

<b>2.6 REFERENCE NO - 18/502208/FULL</b>			
<b>APPLICATION PROPOSAL</b> Revocation of quarrying use and erection of 4 No. detached dwellings with garages, associated landscaping, Restoration scheme, enlarged lake and use of existing access (Revision to 16/501552/FULL)			
<b>ADDRESS</b> Winterbourne Wood Quarry Jezzards Lane Dunkirk ME13 9PH			
<b>RECOMMENDATION - Grant SUBJECT TO:</b> Completion of a Unilateral Undertaking to secure long term management of adjoining land.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council Objection			
<b>WARD</b> Boughton And Courtenay	<b>PARISH/TOWN COUNCIL</b> Dunkirk	<b>APPLICANT</b> Clifford Property Developments Ltd <b>AGENT</b> Rebus Planning Solutions	
<b>DECISION DUE DATE</b> 11/07/18	<b>PUBLICITY EXPIRY DATE</b> 06/07/18		
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
16/501552/FULL	Revocation of quarrying use and erection of 4 No. detached dwellings with garages, associated landscaping, enlarged lake and use of existing access.	Approved	30/05/2017
SW/12/0077	Single dwelling house	Refused Appeal allowed	19/01/2012 16/05/2013
SW/10/0096	Development of fourteen residential units, two holiday lodges and a woodland interpretation centre.	Withdrawn	26/04/2010
SW/06/1444	Residential development (outline)	Refused	04/04/2007
SW/05/1513	Residential development (outline)	Refused	03/02/2006

## 1.0 DESCRIPTION OF SITE

- 1.01 The site lies approximately 1.6km south of Boughton and is an approximately 4 hectare portion of a far wider area of woodland. It is essentially the only part of this woodland that now bears the open scars of sand and gravel extraction, the remainder not having been worked (at least not in modern times). It forms part of the wooded hills running south of Boughton and Dunkirk towards Selling, where development is scattered and roads narrow, winding and often steep. The surroundings are entirely rural in nature, isolated and with a sense of remoteness. Footpaths adjoin the site, but there is no right of access across the site more generally.

- 1.02 The site has a road frontage to a narrow single track lane which is only reached by other similar lanes, and these lanes are not suitable for heavy traffic. Parts of the development site remain wooded, especially around the margins, but the majority appears as a sand quarry with high exposed faces of sand, but little in the way of buildings, hard-standing or plant. It shows as being “disused” on Ordnance Survey maps, and apart from recent clearance and some tipping appears deserted and unworked for some time.
- 1.03 The site lies within the Blean Woods South Local Wildlife Site as defined by the Kent Wildlife Trust. This is an extremely large area of woodland partly owned by the applicant extending eastwards towards Chartham Hatch, and represents a southern extension of the ancient Blean Forest, incorporating many native tree species and it is important for ground flora, mosses, birds, insects and badgers.
- 1.04 A Tree Preservation Order affects the northern part of the applicant’s wider site. This is to the north of a public footpath, which neatly divides the wider site into the southern, partly previously quarried area where trees are mainly silver birch and of limited quality surrounding regenerating areas of gorse and scrub; while to the north the area is more varied coppice woodland with larger specimen trees and holly, which is recorded as ancient woodland. This area is crossed by a second public footpath which divides it further. From inspection, it appears that the northern area, further from the site access and beyond the footpath, is of a steeper less accessible and more difficult to quarry character, whereas the larger southern area is more accessible and of lesser landscape or ecological value.

### **Planning History**

- 1.05 In 1953 and 1956 planning permissions (NK/9/50/13 and NK/9/50/13A) were granted to extract sand, and sand and gravel, from two large adjoining areas of woodland. These areas extend to some 25 plus ha. It seems that only a very small proportion of these areas have yet been excavated, and that the excavations have been intermittent, perhaps reflecting the relatively poor quality of the materials, the difficult road access, and the economics of the operation considering the number of alternative supplies and their costs.
- 1.06 In 1986, in response to the most recent burst of activity, the County Council considered revoking the planning permissions, but it appears that partly due to the required compensation (then estimated at between £50,000 to £200,000 by various parties), and the perceived weakness of the possibility of the Secretary of State confirming this if the Order was challenged, it was resolved not to seek revocation.
- 1.07 By 1995 the eastern area was considered dormant, whilst the western area was active. This development is situated in the western area. In 1997 two applications to impose new modern planning conditions were submitted and these (SW/97/579 and SW/97/580) were approved by the County Council, regulating hours of use and other operational issues and permitting the extraction until the February 2042. No restrictions on the total quantity of mineral to be extracted, or the rate that it could be excavated (which might limit the number of lorries visiting per day) were approved. This may have been because such restrictions could have given rise to a claim for compensation by the site owner. The new conditions stipulate that if excavation ceases for a period of two years (or such longer period as may be agreed by KCC) the site shall be restored and landscaped within a further year.

- 1.08 Also in 1997 an application to extract minerals over a smaller area, but to landfill the resulting space, albeit via a lengthy new access route direct to the A2 at Dunkirk, was submitted. This attracted enormous opposition and was eventually withdrawn.
- 1.09 In 2005 an outline planning application for 19 dwellings was submitted to the Council, and refused.
- 1.10 In January 2007 a revised but similar application was received. My report at that time recorded that both Dunkirk and Boughton Parish Councils were in favour of housing as a means of seeing quarrying cease and the site being restored. I also recorded 27 letters of objection and six in support from local residents. My recommendation, which Members accepted, was that the application be refused on grounds that were largely the same as when the 2005 application was refused, but at the time an additional reason relating to loss of mineral reserves was also included.
- 1.11 In February 2010 a fully detailed application proposed a new approach to residential development of the site. This application (SW/10/0096) proposed a suite of three main features. These were; 14 detached houses; two single storey detached holiday lodges; and a woodland car park and interpretation centre. The car park would have provided a facility in connection with new public access across an area of some 20ha of woodland. Both Parish Councils and over 70 local residents opposed those plans, and I was again set to recommend refusal, but the application was withdrawn shortly prior to the Planning committee meeting in April 2010.
- 1.12 Notwithstanding all the previous decisions, a new application was submitted in 2012 (SW/12/0077). This application was to erect one very large seven bedroom house, with associated garaging, indoor swimming pool, gymnasium, and a one bedroom flat over the garaging.
- 1.13 That application was premised on the fact that, whilst it is fully recognised that development of a new house in this remote rural location is contrary to established planning policies, planning permissions exist for quarrying of the site and adjacent woodland until the year 2042, and that planning permission would not be granted unless a planning obligation by way of a Section 106 Agreement was entered into with the following aims:
1. To restore the landscape and improve biodiversity across the 4ha area of recent quarrying on which it is proposed to build.
  2. To surrender existing planning permissions for quarrying across all the applicant's local land ownership, which extended to almost 24ha of a mainly wooded site.
  3. Transfer of the management of the remaining woodland to an appropriate management body such as the Kent Wildlife Trust, Woodland Trust or other conservation or woodland management organisation whose purpose is to preserve the woodland in perpetuity.

A draft of such a Section 106 Agreement was submitted with the application.

- 1.14 My report noted that Dunkirk Parish Council supported the application on the basis that the development was restricted to one single dwelling; that Boughton-under-Blean Parish Council objected; and that 27 letters of objection and one of support had been submitted. My recommendation was to refuse the application on the following grounds;
- (1) The Council understands that this site is currently despoiled and that the site and adjoining land is subject to extant minerals working permissions; but that it is all

land that is scheduled to be restored under the terms of its existing planning permissions which allow mineral extraction only until the year 2042. The site lies in a remote rural location, outside the built up area boundary of any settlement. Policies E1 and E6 of the Swale Borough Local Plan 2008 seek to protect the countryside for its own sake, and they provide that development will not be permitted in rural Kent except in certain specified circumstances. The proposed development will result in permanent development and occupation of the site, but the development is not one that essentially demands a rural location nor is it necessary for agricultural purposes and, in the Council's view, the merits of the scheme do not weigh in favour of overriding a clear presumption against development in the countryside, as the short term nature of the current permissions are less harmful than the proposed long term harm resulting from unnecessary and undesirable development detrimental to, and preventing the appropriate restoration of, the character and appearance of this rural area.

(2) The site lies within the Blean Woods Special Landscape Area which is given long term protection by adopted and emerging Development Plan policies. The proposed development will appear as an incongruous and isolated development, harmful to the integrity of the landscape. For these reasons, the Council considers that the proposal is likely to be highly damaging to the character of this area and contrary to policies E1 and E9 of the Swale Borough Local Plan 2008.

1.15 I did not suggest any objection to the position, size, design or layout of the proposed dwelling, although the appellant did not argue that it was of outstanding design sufficient to be approved on its own merits. Rather, I focussed on the question of whether the intrinsic harm to the character of the countryside that might arise from the proposed single house was outweighed by the other potential advantages of the proposal. Members accepted this recommendation, but the decision was appealed and an appeal hearing took place in March 2013. The appeal was allowed in May 2013 after the appellant submitted a complicated Unilateral Undertaking which essentially required him to immediately suspend all future quarrying until he notified the Council of his intentions to either;

1. Re-commence quarrying; which meant that the planning permission for the house would fall, or
2. Implement the planning permission; in which case all quarrying rights would fall without compensation being claimed for loss of mineral rights, and the remainder of the quarried site would be restored.

The signed Undertaking also required the appellant not to seek compensation for loss of minerals rights; to submit a scheme for management of the wider remain woodland area before first occupation and to ensure long term management of the woodland area via Kent Wildlife Trust or another appropriate management body; and not to use the so-called wildflower meadow area as anything other than as a meadow.

## **2.0 THE RECENT APPROVAL**

2.01 In 2016, following the approval at appeal, an application was submitted for the same revocation of the quarrying use, but for the erection of four smaller detached dwellings with associated landscaping. The houses were all still substantial, although the overall floorspace was less than for the larger single house approved at appeal. This application attracted a lot of local opposition and Members held a site meeting to hear these views and to see the site. It was recognised that the previous refusal had been lost at appeal and it would be all but impossible to defend a refusal of the application. The application went to Planning Committee in February 2017 and was granted

approval subject to the completion of a Unilateral Undertaking that would achieve the previous safeguards.

### 3.0 PROPOSAL

3.01 This application is akin to the extant 2017 full planning permission in that it again proposes the erection of four two-storey 5 bedroom houses, each with a double garage and additional open parking spaces. The designs feature traditional forms in hand made clay tiles and facing brickwork including yellow and red stocks. The site plan shows plots 1-3 with modest gardens towards the middle of the site, with plot 4 having a larger garden area, including the lake. The scheme as now submitted differs from the recent approval in that it now includes a restoration scheme for the quarried part of the site which previously was only part of the requirements of the unilateral undertaking. There is therefore more material on the table now than when the latest planning permission was granted. This restoration scheme indicates the future for the previously quarried area as woodland, wild flower grassland, reed beds, mixed native hedgerows and a cliff face suitable for sand martins.

3.02 The application proposals differ from that previously approved with:

- The minor realignment of the new access road to take into account the site's topography
- Different house designs
- Repositioning of the lake to a location that will ensure it functions as an effective surface water collection point and
- The inclusion of the restoration scheme for the quarried area

It is similar to the previous application because;

- It requires restoration of the quarried area before occupation of any dwelling
- It requires future use of the quarried area as meadow land and woodland copse, and
- It requires management of the wider woodland in accordance with an approved woodland management scheme in association with a recognised body, with implementation of the scheme prior to occupation of any house

3.03 The application is supported by the following documents;

#### 3.04 Covering Letter

The application is largely the same as that approved under 16/501552/FULL; however the proposal also now includes details of a restoration scheme for the quarried area and therefore changes the specific detailing of the agreed Section 106 obligation in relation to the requirement to submit a restoration scheme as this time the scheme has already been prepared and now forms part of the application itself.

3.05 The principle of development of the application site for four houses has been established under 16/501552/FULL. This now represents a fallback position and should carry significant weight in the determination of the application. In this regard the revised application proposes:

- The same number of dwellings in largely the same locations as those already approved

- Dwellings that have been designed with a generally smaller footprint to those approved
- Development that will remain in the same red line as that approved, and
- A full commitment by the applicants, to the restoration of the former quarry area, the management of the surrounding woodland and the surrender of existing mineral rights

### 3.06 Drainage Impact & Flood Risk Assessment

The document has been provided by Tridax Ltd. The report includes:

- It is intended to use a small packaged treatment plant for each dwelling. The total daily discharge to ground will be less than 2m<sup>3</sup>/day, a permit for the discharge of the treated effluent will not be required from the Environment Agency.
- The proposed development will create 3618m<sup>2</sup> of impermeable area plus the lake footprint of 5993m<sup>2</sup> and the intention is to provide a buffer zone above the top water level of the lake to adequately store the discharge from a 1 in 100 year storm event. The buffer zone will then filtrate from the unlined portion of the lake above the top water level.
- With the introduction of the SUDS solution to cater for the impermeable areas, the post-development will be reduced by 215m<sup>3</sup> from the pre-development run-off volume.
- The site is indicated to be within Flood Zone 1. This zone comprises land assessed as having a less than 1 in 1000 chance of flooding.

### 3.07 Geo-environmental Report

The document has been provided by Ground and Environmental Services Limited who were instructed to undertake a combined Phase 1 and 2 environmental investigations. The following summarises the findings:

- The site was open land and woodland until the 1950s when it became a sand and gravel quarry. The exact extent of the quarrying works is unknown
- The geology at the site is comprised of the Lambeth Group along the western half of the site and the Harwich Formation along the eastern half.
- The site is set upon a Secondary A Aquifer and is not located within a source protection zone.
- Concentrations of toxic metals were below their respective guideline values in all samples tested.
- Asbestos was not detected within any of the screened soil samples. Suspected asbestos cement roofing was present on the on-site building.
- It is recommended that any soft landscaping or amenity spaces are to have certified clean imported top soils and sub soils.
- Should surface made ground soils not be removed off-site the protection of services, notably potable water, may be required on this site should they run through the area of made ground 'hardcore' to the north of the site. Suitable systems include barrier pipe, iron ductile pipework or placement in trenches backfilled with clean imported material. It is recommended that the advice of the service provider is sought regarding the most suitable options for the site.
- The risks to future site workers involved in any future redevelopment of the site are not considered significant providing standard health and hygiene practices are adopted.

- The risks to groundwater in the underlying Secondary A aquifer are considered to be low due to low levels of contamination.
- Based on the principles and definitions outlined under section 57 of the Environment Act 1995, the site would not be considered to be “Contaminated Land” based on its proposed residential/commercial redevelopment end use following implementation of the above measures.

### 3.08 Habitat Survey & Bat Building Report

- The existing building was deemed negligible in terms of its suitability for roosting bats
- Development proposals will not impact on existing semi-mature and mature trees within the site
- Extension of the existing on-site pond would provide a larger lake for wildlife and nature conservation
- No evidence of badgers, however evidence of dormice and previous evidence of reptiles

### 3.09 Restoration Scheme & Plan

The restoration scheme has been provided by the local ecologist Martin Newcombe, dated 4<sup>th</sup> April 2018 and the plan is divided up into seven zones.

Zone 1 – Grassy sward with forbs. Scattered oak and beech to be planted and allowed to grow to old age to maintain the woodland cover.

Zone 2 – Gardens of the proposed houses, which may be partially or wholly cut for lawns. An appropriate wildflower mix containing perennials will ensure there will always be a range of wild flowers available. Scattered native trees to maintain the woodland cover and allowed to grow to old age.

Zone 3 – The existing woodland belt would be coppiced where possible to thicken the edge and to provide habitat for small birds and other animals. Where possible, boxes will be supplied for bats and birds.

Zone 4 – Mixed native species hedgerow to provide a barrier between area 1 and the access road, a longer length of hedge would also provide a boundary between the land owned by plots 1-4.

Zone 5 – Initial seeding with a grass mixture and left to develop naturally without further management.

Zone 6 – Reed bed would be planted with common reed initially but it is anticipated that they and associated plants would eventually colonise the rest of the pond.

Zone 7 – Wood edge scrub would be the same composition as the mixed hedgerow and would provide habitat along the wood edge.

Zone 8 – This refers to the sand martins that used to use the site for breeding, however the site was lost due to natural erosion and scrub growth. They are however easily recreated and it is hoped by managing the cliff face it will be possible to attract them back to nest again.

#### **4.0 PLANNING CONSTRAINTS**

Ancient Woodland

Section 106 Agreement SW/12/0077

Unilateral Undertaking 16/501552/FULL

#### **5.0 POLICY AND OTHER CONSIDERATIONS**

5.01 The Development Plan currently comprises of the Swale Borough Local Plan Bearing Fruits 2031. The following Local Plan policies are most directly relevant to consideration of the application:

ST1 (Delivering sustainable development in Swale)  
ST2 (Development targets for jobs and homes 2011-2031)  
ST3 (The Swale settlement strategy)  
ST4 (Meeting the Local Plan development targets)  
CP3 (Delivering a wide choice of high quality homes)  
CP4 (Requiring good design)  
DM6 (Managing transport demand and impact)  
DM7 (Vehicle parking)  
DM14 (General development criteria)  
DM19 (Sustainable design and construction)  
DM24 (Conservation of valued landscapes)  
DM26 (Rural lanes)  
DM29 (Woodlands, trees and hedges)

5.02 As the County Council has previously stated that the mineral reserves within the site are no longer of strategic importance, the provisions of minerals planning policies are not of significance.

5.03 The Council's Landscape and Biodiversity Appraisal (2011) sees the site within the Hernhill and Boughton Fruit Belt landscape character area, which is in good condition and has high sensitivity, making it one of the very few landscapes within the borough that combine both qualities. This means that if one were to rank local landscapes according to their condition/sensitivity index this one would come in the highest possible bracket.

#### **6.0 LOCAL REPRESENTATIONS**

6.01 139 notification letters were sent out as well as a site notice erected. One local objection has been received from a property in Boughton Under Blean which can be summarised as follows:

- As a community we have for years objected to any housing or other development at Winterbourne, although an application for a single house was approved.
- Our objections remain the same – narrow roads, no local services and increased traffic.
- There have already been 2 large developments allowed at Selling Station which has increased traffic movement.



- The valley is an area of outstanding natural beauty and such development should not be agreed. NOTE: The area is not within an AONB.
- It would set a precedent for the area
- The development would have a serious impact on Selling.

## 7.0 CONSULTATIONS

7.01 Dunkirk Parish Council were consulted on the application and commented as follows:

*“Dunkirk Parish Council objects to the application.*

*DPC has no issue with the changes to the individual buildings or their positions on the site. However, we ask that there is compliance with the existing Unilateral Undertaking before consent is given.*

*We object on the basis that the committee and SBC gave consent with a unilateral undertaking in place to allow the woodland, the land marked blue on the plans, to be managed by RSPB, Kent Wildlife Trust or similar body, IN PERPETUITY.*

*After a site meeting for the current consented application 16/501552/FULL, the agent amended the U/U to include two further areas, marked in green, as woodland or meadow along with the blue land to be managed in perpetuity. This made the site much more acceptable to local residents.*

*This must be included in some way; we suggested by condition, but there may be a better way. It is imperative that the application is bound by the U/U, with of course a name change.*

*This enabled DPC to support and recommend this to parishioners. Our Ward Councillors agreed that as long as the U/U was in place to consent should be given and the planning committee agreed and the minutes reflect this:*

*Members considered the application and raised points which included: disappointment that the freehold of the land would not be transferred; protection of the land from further development was not guaranteed; needed to consider what was best for the area to ensure the rest of the site was protected; happy to support the application with the proviso that the blue land would be protected, a condition to prevent flood risk, and the green land on the plan would be protected from further development; a lease was as good as freehold;*

*The current owner purchased the land with the U/U in place and must be bound by it.*

*It would be unacceptable to allow the owner to manage the land (as his agent states is his intent) as there would be no control in the future - and what happens if he dies or sells the land.*

*The owner has discussed a lodge of some description to allow visitors into the middle of the wood which would be unacceptable and development creep.*

*In finishing, neither the blue land nor the green land can be allowed to be in personal management. It must be a body as stated in the U/U that will manage the land in perpetuity.*

*Furthermore, the committee requested a T.R.O. to be conditioned but it was not. This provides an opportunity to re-visit that request”*

- 7.02 A number of emails have been exchanged between myself, the applicant and the Parish Council. Dunkirk Parish Council was formally re-consulted once the draft Section 106 was submitted which included the management of the woodland in perpetuity with a management body such as the Kent Wildlife Trust or the RSPB. No response was received to this re-consultation.
- 7.03 The Environment Agency has raised no objection to the proposal subject to conditions relating to surface water and contamination.
- 7.04 Kent Highways and Transportation do not consider that they need to comment on the application.
- 7.05 Natural England has no objection to the proposal.
- 7.06 The Forestry Commission has forwarded details of Government Policy towards ancient woodland in the NPPF, which is to discourage development that will result in its loss, unless the need for, and benefits of, the development in that location clearly outweigh the loss. The Commission does not object or support planning applications but simply refers to generic advice regarding how ancient woodland should be dealt with in the planning process.
- 7.07 KCC's Ecological Advice Service initially requested additional species surveys including dormouse, reptile, bat activity and a tree assessment for roosting bats. Revised comments were received once the Biodiversity Officer had spoken with the applicant's ecology consultant. The revised comments stated that the additional species surveys were not required and conditions including a mitigation strategy and management plan are requested. These matters can be addressed via the requirements of the Unilateral Undertaking.
- 7.08 The Environmental Health Manager has reviewed the Geo-environmental report and note there is a negligible risk of contamination. It is recommended that a watching brief condition be added, and note that one has already been suggested by the EA, the wording of which would be adequate.
- 7.09 KCC Flood and Water Management queried a number of figures in the drainage details, but the applicant has accepted the conditions suggested by KCC. 9.09 The applicant is aware of comments made by KCC Flood and Water Management and has instructed a company to create a detailed drainage scheme, and the conditions requested have been listed below.

## **8.0 BACKGROUND PAPERS AND PLANS**

Application papers for applications SW/12/0077 (and related Unilateral Undertaking), 16/501552/FULL (and related Unilateral Undertaking), and 18/502208/FULL and draft Unilateral Undertaking.

## **9.0 APPRAISAL**

### **Principle of Development**

- 9.01 The site is located outside any defined built up area boundary and development in this location is usually resisted. Members will, however, be aware that residential development has previously been approved on this site; once at appeal under

reference SW/12/0077, and in February 2017 at Committee for the revocation of quarrying use and erection of four houses (18/502208/FULL).

- 9.02 As there is already an approval for four houses and a Unilateral Undertaking in place, there is a clearly established fall back position. The existing quarrying permissions allow extraction until 2042, and it was on this basis that the Inspector allowed the previous appeal, as the resumption of quarrying was considered likely to result in loss of valuable ancient woodland as a direct and indirect result of further quarrying. The Council must have regard to these findings now.

### **Visual Impact**

- 9.03 I consider the style of development now proposed is as appropriate to the local countryside character as the approved scheme is. The area is characterised by detached former farmhouses and other frontage development. The adjacent lane to the north is also a dead-end with occasional dwellings which tapers out into a footpath and, accordingly I find that the style of development now proposed is not alien to the local countryside. The site itself is visually contained and, as the houses are set in a row running west to east (rather than north to south), the views from the highway and from the west will face the narrow western end of the development, so minimising the degree to which the number of houses on the site will be apparent.
- 9.04 In conclusion I do not believe that the visual impact of the current scheme will be less acceptable than that of the previously approved scheme for four houses. Details of the proposed materials have been submitted with the application, and include natural slate and red and yellow stock bricks.

### **Highways**

- 9.05 I note that Kent Highways and Transportation do not raise objection to the application and I remind Members that a scheme has already been approved for four 5 bedroom houses at this site. The Parish Council has reiterated its request for a traffic order making the lanes outside the site one-way. This cannot be achieved through planning powers and is not material to the merits of this application. If it is necessary or desirable, this should be pursued separately with the Highway Authority.

### **Ecology**

- 9.06 Whilst any development of such a neglected rural site close to well known wildlife corridors raises the question of potential adverse impact on wildlife even on protected species, the bare earth nature of this site is unusual and apparently lacking in significant ecological value.
- 9.07 Nevertheless, site restoration and the potential for better management of adjoining woodland offers significant potential for ecological enhancement through the requirements of the Unilateral Undertaking, and Members will note that Kent County Council's Ecological Advice Service raises no objection to the application, but has suggested conditions (which are recommended below) which address the potential ecological implications of the proposal. I therefore see the scheme as having significant ecological benefits.

### **Other Matters**

- 9.08 The appeal proposal and application 16/501552/FULL were only approved after the previous applicant signed a Unilateral Undertaking which required him to immediately suspend all future quarrying until he notified the Council of his intentions to either:
1. Re-commence quarrying; which meant that planning permission for the houses would fall, or
  2. Implement the planning permission; in which case all quarrying rights would fall without compensation being claimed for loss of mineral rights, and the remainder of the quarried site would be restored.
  3. To submit a scheme for management of the wider remaining woodland area before first occupation and to ensure the long term management of the woodland in perpetuity with Kent Wildlife Trust or another appropriate management body.

The current applicant has now submitted a draft Unilateral Undertaking (see Appendix A ) in similar terms (albeit with the site restoration scheme now submitted at applications stage) and I see no reason to set aside acceptance of that now. Accordingly, should Members be minded to approve the application, I recommend that any approval is subject to the same safeguards which are designed to ensure that this result is achieved.

### **The Conservation of Habitats and Species Regulations 2017**

- 9.09 The application site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

Residential development within 6km of any access point to the SPA has the potential for negative impacts upon that protected area by virtue of increased public access and degradation of special features therein. The HRA carried out by the Council as part of the Local Plan process (at the publication stage in April 2015 and one at the Main Modifications stage in June 2016) considered the imposition of a tariff system to mitigate impacts upon the SPA on developments of 10 or more units, as ultimately agreed by the North Kent Environmental Planning Group and Natural England). These mitigation measures are considered to be ecologically sound.

However, 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 (AA) solely on the basis of the agreed mitigation measures (SAMMS), and needs to progress to consideration under an AA.

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

implemented within the SPA from collection of the standard SAMMS tariff will ensure that there will be no adverse effect on the integrity of the SPA.

## **10.0 CONCLUSION**

10.01 Overall the scheme is similar to that approved under 16/501552/FULL, albeit with some visual amendments to the design and layout of the site; I can therefore find no reason to take an alternative view on the recommendation of this application. With the previous approval and the Inspector's decision on SW/12/0077, it would be very difficult to defend a refusal of this scheme. Accordingly, I have recommended appropriate conditions and that the grant of planning permission be subject to completion of a Unilateral Undertaking that achieves the previous safeguards.

**11.0 RECOMMENDATION – GRANT** Subject to the following conditions:

### **CONDITIONS**

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

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

2. The development hereby permitted shall be carried out in accordance with the following approved drawings including use of the facing materials specified thereon;

1109-01B, 1109-02B, 1109-03C, 1109-4B, 1109-05, 1109-06A, 1109-07, 1109-08, 1109-09 & 1109-11

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

3. No infiltration or surface water drainage into the ground is permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters.

Reason: To prevent pollution of groundwater.

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

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

5. Prior to first occupation of any dwelling hereby permitted, a detailed sustainable surface water drainage scheme for the site shall be submitted to and approved in writing by the Local Planning Authority. The detailed drainage scheme shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of within the curtilage of the site

without increase to flood risk on or off-site. Runoff rate should not exceed that of the existing 4.7l/s/ha. The drainage scheme shall also demonstrate that silt and pollutants resulting from the site use and construction can be adequately managed to ensure there is no pollution risk to receiving waters.

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

6. No building hereby permitted shall be occupied until an operation and maintenance manual for the proposed sustainable drainage scheme is submitted to (and approved in writing) by the Local Planning Authority. The manual at a minimum shall include the following details:

- A description of the drainage system and its key components
- A general arrangement plan with the location of drainage measures and critical features clearly marked
- An approximate timetable for the implementation of the drainage system
- Details of the future maintenance requirements of each drainage or SUDS component, and the frequency of such inspections and maintenance activities
- Details of who will undertake inspections and maintenance activities, including the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime

Reason: To ensure that any measures to mitigate flood risk and protect water quality on/off the site are fully implemented and maintained (both during and after construction) and to ensure that the development as constructed is compliant with the National Planning Policy Framework.

7. No dwelling hereby permitted shall be occupied until a Verification Report pertaining to the surface water drainage system, carried out by a suitably qualified professional, has been submitted to the Local Planning Authority which demonstrates the suitable operation of the drainage system such that flood risk is appropriately managed. The Report shall contain information and evidence (including photographs) of earthworks; details and locations of inlets, outlets and control structures; extent of planting; details of materials utilised in construction including subsoil, topsoil, aggregate and membrane liners; full as built drawings; and topographical survey of 'as constructed' features.

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

8. Prior to clearance of any vegetation within the site a precautionary mitigation strategy shall be submitted to and approved in writing by the Local Planning Authority. The document must include the following information:

- Phase 1 Survey (if works are commencing 2 years after planning permission is granted)

- Details of species anticipated to be present on site
- Methodology to clear the vegetation
- Timing of the proposed works

Works must be implemented as detailed within the submitted document.

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

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

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

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

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

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

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

12. The garages hereby permitted shall be used only for the parking of a private motor car or cars or for uses ordinarily incidental to the enjoyment of the occupiers of the dwelling house.

Reason: Development without adequate provision for the parking or garaging of cars is likely to lead to car parking inconvenient to other road users and in a manner detrimental to highway safety and amenity.

13. Upon completion, no alterations to the front elevations of any dwelling hereby permitted (that is the elevation fronting the site access road), whether normally 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.

14. No development beyond the construction of foundations shall take place until further detail of the vehicular access to the site at a scale of 1:20 have been submitted to and

approved in writing by the Local Planning Authority. The access shall be completed in accordance with the approved details prior to the first occupation of any dwelling hereby permitted.

Reason: In the interests of highway safety and convenience

15. No development beyond the construction of foundations shall take place until constructional details of the ridges, the roof eaves and verges, dormer windows, doors, rainwater goods, window reveals, cills, brick plinths, flint or stone panelling, brickwork bond and paving, chimney detailing, and brick arches for each dwelling have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: In the interest of visual amenity.

16. No development in respect to the house proposed for Plot 2 beyond the construction of foundations shall take place until details of facing materials have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: In the interest of visual amenity.

17. No development beyond the construction of foundations shall take place until details of the existing and proposed site levels, in the form of cross-sectional drawings through the site, have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: In the interest of visual amenity.

18. Any entrance gates erected shall be hung to open away from the highway, or from the site access road, and all gates shall be set back a minimum of 5.5m from the carriageway edge.

Reason: In the interests of highway safety and convenience.

19. The existing concrete building on the site shall be demolished and all materials removed from the site prior to first occupation of any dwelling.

Reason: In the interests of visual amenity.

20. Adequate precautions shall be taken during the period of demolition and construction to prevent the deposit of mud and/or other debris on the public highway.

Reason: In the interests of highway safety and convenience.

### **The Council's approach to this application:**

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

- Offering pre-application advice.
- Where possible, suggesting solutions to secure a successful outcome.



- As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance

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

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.  
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

