

2.2 REFERENCE NO - 18/505315/FULL			
APPLICATION PROPOSAL			
Erection of 5no. detached houses with associated access and parking including detached carport to Plot 2.			
ADDRESS Land At The Tracies Newington Kent ME9 7TQ			
RECOMMENDATION - Grant			
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL			
The revised proposal is acceptable with regards to the relevant policies of the development plan; Bearing Fruits (2031), government guidance in the revised NPPF and all other material considerations such as are relevant. It would not give rise to any material harm to the visual amenity of the surrounding countryside or have adverse impacts to the residential amenity of adjoining properties. It would preserve the setting of the nearby designated heritage assets.			
REASON FOR REFERRAL TO COMMITTEE			
Parish Council objection			
WARD Hartlip, Newington And Upchurch	PARISH/TOWN COUNCIL Newington	APPLICANT Mr D King AGENT Shaw Design Services Ltd.	
DECISION DUE DATE 07/12/18		PUBLICITY EXPIRY DATE 16/11/18	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
15/508683/OUT	Outline application for the erection of four detached dwellings with associated access, garages and carports.	Refused Appeal Allowed	2017
PAA/13/0300	Redevelopment of site for housing	Unacceptable in principle	2013
SW/03/0850	Outline application for residential development	Withdrawn	2003
SW/00/0126	Erection of 4 detached dwellings with integral garages.	Refused Appeal Dismissed	2000
SW/00/0125	Erection of two dwellings with integral garages	Refused Appeal Dismissed	2000
SW/96/1055	Erection of 5 detached houses and garages	Refused	1996
SW/81/471	Outline application for residential development	Refused	1981
SW/80/1110	Outline application for the erection of 6 four-bedroom houses with one garage	Refused	1980
SW/75/226	Outline application for 36 houses	Refused	1975
SW/75/225	Outline application for 6 houses	Refused	1975
NK/9/62/193A/7054A	Use of land for residential development refused	Refused	1972
NK/9/67/32B/9198B	Use of land as a site for the extension of 'The Tracies' estate.	Refused	1971
NK/9/67/32	Erection of 13 dwellings	Refused Appeal Dismissed	1967
NK/9/62/193/7054	Use of land for residential development	Refused	1962

1 DESCRIPTION OF SITE

- 1.1 The application site comprises of an irregular shaped plot located to the east of the residential development known as 'The Tracies'. The site is lies just outside the defined settlement boundary of Newington a designated Rural Local Service Centre in the adopted Local Plan, Bearing Fruit (2013). The site is approximately 0.30 hectares in size and has a previous historical agricultural use as an orchard.
- 1.2 The site is accessed directly from 'The Tracies, a pubic highway that currently serves the existing seven detached houses in the cul-de-sac. There is an existing unmade public foot path (ZR61) that crosses the site which in effect divides it into northern and southern parcels.
- 1.3 The architectural character within The Tracies generally comprises of two-storey detached residential properties constructed predominately of brick facing material to the principal elevations with pitched tiled roof. The dwellings have generous rear gardens although the front gardens which adjoin the public highway are relatively modest.
- 1.4 There are several terraced houses of a variety of building types, scale, and massing to the north of the existing development at The Tracies.

2 PROPOSAL

- 2.1 Outline permission was granted on 6th July 2018 at appeal for the erection of 4no. four bedroom detached dwellings with associated access and parking including an attached double garage, two detached double car ports and an integral garage at the site.
- 2.2 The current submission proposes erection of 5no. detached houses with associated access and parking including a detached carport to plot 2. The scheme is submitted on the basis that the principle of the site accommodating four large detached dwellings has been established at appeal, and the current proposal for five dwellings represents the most effective use of the land. The scheme was the subject of pre-application discussions and amended further to address concerns relating to excessive hardstanding within the development.
- 2.3 The submission is accompanied by plans showing five detached dwellings of traditionally designed and appearance. The buildings are arranged in an enclosed format as a continuation of the existing development within the cul-de-sac. Four of the proposed dwellings would be located largely over the footprint of the previously approved development. The additional dwelling is positioned at the centre of the open space between plots 2 and 5 to provide a focal point and sense of completion for the development.
- 2.4 Plot 1 -This is to the north western part of the site and is occupied by a 4 bedroom detached two-storey dwelling with integral garage. It would be 7.7 metres high with eaves at 5 metres. The roof would be pitched and the front elevation would feature a projecting gable feature set down from the main roof and a porch. There would be 4 bedrooms at first floor with one en-suite and a family bathroom. The ground floor would accommodate a hall entrance, living dining room, kitchen, downstairs toilet, study and garage.
- 2.5 Plot 2 – This is located at the north eastern part of site and would be a 4 bedroom detached dwelling covered in hipped tiled roof featuring a gablet. It would have a bay window feature at ground floor and a detached carport which is located close to the south east facing elevation. The building would be 7.7 metres high with eaves at 5 metres. The ground floor would have living room, family room, kitchen, dining room,

hall, utility and cloak room. There would be 4 bedrooms at first floor one with en-suite facilities and a family bathroom.

- 2.6 Plot 3 – This amounts to the proposed additional dwelling which is positioned at the centre of the site. The principal elevation would have direct views from within The Traces. It would have a hipped roof with a gabled feature and porch at the front. The building would have a ridge height of 7.7 metres with eaves at 5 metres. There would be a dining/living room, breakfast/kitchen area, hall entrance study and an integral garage at ground floor. The accommodation provided at first floor would be 4 bedrooms, one with en-suite facilities and a family bathroom.
- 2.7 Plots 4 and 5 - The dwellings on plot 4 and 5 to the south of the application site would have an identical design featuring a barn hip and a gable feature at the front elevation which is set down from the ridge. Each would have 4 bedrooms at first floor two with en-suit facilities. There is an integral garage, living/dining room breakfast/kitchen, porch cloak room and porch at ground floor.

3 SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Site Area (ha)	0.30	0.30	0
Approximate Ridge Height (m)	n/a	7.7m	0
Approximate Eaves Height (m)	n/a	5m	0
No. of Residential Units	0	5	+5

4 PLANNING CONSTRAINTS

- 4.1 Adjacent to - Newington High Street Conservation Area
- 4.2 Adjacent to Lion House, a grade II listed building

5 POLICY AND CONSIDERATIONS

- 5.1 **The National Planning Policy Framework (NPPF):** Paras 8 (three dimensions of sustainable development); 10, 11 (presumption in favour of sustainable development); 47 (Determining applications); 54, 55, 56, 57 (planning conditions and obligations); 61 (delivering sufficient supply of homes); 124, 127, 128, 130, 131 (good design); 174, 175, 176, 177 (Biodiversity); 189, 190, 191 and 192 (Proposals affecting heritage assets).
- 5.2 **National Planning Practice Guidance (NPPG):** Design and public rights of way.
- 5.3 **Development Plan: Bearing Fruits 2031:** The Swale Borough Local Plan 2017 – Policies ST1 (Delivering sustainable development in Swale); ST2 (Development targets for jobs and homes 2014-2031); ST3 (The Swale settlement strategy); ST4 (Meeting the Local Plan development targets); CP2 (Promoting sustainable transport); CP3 (Delivering a wide choice of high quality homes); CP4 (Requiring good design); DM7 (Vehicle parking); DM14 (General development criteria); DM19 (Sustainable design and construction); DM21 (Water, flooding and drainage); DM28 (Biodiversity and geological conservation); DM32 (Development involving listed buildings); and DM33 (Development affecting a conservation area).

6 LOCAL REPRESENTATIONS

6.1 10 representations have been received from local residents raising the following (summarised) issues:

- Increase in traffic and congestion
- The density of the development is inappropriate for this countryside location
- Loss of natural wildlife.
- Reptile report makes no mention of insects and endangered species
- Presence of established walnut tree
- Loss of established trees
- Harm to the integrity of the Medway Estuary & Marshes SPA
- The development is contrary to policies of the adopted local plan.
- Increase in noise
- Recent appeal decision in the area sets the precedence for this application to be refused
- Air pollution within the AQMA of Newington high Street

7 CONSULTATIONS

7.1 Newington Parish Council raises objection to the proposal and comments as follows:

Newington Parish Council accepts with regret the decision of the Planning Inspectorate to allow the appeal for 4 detached houses in The Tracies. Councillors note the comments in 4.2 in the agent's design and access statement and whilst we accept the development of the five houses could potentially close the gap, the Parish Council and residents are concerned that the indicative gap on the application next to plots 3, 4 and 5 would still make a wide enough access giving the potential for future development to the east on arable land. Councillors do not understand why plot 5 could not be turned 90° to close the gap.

7.2 **KCC Highways and Transport:** Comments that the development proposal does not meet the criteria to warrant involvement from the Highway Authority in accordance with the current consultation protocol arrangements.

7.3 **Swale Footpath Group:** State that the applicant recognizes the need for a diversion of ZR61 to enable development. As the new route would run close to the proposed houses, their privacy and security will need consideration (good fences or walls?) at an early stage.

7.4 **Kent County Council Public Rights of Way and Access Service:** Comments that:

- The existence of the right of way is a material consideration. Should consent be granted, the development will impact upon the public use, enjoyment and amenity of the Public Right of Way.
- The applicant states public footpath ZR61 passes through the site, however the legal alignment and the walked route on the ground are not in the same location. In line with consent relating to planning application 15/508683/OUT the applicant has applied to divert the legal alignment of the footpath onto a suitable route through the proposed development.

7.5 **Environmental Health:** Raises no objection. Recommends conditions relating to the construction phase of the development and the protection of the residential amenity of neighbouring properties.

8 BACKGROUND PAPERS AND PLANS

- 8.1 The submission is accompanied by the following plans/drawings: Plan/Drawing 1826-01 Location Plan, Plan/Drawing 1826-02 Site Layout, Plan/Drawing 1826-03 Site Survey, Plan/Drawing 1826-04 Plot 1 Plans, Plan/Drawing 1826-05 Plot 2 Plans, Plan/Drawing 1826-06 Plot 3 Plans, Plan/Drawing 1826-07 Plot 4-5 Plans, Plan/Drawing 1826-08 Plot 1 Elevations, Plan/Drawing 1826-09 Plot 2 Elevations, Plan/Drawing 1826-10 Plot 3 Elevations, Plan/Drawing 1826-11 Plot 4 Elevations, Plan/Drawing 1826-12 Plot 5 Elevations, Plan/Drawing 1826-13 Plot 2 Carport, Design and access Statement, Reptile Survey, and a Phase 1 Ecology Survey.

9 APPRAISAL

Principle of Development

- 9.1 The principle of residential development at the application site with regards to the erection of 4no. detached dwellings including garages and carports with associated access and parking was established under the appeal allowed at the site (attached as Appendix 1). Therefore, the key question for members in this current submission is whether the site is capable of accommodating the additional dwelling proposed without harm visual harm to amenities of the local area. It is also necessary to consider the cumulative impact the current proposal might have on nearby heritage assets and highway safety.

Visual Impact:

- 9.2 The application site is located at the end of an existing cul-de-sac of seven detached houses and is relatively well contained by existing residential development to the north, south and west. The area to the west of the site whilst open and green is unremarkable in character. Although the scheme currently proposed would require some degree of alteration of the approved layout to accommodate the additional dwelling, the development would still appear as 'a natural extension to The Tracies as noted in the appeal inspector's report. In my view the location of the additional unit would help enclose the eastern part of the site providing a sense of completion for the development. The siting of the additional dwelling would almost certainly preclude further develop on land to the east of the site which weighs in favour of this proposal.
- 9.3 The proposed layout, scale and mass reflects the general character of the surrounding area that generally comprise of two storey properties. Although the revised scheme would result in an increase in site density, it is a more effective use of the land and would still remain within the range of densities in the surrounding area. Importantly, the resulting development would not appear as cramped form of development or give rise to any material harm to the visual amenity of the locality or the wider setting.
- 9.4 The development utilises a verity of architectural styles, fenestration and form of roof configuration that is in keeping with the visual character of the area. Traditional materials are proposed which would help ensure that the development responds positively to and integrates well within it's surroundings. The revised scheme is well contained within the site and would not result in harm to the character and appearance or the intrinsic beauty of the countryside.

Residential Amenity

- 9.5 The development would have residential neighbours to the north, south and west of the application site. However, the separation distances between the existing and proposed dwellings would be such that the scheme would not adversely affect the amenities of any neighbour in terms of over shadowing, loss of light, outlook or privacy. Each property would have acceptable outdoor amenity provision and in considering the separating distances,

orientation, positioning and angles of fenestration, the proposal is acceptable in relation to the amenities of the future occupants of the proposed buildings in terms of outlook, privacy, light or general disturbance.

Highways

9.6 The development would include independent access and adequate off street parking provision within the scheme is compliant with Kent Highway parking standards. Considering the nominal additional traffic likely to be generated by the revised proposal, the impact on highway safety and the free flow of traffic is likely to be minimal. Kent Highways and Transport does not raise any objections to the proposal. Whilst objections have been raised regarding a likely adverse impact of increased vehicular traffic on the local road network in general and rural lanes in particular, it is not considered that the increased vehicular traffic that would result from this revised proposal would compromise highway safety, the integrity of the country lanes or local amenity in the vicinity of the site.

9.7 The existing public footpath (ZR61) that passes through the site is indicated to be retained within the overall scheme, however, an application have now been submitted to Kent Council under the Public Path Orders of the Town and Country Planning Act 1990 seeking diversion of the footpath around the outer perimeter of the development.

Heritage Impacts

9.8 The site lies adjacent to Newington High Street Conservation Area and Lion House, a grade II Listed building and due consideration needs to given to the desirability of preserving these heritage assets. The appeals inspector in his report on the previously approved scheme states that; *'while the development would form part of the setting of Newington High Street Conservation Area and Lion House a grade II listed building on High Street, the setting of those heritage assets would be preserved'*. This revised development although for 5 dwellings is well designed and would not be significantly different in terms of layout and appearance from the previously approved scheme. I do not believe that it would have a harmful impact on the special character of the High Street Conservation Area. Equally, the proposal would not harm the setting of the listed building at Lion House.

Landscaping

9.9 Although there are no protected trees within the site, there appear to be a number of established trees within it and whilst the application is not accompanied by a landscaping scheme, the proposals provide a good opportunity for the introduction of landscaping that will increase biodiversity and bring significant environmental enhancement to this site. A planning condition seeking Arboricultural Method Statement to protect existing tress on the land, and a landscaping scheme that is sympathetic to the site's countryside context to help soften the appearance of the development is necessary.

Ecology

9.10 The guidance in the NPPF encourages opportunities to incorporate biodiversity enhancements in and around new developments. In terms of ecological impacts of the development, the application is accompanied by a Phase I Ecology Survey and a Reptile survey which are considered to be sufficient for the site. The KCC Ecologist has been consulted and raises no objection to the proposal subject to conditions requiring updated ecological survey and a bat scoping survey prior to work commencing on trees. The ecology/biodiversity matters raised by neighbouring objectors are adequately addressed by the conditions appended.

Impact on SPA and Ramsar Sites

9.11 I have for completeness set out an Appropriate Assessment below. Since this application would result in an increase in residential accommodation on the site, impacts to the SPA and Ramsar sites may occur from increased recreational disturbance. Due to the scale of the development there is no scope to provide on site mitigation and therefore off site mitigation is required by means of developer contribution at the rate of £239.61 per dwelling. The Agent has provided written confirmation that the applicant would be willing to pay this mitigation fee, which will be secured by way of a unilateral undertaking.

Other Matters

9.12 The planning issues raised by Newington Parish Council and neighbouring objectors have been addressed in the main appraisal section of this report.

10 CONCLUSION

10.1 The application site has extant permission for 4no. dwellings and the current proposal entails revision of the approved scheme to provide 5no. dwellings. The revised scheme is of appropriate scale, layout and design and does not give rise to any unacceptable visual harm to countryside interest or visual amenity of the general vicinity of the site. I have considered the impact of the development on the residential amenities of neighbouring residential occupiers and have found no adverse impacts significant enough to warrant a refusal of planning permission. The proposal would preserve the architectural integrity and features of special interest of nearby designated heritage assets. With adequate off-street parking provision that is compliant with Kent Highways parking standards, and negligible impact on highway safety and the free flow of traffic a conditional approval is recommended.

11 RECOMMENDATION

11.1 GRANT Subject to the following conditions:

CONDITIONS to include

- (1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission;

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- (2) The development hereby permitted shall be carried out in strict accordance with the following approved plans: 1826-02 Rev. A - Site Layout, 1826-03 Site Survey, 1826-04 Plot 1 Plans, 1826-05 Plot 2 Plans, 1826-06 Plot 3 Plans, 1826-07 Plot 4-5 Plans, 1826-08 Plot 1 Elevations, 1826-09 Plot 2 Elevations, 1826-10 Plot 3 Elevations, 1826-11 Plot 4 Elevations, 1826-12 Plot 5 Elevations, 1826-13 Plot 2 Carport

Reason: To ensure a satisfactory appearance to the development and to safeguard the enjoyment of their properties by existing and prospective occupiers.

Pre Commencement Conditions

- (3) The development shall not commence past slab level until written details of the materials to be used in the construction of the external surfaces of the new build dwellings and hard surfaces have been submitted to and approved in writing by the Local Planning Authority and the development shall be constructed using the approved materials and maintained thereafter unless otherwise agreed in writing by the local planning authority;

Reason: To ensure a satisfactory appearance to the development.

- (4) No development shall take place until details of a sustainable drainage scheme for the disposal of surface water and waste water have been submitted to and approved by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details.

Reason: To ensure that the principles of sustainable drainage are incorporated into this development and to ensure ongoing efficacy of the drainage provisions.

- (5) No development shall take place until a construction method statement has been submitted to and approved in writing by the local planning authority. The construction method statement shall provide for:

- a) the parking of vehicles for site operatives and visitors;
- b) loading and unloading of plant and materials;
- c) storage of plant and materials used in constructing the development;
- d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- e) measures to control the emission of dust and dirt during construction;
- f) a scheme for recycling/disposing of waste resulting from the construction works; and
- g) the construction working hours.

The approved construction method statement shall be adhered to throughout the construction period for the development.

Reason: In the interest of residential amenity and to ensure adequate on site parking and turning provision is made for construction traffic in the interest of highway safety and the free flow of traffic.

- (6) Prior to any works on trees being carried out a bat scoping survey, recommended emergence surveys and details of a mitigation strategy must be submitted to the LPA for written approval. The trees must be felled as detailed within the approved mitigation strategy.

Reason: In the interest of ecology and biodiversity on the site.

- (7) Prior to any vegetation clearance a detailed ecological mitigation and enhancement strategy informed by an updated ecological survey(s) must be submitted for written approval by the LPA.

Reason: To protect and enhance the ecology and biodiversity on the site.

- (8) 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.

- (9) All trees to be retained must be protected by suitable fencing of a height not less than 1.2m at a distance as specified in Table 1 or Figure 2 of BS 5837 (2012) 'Trees in

Relation to Design, Demolition and Construction' before any equipment, machinery or materials are brought on to the site and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed, nor fires lit, within any of the area fenced in accordance with this condition and the ground levels within that area shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.

Reason: To safeguard the existing trees to be retained and to ensure a satisfactory setting and external appearance to the development.

- (10) No development beyond the construction of foundations shall take place until details have been submitted to the Local Planning Authority and approved in writing, which set out what measures have been taken to ensure that the development incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the inclusion of solar thermal or solar photo voltaic installations, and energy efficiency. Upon approval, the details shall be incorporated into the development in accordance with the approved details prior to the first use of any dwelling.

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

- (11) No development including site clearance and demolition shall take place until an Arboricultural Method Statement (AMS) in accordance with the current edition of BS 5837 has been submitted to and approved in writing by the local planning authority. The AMS should detail implementation of any aspect of the development that has the potential to result in the loss of, or damage to trees, including their roots and, for example, take account of site access, demolition and construction activities, foundations, service runs and level changes. It should also detail any tree works necessary to implement the approved scheme and include a tree protection plan. The development shall proceed in accordance with the approved measures.

Reason: To enable the Landscape Officer access the impact of the development on trees to be retained and in the interests of landscape, visual impact and amenity of the area and to ensure a satisfactory appearance to the development.

Construction Phase

- (12) The approved details of the parking/turning areas shall be completed before the commencement of the use of the buildings hereby permitted and shall thereafter be kept available for such use. No development, whether permitted by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 (or any order revoking and re-enacting that Order, with or without modification) or not, shall be carried out on the areas indicated or in such a position as to preclude vehicular access to them;

Reason: Development without adequate parking/turning provision is likely to lead to parking inconvenient to other road users and in the interests of road safety.

- (13) No demolition/construction activities shall take place, other than between 0800 to 1800 hours (Monday to Friday) and 0800 to 1300 hours (Saturday) with no working activities on Sunday or Bank Holiday.

Reason: In the interest of residential amenity.

Post Construction

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

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

- (15) Upon completion, no further development 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), shall be carried out.

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

- (16) Prior to occupation of the development hereby permitted external lighting shall be in place that is in accordance with a lighting design strategy that has previously been submitted to and approved in writing by the LPA. The strategy shall:

a) Identify those areas/features on site that are particularly sensitive for bats and in which lighting must be designed to minimise disturbance, and;

b) Show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory or having access to their breeding sites and resting places.

c) Include measures to reduce light pollution and spillage.

All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy.

Reason: In the interest of biodiversity protection and visual amenity.

- (17) The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the dwellings shall not be occupied unless the notice for the dwellings 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.

INFORMATIVES

1. Any planning consent given confer no consent or right to disturb or divert any Public Right Of Way at anytime without the express permission of the Highway Authority.
2. Attention is drawn to Sections 60 & 61 of the COPA 1974 and to the Associated British Standard COP BS 5228: 2009 for noise control on construction sites. Statutory requirements are laid down for control of noise during works of construction and demolition and you are advised to contact the EHM regarding noise control requirements.

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-

application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

In this instance;

The applicant/agent was advised of changes required to the application and these were agreed. The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

Habitat Regulations

Appropriate Assessment under the Conservation of Habitats and Species Regulation 2017

The Appropriate Assessment (AA) have been undertaken without information provided by the applicant.

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

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

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

The recent (April 2018) judgement (People Over Wind v Coillte Teoranta, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, "it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site." The development therefore cannot be screened out of the need to provide an Appropriate Assessment (AA) solely on the basis of the agreed Strategic Access Management and Monitoring Strategy measures (SAMMS), and needs to progress to consideration under an AA.

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

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

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

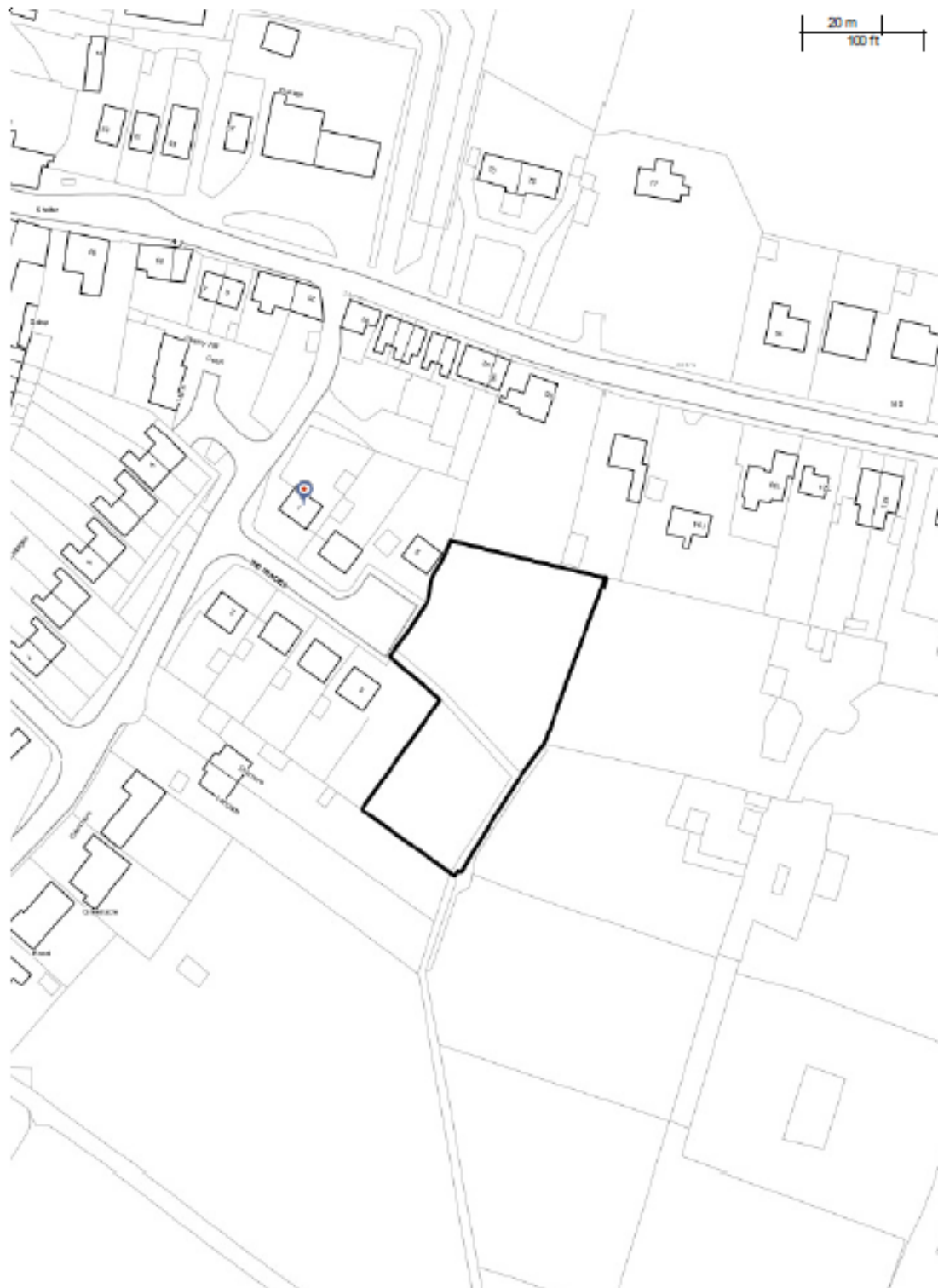
Based on the correspondence with Natural England (via the NKEPG), I conclude that off site mitigation is required.

In this regard, whilst there is 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 (to be secured by either a s106 agreement or unilateral undertaking on all qualifying developments) will ensure that these impacts would not be significant or long-term. I therefore consider that subject to mitigation, there will be no adverse effect on the integrity of the SPA.


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

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.



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