves of the rear extension is 2.4m, with an overall height of 3.4m, incorporating two rooflights and rear double doors.
- 3.3 The proposed side extension would measure approximately 3.9m in depth by 2.5m wide with a single door on the front and rear elevation. The extension would be sited under the existing first floor undercroft and behind the access gates previously approved under 23/501179/FULL.
- 3.4 The existing side window on the west elevation will be reduced in size and sit directly behind the proposed side extension.
- 3.5 The external materials will match that of the existing dwelling.

### 4. **CONSULTATION**

- 4.1 Two rounds of consultation with neighbours has been undertaken. A site notice was also displayed at the site and the application was advertised in the local newspaper. Full details of representations are available online.
- 4.2 2 letters were received objecting to the application on the following grounds:

<b>Comment</b>	<b>Report reference</b>
Loss of visual continuity of streetscene	Paragraph 7.11
Overlooking of no.36 from side window	Paragraph 7.21
Loss of car parking space	Paragraph 7.26
Lack of clarity regarding the existing front garden / the existing garage	Paragraph 7.28
No details regarding the party wall or how the side extension will be ventilated	Paragraph 7.28
No details regarding joinery	Paragraph 7.12



No information regarding drainage	Paragraph 7.28
-----------------------------------	----------------

4.3 **Faversham Town Council** were consulted on two occasions. In response to the first consultation they raised an objection on the following grounds:

- The design of the infill of the undercroft will affect the street scene in the Conservation Area;
- Concern regarding loss of car parking which would be reduced from 3 spaces to 1.

4.4 In response to the second round of consultation Faversham Town Council referred to their initial comments (as set out above).

## 5. **REPRESENTATIONS**

5.1 **Historic England** provided no comments.

5.2 **KCC Archaeology**: No objection subject to condition requiring an archaeological watching brief.

5.3 **SBC Conservation Officer**: No objection.

## 6. **DEVELOPMENT PLAN POLICIES**

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

**ST3** The Swale settlement strategy

**CP4** Requiring good design

**DM7** Vehicle Parking

**DM14** General development criteria

**DM16** Alterations and extensions

**DM32** Development involving listed buildings

**DM33** Development affecting a conservation area

**DM34** Scheduled Monuments and archaeological sites

6.2 **Supplementary Planning Guidance/Documents**

Supplementary Planning Guidance - Designing an Extension – A Guide for Householders

Supplementary Planning Document - Swale Parking Standards

## 7. **ASSESSMENT**

7.1 This application is reported to the Committee because Faversham Town Council object to the proposal. Considering these comments and the scheme that has been submitted, the committee is recommended to consider the following points:

- The Principle of Development
- Character and appearance / Heritage
- Living Conditions
- Highway safety and parking

**Principle**

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

**Character and appearance / Heritage**

- 7.6 The National Planning Policy Framework attaches great importance to the design of the built environment and that design should contribute positively to making places better for people. The Local Plan reinforces this requirement.
- 7.7 Policies CP4, DM14 and DM16 of the Local Plan state that developments and extensions should be well designed and respond positively to the building and its surroundings. The Council's SPG entitled Designing an Extension – A guide for Householders recommends that for single storey rear extensions close to your neighbours common boundary, the Borough Council considers that a maximum projection of 3m will be allowed.
- 7.8 In addition, the National Planning Policy Framework states that local planning authorities should identify and assess the particular significance of any heritage asset and consider the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits that may arise and this is endorsed by the Local Plan.
- 7.9 Policy DM33 of the Local Plan requires proposals to preserve or enhance the conservation area's special character or appearance.
- 7.10 The site is located in the Faversham conservation area and the surrounding area is comprised of dwellings constructed in a variety of styles and designs. A large number of the dwellings in the surrounding area are terraced. In terms of the rear extension, it incorporates a pitched roof, and will be constructed from external materials matching the existing dwelling. It is small scale and would not be visible from public vantage points. As such it is considered that this element of the scheme would have no detrimental

impact upon the streetscene and would preserve the character and appearance of the conservation area.

- 7.11 The proposed side extension under the first floor undercroft is set back from the front elevation by 2.8m. It would be constructed from brickwork to match the existing dwelling. It is also the case that a set of gates approved separately under ref. 23/501179/FULL would, if implemented, block any views of the front elevation of the side extension. However, even if this wasn't the case, it is considered that the front elevation of the side extension is appropriately designed and would not harm the streetscene, and would preserve the character and appearance of the conservation area.
- 7.12 The existing timber window on the north west elevation will be reduced in scale. It would be entirely hidden from public vantage points and be constructed from timber which is an appropriate use of materials and would preserve the character and appearance of the conservation area.
- 7.13 On the basis of the above, the scheme has been appropriately designed and would sit comfortably in the streetscene. It is considered that the proposal would preserve the character and appearance of the conservation area. On this basis the application complies with policies CP4, DM14, DM16 and DM33 of the Local Plan.
- 7.14 Policy DM32 of the Local Plan requires proposals to preserve the setting of listed buildings. Policy DM34 of the Local Plan states that development will not be permitted that would adversely affect the setting of a Scheduled Monument and that appropriate archaeological investigation and recording will take place.
- 7.15 Abbey Street has a number of listed buildings / structures, the closest being the grade II listed lamp posts outside no.s 80, 81, 83, 91, 95 and south of no. 99 Abbey Street, along with the grade II\* listed Arden's House, at No.80 Abbey Street. These designated heritage assets at their closest point lie approximately 20m to the south east of the application site. In addition, the Scheduled Monument of the site of St Saviour's Abbey also lies approximately 20m away. The only part of the proposal that would have any potential intervisibility with that of the listed building / structure and Scheduled Monument would be the front elevation of the side extension. However, on the basis that it is set back from the front elevation as described above and the acceptable design and use of appropriate materials it is considered that the scheme would preserve the setting of the listed buildings and Scheduled Monument referred to above. The site does lie in an area of high archaeological potential and the KCC Archaeological Officer has been consulted. A condition requiring an archaeological watching brief has been recommended and this has been imposed below. As such the scheme complies with policies DM32 and DM34 of the Local Plan.
- 7.16 In considering the impact of this proposal upon designated heritage assets, officers have had regard to the Council's obligations pursuant to the Planning (Listed Building and Conservation Areas Act) 1990.

### **Living conditions**

- 7.17 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 alterations or extensions to existing buildings protect residential amenity.

- 7.18 The existing rear elevation of the property is staggered and the existing element situated on the boundary with no.38 Abbey Street projects to the rear of this property by a distance of 3.2m on the common boundary. The proposed rear extension will extend the furthest rearward part of the existing dwelling sideways towards no.38, resulting in the extended side wall being approximately 2.4m off the neighbouring boundary with this property. In addition, the extension has been designed in such a way as to be largely obscured from No 38 by the existing rear projection to No 37 described above. On this basis, due to the separation distance and that the existing dwelling would largely obscure the proposed extension from the rear of No.38 there would be no significant impact on the living conditions of the occupants of No.38 from this element of the proposal in terms overshadowing or loss of outlook.
- 7.19 In terms of the impact of the rear extension upon the living conditions of the occupants of No.36, the rear extension would project no further than the closest part of the existing dwelling to this neighbouring dwelling. As a result there would be no harm in this regard.
- 7.20 In respect to the side extension under the first-floor undercroft, this would project rearwards approximately in line with the rear elevation of no.36 and as such would give rise to no unacceptable harm to the living conditions of the occupants of this property.
- 7.21 The existing side window on the ground floor will be reduced in scale. As such there would be no increased opportunities for overlooking compared to the current arrangement and is therefore acceptable.
- 7.22 Taking the above into account the proposal is considered to have an acceptable impact upon on the living conditions of surrounding dwellings in accordance with policies DM14 and DM16 of the Local Plan 2017.

### **Highway safety and parking**

- 7.23 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.”*

- 7.24 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.”*

- 7.25 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.
- 7.26 The submitted details show that one car parking space would remain within the curtilage of the property. The proposal would mean that much of the area in the undercroft would be lost to the side extension. The space within the undercroft measures 2.5m in width. The Council's Parking SPD states that the minimum car parking space requirement when the space abuts a hard boundary on both sides, as would be the case here, is 2.9m. On the basis that the undercroft falls below this minimum requirement it is not considered that the side extension would lead to the loss of a parking space. A gate at the front of the undercroft has also been approved under ref. 23/501179/FULL which would restrict access to this area, however, regardless of whether this is installed the above assessment of the available parking space remains relevant.
- 7.27 There have also been comments received that the proposal leads to the loss of the garage space. The garage, located at the rear of the property already has planning permission, under ref. 23/501179/FULL for its conversion. Part of the reason for granting planning permission for those works was on the basis that the garage was undersized when assessed the Council's Parking SPD. Therefore, it is considered that the scheme would have no material impact on the parking availability at the property. In addition the scheme does not propose any additional bedrooms. On that basis the available parking remains as per the current situation and therefore I consider this acceptable and in accordance with Policy DM7 of the Local Plan.

### **Other Matters**

- 7.28 Although a number of the matters raised in the representations have been responded to by virtue of the discussion above, those that remain are considered as follows. Firstly, comment has been raised regarding the lack of clarity in relation to works to the front garden, however, no works are proposed in this respect. A comment sets out that there is a lack of detail regarding works to the garage, however, no works are proposed to the garage as part of this application (having already been approved under ref. 23/501179/FULL). In respect of drainage, the site does not lie in an area of high flood risk and in any case, for a scheme of this scale drainage would be a matter for Building Regulations. In terms of the ventilation of the side extension, there are doors proposed and finally, issues related to the party wall are not planning considerations.

## **8. CONCLUSION**

- 8.1 On the basis of the above, the scheme is considered to be in compliance with policies ST3, CP4, DM14, DM16, DM32, DM33 and DM34 of the Local Plan and the Council's SPG's related to house extensions and conservation areas. It is recommended that planning permission is granted.

**CONDITIONS**

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

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

- (2) The development hereby permitted shall be carried out in accordance with drawings 1660/R12 rev Band 1660/R13 rev A.

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

- (3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those stated on the Application Form.

Reason: In the interests of visual amenity.

- (4) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be in accordance with a written programme and specification which has been submitted to and approved by the Local Planning Authority.

Reason: To ensure that features of archaeological interest are properly examined and recorded.

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

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), September 2023 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

In this instance:

The applicant/agent was advised of minor changes required to the application and these were agreed.



This page is intentionally left blank



<b>2.5 REFERENCE NO 23/505421/NMAMD</b>		
<b>PROPOSAL</b> Non-material amendment to application 17/505711/HYBRID to alter the boundary of the proposed primary school and open space.		
<b>SITE LOCATION</b> Land At Wises Lane Borden Kent ME10 1GD		
<b>RECOMMENDATION</b> Approve non-material amendment		
<b>APPLICATION TYPE</b> Non-material amendment		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Objection from Borden Parish Council and request from Councillor Baldock		
<b>Case Officer</b> Simon Greenwood		
<b>WARD</b> Borden and Grove Park	<b>PARISH/TOWN COUNCIL</b> Borden	<b>APPLICANT</b> BDW Kent <b>AGENT</b> DHA Planning
<b>DATE REGISTERED</b> 30.11.2023	<b>TARGET DATE</b> 28.12.2023	
<b>BACKGROUND PAPERS AND INFORMATION:</b> Documents referenced in report are as follows: -  Land Use Plan 1659.80 (uploaded on 28.11.2023) Covering letter ref. LW/OK/15742 dated 16.11.2023 (uploaded on 28.11.2023) Further information letter dated 22.03.2024 (uploaded on 24.03.2024)  The full suite of documents submitted pursuant to the above application are available via the link below: - <a href="https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=S4UCRBTYHK300">https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=S4UCRBTYHK300</a>		

## 1. SITE LOCATION AND DESCRIPTION

- 1.1. The application site consists of a large area of land to the south and west of Sittingbourne, covering an area of some 47.5 Hectares in total. The site extends from Chestnut Street to the west, to Borden Lane to the east. Wises Lane crosses the site from north to south, and Cryalls Lane is sited within the southern and eastern extents of the site boundary.
- 1.2. The site falls wholly within the parish of Borden, and Borden village lies to the south of the site.

## 2. PLANNING HISTORY

- 2.1. Hybrid planning permission was granted at appeal in April 2021 for a scheme comprising outline planning permission for up to 595 dwellings, 2FE primary school and associated infrastructure, and full planning permission for Phase 1A comprising the erection of 80 dwellings and associated infrastructure (LPA ref. 17/505711/HYBRID; PINS ref. APP/V2255/W/19/3233606).
- 2.2. Approval of reserved matters relating to a sub-station and a stretch of roadway was granted in January 2023 under application ref. 22/504822/REM.
- 2.3. Approval of reserved matters relating to a link road and associated landscaping was granted in August 2023 under application ref. 22/504823/REM.
- 2.4. A non-material amendment to planning permission ref. 17/505711/HYBRID was granted in October 2023 under application ref. 23/504489/NMAMD. The amendments involved a revision to the roof design of one of the house types and corrections to the accommodation schedule for Phase 1A.
- 2.5. Approval of reserved matters (appearance, landscaping, layout and scale) for phases 1B, 2A, 2B and 2C was granted in November 2023 under application ref. 22/504937/REM.
- 2.6. Approval of reserved matters relating to the Sittingbourne Rugby Club pitches and facilities was granted in November 2023 under application ref. 23/500263/REM.

## 3. PROPOSED DEVELOPMENT

- 3.1. Condition 8 of hybrid planning permission 17/505711/HYBRID requires the reserved matters details to accord with a set of parameter plans. The hybrid proposal was granted outline planning permission for a 2-form entry primary school, the location of which was identified on the Land Use Parameter Plan (ref. 2574-300 Rev N) which is listed under Condition 8. It has since come to KCC Education's attention that the location of the primary school land is intersected by Public Right of Way (PROW) ZR117. Due to safety concerns KCC Education would not be able to bring forward a primary school on a site with a Public Right of Way (PROW) running through it. In order to ensure that the school can be delivered and avoid the need to divert the PROW it is proposed to amend the primary school land parcel such that it would avoid the PROW. The proposed amendment would also allow the retention of an established hedgerow which would need to be removed if the PROW were diverted around the current school land parcel.
- 3.2. It is proposed that the southern area of the school land would be designated as open space and the edge of the PROW would then form the school site's southern boundary. Additional primary school land would then be taken from the open space to the east. Retention of the hedgerow would provide a distinct

separation between the school land and the open space to the south. The proposed amendment would result in no changes to the amount of land provided for the delivery of a 2FE primary school and for open space. The application advises that the proposed amendment has been agreed with KCC Education.

#### 4. CONSULTATION

- 4.1. An application to make a non-material change under s.96A is not an application for planning permission, so the existing Town and Country Planning (Development Management Procedure) Order 2015 provisions relating to statutory consultation and publicity do not apply. However, one letter of was received in relation to the application. The comments received are detailed as follows:-

Comment	Report reference
<p>The cover letter makes reference that KCC Education are in agreement with the proposed changes in the school boundaries. To ensure transparency in this agreement then written confirmation should be obtained and posted on the portal, from KCC Education.</p> <p>In addition, Borden Parish Council would probably be the best suited group to comment and approve the change to open space boundaries.</p> <p>This open space should also carry a legal agreement that it will never be developed in the future to ensure the open space remains.</p>	Para. 6.10

- 4.2. **Borden Parish Council** were consulted and objected to the application on the following ground: -

Comment	Report reference/ clarification
<p>Proposal represents a material change which changes the nature of the heart of the development isolates the commercial centre from the amenity land and for these reasons, it has a negative impact on the development.</p>	Para. 6.6

#### 5. REPRESENTATIONS

- 5.1. **KCC Infrastructure:** - The County Council has assessed the implications of this proposal in terms of the delivery of its education provision and fully supports the amendments proposed to the school land by the applicant. These are demonstrated on the updated land use plan.

5.2. **KCC Education:** - No response received.

5.3. **KCC PROW:** - No response received.

5.4. **Swale Footpath Group:** - Why did the "Land Use Plan" not show all Public Rights of Way as such, on their present alignments and numbered? This would have made it easier to come to an informed conclusion. As always, privacy and security issues (and I recognise their importance, not least for schools) need to be addressed at the planning stage (as seems to be the case here).

## 6. ASSESSMENT

6.1. This application is reported to the Committee at the request of Cllr Baldock and because Borden Parish Council have objected to the proposal.

6.2. The application seeks approval under s.96A(4) of the Act for non-material changes to MMA4. Section 96A(1) states:

*"A local planning authority in England may make a change to any planning permission relating to land in their area if they are satisfied that the change is not material."*

6.3. Section 96A(2) states:

*"In deciding whether a change is material, a local planning authority must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission as originally granted."*

6.4. There is no statutory definition of 'non-material'. It is dependent on the context of the overall scheme - what may be non-material in one context may be material in another. The Local Planning Authority must be satisfied that the amendment sought is non-material in order to grant an application under s.96A.

6.5. If a Section 96A non-material amendment application is refused then there is no opportunity to appeal the decision. The applicant could subsequently submit an application under Section 73 of the Town and Country Planning Act (1990) as amended to seek approval of the proposed revision as a 'minor material amendment'. A Section 73 application can be the subject of an appeal.

6.6. The parameter plan approved as part of the outline component of planning permission ref. 17/505711/HYBRID indicated land use parcels which would accommodate the approved scheme. A grant of outline planning permission typically represents a relatively high-level approval addressing the principle of a proposed development, with the details of the development following at reserved matters application stage. In this regard it can be considered that there is a relatively broad scope for amendments to an outline planning permission to be treated as 'non-material'. The configuration of development on the site will be

amended under the application proposal but there will be no changes to the quantum of land allocated to open space and school use. Furthermore, the proposed amendment will not materially impact any existing nearby occupiers.

- 6.7. The applicant has provided some clarification in response to the comments received from the Parish Council. It is stated that there was never an intention for a connection between the commercial area and the open space, and an internal road was always intended to intersect these areas. Furthermore, it is intended that retail development would address the spine road rather than the open space in order to attract footfall. There would be no loss of connectivity as a result of the proposed changes and pedestrian and cycle connections will be provided between the open space and the commercial area.
- 6.8. The proposed revisions to the land parcels would secure the delivery of the school site, retain the existing PROW on its current alignment and the existing hedgerow and would provide a single larger area of consolidated open space on the southern edge of the development. It is considered that the proposed revision is minor and can be considered non-material in the context of the development granted hybrid planning permission.

#### **Other matters**

- 6.9. A representation has been received from a local resident asserting that there should be transparency from KCC Education regarding the proposed amendment. KCC Education did not respond to the Council's consultation; however, KCC Infrastructure have confirmed support for the proposals. The application makes clear that a school cannot be delivered with a PROW running through the site. The representation also suggests that Borden Parish Council should approve the changes to open space boundaries; however Borden Parish Council does not have the relevant authority and it is a matter for the Local Planning Authority. They have, however, had the opportunity to comment on the application. Finally, the representation suggests that the open space should be protected by legal agreement. The Section 106 agreement attached to planning permission ref. 17/505711/HYBRID did secure the open space provision within the scheme.

#### **Conclusion**

- 6.10. Having regard to all the above, the proposed amendments are considered to be non-material and the application satisfies Section 96A of the Town and Country Planning Act (1990) as amended.

RECOMMENDATION: Approval of non-material amendment subject to the following condition:

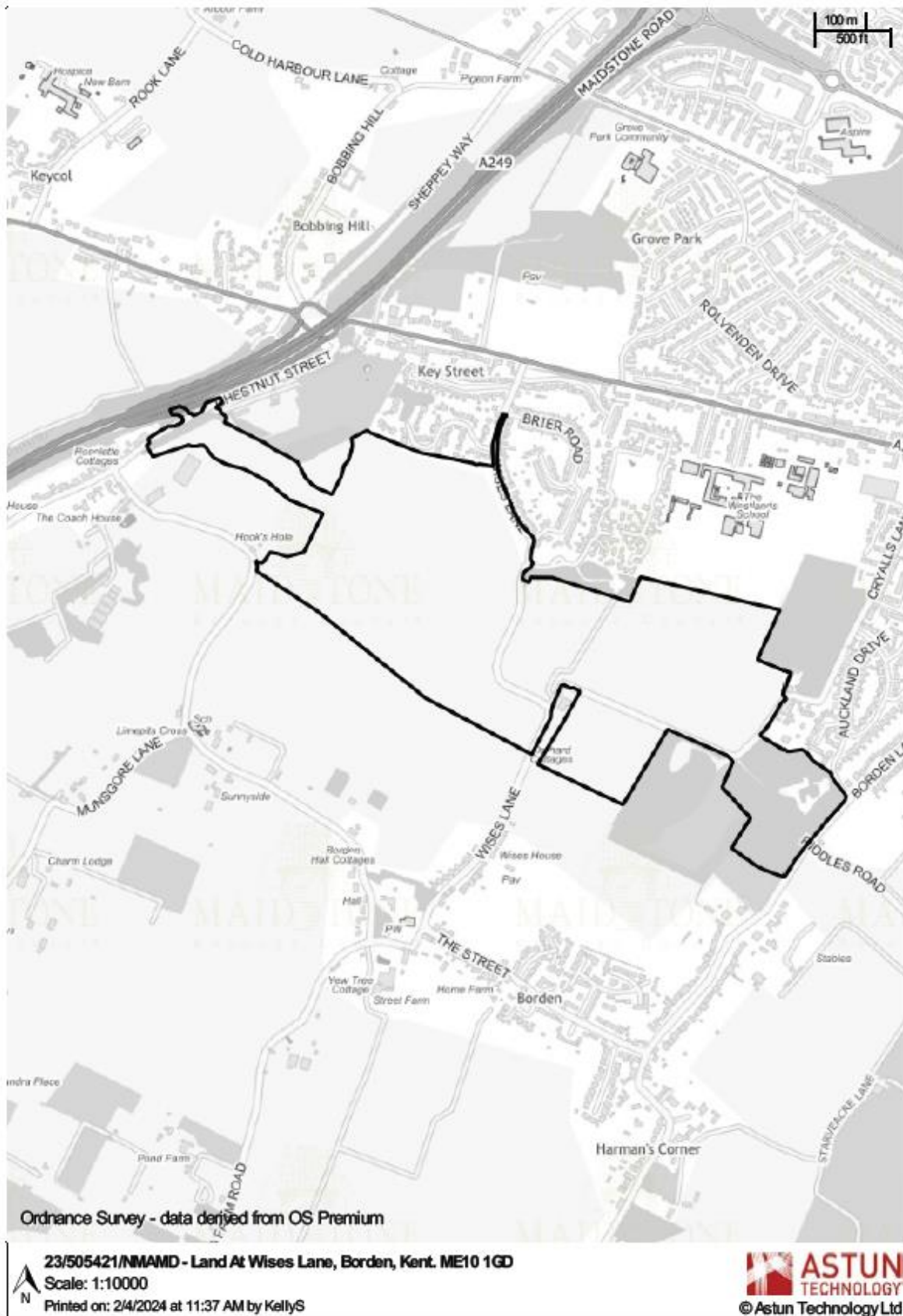
#### **Conditions/Reasons**

1. Condition 8 of planning permission ref. 17/505711/HYBRID is amended as follows:

The reserved matters details submitted pursuant to condition 2 shall accord with the Masterplan Parameter Plans, Building Heights Parameter Plan 2574-304 Rev P; Land Use Plan 1659.80; Density Parameter Plan 2574-303 Rev P; Route Infrastructure Parameter Plan 2574-302 Rev S; David Williams Report APP/V2255/W/19/3233606 <https://www.gov.uk/planning-inspectorate> Page 130 Landscape Consultancy Indicative Landscape Strategy Plan (Addendum LVIA Figure 10.8, Drawing No L8 Revision E (For the avoidance of doubt this replaced the Landscape and Ecology Masterplan previously submitted)).

### **Informatives**

1. The application satisfies Section 96A of the Town and Country Planning Act (1990) as amended. The proposed amendments constitute non-material changes to that planning permission and will result in a development that is substantially the same as was originally granted planning permission.
2. This decision notice only relates to the non-material amendments sought. It is not a reissue of the original planning permission, which still stands. This decision notice must be read in conjunction with the planning permission referred to in the description above (and any other non-material amendments that may have been granted).



This page is intentionally left blank



**PLANNING COMMITTEE – 11 APRIL 2024****PART 3**

Report of the Head of Planning

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

<b>3.1 REFERENCE NO - 22/505778/FULL</b>		
<b>PROPOSAL</b> Retrospective application for change of use from a holiday park (10 months occupancy) for the siting of 21no. residential retirement park homes for use all year round.		
<b>SITE LOCATION</b> Beverley Camp, Warden Road, Eastchurch, Sheerness, Kent ME12 4ES		
<b>RECOMMENDATION</b> Refusal of planning permission.		
<b>APPLICATION TYPE</b> Major application		
<b>REASON FOR REFERRAL TO COMMITTEE</b> The application raises difficult issues which warrant Member determination.		
<b>Case Officer</b> Simon Greenwood		
<b>WARD</b> Sheppey East	<b>PARISH/TOWN COUNCIL</b> Eastchurch	<b>APPLICANT</b> Beverley Park Action Group <b>AGENT</b> Mrs Wendy Benton
<b>DATE REGISTERED</b> 26/01/23	<b>TARGET DATE</b> 27/04/23	
<b>BACKGROUND PAPERS AND INFORMATION:</b>  Documents referenced in report are as follows: -  Application form (uploaded on 26.01.2023) Site location plan (uploaded on 26.01.2023) Design and Access Statement (uploaded on 26.01.2023) Planning Statement (uploaded on 26.01.2023)  The full suite of documents submitted pursuant to the above application are available via the link below: -  <a href="https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=RMKIMETY0XI00">https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=RMKIMETY0XI00</a>		

**SITE LOCATION AND DESCRIPTION**

1.1. Beverley Holiday Park is situated on Warden Road, within the countryside near Eastchurch. The site is bordered by residential dwellings to the southwest, Eden Leisure Park

to the northeast, The Wold Caravan Park to the northwest (rear), and open countryside to the south-east on the opposite side of Warden Road.

- 1.2. The wider area primarily comprises the larger holiday / caravan park area of Eastchurch along with a number of private residential dwellings, in particular to the southwest of the site. There are some limited / seasonal services and amenities on Fourth Avenue to the west of the site including 2 public houses and a fast-food takeaway.
- 1.3. The application site is a designated holiday park under Policy DM4 of the Local Plan. The site is located outside of any built confines and is therefore classed as open countryside under Policy ST3 of the Local Plan.
- 1.4. The site is located within Flood Zone 1 and therefore has a low probability of flooding.

### PLANNING HISTORY

- 2.1. Planning permission was granted for the site in 1949 under application reference NK/8/49/199. Condition 6 of the consent prohibited occupancy between 31st October and 1st March, other than for the purposes of caretaking.
- 2.2. A lawful development certificate was granted in 2008 for residential use of the bungalow on the holiday park site (ref. SW/08/0295). Subsequently, application reference SW/08/0554 granted permission for the demolition and rebuilding of the bungalow.
- 2.3. Planning permission was granted in 2008 for the change of use of the whole site from chalets to caravans under application ref. SW/08/1279. The site layout indicated 28 caravans and a site office in a similar arrangement to the current development. Condition 2 of the consent restricted the occupancy of the site between 31<sup>st</sup> October and 1<sup>st</sup> March, in line with the 1949 consent.
- 2.4. Application ref. SW/10/0865 sought the removal of condition 2 of planning permission ref. SW/08/1279 to allow 12 month residential use of the caravans. Consent was granted subject to a revised condition 2 which maintained the restriction on occupancy between 31<sup>st</sup> October and 1<sup>st</sup> March except for 11 days at Christmas (23<sup>rd</sup> December to 2<sup>nd</sup> January). The decision did not reflect the application proposal and was the subject of a subsequent appeal which is detailed below.
- 2.5. Approval was granted under application ref. SW/11/0945 for variation of condition 2 of planning permission SW/08/1279 to allow 10 month holiday use. The consent was subject to a revised condition 2 which stated:

*No caravans shall be occupied except between 1<sup>st</sup> March and 3<sup>rd</sup> January in the following calendar year, and no caravan shall be occupied unless there is a signed agreement between the owners and operators of the park and all caravan owners within the application site, stating that:*

- a) *The caravans are to be used for holiday and recreational use only and shall not be occupied as a sole or main residence, or in any manner which might lead any person to believe that it is being used as the sole or main residence; and*
- b) *No caravan shall be used as a postal address; and*
- c) *No caravan shall be used as an address for registering, claiming or receipt of any state benefit; and*

- d) *No caravan shall be occupied in any manner, which shall or may cause the occupation thereof, to be or become a protected tenancy within the meaning of the Rent Acts 1968 and 1974; and*
- e) *E) If any caravan owner is in breach of the above clauses their agreement will be terminated and/or not renewed upon the next expiry of their current lease or licence.*

*On request, copies of the signed agreement(s) shall be provided to the Local Planning Authority.*

*Grounds: In order to prevent the caravans from being used as a permanent place of residence, and in pursuance of policies E1 and E6 of the Swale Borough Local Plan 2008.*

### **Enforcement History:**

- 2.6. There is no relevant history of formal enforcement action in relation to the unlawful development and use of the site.

### **Appeal History:**

- 2.7. Application ref. SW/10/0865 which sought removal of condition 2 of planning permission ref. SW/08/1279 to allow year-round residential use of the park was granted subject to a revised condition 2 permitting occupation from March to October with an additional 11 days and nights over the Christmas period. The application was the subject of a subsequent appeal (ref. APP/V2255/A/11/2143536) on the basis that the consent did not reflect the application proposal. The inspector also gave consideration to planning permission ref. SW/08/1279 for change of use from chalets to caravans on the basis of the appellant's assertion that this application had also sought year-round residential use. The appeal was dismissed in May 2011 and the Inspector noted the following in reaching his decision:

- Permanent habitation would change the rural character of the area in the tranquil winter months when the surrounding chalets and mobile homes are empty with no associated movement of occupiers.
- Planning permission would set a precedent for extended occupancy of other nearby parks.
- Families and single workers would look to take advantage of low-cost permanent occupation with increased pressure on the transport network, local facilities, local schools and social services.
- The site occupies an unsustainable location with poor public transport and pedestrian access, limited local shops and amenities, and poor access to jobs, key services and infrastructure.

### **Background and Withdrawn Applications**

- 2.8. Withdrawn applications would not normally be detailed within a planning history and do not constitute a material planning consideration. However, these are detailed for background purposes in the context of the development of the site for residential use, which is understood to have been undertaken several years ago, and the unlawful year-round use of the site which followed. The application has not been accompanied by evidence relating to the specific timing of the development. The timings and specific circumstances of the year-round occupation of individual homes are also unclear and may have been related in some cases to restrictions and shielding during the Covid 19 pandemic.

- 2.9. Application reference 14/501853/AMRCON sought removal of condition 2 and variation of condition 3 of planning permission SW/10/0865 to allow year-round residential use of caravans and a revised layout. The application was withdrawn in January 2015 and the reason for the withdrawal of the application is not clear from the Council's records.
- 2.10. Application reference 20/503067/FULL sought removal of conditions 2, 3 and 4 (all related to the occupancy restriction) pursuant to application SW/11/0945 to allow for year round residential use. The application was submitted under Section 73 of the Town and Country Planning Act which provides for minor material amendments to existing consents. The application was withdrawn in December 2020. The correspondence on file suggests the applicant was advised that the proposal would not constitute a minor material amendment under Section 73 and they should submit a full planning application for permanent residential park homes.
- 2.11. Application reference 21/501474/FULL sought retrospective planning permission for the change of use from a holiday park (10 months occupancy) for the siting of 21no. residential retirement park homes for use all year round. The application was withdrawn in March 2022 and the reason for withdrawal is not clear from the Council's records.
- 2.12. It is understood that the above withdrawn applications were submitted by or on behalf of the site owner (Mr William Love) who undertook the current development of the site. The current application has been submitted by a resident of the park, on behalf of all of the residents of the park, whilst it was under the ownership of Mr Love. The site is subsequently understood to have changed ownership 3 times. The applicant provided written notice of the application to Mr Love in line with statutory requirements as confirmed through completing Certificate B on the planning application form. There is no statutory requirement to inform or serve notice on subsequent owners when site ownership changes following an application submission. However, the case officer has written to Cosgrove Leisure Parks, the current owners of the site, advising of the present application.

### **Relevant cases**

- 2.13. The Council has refused a number of planning applications seeking year-round occupation of holiday parks over recent years, with a number of subsequent appeals being dismissed, including the following:
- Shurland Dale Holiday Park, Warden Road, Eastchurch (refs. 21/506565/FULL, 21/506566/FULL, 20/505317/FULL & 20/505304/FULL) - Permission refused for year-round use as a holiday park;
  - Ashcroft Caravan Park, Plough Road, Eastchurch (refs. 21/506558/FULL & 20/505316/FULL) - Permission refused for year-round use as a holiday park;
  - Central Beach Caravan Park, Grove Avenue, Leysdown (refs. 21/506563/FULL & 20/505388/FULL) - Permission refused for year-round use as a holiday park;
  - Sheerness Holiday Park, Halfway House, Minster on Sea (refs. 21/506564/FULL & 20/505387/FULL) - Permission refused for year-round use as a holiday park;
  - Warden Spring Caravan Park, Thorn Hill Road, Warden (ref. 21/505423/FULL) - Permission refused for year-round use as a holiday park;
  - Meadow View Park, Irwin Road, Minster on Sea (ref. 20/505122/FULL) – subsequent appeal dismissed (ref. APP/V2255/W/21/3287086) - Permission refused for permanent year-round residential use;

- Brookside Park, First Avenue, Eastchurch, Sheppey (ref. 20/504175/FULL) – Permission refused for permanent year-round residential use and subsequent appeal dismissed (ref. APP/V2255/W/21/3274740);
- Golden Leas Holiday Park, Bell Farm Lane, Minster on Sea (ref. 20/503267/FULL) – Permission refused for permanent year-round residential use and subsequent appeal dismissed (ref. APP/V2255/W/21/3279116);
- Estuary View Caravan Park, Bell Farm Lane, Minster on Sea (ref. 20/503268/FULL) – Permission refused for permanent year-round residential use and subsequent appeal dismissed (ref. APP/V2255/W/21/3279125);
- Ives Holiday Camp, Park Avenue, Leysdown (ref. 20/502813/FULL) - Permission refused for permanent year-round residential use;
- Plough Leisure Caravan Park, Plough Road, Minster on Sea (ref. 20/502811/FULL) – Permission refused for permanent year-round residential use subsequent appeal dismissed (ref. APP/V2255/W/21/3277288).

### PROPOSED DEVELOPMENT

- 3.1. Retrospective planning permission is sought for the change of use from a holiday park (10 months occupancy) for the siting of 21 residential retirement park homes for use all year round. It is understood that the siting of the caravans on the park took place several years ago and the homes are now occupied on a year-round basis as the primary and sole residences of the majority of the occupants. As noted above, the timings and specific circumstances of the year-round occupation of individual homes are unclear. The siting of the caravans would have been lawful under the current permitted use of the site as a holiday park. The application therefore primarily falls to be considered in terms of the acceptability of the occupancy of the site on a year-round basis. The occupants of the park are all understood to be aged over 55 and if planning permission were granted a condition restricting occupancy of the park to individuals of retirement age could be applied.
- 3.2. Six of the park homes are arranged either side of a vehicular access into the site and the remainder are arranged in a rectangle around the site. The site has been block paved which provides vehicular access to the homes which generally benefit from one or two car parking spaces, with some additional, informal visitor car parking to the centre of the site. One home has no car parking and makes use of the visitor car parking. The homes have had skirts installed around the bases and there are areas of soft landscaping around some of the homes. Most of the homes have a small rear garden / yard area with some shed / storage structures to the rear of the park homes. There is an open grassed amenity area to the centre of the site.
- 3.3. The applicant asserts that the structures on the site are ‘park homes’ which are distinct from caravans. However, whilst the structures are identified as park homes and are large structures and of higher specification (which meet British Standard BS3632), they still fall within the definition of a caravan and are not building operations. There is no development involved in removing a smaller caravan and replacing it with a larger caravan – provided the structure remains a caravan as defined under the Caravan Sites Acts of 1960 and 1968. It is the nature of the use of the land and caravans – i.e. for permanent residential occupation and not holiday purposes – that forms the basis of this application.

### Additional Information

- 3.4. The majority of the occupants of the site have been paying Council tax on their homes since 2022 after a voluntary declaration that the homes were occupied year-round as primary

residences. The Council's records indicate that 15 of the units on the site are identified as the main homes of the occupants.

### CONSULTATION

- 4.1. One round of written consultation has been undertaken, during which letters were sent to neighbouring occupiers; a notice was displayed at the application site and the application was advertised in the local newspaper in accordance with statutory requirements. Full details of representations are available online.
- 4.2. 40 letters of representation in support of the application were received following the consultation. 10 letters were from addresses within the application site. All the comments received were in support of the application, comments were raised in relation to the following matters: -

<b>Comment</b>	<b>Report reference</b>
Units on the site are now permanent retirement homes purchased by the occupants who are settled and should be able to remain on a year-round basis.	Paras. 6.5-6.11
Vacating the units for 2 months each year would be highly stressful, disruptive and expensive for occupants.	Para. 6.104
Residents do not have other homes and would be homeless during period when the homes must be vacated.	Paras. 6.90-6.96 & 6.104
Uncertainty over occupancy to date has caused great stress and affected the health and wellbeing of the elderly and vulnerable residents of the site.	Paras. 6.90-6.96 & 6.104
A strong and mutually supportive retirement community has been established on the park.	Noted. However, refer to paras. 6.5-6.11
Park and homes are well maintained.	Noted. However, refer to paras. 6.5-6.11
Residents contribute to the local community and economy.	Noted. However, refer to paras. 6.5-6.11
Park occupies a perfect location for a retirement community.	Noted. However, refer to paras. 6.5-6.11
Site is secure and benefits from ample car parking.	Noted and para. 6.43
All residents are over 55 and there are other examples of over 55s park home sites.	Para. 6.105
Residents were promised 12 months occupancy when they purchased the units.	Para. 6.104
Year-round occupancy would result in no additional adverse impacts and would benefit the area.	Paras. 6.5-6.11
Year-round occupation of the park took place during covid restrictions.	Noted.
Residents sold their homes and moved to park to free up family housing.	Para. 6.105
Residents all own their individual park homes.	Para. 6.104
Park homes on the site are intended for residential use and are not suitable for a holiday camp use; Park Homes are built to a recognised standard for permanent occupancy (BS3632).	Para. 6.16

Site no longer has characteristics of a holiday park and does not include holiday facilities such as clubhouse, restaurant, swimming pool and amusements.	Noted. However, refer to paras. 6.5-6.11
Approving the application would not set a precedent as neighbouring holiday parks all have holiday facilities and therefore would not require year-round occupation.	Noted. However, refer to paras. 6.5-6.11
Ample holiday park accommodation in the locality.	Noted. However, refer to paras. 6.5-6.11
Residents were fraudulently advised that homes could be occupied year-round.	Para. 6.104
Sales of homes were subject to a verbal agreement that application seeking year-round occupancy would be submitted and approved. Application was subsequently withdrawn.	Para. 6.104
Same application has been submitted previously and withdrawn / Previous application for year-round occupancy was withdrawn by accident.	Noted.
Previous site owner knew that residents were selling their homes to move onto park.	Para. 6.104
Previous site owners agreed to buyer using a third party address on park home purchase agreement.	Para. 6.104
Subsequent site owners (site since sold on again) demanded evidence of separate main address with threat of eviction and intimidated, threatened and harassed residents.	Para. 6.104
Grant of year-round occupancy would be morally correct in the circumstances.	Noted. However, refer to paras. 6.5-6.11

- 4.3. No representations have been received objecting to the proposals.
- 4.4. The representations include various allegations regarding the conduct of previous site owners, including in relation to the sale of the park homes. The comments do not represent material land use planning considerations which should inform the decision-making process. It is understood that there are ongoing legal proceedings and, in view of the nature of the comments, it is considered that a detailed summary of the conflicting accounts of events would be unhelpful in terms of the decision-making process. It is clear from the planning permissions granted on site that conditions restricting occupancy of caravans / chalets have always been in place.
- 4.5. The sale of the park homes appears to have been undertaken by the previous owner of the site and did not involve the current owners of the site. As noted above, the site is understood to have changed ownership 3 times since this application was submitted.

4.6. **Eastchurch Parish Council** object to the application on the following grounds: -

Comment	Report reference/ clarification
Any permanent occupation would be a breach of planning conditions and enforcement.	Paras. 6.5-6.11
Councillors strongly resisted the change of use from holiday status to residential, particularly for non-permanent structures which are the equivalent of light build housing.	Paras. 6.5-6.11
The Planning Inspector stated that the site would in effect become a residential housing estate and that use of the accommodation for permanent habitation would lead to a change in the rural character of the area in the tranquil winter months when the surrounding chalets and caravans are empty, because of the movement of the occupiers. This would be noticed by permanent residents of which there are several in the area.	Paras. 6.5-6.11
The Planning Inspector was concerned that if permanent occupation was allowed this would set a precedent for other nearby parks to seek year-round occupancy with serious implications for the character and appearance of the area and potentially for the whole of the rural part of Sheppey.	Paras. 6.5-6.11
<p>Inspector pointed out that:</p> <ul style="list-style-type: none"> <li>• there is no footway along most of Warden Road to access the village;</li> <li>• the bus service is infrequent and does not run everyday or in the evenings;</li> <li>• the site is not a good location for access to jobs, key services and infrastructure;</li> <li>• other sites in Kent/Swale with less restricted occupancy periods do not provide justification for Sheppey, where different circumstances pertain;</li> <li>• mobile home parks have a role to play in the housing market but not at the expense of other well established planning policies;</li> <li>• it has not been demonstrated that new residential mobile home parks on Sheppey need to be sited in relatively isolated rural areas where there are limited public services;</li> <li>• limiting the age of occupiers to over 55s would be un-enforceable and would conflict with housing policies.</li> </ul>	Paras. 6.5-6.11
Councillors agreed that encouraging mobile homes as a suitable alternative to permanent housing should be resisted.	Paras. 6.5-6.11

4.7. **SBC Conservation:** - Development has not resulted in any impacts upon heritage assets.4.8. **SBC Urban Design:** - The development is considered to result in a neutral impact in landscape and visual amenity terms. If planning permission were to be granted it would be appropriate to attach a condition securing a scheme of landscaping which could include tree and shrub



planting in the central grassed area and additional planting along the site frontage on Warden Road.

- 4.9. **Mid Kent Environmental Health:** - no objections raised.
- 4.10. **KCC Ecology:** - This is a retrospective application, and any ecological impacts of the development will already have occurred. However, if the development were yet to be undertaken it is unlikely that an ecological assessment would have been required on the basis that the site is a long-established caravan park and has contained regularly managed grassland.
- 4.11. The development includes proposals for new dwellings within the zone of influence (6km) of the Swale Special Protection Area, and Wetland of International Importance under the Ramsar Convention (Ramsar Site). The Council should ensure that the proposals fully adhere to the agreed approach within the North Kent Strategic Access Management and Monitoring Strategy (SAMMS). This is to mitigate for additional recreational impacts on the designated sites. As the application is to increase the residential use of the site from 10 to 12 months, it is recommended that a contribution of 1/3rd of the SAMMS payment should be made for this application.
- 4.12. **KCC SUDs:** - no objections raised.
- 4.13. **KCC Highways:** - no comments.
- 4.14. **Environment Agency:** - no comments.
- 4.15. **Natural England:** - no objection subject to securing appropriate mitigation for recreational pressure impacts on habitat sites.
- 4.16. **Southern Water:** - no objections raised.
- 4.17. **Lower Medway Internal Drainage Board:** - no comments.
- 4.18. **Kent Police:** - no comments.
- 4.19. **NHS Integrated Care Board:** - no contributions are sought towards local healthcare infrastructure and services.

#### DEVELOPMENT PLAN POLICIES

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

- Policy ST 1 - Delivering sustainable development in Swale
- Policy ST 3 - The Swale settlement strategy
- Policy ST 6 - The Isle of Sheppey area strategy
- Policy CP 3 - Delivering a wide choice of high quality homes
- Policy CP 4 - Requiring good design
- Policy CP 7 - Conserving and enhancing the natural environment – providing for green infrastructure
- Policy DM4 - Holiday Parks
- Policy DM 5 - The occupancy of holiday parks
- Policy DM 6 - Managing transport demand and impact
- Policy DM 7 - Vehicle parking
- Policy DM 8 - Affordable housing
- Policy DM 14 - General development criteria

- Policy DM 17 - Open space, sports and recreation provision
- Policy DM 19 - Sustainable design and construction
- Policy DM 21 - Water, flooding and drainage
- Policy DM 26 - Rural lanes
- Policy DM 28 - Biodiversity and geological conservation
- Policy DM 29 – Woodland, trees and hedges.

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

- Housing Land Supply Statement
- Parking Standards SPD
- Developer Contributions SPD
- Strategic Access Management and Monitoring Strategy (SAMMS)
- Interim Park Homes Policy.

#### **ASSESSMENT**

- 6.1. This application is reported to the Committee because the application raises difficult issues which warrant Member determination.
- 6.2. 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
  - Character and Appearance
  - Ecology and Biodiversity Net Gain
  - Transport and Highways
  - Community Infrastructure
  - Open Space
  - Flood Risk, Drainage and Surface Water
  - Living Conditions
  - Sustainability / Energy.

#### **Principle**

- 6.3. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 sets out that the starting point for decision making is the development plan unless material considerations indicate otherwise.
- 6.4. The National Planning Policy Framework provides the national policy context for the proposed development and is a material consideration of considerable weight in the determination of the application. The NPPF states that any proposed development that accords with an up-to-date local plan should be approved without delay. At the heart of the NPPF is a presumption in favour of sustainable development and for decision-taking this means approving development that accords with the development plan.
- 6.5. The site is a designated holiday park under the Local Plan, and the main relevant local plan policy is DM5 which relates specifically to the occupancy of holiday parks. The policy explicitly states that planning permission will not be granted for the permanent occupation of caravans

and chalets on such parks, and limits occupancy to a maximum of 10 months per year. The policy contains a number of criteria that need to be met to support a 10-month occupation period.

- 6.6. This policy is designed to potentially allow existing holiday parks in the borough (which are almost all located on the Island) to operate a longer season that had historically been allowed by the Council. Previously, these holiday parks have operated under an 8 month per year opening limitation, but Policy DM5 provides the potential to increase opening to 10 months, and many parks have successfully applied for this. This is considered by the Council to strike an appropriate balance to offer further support to the holiday and tourism industry, whilst still safeguarding the amenity of rural areas and preventing the risk of use of caravans as permanent and sometimes substandard housing, often in poorly accessible parts of the Borough, as well as the potential increased risk to life in areas liable to flooding. The use of a condition restricting the length of the opening season is operated on all holiday park sites and is a very well established and longstanding tool used by the Council to manage the impacts from such parks – the effect of which is of particular relevance to the Isle of Sheppey, where there are almost 7,000 caravans and chalets on holiday parks.
- 6.7. The proposed development would clearly be contrary to this policy even without consideration of the supporting criteria, as it would result in the year-round occupation of the park, contrary to the longstanding policies to control the length of holiday park opening seasons. The Council has taken a consistent position to restrict year-round residential occupation of holiday parks, and the reasons for this are clearly set out in the supporting text to Policy DM5 of the Local Plan. This position has been consistently upheld at appeal, including the decisions referred to in paragraph 2.13.
- 6.8. Policy ST3 of the Local Plan, which states that at locations in the open countryside outside the defined built-up area boundaries, development will not be permitted unless supported by national policy and where it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings, and the vitality of rural communities.
- 6.9. Almost all of the holiday parks on the Island, including the application site, are outside existing built-up areas in locations where permanent residential development would be resisted in line with Local Plan policy ST 3. In this instance, the application site is poorly located to all but very limited and seasonal amenities on Fourth Avenue and within nearby holiday parks. The limited facilities at Eastchurch are approx. 1.8km along an unlit national speed limit road with no footpath for much of its length, or 1.7km by public right of way. Residents of the park are therefore highly reliant on car use for most needs and the site is not sustainably located for residential development. The development is contrary to Local Plan policy ST 3 as it has not been demonstrated that the criteria specified in part 5 to justify residential development in this location would be met. The development is also contrary to policies ST 1, CP 2 and CP 3 which support policy ST 3 in terms of ensuring that developments are sustainably located. It is important to note that in the case of the Brookside Park appeal (which forms part of the same holiday park complex as Beverley Park) referred to in paragraph 2.13, the Inspector concluded that the Brookside Park was in an unsuitable location for permanently occupied housing for the same reasons as set out above.
- 6.10. Policy DM5 of the Local Plan makes clear that occupancy conditions attached to holiday park consents are intended to protect the quiet, rural character of these areas by providing a breathing space and a period of tranquillity for full time residents and to protect the character

of the rural area. Traffic, congestion, noise and tranquillity all vary according to the season and the restriction on occupancy is intended to provide local residents with a quiet period to appreciate the rural surroundings, free of holidaymakers. Occupation of the Beverley Park throughout the year would bring about activity, noise and traffic in winter months that would be harmful to rural character and would clearly conflict with Policy DM5 of the Local Plan. Again, it is important to note that the Inspector in the Brookside Park appeal came to the same conclusion.

- 6.11. The lawful use of the site is a holiday park. Policy DM 5 of the Local Plan is very clear that in order to ensure a sustainable pattern of development and to protect the character of the countryside, planning permission will not be granted for the permanent occupancy of holiday parks. Likewise, policies ST1, ST3, CP2 and CP3 are clear that development should be provided in sustainable locations which minimise the need to travel.

#### Housing Supply

- 6.12. The Council is presently able to demonstrate a 5 year housing supply. The latest Housing Monitoring report identifies 5.13 years supply of housing.

#### Loss of Tourism

- 6.13. Policy CP1 of the Local Plan seeks to safeguard or enhance Swale's 'Principal Tourism Assets' and to consolidate or widen the tourism potential of the borough. Holiday parks are listed under the borough's 'Principal Tourism Assets' and the supporting text sets out that these should be protected from inappropriate development. Policy ST6 seeks to support the existing tourism offer on the Island, and the supporting text to this policy emphasises the importance of tourism to the economy of the Island. Policy DM3 promotes rural tourism and makes clear that residential development should not be permitted at the expense of rural employment. The supporting text to policy DM4 states that holiday parks provide direct employment and support shops, pubs, restaurants and visitor attractions.
- 6.14. The change of use of the site has resulted in the loss of holiday accommodation and has reduced the tourism offer on the Island which is contrary to the above policies that seek to safeguard and enhance tourism, and to prevent the permanent occupation of holiday parks. No information has been provided to demonstrate why the accommodation is not suitable for holiday use. It is noted that the homes on the site are all in private ownership, but this is not a unique situation with holiday parks on the Island, and there is no evidence to demonstrate why this would create insurmountable difficulties to use the units as holiday accommodation. The residential use of the site has undermined the clear strategies in the adopted local plan to promote and increase the tourism offer in the borough and on Sheppey, where tourism plays a vital role in the local economy, and may also risk setting a precedent that could lead to further pressure for removal of occupancy conditions on other holiday parks. In this regard the change of use is contrary to policies CP1, ST6, DM3, DM4 and DM5 of the Local Plan.

#### **Size and Type of Housing**

- 16.15 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. The supporting text to Local Plan Policy CP3 sets out requirements for market and affordable housing by size. The Council has a Housing Market Assessment (HMA) 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. The assessment identifies that 2 and 3 bed units are the house sizes in greatest need for the Borough. All units on the site would provide 2 bedrooms.

16.16 Paragraph 5.3.16 of the Local Plan states that:

*The population aged 65 or over is likely to increase dramatically over the plan period to 38,132 in 2031, a rise of 46.2%. The Strategic Housing Market Assessment (SHMA) highlights the greatest future demand is for two/three bedroom owner-occupied dwellings and one/two bedroom private rent and affordable dwellings. Development for housing specifically aimed at occupiers over 65 should, in the first instance, aim to reflect this.*

16.17 The development would provide a type of housing that would be suitable for older persons. It would also be possible to impose planning conditions to restrict occupation of the development to persons over 55 years. This would contribute to the provision of older persons housing in the Borough, although it is important to note that the residential accommodation would be poorly located and divorced from services and facilities, as set out in the sections above. The application sets out that all of the homes on the site meet BS3632 (2015) standards which relates to park homes suitable for year-round occupation. BS3632 covers the construction, size and design of the park home and matters including water, gas and electric supplies and ventilation. BS3632 provides minimum specifications in relation to thermal insulation, stability and room sizes and ensures that the homes are energy efficient.

16.18 Manufacturer model details have not been provided for all of the homes on the site; however, the applicant advises that the majority of the homes on the site are the Pembroke (20ft x 40ft) model manufactured by Stately Albion. These homes have a floor area of approx. 74.3m<sup>2</sup> (GEA) and feature a living room; separate dining area; master bedroom with dressing room and en-suite bathroom; a second bedroom; a second bathroom; and a kitchen. 5 of the homes are 52m<sup>2</sup> (GIA) 2 bedroom 3 person units. Overall, the units on the site are of good internal layout and size for caravans/park homes. The majority of the homes benefit from small rear yards / gardens and there is a grassed communal amenity area to the centre of the site.

16.19 It is considered that the development provides a reasonable standard of residential accommodation which meets British Standards for year-round occupation. Accordingly, the standard of accommodation is not considered to represent grounds for refusal of planning permission.

16.20 If the proposal were acceptable in principle then it would be appropriate to place a restriction on the occupation of the homes to over 55s only. This would ensure that the homes remain available for older people looking to downsize and free up larger homes to meet the needs of families and would accord with Policy CP3 in providing for older persons accommodation.

### **Affordable Housing**

16.21 The NPPF sets out the requirement for setting appropriate affordable housing levels for new development based on up-to-date evidence. Policy DM 8 of the Local Plan gives rise to a requirement for nil affordable housing from developments on the Isle of Sheppey. No affordable housing is proposed, and the application is therefore in not in conflict with policy DM 8.

### **Landscape and Visual Impact**

16.22 The NPPF requires decisions to ensure that development is '*sympathetic to... landscape setting*' The Local Plan reinforces this requirement.

16.23 The siting of the park homes does not require planning permission and the use of the site as a holiday park is long established and originally comprised 36 holiday chalets. The development is not considered to result in any harm in landscape and visual impact terms. If planning permission were to be granted there would be potential to secure improvements to the appearance of the site through a landscaping condition. The development is in accordance with the Local Plan and the NPPF in landscape and visual amenity terms.

### **Heritage**

16.24 The National Planning Policy Framework states that local planning authorities should identify and assess the particular significance of any heritage asset and consider the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits that may arise and this is endorsed by the Local Plan.

16.25 The Council's Conservation and Design Manager has confirmed that no designated or non-designated heritage assets would be materially impacted by the development, either directly or indirectly. Furthermore, there is not evidence to suggest that the application site holds any historic interest.

### **Character and appearance**

16.26 The National Planning Policy Framework attaches great importance to the design of the built environment and that design should contribute positively to making places better for people. The Local Plan reinforces this requirement.

16.27 The immediate locality is characterised by a number of holiday parks which may be considered to have negative impacts in character terms, particularly where the parks are of poor quality and in need of modernisation and improvement, as was previously the case with the application site. As noted above the siting of the park homes does not require planning permission and physical changes to the site and ancillary development associated with the siting of the homes is considered minor. Overall, any impact in character and appearance terms is considered neutral.

16.28 In view of the neutral impact on the character and appearance of the area the park as developed is not considered to conflict with the provisions of the Local Plan and the NPPF.

### **Ecology**

16.29 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 CP 7 and DM 28 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.

16.30 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 where possible'. 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.'

- 16.31 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".
- 16.32 In terms of the Local Plan policy DM 28 sets out that development proposals will conserve, enhance, and extend biodiversity, provide for net gains where possible, minimise any adverse impacts and compensate where impacts cannot be mitigated.
- 16.33 The KCC Ecology Officer noted that this is a retrospective application and any ecological impacts of the development will already have occurred. However, if the development were yet to be undertaken it is unlikely that an ecological assessment would have been required on the basis that the site is a long-established caravan park and has contained regularly managed grassland.
- 16.34 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 CP 7 and DM 28 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.
- 16.35 Since this application has resulted in a net increase in residential accommodation on the site, impacts to the SPA and Ramsar sites may have occurred from increased recreational disturbance. Due to the scale of the development there is no scope to provide on site mitigation and in such circumstances off site mitigation is normally required by means of developer contributions at the rate of £314.05 per dwelling. In this case, the KCC Ecology officer has recommended that, as the application is to increase the occupation of the park from 10 months to 12 months, a contribution of one third of the SAMMS payment should be secured. On this basis a contribution of £2,198.35 would be sought for the development ( $(£314.05 / 3) \times 21 = £2,198.35$ ).
- 16.36 Natural England raise no objection to the development subject to securing appropriate mitigation for recreational pressure impacts on habitat sites.
- 16.37 A SAMMS contribution has not been pursued in this case as it is recommended that planning permission be refused. SAMMS contributions would normally be secured through a Section 106 agreement for a development of this scale. A ground of refusal is recommended to address the absence of a Section 106 agreement to secure the requested contributions. However, if Members were minded to grant planning permission, a Section 106 agreement could be prepared to overcome the recommended ground of refusal. If planning permission is refused and the application appeals the Council's decision, the Council would withdraw the ground of appeal relating to the absence of a Section 106 agreement upon the submission of a satisfactory Section 106 agreement.
- 16.38 If planning permission were to be granted ecological and biodiversity enhancements on the site could be secured through a condition.

## Transport and Highways

16.39 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.”*

16.40 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.”*

16.41 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.

16.42 The locational sustainability of the site has been assessed in earlier sections of this report. In terms of traffic generation, the residential use is unlikely to result in materially different movements than as a holiday park. Although these movements would extend into the winter months, no highways safety matters have been identified regarding the unsustainable location of the site from a transport perspective.

16.43 The change of use is not considered to have involved an increase in the intensity of use of the vehicular access such that there would be adverse technical highways impacts. Furthermore, in view of the age related occupancy restrictions that could be secured if planning permission were granted it can be accepted that the use of the site as a retirement park is making a limited contribution to traffic generation at peak times.

16.44 The change of use is not considered to have involved an increase in the intensity of use of the vehicular access such that there would be adverse technical highways impacts. The site does not have formally laid out car parking but has a large block paved area of hardstanding which provides a roadway and informal car parking. The homes on the site benefit from adjacent informal parking spaces and adequate space to manoeuvre vehicles from the spaces. 9 of the homes have two car parking spaces, 11 have one car parking space and 1 home does not benefit from a car parking space and makes use of an informal area to the centre of the site which provides 6 or 7 visitor car parking spaces. The Swale Parking Standards SPD (April 2020) sets out a requirement for 2 spaces for two bedroom homes in this location. The parking provision will generally fall short of this requirement; however, it can be noted that the homes are occupied by retired individuals or couples and not by family units or shared households. Furthermore, the application seeks retrospective consent for permanent occupation of the homes and the car parking provision appears demonstrably adequate to serve the development. The central grassed amenity area could be used to increase car parking provision but this would be at the expense of residential amenity and opportunities to improve biodiversity on the site. It is considered that the parking provision on the site can be accepted.

16.45 The site benefits from a wide paved roadway which would allow vehicles to adequately manoeuvre around the site and service all homes within the site.

16.46 Details of refuse collection have not been provided although the applicant has confirmed that refuse is collected by the Council. In view of the adequacy of the servicing arrangements and given that refuse is presently being collected from the site it is assumed that satisfactory



arrangements are currently in place. If planning permission were to be granted then further information could be obtained in this regard and controlled as necessary through conditions.

16.47 Details of cycle storage have not been provided, albeit it is noted that the homes generally benefit from rear garden / yard areas with some sheds which could accommodate bicycles. If planning permission were granted and it was considered appropriate to secure cycle parking for a retirement community in this location then an appropriate condition could be applied.

16.48 KCC Highways have not made any comments on the application.

16.49 The development would not encourage sustainable transport choices, and this is reflected in recommended reason for refusal No. 1. It is otherwise considered that the proposed development does not result in unacceptable impacts in highways terms and therefore the proposal can be considered to accord with the Local Plan and the NPPF.

### **Community Infrastructure**

16.50 Local Plan policies CP 5 and CP 6 require that provision shall be made to accommodate local community services, social care and health facilities within new developments.

16.51 As with any planning application, the 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.

16.52 It can be noted that the residents of the park are all retired and therefore will not require access to schools and children's services which serve the needs of younger populations.

16.53 The following outline the financial contributions that have been sought by Kent County Council and Swale Borough Council to mitigate the impact of the development upon services, these contributions are all for specific capital projects which have been identified and assessed by Officers to comply with the Regulations (as amended).

#### *Education*

16.54 The development is occupied by a retirement community and has nil child yield. Accordingly, the development does not give rise to a requirement for an education contribution.

#### *Libraries*

16.55 £1,315.23 (£62.63 per dwelling) towards additional resources, equipment and book stock (including reconfiguration of space) at local libraries serving the development including Minster and Sheerness.

#### *Adult Social Care*

16.56 £3,798.48 (£180.88 per dwelling) towards specialist care accommodation, assistive technology systems and equipment to adapt homes, adapting Community facilities, sensory facilities, and Changing Places within Swale.

*Community learning*

16.57 £718.41 (£34.21 per dwelling) towards Community Learning Project details or additional equipment and resources for adult education centres on Sheppey, including outreach provision.

*Integrated Children's Services*

16.58 The development is occupied by a retirement community and does not accommodate a child population. Accordingly, the development does not give rise to a requirement to a children's services contribution.

*Health care*

16.59 Contributions have not been sought towards local healthcare infrastructure and services as the integrated care board have advised that residents will already be registered with local practices and there is unlikely to be any additional pressure on primary care.

*Refuse*

16.60 £1,092 (£52 per dwelling) towards additional capacity at Household Waste Recycling Centres.

16.61 £2,984.73 (£142.13 per dwelling) towards additional capacity at Waste Transfer Stations.

16.62 The above contributions would be sought to mitigate the additional impacts on local infrastructure and services which would arise from 21 new residential dwellings. It is recommended that planning permission be refused, therefore the Council has not pursued the requested financial contributions, which would normally be secured through a Section 106 agreement. A ground of refusal is recommended to address the absence of a Section 106 agreement to secure the requested contributions which are a requirement of Policies CP 5 and CP 6. However, if planning permission were to be granted, a Section 106 agreement could be prepared to overcome the recommended ground of refusal. If planning permission is refused and the applicant appeals the Council's decision, the preparation of a satisfactory Section 106 agreement would address the ground of refusal.

**Open Space**

16.63 Policy DM 17 of the Local Plan sets out that new housing development shall make provision for appropriate outdoor recreation and play space, including urban parks, children's play areas, open space for sport, allotments or community gardens proportionate to the likely number of people who will live there.

16.64 The change of use gives rise to the following open space requirements:

Typology	Policy DM17 requirement (ha per 1,000 person)	Scheme requirement (ha)	Proposed (ha)	Short fall (ha)
Parks and gardens	1.1	0.05	0	0.05
Natural and semi natural greenspace	4.36	0.18	0	0.18
Formal outdoor sport	1.09	0.05	0	0.05

Amenity Greenspace	0.45	0.02	0.06	No
Provision for children and young people	N/A	N/A	0	0
Formal Play facilities	N/A	N/A	0	0
Allotments	0.2	0.01	0	0.01
Total				0.29

16.65 Given the size and use of the site, parks and gardens, outdoor sports and allotments are not provided on site. There are no parks and gardens or allotments within a reasonable distance of the site which would benefit from a financial contribution to address the identified shortfall. The occupants of the park homes are of retirement age and so will not generate a requirement for play space. In view of the rural location of the site it is considered that the occupants have ample access to natural and semi-natural greenspace. The Council's Green Spaces Manager has advised that a contribution towards off-site formal sport provision at a rate of £681.81 should be secured.

16.66 It is recommended that planning permission be refused, therefore the Council has not pursued the requested financial contribution towards formal off-site sport provision which would normally be secured through a Section 106 agreement. A ground of refusal is recommended to address the absence of a Section 106 agreement to secure the financial contributions to mitigate the impacts of the change of use. As noted above, if planning permission were to be granted the preparation of a satisfactory Section 106 agreement would overcome the ground of refusal.

### **Flood Risk, Drainage and Surface Water**

16.67 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 DM 21 of the Local Plan.

16.68 The application does not involve new surface water drainage proposals and existing measures would appear to satisfactorily address surface water run-off. The KCC drainage officer raises no objections to the development and the Lower Medway Internal Drainage Board made no comments on the proposal. It is therefore considered that the development is in accordance with Policy DM 21 of the Local Plan and the NPPF.

### **Living Conditions**

#### *Existing neighbouring residents*

16.69 The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers. The application site adjoins holiday park sites to the north-east and northwest, with chalets on the neighbouring site in particularly close proximity adjacent to the northwest boundary. It is understood that the park homes on the site do not have windows on the north-west elevations which face the neighbouring site and therefore opportunities for direct overlooking of neighbouring occupiers should be limited. Any overlooking would occur to holiday accommodation which may be less sensitive than residential dwellings, in particular if it is let on a short term basis as occupiers will not be subject to a permanent loss of privacy. It is also noted that the site previously accommodated a holiday park comprising up to 36

chalets which may also have presented overlooking opportunities. It is therefore considered that the change of use does not give rise to increased harmful overlooking of occupants of adjacent sites.

16.70 There are neighbouring residential dwellings to the south-west of the site. It is considered that the additional occupation of the park homes during January and February would not give rise to any unduly harmful increased impacts upon the living conditions of the occupants of these dwellings.

*Residents of application site*

16.71 New development is expected to offer future occupiers a sufficient standard of accommodation.

16.72 There are chalets on the neighbouring sites to the north-east and north-west in very close proximity to homes on the application site which, given the holiday park uses, are considered likely to result in noise and disturbance which would be noticeable within the application site.

16.73 The site layout involves approx. 5m separation distances between the habitable room windows of neighbouring homes, resulting in overlooking opportunities. This issue has partly underpinned the Council's resistance to residential use of holiday parks as they are not laid out to meet privacy standards which would normally be sought for new residential development. It was observed that some residents on the site have used net curtains to mitigate overlooking. Furthermore, it is acknowledged that the residents on the site would have bought the homes aware of the lack of privacy arising from the site layout and have accepted any overlooking over the period that permanent residential occupation of the site has occurred.

16.74 The Council contested the Estuary View Caravan Park (PINS ref. APP/V2255/W/21/3279125) on grounds relating to insufficiently separated caravans with insufficient amenity space located in close proximity to holiday accommodation. The Inspector noted that, whilst the separation distances did not meet the distances expected between houses, caravan occupation within a countryside caravan park location offered other amenity benefits. Furthermore, the present situation provided for 10 months occupancy of the caravans (albeit not as a main residence) which is not dissimilar to permanent occupation in amenity terms. Accordingly, the Inspector did not consider that there would be any conflict between the amenity standards of the proposal with Local Plan policy DM 14 and the provisions of the NPPF. In view of the conclusions reached by the Inspector and the parallels with this application it is considered that the site layout and its relationship with adjacent holiday parks would provide a satisfactory standard of residential amenity.

**Sustainability / Energy**

16.75 Policy DM 19 of the Local Plan requires development proposals to include measures to address climate change.

16.76 The application does not propose new development and therefore does not present an opportunity to deliver new measures to address climate change. It is noted that the park homes meet BS3632 and therefore feature double glazing and a good standard of insulation and accordingly will provide energy efficient accommodation which represents an improvement over the chalets which previously occupied the site. It is therefore considered that, in the context of the opportunities on the site, the development delivers energy efficiency measures which sufficiently address Local Plan policy DM 19.

## Equality and Human Rights

### *Human rights: overview*

16.77 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.

16.78 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. The loss of other forms of property (e.g. business premises) may engage rights under A1P1. It should be noted that A1P1 applies to both natural and legal persons.

16.79 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.

16.80 In the case of Art 8 rights, the interference must be in accordance with law and be considered necessary in the interests of national security, public safety or the economic well-being of the country, for the prevention of crime/disorder, for the protection of health/morals or for the protection of the rights and freedoms of others.

16.81 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.*

16.82 Any interference in such rights caused by the planning control decision has to be balanced with and against all other material considerations, the issue of justification for interference with article 8 rights effectively being dealt with by way of such a fair balance analysis.

- V. *That balancing exercise is one of planning judgment [...].*
- VI. *[...] Article 8 rights are, of course, 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, important not only in the public interest but also to protect the rights and freedoms of other individuals [...].*

16.83 In terms of A1P1, this provides as follows:

*"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No-one shall be deprived of his possessions except in the public interest and subject to conditions provided for by law.*

*The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”*

16.84 There are three key rules. The first is the principle of peaceful enjoyment of property. The second covers the deprivation of possessions and subjects it to certain conditions. The third recognises that that property can be controlled in the general interest.

16.85 Claims under any of the three rules need to be examined under four heads:

- I. *Whether there was an interference with the peaceful enjoyment of “possessions”,*
- II. *Whether the interference was “in the general interest”;*
- III. *Whether the interference was “provided for by law”;*
- IV. *Proportionality of the interference.*

16.86 In terms of assessing the proportionality of the interference, domestic case-law (Thomas v Bridgend County Borough Council in the Court of Appeal [2011], applying the European case of Bugajny), has summarised the approach as follows:

*“The cases show that the issue of proportionality can be expanded into the following question: “whether the interference with the applicants’ right to peaceful enjoyment of their possessions struck the requisite fair balance between the demands of the general interest of the public and the requirements of the protection of the individual’s fundamental rights, or whether it imposed a disproportionate and excessive burden on them.” (Bugajny [...] para 67).”*

16.87 Article 14 of the Convention deals with the requirement for Convention freedoms to be available to all on a non-discriminatory basis. Article 14 is not a free-standing right in the same way as Art 8 and A1P1.

*Equalities: overview*

16.88 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. Advancing equality will amongst other measures remove or minimise disadvantages suffered by people due to their protected characteristic and taking steps to meet the needs of people from protected groups where these are different from the needs of other people.

16.89 In planning terms, the potential impacts of a proposal on an individual or on groups of individuals should be addressed by the decision-maker as a material consideration. In balancing this against other material considerations, the decision-maker should also ensure that they give due weight to what is required by their statutory duties, including the requirements of the PSED.

*Existing occupiers*

16.90 If planning permission were refused then occupation of the homes would be restricted to 1<sup>st</sup> March to 3<sup>rd</sup> January the following year, in line with planning consent ref. SW/11/0945 and Local Plan Policy. The occupiers would be required to vacate their units for most of January and all of February each year and would only be permitted to use the homes for holiday/recreational use in line with condition 2 of planning permission ref. SW/11/0945.

*Effect of displacement – residential occupiers*

- 16.91 As regards Art 8 rights (that is, the right to respect for the home and private life), for the purposes of assessing the application on the basis that the right is engaged by the loss of the use the homes on the park for most of January and February each year. The occupiers will 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 so able to be justified under the second limb of Art 8.
- 16.92 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, as explained in RLT Built Environment Ltd.
- 16.93 Local Plan policy does not support year round occupation of the borough's holiday parks. Condition 2 of planning permission ref. SW/11/0945 states that the caravans are to be used for holiday and recreational use only and shall not be occupied as a sole or main residence. The occupants of the site would be required to move out of their park homes for at least two months of each year and would not be able to use the homes as a sole or main residence. Officers acknowledge that this would be disruptive for those affected.
- 16.94 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 temporary displacement. In this case all of the residents of the park are of retirement age and some are elderly and are therefore would be identified as more sensitive to temporary displacement.
- 16.95 Taking into account the nature of the impact on the existing occupiers, officers consider the benefits of resisting unplanned residential development in an unsustainable location and protecting the rural character of this part of Sheppey, which is in the public interest, would outweigh any interference with the rights of the individual under Art 8.
- 16.96 As regards A1P1 rights in relation to residential occupiers, officers have proceeded for the purposes of assessing this application on the basis that this right is engaged by the temporary displacement from the 21 residential dwellings on the site each year and the restriction on occupation of the caravans as a sole or main residence. That interference can be regarded as being in the general interest, the operation of the planning system being a legitimate interest of the state.
- 16.97 In officers' assessment, taking account of the nature of the impact on residential occupiers, the proposed mitigation measures 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.

**Other matters**The Interim Park Homes Policy

- 16.98 The Full Council adopted an interim planning policy on park homes on 17 June 2020 as 'a material consideration that will hold some weight in the consideration of applications for park home proposals'. Nonetheless, following further legal advice on this matter, the interim policy is considered to hold limited weight given that it was not progressed via the development plan process, and has not been subject to scrutiny through consultation and examination.

- 16.99 The interim policy sets out a list of criteria for compliance. This includes the requirement that the site is in a sustainable location with access to services and facilities, and that the site layout provides acceptable privacy and amenity standards for residents. It has been set out above why these specific matters are a concern in relation to this application. Therefore, given the limited weight that should be attached to this interim policy, together with the conflict in any case with its criteria, it is still considered that the application is unacceptable.
- 16.100 It is also noted that the Inspectors considering the Plough Leisure Caravan Park, Brookfield Park, Golden Leas Holiday Park and Estuary View Caravan Park appeals (detailed in the Relevant Cases section earlier in this report) afforded limited or very limited weight to the Interim Park Homes Policy.

### Conclusion

- 16.101 The application seeks retrospective planning permission for the change of use from a holiday park (10 months occupancy) to a residential retirement park for year round occupation. Local Plan policy DM 5 is very clear that in order to ensure a sustainable pattern of development, to provide a period of relief to local residents and to protect the character of the countryside, planning permission will not be granted for the permanent occupancy of holiday parks. The granting of planning permission would be likely to set a precedent for similar changes of use of holiday parks on the Island. The development is contrary to Local Plan policy DM 5 and is therefore unacceptable in principle and **significant weight** is placed on this disbenefit arising from conflict with Local Plan policy.
- 16.102 Policy ST 3 makes a presumption against residential development within the rural part of the borough where the site is located. The site is in an unsustainable location for residential development and it has not been demonstrated that the criteria specified in policy ST 3 part 5 to justify residential development in this location would be met. Furthermore, residents are reliant on private car use for transport and the development does not promote sustainable transport, as required by Policy CP 2. Accordingly, the development is contrary to Local Plan policies ST 3 and CP 2. The development is also contrary to Local Plan policy ST 1 and CP 3 (which support policy ST 3) and policy DM 14. **Significant weight** is placed on this disbenefit arising from the conflict with Local Plan policy.
- 16.103 The permanent year-round residential use of a designated holiday park has resulted in the loss of tourist accommodation contrary to Local Plan policies CP 1, ST 6, DM 3, DM 5 and DM 14 which together seek to promote the tourism potential of the borough and the related economic and employment benefits. **Significant weight** is placed on this disbenefit arising from the conflict with Local Plan policy.
- 16.104 A Section 106 agreement has not been prepared to secure community infrastructure contributions sought by KCC and an open space contribution as well as SAMMS payments to mitigate against ecological impacts upon the Medway Estuary and Marshes SPA. The application is therefore contrary to Local Plan policies CP 5, CP 6, CP 7 and DM 28 and **significant weight** is afforded to this disbenefit arising from the conflict with these policies. It is acknowledged that if the proposal was otherwise acceptable then the financial contributions would be sought through a Section 106 agreement and this disbenefit would be addressed.
- 16.105 It appears that the occupants have purchased their homes on the assumption that they would be able to occupy them on a year-round basis. Representations in support of the application advise that some of the residents of the park are experiencing health issues associated with old age and the community is close knit and mutually supportive. A refusal



of planning permission could have significant adverse personal and financial implications for the occupants of the homes on the site. However, the circumstances of the park home sales and the implications for these residents if planning permission were refused is unfortunately not a material land use planning consideration to which any significant weight can be afforded in the decision-making process.

- 16.106 The benefits of the change of use of the site include the provision of 21 low cost residential units which could be controlled for older persons and which would contribute towards the Borough's housing supply. The units would meet an identified need and would assist in freeing up family sized accommodation for occupation by families. However, the 21 units would only represent a small addition to the housing stock and the benefit is tempered by the unsustainable location of the accommodation. Accordingly, **limited** weight is afforded to this benefit. The release of existing housing stock is of **moderate** positive weight.
- 16.107 Planning decisions must be taken in accordance with the Development Plan unless material land use planning considerations indicate otherwise. Taking the above into account, it is considered that the development conflicts with the Development Plan as a whole and it is recommended that planning permission be refused.
- 16.108 In view of the ongoing breach of condition 2 of planning permission ref. SW/11/0945 it is also recommended that enforcement action is authorised to pursue compliance with condition 2.

RECOMMENDATION – Refusal of planning permission for the following reasons:

1. The site lies within the countryside of the Borough where permanent residential development is resisted in principle, and where the existing two month holiday park occupancy break, together with further restrictions during the open season, provides relief to local residents from noise, disturbance and other amenity concerns, and protects the character and appearance of the wider countryside associated with year round residential occupation of the site, as opposed to holiday use. Furthermore, the site represents an unsustainable location for permanent year round residential use by virtue of its remote location within the countryside and outside of any well defined urban boundary, its remoteness and lack of connectivity to services and facilities, its poor integration with existing communities and limited public transport to service the site. The proposal is therefore contrary to Policies ST 1, ST 3, CP 2, CP 3, DM 5 and DM 14 of the Swale Borough Local Plan 'Bearing Fruits 2031'.
2. The permanent year-round residential use of a designated holiday park has resulted in the loss of tourist accommodation harmful to the tourism industry, particularly on the Isle of Sheppey, and thereby contrary to Local Plan policies CP 1, ST 6, DM 3, DM 5 and DM 14.
3. In the absence of a Section 106 legal agreement to secure community infrastructure contributions and financial mitigation against ecological impacts upon the Swale Special Protection Area (SPA) and Wetland of International Importance under the Ramsar Convention (Ramsar Site), the proposal would be contrary to policies CP 5, CP 6, CP 7 and DM 28 of the Swale Borough Local Plan 'Bearing Fruits 2031'.

RECOMMENDATION – Authorise enforcement action in relation to the breach of condition 2 of planning permission ref. SW/11/0945.



**PLANNING COMMITTEE – 11 APRIL 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 – Security Gatehouse Guillat Ave Kent Science Park Sittingbourne**

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

The Inspector disagreed with the Council's first ground of refusal and was satisfied that the site could be considered as curtilage. Nonetheless, the Inspector agreed with the Council's second ground of refusal that the boundary fencing would require planning permission. Furthermore, the Inspector concluded that the development proposed, and its various components would materially affect the external appearance of the site and as such failed to satisfy the requirements of Class I of the GPDO. On that basis, the appeal was dismissed.

- **Item 5.2 - Land Adj to Cat-C-Vu Preston Hall Gardens Warden**
- **Item 5.3 - Cliff End Mobile Home Preston Hall Gardens Warden**

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

This appeal relates to the stationing of a caravan for residential use. Although in a road of dwellings, the Inspector did not consider the caravan to be overly conspicuous or harmful to the streetscene, or that it would fail to provide adequate living accommodation if made personal to the occupant. However as mitigation against impacts on the SPA had not been provided by way of a SAMMS contribution, the Inspector dismissed the appeal and upheld the enforcement notice.

- **Item 5.4 - Bounds Farm Land to rear of 142 - 146 The Street Boughton**

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

The Inspector concluded that the site is an appropriate location for new housing as it is within a reasonable walking distance of facilities and services within the village and to bus services to Faversham and Canterbury. However, the extant use of the building would have generated a level of noise and disturbance and as such the Inspector was

not convinced that future occupiers of the converted poultry shed would preclude use of the building for those prioritised by Policy DM3. In the absence of marketing evidence, the Inspector concluded that the loss of a relatively small amount of floor space for commercial use would have a limited but negative effect on the rural economy and community vitality. Additionally, no mechanism was presented to secure payment of the financial contribution towards the recreational impacts of the proposed development on the SPA. On that basis, the appeal was dismissed.

- **Item 5.5 – School Lane Farm School Lane Iwade**

**APPEAL ALLOWED**

**DELEGATED REFUSAL**

**Observations**

Although the application failed to comply with Policy DM3 of the Local Plan, the Inspector determined that in light of the Council's housing land supply shortfall, the harm caused through conflict with this policy did not significantly and demonstrably outweigh the benefits of allowing conversion of the building to a dwelling.



---

## Appeal Decision

Site visit made on 23 January 2024

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

an Inspector appointed by the Secretary of State

Decision date: 23 February 2024

---

**Appeal Ref: APP/V2255/X/23/3318631**

**Security Gatehouse, Guillat Avenue, Kent Science Park, Sittingbourne, Kent ME9 8AG**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development [hereafter referred to as "LDC"].
  - The appeal is made by Jazz Pharmaceuticals (formerly GW Pharma) against the decision of Swale Borough Council.
  - The application Ref 22/504606/LAWPRO, dated 21 September 2022 was refused by notice dated 23 February 2023.
  - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
  - The development for which a certificate of lawful use or development is sought is described as *'Develop a utilities slab & Recycling area located to the west of Building 750 between Building 750 and Shimmin Road. The area would accommodate building utilities facilities, covered area for storage, relocation of existing silo (currently located at south west corner of Building 750), packaged boiler house, buried services and external storage for empty IBC's.'*
- 

### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. The Council has identified that, since the application was submitted, the development proposed has been revised with the deletion of the boiler house from the scheme.

### Main Issue

3. The main issue is whether the Council's decision not to issue a LDC was well founded.

### Reasons

4. In an appeal under s195 of the Act against the refusal of a LDC the planning merits and/or impacts of the use applied for do not fall to be considered. Instead, the decision is based strictly on the evidential facts and on relevant planning law. The burden of proof is on the appellant, and I shall reach my decision on the various evidence before me.
5. The matter to be decided upon is whether the development, if carried out at the date of the application ie 21 September 2022, would have been lawful. The determination is to be made against the Town and Country Planning (General

---

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

Appeal Decision APP/V2245/X/23/3318631

---

Permitted Development) Order 2015, as amended (GPDO) as subsisted at the time of the application.

6. The appeal involves the proposed recycling and utility area use being situated on a vacant piece of land adjacent to Buildings 750 and 720, although it is accepted that there is some vegetation along the boundary with the latter.
7. The Council, in its decision notice, refers to Class H, Part 7, Schedule 2 of the GPDO. This allows for the erection, extension or alteration of an industrial building or warehouse subject to certain provisos; the most relevant here being condition H.2(a) which requires that the development is carried out within the curtilage of an existing industrial building or warehouse.
8. Curtilage is not defined within the GPDO. However, it is not a use of land but an area delineated through its physical association with a building. In a recent judgement, *R Hampshire CC) v Blackbushe Airport Ltd* [2021] EWCA Civ 398, which dates from 2021, it was held that the correct question to consider is whether the land forms part and parcel with the building, and not whether the land together with the building fall within, or comprise, a unit devoted to the same or equivalent function or purpose, nor whether the building forms part and parcel of some unit which includes that land.
9. An earlier case, *Challenge Fencing Ltd v SSHCLG* [2019] EWHC 553, which was endorsed by the Blackbushe judgement, did indeed find the extent of a curtilage would be a matter of fact and degree and confirmed that factors such as physical layout, the ownership, both past and present, and the use or function of the land or buildings, also past and present, are relevant to making the decision. If the land is in ancillary use to the building this will also be relevant, but it is not a legal requirement. The concept of one enclosure is also of relevance. In *Blackbushe* it was noted that, whilst not exhaustive, the guidance in *Challenge Fencing* was helpful in identifying a curtilage.
10. Most recently, in May 2022, the judgement of *Hiley v SoS* [2022] EWHC 1289 (Admin) was reported. This case has been highlighted by the appellant. It concerned a proposal to erect a steel-clad workshop and storage building, plus associated hardstanding and vehicular access, on a site adjoining a business park. The task was to determine whether the proposed development would be within the 'curtilage' of the adjacent business park buildings.
11. The challenge had been brought following an unsuccessful appeal against the Council's decision to refuse to issue a lawful development certificate to confirm, as claimed, that the proposed development would benefit from the allowance under Class H. In dismissing the appeal the Inspector had found that there was a striking difference between the character and appearance of the appeal site and the industrial/warehouse buildings, and he concluded that the site was visually, spatially and physically separate from the business park.
12. The challenge was subsequently upheld by the court, with the judge deciding that the Inspector had misdirected himself, both in considering that a curtilage "is a feature constrained to a small area about a building" and that, in order to satisfy the Class H condition, the site and the business park had to form part of a single enclosure. In his reasoning the judge took a similar line to that held in the *Blackbushe* and *Challenge Fencing* cases.

Appeal Decision APP/V2245/X/23/3318631

---

13. Turning to the current appeal I have had regard to the correct approach and criteria set out above as to identifying what constitutes curtilage. Given the relevant factors, and the physical arrangement with Jazz Pharmaceuticals – who, as lessee, would operate the proposed recycling and utilities plant – occupying both said buildings, I am satisfied that the piece of land at issue can be considered as curtilage thereto.
14. However, neither building would be extended or altered by the proposal. A portal-framed building, labelled a 'Recycling Management Skip Shed' and a water tank structure would be separate buildings erected as part of the scheme. Also, stationed throughout the western half of the site would be a considerable number of drums and skips. In the circumstances I am of the view that the proposed development would, in its entirety, represent a mixture of development potentially permitted by way of Classes H and I; the latter being concerned with developments relating to an industrial process.
15. Class I allows for development carried out on industrial land for the purposes of an industrial process consisting of, amongst other things, the installation of additional or replacement plant or machinery. However, Class I has a specific limitation which stipulates that development is not permitted if it would materially affect the external appearance of the premises of the undertaking concerned.
16. Taking the premises as comprising both the buildings and its associated land I consider that the extent of the development proposed and its various components would materially effect its external appearance, particularly when viewed from Shimmin Road off which the site's exit gates reached via a proposed vehicular egress roadway, would be positioned. As such, the proposal fails to satisfy the requirements of Class I.
17. I must therefore disagree with the Council's first ground of refusal given that, contrary to the Council's view, I have identified the appeal site as curtilage. To this extent the Council's decision was not well founded. Nonetheless, due to the relevance of Class I, the legislation indicates that the proposal would not represent permitted development.
18. Finally, with regard to the second ground of refusal, I must agree with the Council that, as Shimmin Road is used by vehicular traffic – irrespective of whether it is public highway – boundary fencing is subject to the limitations in Class A, Part 2, Schedule 2 of the GPDO. Accordingly, any means of enclosure erected adjacent to Shimmin Road should not exceed 1 metre in height otherwise the benefit of planning permission is required.
19. For the reasons given above I conclude that, on the evidence available, the appeal should not succeed. Accordingly, I shall exercise the powers transferred to me under section 195(3) of the 1990 Act, as amended.

*Timothy C King*

INSPECTOR

This page is intentionally left blank






---

## Appeal Decisions

Site visit made on 23 January 2024

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2024

---

### Appeal A: APP/V2255/C/22/3299109

#### Land adjacent to Cat-C-Vu, Preston Hall Gardens, Warden, Kent ME12 4PL

The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.

- The appeal is made by Thomas Philip Hannan against a notice issued by Swale Borough Council.
  - The notice was issued on 26 April 2022.
  - The breach of planning control as alleged in the notice is:  
Without planning permission, the material change of use of the Land to the stationing of a mobile home for residential use.
  - The requirements of the notice are:
    - (i) Cease the residential use of the Land.
    - (ii) Cease the residential use of the mobile home on the Land.
    - (iii) Remove the mobile home from the Land.
    - (iv) Remove from the Land all materials, rubbish and waste arising from the works undertaken in (i) to (iii) above.
  - The period for compliance with the requirements is within six (6) months from the date this notice takes effect.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
- 

### Appeal B: APP/V2255/W/22/3293558

#### Cliff End Mobile Home, Preston Hall Gardens, Warden, Sheerness, Kent ME12 4PL

- 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 Thomas Hannan against the decision of Swale Borough Council.
  - The application Ref 20/500812/FULL, dated 9 February 2020 was refused by notice dated 18 August 2021.
  - The development proposed is described as '*Change of use of land to residential for existing mobile home sited on land adj JR's.*'
- 

## Formal Decisions

### Appeal A

1. It is directed that the alleged breach of planning control, as set out in the enforcement notice, is deleted and reworded as follows:

Appeal Decisions APP/V2255/C/22/3299109 & APP/V2255/W/22/3293558

---

'Without planning permission, the material change in the use of the land, involving the stationing of a caravan and its use for residential purposes constituting the creation of a new independent planning unit.'

2. Subject to this correction the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

#### **Appeal B**

3. The appeal is dismissed.

#### **Matters concerning the Enforcement Notice (Appeal A)**

4. Given that the notice was not appealed on either grounds (b) and (c) I am satisfied that a breach of planning control has occurred in this instance. However, the Council says that the land was previously used as residential garden in association with the residential dwelling immediately to the east, JR's.
5. The land was later subdivided and a new planning unit then created when the mobile home was brought onto the land and occupied independently for residential purposes. In the circumstances the enforcement notice's allegation is, not sufficiently precise in its wording to reflect the actual breach.
6. Under the provisions of section 176(1) of the 1990 Act as amended it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms if I am satisfied that the correction or variation will not cause any injustice. It is considered that the Courts interpret the power to correct a notice very widely and that the powers in s176(1) can extend to making significant changes to the terms of the notice so as to put it on a proper footing.
7. In this particular instance the breach has effectively arisen due to the severance of the land from JR's and the effective establishment of a new, independent planning unit. I consider that the allegation, as it stands, requires clarification and it is capable of correction without injustice being caused. Accordingly, I have changed its wording to better reflect the breach which has occurred.

#### **Appeal A**

##### **The appeal on ground (d)**

8. The appeal on ground (d) is that, at the date the enforcement notice was issued, it was too late for the Council to take formal action as the development which constituted the breach of control had already acquired immunity from such in planning terms.
9. The stationing of a mobile home/caravan and its occupation for residential purposes represents a use of land requiring the benefit of planning permission. The immunity period for such is ten years prior to the issue of the enforcement notice; in this instance, therefore, 26 April 2012, and this is known as the material date. Accordingly, the appellant needs to demonstrate that the unauthorised change of use has occurred continuously since at least this date.
10. The onus is on the appellant to prove his case, with the burden of proof being on the balance of probabilities. Accordingly, my decision has to be based on evidential fact and, where applicable, case law.

---

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

2

Appeal Decisions APP/V2255/C/22/3299109 & APP/V2255/W/22/3293558

---

11. The appellant, in his representations, on the appeal form completed in May 2022, says that he has lived in the mobile home on the site for the past 7 years. This reiterates his assertion on the application form, relating to Appeal B, that the use commenced in July 2015.
12. The appellant does also say that there have been various motor-homes on the site for over 20 years but this is not properly corroborated by written representations made in support of the use. These make reference to a single caravan having been present on the land for many years. However, a letter of objection refers to a 'dilapidated caravan' on the land which was removed by a previous occupier of JR's. She had apparently lived there since 2005 and, given the site's history taken from the evidence before me, I have reasonably assumed that the said caravan was removed from the land prior to its subdivision.
13. Given the evidence and my consequent findings that the appellant cannot demonstrate that the residential use of the land enforced against commenced before the material date in 2012 the requisite immunity does not, on the balance of probability, exist.
14. As such, the appeal on ground (d) does not succeed.

**The appeal on ground (a) – the deemed planning application (DPA), and also Appeal B**

Main Issues

15. Given that the DPA and the s78 appeal are seeking planning permission for the same development the main issues are the same for both Appeals A and B. These are whether the proposal represents an acceptable form of development having regard to the following matters:
  - 1) the effect of the development on the character and appearance of the area, with particular regard to the mobile-home's siting and design;
  - 2) the effects of the development on the living conditions of neighbouring occupiers, with particular regard to those at Cat-C-Vu;
  - 3) whether the mobile home provides for a satisfactory standard of living accommodation for its occupier; and
  - 4) whether the proposal would affect the integrity of the Special Protection Area (SPA) and, if not, the appropriateness of mitigation in this regard.

Reasons

*Character and appearance*

16. Preston Hall Gardens is an unmade road off which, consistent with other roads in the locality, is one of residential character. However, there is no common characteristic in terms of plot size or style of dwelling or type of home. There are clear variations in height, extent, building lines and boundary treatment. Along the road a large number of single-storey bungalows are evident.
17. The road slopes down eastwards towards the coast. The appeal site containing the mobile home at issue is the last plot before the Cliff Drive junction save for the single-storey, flat-roofed dwelling known as JR's. This lies off the junction, and is set into its site.

---

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

3

Appeal Decisions APP/V2255/C/22/3299109 & APP/V2255/W/22/3293558

---

18. In light of the above I must disagree with the Council's view that there is a 'conventional built vernacular'. To illustrate the variety of buildings a somewhat looming dwelling with a steep roof pitch, and built on high ground on the opposite side of Preston Hall Gardens looks out towards JR's. Also, beyond the appeal site's western boundary is a substantial post-war dwelling, set on slightly higher ground, and with its gable end facing the common boundary. Further, there are a considerable number of relatively small, irregular shaped plots towards the eastern ends of Preston Hall Gardens and Sea Approach, which lies southwards.
19. In this contextual setting, whilst the mobile home is not a building as such, its form is not overly conspicuous and its appearance and siting does not unreasonably detract from the rather loose integrity of the streetscene.
20. In the circumstances I am satisfied that the development has not caused any significant harm to the character and appearance of the surrounding nor the general objectives and requirements of policies DM14 and CP4 of the Swale Borough Local Plan (LP), adopted in 2017.

*Living conditions*

21. The mobile home's rear wall panel faces towards the boundary enclosure with Cat-C-Vu. However, there is little rear aspect and the boundary is both physically demarcated and screened with vegetation growing from the Cat-C-Vu's side. This neighbouring house has two flank-wall windows – one each at ground and first floor levels – but neither appear to light habitable rooms. Certainly, neither can be termed as primary windows thereto.
22. I note that the occupier of Cat-C-Vu has objected to the development on two separate grounds; one relating to her considered loss of privacy, and the other in respect of alleged noise and vibration disturbance from the appellant's generator. Her representations also mentioned nuisance due to smoke from a wood burning stove. In terms of the latter points I note that the Council's Environmental Protection team has raised no objections.
23. Regarding the privacy issue the Council's case report comments that, on balance, the physical relationship between the two properties is not unacceptable, although the report does mention that the land has been raised. This might be the case but the appeal site's land level is still lower than that of Cat-C-Vu.
24. In the circumstances I do not consider that the development has had an unacceptable impact on the living conditions at Cat-C-Vu, and there is no material conflict with LP policy DM14.

*Standard of accommodation*

25. The appellant, as mentioned, will have lived in the mobile home for 9 years in July. He lives alone and I am satisfied that the floor area and the standard of accommodation is quite adequate for one person. Nonetheless, I accept that this mobile home is of limited size and it would not be suitable for family accommodation.
26. Any planning permission granted could, by condition, be made personal to the occupier and require for the mobile home's removal at the time at which he vacates the site. This would mean that, upon this date the permission would expire and the mobile home's removal from the land would be required.

Appeal Decisions APP/V2255/C/22/3299109 & APP/V2255/W/22/3293558

---

27. Accordingly, given the circumstances, I am again satisfied that the aims and requirements of LP policy DM14 would not be compromised by the development.

*Integrity of the SPA*

28. The appeal site is located within 6km of the Thames Estuary and Marshes SPA which provide habitats for overwintering birds. Within this zone Natural England considers that new housing has the potential to affect the SPA's features of interest. In combination with other developments in Swale an additional dwelling would be liable to lead to recreational disturbance and so have a detrimental impact on the birds. There would therefore be a likely significant effect on the SPA. To mitigate this impact the Council expects that a financial contribution is made to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy.
29. The collection of the tariff to facilitate off-site measures is intended to avoid significant or long-term impacts. Natural England concurs with this approach. Contributions will be forwarded to Birdwise which is the brand name of the SAMM Board that is made up of a partnership of local authorities, developers and environmental organisations.
30. Although the Council mentions that a standard form relating to a Unilateral Undertaking planning obligation for the financial contribution was sent to the appellant, and I understand that the appellant has previously indicated a willingness to pay, the Council has confirmed that the requisite sum has not been paid.
31. The government's Planning Practice Guidance indicates that any measures used to inform the decision about the effects on integrity need to be sufficiently secured and likely to work in practice. A high degree of assurance is required if the provisions of the Conservation of Habitats and Species Regulations are to be met. This would normally be done by means of a planning obligation.
32. In the absence of the said contribution towards the interests of mitigation I have concluded that the development has the potential to adversely affect the integrity of the SPA, and this would be in conflict with LP policy DM28 which reflects the Regulations and seeks to conserve and enhance biodiversity generally.

*Other Considerations.*

*Housing supply*

33. The Council, at the time its case report was written, indicates it could not currently demonstrate a 5 year housing land supply and, therefore paragraph 11d of the National Planning Policy Framework (the Framework) is triggered. I have seen no subsequent evidence otherwise in relation to this appeal but, even so, the absence of any mitigation secured against resultant ecological harm to the SPA must override even if a 5 year supply could now be demonstrated.

*Human Rights Act*

34. Article 8 of the European Convention on Human Rights, enshrined in UK law through the Human Rights Act 1998, provides that everyone has the right to respect for his private and family life, his home and correspondence. In this regard there shall be no interference by a public authority with the exercise of this

Appeal Decisions APP/V2255/C/22/3299109 & APP/V2255/W/22/3293558

---

right except such as is in accordance with the law and which is necessary, amongst other things, for the protection of the rights and freedoms of others.

35. Accordingly, if Article 8 is engaged, then interference with those rights can be justified by the Council if it is a legitimate aim, in accordance with the law and necessary in the public interest.
36. Personal circumstances are themselves capable of being a material consideration in a planning case and this is well established in law. In this particular instance, whilst I have taken into account relevant policies which, in the main, would guard against the development, I consider that the displacement of Mr Hannan from this very modest development, which is his sole residence, would result in him being made homeless and thereby suffering a significant degree of hardship.
37. Given the rather low key nature of occupation I afford the appellant's personal circumstances as carrying significant weight.

#### Planning Balance

38. I have found no harm in relation to three of the four main issues I have identified. I also have concerns that the appellant would stand to lose his home. However, he does not benefit from any special dispensation giving exemption from the said necessary financial contribution. He has indicated a willingness to pay this but has not followed it up.
39. There is no mechanism available to me to secure this and thereby, were I to allow the appeal, I could not make any planning permission dependant on the said contribution. In the circumstances, I cannot allow this appeal. This does leave the door open to the appellant making a new planning application to the Council which, if approved, would override the requirements of the upheld enforcement notice, for which full compliance is required within six months from the date of this decision.
40. As mentioned, it would be open to the Council to consider a personal permission given the circumstances and the opportunity would also arise to control the site's layout. Nonetheless, these are matters for negotiation between the two main parties and the onus, in the first instance, is on the appellant, otherwise, the requirements of the enforcement notice should be met to avoid the possibility of prosecution.

#### Conclusion

41. For the reasons given above, and having had regard to all matters raised, I conclude that Appeal A should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.
42. Appeal B is dismissed for the same reasons.

*Timothy C King*

INSPECTOR



---

## Appeal Decision

Site visit made on 19 January 2024

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

an Inspector appointed by the Secretary of State

**Decision date: 11<sup>th</sup> March 2024**

---

**Appeal Ref: APP/V2255/W/23/3319145**

**Bounds Farm, Land to rear of 142-146, The Street, Boughton under Bleau, Faversham ME13 9AP**

- 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 N Tillings (NST Kent Ltd) against the decision of Swale Borough Council.
  - The application Ref 22/504144/FULL, dated 23 August 2022, was refused by notice dated 13 October 2022.
  - The development proposed is the conversion of an agricultural unit into a 1 x 3 bedroom dwelling.
- 

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The Boughton and Dunkirk Neighbourhood Plan 2022-2031 'Made version: February 2023' ("the NP") is now part of the development plan. The main parties have provided comments on the relevance of the NP to this appeal. Therefore, I am satisfied that they would not be unfairly prejudiced by me taking account of the NP in determining this appeal.
3. The Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023. There are no material changes relevant to the substance of this appeal and therefore I am satisfied that no one will be prejudiced by the changes to the national policy context. All references to the Framework in this decision relate to the revised document.

### Main Issues

4. The Officer Report states that the appeal site lies within the 6-kilometre (km) zone of influence of The Swale Special Protection Area ("the SPA"), which is protected as a European site of nature conservation importance and subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 as amended ("the regulations").
5. The appeal proposal has the potential to adversely affect the nature conservation interests of the SPA and I, as competent authority as set out in the regulations, must consider this as part of my decision. Therefore, I have included this amongst my main issues, which are:
  - Whether the proposed development would affect the integrity of the SPA as a protected European site of nature conservation importance.

---

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

Appeal Decision APP/V2255/W/23/3319145

---

- The effect of the proposal on employment provision and community facilities within the area.
- The effect on the character and appearance of the area, and whether it would preserve or enhance the character or appearance of the Boughton Street Conservation Area (“the CA”) and whether it would preserve the settings of the grade II listed buildings at Numbers 128 and 130, 132 and 134, and 142 The Street.
- Whether the proposed dwelling would be in an appropriate location for new housing with particular regard to the Council’s settlement strategy and the accessibility of services and facilities.
- Whether parking provision would be adequate.

### Reasons

*Protected European site of nature conservation importance.*

6. The Bird Wise North Kent Mitigation Strategy, January 2018 (“the BWNKMS”), identifies the SPA as one of three SPAs on this part of the Kent coast. These consist of mudflats, reedbeds, saltmarsh and grazing marsh, which are rich and diverse ecosystems that provide food and high tide roosts for waders and wildfowl. The SPA is internationally significant for supporting large numbers of birds - wildfowl, waders and terns - that overwinter or breed there.
7. The main threat to the nature conservation interests of the SPA, and thus its integrity is the disturbance of birds by the presence of people, particularly recreational walkers and when dogs are walked off the lead. Disturbance to the bird species reduces their ability to feed and rest, decreasing energy levels and harming their chances of migrating and surviving. In the specific case of terns, disturbance reduces the incubation period, lowering the probability of successful breeding. Due to disturbance, the number of birds using the three SPAs has declined markedly.
8. The evidence indicates that development within 6km of the access points to the SPA is particularly likely to increase the number of visitors using it for recreation. Future residents of the proposed development therefore have the potential to contribute to the negative effects of recreational disturbance to the qualifying bird species in the SPA, and the resultant decline in their numbers, thus threatening the SPA’s integrity.
9. The appeal proposal is therefore likely to have a significant adverse effect on the integrity of the SPA, both in isolation and cumulatively with other housing development. As the competent authority, I must undertake an Appropriate Assessment (AA) and consider whether measures could be put in place to avoid or mitigate its likely adverse effect on the SPA, with the aim of maintaining or restoring, at favourable conservation status, the natural habitats and species of the SPA.
10. To mitigate the potential adverse in-combination effects of new housing development and visitor pressure on the qualifying bird species within the SPA, the BWNKMS requires new residential development to make payment of a tariff-based financial contribution towards the delivery of a Strategic Access Management and Monitoring Strategy (“the SAMMS”).



Appeal Decision APP/V2255/W/23/3319145

---

11. The measures in the SAMMS that will be implemented to mitigate the potential in-combination effects of new housing development in the vicinity of the SPAs, include raising awareness of the issue of disturbance to the qualifying bird species through a range of methods, including a website, printed materials, and face-to-face contact through the employment of a seasonal Ranger. Access and infrastructure enhancements are also proposed, including improved signage and interpretation boards, screening of sensitive areas, footpath diversions, reviewing parking facilities and potentially dedicated dog exercise areas. The success of the SAMMS will be monitored and deemed successful if the level of bird disturbance is not increased.
12. There is no mechanism before me to secure payment of the requisite financial contribution towards mitigating the recreational impacts of the proposed development on the SPA. The Planning Practice Guidance<sup>1</sup>, states that in exceptional circumstances a negatively worded condition could be imposed requiring a planning obligation to be entered into before certain development can commence. However, the evidence before me does not demonstrate any exceptional circumstances that would justify imposing such a planning condition.
13. Consequently, I conclude through my AA that the appeal proposal would have a significant adverse effect on the integrity of the SPA. No alternative solutions, imperative reasons of overriding public interest and no other compensatory measures have been put forward. As a result, the proposal is contrary to Policy CP7 of the Swale Borough Local Plan – Bearing Fruits 2031 (Adopted July 2017) (“the LP”). This Policy states that residential development within 6km of an access point to any of the North Kent Marshes, must contribute to its SAMMS and ensure there is no adverse effect on the integrity of a SPA.

*Employment provision and community facilities*

14. LP Policy DM3 states that planning permission will not be permitted where this would reduce the potential for rural employment and/or community facilities unless the site/building is demonstrated as having no demand for such purposes or its use would be undesirable or unsuitable. The Policy therefore gives priority to these uses over residential use in the first instance, and the Policy’s supporting text states that evidence of demand should include the results of efforts made to market the building as available for employment use, normally with a planning permission. There is no evidence to suggest the appeal building has been marketed for the purposes in LP Policy DM3.
15. The appeal building is relatively modest in size and floor space. It shares a party wall with an existing dwelling, which is likely to preclude its reuse for purposes generating relatively high levels of noise and disturbance, and may be expected to narrow the range of suitable uses. However, the extant use of the appeal building would have generated a level of noise and disturbance commensurate with that use, and it establishes a baseline from which to assess the effects of alternative uses of the building.
16. In this context, I have limited substantive evidence that many or all the uses prioritised by LP Policy DM3, would be harmful to the living conditions of nearby residential occupiers. As such, I am not convinced that the potential effects on nearby residential occupiers would necessarily preclude use of the

---

<sup>1</sup> Paragraph: 010 Reference ID: 21a-010-20190723

Appeal Decision APP/V2255/W/23/3319145

---

building for those uses prioritised by Policy DM3, such that they would be undesirable or unsuitable.

17. There can be no certainty that marketing would find an occupier of the building for the purposes prioritised by LP Policy DM3. Nonetheless, marketing would establish whether market demand exists based on factors including the specific attributes and constraints of the building and its site, which would include its surroundings and the attached dwelling.
18. Taking all these factors into consideration, in the absence of marketing evidence, I conclude that the loss of a relatively small amount of floor space for the uses prioritised by LP Policy DM3, would have a limited but negative effect on the rural economy and community vitality. As such, it would be contrary to the elements of Policies ST1 and DM3, which support a prosperous rural economy and prioritise re-use of rural buildings for rural employment and/or community facilities.

*Character and appearance, the CA and listed buildings*

19. Based on my observations at my site visit and the Boughton Street Conservation Area Character Appraisal and Management Strategy, Adoption Version June 2019 ("the CACA"), the character, appearance and significance of the CA is derived from the tight-knit rows of buildings, mostly of some age and of varied architectural styles, that are set close to the historic road as it runs through the village. This relatively narrow and generally linear pattern of settlement, combined with the topography of the area and the views out towards the countryside that it provides, gives a sense of the village being imbedded within a wider rural landscape.
20. The appeal property was formerly a poultry shed and remains in agricultural use. It is contained within a low-rise single storey building, the remainder of which has now been converted to residential dwellings under Part 3, Class Q of The Town and Country Planning (General Permitted Development) (England) Order 2015, with the insertion of window and door openings in its walls, parking areas and rear gardens enclosed by fencing.
21. This building is set on elevated ground behind the row of dwellings that front The Street. The openness of the land around the appeal building, and between it and the buildings fronting The Street, is appreciable in relatively localised views from the nearby public footpath, nearby properties and potentially in glimpse views from The Street through gaps between buildings. It contributes positively to the character and appearance of the countryside and to the rural setting of the village and the setting of the CA. Although not located within a designated area of high landscape value in the LP, the Council's evidence indicates that the appeal site is in a highly sensitive landscape.
22. The insertion of windows and doors into the walls of the appeal building and the accumulation of domestic paraphernalia in the garden, and parked vehicles to the front, would reflect the established residential character and appearance of the building converted to dwellings. The proposed fencing around the garden would replicate the alignment of those adjacent residential gardens which are enclosed by fencing. The use of the garden would not, in relation to those nearby gardens, materially harm the relative tranquillity of the environment.

Appeal Decision APP/V2255/W/23/3319145

---

23. Experienced in this context, the appeal proposal would not be visually incongruous or intrusive, and its garden would constitute a very modest encroachment into the large and open field in those aforementioned views. Set well back from the closest buildings fronting The Street, and separated from them and the CA by the large open field, I find that the landscape setting of the village, and views into and out of the CA, and the setting of the CA, would not be harmed by the appeal proposal. For these reasons, the appeal proposal would comply with the objectives of the CACA, which seek to protect the landscape around the CA and its visual relationship between the historic built environment and its rural setting.
24. A number of listed buildings front The Street in the area of the appeal site. List descriptions for the Grade II listed building (Number 142), which is the closest to the appeal site, and for the Grade II listed buildings (Numbers 128-130, and 132-134) which are set further away to the east have been provided. The special heritage interest and significance of these listed buildings would appear to be derived principally from their respective ages and their architectural qualities and traditional materials in the historic street scene.
25. Number 142 is a substantial high status period house with a formal symmetry to its façade, elaborate door casement and front garden enclosed by railings. There is evidence of a historic relationship between it and the farm on the appeal land, which were subdivided many years ago. Numbers 128-130 and 132-134 have group value as a row of modest houses dating back to the sixteenth and eighteenth centuries, the former built from a timber frame with a plain tiled and pantile roof, which has architectural and historic interest. I am required by s66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 ("the Act"), to pay special attention, and have regard to, the desirability of preserving the setting of listed buildings.
26. There would be intervisibility between the appeal proposal and the listed buildings. This would be experienced in private views from those buildings and in public views from the nearby footpaths. In these views the building containing the proposed dwelling, its rear garden fence and any accumulated paraphernalia, would be seen in the context of the backs of the tight-knit rows of buildings fronting The Street, including the aforementioned listed buildings.
27. However, the proposed development would not change the scale and form of the appeal building, and the garden fencing, paraphernalia, and domestication would be modest in scale. Moreover, these elements would be seen in the context of the existing residential dwellings within the former poultry building, including their gardens, and would be separated from the listed buildings at Numbers 142, 132-134 and 128-130, by generous distances with significant open land in between. As such, I find that the appeal proposal would not harmfully impinge on the settings of the listed buildings. As such, their significance as designated heritage assets would be preserved and not harmed.
28. The appeal property is not an existing dwelling and therefore it has no garden of its own to extend. As such, LP Policy DM13, which seeks to ensure that proposals to extend gardens do not cause harm is not determinative to my consideration of this main issue.
29. I therefore conclude on this issue that the appeal proposal would not harm the character and appearance of the area, or views into or out of the CA, or its setting, and it would preserve the settings of the aforementioned listed

---

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

5

Appeal Decision APP/V2255/W/23/3319145

---

buildings. The appeal proposal would therefore accord with the Act and Policies ST1, ST3, CP8, DM14, DM32 and DM33 of the LP, and Policies H5, E1 and E2 of the NP, insofar as they seek to ensure that development reflects the positive characteristics and features of the site and locality, and protects the intrinsic character and beauty of the countryside, the setting of, or views into and out of a Conservation Area, and preserves the significance of designated heritage assets, including the settings of listed buildings.

30. In terms of the Framework, the proposal would cause no visual harm and would be sympathetic to the surrounding built environment and landscape setting, and would protect the intrinsic character and beauty of the countryside, consistent with Paragraphs 135 and 180. There would be no conflict with the Framework Chapter 16 insofar as the significance of the designated heritage assets would not be harmed.

*Whether an appropriate location for housing*

31. The building lies outside of the defined built-up boundary of the village and in the open countryside for planning purposes. The settlement strategy in LP Policy ST3 does not permit development in the open countryside unless supported by national planning policy and able to demonstrate that it would contribute to protecting and where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities. LP Policies ST1 and CP3, and NP Policies H1 and T2 require compliance with the settlement strategy for the Borough in LP Policy ST3, and therefore have a circular relationship with this Policy.
32. For the reasons given above, the appeal proposal would protect the intrinsic value and beauty of the countryside, and the landscape character and setting of the village. Along with the recently completed houses within the converted agricultural building of which it forms part, the proposed dwelling would be set in relatively close proximity to the defined built-up area of the settlement and nearby buildings. As such, it would not be physically separate or remote from the settlement, and therefore it would not constitute an isolated home in the countryside for the purposes of Framework Paragraph 84.
33. Despite the acknowledged (in LP Policy ST3) need to travel to other larger settlements for major shopping, leisure and employment needs, and also to reach secondary education, the appeal site is within a reasonable walking distance of most of the village's services. There is a village shop, public house, primary school, pre-school and Church within a relatively short walk of the appeal site. The evidence suggests there is a frequent bus service that reaches the nearby towns of Faversham and Canterbury in 20-25 minutes from the bus stops along 'The Street'. Future residents would therefore have reasonable access to the facilities and services within the village that are likely to be visited frequently, and to public transport provision to larger settlements. As such, they would have a choice of travel modes and would not be solely dependent on the private car to meet normal everyday needs.
34. The proposal would make a modest contribution towards meeting housing needs within the Borough for which there is currently a shortfall against the housing requirement. Future occupiers would use facilities and services within the village, thus benefiting the social and economic health of the community. The appeal proposal would therefore be supported by Framework Paragraphs 82 and 83, which require planning decisions to support housing in rural areas

---

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

6

Appeal Decision APP/V2255/W/23/3319145

---

that reflects local needs and locate housing where it will enhance or maintain the vitality of rural communities. Furthermore, it would protect the intrinsic character and beauty of the countryside, and landscape setting of the village, consistent with Framework Paragraph 180.

35. Whilst situated beyond the defined built-up area boundary of the village, the appeal proposal would be supported by national planning policy as required by LP Policy ST3 and it would accord with certain elements of LP Policies ST1 and ST3, insofar as they seek to steer housing to defined settlements, including Rural Local Service Centres, where homes could support rural services and keep vitality within rural communities, including on windfall sites.
36. Taking all the above into account, I conclude on this issue that the proposed dwelling would be in an appropriate location for new housing with particular regard to the Council's settlement strategy and the accessibility of services and facilities. As such, it would be consistent with LP Policies ST1, ST3 and CP3, and NP Policies H1 and T2 insofar as they require compliance with the settlement strategy for the Borough.

#### *Parking provision*

37. The Swale Borough Council Parking Standards, May 2020, recommend that 3 parking spaces are provided for the proposed development given its rural location. However, there is limited substantive evidence before me that the provision of 2 spaces would cause any adverse effects and there would likely be land available on the site access to accommodate for overspill parking. Furthermore, facilities and services in the village would be reasonably accessible from the site by walking and cycling. For these reasons, parking provision for the proposed development would be adequate and as such the proposal would be consistent with LP Policy DM7 and NP Policies T3 and H8, which incorporate the Borough's Parking Standards and require dedicated on-site parking.

#### **Other Matters**

38. It is indicated that the Council's assessment of the appeal site as part of its wider Housing Land Availability Assessment (HLAA) found it to be suitable for housing delivery and in a sustainable location. Given that I have also found the appeal building to be in a suitable location for housing, as a matter of principle, the HLAA would not alter my conclusions on the main issues.
39. The proposed conversion to a dwelling and its occupation would generate short-term employment opportunities and economic activity, together with long-term economic and social benefits through the new resident household supporting businesses and services within the area. The dwelling could be delivered quickly given the extent of the proposed conversion works. A net gain in biodiversity could be secured on-site by a planning condition. These benefits weigh modestly in its favour. An absence of harm to the character and appearance of the area and to the significance of the designated heritage assets is neutral and weighs neither in favour nor against the development.

#### **Planning Balance**

40. Section 38(6) of the Planning and Compulsory Purchase Act 2004, requires applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

---

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

7

Appeal Decision APP/V2255/W/23/3319145

---

41. In the context of the development plan, I have found through my AA that the proposal would conflict with LP Policy CP7, insofar as it would have a significant adverse effect on the integrity of the SPA as a designated European site. Having regard to my duties under the regulations, I attach substantial weight to this policy conflict. There would also be conflict with LP Policy DM3 as the proposal would result in the loss of a building that could otherwise have been used for the purposes prioritised by this Policy. This would result in a potentially limited but negative effect on the rural economy and community vitality, contrary to the part of LP Policy ST1 which supports a prosperous rural economy.
42. The proposal would be in an appropriate location for new housing, and it would deliver economic, social and environmental benefits. As such, it would be consistent with LP Policies ST1, ST3 and CP3, and NP Policies H1 and T2, insofar as it would be supported by national planning policy in locational terms, and would contribute to protecting the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.
43. The Council cannot currently demonstrate a 5-year supply of deliverable housing sites and the proposal would make a modest but valuable contribution to boosting housing supply in the Borough and meeting housing needs. The need for housing is immediate and the proposed conversion could be delivered quickly. However, even taking account of the shortfall against the housing requirement, the collective benefits of the appeal proposal attract moderate weight in its favour, insufficient to outweigh the conflict with LP Policies CP7, DM3 and ST1.
44. For these reasons, I find that the appeal proposal would conflict with the development plan when read as a whole and I give substantial weight to the totality of this conflict.
45. The Framework is a material consideration. Under Footnote 7 to Paragraph 11.d)i. of the Framework, the appeal proposal's adverse effect on the integrity of the SPA as a protected European site of nature conservation importance would provide a clear reason for refusing to grant planning permission to the appeal proposal. Therefore, the proposal does not benefit from the Framework's presumption in favour of sustainable development.

### **Conclusion**

46. For the reasons given above and having considered all matters raised, I conclude that the proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight, including the benefits of the proposal and the provisions of the Framework, to indicate that a decision should be made other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

*G Sylvester*

INSPECTOR



---

## Appeal Decision

Site visit made on 19 January 2024

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

an Inspector appointed by the Secretary of State

**Decision date: 12<sup>th</sup> March 2024**

---

**Appeal Ref: APP/V2255/W/23/3321359**

**School Lane Farm, School Lane, Iwade, Kent ME9 8SG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr and Mrs Gibbard against the decision of Swale Borough Council.
  - The application Ref 22/505438/FULL, dated 15 November 2022, was refused by notice dated 20 April 2023.
  - The development proposed is the conversion of a redundant agricultural building to one dwelling.
- 

### Decision

1. The appeal is allowed and planning permission is granted for the conversion of a redundant agricultural building to one dwelling at School Lane Farm, School Lane, Iwade, Kent ME9 8SG in accordance with the terms of the application, Ref 22/505438/FULL, dated 15 November 2022, subject to the conditions in the attached schedule.

### Procedural Matters

2. The appeal site lies within the zone of influence of The Swale, Medway Estuary and Marshes, and Thames Estuary Special Protection Areas (SPAs) and Ramsar sites. These sites are protected as European sites of nature conservation importance and subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 as amended ("the regulations"). The appellants have paid the requisite financial contribution to the Council to mitigate any adverse impacts of the appeal development on the European sites. Therefore, the Council has withdrawn its second reason for refusal. I will return to this matter later in my decision.
3. The Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023. There are no material changes relevant to the substance of this appeal and therefore I am satisfied that no one would be prejudiced by the changes to the national policy context. All references to the Framework in this decision relate to the revised document.

### Main Issues

4. The main issues are:
  - The effect of the proposal on employment provision and community facilities within the area.
  - The effect of the proposed dwelling on the character and appearance of the area.

---

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

Appeal Decision APP/V2255/W/23/3321359

---

- Whether the proposed dwelling would be in an appropriate location for new housing with particular regard to the Council's settlement strategy and the accessibility of services and facilities.
- Whether the proposed development would affect the integrity of the SPAs as protected European sites of nature conservation importance.

### Reasons

#### *Employment provision and community facilities*

5. Policy DM3 of the Swale Borough Local Plan – Bearing Fruits 2031 (Adopted July 2017) ("the LP"), states that planning permission will not be permitted where this would reduce the potential for rural employment and/or community facilities unless the site/building is demonstrated as having no demand for such purposes or its use would be undesirable or unsuitable.
6. The Policy's supporting text identifies that the rural areas in Swale are generators of wealth, and that the development of the rural economy is affected by limited availability of land. The Employment Land Review dated 2018, indicates demand across the rural area for employment floor space.
7. LP Policy DM3 therefore gives priority to the re-use of rural buildings for employment and/or community facilities over residential use in the first instance. The Policy's supporting text states that evidence of demand for the prioritised uses should include the results of efforts made to market the building, normally with a planning permission.
8. The appeal building is reasonably large and stands within relatively spacious grounds close to residential properties. From my inspection and the evidence before me, it appeared to be in a good state of repair, save for some missing cladding, and eminently capable of reuse and conversion. It has not been marketed to test the demand for re-use for the purposes prioritised by LP Policy DM3.
9. The extant agricultural use of the appeal site would be expected to generate a level of noise and disturbance commensurate with that use. This could potentially have occurred during the early mornings and late evenings, and at the weekends when nearby occupiers of residential properties are most likely to be enjoying their dwellings and gardens. I have not been referred to any complaints to the Council that use of the appeal site has caused harm to the living conditions of those nearby occupiers.
10. Some uses of the appeal building, such as those generating high levels of noise and disturbance, would be likely to be unsuitable given the appeal site's proximity to residential properties. However, LP Policy DM3 does not define the term rural employment and envisages that it could include a variety of businesses that can be successfully accommodated within a rural area. As such, rural employment would not necessarily be limited to noisy uses, undesirable and unsuitable in an area close to housing. In this context, I am not convinced on the evidence before me that the potential effects of employment and/or community uses of the building would necessarily harm the living conditions of nearby occupiers.
11. In terms of accessibility, the hard-core access track to the property is straight in its alignment and flanked by grass strips on both sides for most of its length.

---

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

2



Appeal Decision APP/V2255/W/23/3321359

---

It appeared to be relatively wide, and I have no reasons to doubt that it would not have been sufficient to accommodate the machinery and vehicles associated with the extant use. I have no substantive evidence to demonstrate that the width of the access track, including its junction with the highway, would be so restricted as to prevent large vehicles, including commercial vehicles, from accessing the appeal site and building.

12. Taking account of all these factors, I conclude on this issue that in the absence of marketing evidence the appellant has failed to demonstrate that there is no demand for the building for the uses prioritised by LP Policy DM3, or that those uses of the building would be undesirable or unsuitable. Whilst there is no certainty that marketing the building would necessarily lead to its re-use for these purposes, its conversion to housing would nonetheless have a negative effect on the rural economy and community vitality, contrary to the elements of LP Policies ST1 and DM3, which support a prosperous rural economy.

#### *Character and appearance*

13. On the approach from School Lane, the edge of the built-up area of the village is defined by closely spaced dwellings set adjacent to open fields. The boundary between settlement and countryside is therefore clearly defined, with a somewhat sudden change of character between them. Although set outside of the defined built-up area boundary of the village, the appeal site, including the access track which is shared with a number of dwellings, adjoins the built-up area of the village. The appeal building, which is set well back into the site from the road, is viewed with several dwellings of varying sizes, styles and materials, and is visually well related to the built-up area of the village and reads as part of it. As such, there is a clear distinction between the appeal building and the open fields to the north and west, which are discernibly countryside in character with open fields devoid of buildings.
14. The appearance of the appeal proposal would blend the form of the agricultural building, featuring a shallow pitched roof and asymmetric roof form, with the domestic window and door openings necessary for habitation. As such, its appearance would be different to most of the nearby dwellings which tend to have steeply pitched roofs and smaller consistently sized window openings. However, the nearby dwellings are not of uniform appearances and vary in scale, form and materials. They include relatively large brick built two storey dwellings, with gabled and hipped roof forms, and a single storey bungalow with timber clad walls set close to the appeal site access, and arranged in an irregular pattern. In the context of this variety of buildings, the appearance of the proposed dwelling would relate satisfactorily to those nearby.
15. The appeal building is set back from the road by a considerable distance, with the rear garden area set further from the road and behind it. Seen in the context of the nearby dwellings and across these distances, neither the proposed dwelling nor the likely accumulation of domestic paraphernalia in the garden area, or to the front of the building, would be out of keeping with the character and appearance of the area. Furthermore, the appeal proposal would not encroach onto the adjacent open fields which are readily identifiable as open countryside.
16. I conclude on this issue that the proposal would not harm the character and appearance of the area. As such, it would accord with LP Policies ST1, ST3, CP3, CP4 and DM14, insofar as they seek to ensure that the design,

---

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

3

Appeal Decision APP/V2255/W/23/3321359

---

appearance and detail of a development is sympathetic and appropriate to the positive characteristics and features of the site and locality, protects the intrinsic character and beauty of the countryside.

17. The proposal would also be consistent with Framework Paragraphs 135 and 180, insofar as it would be sympathetic to the surrounding built environment and landscape setting, and would protect the intrinsic character and beauty of the countryside.

*Whether an appropriate location for housing*

18. The building lies outside of the defined built-up boundary of Iwade and in the open countryside for planning purposes. The settlement strategy in LP Policy ST3 does not permit development in the open countryside unless supported by national planning policy and able to demonstrate that it would contribute to protecting and where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.
19. I have found that the appeal proposal would protect the intrinsic character and beauty of the countryside, and the setting of the village. Set close to the dwellings to the east, which are situated within the defined built-up area of Iwade, the proposed dwelling would be well related to the settlement and not physically separate or remote from it. As such, it would not constitute an isolated home in the countryside for the purposes of Framework Paragraph 84.
20. The evidence indicates that the proposed dwelling would be within a 10-minute walk of services and facilities, including a convenience store, doctors surgery and primary school. Although there is no footway along a short stretch of School Lane between the appeal site and the junction with Holly Blue Drive, this route is lit by streetlights and there are grass verges and hard surfaced driveways in places, along with traffic calming measures, to provide a refuge from passing vehicles. I observed low traffic flows along School Lane during my site visit. The absence of a relatively short length of footpath is unlikely, in this context, to deter most people from walking into the village. Future residents would therefore have reasonable access to a range of facilities and services within the village that are likely to be visited frequently, and would not be solely dependent on the private car.
21. The proposal would make a modest contribution towards meet housing needs within the Borough for which there is currently a shortfall against the housing requirement. Future occupiers would use facilities and services within the village, thus benefiting the social and economic health of the community. The appeal proposal would therefore be supported by Framework Paragraphs 82 and 83, which require planning decisions to support housing in rural areas that reflects local needs and enhances or maintains the vitality of rural communities. Furthermore, it would protect the intrinsic character and beauty of the countryside, consistent with Framework Paragraph 180.
22. Although situated beyond defined built-up area boundary of the village, the appeal proposal would, for the reasons given above, be supported by national planning policy as required by LP Policy ST3 for locations in the open countryside. It would also accord with certain elements of LP Policies ST1 and ST3, insofar as they seek to steer housing to defined settlements, including

Appeal Decision APP/V2255/W/23/3321359

---

Rural Local Service Centres, where homes could support rural services and keep vitality within rural communities, including on windfall sites.

23. Taking all the above into account, I conclude on this issue that the proposed dwelling would be in an appropriate location for housing with particular regard to the Council's settlement strategy, and the accessibility of services and facilities. As such, it would be consistent with LP Policies ST1, ST3 and CP3, insofar as they require compliance with the settlement strategy for the Borough.

*Protected European sites of nature conservation importance.*

24. The appeal site lies within the 6-kilometre (km) zone of influence of the SPAs, which are protected as European sites of nature conservation importance and subject to statutory protection under the regulations. The Bird Wise North Kent Mitigation Strategy January 2018 (the BWNKMS) identifies that the three SPAs include mudflats, reedbeds, saltmarsh and grazing marsh, which are rich and diverse ecosystems that provide food and high tide roosts for waders and wildfowl. The SPAs are internationally significant for supporting large numbers of wildfowl, waders and terns that overwinter or breed there.
25. The main threat to the integrity of the SPAs is the disturbance of birds by the presence of people, particularly walkers and when dogs are walked off the lead. Disturbance reduces their ability to feed and rest, and thus decreases their chances of migration and survival. It also reduces the incubation period for terns, lowering their breeding success. The number of birds using the three SPAs has declined markedly due to disturbance, and in particular on the Medway at locations with the highest levels of access. Development within 6km of access points to the SPAs is particularly likely to lead to increased recreational visitors.
26. Consequently, the appeal proposal would increase the number of households within 6km of the SPAs and is therefore likely to increase the negative effects of recreational disturbance to the qualifying bird species, resulting in the decline in their numbers and threatening the integrity of the SPAs. As such it is likely to have a significant adverse effect on the integrity of the SPAs, both in isolation and cumulatively with other housing development.
27. LP Policies CP7 and DM28, state that a project specific Habitats Regulations Assessment must be carried out to ensure there are no likely significant effects upon any European designated site. As the competent authority, I must undertake an Appropriate Assessment (AA) and consider whether measures could be put in place to avoid or mitigate its likely adverse effect on the SPAs, with the aim of maintaining or restoring, at favourable conservation status, the natural habitats and species of the SPAs.
28. To mitigate the potential adverse in-combination effects of new housing development and visitor pressure on the qualifying bird species within the SPAs, the BWNKMS requires new residential development to make a tariff-based financial contribution towards the delivery of a Strategic Access Management and Monitoring Strategy ("the SAMMS"). The measures in the SAMMS include raising awareness of the issue of disturbance to the qualifying bird species through a range of methods, including a website, printed materials, and face-to-face contact through the employment of a seasonal Ranger. Access and infrastructure enhancements are also proposed, including

Appeal Decision APP/V2255/W/23/3321359

---

improved signage and interpretation boards, screening of sensitive areas, footpath diversions, reviewing parking facilities and potentially dedicated dog exercise areas. The success of the SAMMS will be monitored and deemed successful if the level of bird disturbance is not increased.

29. For smaller developments such as the appeal scheme, the Council has produced a SAMMS Mitigation Contribution Agreement in accordance with Section 111 of the Local Government Act 1972, Section 12 and Section 93 of the Local Government Act 2003, and Section 1 of the Localism Act 2011. The Council has confirmed that this agreement has been completed, signed and submitted by the appellants, and payment of the requisite tariff-based contribution towards the delivery of the SAMMS measures has been made.
30. Consultation with Natural England confirms that it is satisfied that the secured financial contribution would be effective in mitigating the recreational impacts of the development on the SPAs and avoiding adverse effects on their integrity. I conclude through my AA, that I am satisfied that delivery of the mitigation secured by the appellants' financial contribution, would ensure that the appeal proposal would not have an adverse effect on the integrity of the SPAs and Ramsar sites. Therefore, it would comply with LP Policies CP7 and DM28, the requirements of which are set out above.

#### **Other Matters**

31. On the evidence before me, I have no basis to consider that the proposal would not accord with the requirements set out in the letter from the Health and Safety Executive.

#### **Planning Balance**

32. Section 38(6) of the Planning and Compulsory Purchase Act 2004, requires applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
33. In the absence of evidence of marketing the building for the uses prioritised by LP Policy DM3, I have found that the proposal would have a negative effect on the rural economy and community vitality, contrary to this Policy, and the part of LP Policy ST1 which supports a prosperous rural economy. This weighs moderately against the proposal.
34. The proposed dwelling would be consistent with LP Policies ST1, ST3 and CP3, insofar as it would be supported by national planning policy, and would contribute to protecting the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities. It is in an appropriate location for new housing, and it would deliver economic, social and environmental benefits. The Council cannot currently demonstrate a 5-year supply of deliverable housing sites and the proposal would make a small but valuable contribution to boosting housing supply in the Borough and meeting housing needs. However, even taking account of the shortfall against the housing requirement, the collective benefits of the appeal proposal attract no more than moderate weight in its favour, given its scale.
35. In the scenario that the conflict with LP Policies DM3 and ST1 was to bring the proposal into conflict with the development plan as a whole, the presumption in favour of sustainable development in Paragraph 11.d) of the Framework would apply due to the housing land supply of 4.83 years in the Council's area. As a

---

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

6

Appeal Decision APP/V2255/W/23/3321359

---

consequence, planning permission for the proposed development should be granted unless, under Framework Paragraph 11.d)i., the application of the policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development or, under Framework Paragraph 11.d)ii., 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.

36. I have concluded through my AA that the proposal would have no significant adverse effects on the integrity of protected European nature conservation sites and therefore this would not provide a clear reason for refusing the development proposed. As such, Framework Paragraph 11.d)ii. would apply and planning permission should be granted unless any adverse impacts significantly and demonstrably outweigh the benefits of the development, when assessed against the policies in the Framework taken as a whole.
37. Converting the appeal building to a dwelling would prevent its reuse for employment and community uses. Even though marketing would not necessarily lead to re-use for those purposes, the loss of a relatively modest amount of potential employment floor space would nevertheless result in a modest degree of conflict with the Framework's encouragement of achieving a prosperous rural economy and this weighs against the proposal.
38. There would be compliance with Framework Paragraphs 82 to 84, insofar as the location of the proposed dwelling would not constitute an isolated home in the countryside, and it would be well related to the village of Iwade and accessible to the services and facilities therein. Occupation of the proposed dwelling would support services and facilities within the village and bring some modest social and economic benefits to the area, supporting the vitality of the village and the rural economy. Construction works, although limited to the conversion of the building, would also bring short-term economic benefits weighing positively in its favour.
39. The Council's housing land supply shortfall is relatively modest. However, the housing need is current, and the proposed dwelling would make a valuable contribution to boosting housing supply on a small site, which could be delivered quickly. As such it would accord with Framework Paragraphs 60 and 70, which sets the Government's objective of significantly boosting the supply of homes where needed, including on small sites. Given the importance of boosting supply, this weighs strongly in its favour.
40. For these reasons, I find that the proposal's adverse impacts would not significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies in the Framework taken as a whole. Consequently, the proposal constitutes the sustainable development for which the Framework indicates a presumption in favour of.
41. Although offered as a self-build dwelling, it would not be necessary to restrict the proposed dwelling in this way given the outcome of the planning balance referred to above.

### Conditions

42. The Council has suggested the imposition of a number of planning conditions in the event of the appeal being allowed, which I have considered in accordance

---

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

7

Appeal Decision APP/V2255/W/23/3321359

---

with the tests for imposing conditions set out in the Framework and the Planning Practice Guidance. Where necessary I have amended the wording of the suggested conditions to ensure compliance with the tests. In the interests of certainty of the planning permission granted, conditions are imposed to necessarily indicate the time limit for implementation and specify the approved plans.

43. A pre-commencement condition is necessary in the interests of public health to ensure that the site is investigated for potential land contamination.
44. Landscaping details are necessary to ensure that the development respects the character and appearance of the area.
45. To meet the objectives of LP Policy ST1 which promotes sustainable design and construction, and the efficient use of natural resources to meet the challenge of climate change, it is necessary to impose conditions securing measures the sustainable construction of the development and securing an electric vehicle charging point. I have simplified the condition to give the parties flexibility over the precise measures to be agreed when discharging the condition.
46. A condition is necessary to ensure that provision is made for car parking on the site to avoid parking on the highway.
47. In the interests of safeguarding the living conditions of nearby occupiers, a condition is necessary to control construction working hours.
48. External materials are specified on the approved drawings and the appeal proposal would be acceptable in visual terms. As such, securing further details of materials would be unnecessary.
49. I have not been made aware of a specific policy requiring water consumption to not exceed 110 litres per person per day. Therefore, this condition has not been demonstrated as necessary to make the development acceptable and I have not imposed it.
50. The justification for restricting permitted development rights within several classes of the GPDO is expressed in broad terms and refers to the setting of a listed building for which no details have been provided. As such, it does not amount to the clear justification necessary to demonstrate why such national rights should be restricted and therefore I have not imposed the suggested conditions.

### **Conclusion**

51. For the reasons given above and having considered all matters raised, I conclude that the material considerations are of sufficient weight to outweigh the conflict with LP Policies DM3 and ST1, and the development plan as a whole, and indicate that planning permission should be granted. As such, the appeal should be allowed.

*G Sylvester*

INSPECTOR

---

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

8

Appeal Decision APP/V2255/W/23/3321359

---

### Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 221132\_004 Rev A Proposed Site and Location Plan; 221132\_005 Rev A Proposed Floor Plan; 221132\_006 Rev A Proposed Elevations Coloured.
- 3) The development hereby permitted shall not commence until the following components of a scheme to deal with the risks associated with contamination of the site shall have been submitted to and approved in writing by the local planning authority:
  - (a) A preliminary risk assessment which has identified all previous uses; potential contaminants associated with those uses; a conceptual model of the site indicating sources, pathways and receptors, and potentially unacceptable risks arising from contamination at the site.
  - (b) A site investigation, based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
  - (c) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (b) giving full details of the remediation measures required and how they are to be undertaken. The RMS shall also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
  - (d) A Closure Report shall be submitted upon completion of the works including full verification details as set out in (c). 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 shall be agreed in writing by the local planning authority. The scheme shall thereafter be implemented as approved.
- 4) No development above ground floor slab level shall take place until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. The landscaping works shall be carried out in accordance with the approved details prior to the occupation of the dwelling or in accordance with an implementation programme to be submitted to and agreed in writing by the local planning authority. Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the local planning authority, and within whatever planting season is agreed.

Appeal Decision APP/V2255/W/23/3321359

---

- 5) No development above ground floor slab level shall take place until details demonstrating how the development would incorporate sustainable design and construction measures have been submitted to and approved in writing by the local planning authority. The dwelling shall not be occupied until the approved measures have been provided and thereafter retained.
- 6) Prior to the occupation of the dwelling hereby permitted, a scheme for the provision of an electric vehicle charging point shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented prior to the first occupation of the development hereby approved and thereafter retained.
- 7) The vehicle parking and manoeuvring space, and access thereto shall be provided in accordance with the approved drawings before first occupation of the dwelling and thereafter kept available for the parking and manoeuvring of vehicles, and used for no other purpose.
- 8) No demolition or construction works shall take place on the site other than between the hours of 08:00 to 18:00 Monday to Friday and 08:00 to 13:00 on Saturday, and not at all on Sundays, Public or Bank Holidays.

**End of schedule**