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2.7 REFERENCE NO - 19/501378/FULL			
APPLICATION PROPOSAL Change of use of residential annexe to independent residential use (Retrospective).			
ADDRESS Annexe James House Kent View Drive Eastchurch Sheerness Kent ME12 4DP			
RECOMMENDATION Grant, subject to conditions and receipt of standard SAMMS contribution			
SUMMARY OF REASONS FOR RECOMMENDATION The proposal would provide an additional dwelling to meet housing supply and would not give rise to adverse harm to residential amenity, visual amenity or highway safety over or beyond the existing situation.			
REASON FOR REFERRAL TO COMMITTEE Objection to the proposal from Eastchurch Parish Council			
WARD Borden And Grove Park	PARISH/TOWN COUNCIL Eastchurch	APPLICANT Ms Patricia Bath AGENT Brachers LLP	
DECISION DUE DATE 12/06/19	PUBLICITY EXPIRY DATE 09/05/2019		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
15/503250/SUB	Submission of details pursuant to Conditions: 3 - Details of external finishing materials, and 4 - Details of hard and soft landscaping (original app ref: SW/13/1545)	Approved	19.06.2015
APP/V2255/A/14/2 215852	Appeal against the refusal Ref: SW/13/1545	Appeal Allowed	21.07.2014
SW/13/1545	Proposed dwelling and Annexe	Refused	07.02.2014

MAIN REPORT**1.0 PLANNING HISTORY**

- 1.1 The original planning application which relates to this site was refused for the following reason, *'The dwelling, by virtue of its scale and urbanising effect in a location within a rural settlement characterised by sporadic and widely spaced buildings, would be detrimental to the character and appearance of the countryside and the rural environment and would represent an unsustainable form of development.* (Planning application ref: SW/13/1545 dated 7 February 2014).
- 1.2 The decision was appealed and allowed by the Inspectorate. It was concluded that that the principle of residential accommodation was acceptable given that sufficient evidence had been provided to demonstrate that the site was previously developed. In addition, it was considered that the dwelling would satisfactorily integrate into the

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street scene and thus allowing for the area to maintain its rural character. (Planning Appeal Ref: APP/V2255/A/14/2215852, dated 21 July 2019).

- 1.3 Condition (9), was imposed by the Inspector, which had the effect of *'restricting the use of the garage ancillary to the main dwellingto prevent its future subdivision into a separate unit, in the interests of residential amenity.'* (Appeal Ref: APP/V2255/A/14/2215852, dated 21 July 2019)
- 1.4 It is this ancillary link that the applicant now seeks to remove, to enable the annexe to be used as a single independent residential dwelling.
- 1.5 There are three planning appeals which I consider relevant in the determination of this application. Each Planning Appeal relates to the construction of residential housing located outside the Built-up Area boundary of Eastchurch and all of which are situated within close proximity to the subject site.
- 1.6 Planning appeal for a *'Pair of 3 bedroom semi-detached dwellings..... with associated parking spaces and a 4 bedroom house with double garage and parking all served by the propose extended highway.....'* The appeal was dismissed on the grounds that whilst the site was considered previously developed land, the proposal would cause harm to the landscaping setting of the existing residential setting, and not conserve the beauty of the countryside. (Orchard Way, Eastchurch, Appeal Ref: APP/V2255/W/17/3177787), dated 20 November 2019)
- 1.7 Similarly, an appeal for a *'4 bedroom detached house with integral garage...'* was dismissed as the proposed siting and visual effect on the pattern of development and open space was considered not to satisfy the requirements on the Local Plan or Framework on design. (Land on the corner of Range Road, Eastchurch, Appeal Ref: APP/V2255/W/17/3177790), dated 17 November 2019)
- 1.8 The third appeal for the *'erection of pair of 3 bedroom semi-detached houses with associated garages and car parking'* was allowed by the Inspectorate on the grounds of sustainability. The site was considered a sustainable location, suitable for the proposed location of residential accommodation. (11 Range Road, Eastchurch, APP/V2255/W15/3135789 dated 28 January 2016)
- 1.9 The key distinction between the Planning Appeals as listed above is that the two appeals which were dismissed (Ref: APP/V2255/W/17/3177787 & APP/V2255/W15/3135789) came at a time when the Council could demonstrate a 5 year housing supply and given this, the Planning Inspectorate did not deem it considered the scheme acceptable, having regard to the location of the site relative to shops and services, and other dwellings in the immediate vicinity. However, the earlier appeal (Ref: APP/V2255/W15/3135789) which was Allowed is considered most relevant as it came at a time when the Council was unable to demonstrate a 5 year housing supply, which is the Councils current position.

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2.0 DESCRIPTION OF THE SITE

- 2.1 The Annexe is situated on the northern side of Kent View Drive, approximately 53m from the junction with Church Road to the west. There are several residential side roads off this section of Church Road, and nearby to the south is the entrance to the complex of three prisons. The side roads vary in terms of plot size, property type and density, but the general character of the area is of detached properties with occasional undeveloped plots, giving a sense of space and rural character. Shops and services within the village of Eastchurch, are located about half a mile from the site and can be accessed on foot via a dedicated footway with streetlights, and bus services run to Eastchurch and the wider network of centres.
- 2.2 The Annexe is a single storey L-shaped building with a pitched roof, associated hardstanding and vehicle access. It accommodates one self-contained residential unit suitable for two person occupancy with a large open plan living area, double bedroom and a bathroom. It is attached to a double garage to the west.

3.0 PROPOSAL

- 2.1 The proposal seeks to use the Annexe as a separate residential unit.
- 2.2 The application is retrospective and as such no changes are proposed to the existing built form of the unit nor to the existing parking or landscaping layout.

4.0 PLANNING CONSTRAINTS

- 4.1 No planning constraints are identified other than being located outside of the Built-up Area Boundaries.

5.0 POLICY AND CONSIDERATIONS

- 5.1 The National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG)
- 5.2 Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies ST 1, ST 3, ST 6, CP 4, DM 7, DM 14
- 5.3 SPG 4 Kent Vehicle Parking Standards

6.0 LOCAL REPRESENTATIONS

- 6.1 No comments have been received

7.0 CONSULTATIONS

- 7.1 **Eastchurch Parish Council:** Objects to the application. The Council upholds the Inspectors Report of the Appeal Decision and the Schedule of Conditions attached.'
- 7.2 Additionally, Eastchurch Parish Council requested clarification of ancillary use which is defined as accommodation that is subordinate to the main dwelling, the function is

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restricted to the supplementary enjoyment of the main residence and for no other purpose or operations.

7.3 **Natural England:** Assessment to be made in accordance with Natural England.

7.4 SAMMS payment will be required on the grounds of mitigation and this can be secured quickly if Members are minded to grant permission.

8.0 APPRAISALPrinciple of Development

8.1 The Local Plan 2017 policy ST3 identifies the site as lying outside of the Built-up area boundary of Eastchurch, and therefore in the countryside.. Paragraph 4.3.23 identifies the primary objective here is to protect the open countryside from isolated and/or large scale development. Where minor development is essential for social, economic or environmental health of a community it would be required to enhance the intrinsic character, beauty, wildlife value, tranquillity and undeveloped nature of the countryside and its communities and buildings.

8.2 The Annexe is not located within an isolated position nor is it large scale development. The structure is built and the impact of its built form '*upon the protection and enhancement of the quality, character and amenity of the countryside*' was previously assessed and considered acceptable by the Planning Inspectorate. (Appeal Ref: APP/V2255/A/14/2215852, dated 21 July 2019).

8.3 The unit would provide a residential housing unit where the Council has identified a five-year housing supply shortfall. According to paragraph 49 of the National Policy Framework, relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

8.4 Paragraph 14 indicates that for decision-taking, this means, where the development plan is absent, silent or relevant policies are out of date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole and as such sets out a presumption in favour of sustainable development.

8.5 The Framework identifies three dimensions to sustainable development: economic, social and environmental, and states that planning needs to perform roles in all three dimensions. As such, it is necessary to consider the proposal in terms of all three roles to establish whether it constitutes sustainable development.

8.6 As previously referred to under section 1.9, the appeal decision which I believe should be given weight based on the Council being unable to demonstrate a five year housing supply and allowing the Appeal on the grounds of sustainability is located within close proximity of the site at 11 Range Road, Eastchurch. The application was for the '*erection of pair of 3 bedroom semi-detached houses with associated garages and car parking*'. (Ref: APP/V2255/W/15/3135789 dated 28.01.2016). The Planning Inspectorate considered the following:

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*The site is located outside the defined settlement of Eastchurch, being approximately ¾ mile from the settlement boundary and around 1 mile from the village centre and the goods and services available there. Church Road, which links the Sheppy prison cluster to the village centre, does have a footway along its length and some lighting and so provides a safe pedestrian access to the village centre. Furthermore, on Church Street there is a bus stop around 300 metres from the site which is served by three bus services providing links to the village centre and larger towns further afield. **Accordingly because of the site's accessibility to goods, services and public transport links, the provision of housing in this location would support the well-being of the village and help to perform the social role in sustainable development.***

*The prison cluster dominates the context of the site, and the appellant has commented that the neighbouring houses were originally built to house prison staff and their families. It is not unreasonable to consider that the prisons could provide employment opportunities for future residents of the dwellings which would be accessible by walking or cycling. Furthermore there may also be a short term gain for the local economy during the construction period. **Consequently, the development would contribute to the local economy and fulfil the economic role.***

As set out above, the immediate area has a primarily domestic character and therefore no harm would be caused to the character or appearance of the countryside as a result of the development. As such the development would protect the countryside and the environmental role would be met.

*In terms of complying with specific policies in the Framework, Paragraph 55 advises that isolated homes in the countryside should be avoided. **However due to the size of the settlement within which the site is located and the links to the village centre, I do not consider that the development would be isolated.***

*In summary, there would be no adverse impacts arising from the proposed dwelling, there would be benefits when considered against the Framework as a whole and there are no specific policies in the Framework which indicate that development should be restricted. **For all the above reasons, I find that the proposed dwelling would constitute sustainable development.***

- 8.7 There are no specific policies in the adopted Local Plan (2017) which allow for the subdivision of existing residential dwellings in countryside locations. However - recent government guidance in paragraph 79 (d) of the revised National Planning Policy Framework NPPF (2018) states that isolated homes in the countryside should be avoided unless, amongst other things, the development would involve the subdivision of an existing residential unit. It is arguable whether this is the case here. Nonetheless, as I set out above, the built form is in place. The building has its own frontage to Kent View Drive and would read as frontage development rather than backland development.
- 8.8 As set out above, the site lies in a comparatively sustainable location. The building is already constructed (lawfully, albeit its use is currently unauthorised) and the Council

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cannot demonstrate a 5 year supply of housing land, which tilts the policy balance in favour of provision of new residential development in such locations.

- 8.9 Given the above I am, on balance, of the view that the proposal is acceptable in principle. Members should note that the very specific circumstances of this site are given significant weight here – in particular the location relative to Eastchurch, the pedestrian route to Eastchurch from the site, and the fact that the annex has a separate street frontage to the dwelling. I do not envisage such circumstances being readily repeated elsewhere, and my recommendation in this respect does not in my view set a precedent.

Visual Impact

- 8.10 The design and visual impact of the Annexe was previously assessed and considered acceptable under the linked Planning Appeal (Ref: ref: *APP/V2255/A/14/2215852*). The Planning Inspectorate considered that the proposal being located outside of the Built-up Area Boundaries would not adversely impact upon the character and appearance of this countryside setting and therefore would adhere to the broader principles of the Development Plan. As such, given that this planning application is retrospective, and no further extensions or alterations are proposed to the built form of the structure or to the existing layout of the site, the Planning Inspectorates previous consideration is upheld in this regard.
- 8.11 Should the application be considered acceptable, I recommend the imposition of conditions removing all Permitted Development rights. This would safeguard the risk of enclosure to the front of the Annexe to prevent high fencing from being erected and for hardstanding, to prevent the removal of the front garden. It would also prevent alterations to the building increasing it in size.

Residential Amenity

- 8.12 In terms of habitable provision, the double bedroom has a floor area of 10.6m² whilst the open plan kitchen/living area provides 21m² of usable space. Both rooms are of a sufficient size for daily activities and all rooms are serviced by a window to allow for natural light provision. The total floor area provision is 42.8m² of usable habitable space which exceeds the Councils minimum space standards and overall is considered to provide an acceptable standard of residential accommodation with adequate daylight, sunlight and privacy provision.
- 8.13 The Council requires a good standard of outdoor amenity provision for future occupiers. This site falls well below the normal minimum provision of private amenity space. However – the development is small in scale and is very unlikely to be used as family accommodation. In such circumstances, this Council has in the past considered the lack of provision of private amenity space to be acceptable. Notwithstanding this, there is a small grassed area to the front of the site which although not ideally located in terms of privacy is considered sufficient given that this is not a family unit. In addition, the sites' countryside setting makes the site easy assessable to outdoor open space within close proximity of the site and therefore acceptable in this regard.

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- 8.14 In relation to the impact upon neighbouring residential properties, the Annexe is located adjacent to 'St Teresa' to the south, a residential bungalow in habitable use. Two windows are located within the side (east) elevation of the Annexe facing this neighbouring property. Notwithstanding, these windows are high level (approximately 1.8m above floor level) and therefore do not provide direct overlooking. Furthermore, the distance between these properties is 31m a sufficient distance to mitigate against the loss of day light, sunlight, sense of enclosure or loss of privacy and is therefore acceptable in this regard.
- 8.15 Similarly, the windows in the side (west) and rear (north) elevation of the Annexe are high level windows with all other neighbouring residential properties including The Sherries to the north, Cottage & Mairstane (south) and James House (west) being located a minimum distance of 21m from the subject site. As such no adverse amenity concerns are raised in relation to daylight, sunlight, overshadowing, sense of enclosure or loss of privacy and therefore considered acceptable in this regard.
- 8.16 The Annexe would be retained in its current form as a one bedroom self contained unit for two person occupancy and therefore any increased intensification of the site associated with increased noise levels would be minimal and not sufficient to adversely impact upon the existing residential amenity of the area.

Parking

- 8.17 In terms of parking provision, a double garage and associated hardstanding is integrated into the design of the Annexe and this is considered sufficient for the parking of two vehicles. The car parking is considered an over provision for a unit of this size in accordance with Kent County Council Highways guidance which requires 1 space per 1 bedroom dwelling.
- 8.18 The parking provision for James House would remain unaffected by the proposal.

9.0 CONCLUSION

- 9.1 The principle of a new residential unit outside the Built-up Area Boundaries is contrary to the Local Plan 'Bearing Fruits 2031'. However – as the Council cannot demonstrate a five year supply of housing, the policy objection to development of this kind in the countryside is given less weight in the decision making process and on balance I consider it to be acceptable as a matter of principle. The use of the building as a separate dwelling is acceptable in all other respects, and therefore subject to the SAMMS payment, and to the conditions below, I recommend that planning permission is granted.

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

- (1) The development hereby approved shall be carried out in accordance with the following approved drawings: Site Location and Block Plans, Proposed Annexe Elevations, 2165/01, 2165/02

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

- (2) Upon completion, no further development, whether permitted by Classes A, B, C, D, E or F 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 character and appearance of the area, and visual protection of this countryside setting.

- (3) The parking provision associated with the integral double garage, would be retained for the use of the Annexe only and not for general use of the main dwelling James House.

Reason: To ensure adequate parking provision for future residents, and to minimise increased intensification of the site associated with increased elevated noise levels for the protection of neighbouring properties.

- (4) Notwithstanding the provisions of Class A, Part 2, Schedule 2, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any order revoking and re-enacting that Order, no fences, gates walls or other means of enclosure shall be erected within the application site.

Reason: In the interests of visual amenity.

The Council's approach to the application

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.

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.

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Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017

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

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

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

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

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

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

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

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

Due to the scale of development there is no scope to provide on site mitigation such as an on-site dog walking area or signage to prevent the primary causes of bird disturbance, which

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are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats.

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

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

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

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