

Agenda

Extraordinary Planning Committee Meeting

Date: Tuesday, 26 November 2024

Time 7.00 pm

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

Membership:

Councillors Mike Baldock (Chair), Andy Booth, Hayden Brawn, Simon Clark, Kieran Golding, James Hunt, Elliott Jayes (Vice-Chair), Peter Marchington, Claire Martin, Ben J Martin, Richard Palmer, Julien Speed, Paul Stephen, Terry Thompson, Karen Watson, Tony Winckless and one vacancy.

Quorum = 6

Pages

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- (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.

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 or call 01795 417328) by noon on Monday 25 November 2024.

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

Issued on Monday, 18 November 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. To find out more about the work of this meeting, please visit www.swale.gov.uk

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

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SWALE BOROUGH COUNCIL

PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

26th November 2024

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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

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INDEX OF ITEMS FOR PLANNING COMMITTEE – 26th November 2024

- Minutes of last Planning Committee Meeting
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PART 2

2.1	22/502132/ADV	UPCHURCH	Christine House London Road
2.2	24/500439/HYBRID	FAVERSHAM	Land adjacent to Halke Cottage
2.3	24/502460/FULL	SITTINGBOURNE	34 Key Street Sittingbourne
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PART 5

5.1	24/500669/FULL	SITTINGBOURNE	8 Edynham Close
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5.5	23/503739/FULL	FAVERSHAM	102 Athelstan Road
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5.7	23/505029/FULL	EASTLING	Orchard View Eastling Road

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PLANNING COMMITTEE – 26th NOVEMBER 2024

PART 2

Report of the Head of Planning

PART 2

Applications for which **PERMISSION** is recommended

2.1 REFERENCE NO 22/502132/ADV		
PROPOSAL Advertisement Consent for internally illuminated fascia signage and internally illuminated totem signage.		
SITE LOCATION Christine House London Road Upchurch Kent ME8 8PT		
RECOMMENDATION Delegate to the Head of Planning to grant advertisement consent 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.		
APPLICATION TYPE Advertisement		
REASON FOR REFERRAL TO COMMITTEE The objection from Hartlip Parish Council is contrary to the Officer recommendation.		
CASE OFFICER Guy Martin		
WARD Bobbing, Iwade and Lower Halstow Ward	PARISH/TOWN COUNCIL Upchurch Parish Council	APPLICANT Solid Rock Holding Ltd AGENT Puffin Design Ltd
DATE REGISTERED 03.05.22	TARGET DATE 26.07.22	
BACKGROUND PAPERS AND INFORMATION: Documents referenced in report are as follows: - All drawings submitted: 1025_LOC_L001 Site Location Plan (uploaded 27.04.22) 1025_SITE_L001 Existing Site Layout Plan (uploaded 27.04.22) 1025_ELEV_L001 Existing External Elevations (uploaded 27.04.22) 1025_ELEV_L002 Proposed External Elevations (uploaded 27.04.22) 1025_LOC-LOO3 Proposed External Elevations Coloured (uploaded 27.04.22) 1025_ELEV_L004B Proposed Signage Details (uploaded 02.04.24) 1025_ELEV_LOO5A Photographs (uploaded 02.04.24) 1025-SITE_L002A Proposed Site Layout (uploaded 02.04.24) Additional Information (uploaded 02.04.24) The full suite of documents submitted pursuant to the above application are available via the link below: -		

<https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=RAZW6UTYG5W00>

1. SITE LOCATION AND DESCRIPTION

- 1.1 The site is located in the countryside with a commercial building sited upon it and sits within a cluster of commercial development along the A2, London Road. To the east and west of the site lies separate car dealerships, both of which possess a commercial character with a number of signs and advertisements, larger footprint buildings and substantial hardstanding areas to the front. Highway signage, telegraph poles and lighting columns are all within close proximity of the application site.

2. PLANNING HISTORY

- 2.1 20/503637/FULL: Application approved on 07.04.2021 for Change of use of auto showroom and workshop (Sui generis) to a banqueting hall, with food processing and distribution (Class D2 and B2), including the creation of a mezzanine floor and alterations to fenestration. Change of use of 2no. residential bungalows (C3) to guest accommodation (C1) associated with the banqueting hall, including the erection of a single storey rear extension and loft conversion, including 2no. rear dormers and installation of 4no. rooflights to front. Erection of a wedding gazebo to rear of bungalows.
- 2.2 19/504657/FULL: Planning permission refused on 14.02.2020 and then later allowed on appeal on 28.04.2021 for Change of use of auto showroom and workshop (Sui Generis) to a banqueting hall, including food processing and distribution (Class D2 and B2), including the creation of a mezzanine floor and alterations to fenestration. (Resubmission of 19/503293/FULL).
- 2.3 19/503293/FULL: Application refused on 11.09.2019 for Change of use of auto showroom and workshop (Sui Generis) to a banqueting hall, including food processing and distribution (Class D2 and B2), including the creation of a mezzanine floor and alterations to fenestration.
- 2.4 SW/06/0176: Advertisement consent permitted on 06.04.2006 for 1 internally illuminated fascia sign, 4 non-illuminated 'customer parking' signs, 1 non-illuminated 'test drive' sign and 1 non-illuminated 'entrance' panel and refused on 06.04.2006 for 1 internally illuminated totem sign (split decision).
- 2.5 SW/04/0600: Planning permission granted on 08.07.2004 for Extension to workshop and parts department.
- 2.6 SW/04/0404: Advertisement consent permitted on 25.05.2004 for four internally illuminated signs and 3 non illuminated signs to external areas.

3. PROPOSED DEVELOPMENT

3.1 This application seeks advertisement consent for three internally illuminated fascia signs and one internally illuminated totem sign. The detailed design and size of the signs is described below:-

- Fascia Sign (1) – Static internally illuminated aluminium fascia sign with the wording 'BeulahB Lounge'. Measuring 0.915m high with a width of 6.7m and a depth of 0.08m, located 3.73m above the ground on the northern elevation of the building illuminated to 495 cd/m². The advertisement comprises of an aluminium sign case with Perspex backed lettering. The text and background will comprise of white letters on an aubergine coloured background.
- Fascia Sign (2) – Static internally illuminated aluminium fascia sign with the wording 'Christine House'. Measuring 1.04m high x 1.93m wide and a depth of 0.08m, located 2.04m above the ground, illuminated to 495 cd/m² and located on the northern-western elevation of the building. The text and background will comprise of white letters on an aubergine coloured background.
- Fascia Sign (3) – Static internally illuminated aluminium fascia sign with the wording 'BeulahB Suite'. Measuring 0.915m high x 5.85m wide with a depth of 0.08m, located 3.7m above the ground, illuminated to 495 cd/m² on the northern elevation of the building. The materials comprise of an aluminium sign case with Perspex lettering. The text and background will comprise of white letters on an aubergine coloured background.
- Totem Sign (4) – Static internally illuminated aluminium totem sign to 495cd/m² illumination, with the wording 'Christine House'. Measuring 1.45m high with a width of 1.4m and a depth of 0.16m with the base of the advertisement 3.69m above ground level. The sign comprises of an aluminium case with Perspex lettering. The text and background will comprise of white letters on an aubergine coloured background. The sign would be located adjacent to the vehicular entrance to the site set back 7m from London Road.

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 In response to the first round of consultation Upchurch Parish Council objected to the application on the following grounds:

Comment	Report reference
Would be disappointed if there is harmful illumination in this countryside gap; harmful illumination should be avoided at all costs and there should be no illumination outside of trading hours.	See paragraphs 7.6 – 7.8

- 4.4 Hartlip Parish Council objected to the application on the following grounds: -

Comment	Report reference
Illumination in the countryside should be avoided at all costs and certainly should not be permitted outside working hours.	See paragraphs 7.6 – 7.8

- 4.5 In response to the second round of consultation Upchurch Parish Council responded setting out that they wished to withdraw their objection as a result of information regarding changes to lighting times; the positioning of the lights; light levels; and information regarding a nearby appeal.

- 4.6 In response to the second round of consultation, Hartlip Parish Council confirmed that their original objection as set out under paragraph 4.4 remains as their position.

5.0 REPRESENTATIONS

- 5.1 **Mid-Kent Environmental Health** – No objection provided that a condition ensures that the signs do not flash and the illumination levels within PLG05 are not exceeded.

- 5.2 **KCC Highways** – No objection subject to a condition requiring no flashing signage and that the luminance does not exceed the requirements of the Institution of Lighting Professionals 'Professional Lighting Guide 05: The Brightness of Illuminated Advertisements'.

- 5.3 **National Highways** – No objections.

6.0 DEVELOPMENT PLAN POLICIES

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

- CP4** Requiring good design
DM14 General development criteria
DM15 New shopfronts, signs and advertisements

6.2 **Supplementary Planning Guidance SPG:**

The Design of Shopfronts, Signs and Advertisements SPG

7.0 ASSESSMENT

7.1 This application is reported to the Committee because Hartlip Parish Council have objected to the proposal. As this is an application for advertisement consent, as set out in the Advertisement Regulations the only matters for consideration are as follows:

- Amenity
- Public safety

Impacts on Amenities

7.2 Policy DM15 of the Swale Borough Local Plan and the Design of Shopfronts, Signs and Advertisements SPG seek to ensure that advertisements respond positively to the character of a locality and minimise harm to amenity. Policy DM15 and the SPG advise that such development should respect the character of the surrounding area and should not be excessive in quantity.

7.3 The SPG also states that the Borough Council will not normally permit advertisements outside town centres, particularly in sensitive areas such as residential areas and open countryside.

7.4 Although the site lies in the countryside, the application site is comprised of a commercial use and is surrounded by other active business premises. Three out of the four proposed signs would be situated on the building itself (known as Christine House) set back from the road by 24 metres. Given the size of the building, which amounts to a total floor area of 1445.7 square metres, the fascia signs are proportionate, subservient and in keeping with the character of the building.

7.5 The totem sign would be located adjacent to the vehicular entrance to the site, set back from the A2, which is a primary distributor road in the Borough, at a distance of 7 metres. Given that only one sign is located in this part of the site, the proposals are considered to be in compliance with the SPG where it states, in paragraph 4.3, that roadside facilities should be kept to a minimum.

7.6 Turning to the illumination of the proposed signage, it is important to recognise that it was of concern to Hartlip Parish Council, who raised concerns around excessive illumination in the countryside. Given the commercial character of this cluster of development, and appropriate level of signage, together with their set back from the road, it is considered that the internal illumination would have an acceptable impact upon visual amenities of the area and be in keeping with the

character of the surrounding premises. A recent appeal decision, (ref. APP/V2255/Z/21/3282811) at the adjacent Suzuki garage allowed an illuminated totem sign where the Inspector noted that the advertisement would not have a harmful effect on the visual amenities of the area. These conclusions are relevant to the determination of this application, whereby both sites are of a similar commercial character.

- 7.7 The Institution of Lighting Professionals 'Professional Lighting Guide 05 states that advert signs up to 10m² within a rural location should have a maximum level of illuminance of 400 cdm², and in a suburban location should have a maximum level of illuminance of 600 cdm². An example of a rural location in the Guide is defined as a "Village or relatively dark outer suburban locations" whilst a suburban location is defined as "Small town centres or suburban locations." The site does not fall neatly into either category and as such the views of KCC Highways were sought in respect of this matter. KCC Highways commented that for these specific purposes the site falls within a suburban location. On the basis of the presence of the A2 distributor road with its associated lighting, and the presence of commercial premises both upon and surrounding the site it is considered that this assessment is reasonable. As a result, the proposed level of illumination at 495 cdm² is acceptable. The site is restricted in terms of its hours of use via the planning permission granted on appeal, as originally submitted under ref. 19/504657/FULL. As a result, a condition is recommended below to only allow the advertisements to be illuminated during these hours.
- 7.8 Consequently, the proposal is considered to have an acceptable impact on the street scene and would reflect the character of the surrounding cluster of development. As a result, it would not have a harmful impact on the visual amenity of the area meeting the objectives of the policies DM14 and DM15 of the Swale Local Plan 2017, the Design of Shopfronts, Signs and Advertisements SPG and the NPPF.

Living Conditions

- 7.9 The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers. Specifically, Local Plan 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.
- 7.10 The signs are illuminated and static. The SBC Environmental Health Team were consulted on the proposal and had no objections to the signage subject to the illumination being static. The closest residential property to the signs (known as 'Muriel') is located immediately to the east of the commercial building on the site although within the application site boundary. None of the fascia signs face towards this property and the totem sign is located approximately 26m away.

Given the static nature of the illumination and the position of the signs within the site, together with separation from residential premises, the proposed development would have an acceptable impact on living conditions of neighbouring occupiers and comply with policy DM14 of the Swale Local Plan 2017 and the NPPF.

Public Safety

- 7.11 When considering public safety, the impact of new proposed signage on the safe use and operation of any form of traffic or transport including the safety of pedestrians, must be taken into account.
- 7.12 The proposed signage would be set back from the public highway ensuring that it would not obstruct views. KCC Highways were consulted on the proposal and had no objections subject to the lighting not flashing and meeting the requirements of the Institute of Lighting Professionals guidance. As referred to above, KCC Highways confirmed that the site lay within a suburban location and that the proposed illumination levels are appropriate. Subject to safeguarding conditions securing maximum levels of illumination, the proposed development is considered to be acceptable in relation to public and highway safety.

Conclusion

- 7.13 The proposed development would have an acceptable impact on amenity and public safety which are the only two matters that can be considered. Consequently, it would comply with the requirements of policies DM14 and DM15 of the Swale Borough Local Plan 2017 and the Design of Shopfronts, Signs and Advertisements SPG. It is therefore considered that advertisement consent be granted.

Conditions

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

(4) Any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a condition that does not endanger the public.

(5) Where an advertisement is required under these Regulations to be removed, the site shall be left in a condition that does not endanger the public or impair visual amenity.

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

(6) The illumination of any sign hereby permitted shall not be of a flashing type.

Reason: In the interest of the highway safety and the amenities of the area.

(7) The maximum value of luminance of the advertisements hereby permitted must not exceed 495 cdm² (candelas per metre squared).

Reason: In the interest of the highway safety and the amenities of the area.

(8) The advertisements hereby approved shall only be illuminated between 8am – 1am Monday to Thursday and between 8am - 3am Friday to Sunday.

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

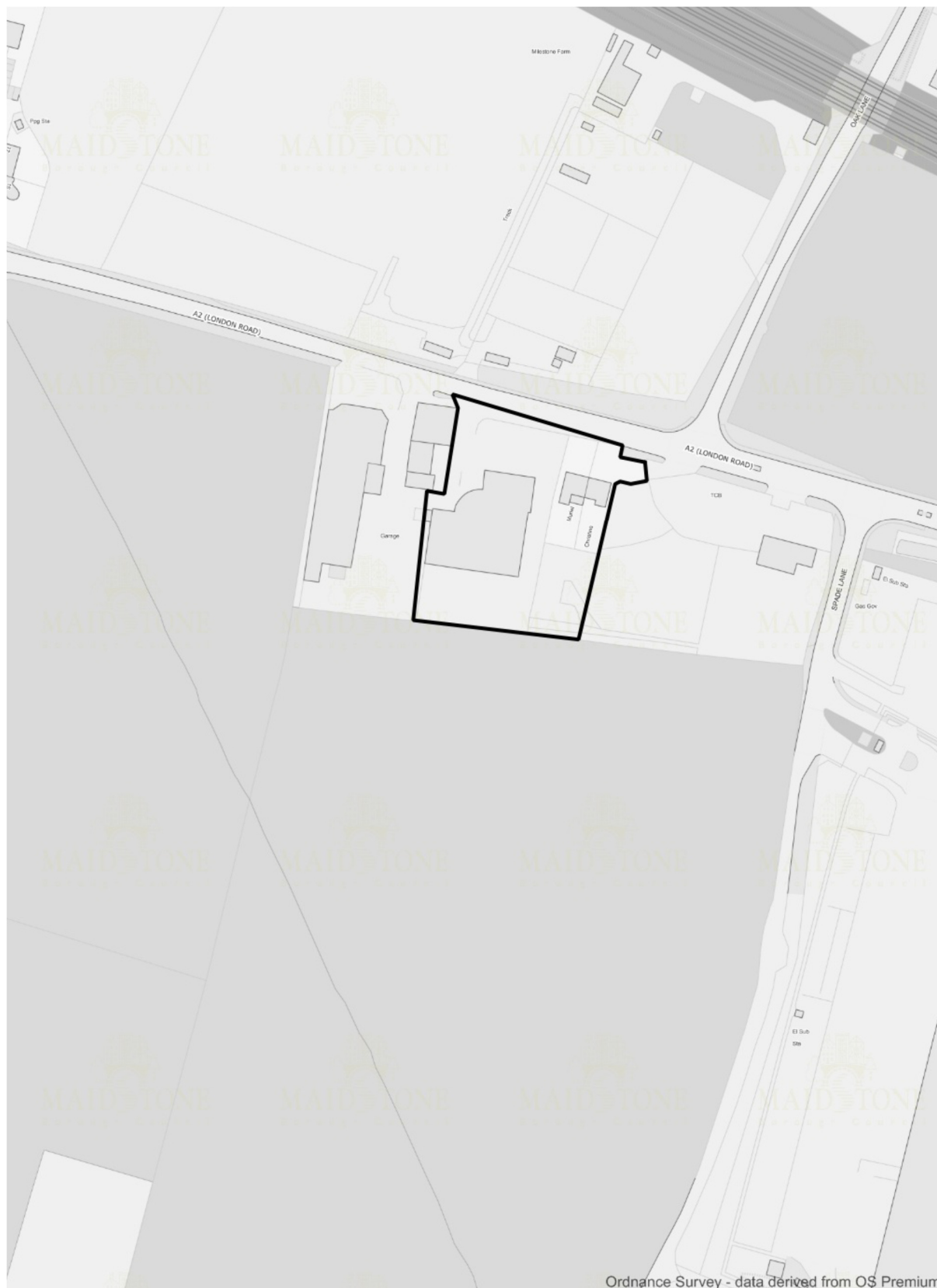
(9) The advertisements hereby permitted shall be installed in accordance with the following approved drawings: 1025_SITE_L002A (Proposed Site Layout) and 1025_ELEV_L004B (Proposed Signage Details).

Reasons: For the avoidance of doubt.

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.



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2.2 REFERENCE NO: 24/500439/HYBRID		
PROPOSAL: Hybrid application comprising of: Outline application (with all matters reserved except for access) for erection of 5no. self/custom-build dwellings. Full planning application for creation of access and erection of 1no. dwelling with associated parking and annexe above car-port.		
SITE LOCATION: Land adjacent to Halke Cottage, Brogdale Road, Faversham, Kent, ME13 8XZ		
RECOMMENDATION: 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.		
APPLICATION TYPE: Minor		
REASON FOR REFERRAL TO COMMITTEE: The recommendation is contrary to Ospringe Parish Council's objection to the application.		
Case Officer: Luke Simpson		
WARD: East Downs	PARISH/TOWN COUNCIL: Ospringe	APPLICANT: Mr Trevor Wells AGENT: OSG Architecture
DATE REGISTERED: 31/01/2024		TARGET DATE: 10/04/2024
BACKGROUND PAPERS AND INFORMATION: Documents referenced in report are as follows: -		
<ul style="list-style-type: none"> • Site Location Plan and Existing Site Plan (23-1404-001 A) • Site Plan (23-1404 – 010 D) • Application Demarcation (23-1404 – 011 B) • Proposed Demolition and Existing Elevations (23-1404 – 012 A) • Street Scenes (23-1404 – 013 A) • Plot 01 – Proposed Floor Plans & Elevations (23-1404 – 100 B) • Plot 01 – Car Port and Annex – Proposed Floor Plans & Elevations (23-1404 – 101 C) • Plot 02 - Proposed Floor Plans and Elevations (23-1404 – 110 B) • Plot 03 - Proposed Floor Plans and Elevations (23-1404 – 120 B) • Plot 04 - Proposed Floor Plans and Elevations (23-1404 – 130 C) • Typical Double Garage Plans and Elevations (23-1404 – 140 A) • Access Plan (12703/2100 P5) 		

The full suite of documents submitted pursuant to the above application are available via the link below: -

<https://pa.midkent.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

1. SITE LOCATION AND DESCRIPTION

- 1.1 The application site forms a 0.685 Hectare area of land situated to the west of Brogdale Road, approximately 500m to the south-west of the Faversham settlement boundary. The site is currently used as a paddock for keeping horses, but also includes part of the residential curtilage of the dwelling known as Halke Cottage, which sits at its northern end. To the north of the site are 4 residential properties situated within spacious plots, to the east is Brogdale Road with a development site beyond where 310 dwellings are currently being constructed, and which is allocated within the Local Plan for mixed use development (known as Perry Court Farm). To the south lies the M2 Motorway with agricultural land beyond and the rural hamlet of Brogdale, and to the west lies agricultural land.
- 1.2 The eastern roadside boundary of the site is planted with a dense belt of trees and vegetation, which provides good levels of screening from Brogdale Road, and this area of vegetation sits outside of the application site, so would not be affected by the proposed development. Another belt of mature trees sits along the southern boundary of the site, which prevents medium and long-range views from the road bridge that crosses the M2 and further south. With regard to the M2 itself, as it occupies lower ground, there are no views available into the site from passing vehicles. Views into the site from the agricultural fields to the west are more open as this boundary is occupied by a lower-level hedgerow, however due to its enclosed nature and use as an equestrian paddock it does not share the same agricultural characteristics as the adjacent fields to the west.
- 1.3 In terms of connectivity, whilst the site is divorced from Faversham slightly, Brogdale Road has a pedestrian footpath that links the site to the new residential development to the east and to London Road 800m to the north, which provides bus stops. Faversham Railway Station and Faversham Town Centre are also only 1.6km away to the north.
- 1.4 The site is accessed directly off of Brogdale Road via a shared driveway situated at its north-eastern corner, which also serves Halke Cottage. Halke Cottage along with part of its existing garden area, including outbuildings are to be retained.
- 1.5 The Site is not subject to any policy, environmental or landscape designations. The Kent Downs AONB is located 0.5km to the southwest and on the southern side of the M20 motorway. It is also situated entirely within Flood Zone 1.

2. PLANNING HISTORY

- 2.1 There is no planning history associated with this site.

3. PROPOSED DEVELOPMENT

- 3.1 This is a hybrid planning application that seeks outline consent with all matters except for access reserved for the construction of 5 self/custom-build dwellings, and full consent for the creation of an access and the construction of 1 open-market dwelling with associated parking and a car-port with an annexe above (identified as plot 1 on the proposed site plan).
- 3.2 The proposal seeks to widen the existing access to Halke Cottage in order to enable the retention of its existing private driveway and to enable large service vehicles to enter the site and newly proposed dwellings from the south and north. It is also proposed to construct a continuation of the access that runs in a south westerly direction through the site, which each of the new properties would be served by.
- 3.3 Whilst the layout and detailed design of the 5 self/custom building units are reserved matters, the preliminary site plan indicates that these would be laid out in a linear fashion, running along the western side of the new internal site access. All of these units are set within relatively large plots that incorporate generously sized private amenity areas and a combination of hardstanding's and car ports/garages to provide a minimum of 3 parking spaces per unit.
- 3.4 The proposed open market dwelling (unit 1), for which full consent is sought, is the nearest unit to the access, and sits just to the south-west of Halke Cottage. It takes the form of a detached, two-storey dwelling featuring a jerkinhead roof and a single-storey lean-to projecting from its north-east facing flank elevation. It measures 15.02m in width by 8.53m in depth and 9.11m in height, with an eaves height of 4.86m, and the submitted plans show that it would be constructed with clay roof tiles and mainly brickwork elevations with white composite window units, stone cills, an Oak and frame and clay roof porch, and white weatherboarding for the lean-to element.
- 3.5 The dwelling would accommodate a living room, kitchen/dining room, utility, bathroom and study at ground floor level and 4 bedrooms (one with en-suite) and a bathroom at first floor level. It would also be served by a large private garden area to the rear, a double by car barn with annexe accommodation in the roof space, and a private hardstanding large enough to accommodate 2 cars to the front/side.
- 3.6 The car barn building measures 8.0m in width by 6.51m in depth and 6.14m in height and features a dual-pitched roof with two pitched dormers to the front and an external staircase leading from a side entrance to the garden. It would also be constructed with clay roof tiles and brickwork elevations with white composite window units.

4. CONSULTATION

- 4.1 One round of 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 newspapers due to the proposals potential to impact a public right of way that runs along the southern boundary of the site. Full details of representations are available online.

- 4.2 Two letter of representation has been received in relation to the consultation, including from the Swale Footpaths Group. Neither of these letters object or support the proposed development, but the following concerns are raised: -

Comment	Report reference
The impact of lights from vehicles leaving the site may cause glare to the occupiers of the neighbouring property known as Weydale	Living conditions are addressed within Section 7.6 of this report.
It is appreciated that the application makes reference to the public footpath that runs along the southern boundary of the site.	The potential impact of the development on the adjacent Public Right of Way is addressed within Section 7.5 of this report

- 4.3 Ospringe Parish Council has objected to the proposed development with the following concerns being raised:

- The application site lies outside of the settlement boundary and as such, the proposal would result in the unjustified development of the countryside,
- The proposal is and would appear over-intensive, with the density far higher than the site can accommodate,
- The proposed mix of dwelling units does not reflect the local housing need,
- The proposal would have a detrimental impact upon the living conditions of Halke Cottage by virtue of proximity and overlooking,
- The proposed access is unsatisfactory and too constrained for the number of dwellings proposed,
- Insufficient space is provided for parking and on-site manoeuvring for large vehicles, which would result in the creation of potential traffic hazards on Brogdale Road.
- The proposed access does not provide sufficient visibility in a northerly direction directly along Brogdale Road.

5. REPRESENTATIONS

5.1 **Urban Design Officer** – Supportive of the proposed development. The design is responsive to the context of the site, with sufficient separation between dwellings. The variation in design and height of the new dwellings results in an interesting scheme. It is recommended that materials and landscaping details are conditioned and that boundary treatments will need to be carefully considered.

5.2 **KCC Biodiversity Officer** – No objection subject to conditions to secure the implementation of recommendations set out within the Ecological Impact

Assessment, an Environmental Management Plan, the purchasing of Biodiversity Net Gain credits, a Habitat Management and Monitoring Plan, on-site biodiversity enhancements and lighting plans.

- 5.3 **Environmental Protection** – No objections subject to a watching brief condition that would require the applicant to submit assessment and remediation details in the event of contaminated land being uncovered, and a condition to ensure that the recommendations set out within the Noise Assessment are implemented.
- 5.4 **KCC Highways** – No objection subject to conditions to secure a Construction Management Plan, the implementation of parking & vehicle turning spaces, EV charging facilities and cycle storage, and the visibility spays shown on the submitted plans.
- 5.5 **KCC Flood and Water Management** – The application falls outside of KCC's remit for providing comments as statutory consultee
- 5.6 **KCC Minerals & Waste** – The County Council has no land-won minerals or waste management capacity safeguarding objections or comments to make regarding this particular application.
- 5.7 **Natural England** – No objection subject to securing appropriate mitigation for recreational pressure impacts on European Habitat Sites.
- 5.8 **KCC Public Rights of Way** – I have no objection against the proposed development; However, a developer contribution amount to the sum of £6500 is requested to provide a 100-metre length, 2-metre wide, all-weather surface around the development to enhance the experience of Public Footpath ZF16. This will provide an improved connection to Public Footpath ZF18, encouraging residents and the public to use the surrounding footpath network to travel into town.
- 5.9 **KCC Development Investment** – The County Council has assessed the implications of this 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 would require mitigation, either through the direct provision of infrastructure or the payment of an appropriate financial contribution.

6. DEVELOPMENT PLAN POLICIES

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

- ST 1 Delivering sustainable development in Swale
- ST 3 The Swale settlement strategy
- CP 2 Promoting sustainable transport
- CP 3 Delivering a wide choice of high-quality homes
- CP 4 Requiring 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 20 Renewable and low carbon energy
- DM 21 Water, flooding, and drainage
- DM 24 Landscape
- DM 28 Biodiversity and geological conservation
- DM 29 Woodlands and Trees
- DM 31 Agricultural Land

6.2 Supplementary Planning Documents

- Swale Borough Council Parking Standards (May 2020) SPD
- Developer Contributions SPD (2009)

7. ASSESSMENT

7.1 This application is reported to the Committee because the recommendation is contrary to the considerations of Ospringe Parish Council. For the proposal that has been submitted, the committee is recommended to carefully consider the following main points:

- Principle of development
- Landscape and Visual
- Transport and Highways
- Living Conditions
- Ecology
- Flood Risk, Drainage and Surface Water
- Contamination
- Sustainability / Energy
- Developer contributions

7.2 Principle of development

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

7.2.2 The site lies outside of the built-up area boundary of Faversham, and within the countryside setting as designated by Policy ST3 of the Swale Borough Local Plan, which sets out that in such locations development will not be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.

7.2.3 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.

- 7.2.4 The Council cannot currently demonstrate a five-year housing land supply and therefore, on this basis paragraph 11 (d) of the NPPF, the local plan policies most important for determining the application should be considered out-of-date, and that a presumption in favour of sustainable development should apply – meaning that development 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. Accordingly, in this instance, a ‘tilted balance’ should apply to decision making and a presumption of sustainable development must duly be applied.
- 7.2.5 Notwithstanding the countryside location of the site, its proximity to the settlement of Faversham must be recognised, as should Faversham’s status as a tier 2 Borough Centre that provides a good range of services and amenities as well as good public transport links (as defined within Policy ST3). As previously noted, the settlement boundary of Faversham lies only 210m away and there are pedestrian links already in situ between the site and London Road, which offers public transport routes to other areas of the settlement and beyond, as well as to the Aldi supermarket which lies 550m to the east. Further to this, Faversham Town Centre and Train Station are only 1.6km away to the north. It is therefore considered that it would be difficult to conclude that the site is not in a relatively sustainable position despite its countryside location.
- 7.2.6 The Local Plan policy CP3 requires the mix of tenures and sizes of homes provided in any particular development to reflect local needs. The Local Plan requires developments to achieve a mix of housing types, which reflects that of the Strategic Housing Market Assessment (SHMA). Notwithstanding this, new evidence has been prepared in the form of the Council’s Housing Market Assessment (HMA) in 2020 (i.e., more recently than the Local Plan), and this demonstrates the most up-to-date evidence on the required housing mix within the district. As such, officers have considered the proposed housing mix against that set out in the HMA, which is as follows:

Tenure - HMA	1 bed	2 bed	3 bed	4 bed
Market Required	7%	32%	46%	15%

- 7.2.7 The mix of housing cannot be fully established given the hybrid nature of the application but, based on the indicative submissions, it appears probable that the development would not align with the preferred housing mix. Notwithstanding this, it is clear from the above that there is a need for housing of all sizes within the Swale Borough. Consequently, although not being the type of housing for which there is the greatest need, it is considered that the provision of larger houses, as indicatively shown, can still be found acceptable in terms of meeting a need, particularly in the context of the housing land supply position of the Borough which is set out further below. From this basis, whilst there is likely to be a conflict with the development plan arising from the proposal not according with the requirements of Policy CP3 of the Swale Borough Local Plan (as well as the Council’s Housing Market Assessment (HMA) 2020), the harm arising in this regard is very limited.

Summary of Principle

7.2.8 The development is proposed in a location that is contrary to the spatial strategy of the adopted development plan and, as will be set out below, it would unavoidably result in some harm to the rural character and appearance of the area. Harm and development plan policy conflict is identified in these respects. However, set out above and as will be considered further below, the site is not considered to be an unsustainable location, and there are a number of positive elements that would arise from the proposal. These will therefore be considered in turn and a judgement of the planning balance will be undertaken at the end of this report.

7.3 Landscape and Visual

7.3.1 The National Planning Policy Framework attaches great importance to the design of the built environment and states that design should contribute positively to making places better for people. The Swale Borough Local Plan reinforces this requirement through Policy CP4, which requires development proposals to be of high-quality design and to be in keeping with the character of the area. Further to this, Policy DM14 of the local plan sets out that development proposals should be both well sited and of a scale, design, appearance and detail that is sympathetic and appropriate to the location.

7.3.2 The site contributes to the rural character of the surrounding landscape to the west of Brogdale Road, but this contribution is limited in views from Brogdale Road and other areas of public realm to the south by virtue of the fact that the site is generally well screened by dense ribbons of trees and vegetation that wrap around its eastern and southern boundaries. In addition to this the site benefits from an elevated positioning above the adjacent M2 which lies to the south meaning that the proposal would not be perceived from this busy highway.

7.3.3 Views of the site are possible from the public footpath that runs diagonally across the adjacent field to the west, but the site does not share the same agricultural characteristics as the farmland that lies to the west and beyond due to establishes residential and equestrian uses and more managed appearance. Further to this, the presence of the existing residential properties immediately to the north would ensure that the proposed scheme would not appear as an isolated form of development. It is, however, the case that the proposal would have a noticeable impact on the character of the countryside as viewed from the public right of way. Moreover, the provisions of enclosures and bunds to mitigate noise impacts from nearby noise sources, would also be likely to have an imposing visual impact, albeit it may be that these requirements can also be partially mitigated by soft landscaping.

7.3.4 Faversham Active Travel and East Kent Public Rights of Way sought contributions towards upgrading a footpath than runs around the southern boundary of the site by seeking £6,500 to provide a 100m by 2m wide length of all-weather surface near to the site. It is considered that this enhancement to the public footpath would improve the pedestrian experience in such a way that the impact on views from the right of way would be off-set and compensated for.

Therefore, in this respect and as it is to address a specific matter arising from this permission rather than a generic contribution as has been sought by other consultees, it is considered that the requested contribution would meet the applicable tests and align with the Council's practices in relation to planning obligations.

- 7.3.5 Whilst it is therefore acknowledged that the proposal would unavoidably have some impact upon the localised countryside setting, it would not result in the development of land that is integral to the rural character of the area or appear out of place when viewed within the context of its surroundings.

7.4 **Character and Appearance**

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

- 7.4.2 In terms of detailed design, it must be recognised that only the scale and appearance of the dwelling identified as Plot 1 on the proposed site plan can be considered under this application as these matters for plots 2-6 are reserved matters. The applicant has submitted preliminary drawings that show all of the proposed dwellings as being of a similar scale and sharing a similar aesthetic; however, the main consideration in this instance is how unit 1 relates to Halke Cottage and other existing dwellings along Brogdale Road.

Full Considerations

- 7.4.3 It is evident from visiting the site that Plot 1 has been informed by the local vernacular of dwellings within the surrounding rural area, and in particular by Halke Cottage and the other residential properties to the north of the site. It displays a general scale and architectural details that are familiar to the existing street-scene through the use of a traditional roof form and natural materials including clay roof tiles, red brick and weatherboarding. These features ensure that the building would be sympathetic to the prevailing character and appearance of the street scene.
- 7.4.4 In terms of layout, there is no definitive pattern of development within this part of Brogdale Road, however, the five dwellings situated to the north of the site are all set back from the highway to some degree, and all have a traditional plot layout with parking at the front and their private amenity spaces at the rear. Accordingly, the situation and layout of Plot 1 is considered to be broadly consistent with the general arrangement of existing properties on the western side of Brogdale Road, and as such it is deemed that it would be perceived as a cohesive addition to the street-scene.

Indicative Proposals

- 7.4.5 The preliminary site plan for the overall development demonstrates that the remaining 5 units (units 2-6) can be comfortably accommodated within the site in such a manner that enables a continuation of the loosely linear and recessed development pattern that has been created by the existing dwellings to the north.

The indicated plot sizes of the proposed dwellings are relatively small when compared to these neighbouring properties, but the layout shows that effective separation can be incorporated between buildings and that space can be provided for a meaningful landscaping scheme. Reflective of this, the Council's Urban Design Officer has confirmed that the proposed layout is responsive to the context of the site, and that it provides opportunities for variation in the design and scale of the individual dwellings, which would enable a visually interesting development.

- 7.4.6 Further to the above, importantly, the submitted plans show that the existing vegetation along the roadside boundary can be retained, which is considered to be important in this case as it provides a valuable source of screening and contributes to the verdant character of this part of Brogdale Road.
- 7.4.7 Overall, it is therefore considered that the proposed development is of an appropriate scale and design, and that it would not have a detrimental impact upon the street-scene of Brogdale Road, or upon the character and appearance of the wider area. It is therefore considered that the proposal accords with policies CP4 or DM14 of the Local Plan and the NPPF.

7.5 Transport and Highways

- 7.5.1 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.”

- 7.5.2 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.”

- 7.5.3 The proposed development scheme would expand the existing entrance to the site from Brogdale Road and re-configure / extend its internal driveway in a north-south direction to provide an access that can serve all of the proposed units. The submitted plans make provision for all of the dwellings to be served by at least 3 on-site parking spaces (to be provided on either hardstanding's to the front of properties or in open fronted car barns), secure cycle stores and electric vehicle charging points.
- 7.5.4 The proposed level of parking provision for all of the units (including plot 1 for which full permission is sought) complies with the Council's Parking Standards SPD, which sets out that 4 and 5-bed dwellings within countryside locations such as this should be provided with at least 3 on-site parking spaces.
- 7.5.5 With regards to potential impact upon the local highway network, the scheme would result in a relatively minor increase in the number of vehicles that use this

section of Brogdale Road, but as this is a full width 2-lane highway it is not anticipated that this associated increase would result in any capacity issues, particularly given the fact that KCC Highways have confirmed that the proposed enlarged access would offer appropriate visibility splays in both directions along the highway.

- 7.5.6 Works to create the new access to the site would have the potential to obstruct traffic along Brogdale Road for a period of time, whilst it is being implemented. For this reason Kent County Council Highways Officers have requested that a condition should be attached to this recommendation that requires the applicant to submit a construction management plan prior to the commencement of works to ensure that there are no undue impacts upon highway safety, as well as local amenities and the local environment.
- 7.5.7 It is also of note that there is a public footpath to the front of the site, which would provide safe pedestrian access to London Road (situated approximately 800m to the north), where there are public transport links to Faversham Town Centre and beyond, as well as to the Aldi supermarket located 550m to the north-east. As such, whilst it is accepted that occupiers of the proposed development would be largely reliant on private vehicle use, there would be opportunities to access essential day-to-day services and amenities on foot and by public transport. Sustainable methods of transport would further be encouraged through the incorporation of designated cycle storage and EV charging points for each dwelling. Moreover, primarily for the reasons set out above, it is considered that it is appropriate to secure enhancements to a public right of way which would also be beneficial in terms of improving accessibility within the locality for occupiers of the site and others.
- 7.5.8 It is therefore considered that the proposal would not create a situation that would result in significant risks to highway safety or the efficient functioning of the local highway network. Accordingly, it is compliant with policies DM7 or DM14 of the Local Plan.

7.6 Living Conditions

- 7.6.1 Policy DM14 advises that development should respect the living conditions of the occupiers of neighbouring properties and uses by ensuring that development does not create loss of sunlight, overshadowing, overlooking or result in excessive noise, activity or vehicular movements or visual intrusion.
- 7.6.2 The proposed development scheme would result in the removal of a large area of garden from the curtilage that is associated with Halke Cottage but, given the generous size of this plot, it is considered that sufficient space would remain to enable its present and future occupiers to continue to enjoy an appropriate level of private amenity provisions.
- 7.6.3 The preliminary proposed site plan shows that all of the dwellings can be comfortably accommodated within the site whilst retaining a suitable degree of separation between each other, and with the existing properties of Halke Cottage and Weydale, to the north. Accordingly, whilst there are locations where

dwellings do sit within close proximity of shared curtilage boundaries, the submitted plans show that potential amenity issues, whether related to enclosure, light or privacy, can be avoided by ensuring that the proposed dwellings are laid out in a considered way and are of an appropriate scale, design and orientation.

Future occupiers

- 7.6.4 Turning to the living conditions of the occupiers of the proposed dwellings, as above, it is noted that it is only Plot 1 for which full planning permission is sought and for which the submitted plans can be fully considered. In this regard, whilst the Council does not have any policies that relate specifically to residential size standards, the dwelling would exceed the minimum internal floorspace requirements that are set out within the governments technical housing standards - nationally described space standards. Moreover, all of their primary habitable rooms would be served by appropriated sized windows that would provide good levels of light and outlook. In addition to this, the dwelling would be served by a suitable sized garden that would provide a degree of privacy, as well as good parking, cycle store and waste provisions. The indicative details of the other dwellings also provide comfort that they will also be able to provide good living conditions for future occupiers.
- 7.6.5 The applicant has submitted a Noise Assessment which details that mechanical ventilation systems will be required to provide adequate internal noise levels whilst also providing ventilation. It is not ideal to require occupiers to have a choice in this regard but, it is considered that this is an established practice that can be found acceptable in this instance. The assessment also details the need for a bund and acoustic fencing at the boundary west and south boundaries of the site. The Council's Environmental Health Officer has advised that this approach is sound, but further details will be required to ensure that the visual impacts of these works will be acceptable. This can be secured by condition.
- 7.6.6 In conclusion, for the reasons detailed above and subject to conditions, the proposed development would provide appropriate living conditions for future occupiers, without resulting in significant harm to the living conditions of the occupiers of existing neighbouring properties. As such, it complies with Local Plan Policy DM14 in respect of amenity impacts.

7.7 Biodiversity and protected habitats

- 7.7.1 Section 40 of the NERC Act (2006), as well as paragraphs 180 and 186 of the NPPF (2023), establish that biodiversity should be maintained and enhanced through the planning system, and that the implementation of measurable net gains for biodiversity (integrated as part of design) should be encouraged. These principles are reinforced at a local level by Policies DM28 and DM30 of the Local Plan which establish that development proposals will apply national planning policy in respect of the preservation, restoration and re-creation of habitats and species, and will be required to provide, where possible a net gain of overall biodiversity.

- 7.7.2 The Government's new Biodiversity Net Gain legislation goes a step further than the above referenced policy requirements as it requires that development proposals must have no adverse impact upon important habitats and that they must create an overall net gain in biodiversity of 10%. However, as the application was submitted prior to the date on which the BNG legislation came into effect, this threshold cannot be applied in this instance.
- 7.7.3 The applicant has submitted a Preliminary Ecological Appraisal in support of their application, which details the results of a site survey that was conducted by a qualified Ecologist. The report states that the site and its surrounding vegetation provides habitat opportunities for commuting and foraging bats, nesting birds, hedgehogs and badgers, but goes on to conclude that subject to the implementation of mitigation measures such as precautionary construction practices, the adoption of a sensitive lighting scheme and only carrying out vegetation removal outside of bird nesting season, the proposed development would be unlikely to result in harm to wildlife.
- 7.7.4 The applicant has also submitted a Baseline Habitat Condition Assessment and a Biodiversity Net Gain Assessment which state that the proposal would result in a 222.6% gain in the biodiversity value of hedgerow units but a 16.36% loss in the biodiversity value of habitat units across the site. As such, it is concluded that 0.55 habitat units will need to be secured in order to achieve a 1% gain in biodiversity value and that these units will be purchased from a 3rd party provided. It is considered that the habitat units will need to be secured through a planning obligation.
- 7.7.5 The Council's Biodiversity Officer has reviewed the application and confirmed that sufficient information has been provided in order for planning permission to be granted. However, it is recommended that a number of conditions should be attached to any permission to secure the implementation of precautionary mitigation measures as detailed within the Ecological Impact Assessment, a Construction & Environment Management Plan, a Biodiversity Net Gain Plan and a Habitat Management & Monitoring Plan to secure on-site biodiversity enhancements and lighting details and restrictions.
- 7.7.6 All of the suggested conditions are considered to be reasonable and appropriate and have therefore been incorporated into this recommendation.
- 7.7.7 Overall, it is therefore deemed that subject to compliance with conditions, the proposed development would deliver habitat enhancements and would not result in harm to local wildlife. It is therefore in accordance with Section 40 of the NERC Act (2006), paragraphs 180 and 186 of the NPPF, Paragraph 5.25 of the Faversham Creek Neighbourhood Plan as well as Policies DM28 and DM30 of the Swale Local Plan.
- Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017.*
- 7.7.8 This Appropriate Assessment (AA) has been undertaken without information provided by the applicant.

- 7.7.9 The application site is located within 6km of The Swale Special Protection Area (SPA) which is a European designated site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).
- 7.7.10 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.
- 7.7.11 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.
- 7.7.12 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.
- 7.7.13 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.
- 7.7.14 However, the proposed development is of a relatively 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.
- 7.7.15 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.
- 7.7.16 Based on the correspondence with Natural England (via the NKEPG), it is concluded that off site mitigation is required by means of developer contributions at the rate of £328.27 per new dwelling (totalling £1,969.62). This fee will be secured prior to the determination of the application.

7.7.17 In this regard, whilst there are likely to be impacts upon the SPA arising from this development, the mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff (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.

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

7.8 Drainage

7.8.1 Policy DM21 of the local plan establishes that development proposals should avoid inappropriate development in areas at risk of flooding, and include, where possible, sustainable drainage systems to restrict runoff to an appropriate discharge rate to ensure that surface water is disposed of on site.

7.8.2 The application site lies entirely within Flood Zone 1 and therefore is at low risk of flooding. Notwithstanding that, the applicant has submitted a SuDS & Foul Drainage Statement & Management/Maintenance Plan, which sets out that surface water will be drained from the site via ground infiltration systems, including a combination of soakaways, porous paved driveways and access road and coarse granular filled sub-bases, which will prevent flooding even in critical storm events.

7.8.3 The report also sets out that as there are no public sewers in the area, foul drainage will be dealt with by package sewage treatment plants which will be located in each of the 6 properties gardens, meaning there will be no additional input into the local sewage network.

7.8.4 In view of the above, the proposed development will not increase the risk of flooding within or outside of the site and as such, it complies with policy DM21 of the Swale Local Plan 2017 and NPPF.

7.9 Contaminated Land

7.9.1 The Council's Environmental Protection Officer has confirmed that as the site is not a known area of contamination, no information is required prior to the determination of the application. It is however recommended that any permission should be subject to a watching brief condition that requires details and mitigation to be submitted to and approved by the local planning authority in the event of contaminants being found during construction works.

7.10 Sustainability / Energy

- 7.10.1 Policy DM19 (Sustainable Design and Construction Climate change) requires developments to address climate change and reduce carbon emissions through using materials and construction techniques that increase energy efficiency and thermal performance. The policy does not include a threshold for such reductions. However, the Council's Ecological and Climate Change Emergency Action Plan sets out that new housing developments should achieve a minimum 50% reduction in emissions when compared to target rates in the current Building Regulations.
- 7.10.2 The applicant has not submitted details at this stage of how the development will achieve carbon emission reductions, but mindful of the above, a condition has been attached to this recommendation that requires the applicant to provide details of how the proposed dwellings will achieve a 50% reduction in emissions prior to the commencement of development. A condition is also included to ensure that the development meets national water efficiency standards set out within building regulations legislation.
- 7.10.3 In summary, subject to compliance with conditions, adequate measures can be incorporated into the proposed development to address climate change and to ensure compliance with Local Plan Policies DM19 and DM21 and the NPPF.

7.11 Community infrastructure

- 7.11.1 Kent County Council has sought to secure financial contributions from the applicant to mitigate against the impact of the development upon local services and community facilities. However, pre-amble to Policy CP6 of the Local Plan (paragraph 5.5.15) sets out that developer contributions will not be sought for developments of less than 10 dwellings. As such, it is not deemed reasonable or appropriate to require the applicant to enter into a S106 agreement to secure any matters other than the self-build housing, the habitat units, the footpath contribution and, unless otherwise paid, the SAMMS payment.

7.12 Planning Balance & Conclusion

- 7.12.1 The proposed development is situated within the countryside setting and would result in the encroachment of built form into the rural area. It would therefore undoubtedly have an impact upon the rural character and appearance of the local landscape and by virtue of this and the 'countryside' definition of its location, would be in conflict with the spatial strategy set out within Policy ST3 of the Swale Borough Local Plan, and as a result with the development plan when taken as a whole. Moreover, very limited harm would arise from the development not being likely to deliver a mix of housing, contrary to Local Plan Policy CP3.
- 7.12.2 Notwithstanding the above, significant weight must be afforded to the proximity of the site to Faversham and the good range of services, amenities and public transport links that it provides. This would engender social benefits by enabling future occupiers to support local services and satisfy some of their day-to-day needs whilst utilising public and other sustainable modes of transport.

- 7.12.3 It must also be acknowledged that the immediate surrounding area provides several forms of development that are not consistent with a wholly rural location, including the M2 motorway that lies to the south of the site, the Preston Fields development to the east and the neighbouring dwellings to the north. This backdrop of development ensures that the contribution of the site to the countryside setting is somewhat limited, and that the proposal would not be seen as an isolated form of development.
- 7.12.4 A key aspect of the scheme is that it would enable the provision of 6 new dwellings in a relatively sustainable location at a time when the Council is not able to demonstrate a 5-year housing land supply, and it is considered appropriate to afford this significant weight. Significant weight can also be afforded to the benefit arising from the provision of 5 self-build dwellings, particularly given that there is a small provision of such units in the Borough. This provision would need to be secured and it is considered that, in this case, this would be best secured through a planning obligation.
- 7.12.5 Furthermore, some minor economic and environmental benefits would also be derived, such as the economic benefits of construction, which will create local job opportunities and the provision of enhanced wildlife opportunities within the site, although as the scheme partially relies on purchasing off-site biodiversity credits to deliver an overall biodiversity uplift of 1%, the degree of benefit for this last element is moderate by virtue of the fact that it represents a level of provision that is required within the NPPF.
- 7.12.6 In addition to the above, the proposed dwellings (as indicated are of an acceptable scale, design and arrangement when considered within the context of the existing dwellings situated to the north of the site. They would not create a situation that would result in harm to living conditions, or the safe functioning of the local highway network, and no consultee concerns have been raised in respect of flooding / drainage or contamination issues. SAMMS contributions will also mitigate against the impact of the proposals on protected biodiversity sites. As these are standard policy requirements, they cannot offer significant weight in favour of the development when considering its merits against the associated countryside harm.
- 7.12.7 In weighing up the balance, noting the sustainable location of the site, the fact that the development would provide a small but valuable contribution towards the Council's five year housing land supply and would deliver a net gain in biodiversity, as well as some social benefits, it is considered that the approach set out in Paragraph 11d of the NPPF is applicable in this instance, and that the limited harm that would be associated with the encroachment of development into the countryside in this location would be clearly outweighed by the benefits of the proposal. The NPPF therefore indicates that planning permission should be granted.
- 7.12.8 The fundamental approach to the assessment is whether the development accords with the development plan and, if it does not, whether there are any material considerations, such as the NPPF, that justify reaching a different conclusion. The proposed development would be in conflict with the development

plan when taken as a whole by virtue of the fact that it would fail to comply with the spatial strategy set out within Policy ST3 and would unavoidably result in some albeit limited harm to the rural character and appearance of the area; however, for the reasons given above and it is considered that there are other material considerations, including the NPPF, that indicate that permission should be granted.

- 7.12.9 The application is, therefore, recommended for approval subject to the conditions set out below and a planning obligation to secure the self-build housing, the off-site biodiversity units, the stated footpath contribution and, unless otherwise paid, the abovementioned SAMMS payment.

CONDITIONS

- 1) The detailed element of the development to which this permission relates must be begun no later than the expiration of three years beginning with the date on which this 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) In relation to the part of the planning permission for which outline planning permission is granted (as demarked on plan 23-1404 - 011 Revision B), details relating to the layout, scale and appearance of the proposed buildings (not in the detailed element) and landscaping of the site within that part of the site, shall be submitted to and approved by the Local Planning Authority before any development within that part of the site is commenced.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 3) Application for the approval of reserved matters referred to in Condition (2) above must be made no later than the expiration of three years beginning with the date of the grant of outline planning permission.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 4) The development to which this permission relates must be begun no later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

5) The detailed element of the development shall be carried out in accordance with the following approved plans:

- Site Location Plan and Existing Site Plan (23-1404-001 A)
- Site Plan (23-1404 – 010 D)
- Proposed Demolition and Existing Elevations (23-1404 – 012 A)
- Street Scenes (23-1404 – 013 A)
- Plot 01 – Proposed Floor Plans & Elevations (23-1404 – 100 B)
- Plot 01 – Car Port and Annex – Proposed Floor Plans & Elevations (23-1404 – 101 C)
- Access Plan (12703/2100 P5)

Note: for the above drawings, only the information pertaining to Plot 1 and the access to the site are to be approved in detail. All other information is for illustrative purposes only.

Reason: To accord with the terms of the application and in the interest of proper planning.

6) Any application for the approval of the reserved matter of landscaping shall be accompanied with full details of all boundary enclosures and any changes to ground levels (including bunds) that are required to achieve an acceptable living environment within the gardens of the dwellings on plots 3 to 6 (inclusive) hereby approved and a timetable for providing those enclosure and undertaking those works. Subsequently, the approved enclosures shall be provided and the approved works shall be carried out in full accordance with the approved timetable.

Reason: In the interests of ensuring suitable living conditions for future occupiers.

7) Prior to the occupation of each of the dwellings hereby approved, details shall have been submitted to the Local Planning Authority and approved in writing, which shall set out what measures will be taken to ensure that that dwelling incorporates sufficient sustainable construction techniques (such as water conservation and recycling, renewable energy production including the potential inclusion of solar thermal or solar photovoltaic installations, and energy efficiency) 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). All approved measures shall be installed prior to the first occupation of the dwelling and retained as such in perpetuity.

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

- 8) The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the dwellings (for each phase) 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.

- 9) Prior to the occupation of any dwelling hereby approved, that dwelling shall be provided with at least one electric vehicle charging point in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority. All Electric Vehicle chargers provided must be to Mode 3 standard (providing a minimum of 7kw) and SMART (enabling Wifi connection). Approved models are shown on the Office for Low Emission Vehicles Homecharge Scheme approved chargepoint model list: <https://www.gov.uk/government/publications/electric-vehicle-homecharge-scheme-approved-chargepoint-model-list>.

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

- 10) Prior to any works occurring above slab level in association with the construction of the dwelling on Plot 1 that is hereby approved, written details and samples of the materials to be used in the construction of the external surfaces of the building(s) hereby permitted shall have been submitted to and approved in writing by the local planning authority. Subsequently, the development shall be constructed using the approved materials;

Reason: To ensure a satisfactory appearance to the development.

- 11) Prior to any works occurring above slab level in association with the construction of the dwelling on Plot 1 that is hereby approved, details of all boundary treatments within the part of site for which full planning permission is hereby granted shall have been submitted to and approved in writing by the local planning authority and the development shall be constructed and maintained in accordance with the approved details unless otherwise agreed in writing by the local planning authority.

Reason: To ensure a satisfactory appearance to the development.

- 12) Prior to any works occurring above slab level in association with the construction of the dwelling on Plot 1 that is hereby approved, details of all details of hard landscaping works and the species of plants and shrubs to be planted in respect of the part of site for which full planning permission is hereby granted shall have

been submitted to and approved in writing by the local planning authority and the development shall be carried out in accordance with the approved details before the first occupation of the permitted dwelling.

The submitted details shall include a plant specification, implementation details, a maintenance schedule and a [5] year management plan.

The new soft landscaping shall comprise predominantly of native or near-native species as appropriate.

Reason: In the interests of landscape, visual impact and amenity of the area and to ensure a satisfactory appearance to the development.

- 13) Upon completion of the soft landscaping works set out in condition 12, 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 the next planting season, unless otherwise agreed.

Reason: To ensure the retention and maintenance of strategic landscaping, in the interests of visual amenity.

- 14) No development shall take place in any phase until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- a) Routing of construction and delivery vehicles to and from the site,
- b) Parking and turning areas for construction and delivery vehicles and site personnel,
- c) Timing of deliveries,
- d) Provision of wheel washing facilities, and
- e) Temporary traffic management / signage.
- f) Loading and unloading of plant and materials

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

- 15) Before the dwelling shown on Plot 1 on the plans hereby approved is first occupied, the proposed bathroom windows in the first floor north-west facing elevation of that dwelling shall be obscure glazed to not less than the equivalent of Pilkington Glass Privacy Level 3, and this window 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.

Reason: To prevent overlooking of adjoining properties and to safeguard the

privacy of neighbouring occupiers.

- 16) Any application submitted for the approval of reserved matters shall include details of areas for the parking and manoeuvring of vehicles in the development, in accordance with the Council's adopted parking standards. The parking areas shall be provided in accordance with such details as approved prior to the occupation of each dwelling or building to which they relate, and shall be retained as such thereafter.

Reason: To ensure a satisfactory parking arrangement and in the interests of highway safety.

- 17) For the detailed element of the proposal, the area shown on the 'Proposed Site Plan' (23-1404 – 010 D) drawing as car parking space shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown (other than the erection of a private garage or garages) or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling(s) hereby permitted.

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

- 18) The approved details of the access shall be completed before the commencement of the use of the land or buildings hereby permitted and the sight lines maintained free of all obstruction to visibility above 0.9 metres thereafter;

Reason: In the interests of road safety.

- 19) No dwelling hereby approved shall be occupied until details of cycle storage for that dwelling has been submitted to and approved in writing by the local planning authority. Subsequently, the approved facilities shall be provided before the first occupation of the dwelling served by that cycle storage and maintained thereafter.

Reason: No such details have been submitted and in the interest of amenity.

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

Monday to Friday 0730 – 1900 hours, Saturdays 0730 – 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.

- 21) If during construction/demolition works evidence of potential contamination is encountered, works shall cease and the site fully assessed to enable an appropriate remediation plan to be developed. Works shall not re-commence until an appropriate remediation scheme has been submitted to, and approved in writing by, the Local Planning Authority and the remediation has been completed.

Upon completion of the building works, this condition shall not be discharged until a closure report has been submitted to and approved in writing by the Local Planning Authority. The closure report shall include details of;

- a) Details of any sampling and remediation works conducted and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology.
- b) Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.
- c) If no contamination has been discovered during the build then evidence (e.g. photos or letters from site manager) to show that no contamination was discovered should be included.

Reason: In the interests of protecting the health of future occupants from any below ground pollutants.

- 22) The precautionary mitigation measures detailed within the Ecological Impact Assessment, Native Ecology, November 2023 will be implemented for each phase of the development.

Where a need for additional badger mitigation measures is identified following the pre-works survey, all required surveys and mitigation will be implemented prior to the onset of relevant works, in accordance with wildlife legislation. A copy of the precautionary works method statement will be appended to the CEMP to be implemented under Condition X. Measures will be implemented and maintained for the duration of each phase of works as required.

Reason: In the interests of biodiversity and protected species that may occupy the site.

- 23) No development shall take place (including any ground works, site or vegetation clearance) until a construction environment management plan for biodiversity has been submitted to and approved in writing by the local planning authority. The CEMP (biodiversity) shall include the following:
- a) Purpose and objectives for proposed mitigation works during construction;

- b) The identification of biodiversity protection zones and the use of protective fences, exclusion barriers and warning signs;
- c) Detailed design(s) and/or working method(s) necessary to achieve stated objectives
- d) Extent and location of proposed mitigation works shown on appropriate scale maps and plans, with reference to: pollution avoidance measures (noise, dust, lighting and run-off), protection of retained trees and hedgerows, and reference to precautionary measures for breeding birds, badger, reptiles and hedgehog as secured under Condition X;
- e) Timetable for implementation, demonstrating that mitigation works are aligned with the proposed phasing of construction;
- f) Persons responsible for implementing the mitigation works, including any times during construction when specialist ecologists need to be present on site to undertake / oversee works;
- g) Initial aftercare and reference to a long-term maintenance plan (where relevant);
- h) Disposal of any wastes for implementing work.

The works shall be carried out in accordance with the approved details and shall be retained in that manner thereafter.

Reason: In the interests of biodiversity and protected species that may occupy the site.

- 24) No development in any particular phase shall commence until a Biodiversity Gain Plan has been submitted to, and agreed in writing by, the Local Planning Authority, to demonstrate how a 1% net gain in biodiversity will be achieved in accordance with NPPF 2023. The Plan shall align with the Biodiversity Net Gain Assessment: Design Stage, Native Ecology, May 2024 and will be supported by an updated metric calculation to include details of both on and offsite habitats. The Plan will include evidence of an agreement with an offsite provider to provide the additional units required to achieve the 1% net gain.

Reason: In the interests of biodiversity and protected species that may occupy the site.

- 25) No development shall commence in any particular phase until a Biodiversity Net Gain Habitat Management and Monitoring Plan has been submitted to, and agreed in writing by, the Local Planning Authority, to demonstrate how a 1% net gain in biodiversity will be achieved in accordance with NPPF 2023. The Plan shall align with the Biodiversity Net Gain Assessment: Design Stage, Native Ecology, May 2024 and will be supported by an updated metric calculation.

The HMMP will include the following:

- A detailed planting specification to include the use of native species in soft landscaping and the avoidance of known non-native invasive species;
- 30-year objectives;
- Management responsibilities and maintenance schedules

The HMMP shall also include details of the legal and funding mechanism(s) by

which the long-term implementation of the Plan will be secured by the developer and the management body(ies) responsible for its delivery with regard. The approved plan will be implemented in accordance with the approved details and thereafter maintained.

Reason: In the interests of biodiversity and protected species that may occupy the site.

- 26) Prior to development above slab level of any particular phase a Biodiversity Enhancement Plan illustrating details of how the development will offset biodiversity loss/enhance biodiversity will be submitted to, and approved in writing by, the local planning authority. Building-integrated boxes for bats and birds will be located at the appropriate height and aspect. Boxes for breeding birds will be targeted at S41 priority species / red/amber listed species likely to occur within the vicinity. All boxes included for wildlife will be Woodstone/woodcrete or similar to ensure durability. The approved measures will be implemented and retained thereafter.

Reason: In the interests of biodiversity and protected species that may occupy the site.

- 27) Prior to occupation of Plot 1, a lighting design plan for biodiversity will be submitted to and approved in writing by the local planning authority. The plan will be designed in accordance with the Bat Conservation Trust's 'Guidance Note 8: Bats and Artificial Lighting 08/23' and will show how and where external lighting will be installed so that it can be clearly demonstrated that areas to be lit will not increase lighting impacts on retained vegetation or impact on areas of proposed landscaping and biodiversity enhancement. A Lux contour plan should incorporate any mitigation measures proposed to reduce impacts from external and internal lighting, including sensitive positioning / recessing of internal lighting, use of cowls, and/or tinted glazing treatments. All lighting shall be installed in accordance with the specifications and locations set out in the plan and be maintained thereafter. During occupation, no additional lighting will be installed without prior written agreement from the Local Planning Authority.

Reason: In the interests of biodiversity and protected species that may occupy the site.

- 28) Prior to the occupation of any of the dwellings on Plots 2-6, a lighting plan for biodiversity will be submitted to, and approved in writing by, the local planning authority. The plan will be designed in accordance with the Bat Conservation Trust's 'Guidance Note 8: Bats and Artificial Lighting 08/23' and will show how and where external lighting will be installed. The Plan will detail the expected vertical and horizontal light spill in Lux levels, so that it can be clearly demonstrated that areas to be lit will not increase lighting impacts on retained vegetation relative to the current baseline, or impact on areas of proposed landscaping and biodiversity enhancement. The Lux contour plan should incorporate any mitigation measures proposed to reduce impacts from external and internal lighting, including sensitive positioning / recessing of internal lighting, use of cowls, and/or tinted glazing treatments. All lighting shall be installed in

accordance with the specifications and locations set out in the plan and be maintained thereafter. During occupation, no additional lighting will be installed without prior written agreement from the Local Planning Authority.

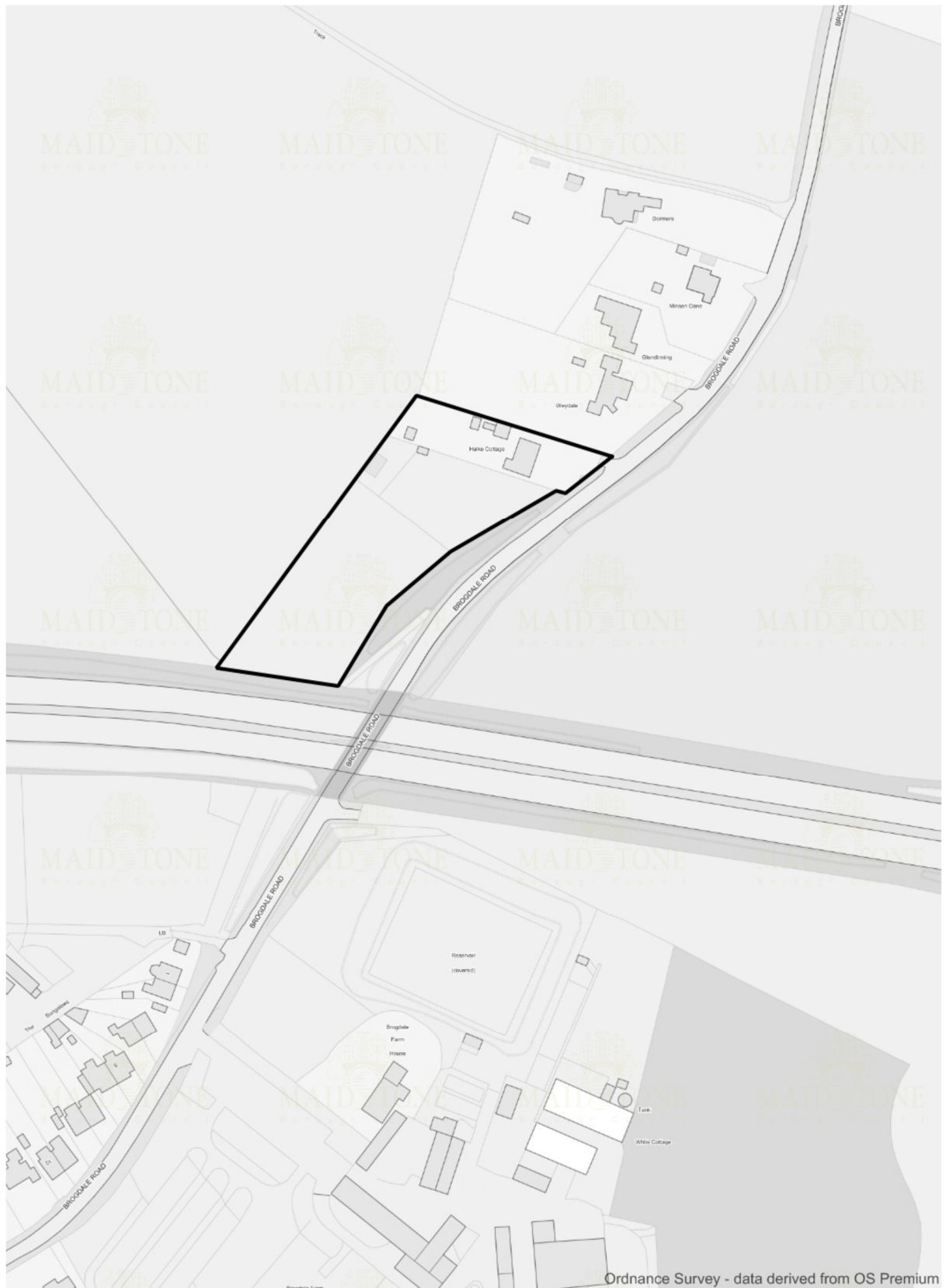
Reason: In the interests of biodiversity and protected species that may occupy the site.

- 29) Prior to the occupation of any dwelling hereby approved, it shall have been fitted with the noise attenuation measures set out within the Noise Assessment for Planning report (Halsion, January 2024).

Reason: In the interests of ensuring suitable living conditions for future occupiers.

Informatives

- 1) It is important to note that planning permission does not convey any approval to carry out works on or affecting the public highway.
- 2) With regard to the Public Right of Way situated to the South of the site, no furniture may be erected on or across Public Rights of Way without the express consent of the Highway Authority, There must be no disturbance of the surface of the right of way, or obstruction of its use, either during or following any approved development, Planning consent does not confer consent or a right to disturb or unofficially divert any Public Right of Way at any time without the express permission of the Highway Authority, and no trees or shrubs should be planted within 1.5 metres of the public right of way.



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2.3 REFERENCE NO 24/502460/FULL		
PROPOSAL Section 73 - Application for Variation of Condition 5 (to allow change of the reduction in Dwelling Emission Rate from 50% to 25%) pursuant to 21/501143/FULL		
SITE LOCATION 34 Key Street Sittingbourne Kent ME10 1YS		
RECOMMENDATION Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions as set out in the report, with further delegation to the Head of Planning to negotiate the precise wording of conditions, including adding or amending such conditions as may be consequently necessary and appropriate.		
APPLICATION TYPE Section 73 - Application for Variation of Condition		
REASON FOR REFERRAL TO COMMITTEE Councillor Baldock referred the application to Committee		
CASE OFFICER Guy Martin		
WARD Borden And Grove Park Ward	PARISH/TOWN COUNCIL Borden Parish Council	APPLICANT Mr S Hafeez AGENT Blackburn Architects Limited
DATE REGISTERED 19.06.24	TARGET DATE 23.08.24	
BACKGROUND PAPERS AND INFORMATION: Documents referenced in report are as follows: - All drawings submitted: Part La Overview Report Plot 1 Compliance Report Plot 2 Compliance Report Plot 3 Compliance Report Plot 4 Compliance Report The full suite of documents submitted pursuant to the above application are available via the link below: - https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=SF295UTYKU100		

1. SITE LOCATION AND DESCRIPTION

- 1.1 The site is located to the rear of 34 Key Street, Sittingbourne and was previously used as a tool hire shop comprising of a yard with outbuildings to the rear.
- 1.2 The site is located within the built confines of Sittingbourne and to the east of the Key Street roundabout in a predominantly residential area. The site adjoins the Pine Lodge care home and is reached by an existing access off the A2.
- 1.3 The site is now comprised of the partially built residential development as originally approved under ref. 20/500367/FULL and amended via ref. 21/501143/FULL as set out in the Planning History section below.

2. PLANNING HISTORY

- 2.1 24/502378/FULL – Application under consideration for Section 73 - Application for Minor Material Amendment to approved plans condition 2 (to allow increase in the height of the building comprising plots 1, 2 and 3) pursuant to 21/501143/FULL.
- 2.2 24/501304/SUB - Submission of details approved on 16.04.2024 to discharge condition 7.1 - Contaminated Land Assessment and 7.2 - Remediation Method Statement, Subject to 20/500367/FULL.
- 2.3 22/500723/FULL – Application withdrawn on 24.06.2024 for Section 73 - Application for removal of condition 5 (50% reduction in Dwelling Emission Rate) pursuant to 21/501143/FULL for - Section 73 - Application for Minor Material Amendment to approved plans condition 2 (addition of dormer windows to units 2 and 3) pursuant to 20/500367/FULL for - Demolition of existing storage buildings and erection of 1 no. two bed and 3 no. one bed dwelling units with associated parking turning and amenity space as amended by drawings BA-2008-P-20 Revision A and BA-2008-P-40 Revision A.
- 2.4 21/501143/FULL – Planning permission granted on 28.07.2021 for Section 73 - Application for Minor Material Amendment to approved plans condition 2 (addition of dormer windows to units 2 and 3) pursuant to 20/500367/FULL for - Demolition of existing storage buildings and erection of 1 no. two bed and 3 no. one bed dwelling units with associated parking turning and amenity space as amended by drawings BA-2008-P-20 Revision A and BA-2008-P-40 Revision A.
- 2.5 20/500367/FULL – Planning permission granted on 26.05.2020 for Demolition of existing storage buildings and erection of 1no. two bed and 3no. one bed dwelling units with associated parking turning and amenity space as amended by drawings BDS-1624-P04 Rev B, BDS-1624-P02 Rev B and BDS-1624-P03 Rev D.

3. PROPOSED DEVELOPMENT

- 3.1 This application seeks planning permission to vary condition 5 (to allow the change of the reduction in Dwelling Emission Rate from 50% to 25%) pursuant to approved application 21/501143/FULL. The previous approvals have granted planning permission for four dwellings on this site in two separate buildings.
- 3.2 Condition 5 of 21/501143/FULL is worded as follows:

The dwelling units 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. CONSULTATION

- 4.1 One round of consultation has 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 **Borden Parish Council** did not respond.
- 4.4 **Cllr Mike Baldock** (one of the Ward Councillors) requested that the application be reported to Planning Committee *'as it goes against policy and Members might have objections.'*

5.0 REPRESENTATIONS

- 5.1 **KCC Archaeology** – Did not wish to comment on the application.
- 5.2 **KCC Minerals and Waste** – The County Council has no land-won minerals or waste management capacity safeguarding objections or comments to make regarding this particular application.
- 5.3 **KCC Rights of Way** – Had no comment to make.
- 5.4 **Natural England** - No response received.
- 5.5 **SBC Climate Change Officer** - No objection to the 25% reduction.
- 5.6 **SBC Design / Conservation** – No comment.
- 5.7 **Mid-Kent Environmental Health** - No objection.

6.0 DEVELOPMENT PLAN POLICIES

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

DM14 General development criteria
DM19 Sustainable Design and Construction

7.0 ASSESSMENT

- 7.1 This application is reported to the Committee because Councillor Baldock has called the item to Committee for the reasons set out in paragraph 4.4 above. Considering these comments and the scheme that has been submitted the Committee is recommended to consider the following points:

- Principle of development
- Sustainability / Energy

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 This application seeks a variation to condition 5 of the planning permission granted under ref. 21/501143/FULL. The relevant section of the Act (Section 73) that this application has been submitted under is very clear in that “On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted”. As a result, the only consideration as part of this application is whether the variation, as set out in the proposal section above is acceptable. Therefore, the principle of developing dwellings on this site has been accepted and is not able to be considered further.

Sustainability / Energy

- 7.5 Policy DM19 of the Swale Local Plan states that development proposals will include measures to address and adapt to climate change in accordance with national planning policy and, where appropriate, will incorporate amongst other matters:
- Use of materials and construction techniques which increase energy efficiency and thermal performance, and reduce carbon emissions in new development over the long term unless considerations in respect of the conservation of heritage assets indicate otherwise;
 - Design of buildings which will be adaptable to change and reuse over the long term and which include features which enable energy efficient ways of living (e.g. adequate drying space, cycle storage, home working and good daylighting).
- 7.6 The NPPF states that the planning system should support the transition to a low carbon future in a changing climate and should help to shape places in ways that contribute to radical reductions in greenhouse gas emissions.
- 7.7 The Council also has a document entitled “*Guidance for complying with the climate change planning condition to reduce operational carbon of new dwellings in Swale by 50%*”, and the Council’s declaration of a Climate and Ecological Emergency has been confirmed by a Planning Inspector (in regards to the appeal related to ref. 18/503135/OUT – Land at Barton Hill Drive) as being a material planning consideration. However, the same Inspector also commented that the condition suggested by the Council in respect of that development (which was a staged approach requiring dwellings to be built with an increasing reduction in dwelling emissions dependant on when they were built, starting at 50%) not to be supported by local or national policies. This was effectively the same position that the Secretary of State took when considering the appeal related to ref. 17/505711/HYBRID – Land at Wises Lane, in saying that the 50% condition was not supported by local or national policy. The same local policy applies now and the NPPF which has been revised since this decision, does not set a target figure.
- 7.8 In addition to the above, the matter of imposing the condition requiring a 50% reduction in dwelling emissions against the Building Regs was directly addressed by an Inspector in respect of an appeal related to a development at Land to the rear of 25-29 Station Street, Sittingbourne (ref. 21/503221/OUT). Here the Inspector stated:

“The Council seeks at least a 50% reduction in dwelling emission rates compared to the Target Emission Rates required under the Building Regulations. This is a laudable response to climate change but the Framework is clear that any local requirements should reflect the Government’s policy for national technical standards. Such a condition therefore goes beyond national policy. Policy DM19 refers to sustainable design and construction in generic terms and so this specific requirement is not part of the development plan. As such, this stipulation is not justified.”

- 7.9 In this case, construction work on the proposal has started with the development having been built up to the second-floor level. Due to wider concerns with the building not being built in accordance with the approved drawings, the Council have instructed the development to stop, whilst these matters are regularised. In terms of the reduction in dwelling emission rates, the applicant has advised that there is insufficient space to achieve a 50% reduction in emissions due to the design of the roof limiting the capacity for solar panels and that there is insufficient space on site for ground source heat pumps and that the cost would make the scheme unviable.
- 7.10 The applicant advises that due to the tight plot arrangement, dwelling sizes and roof configuration that the applicant is unable to achieve a 50% reduction in the Dwelling Emission Rate and has provided evidence to show that a 25% reduction in the Dwelling Emission Rate can be met through an increased fabric performance and a sustainable heating, ventilation and air conditioning systems and also the use of PV panels.
- 7.11 The applicant’s agent has confirmed that works started on site on the 20th February 2022 which would require the developer to meet the 2013 Building Control regulations.
- 7.12 Therefore, whilst it is noted that a 25% reduction in Dwelling Emission Rate compared to the Target Emission Rates as required under Part L1A of the Building Regulations 2013 (as amended) would result in a reduction in the rate originally set out within Condition 5, it would still result in a reduction in emission rates above that set by 2013 building control regulations.
- 7.13 The key policy in the determination of this application is DM19, which does not set a target figure and refers to development proposals reducing carbon emissions over the long term. Ultimately, the scheme would achieve this via the methods set out above and the adopted policy would outweigh the material consideration in terms of the Council’s Climate and Ecological Emergency. Due to the circumstances of the case the Council’s Climate Change Officer was consulted on the proposal and had no objections to the proposed variation to the condition.

Conclusion

- 7.14 In view of the adopted policies and the way that this matter has been dealt with on various occasions by Planning Inspectors / Secretary of State, it is recommended that condition 5 be varied in accordance with the amendment being sought and planning permission is granted. As this is a S.73 application the other conditions imposed on 21/501143/FULL are repeated below with the following updates.
- 7.15 Firstly, the time limit condition is no longer necessary as the development has commenced. As a result, the condition which is the subject of this application, originally numbered 5 is now numbered 4 as below. Further to this, the approved drawing condition (1 below) has been amended in line with the recommendation related to the application submitted under ref. 24/50278/FULL which also appears on this agenda. In the event that separate application was refused and this application approved, then that

condition would be required to be altered back to that as originally imposed on 21/501143/FULL. The same applies to the drawing number listed in what is now condition 2 below, which, if that separate application is refused would need to refer back to the original. Finally, condition 7 below related to contamination has been altered to reflect the details which have subsequently been submitted and approved.

CONDITIONS

(1) The development hereby permitted shall not be carried out otherwise than in complete accordance with drawings BA-2008-P02, BA-2008-P20 Revision B & BA-2008-P40 Revision B.

(2) The facing materials used on the development hereby approved shall accord with the specification set out on approved drawing BA-2008-P20 Revision B.

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

(3) Notwithstanding the approved drawings the rooflights to Units 2 and 3 shall have a cill height of at least 1.7m above finished floor level.

Reason: In the interests of residential amenity.

(4) The dwelling units hereby approved shall be constructed to achieve at least a 25% reduction in Dwelling Emission Rate compared to the Target Emission Rates as required under Part L1A of the Building Regulations 2013 (as amended) as set out within the details submitted.

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

(5) The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the dwelling units shall not be occupied unless the notice for that dwelling unit of the potential consumption of water per person per day required by the Building Regulations has been given to the Building Control Inspector.

Reason: In the interests of water conservation and sustainability.

(6) Prior to first occupation of any dwelling unit hereby approved, at least one electric vehicle charging point shall be installed and made ready for use close to the parking areas within the site as shown on drawing BA-2008-P02 for use of residents of the dwelling units hereby approved.

Reason: In the interests of promoting sustainable development.

(7) The development hereby permitted shall deal with the risks associated with contamination as set out within the remediation method strategy as submitted and approved under ref. 24/501304/SUB.

A Closure Report shall be submitted upon completion of the remediation works. The closure report shall include full verification details. 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 will require the written consent of the Local Planning Authority. The scheme shall thereafter be implemented as approved.

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

- (8) The areas shown on drawing BA-2008-P02 for car parking and cycle storage space shall be made available prior to first occupation of any dwelling unit hereby approved, and these facilities shall be kept available for such use at all times. No permanent development, whether permitted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access to the car parking spaces referred to above.

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

- (9) Upon completion, no further alterations or extension of the approved dwelling units, whether permitted by Classes A, B, C or D 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.

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.



2.4 REFERENCE NO 24/502378/FULL		
PROPOSAL Section 73 - Application for Minor Material Amendment to approved plans condition 2 (to allow increase in the height of the building comprising plots 1, 2 and 3) pursuant to 21/501143/FULL		
SITE LOCATION 34 Key Street Sittingbourne Kent ME10 1YS		
RECOMMENDATION Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions as set out in the report, with further delegation to the Head of Planning to negotiate the precise wording of conditions, including adding or amending such conditions as may be consequently necessary and appropriate.		
APPLICATION TYPE Section 73 - Minor Material Amendment		
REASON FOR REFERRAL TO COMMITTEE Councillor Baldock referred the application to Committee		
CASE OFFICER Guy Martin		
WARD Borden And Grove Park Ward	PARISH/TOWN COUNCIL Borden Parish Council	APPLICANT Mr S Hafeez AGENT Blackburn Architects Limited
DATE REGISTERED 14.06.24	TARGET DATE 23.08.24	
BACKGROUND PAPERS AND INFORMATION: Documents referenced in report are as follows: - All drawings submitted: BA-2008-P-02 Proposed Site Location Plan (uploaded 03.03.21) BA-2008-P01 Existing and Proposed Block Plan (uploaded 03.03.21) BDS-1624-PO2A Existing Plans and Elevations (uploaded 03.02.20) BA-2008-P-20B Proposed Plans and Elevations (uploaded 13.06.24) BA-2008-P-40-B Typical Sections (uploaded 13.06.24) TRK01-(01)-A Vehicle Path Analysis 1 of 2 (uploaded 03.02.20) TRK01-(02)-A Vehicle Path Analysis 1 of 2 (uploaded 03.02.20) The full suite of documents submitted pursuant to the above application are available via the link below: - https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=SEPIY4TYK2K00		

1. SITE LOCATION AND DESCRIPTION

- 1.1 The site is located to the rear of 34 Key Street, Sittingbourne and was previously used as a tool hire shop comprising of a yard with outbuildings to the rear.
- 1.2 The site is located within the built confines of Sittingbourne and to the east of the Key Street roundabout within a predominantly residential area. The site adjoins the Pine Lodge care home and is reached by an existing access off of the A2. Residential dwellings lie to the south of the application site.

1.3 The site is now comprised of the partially built residential development as originally approved under ref. 20/500367/FULL and amended via ref. 21/501143/FULL as set out in the Planning History section below.

2. PLANNING HISTORY

2.1 24/502460/FULL – Application under consideration for Section 73 - Application for Variation of Condition 5 (to allow change of the reduction in Dwelling Emission Rate from 50% to 25%) pursuant to 21/501143/FULL.

2.2 24/501304/SUB - Submission of details approved on 16.04.2024 to discharge condition 7.1 - Contaminated Land Assessment and 7.2 - Remediation Method Statement, Subject to 20/500367/FULL.

2.3 22/500723/FULL – Application withdrawn on 24.06.2024 for Section 73 - Application for removal of condition 5 (50% reduction in Dwelling Emission Rate) pursuant to 21/501143/FULL for - Section 73 - Application for Minor Material Amendment to approved plans condition 2 (addition of dormer windows to units 2 and 3) pursuant to 20/500367/FULL for - Demolition of existing storage buildings and erection of 1 no. two bed and 3 no. one bed dwelling units with associated parking turning and amenity space as amended by drawings BA-2008-P-20 Revision A and BA-2008-P-40 Revision A.

2.4 21/501143/FULL – Planning permission granted on 28.07.2021 for Section 73 - Application for Minor Material Amendment to approved plans condition 2 (addition of dormer windows to units 2 and 3) pursuant to 20/500367/FULL for - Demolition of existing storage buildings and erection of 1 no. two bed and 3 no. one bed dwelling units with associated parking turning and amenity space as amended by drawings BA-2008-P-20 Revision A and BA-2008-P-40 Revision A.

2.5 20/500367/FULL – Planning permission granted on 26.05.2020 for Demolition of existing storage buildings and erection of 1no. two bed and 3no. one bed dwelling units with associated parking turning and amenity space as amended by drawings BDS-1624-P04 Rev B, BDS-1624-P02 Rev B and BDS-1624-P03 Rev D.

3. PROPOSED DEVELOPMENT

3.1 This application seeks planning permission to vary condition 2 (approved drawings) pursuant to approved application 21/501143/FULL. The previous approvals have granted planning permission for four dwellings on this site in two separate buildings.

3.2 This application is a consequence of an enforcement case where it was identified that the two-storey building had not been constructed as per the approved details. As a result, set out below are the ‘as approved’ building heights under 21/501143/FULL and those now to be considered as part of this application.

	Application 21/501143/FULL (m)	As built Height (m)
Plot 1 roof height	5.9	6.2
Plot 1 Eaves Height	4.3	5.0
Plot 2 and 3 roof height	5.7	6.1
Plot 2 and 3 eaves height	3.2	4.0

4. CONSULTATION

4.1 One round of consultation has 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 One objection was received from a neighbouring occupier on the following grounds:

Comment	Report reference/
- The bungalow should be clad as per the approved details to improve the efficiency of the property;	See paragraph 7.10
- Concerned that through the removal of the wall of the original building that it has left a wall unstable and unsafe.	See paragraph 7.22
- The correct neighbour consultation has not been carried out.	See paragraph 7.21

4.3 **Borden Parish Council** did not respond.

4.4 **Cllr Mike Baldock** (one of the Ward Councillors) requested that the application be reported to Planning Committee due to the deviations in height from those approved.

5.0 REPRESENTATIONS

5.1 **KCC Archaeology** - No comment.

5.2 **KCC Minerals and Waste** – The County Council has no land-won minerals or waste management capacity safeguarding objections or comments to make regarding this proposal.

5.3 **KCC Rights of Way** - No comments received.

5.4 **Natural England** - No comments received.

5.5 **SBC Climate Change Officer** - No comment to make.

5.6 **Mid-Kent Environmental Health** - No objection.

6.0 DEVELOPMENT PLAN POLICIES

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

ST3 Swale settlement strategy
CP4 Requiring good design
DM14 General development criteria
DM16 Alterations and extensions

7.0 ASSESSMENT

7.1 This application is reported to the Committee at the request of Councillor Baldock due to the deviations in height from those previously approved. Considering these comments

and the scheme that has been submitted the Committee is recommended to consider the following points:

- Principle of development
- Character and Appearance
- Living Conditions

Principle

- 7.2 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 sets out that the starting point for decision making is the development plan unless material considerations indicate otherwise.
- 7.3 The National Planning Policy Framework provides the national policy context for the proposed development and is a material consideration of considerable weight in the determination of the application. The NPPF states that any proposed development that accords with an up-to-date local plan should be approved without delay. At the heart of the NPPF is a presumption in favour of sustainable development and for decision-taking this means approving development that accords with the development plan.
- 7.4 This application seeks a variation to condition 2 (approved drawings) of the planning permission granted under ref. 21/501143/FULL. This application has been submitted under Section 73 of the Town and Country Planning Act 1990 which allows for conditions to be varied, including the condition that specifies the plans which the development should be undertaken in accordance with. Although not appearing in current legislation or guidance, when made in respect of such a condition, this type of application is sometimes referred to as a Minor Material Amendment. Planning Practice Guidance sets out that “there is no statutory limit on the degree of change permissible to conditions under s73, but the change must only relate to conditions and not to the operative part of the permission.” This is supported by the guidance setting out that the only limits on the use of this approach are that it cannot amend the time limit for commencing development and cannot amend the description of the development. In this case, noting that the amendments relate to the scale and fenestration of one of the approved buildings only, it is considered that the scope of the changes sit comfortably within the scope of an application of this type.
- 7.5 The relevant section of the Act (Section 73) that this application has been submitted under is very clear in that “On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted.” As a result, the only consideration as part of this application is whether the variations, as set out in the proposal section above are acceptable. Therefore, the principle of developing dwellings on this site has been accepted and is not able to be considered further.

Character and Appearance

- 7.6 The National Planning Policy Framework attaches great importance to the design of the built environment and that design should contribute positively to making places better for people. The Local Plan reinforces this requirement.
- 7.7 Policy CP4 of the Swale Local Plan 2017 requires development proposals to be of high-quality design and to be in keeping with the character of the area. It states that particular regard should be paid to the scale, height, materials, detailing, mass, bulk, articulation and site coverage of any future proposals.

- 7.8 The alterations to the height of the roof and the eaves height would incorporate an appropriate design. The building is set to the rear of existing built form fronting Key Street (the A2) and to the rear of existing residential properties in Cherryfields. As such, the amendments would be hidden from many public vantage points. From those places where the development would be viewed, it would not appear to be of scale or form that would be inappropriate in the context of the surrounding area. Albeit taller, the overall form of the building and its roof, comprising of pitched roofs, rooflights and a discreetly positioned dormer, would remain similar and, as such, it is considered that the development would remain acceptable in terms of the proportions and form of the development.
- 7.9 In respect to the fenestration, the proposed amendments do not change the location of the windows and doors, however, through raising the eaves height the proposal results in an increase in the height of the first-floor windows. In comparison to the extant permission at the site, the appearance of the development would not change to a degree that the development would now be in conflict with the policies of the development plan.
- 7.10 The materials will remain unchanged. In respect to the point made by a neighbouring occupier relating to the cladding on the bungalow, the application and drawings show that this building will be clad in black weatherboarding. It is important to note that no amendments to this building are proposed. Works on site have currently stopped until the current application is determined however once works start the applicant will be able to proceed with works to, amongst other matters, clad the rear of this building.
- 7.11 On the basis of the above the development would ensure that the character and appearance of the area is preserved meeting the requirements of policy CP4 of the Swale Local Plan.

Living Conditions

- 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 should 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, give rise to an unreasonable loss of privacy, or result in an unreasonable loss of outlook or in excessive noise or odour pollution. Policy DM 16 also requires that alterations or extensions to existing buildings protect residential amenity.
- 7.13 In terms of the surrounding uses, the building subject to this application lies immediately adjacent to the Pine Lodge Care Home which abuts the site to the west and nos. 48, 50 and 52 Cherryfields to the south. To the east / north east of the site lie a terrace of properties (nos 34-50) fronting Key Street.
- 7.14 There are no windows on the southern facing elevation of the property and roof lights along the western elevation of the building. Due to the increase in eaves and roof heights the roof lights are raised above their previous level ensuring that they would not provide any more harm in terms of overlooking of the adjacent nursing home compared to the scheme already approved.

- 7.15 The western wall of the proposed building lies adjacent to the boundary with Pine Lodge Care Home. This adjacent property incorporates a first-floor window located adjacent to the proposed development. There are no records to confirm the use of this room however the proposal would not fail the two tests for light ensuring that the room would not result in an unacceptable loss of light. It is not considered that the proposal would result in a harmful additional loss of outlook above that previously granted.
- 7.16 To the south, the rear boundaries of nos. 50 and 52 Cherryfields abut the building in question, however, whilst the proposal would result in a larger flank wall lying adjacent to their rear boundaries, the increase in height would be by a limited amount compared to what has already been approved and the proposal would lie predominately to the rear of detached garages which serve these residential properties in Cherryfields.
- 7.17 Therefore, in respect to the properties to the rear of the site within Cherryfields, whilst the amendment results in a higher building, as it is sited adjacent to existing outbuildings located to the rear of the neighbouring properties the proposal would not give rise to additional harmful impacts to an extent that would be unacceptable.
- 7.18 In terms of the terrace of properties fronting Key Street to the east / north east, it is considered that due to the separation distance between the building and these properties that the increase in height would not give rise to any harm to the living conditions of the occupants of these properties.
- 7.19 In reviewing the proposal it is not considered that it would have an adverse impact upon the amenities of the proposed bungalow on site due to the limited increase in height.
- 7.20 In consequence it is not considered that the proposal would have an adverse impact upon the living conditions of neighbouring occupiers meeting the requirements of policy DM14 of the Local Plan.

Other Matters

- 7.21 In respect to the remaining points raised by the neighbouring occupant, surrounding properties were consulted and a site notice was displayed adjacent to the site ensuring that the Council's statutory publicity requirements were complied with.
- 7.22 The potential impact of stability of a wall is a building control matter outside of the control of the planning process.

Conclusion

- 7.23 On the basis of the above assessment, it is recommended that planning permission is granted and condition 2 of 21/501143/FULL be varied to incorporate the amendments as submitted under this current application.
- 7.24 As this is a S.73 application, the other conditions imposed on 21/501143/FULL have been repeated below with the following updates. Firstly, the time limit condition is no longer necessary as the development has commenced. As a result, what was condition 2 on 21/501143/FULL becomes condition 1 as below with the necessary drawing numbers updated. In addition to this, a separate application appearing on this agenda, submitted under ref. 24/502460/FULL seeks to amend the energy efficiency condition. As this has been recommended for approval this has also been amended as below (see condition 4). However, in the event of that separate application being refused and this application approved, then this condition would be required to be altered back to that as originally imposed on 21/501143/FULL. Finally, condition 7 below related to

contamination has been altered to reflect the details which have subsequently been submitted and approved.

CONDITIONS

- (1) The development hereby permitted shall not be carried out otherwise than in complete accordance with drawings BA-2008-P02, BA-2008-P20 Revision B & BA-2008-P40 Revision B.

Reason: In the interests of residential amenity.

- (2) The facing materials used on the development hereby approved shall accord with the specification set out on approved drawing BA-2008-P20 Revision B.

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

- (3) Notwithstanding the approved drawings the rooflights to Units 2 and 3 shall have a cill height of at least 1.7m above finished floor level.

Reason: In the interests of residential amenity.

- (4) The dwelling units hereby approved shall be constructed and tested to achieve at least a 25% reduction in Dwelling Emission Rate compared to the Target Emission Rates as required under Part L1A of the Building Regulations 2013 as set out within the details submitted for permission ref: 24/502460/FULL.

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

- (5) The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the dwelling units shall not be occupied unless the notice for that dwelling unit of the potential consumption of water per person per day required by the Building Regulations has been given to the Building Control Inspector.

Reason: In the interests of water conservation and sustainability.

- (6) Prior to first occupation of any dwelling unit hereby approved, at least one electric vehicle charging point shall be installed and made ready for use close to the parking areas within the site as shown on drawing BA-2008-P02 for use of residents of the dwelling units hereby approved.

Reason: In the interests of promoting sustainable development.

- (7) The development hereby permitted shall deal with the risks associated with contamination as set out within the remediation method strategy as submitted and approved under ref: 24/501304/SUB.

(i) A Closure Report shall be submitted upon completion of the remediation works. The closure report shall include full verification details. 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 will require the written consent of the Local Planning Authority. The scheme shall thereafter be implemented as approved.

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

- (8) The areas shown on drawing BA-2008-P02 for car parking and cycle storage space shall be made available prior to first occupation of any dwelling unit hereby approved, and these facilities shall be kept available for such use at all times. No permanent development, whether permitted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access to the car parking spaces referred to above.

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

- (9) Upon completion, no further alterations or extension of the approved dwelling units, whether permitted by Classes A, B, C or D 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.

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.



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PLANNING COMMITTEE – 26 November 2024**PART 5**

Report of the Head of Planning

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

- **Item 5.1 – 8 Edyngham Close, Sittingbourne**

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

The application related to a new boundary wall and the Inspector identified that the main issue was the effect of the development on the character and appearance of the area. The Inspector found that enclosing the open space to the side of the appeal property would create a substantial feature that would be clearly visible in views from the public realm in a highly prominent location. The Inspector found that enclosing the open space to the side of the dwelling would be out of keeping with the character and appearance of the area and, as such, the development would be visually harmful as it would erode the distinctive qualities of the locality. Other examples within the area were not found to justify the impact of this development and other matters raised by the appellant were not found to outweigh conflict with the development plan that exists as a result of the identified harm.

- **Item 5.2 – 73-75 High Street, Queenborough**

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

The application related to the change of use of the building to form two flats with the physical works involved including the raising of the roof, the provision of balconies and the formation of a roof terrace with an enclosed staircase. The Inspector identified that the main issue was the effect of the proposal on the living conditions of the occupiers of two neighbouring properties. Due to the height of the works to the rear of the building and the proximity to the neighbouring property of 77 High Street, the Inspector found that the extension would have an overbearing effect that would dominate the outlook of the residents of that property. Moreover, it was found that the size and elevation of the proposed roof terrace would enable direct overlooking of 69 and 77 High Street to an unacceptable degree. Whilst it was found that the impact on the sunlight received within the neighbouring properties would not be unacceptable, the impact on the occupiers of 69 High Street was otherwise acceptable and the provision of privacy screens would prevent unacceptable overlooking from some potential vantage points, the impact on privacy and the outlook of the occupiers of 77 High Street was unacceptable and contrary to policies DM14 and DM 16 of the Local Plan. The harm caused was found to clearly and demonstrably outweigh the benefits arising from the proposal which included the benefit of boosting Housing Land Supply, the potential benefit to the character and the limited economic benefits of the proposal.

- **Item 5.3 – Land Rear of 17 Station Street, Sittingbourne**

APPEAL DISMISSED

DELEGATED REFUSAL

Observations

The application related to the erection of a building consisting of four flats, each with one bedroom. The Inspector identified that the main issues were the effect of the proposal on the living conditions of the existing neighbouring occupiers and the future occupiers of the development and the impact on the Swale Special Protection Area. It was found that the development would diminish the enjoyment of the adjacent residential living environment due to the overshadowing caused by the proposed development. It was also found that there would be unacceptable inter-visibility between existing neighbouring residents and future occupiers of the development, to the detriment of the living conditions of all. The proposal was therefore found to conflict with Local Plan policies DM14 and CP4. The impact on the Swale Special Protection Area was not considered further due to the overriding harm that was identified in relation to living conditions. The harm caused was found to clearly and demonstrably outweigh the benefits arising from the proposal which included the benefit of boosting Housing Land Supply and limited economic benefits during construction.

- **Item 5.4 – Land Rear of 98A Sockless Road, Minster**

APPEAL DISMISSED

DELEGATED REFUSAL

Observations

Outline planning permission with all matters reserved except for access was sought for the erection of 6 dwellings. The Inspector found that the main issues were the impact on the Swale Special Protection Area and the effect on the character and appearance of the area. The impact of the proposal on the character and appearance of the area was found to be acceptable and the housing supply benefit was found to weigh in favour of the proposal. However, as suitable mitigation to off-set the impact of the development on the Special Protection Area was not secured, the Inspector found that the proposed development could result in harm to the integrity of the Special Protection Area and would conflict with the Habitats Regulations, policies ST1, DM14 and DM28 of the Local Plan and the NPPF.

- **Item 5.5 – 102 Athelstan Road, Faversham**

APPEAL ALLOWED

DELEGATED REFUSAL

Observations

The application sought permission for a single storey rear extension to a dwelling and was refused on the grounds of the impact of the development on the daylight and outlook

of the neighbouring property of 104 Athelstan Road. Whilst it was noted that there was 'limited' conflict with the Council's Designing an Extension – A Guide for Householders Supplementary Planning Guidance, the Inspector concluded that the proposed extension would not cause significant harm to living conditions for neighbouring residents. The Inspector referred to the modest eaves height, the pitched roof design and the inset from the boundary of the extension as well as the screening at the boundary and the orientation of the dwellings in reaching the opinion that the development would not cause an unacceptable loss of daylight or sunlight and not be visually dominant or intrusive.

- **Item 5.6 – Faversham War Memorial**

APPEALS DISMISSED

APPLICATIONS FOR PLANNING PERMISSION AND LISTED BUILDING CONSENT NOT DETERMINED

Observations

The proposal was to dismantle the Faversham War memorial and re-erect it in the centre of the Memorial Garden, with other works involving interpretation boards, raised beds, an access path, the removal of an iron railing fence and the repair and re-laying of existing paving. Following a non-determination appeal being submitted and the Planning Committee setting out that the applications would have been refused, the Inspector proceeded on the basis that the main issues were whether the development preserves the listed building, its setting and any features of special architectural and historic interest that it possesses, and whether it preserves or enhances the character or appearance of the Conservation Area. The Inspector found that the war memorial would no longer be listed if moved and that the proposal would cause a total loss of the heritage asset at its existing site. The Inspector took the view that relocating the monument would make it the focus of the garden which would give it a grandiose setting which would be at odds with the modest and understated design and scale of the monument. It would have the appearance of architectural salvage or a relic, disconnected from its original location. Due to its location at the back of the Memorial Gardens, it would be less prominent in the street scene and less visible to passersby. In terms of the Conservation Area, the works would result in the loss of the focal point on the site and the erosion of the visual connection with the Cottage Hospital and the wider street scene. The positive contribution made by the war memorial to the street scene and distinctive character of the Conservation Area would thereby be lost. Moreover, the scale of the memorial and its new setting were found to detract from the character of the Conservation Area. Public benefits of the proposal were considered but not found to be sufficiently substantial to outweigh the harm caused.

- **Item 5.7 – Orchard View, Easting Road, Eastling**

APPEAL DISMISSED

DELEGATED REFUSAL

Observations

Permission was sought for the siting of two mobile shepherd's huts to be used as holiday lets with other works including the planting of a wild meadow. The main issues assessed by the Inspector were the impact on character and appearance, including the application of policies of relevance to the AONB (now National Landscape), and the impact on the

provision of best and most versatile agricultural land. It was found that the development in this location had not been justified and that the development would urbanise this undeveloped land, introducing an uncharacteristic use and associated built form into the prevailing farmed rural landscape. It was stated that the development would be inappropriate and intrusive in this countryside location, visually jarring with the open and green characteristics of the area and inharmonious with the natural beauty of the AONB. Moreover, in the absence of evidence that less valuable land was not available for the development, it was found that the loss of agricultural land would be contrary to Local Plan policy DM31. Rural economy and tourism benefits were considered by the Inspector but found to be significantly outweighed by the identified harm.



The Planning Inspectorate

Appeal Decision

Site visit made on 19 August 2024

by **Nicola Davies BA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27th August 2024

Appeal Ref: APP/V2255/D/24/3344201

8 Edyngham Close, Sittingbourne, KENT ME10 2SN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mrs H Brown against the decision of Swale Borough Council.
 - The application Ref is 24/500669/FULL.
 - The development proposed is the erection of a new boundary wall.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue raised by this appeal is the effect of the proposed development on the character and appearance of the area.

Reasons

3. Many of the properties in the area have open frontages, although some are enclosed by vegetation and a small number host fences, although those fences nearby enclose the rear boundaries of properties. There are wide verges in the area that give this locality a spacious character and openness to the appearance of this residential area. The general openness provides a sense of place to this locality. These create a distinctiveness to both the character and appearance of the area. Whilst some boundary features exist in the locality these are not an overriding characteristic. The space to the side of the appeal property contributes to the spacious character and appearance of the area.
4. Enclosing the open space to the side of the appeal property would create a substantial feature that would be clearly visible in views from the public realm in a highly prominent location. Although the frontage to the property would remain open, enclosing the open space to the side of the dwelling would be out of keeping with the character and appearance of the area. As such, it would be visually harmful as it would erode the distinctive qualities of the locality.
5. I have been provided photographs of examples of enclosures in the neighbouring and wider area. I accept that there are some forms of enclosures within the locality, such as, those that enclose rear gardens of neighbouring properties and hedges around front gardens. However, in the main the area hosts an openness to its character and appearance. Many of the examples provided are not in the immediate environs of the appeal site where I have identified there to be a distinctiveness to the character and appearance of the

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

Appeal Decision APP/V2255/D/24/3344201

area. Those examples offer little weight in favour of the proposal. This proposal can and should be considered on its individual merits taking the surrounding context into consideration. Whilst there may be other examples of enclosures in the neighbouring area, this does not justify further such development where visual harm would arise.

6. It is advised that the area of land relating to the appeal site has not been maintained by Authorities over the years. It is also contended that it has been used as a pedestrian short cut and that plants and bulbs within this area have been vandalised and dogs have been allowed to foul in the area. Enclosing this land would allow it to be maintained. Climbing plants could potentially make an attractive feature of the enclosing boundary. Whilst these would be benefits of the proposal they do not overcome the harm that I have identified to the open character and appearance of the area. These matters, therefore, offer little weight in favour of the proposed development.
7. For these reasons, I conclude that the proposed development would be harmful to the character and appearance of the area. The proposal would, therefore conflict with Policies CP4 and DM14 of the Bearing Fruits 2031 – The Swale Borough Local Plan 2017. These policies seek, amongst other matters, development to be of high quality design that is sympathetic and appropriate to its location and that promotes and reinforces local distinctiveness and strengthens a sense of place.

Conclusion

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

Nicola Davies

INSPECTOR



The Planning Inspectorate

Appeal Decision

Site visit made on 4 September 2024

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

an Inspector appointed by the Secretary of State

Decision date: 23rd September 2024

Appeal Ref: APP/V2255/W/23/3334751

73-75 High Street, Queenborough, Kent ME11 5AG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mrs Susan Stock against the decision of Swale Borough Council.
- The application Ref is 23/502901/FULL.
- The development proposed was originally described as “change of use from commercial to 2no. residential apartments, including raising of roof, installation of new bi fold doors, erection of balconies to the creekside elevation, and new roof terrace with enclosed staircase”.

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The proposed site location and block plan, and floor plans and elevations were amended during the application process showing the removal of a balcony, an altered roof terrace configuration and additional information on sight lines. I have determined the appeal based on the amended plans.

Main Issue

3. The main issue in this appeal is the effect of the proposal on the living conditions of the occupiers of 69 and 77 High Street, with particular regard to outlook, sunlight and privacy.

Reasons

4. The appeal site comprises a commercial building in a predominantly residential area. It is a single storey property with a basement which projects beyond the rear of the neighbouring houses at 69 and 77 High Street (Nos 69 and 77). The three-storey structure at No 77 has a ground floor opening onto a small, raised patio and a lower-level back garden immediately abutting the site. No 69 is a two-storey dwelling with rear outbuildings alongside an alley which separates it from the appeal site.
5. The proposed development would replace the existing part monopitch, part flat roof with a taller flat roof to create a first floor. It would include a rear

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balcony, roof terrace and a central staircase providing access to the upper floor apartment and roof.

6. The proposal would not increase the building footprint, would be lower than the neighbouring buildings and has been designed to minimise flood risk whilst providing an adequate standard of accommodation. However, due to the significantly increased height of the rear part of the structure and its proximity to the ground floor rear room and patio at No 77, the extended building would have an overbearing effect, dominating the outlook from the adjoining house and patio. Given the south facing orientation of No 77's rear rooms and garden and considering the existing overshadowing from the building on the site, the proposed scheme would not cause unacceptable loss of sunlight to the occupants of that house.
7. I acknowledge that there have been some changes to the proposed external amenity spaces since the Council's refusal of a previous application for the site (ref 22/505921/FULL) and during the application process for the current proposal. There is no dispute that the privacy screens on the proposed balcony would prevent unacceptable overlooking of the neighbouring properties from that space.
8. Nevertheless, the proposed roof terrace would occupy a large amount of the roofspace above the extended building. Whilst it would align with the rear of No 77 and face the harbour, the scale and elevated position of the roof terrace mean that future occupiers would be able to look directly down into the rear gardens at Nos 69 and 77 when using their outdoor space. This would result in an unacceptable loss of privacy to the residents of these neighbouring properties, significantly harming their living conditions. There are views into the garden at No 77 from the adjacent property at 79 High Street and the rear patio is also visible from the street. However, the position of the proposed roof terrace high above the neighbouring gardens would result in greater overlooking than at present.
9. The existing rear outbuildings at No 69 already substantially enclose and affect the amount of sunlight to the rear garden and ground floor rooms of this neighbouring house. The first-floor window nearest the appeal site is obscure glazed. Although the proposed scheme would result in a sizeable extended building, given the position of outdoor structures and rear window arrangements at No 69, the proposal would not result in a harmful loss of outlook or unacceptable overshadowing to the occupiers of this property.
10. Whilst the proposed development would not harm the sunlight to Nos 69 and 77, I conclude that it would significantly harm the occupants' privacy. There would also be an unacceptable loss of outlook from No 77. This would be contrary to Policies DM14 and DM16 of the Bearing Fruits 2031 The Swale Borough Local Plan 2017 (Local Plan) where they require developments to protect residential amenity.

Other Matters

11. The Council did not find harm or development plan conflict in relation to several other matters, including flood risk, noise, parking, space standards, living conditions for future occupants and archaeology. However, even if I

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were to agree with the Council on these points, the absence of harm would be a neutral matter which would not carry weight in favour of the proposal.

12. The site adjoins a grade II listed building at 77 High Street (No 77). Its special interest and significance derive in part from it being an 18th century three storey and basement brick building with a parapet and concealed slate roof, a panelled doorway with fanlight, an octagon bay window and some sash windows. As the extended building would be attached to the rendered side of No 77 and given that its frontage would remain much smaller than that of the adjoining building, the proposal would preserve the setting of the listed building, and its significance would not be harmed. I note that the Council raised no objection in this regard either. Nevertheless, this lack of harm weighs neutrally and does not amount to a consideration in support of the appeal or alter my overall conclusion on the main issue.
13. The site lies within the Queenborough Conservation Area (CA) where there is a requirement for special attention to be paid to the desirability of preserving or enhancing the character or appearance of the CA. Having regard to the Queenborough CA Character Appraisal and Management Strategy (CAMS), the significance of the CA derives in part from it being a late example of a medieval port town and Royal Borough, with planned High Street, town quay and Parish Church and its collection of Georgian buildings. The host building is identified in the CAMS as being a negative feature in the CA as it is a modern building which does not respond sympathetically to the prevailing scale, roofscape, rhythm of frontages and use of materials of buildings along the High Street.
14. The proposal would modernise a building of limited architectural quality no longer required for commercial use and is supported by Queenborough Town Council. I note that the Council does not object to the proposed design and considers that the scheme has the potential to enhance the character and appearance of the CA. However, I am concerned that the external roof terrace enclosures and stairwell structure would create roof clutter visible from the High Street which could be detrimental to the character and appearance of the CA. As I am dismissing the appeal for other reasons, I have not considered this matter further.
15. The proposed development would be likely to have a significant effect, either alone or in combination, on The Swale Special Protection Area and Ramsar site due to its location within 6km of the protected sites. However, notwithstanding the SAMMS¹ Mitigation Contribution Agreement and fee payment, given my conclusion below there is no need to consider the implications of the proposal on the protected sites because the scheme is unacceptable for other reasons.

Planning Balance and Conclusion

16. The Council cannot currently demonstrate a five year housing land supply required by the Framework. According to an appeal decision for Ufton Court Farm in July 2024², the Council's current position is a 4.1 year housing land

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

² Appeal Ref: APP/V2255/W/23/3333811

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supply. This represents a significant shortfall and therefore paragraph 11(d) of the Framework is engaged.

17. Paragraph 11(d)(ii) of the Framework confirms that in such circumstances, permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
18. The Framework seeks to boost housing supply and highlights the important contribution small and medium sized sites can make, whilst supporting development which makes efficient use of land. The proposal would make a modest contribution of two additional dwellings to the supply of housing, making better use of previously developed land within Queenborough on a site with access to services and public transport. It would contribute towards Swale Borough's housing supply, making a modest difference to addressing the shortfall, and therefore I attribute modest weight to this benefit.
19. There would also be some economic benefits during the construction phase when the development would provide jobs. However, given the relatively small scale of the proposal, this benefit would be limited.
20. In contrast, the proposal would harm the living conditions for existing occupiers at Nos 69 and 77. I have concluded that the proposal would conflict with Policies DM14 and DM16 of the Local Plan. This matter carries significant weight against the scheme.
21. Consequently, the adverse impacts I have identified would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. It therefore follows that the proposal does not benefit from the presumption in favour of sustainable development.
22. For the reasons given above, the proposal would conflict with the development plan and the material considerations, including the Framework, do not indicate that the appeal should be decided other than in accordance with it. The appeal is therefore dismissed.

A Wright

INSPECTOR



The Planning Inspectorate

Appeal Decision

Site visit made on 11 September 2024

by **Nicola Davies BA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 September 2024

Appeal Ref: APP/V2255/W/24/3341411

Land rear of 17 Station Street, Sittingbourne ME10 3DU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Naith Hanchard of Project Halo Ltd against the decision of Swale Borough Council.
 - The application Ref is 23/505202/FULL.
 - The development proposed is the erection of a building to comprise of 4 x 1 bed apartments with associated parking.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues raised by this appeal are the effect of the proposed development on the living conditions of existing neighbouring and future occupiers and the Swale Special Protection Area (Swale SPA).

Reasons

Living Conditions

3. Kember Place is to the south of the proposed development. The proposed building would project some distance beyond the rear building line of the existing adjacent building, Kember Place, although the proposal would include a setback in projection next to Kember Place. Notwithstanding this, the proposed development would create a substantial bulk of built development in very close proximity to the upper storeys of Kember Place which hosts windows that serve habitable living space. The projection, although chamfered, would cause overshadowing of Kember Place. A development of the projection and height proposed, in such close proximity to the adjoining property and its rear windows, would diminish the enjoyment of the adjacent residential living environment that the existing occupiers should reasonably expect to enjoy.
4. I saw that 17 Station Street is sited at a lower ground level to that of the appeal site. I acknowledge that 17 Station Street has been unoccupied. However, the Council has advised that this property has recently been converted to residential use.
5. The proposal would have outlook at the rear over four storeys. These would directly face onto the rear elevation of 17 Station Street that has windows in the rear elevation as well as its outrigger. There would be separation between

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the respective developments. Nonetheless, mutual observation would occur in respect of outlook from both these buildings. The space between developments would not be sufficient to prevent observation from taking place. As such, loss of privacy would occur. This would be harmful to the living conditions the occupiers of each respective property should reasonably expect to enjoy.

6. I accept that there may be examples of other similar relationships between existing development with mutual overlooking in the locality. Whilst this may be so, this does not justify further development where harm would occur.
7. For these reasons, I conclude that the proposed development would be harmful to the living conditions of existing neighbouring occupiers and future occupiers of the proposed development. The proposal would, therefore conflict with Policies DM14 and CP4 of the Bearing Fruits 2031: The Swale Borough Local Plan 2017. These policies seek, amongst other matters, development to cause no significant harm to amenity. Whilst the criteria of policy CP4 does not specifically refer to protecting residential amenity it requires proposals to be of a high quality design that are appropriate to its surroundings. I have found that this would not be the case here.

Swale SPA

8. The proposed development would have a negative impact upon the Swale SPA and a financial contribution is required to mitigate the potential adverse effects resulting from the development. I acknowledge the appellant's willingness to draft an agreement to address this matter. Notwithstanding this, had I considered the development to be acceptable in all other respects, I would have sought to undertake an Appropriate Assessment. However, given that I am dismissing this appeal for other reasons it has not been necessary for me to consider this matter in any further detail.

Other Matters

9. The appellant highlights that the Council does not have a five-year housing land supply of deliverable housing sites in place. The proposal would boost the supply of housing and could provide high quality homes. However, even if the housing shortfall is substantial, the benefits associated with four dwellings would be relatively small. Also any economic benefits during construction would be temporary and limited.
10. The adverse impact of the proposed development on the living conditions of existing adjoining and future occupiers attracts substantial weight and therefore significantly and demonstrably outweighs the benefits when assessed against the policies of the National Planning Policy Framework when taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

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

Nicola Davies

INSPECTOR

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Appeal Decision

Site visit made on 16 October 2024

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st November 2024

Appeal Ref: APP/V2255/W/24/3337949

Land rear of 98A Scocles Road, Minster on Sea, Sheerness, Kent ME12 3SW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs Alan Saunders against the decision of Swale Borough Council.
 - The application Ref is 22/500388/OUT.
 - The development proposed is an outline planning application for residential development of 6no. dwellings with associated parking and access driveway, to be accessed from within parcel G of Harps Farm residential development.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is submitted in outline with all matters except for access reserved for future consideration. I have dealt with the appeal on this basis, treating any details of other matters shown on the plans as illustrative.
3. The application was amended from 7 to 6 dwellings during the course of the Council's consideration of the application. I have therefore taken the description of development from their decision notice as it more accurately describes that for which permission is sought.

Main Issues

4. The main issues are the effect of the proposed development on a) the Swale, Thames and Medway Estuary Special Protection Areas; and b) the character and appearance of the area.

Reasons

The Swale, Thames and Medway Estuary Special Protection Areas

5. The Swale, Thames and Medway Estuary Special Protection Areas (SPAs) provide wetland and important habitat that is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). These areas are easily disturbed by recreational activity from people and their pets and there is a reasonable likelihood that the SPAs would be accessed for recreational purposes by future occupiers of the development. While the effects of the development alone would be limited, additional recreational visitors to the protected areas would be likely to have significant effects when considered in combination with other proposals.

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6. The Habitats Regulations require me to consider any avoidance or mitigation measures that would be capable of addressing the adverse effects and to be certain that they would be effective. I have been provided with information and representations on the matter, including the Bird Wise North Kent Mitigation Strategy (2018). It appears that the impact on the SPAs could be monitored and managed to a satisfactory level through a tariff-based system that would fund measures such as awareness raising, on-site wardens, provision of signage and access infrastructure. Natural England, who are the statutory conservation body, agree that such payments can avoid an adverse effect on the integrity of the SPAs.
7. An applicant can either make a direct payment to the Council, in line with the appropriate tariff, or sign a unilateral undertaking (UU) to pay the tariff at a later date. I acknowledge the appellant has submitted a draft UU to address this matter but there is no information before me to indicate that a completed UU has been produced or a direct payment made to the Council.
8. Where suitable mitigation has not been secured, the Habitats Regulations state that planning permission should only be granted if there are reasons of overriding public interest and suitable compensatory measures are secured. As this case does not accord with those requirements, permission cannot be granted.
9. Consequently, I find that the proposed development could result in harm to the integrity of the SPAs and would conflict with both the Habitats Regulations, and Policies ST1, DM14 and DM28 of the Swale Borough Local Plan 2017. These policies, amongst other things, require development to avoid significant harm to, and adequately mitigate the effects upon, biodiversity, and that any adverse effect is only permitted in exceptional circumstances where there are overriding reasons of public interest and damage can be fully compensated.
10. The development would also conflict with the National Planning Policy Framework (the Framework), which requires development to protect and enhance the natural environment and sites of biodiversity value, improve biodiversity, and that where significant harm to biodiversity cannot be adequately mitigated, permission should be refused.

Character and Appearance

11. The appeal site is a largely inaccessible plot of land which contains unmanaged trees and vegetation. It is located between the rear gardens of houses on Harps Avenue and a residential development currently under construction. The green buffer provided by the site is no doubt of some value to those existing residents whose gardens back onto it. However, given where it is located and the housing around the site, its wider visual contribution to the area is more limited.
12. The redevelopment of the site would result in the loss of some habitat, trees and biodiversity. However, it would also provide an opportunity for some compensatory planting and habitat provision, which could be more effectively managed than is currently the case.
13. However, the illustrative layout submitted with the proposal does not, to my mind, represent a satisfactory approach in this regard. It leaves a large inaccessible area of trees at one end of the site and insufficient areas amongst

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the houses to allow planting and structural landscaping to thrive. What the illustrative drawing does do however, is indicate that a more considered layout could achieve these objectives.

14. Indeed, it seems to me that there is sufficient space to provide the houses as well as a more appropriate approach to boundary planting; deliver areas of communal planting that would help bring about habitat and biodiversity contributions; and retain a visual contribution to the wider area. I acknowledge that this might necessitate smaller dwellings than those shown on the submitted illustrative layout but this would not necessarily change the number of units now being sought.
15. It was suggested that the scheme as proposed would deliver a 7% Biodiversity Net Gain (BNG). Any new planning application would need to meet the new statutory BNG targets and so this would provide a definitive measure against which any revised submission would need to be assessed. This would be an additional incentive to provide appropriate boundary planting and retain as many trees on site as possible.
16. Given that the site is effectively 'land-locked' and is, or will be, largely surrounded by houses, the redevelopment of the site for housing would not be out of keeping with the wider area. The Highway Authority has indicated that in terms of highway safety and capacity the means of access would be acceptable. Although some on site matters such as turning would need to be more fully considered, it would be possible to deal with them at a later date.
17. Overall, there would be opportunities to secure compensatory planting and biodiversity net gains, which would retain some of the site's wider visual contribution to the area. Accordingly, I do not find the proposal harmful to the character and appearance of the area. As such, it would accord with Policies CP4, DM28 and DM29 of the Swale Local Plan 2017 insofar as they seek to ensure developments are appropriate to their surroundings and have regard to trees, habitat, biodiversity and their management.
18. The proposal would in relation to this matter accord with the Framework's objectives of avoiding significant harm to, and providing net gains for, biodiversity.

Other Matters

19. The Framework seeks to significantly boost the supply of housing and acknowledges that small-scale developments can make an important contribution to meeting housing requirements and be built out quickly. In this case the site is located within a settlement, and I note that the appellant has secured rights of access, drainage etc across the adjoining land in order to be able to develop the site. Six additional dwellings would make a positive contribution to the supply and mix of housing in the borough and there would be some modest economic and social benefits associated with them. This all weighs positively in favour of the proposal.
20. It is suggested that the Council did not make the appellant aware of the need for a SPA payment. However, the appellant has become aware of the requirement as a draft UU was submitted with the appeal and it was open to the appellant to pursue the matter further. As such, it does not detract from my findings on the issue.

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Conclusion

21. Notwithstanding the positive contribution the proposal would make to the supply of housing, and the absence of harm to the character and appearance of the area, the harm to the SPAs provides a clear reason to refuse the appeal.
22. There is nothing before me to indicate that the harm I have identified to the SPAs, or the resulting conflict with the Habitat Regulations and the development plan, would be outweighed by other material considerations. Therefore, the decision should be made in accordance with the development plan.
23. As such, having regard to all other matters raised, the appeal is dismissed.

Stewart Glassar

INSPECTOR



Appeal Decision

Site visit made on 17 September 2024

by **M Cryan BA(Hons) DipTP MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 October 2024

Appeal Ref: APP/V2255/D/23/3334484

102 Athelstan Road, Faversham ME13 8QW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Barney Goodland against the decision of Swale Borough Council.
 - The application reference is 23/503739/FULL.
 - The development proposed is a single storey rear extension incorporating four rooflights.
-

Decision

1. The appeal is allowed and planning permission is granted for a single storey rear extension incorporating four rooflights at 102 Athelstan Road, Faversham ME13 8QW in accordance with the terms of the application, reference 23/503739/FULL, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following drawings:
 - Basement plan proposed (AR1945.08, dated May 2023)
 - Ground floor plan proposed (AR1945.09, dated May 2023)
 - First floor plan proposed (AR1945.10, dated May 2023)
 - Roof plan proposed (AR1945.11, dated May 2023)
 - Elevations proposed (AR1945.07, dated May 2023)
 - 3) The external materials of the extension hereby permitted shall match those used in the existing building.

Main Issue

2. The main issue is the effect of the proposed extension on living conditions for neighbouring residents, with particular regard to daylight and outlook at No 104 Athelstan Road.

Reasons

3. No 102 Athelstan Road is a two-storey semi-detached house, on the south side of a residential street close to Faversham town centre. It has an L-shaped footprint, with a two-storey "outrigger" wing at the rear shared with No 100, its semi-detached "twin" to the east. The appeal property and No 104 each have a side passage in the space between the two buildings which gives access to the rear gardens via a gate. The rear gardens of No 102 and its neighbours on either side are separated by brick walls topped with timber trellises.

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4. The proposed development is an extension to the rear of the ground floor. This would infill the space alongside and wrap around the back of the existing outrigger wing, squaring off the ground floor of the dwelling. It would project approximately 6.4m beyond the main rear elevation on the west side of the dwelling, and around 1.8m beyond the back wall of the rear wing on the east side. It would have a double-pitched roof with a ridge height of approximately 3.6m and an eaves height of around 2.25m. There would be four rooflights on the west-facing roof pitch. The side of the proposed extension would be around 0.96m from the centreline of the common boundary with No 104.
5. The existing boundary wall between the appeal property and No 104 is around 1.6m high, to which the timber trellis adds a further 0.28m or so. This would provide a reasonable degree of visual screening from No 104. While the extension would of course still be visible to the occupiers of No 104, the combination of the distance by which it would be offset from the boundary, the relatively modest eaves height, and the pitched roof design would mean that it would not be unacceptably visually dominant or intrusive. In common with other properties on Athelstan Road No 104 has a reasonably long rear garden, and the length of the proposed extension would not result in an unacceptable enclosing or "tunnelling" effect in the outlook from that dwelling. The rear of this side of Athelstan Road faces more or less due south, and I am therefore also satisfied that any reduction of daylight or sunlight to the neighbouring houses which might arise would be very minor.
6. The Council's *Designing an Extension – A Guide for Householders* Supplementary Planning Guidance ("the SPG") provides advice on a number of matters in order to help ensure that extensions do not cause unacceptable harm either to the character and appearance of an area, or to neighbours' living conditions. Among other things, it advises that "for single-storey rear extensions close [a] common boundary, the Borough Council considers that a maximum projection of 3.0m will be allowed", though it goes on to note that a gap to the boundary "may offset this requirement slightly depending on the distance allowed".
7. The proposed extension would appear to exceed that recommended by the SPG, though the advice is somewhat vague in terms of what is meant by "close" to the boundary (the illustration within the guidance shows an extension built almost directly abutting a boundary), and what effect increasing the gap might have on the maximum recommended length of an extension. I note also the appellant's comments about the age of the guidance (the document provided to me was not dated, but it is suggested that it may be from as far back as 1993), the extent to which it had been subject to public consultation, and whether it had been formally adopted by the Council. However, the SPG is intended to be advisory and, as I have described in paragraph 5 above, I am satisfied that no significant harm to neighbours' living conditions would arise from a failure to comply with this particular part of it in this case.
8. The Council drew my attention to a 2018 appeal decision in respect of a proposed rear extension some 5.8m long at No 124 Athelstan Road (PINS Ref: APP/V2255/D/17/3185704). In that case the Inspector found that "the gap between the proposal and the shared boundary [with No 122] would be reasonably modest and would not be sufficient to offset the effect of the proposed depth", and that "the combination of the proposed height and depth

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would appear unacceptably dominant on the outlook from No.122". I do not know the full details of that proposal, including the eaves or ridge heights as they were not referred to in the appeal decision. However, it is evident that Nos 122 and 124 are much closer together than Nos 102 and 104; while I was not provided with precise measurements a visual inspection during my site visit suggested that the gap between the appeal property and No 104 is perhaps somewhere in the order of twice as broad as that in the 2018 appeal case. I accept that the fundamental issue of concern to the Council is the same, but site-specific factors mean there would be a different spatial relationship between the proposed extension and the neighbouring occupiers. The 2018 appeal decision does not weigh significantly against this appeal scheme.

9. The Council found no harm in respect of the impact of the extension in respect of No 100 Athelstan Road. It also considered that the proposed rooflights would not have any adverse impact on any neighbours' privacy. Based on all the evidence before me, including what I saw during my site visit, I do not disagree with either of those assessments.
10. Taking the above points together, and notwithstanding the limited conflict with advice in the SPG, I conclude that the proposed extension would not cause significant harm to living conditions for neighbouring residents. It would therefore comply with Policies DM14 and DM16 of the 2017 Swale Local Plan which together seek to ensure that development, including extensions, causes no significant harm to amenity.

Conditions

11. In addition to the standard time limit condition (1), I have specified the approved plans so as to provide certainty (2). In order to protect the character and appearance of the area I have also included a condition requiring materials matching the existing dwelling to be used for the extension (3).

Conclusion

12. For the reasons given above I conclude that the appeal should be allowed.

M Cryan

Inspector

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Appeal Decisions

Site visit made on 8 July 2024

by **N Thomas MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 October 2024

Appeal A: APP/V2255/W/23/3333094

Faversham War Memorial, Stone Street, Faversham ME13 8PZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Faversham War Memorial Garden Committee against Swale Borough Council.
 - The application reference is 23/502500.
 - The development proposed is to carefully dismantle the Faversham War memorial and re-erect in the centre of the Memorial Garden, formation of a proposed new peace corner - interpretation boards with local reflections and raised bed for planting wooden crosses on site of existing War Memorial and associated access path within site. Removal of iron railing fence, and repair and re-laying of existing paving as depicted on proposed drawings.
-

Appeal B: APP/V2255/Y/23/3333093

Faversham War Memorial, Stone Street, Faversham ME13 8PZ

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
 - The appeal is made by Faversham War Memorial Garden Committee against Swale Borough Council.
 - The application reference is 23/502054.
 - The works proposed are to carefully dismantle the Faversham War memorial and re-erect in the centre of the Memorial Garden, formation of a proposed new peace corner - interpretation boards with local reflections and raised bed for planting wooden crosses on site of existing War Memorial and associated access path within site. Removal of iron railing fence, and repair and re-laying of existing paving as depicted on proposed drawings.
-

Decision

Appeal A

1. The appeal is dismissed and planning permission is refused.

Appeal B

2. The appeal is dismissed and listed building consent is refused.
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Appeal Decisions APP/V2255/W/23/3333094 and APP/V2255/Y/23/3333093

Preliminary Matters

3. As the development is in a conservation area and relates to a listed building I have had special regard to sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) (the Act).
4. The Council did not issue decisions within the prescribed time period and therefore there are no decision notices. The appeals were lodged and the Council's planning committee subsequently resolved that it would have refused them due the harm caused to the designated heritage asset. Although the putative reasons for refusal do not refer to Faversham Conservation Area (the CA), the effects of the proposal on it were considered by the Council and the appellants. In view of my duty under section 72(1) of the Act I have included the effects on the CA in the main issue.
5. As one of the aims of the proposal is to improve access to the War Memorial for the elderly and those with reduced mobility it is likely that the proposal will affect those who have protected characteristics of age, disability or impairment under s149(7) of the Equality Act 2010. I have a duty to consider the three aims of the Public Sector Equality Duty (PSED) as part of my decision. If I dismiss the appeals this is likely to have negative consequences for those wishing to visit the site, in particular in terms of the aim to eliminate discrimination.
6. I have noted that the Council did not notify Historic England or the National Amenity Societies as should have been the case where a proposal includes relevant works¹ to a Listed Building (LB). However, I have concluded that the proposal should be dismissed for reasons relating to the effects on the LB and the CA. In these circumstances, little would be gained by delaying the decision to undertake that notification. However, had my decision been otherwise, I would have provided an opportunity for the notifications to take place.

Main Issues

7. The appeal property is a Grade II listed building known as "Faversham War Memorial" (Ref: 1418393) (the LB). The main issues are whether the development preserves the LB, its setting and any features of special architectural and historic interest that it possesses, and whether it preserves or enhances the character or appearance of the CA.

Reasons

Listed Building

8. The LB is a monument to the fallen of the First World War and was subsequently used to commemorate the fallen of the Second World War. It consists of three pieces of granite on a stone base. At the top is a Celtic cross with a tapering shaft set on a tall tapering base. The cross face is enriched with relief decoration and floral bosses. It sits on a square plinth with a two-stepped base with a flower holder placed in front. The monument is located on a roughly triangular area paved in bricks. It is situated at the junction of Stone Street with Roman Road with later metal railings on a stone kerb between granite piers along the frontage with the public footway.

¹ As defined and set out in the Arrangements for Handling Heritage Applications – Notification to Historic England and National Amenity Societies and the Secretary of State (England) Direction 2021

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9. There are no names recorded on the monument but there is a memorial panel at the Church of St Mary of Charity and a book of remembrance for those who fell in The First World War and a separate book for the names of those who fell in the Second World War. There is a further memorial of The First World War in Faversham Borough cemetery to the men and boys killed by an explosion at the Faversham Gunpowder Works in 1916.
10. Faversham lost a significant number of men in the First World War, and this was amplified by the heavy civilian losses at the gunpowder works. In order to provide a physical place at which families could express their grief, temporary war memorials were erected in the town, whilst funds were raised to erect a permanent memorial. After the war, the Cottage Hospital opposite the appeal site on Stone Street needed to expand and a war memorial wing and operating theatre were added. An application was made to the Cottage Hospital Trust for permission to erect a cross on the appeal site, which was on land that had been given to the hospital. I understand that a portion of the funds raised for the War Memorial were donated to the Cottage Hospital to support its expansion. A special ceremony marked the unveiling of the War Memorial by Vice Admiral Sir Hugh Evan-Thomas and the opening of the extension to the Cottage Hospital on 3 November 1922.
11. To the rear of the LB is a Memorial Garden separated from the appeal site by metal railings and a mature holly tree. The tree has in places grown around the railings and provides shade to the LB. These elements combine to provide an attractive setting to the monument and are important to the atmosphere within which the LB is experienced.
12. Insofar as it relates to the appeals, the special interest of the LB lies in its historic interest as a memorial to those lost in the two World Wars. It has architectural interest for the quality of the design and craftsmanship which has resulted in a simple and dignified monument and therefore has aesthetic value. Being in a prominent position at the junction of two roads and opposite the Cottage Hospital with which it was associated, the LB is a focus of commemoration of those who were lost in the two World Wars and the location of the annual Remembrance Day parades. This gives it a further layer of interest and as such, it has communal value.
13. The proposal would involve the dismantling of the LB, including the tapered base, plinth and stepped base, and its removal from the site. Part of the railings would also be removed. Only the surfaced area with the remaining railings and granite piers would remain on the site of the LB. There would be an almost total loss of historic fabric from the site, such that LB would cease to exist.
14. The LB was deliberately located in a prominent location at the junction of two streets and opposite the Cottage Hospital with which it was associated. Its physical and visual connection with the adjacent roads and the Cottage Hospital would be severed and removing it would seriously undermine its historic and communal value. The removal of the railings, while a later addition, would remove the separation between the LB and the adjacent Memorial Garden.
15. The Memorial Garden was remodelled in 2017 with commemorative stones inscribed with the names of those who lost their lives in the two World Wars, and it was rededicated by the Bishop of Dover in 2018. There is a central path

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leading to a vertical slab where it is proposed to re-erect the memorial. The site of the LB would be turned into a 'peace corner' with the railings removed to the sides and rear, so that only the railings alongside the road frontages would remain. This would further obfuscate the distinction between the War Memorial and the rest of the gardens, eroding its special interest as a LB. A new pedestrian access would be formed from the appeal site leading into the Memorial Gardens, with interpretation boards and raised beds for the placing of wooden Remembrance crosses.

16. The proposal to re-erect the dismantled memorial some 16 metres away in the main part of the Memorial Garden would give the memorial a new location and setting within a space that has been deliberately designed to accommodate it. It would no longer be a Listed Building, as identified by the War Memorials Trust. The gardens have been recently laid out with eight freestanding commemorative stone tablets engraved with the names of the men who lost their lives during the two World Wars. Relocating the monument would make it the focus of the garden and would give it a grandiose setting which would be at odds with the modest and understated design and scale of the monument. It would have the appearance of architectural salvage or a relic, disconnected from its original location. Due to its location at the back of the Memorial Gardens, it would be less prominent in the street scene and less visible to passersby. The proposed location would still have a visual link with the Cottage Hospital, albeit set further away and in a less conspicuous location.
17. Overall, the proposal would result in significant harm to the historic, aesthetic and communal value of the LB, thereby causing an almost total loss of its special interest as a LB. It follows that the works would fail to preserve the Grade II listed building, its setting, and any features of special architectural or historic interest it possesses. This runs counter to the statutory presumption under sections 16(1) and 66(1) of the Act and is a matter of considerable importance and weight.

Conservation Area

18. Much of the centre of Faversham is designated as CA. The town has Saxon origins and has been subject to successive waves of development. It prospered with an abbey in the 12th century, while the use of Faversham Creek for navigation made it an important port with several industries flourishing, including gunpowder manufacturing. In the 19th century the railway led to far reaching change, including large new areas of rectilinear housing, which contrast with the historic core of the town. The appeal site is located in an area of high-density Victorian houses built on a former brickfield, between the station and the town centre, generally in terraces with some larger villas in more spacious grounds. The area around the appeal site has a distinctive character due to the predominance of Victorian housing in a grid layout, with its high degree of uniformity.
19. The LB and the Memorial Garden form a notable open space in this otherwise built-up part of the CA. On the opposite side of the road is the Cottage Hospital, built in 1887, which forms a local focal point with the War Memorial and garden opposite. As the Cottage Hospital was built on the site of clay pits the ground floor is set below the road level and it appears as a single storey building, giving the area a sense of openness, enhanced by the holly tree, War Memorial and garden. Insofar as it is relevant to the appeals, the significance

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of the CA lies in its early origins and subsequent development, with the War Memorial, railings and tree making a positive contribution to the significance of the CA.

20. The removal of the LB and the railings would result in the loss of the focal point on the site, highly visible to passersby, and the erosion of the visual connection with the Cottage Hospital and the wider street scene. The positive contribution made by the LB to the street scene and distinctive character of the CA would thereby be lost. The jarring juxtaposition of the modest design and scale of the memorial with the grandiose setting in the Memorial Gardens would detract from the character of the CA. This would run counter to the statutory presumption under s72(1) of the Act.

Public benefits

21. Paragraph 205 of the National Planning Policy Framework (NPPF) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. I am also mindful of the guidance in paragraph 204 of the NPPF, which advises decision makers to have regard to the importance of the retention of memorials in situ. A joint publication by Historic England and the War Memorials Trust² advises that relocation of memorials should only be considered if the current position is putting the memorial at risk or it has become inaccessible to the public. If relocation is considered the only viable alternative, then it can be a high-risk process as the true condition of the memorial and its internal fixings may remain unknown until the work begins.
22. Significance can be lost through the alteration or destruction of those assets (para 206). Any harm to or loss of the significance of designated heritage assets should require clear and convincing justification. Substantial harm to or loss of grade II listed buildings should be exceptional. Due to the extent of the effect of the proposal on the LB and the almost total loss of its special interest, I find that it would amount to substantial harm.
23. Under such circumstances, paragraph 207 of the NPPF advises that consent should be refused, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh the harm or loss, or that all four tests set out in a)-d) of the paragraph are met.
24. The appellant considers that the relocation of the memorial would bring various benefits. In accordance with NPPF paragraph 207, it is necessary to consider whether the substantial harm to the designated heritage asset is necessary to achieve substantial public benefits to outweigh the harm or loss.
25. The LB is generally considered to be in good condition, although the thin mortar joints between the stones are identified as needing repair. The cross is said to be leaning front to back and side to side by a small amount and it was asserted by an arboricultural specialist³ in 2021 that this is caused by the roots of the holly tree, and that it will worsen over time. It was not noticeable on site. Furthermore, a structural survey⁴ subsequently submitted by the appellant's representative in response to the appeal, explains that a visual inspection indicated it is in a reasonable condition and that the cross was

² Conserving War Memorials: Structural Problems and Repairs June 2017 (HEAG169)

³ Technical Note Aspect Arboriculture 2 June 2021

⁴ Letter from Hockley & Dawson Consulting Engineers dated 27 March 2024

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vertical, and the base profile had a consistent 6-7 degree angle on all sides, indicating no significant structural movement over the past 100 years. No cracks or defects were noted and the decorative stonework on the Celtic cross was clear and showed no significant signs of decay. The structural survey did not identify that the LB is at risk if left in situ nor were any roots of the holly tree identified as causing subsidence in the arboricultural report. The Council's tree officer did not observe any significant displacing or lifting to any of the surrounding paving or the memorial itself. There is therefore conflicting evidence as to whether the holly tree is destabilising the LB. Moreover, there is no explanation as to whether the LB could be stabilised in situ if necessary, and whether there is a viable alternative to dismantling it.

26. I appreciate that the proposed new location for the monument would be further from passing traffic. However, the LB is set behind a public footway on residential roads behind granite piers and metal railings, and therefore has some considerable physical protection from passing traffic. It is not unusual for war memorials to be close to roads. Stone Street is a bus route, giving access to the town centre facilities and car parks. However, it is in a residential area where traffic speeds are relatively low and restricted by parked cars. It is not the only route to town centre facilities. I have seen no evidence that the LB is at particular risk of damage from traffic.
27. It has also been asserted that relocation of the monument would protect it from damage through pollution from road traffic. An air quality report⁵ has been provided, indicating that the current Air Quality Management Area (AQMA) in Faversham along the A2 should be extended. AQMAs relate to the effects of air quality on humans. There is no substantiated evidence that road traffic pollution is damaging or is likely to damage the monument.
28. Therefore, there is no clear evidence that the LB is at risk in its current location. Even if it that were to be the case, no investigation has been carried out as to whether the LB could be made safe or repaired without the need to dismantle it. It has not therefore been shown that there is no viable alternative to the loss of the LB.
29. Rather than securing its future, the process of dismantling, moving and reassembling the Memorial would expose it to risks of damage. Experienced stonemasons have advised that it could be safely moved but acknowledge that it is not possible to fully determine the condition of the internal fixings until the Memorial is taken apart, therefore the risk that the historic fabric might be damaged by the works can never be fully eliminated. As it has not been demonstrated that the LB will be at risk of damage if it remains in place, there is no justification for exposing it to risks of damage through dismantling and moving it.
30. In its current position there is restricted space around the LB and I understand that Remembrance Day services take place in the Memorial Garden rather than in front of the War Memorial, as would traditionally have been the case. The adjacent roads are closed to allow the Remembrance Day parade to take place. It is not unusual to close roads for a short period on Remembrance Day, and any disruption and inconvenience is short-lived. In any event it has not been argued that relocating the memorial would avoid the need for road closures on Remembrance Day.

⁵ Air quality report for the Faversham Society 27 August 2019

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31. There would be public benefits in terms of improving accessibility to the War Memorial. The previous works to the Memorial Garden have created level access to the intended position of the War Memorial, which would facilitate access for all to pay their respects and to attend Remembrance Day services. It has a wider gateway from Stone Street with no step, and a wide level path leading to the proposed location. The relocation would potentially allow Remembrance Day services to take place in a more inclusive manner in a less physically restrictive space.
32. However, no information has been provided to indicate that other means of improving access to the LB have been explored. I do not therefore consider that it has been demonstrated satisfactorily that there are no other means of improving accessibility that would avoid the need to dismantle and relocate the LB. Moreover, there is a clear alternative and inclusive focus for those wishing to remember the fallen in the Memorial Garden.
33. The appellant asserts that the new location would be beneficial because it would be more publicly visible and not overshadowed by the holly tree. However, the holly tree makes a positive contribution to the special interest as it is within the setting of the LB. If it were considered that it overshadows the War Memorial to an excessive extent, there are arguably other less drastic means of mitigating that effect that do not involve dismantling and removing the LB.
34. I acknowledge the desire to locate the War Memorial closer to the recently installed stone tablets in the Memorial Garden which list the names of the fallen during the two World Wars. However, the Memorial is already close to the stone tablets and has a visual connection with them. They were designed and located on the basis that the Memorial would be relocated, even though listed building consent and planning permission had not been granted. I therefore afford limited weight to this as a public benefit.
35. The existing site of the LB would be resurfaced and would become a 'peace corner', with local reflections, an interpretation board and a new raised bed. This would become a space for all faiths to reflect and also provide educational opportunities for local schools. This is a positive aspect of the proposal, but it has not been shown that it could not be accommodated elsewhere within the Memorial Garden and it therefore attracts limited weight as a public benefit.
36. There is no clear evidence that the War Memorial is at risk of damage in its current location, and moving it brings its own risks. Although public benefits have been identified, it has not been demonstrated that there are no alternative less drastic means of providing them, which limits the weight I afford them. Consequently, I do not consider that the public benefits of the proposal are substantial enough to outweigh the substantial harm that would be caused to the heritage asset.
37. Turning to the specific tests set out in paragraph 207, the first is whether the nature of the heritage asset prevents all reasonable uses of the site. Although there would be improvements to the accessibility of the War Memorial in the proposed new location, there is no evidence that it is not able to function as a War Memorial in its current position. It is not therefore the case that the nature of the heritage asset prevents all reasonable uses of the site.

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38. The LB already has a viable use and will continue to be a War Memorial if I dismiss the appeals. The second test is not therefore met.
39. I understand from the evidence that the LB is already in public ownership and I have no reason to believe that there is insufficient funding to enable its long-term conservation. The third test is not therefore met.
40. The LB is still 'in use' as a War Memorial, and it is not therefore the case that the harm is outweighed by the benefit of bringing the site back into use. The fourth test is not therefore met.
41. As none of the tests are met, and it has not been demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh the harm, in accordance with paragraph 207 of the NPPF, the appeal should be dismissed.
42. In terms of the level of harm to the CA, I find this would be less than substantial, bearing in mind the extent of the effect. Paragraph 208 of the NPPF advises that the harm should be weighed against the public benefits of the proposal. I have already considered the public benefits in relation to the harm to the LB. While some of the identified benefits are capable of amounting to public benefits they are insufficient to outweigh the less than substantial harm that would be caused to the CA.
43. Taking all this into account, it cannot be demonstrated that the substantial harm that would be caused to the LB is necessary to achieve substantial public benefits that outweigh that harm, or that the tests set out in paragraph 207 of the NPPF have been met. In accordance with paragraph 207 consent must therefore be refused. In respect of the effects on the CA, the proposal conflicts with paragraph 208 of the NPPF. The proposal therefore fails to satisfy the requirements of the Act. It would conflict with policies CP8, DM14 and DM32 of the Swale Borough Local Plan 2017 and policy FAV11 of the Faversham Neighbourhood Plan insofar as they seek to ensure that the significance of designated heritage assets is sustained and enhanced.
44. In relation to the PSED, I have had due regard to the effects of the decisions on the users of the site, including those who have protected characteristics in terms of age, disability and impairment, insofar as they are different to those without a relevant protected characteristic. Although the appeals are to be dismissed, these considerations have been at the forefront of the decision-making process. The outcome is a proportionate one.

Other Matters

45. I am aware that previous applications for listed building consent and planning permission to dismantle the War Memorial and re-erect in the centre of the memorial garden were previously recommended for approval by officers but refused at committee⁶. As permission was not granted, the positive recommendation does not indicate that the principle of moving the LB was previously found to be acceptable.
46. The appellant states that other war memorials have been moved. I am not aware of the circumstances that led to them being relocated but I understand that the memorial in Sittingbourne was not listed. The other examples do not

⁶ Ref 16/504008/LBC

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indicate that this proposal is acceptable, as each case is considered on its own circumstances and merits.

Conclusion

47. For the reasons given above, I conclude that the appeals should be dismissed.

N Thomas

INSPECTOR

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Appeal Decision

Site visit made on 23 September 2024

by **V Goldberg BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 31 October 2024

Appeal Ref: APP/V2255/W/24/3341877

Orchard View, Eastling Road, Eastling, Kent ME13 0AN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Andrew Higenbottam against the decision of Swale Borough Council.
 - The application Ref is 23/505029/FULL.
 - The development proposed is Siting of 2 x mobile shepherds huts 2.7m wide x 5.0 m long on existing paddock and the installation of a septic tank and related works to be used as holiday lets. Planting of wild meadow on existing site.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. There are no elevation or plan drawings in respect of the proposed shepherd huts, but their position and floor area are denoted on the block plan. The supporting statement sets out that the septic tank would be 2m in diameter, but the Council considers that it measures 3.8m on the block plan. The septic tank does appear somewhat larger based on the scaled block plan submitted. In addition, the supporting information specifies that the septic tank would be between 2.6m and 3.1m in height but there is no supporting drawing to establish the height. I have made my assessment strictly on the basis of the plans before me.
3. The appellants planning and appeal statements and decision notice refer to paragraphs 84 and 85 of the National Planning Policy Framework (the Framework). These paragraphs appear as paragraphs 88 and 89 in the latest revision of the Framework and therefore I have referred to these in my decision.
4. On 22 November 2023, all designated Areas of Outstanding Natural Beauty in England and Wales became "National Landscapes". The parties refer to the appeal site being within the Kent Downs Area of Outstanding Natural Beauty (the AONB) which is now known as the Kent Downs National Landscape (KDNL). However, the legal designation and policy status of the AONB is unchanged and it remains an AONB in both, so I have used both terms where relevant.
5. On 26 December 2023, Section 245 of the Levelling-Up and Regeneration Act (LURA) amended the duty on relevant authorities in respect of their interactions with statutory purposes of AONBs, as set out in Section 85 of the Countryside and Rights of Way Act 2000 (as amended). In so far as it relates

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to this appeal, the amendment now requires relevant authorities “in exercising or performing any functions in relation to or so as to affect land in an AONB...to seek to further the purpose of conserving and enhancing the natural beauty of the AONB” [my emphasis].

6. There are currently no regulations or guidance to assist, but the explanatory note to the LURA states “The clause strengthens the duty on certain public authorities when carrying out functions in relation to these landscapes to seek to further the statutory purposes and confers a power to make provision as to how they should do this.” This therefore forms a main issue for the appeal, and I am satisfied there is sufficient information before me to make my determination in respect of these matters.
7. The Planning Practice Guidance (PPG) refers to the relevance of management plans for AONBs for assessing planning applications. Whilst these do not form part of the development plan, they help to set out the strategic context for development and provide evidence of the value and special qualities of these areas¹. The Kent Downs National Landscape Management Plan (KDNLMP) 2021-2026 is therefore a material consideration, as its objectives align with the Framework’s. During the appeal the parties have been asked for their comments on the content of the management plan insofar as they relate to the main issues. The comments received have been duly considered.

Main Issues

8. The main issues in this appeal are the effect of the proposed development on:
 - the character and appearance of the countryside including whether it would conserve and enhance the landscape and scenic beauty within the Kent Downs Area of Outstanding Natural Beauty (AONB); and
 - the provision of Grade II (best and most versatile) agricultural land.

Reasons

Character and appearance

9. The site is within the Kent Downs Area of Outstanding Natural Beauty (AONB) and I afford great weight to conserving and enhancing the landscape and scenic beauty in this area which has the highest status of protection in relation to these issues. The AONB is made up of landscape components with special characteristics and qualities which together distinguish it as a landscape of national and international importance and underpin its significance and natural beauty. The appeal site and surrounding area has a farmed rural landscape recognised in the KDNLMP for maintaining the natural beauty of the Kent Downs. The pastoral scenery is noted for being a particularly valued part of the landscape. The site is also outside the settlement boundary of Eastling and is therefore in the countryside for the purposes of the development plan.
10. In this section of Eastling Road, the road demarcates the settlement boundary with built form comprising residential properties lining its western side. In contrast the eastern side of the road is predominantly characterised by open agricultural fields with built form sporadic and limited to Orchard View, its buildings in equestrian use and agricultural buildings.

¹ Planning Practice Guidance Paragraph: 040, Reference ID: 8-040-20190721, Revision date: 21 07 2019.

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11. Reference has been made to the term 'unjustified development' used in the decision notice. Whilst there is policy support in the development plan for rural tourism, Policy DM3 of the Bearing Fruits 2031- The Swale Borough Local Plan 2017 (SBLP) requires proposals to demonstrate compliance with a number of criteria. Criterion 1 (c) specifies that the sustainable growth and expansion of businesses must firstly consider re-use of existing buildings or the development of other previously developed land unless such sites are not available, or it is demonstrated that a particular location is necessary to support the needs of rural communities or the active and sustainable management of the countryside. In this case, there is no evidence before me that this criterion has been addressed and as such the proposed development has not been justified.
12. Whilst the shepherds' huts are modest in size, well designed and not permanently fixed to the ground, they are sited on the land and would have a visual impact. In any event, the shepherd huts cannot be considered in isolation, the cumulative impact of the proposed shepherd huts, hardstanding/parking area, parked cars and septic tank would unacceptably urbanise this undeveloped land and introduce an uncharacteristic use and associated built form into the prevailing farmed rural landscape.
13. The proposed development would be both visible from Eastling Road, neighbouring plots and sections of footpath ZR372, thus it would be inappropriate and intrusive in this countryside location, visually jarring with the open and green characteristics of the area and inharmonious with the natural beauty of the AONB.
14. Whilst the site is adjacent to the settlement of Eastling and its associated transport links, Eastling Road acts as a clear boundary to the settlement. Introducing uncharacteristic development beyond this line would unacceptably erode this well-established boundary.
15. Reference is made to planning application 19/503077/FULL which permits holiday let accommodation. From the evidence before me, this scheme appears materially different to the proposed development. Unlike the appeal site the existing land was not undeveloped, the scheme proposed the demolition of multiple buildings and did not increase the amount of built form in the immediate vicinity. Given that this development is materially different from the appeal scheme, the relevance of this decision is limited, and it would not sufficiently justify the appeal scheme. I have therefore considered this appeal on its own merits.
16. For the reasons above, I conclude that the proposed development would unacceptably harm the character and appearance of the countryside and would fail to conserve and enhance the landscape and scenic beauty within the AONB. It is therefore contrary to policies ST1, ST3, DM3, DM14, DM24 and DM31 of the SBLP and the Framework. These policies amongst other things aim to focus proposed development within defined settlements and seek development to conserve and enhance valued landscapes and achieve good design through reflecting the area's rural characteristics.

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Provision of Grade II agricultural land

17. Despite being used as a paddock; the parties agree that the site is located on best and most versatile agricultural land. Policy DM31 of the SBLP advises that development on such sites will not be permitted unless the site is allocated for development in the local plan or there is no alternative lower grade land and the development would not result in the remainder of a holding becoming unviable.
18. Given that there is no evidence that the appeal site is an allocated site, and it has not been demonstrated that there is an alternative site of a lower grade, I conclude that the proposed development would result in the loss of the best and most versatile agricultural land. It is therefore contrary to policy DM31 of the SBLP insofar as it seeks to protect best and most versatile agricultural land.

Other Matters

19. Whilst the Framework supports rural tourist development, through the conversion of existing buildings and erection of new ones, paragraph 89 advises that in areas beyond existing settlements, proposed development is required to be sensitive to its surroundings. Equally the Framework emphasises that great weight should be given to conserving and enhancing landscape and scenic beauty in AONB'S and the proposal fails to achieve this aim.

Planning Balance and Conclusion

20. The proposed development would support the diversification of the rural economy, bring holiday- makers into the area and generate trade for local businesses, however, given the small scale of the development the benefits of the scheme would be limited. Conversely, the proposal would harm the character and appearance of the countryside and fail to conserve and enhance the landscape and scenic beauty within the AONB. This attracts significant weight against the scheme.
21. The benefits of the scheme are therefore significantly outweighed by the harm. As such, set against this harm, the socio-economic benefits associated with two shepherd huts would be limited, even taking account of the objective of supporting sustainable rural tourism in the Framework.
22. Therefore, the proposal conflicts with the development plan as a whole and the material considerations do not indicate that the appeal should be decided other than in accordance with it.

V Goldberg

INSPECTOR