

**PLANNING COMMITTEE – 9 JANUARY 2020****PART 3**

Report of the Head of Planning

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

<b>3.1 REFERENCE NO - 19/504625/FULL</b>		
<b>APPLICATION PROPOSAL</b> Demolition of existing garage and erection of replacement garage building (as approved under 17/501081/FULL but with minor amendments) and associated car parking. First floor to be used as holiday accommodation. (Resubmission of 19/503604/FULL)		
<b>ADDRESS</b> Elm Tree Cottage Butlers Hill Dargate Faversham Kent ME13 9HG		
<b>RECOMMENDATION</b> - Refuse		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council Support		
<b>WARD</b> Boughton And Courtenay	<b>PARISH/TOWN COUNCIL</b> Hernhill	<b>APPLICANT</b> Mr & Mrs Marsh <b>AGENT</b> Peter S. Ferguson-McCardle
<b>DECISION DUE DATE</b> 07/11/19	<b>PUBLICITY EXPIRY DATE</b> 17/10/19	

**Planning History**

19/503604/FULL

Demolition of existing garage/store building and erection of new garage/gym and laundry room with holiday letting accommodation above and creation of 2 parking spaces within existing paddock

Withdrawn by applicant due to officer's concerns regarding proposed height and footprint of proposed new building 19.08.2019

17/501081/FULL

Demolition of existing garage/store and erection of replacement.

Approved Decision Date: 03.05.2017

15/501697/FULL

Demolition of rear lobby and dormer window and proposed two storey rear extension plus internal rearrangements

Approved Decision Date: 07.05.2015

15/501698/LBC

Listed Building Consent for demolition of rear lobby and dormer window and proposed two storey rear extension plus internal rearrangements

Approved Decision Date: 07.05.2015

SW/10/1194

Erection of small barn and equipment store.

Approved Decision Date: 12.11.2010

SW/09/0415

Listed Building Consent for conversion of former cart lodge to residential annexe.

Approved Decision Date: 10.08.2009

SW/09/0414

Planning permission for conversion of former cart lodge to residential annexe.

Approved Decision Date: 10.08.2009

## 1. DESCRIPTION OF SITE

- 1.1 The property is the Grade II listed Elm Tree Cottage situated on the eastern side of Butlers Hill within the Dargate conservation area and within the Blean Woods Area of High Landscape Value. To the rear of the cottage is a small gently sloping field. The property includes the main cottage, a former cart lodge immediately to the rear (now converted to an annexe), and a double garage beyond.
- 1.2 The curtilage listed former cart lodge received planning permission and listed building consent in 2009 for its restoration and conversion to a residential annexe. This work has been completed and the applicants are using this building as a holiday let, although they have not sought planning permission for that use.
- 1.3 The garage building is a newer building, and it was the subject of an application in 2017 (17/501081/FULL) which approved its replacement by a new garage with storage in the roofspace, but only after the building was reduced in size and height. The application was amended to ensure it did not compete visually with the adjacent listed building. That permission has not been implemented, and the current application is essentially for an alternative form of development.
- 1.4 The Dargate Conservation Area Appraisal describes the area as;

*The road to Butlers Hill leading south from the hamlet has a similarly loose scatter of frontage development, again interspersed with orchards and fields. Elm Tree Cottage occupies a crucial position on the turn in the road; it is an attractive white painted weatherboarded house built in the early 1800s, and is also characteristically Kentish in appearance. The building has remained reasonably unaltered, and the setting is uncluttered in appearance. Immediately to the south west lies Bushey Whilds, an early 17th century red brick house with a clay tiled roof, although now with a modern extension at the rear.*

## 2. PROPOSAL

- 2.1 The current application proposes replacing the existing double garage with a larger double garage that incorporates a utility room at ground floor. Within the roofspace a living room/kitchen, bedroom/dining room and an en-suite bathroom are proposed, all lit by four rooflights and two gable-end windows, and accessed by an external staircase. The application seeks to increase the approved height of the structure by around 0.25m to enable the roofspace accommodation to be used as self-contained holiday accommodation. The ground floor car parking and a utility room spaces would be separately accessible.

- 2.2 The proposed facing materials include handmade clay plain roof tiles, black stained timber weatherboarding, black stained timber stairs and doors, black conservation rooflights, and a red brick plinth.
- 2.3 The application is supported by a brief Heritage Statement and Design & Access Statement which argues that as the proposed building is principally the same as that previously approved, and it is located behind the former cart shed *“the proposal will have little or no effect on the setting of the listed building but will permit the secure storage of vehicles whilst providing a valuable tourism asset”*.
- 2.4 The building has the same footprint as the replacement garage approved in 2017 but it would be taller than that approved scheme, and almost as tall as the former cart lodge which sits between it and the main listed building.
- 2.5 The applicants have compared the proposal to a recent decision to grant planning permission within the same parish for the redevelopment of two small barns to create a new holiday let.

### **3. PLANNING CONSTRAINTS**

Conservation Area Dargate

Grade II Listed Elm Tree Cottage

### **4. POLICY AND CONSIDERATIONS**

- 4.1 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies CP4, ST3, DM3, DM14, DM32 and DM33.
- 4.2 Supplementary Planning Guidance (SPG): ‘Conservation Areas’
- 4.3 National Planning Policy Framework (NPPF)

### **5. LOCAL REPRESENTATIONS**

- 5.1 Four letters of objection have been received from local residents and the comments therein can be summarised as follows:
  - Previous permission 17/501081/FULL is being invoked as supporting evidence for this new build. However, that permission has a condition restricting its use as ancillary.
  - As the current application is for use as a separate unit of accommodation this would be contrary to the provisions of the development plan. Policies DM11, DM16 and DM33 have not changed in the interim
  - The application is essentially for a new house and it would extend residential development in depth back from the highway
  - It would be approximately the same size as a detached house, and the same size as Elm Tree Cottage, which itself has already been extended – the extent of “development creep” at Elm Tree Cottage is astonishing
  - The claim that the proposal will have little impact on the listed building is patently wrong – it is now extended and has been subject to significant recent development – it should be protected by all the policies in place

- The purpose and scale of the proposed building is inappropriate for the designated setting and location
- The Dargate conservation area was won on the basis of the hamlet's loosely scattered dwellings – it is vulnerable due to its open character and space
- The proposed new build is inappropriate for a sensitive site at the heart of the conservation area
- The development will be visible from the bridle path and footpath and would block views of the woods within what is classed as the Blean Woods Area of High Landscape Value
- If designations within the development plan are to have any meaning then applications like these should surely be refused
- With the cottage extension, the garage and the cart shed the developed volume has tripled
- There is no need for another holiday let here as there are already at least three holiday lets within a few hundred yards of the site
- The adjoining former cart shed itself is now being used as a holiday let in violation of planning conditions – what is the point of such conditions if they are ignored?
- The stabling and sand school are all being used commercially
- An application to erect a bungalow to the rear of this site at Acorns was dismissed at appeal and that decision sets a precedent for refusal here
- The area has clay soils so soakaway drainage would exacerbate run-off problems

5.2 The applicants have responded to these points at length saying (in summary):

- Replacement of the existing garage has already been approved and if this application is refused it could still be re-built.
- This application has the same size footprint as the approved new garage and replaces an existing building
- The building is not as large as Elm Tree Cottage and is not intended as a house, some objections are exaggerated
- The new building will look better in views from public rights of way, but will look no different to neighbours, and it will not block views of the woods
- We have no use for the approved roofspace storage so propose a studio holiday flat, which would help make the re-build financially viable
- There is clear demand for such holiday accommodation in Dargate, and this helps local businesses, which the Council has supported locally
- The previous planning condition is irrelevant as this is a new planning application
- There should be loss of privacy to neighbours
- There will be no local traffic, drainage or light pollution impact

5.3 Twelve letters of support were received from across the parish and can be summarised as follows:

- The proposed garage would be a visual improvement on the existing, which is in poor repair
- There is already permission to rebuild the existing garage on the same footprint as the original plans, this application is not new but simply making amendments to make it more useful
- The applicants work hard in maintaining high standards and encourage visitors to see local sites and support the local economy
- Small scale business ventures such as this should be encouraged
- The application will support the Council's commitment to a 5 year visitors' economy framework
- The proposed holiday let will support The Dove PH which is a short walk and the pub struggles to attract people from further afield
- The applicants are strong, active members of the community
- There is no parking issues on the site and parking is discretely located down a private track
- The external stair is discretely positioned
- The change of use for the upstairs area reflects the fact that the ownership has changed since the previous application was granted and the applicants don't require an office or store
- Requirements change over time with different owners, demonstrated most often by the extension of properties in the area, but this provides progression in Dargate
- There will be no congestion, drainage or traffic problems
- The building would have no impact on neighbouring properties

## **6. CONSULTATIONS**

- 6.1 The Parish Council supports the proposal, but no reason is given for this support.
- 6.2 Historic England has no comment to make.
- 6.3 Natural England raises no objection subject to a SAMMS mitigation payment in respect of The Swale SPA.
- 6.4 Kent Highways and Transportation state that the proposal does not warrant involvement from the Highway Authority.
- 6.5 The Council's Economy and Community Services Manager supports the application, and states that the site is located in a geographical location which is recognised as being well placed to offer visitors memorable experiences. Dargate has an attractive landscape and is an area that offers local distinctness, being close to the coast and to heritage attractions it is set within the food triangle of Faversham, Whitstable and Canterbury. The flexibility of a self catering unit will provide visitors an opportunity to enjoy the area contributing to economic growth.

## **7. BACKGROUND PAPERS AND PLANS**

- 7.1 All plans and documentation relating to 19/503604/FULL

## **8. APPRAISAL**

- 8.1 This proposal will sit close to Elm Tree Cottage which is a grade II listed building set within the Dargate conservation area, and located in the open countryside outside of any defined built up area boundary and therefore subject to countryside restraint policies in the adopted Local Plan and NPPF. The main relevant policy is ST3 of the Local Plan, which states that at locations in the open countryside outside the built up area boundaries, development will not be permitted unless supported by national policy 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.
- 8.2 Policy DM3 supports the rural economy by encouraging economic development and especially by prioritising the re-use of rural buildings over new builds. The Council has long been supportive of holiday use in vacant rural buildings and there are many such opportunities remaining to exploit. Not all approvals have in fact been implemented.
- 8.3 However, applications for new build holiday lets in the countryside, as in this case, raise similar issues as a proposal for a new dwelling albeit with some economic benefits; hence the preference for the conversion of existing vacant buildings. It should be noted that the existing former cart lodge at Elm Tree Cottage has an approved use as an annexe ancillary to the host dwelling, but this is being used as a self contained holiday let without the benefit of planning permission. It is existing buildings such as this cart lodge that the Council has preferred to see being used as holiday lets rather than purpose built new builds. Such new build development, especially if repeated, would lead to the creation of an unlimited number of new dwellings in remote unsustainable locations to serve a market that is capable of being met from existing rural assets which is, in itself, a more sustainable approach.
- 8.4 The recent decision referred to by the applicants (see paragraph 2.5 above) relates to a scheme where the two barns existed and the approval recognised the benefit of a new use for the buildings, and where their rebuilding was an alternative to their acceptable re-use, but with a better appearance. This is not the same as the current case as that related to two vacant buildings with no practical alternative use, and the holiday let scheme was felt likely to represent an enhancement of the conservation area. In the current case the existing garage is an ordinary domestic outbuilding that has an ongoing function, and which would be replaced with a larger, taller building that will not enhance the character of the conservation area.
- 8.5 The remote rural location of this site is some distance from local services and public transport. Any journeys for services such as shopping etc. would need to be to Faversham or further and would need to be made by private car. As such, I consider the site to be unsustainable, and the National Planning Policy Framework (NPPF) in paragraph 11 states that new development should be sustainable. The NPPF at paragraph 79 does not exempt holiday homes from its restraint on isolated dwellings in the countryside.
- 8.6 The benefits which the proposed holiday let might bring to the rural economy would be fairly limited as there are very few local services within the immediate vicinity of the site and holiday lets arising from conversion would have the same benefits. Any limited benefit to the community does not significantly and demonstrably outweigh the harm when assessed against policies of the Local Plan and the Government guidance within the NPPF.

- 8.7 In terms of the design of the proposed building, its increase in height compared to the approved replacement garage would detract from its appearance and its suitability in this sensitive setting. When application 17/501081/FULL was approved it had been amended to reduce its height and make sure it was subservient to the nearby listed building. The current design is compromised with an exaggerated eaves height in order to fit in the holiday accommodation, and to my mind it appears top heavy and awkward in proportion. The proposed building is now taller and of an appearance which is likely to harm the setting to the listed building and be intrusive within the conservation area.
- 8.8 Paragraph 196 of the NPPF requires Local Planning Authorities to weigh up the public benefit of proposals that result in less than substantial harm to heritage assets, but here the public benefits are very limited and, to my mind, they do not outweigh the harm that the development would result in.
- 8.9 Given the fact there are no nearby neighbouring properties that would be affected by the proposal, it is not considered that residential amenity would be an issue in this case.

## 9. CONCLUSION

- 9.1 The proposal is contrary to local and national policy as it would result in a new residential unit, albeit with a restricted occupancy condition, within the designated countryside. The harm that this would cause to the countryside is not significantly outweighed by the limited benefits to the local economy when assessed against policies of the local plan and NPPF. In addition the proposed design will be taller than the approved garage to enable the creation of the holiday accommodation, which means that its appearance is compromised in a way which means that it will create an intrusive and awkward looking building harmful to the setting of the listed building and to the special character of the conservation area.

### **Appropriate Assessment for the Purposes of The Conservation of Habitats and Species Regulations 2017**

This Appropriate Assessment has been undertaken without information provided by the applicant. The application site is located within 6km of The Swale Special Protection Area (SPA) which is a European designated site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

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.

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. The proposal thus 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 (NE) 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 advises that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation, 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 (NKEPG).

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 (NKEPG) and that such strategic mitigation must be in place before the dwelling is occupied. 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 either s106 agreement or 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.

No mechanism to secure the SAMMS tariff has been finalised with regard to this application, but in the light of the recommendation, it is not a matter that need delay this decision at this stage.

**10. RECOMMENDATION** – Refuse for the following reasons:

- (1) The proposal represents unnecessary, undesirable and unsustainable residential development in this remote countryside location. The harm to countryside interest that might result from this proposal is not outweighed by the limited contribution made to the rural economy when assessed against the policies of the Local Plan and NPPF. The proposal would therefore fail to comply with policies ST3, DM14 and DM33 of Bearing Fruits 2031: The Swale Borough Local Plan 2017 and paragraph 79 of the NPPF.



- (2) The proposed development would, by virtue of the additional height of the building and its awkward proportions, fail to protect the setting of Elm Tree Cottage, and would not preserve or enhance the character and appearance of Dargate conservation area. As such the proposal is contrary to policies CP4, DM14, DM32 and DM33 of Bearing Fruits 2031: The Swale Borough Local Plan 2017.

### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), February 2019 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.

