

PLANNING COMMITTEE – 5 DECEMBER 2019**PART 3**

Report of the Head of Planning

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

3.1 REFERENCE NO - 18/506225/OUT		
APPLICATION PROPOSAL		
Outline application for residential development comprising of nine 2 bed bungalows together with provision of a community orchard. Matters relating to access and layout to be determined, with appearance, landscaping and scale reserved for future consideration.		
ADDRESS Land To The South Of School Lane Lower Halstow Kent ME9 7ES		
RECOMMENDATION REFUSE		
SUMMARY OF REASONS FOR REFUSAL		
The application site is located outside of the built confines of Lower Halstow and within the open countryside. The proposed development would fail to protect the intrinsic value, tranquillity and beauty of the countryside and would result in the unnecessary permanent loss of best and most versatile agricultural land.		
REASON FOR REFERRAL TO COMMITTEE		
Parish Council support		
WARD Bobbing, Iwade And Lower Halstow	PARISH/TOWN COUNCIL Lower Halstow	APPLICANT Crabtree & Crabtree (Lower Halstow) Limited AGENT Grange Ash Limited
DECISION DUE DATE 01/02/19		PUBLICITY EXPIRY DATE 27/08/19

Planning History

17/501505/OUT

Outline application (some matters reserved) for residential development comprising of nine 2 bed retirement bungalows, together with provision of a community orchard - Access and layout being sought.

Refused Decision Date: 24.07.2017

1. DESCRIPTION OF SITE

1.1 The application site lies outside the built up area boundary, to the south of Lower Halstow. It amounts to Best and Most Versatile agricultural land (BMV), being classified as Grade 2.

- 1.2 Open fields lie to the south and west, while Lower Halstow Primary School lies to the east and a recently built residential development lies to the north. There are a number of large, prominent trees on the boundary with the school. There are a number of school buildings facing the site, the closest being approximately 2m from the boundary, with a number of large facing windows overlooking the site.
- 1.3 The site itself is in use for keeping horses, and is subdivided into paddocks. Two stable buildings lie in the south east corner of the site, although there is no record of permission having been granted for these structures.
- 1.4 From School Lane, the land rises to the south, and the site is elevated above the development to the north. It is also visible in long distance views from Breach Lane to the east. A public footpath runs through the site, (although access to it appears to be restricted at present) with further public footpaths (from which the site is visible) to the west.

2. PROPOSAL

- 2.1 The application seeks outline permission for the erection of 9no. two bedroom bungalows. Approval is sought for access and layout. The application also seeks consent for the use of part of the site as a “community orchard”, although it seems to me that this does not in itself require planning permission.
- 2.2 Access would be taken from School Lane, in part using the existing access to the recent residential development to the north of the application site. The existing public footpath is shown on the plans as being “reinstated”. The proposed community orchard would wrap around the western and southern boundaries of the site.
- 2.3 The site would be laid out with three pairs of semi-detached bungalows, and a terrace of three, all facing inwards towards the access road and a central soft landscaped area. Each of the bungalows would have a single parking space, either located adjacent or, in the case of the proposed mid-terrace unit, opposite, with a visitor parking area proposed to be located in the north west of the site, with 6 parking spaces.
- 2.4 The bungalows would each measure 10m wide and between 9.5m and 10m deep. Garden sizes vary across the site, with the smallest being 7m deep and 10m wide, and the largest being a maximum of 25m wide, 18m deep.
- 2.5 The closest bungalow to the school would be located 11m from the building. The closest bungalow to the residential development to the north would lie approximately 35m from the nearest dwelling.
- 2.6 The application is accompanied by an ecological impact assessment, a planning statement, a “retirement bungalow survey”, a transport statement, a water management strategy, and a design and access statement. Additional information submitted since the application was registered includes a draft s.106 agreement, an appraisal of alternative sites considered in and around Lower Halstow, and an example of a similar scheme in Blean.
- 2.7 The application is, essentially, a resubmission of 17/501505/OUT, only with less public open space proposed, and with further justification submitted in respect of a perceived need for bungalows within Lower Halstow.

3. PLANNING CONSTRAINTS

The site lies within a mineral safeguarding area as defined in the Kent Minerals and Waste Local Plan, and amounts to BMV agricultural land

4. POLICY AND CONSIDERATIONS

4.1 The following are relevant:

The National Planning Policy Framework (NPPF)

The following paragraphs are relevant:

8 – Three overarching objectives of sustainable development

10 & 11 – Presumption in favour of sustainable development

12 – The importance of the development plan in decision making

54-56 – The use of planning conditions and planning obligations

59 – Supporting the government’s objective of significantly boosting housing supply

60 & 61 – Assessing and addressing housing mix

77 – Provision of affordable housing in rural areas on exception sites

79 – Circumstances under which isolated homes in the countryside might be acceptable

92 – Provision of social, recreational and cultural facilities the community needs

98 – Protection and enhancement of public rights of way

122 – Making efficient use of land

124, 125 & 127 – High quality design

170 – Development should contribute to and enhance the natural and local environment and recognise the importance of BMV agricultural land

175 & 176 – Impact of development on habitat sites

206 – Protection of minerals safeguarding areas

The Kent Minerals and Waste Local Plan 2013-30

Policy DM7 relates to safeguarding mineral resources and states

KCC’s adopted “Safeguarding Supplementary Planning Document” is relevant

Swale Borough Local Plan 2017

The following policies are relevant:

ST1 – Delivering sustainable development in Swale

ST3 – The Swale settlement strategy

CP3 – Delivering a wide range of high quality homes

DM7 – Vehicle parking

DM9 – Rural exception housing

DM14 – General development criteria

DM19 – Sustainable design and construction

DM24 – Conserving and enhancing valued landscapes

DM28 – Biodiversity and geological conservation

DM31 – Agricultural land

The Council's adopted SPD – "Landscape Character and Biodiversity Appraisal" is relevant. The site lies within the Upchurch and Lower Halstow Fruit Belt.

5. LOCAL REPRESENTATIONS

5.1 8 representations objecting to the development have been received, which are summarised as follows:

- Lack of facilities in the village, and poor public transport;
- Development is on greenfield land;
- Will result in further applications for residential development on agricultural land to the south;
- Design of properties is not in-keeping with existing properties in village;
- Development will exacerbate existing flooding;
- The access is dangerous
- Insufficient parking proposed, which will lead to increase in parking on School Lane;
- There is no guarantee that these will remain occupied by older people, will not be long before any age including young families living in these;
- There is no guarantee that nine 3 and 4 bedroom properties in the village will freed up for families by the development of these bungalows. It is merely increasing the size of the village;
- There are no guarantees that the orchard shown on the proposals as a community orchard will ever be planted;
- Loss of value to existing dwellings;

- Site is prime agricultural land;
- Will be hugely intrusive to one writer's property, home and family life;
- Site is outside of the village boundary.
- Increase in cars and traffic;
- Retirement bungalows are not required as there are enough bungalows in the village already;
- The village has no doctor's surgery, or dentists, the village shop is very small and not suitable for a weekly or monthly shop. The bus services to any of these facilities either in Rainham or Sittingbourne are not regular enough.
- The access road from the proposed site joins School Lane at its narrowest point, by the bridge, which is serious choke point, as it is not suitable for two cars to pass at the same time.
- There must be improvements to the infrastructure prior to approval.
- The site is located outside of the built up area of Lower Halstow and within the open countryside;
- No change since the previous refusal
- The proposed restriction on sales to local residents is welcome. There however remain unanswered questions as to whether residents will be able to freely sell on to people under 55 or will this be restricted to over 55, or who will maintain the communal areas, i.e. will there be a property management company who will charge an annual fee?
- It is of concern that the property is marketed as retirement development.
- Potential buyers point out in their supportive statements the lack of local services, public transport, medical services and shopping facilities.
- The outline plans do not indicate the development is meeting the needs of people with limited abilities.
- The route to the nearest bus stop contains a part narrow road without pavement and an incline to the development.
- The applicant refers to a similar development in Blean near Canterbury, however that development is on flat ground and Blean is a larger community (6,000 residents as opposed to 1,200 in Lower Halstow) and close to a large city (Canterbury) with good public transport in accessibility and frequency. Blean also has a post office and a large village shop.
- The marketing survey carried out in Lower Halstow did not include a survey of the residents of Blean as to any shortcomings of the proposed accommodation. Apart from the lack of local services, the proposed parking allocation is below the one space per bedroom as in other developments, and with the narrow

access on that part of School Lane, this could be problematic. The proposed parking spaces in Lower Halstow seem to lack additional space for opening doors for people with limited mobility.

- It is of further concern that the company carrying out the survey seems half owned by the applicant and the other half by his spouse, it seems difficult to avoid the impression of bias and the scientific basis for the survey is not clear.
- In view of the limitations, it is difficult to see how this development can be seen as other than a development of small residencies, that would suit buyers to downsize and equity release, but does not seem to have any other facilities making it appropriate for retirement purposes.
- It does not allow residents that are unable to live in the village in their current accommodation due to frailty of old age, to remain in the village.
- It should be judged on its merits as small properties, outside the village envelope, on Greenfield land, with likely insufficient parking facilities.

5.2 13 representations in support have been received, including one each from the agent and his wife (who both live locally), and two from the same address elsewhere. They are summarised as follows:

- It is hard to imagine or recall another planning application anywhere in the borough with more justification for approval than this one;
- Planners should get behind the spirit of the NPPF directives and local opinion and approve this scheme without delay.
- Many villages in the UK and especially Lower Halstow are being starved of new development by well-meaning but as we now know misguided development policies, to the point where services and resources are being reduced in rural settlements as an outcome of the lack of development;
- Whilst this application is not necessarily designed for new and young families it will have the effect of 'Freeing up 'at least Nine 3 and 4 bed properties within the village for occupation by the same.
- The latest government planning policies and directives make it very clear that local preferences and needs should take priority with decision makers.
- Many elderly villagers have lived in the village for many decades and hate the prospect of being forced to move away one day from everything they know, and they love.
- There is a need for these bungalows in Lower Halstow.
- The affordable housing in Breach Lane development provided accommodation for younger people from the village to purchase to enable them to stay where they grew up. The same should be done for elderly residents
- There are a limited number of small rental bungalows within the village but rarely available.

- The current village facilities are what these potential 'downsizers' are used to and do not want to leave and lose the village community they have grown with.
- All levels of government recognise the urgent need to plan for a rapidly ageing population. In Swale, the proportion of the retired population is rising faster than the national average.
- Lower Halstow has many retired residents who occupy large homes with multiple spare rooms. It is clear that elderly residents are deeply rooted in the community and don't want to leave the village with family, friends and neighbours on-hand within the village.
- Being able to move to a small bungalow would offer an ideal opportunity to remain part of their community with lower running costs and more suitable domestic facilities.
- Central government and County Council policies require planning authorities to urgently provides suitable accommodation for the increasing retired population.
- The application includes safeguards to ensure occupation by local residents through a legal agreement and there are many more residents interested in the bungalows than the 9 proposed.
- It would not set a precedent for inappropriate development as it meets a particular and justified need.

6. CONSULTATIONS

The Environmental Health Manager does not raise objection, subject to a condition limiting hours of construction

KCC Highways and Transportation do not raise objection, subject to conditions

KCC Ecology do not raise objection, subject to conditions.

KCC Public Rights of Way Officer does not object to the application.

KCC Planning did not respond in respect of mineral safeguarding

The Housing Manager does not object but notes that this scheme does not relate to affordable housing, and that whilst there is an identified need for affordable housing for 11 dwellings in Lower Halstow according to the latest data (a Housing Needs Survey for the period 2013-2018) there was a very limited identified need for housing for the elderly.

Lower Halstow Parish Council comment as follows:

11th January 2019:

It was re-iterated that this was a green field site outside of the village built up boundary, and there were concerns regarding the design for elderly people, and affordability. However, it should be noted that several members of the public spoke and were in favour of this application; the feeling amongst most Councillors at the meeting was that a development of retirement bungalows was in general thought to be a good idea.

24th January 2019:

To reflect the actual support for this application, the following proposal was made at an Extraordinary General Meeting on 23rd January:

The Parish Council wishes to show its strong support for this planning application (18/506225/OUT) to reflect the views of the parishioners and of the Parish Council, and requests that Swale Borough Planning Authority approve this application.

Swale Footpaths Group comment as follows:

It appears that the north end would run beside a road. A pavement, kept free from parked vehicles, is needed here. At one point the path would run behind a house. Its security and privacy will need to be addressed at the planning stage (e.g. secure walls and/or fences) but should not be invoked at a later stage to seek extinguishment or diversion of ZR 46.

7. BACKGROUND PAPERS AND PLANS

7.1 Application papers, plans and correspondence for applications 17/501505/OUT and 18/506225/OUT

8. APPRAISAL

Principle of Development

- 8.01 The site is located on the edge of, but outside, the village confines of Lower Halstow. The main relevant planning policy is ST3 of Local Plan, which states that at locations in the open countryside outside the built up boundaries, development will not be permitted unless supported by national policy and where it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.
- 8.02 Currently the Council cannot demonstrate it has a 5 year supply of housing land and therefore the NPPF “tilted balance” is applicable. Therefore the key issue is whether any adverse impacts of the development would significantly and demonstrably outweigh the benefits, This is addressed in the section headed “planning balance” below.
- 8.03 Lower Halstow is designated as a Tier 5 village in the Council’s settlement strategy, with some sustainable characteristics. The supporting text to the policy states that development at these villages is not needed to meet housing targets, but that windfall developments could help meet local needs and improve the viability of services, through modest redevelopment and infill opportunities. Such development opportunities are likely to be limited both within, and *exceptionally*, when required, at the edges of built up area boundaries.
- 8.04 The scheme proposes to deliver 9 x retirement units. Policy CP3 sets out the Council’s approach for the delivery of a wide choice of homes. This includes the provision of older persons accommodation, to meet a significant forecast increase in the population over 65 years of age. The supporting text to this policy states that the greatest future demand is for two/three bedroom owner-occupied dwellings, and

one/two bedroom private rent and affordable dwellings, and that development for housing specifically aimed at occupiers over 65 should, in the first instance, aim to reflect this. The policy states that development proposals will be steered to locations in accordance with policy ST3, and will meet the housing requirements of specific groups, including older persons.

- 8.05 Policy DM9 of the Local Plan sets out the Council's approach to local needs rural exceptions housing. This essentially allows for small scale local affordable housing in areas where housing would not normally be permitted. Such development has to be clearly justified through an up to date parish or village housing needs assessment by a recognised / appropriate body, a thorough site options appraisal and a prepared statement of community involvement with significant input from the parish council.
- 8.06 The application has been made as a private housing development, with no affordable housing proposed. The justification for the development is made on the basis that the village population is aging and that many local residents under-occupy their homes and would like to downsize. The application is accompanied by a survey carried out by the agent, which indicates that there are retirement age households within the village who wish to downsize and would consider moving to bungalows.
- 8.07 Members should be clear that whilst this is evidence of a general desire of elderly villagers to downsize, it is not in compliance with the rural exceptions policy in the local plan, and Members should not, in my view, give significant weight to it on this basis. It is indicative of a general desire, not an independent, properly constructed Housing Needs Assessment.
- 8.08 The agent has provided a plan showing alternative sites around the village, together with reasons why these would not be considered acceptable. I am generally in agreement with the unacceptability of these sites. It does not though follow that the development proposed here should be considered acceptable on this basis. To presume that otherwise unacceptable development should be approved because the site chosen is not the worst in the vicinity would be wholly wrong.
- 8.09 To summarise – the site lies outside the built up area boundary, the application does not propose local needs affordable housing, or indeed any affordable housing of any type, and is not supported by a village housing needs assessment. On this basis, I consider that the application would be contrary to Policy ST3 of the Local Plan, and the development is unacceptable as a matter of principle.

Impact upon character and appearance of area

- 8.10 The site is located at the edge of the village on sloping land, and elevated from School Lane. It is surrounded by open countryside to the south and west, and the land slopes down into a valley on the west side of the site, before rising again towards Breach Lane. As a result of this, the site is clearly visible from a number of viewpoints on School Lane, Breach Lane, and on various public footpaths in the surrounding area.
- 8.11 The existing site is in use as horse paddocks. Other than a small stable building in the corner of the site, the land has an open and rural character. Visually, the site functions as part of the countryside surrounding the village.

- 8.12 The existing boundary of the village is marked by existing housing and the recent residential development to the north of the site. The primary school is visually prominent to the east of the site although this is not within the village envelope - and these buildings are clearly visible in the landscape, as well as the new development to the north of the site. The proposal would extend the built form into this area of open countryside.
- 8.13 Given that the application site is essentially open and undeveloped and has the fundamental characteristics and appearance of countryside, in my opinion the development of this site would cause harm to the intrinsic value and beauty of the countryside, especially in a village fringe location with a series of public footpaths nearby, where local residents would view, use and experience the immediate surrounding countryside. In this respect, the development would be contrary to Policy ST3 of the Local Plan.
- 8.14 In landscape terms, the site falls within the Upchurch and Lower Halstow Fruit Belt. This sets out that Lower Halstow has been affected by late 20th Century urban sprawl, and that this has increased the size of the village, affected its aesthetic quality and the sense of remoteness that the village once had. The appraisal also refers to the lack of quality and coherency of the landscape at the urban fringe and outskirts of settlements.
- 8.15 The application proposes to plant a community orchard to the south and west of the proposed development. Whilst this would take some time to mature, the effect of this planting would be to offer some screening to the backdrop of the village, which is currently somewhat exposed. This would potentially improve and provide some definition to the landscape setting on the edge of the village, and would enhance the landscape setting to the village. In my view, this would not mitigate the harm caused by the construction of 9 new dwellings in a paddock on the edge of the village. The purpose of landscaping is to soften the impact of development and not to hide otherwise visually harmful development from view.
- 8.16 The scale and appearance of the development would be part of the reserved matters. Nonetheless, the application includes drawings to demonstrate how a scheme for the site could be designed. As shown, the buildings would be single storey and barn-like in appearance, with stained weatherboarded elevations. I am satisfied that the scale and design of built form could be high quality. In this respect, the layout and design of the development would be in accordance with policy CP4 of the emerging plan.
- 8.17 Being located immediately next to the built confines of the village, the site would provide good access to services and facilities within the village. In this respect, the site would have some sustainability benefits. However this would apply to many similar countryside sites on the fringe of towns and villages, is not unique to this site and is not a matter which weighs significantly in favour of approving this scheme,
- 8.18 In summary, there would be harm to the intrinsic value, setting, tranquillity and beauty of the countryside through the proposal to develop this site for housing, which would extend the built form of the village and in turn erode the countryside fringe around the village, contrary to ST3 of the Local Plan. In landscape terms, the scheme would provide structured planting to the west of the site, which in turn would provide a more

defined edge to the village, and would comply with policy DM24 of the Local Plan. However – this is not, in my view, sufficient to warrant approval of the scheme.

Residential Amenity

8.19 The proposed development would be sited in excess of the normal minimum overlooking distance of 21 metres from all surrounding dwellings. The site is capable of accommodating adequately sized amenity spaces for the occupiers of the dwellings, and whilst the site is located close to the village school, I do not consider that this would have significant amenity impacts on either the school or the occupiers of the proposed dwellings. The scheme is acceptable in this regard.

Highways

8.20 The application would provide parking alongside each property, together with space for 6 vehicles within a parking courtyard to the north. The KCC Parking guidelines seek a minimum of 1.5 spaces per dwelling in a village location which, together with visitor spaces, would equate to 15 spaces on this site – which is the number provided. I also consider that the type of development as retirement housing would be likely to result in less cars per household than the parking guidelines would account for. The KCC Highways Officer does not object to the scheme.

8.21 The proposal would access School Lane via new roadway that would be upgraded to provide a dedicated pedestrian pavement. No objection has been raised by KCC Highways on traffic generation or road safety.

8.22 The KCC PROW Officer does not object and I consider the scheme acceptable in this regard.

8.23 Overall, I do not consider that and highways safety issues would be likely to arise from the development.

Other Matters

Drainage / Flooding

8.24 Some residents have raised concern over localised flooding and drainage problems relating to the site and surrounding area. The site is not within the floodplain. The applicant has submitted a foul and surface water management strategy, which is acceptable.

Ecology

8.25 Ecological information has now been submitted to the satisfaction of the KCC Ecologist. If permission were to be granted, suitable conditions would need to be imposed in this respect. SAMMS payments for each dwelling would be required (an HRA/AA is attached below). None have been provided, but this could be addressed if permission were to be granted.

Agricultural land Classification

- 8.26 The land falls to be considered as Best and Most Versatile agricultural land. Policy DM31 of the Local Plan states that development on such land will only be permitted where there is an overriding need that cannot be met on land within built up areas, or where the land is allocated for development, where there is no alternative site on lower quality land, and where the remainder of the agricultural holding would not become unviable as a result of development. In this instance, although the site is not currently used for agricultural purposes, it could easily revert to such use. I am clear that no overriding need has been demonstrated for this development – merely a preference on the part of some villagers to move to smaller, single storey accommodation. I am firmly of the view that the development of this land is unnecessary. On this basis, the proposal would fail to accord with DM31 of the Local Plan.

The Public Open Space and Community Orchard

- 8.27 The proposed community orchard would have the potential to enhance biodiversity and provide a resource to local residents. Although no detail of how this would be managed has been submitted, it could be dealt with by a management company. The provision of this facility is a benefit, to be considered in the balance below.

Occupancy of units

- 8.28 The application proposes that the units would be restricted to persons aged 55 years and over. I am satisfied that such restrictions could be controlled via a S106 agreement.
- 8.29 The applicant has also offered measures to sell the units to local persons first, and has referred to an application at Oakside Park, Dunkirk, where a S106 agreement secured nomination rights to require units at a residential caravan site to be offered to local persons prior to sale to a wider market. He considers that a similar agreement could be used for the application site. As this mechanism has been used by the Council on another site relating to the ownership / occupancy of private units, I consider that a similar mechanism could, in principle, be utilised on this site. However – Members should be clear that this does not equate to affordable housing for local people. The dwellings would presumably be offered at the market rate, and should no local people apply, they would be free to be placed on the open market. Furthermore, there would need to be a mechanism to require this to take place for any subsequent sales. There is no guarantee that this development would, in the short medium or longer term, address any perceived need (noting that no evidence of such a need in Lower Halstow has been presented) within the village – if the dwellings are not taken up by villagers, they would be sold to those outside the village.

9.0 FINAL BALANCING AND CONCLUSION

- 9.01 The site falls outside of the built confines of the village and would be contrary to the Local Plan. The Council cannot demonstrate a five year supply of housing land. However – in my view, this development would cause substantial harm to the character, appearance and intrinsic beauty and tranquillity of the countryside, and would amount to the unnecessary and permanent loss of best and most versatile agricultural land.

- 9.02 The application submits that the proposal would meet an identified need for retirement housing in the village. However no substantive evidence has been provided to demonstrate such need – the agent has carried out a survey of residents, but there is nothing presented to demonstrate anything above a desire of some residents to downsize.. In the absence of clear justification for the scheme, the weight that can be given to this is limited.
- 9.03 The proposal includes measures to improve the landscape setting around the village, through a community orchard. This would also bring other benefits through the provision of a community resource. However this would only potentially offer screening to a small part of the village edge, and the benefits are limited by virtue of the relatively small size of the orchard area proposed. Whilst these are benefits, I would only give these limited weight. In addition, the need for a community orchard does not arise as a direct result of the development proposed, and in my view Members should justifiably be very wary of giving this matter any weight in the decision making process.
- 9.04 Given the above, the limited benefits of the scheme are, in my view, significantly and demonstrably outweighed by the harm it would cause. As such, the application should be refused.

10. RECOMMENDATION

REFUSE for the following reasons:

- 1) The application site is located outside of the built confines of Lower Halstow and within the open countryside. The proposed development would fail to protect the intrinsic value, tranquillity and beauty of the countryside and would result in the permanent loss of best and most versatile agricultural land. The proposal would be contrary to policies ST3 and DM31 of the Swale Borough Local Plan 2017. The provision of retirement housing, and other proposed benefits through the provision of a community orchard and area of public open space do not outweigh the identified harm.

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.

Appropriate Assessment

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 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 small scale and, were it to be approved, in itself and in combination with other development, it would not have an adverse effect on the integrity of the SPA, subject to planning conditions.

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 dwelling 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 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 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/>).



 **18/506225/OUT - Land to the South of School Lane, Lower Halstow, Kent. ME9 7ES**
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