

<b>3.3 REFERENCE NO - 19/504833/FULL</b>			
<b>APPLICATION PROPOSAL</b> Erection of a pair of semi-detached 2 bed cottages (self-builds) together with associated access and parking.			
<b>ADDRESS</b> Land Adjoining Miles Cottages Butlers Hill Dargate Kent ME13 9HH			
<b>RECOMMENDATION</b> – Refuse subject to further views from Kent Highways and Transportation.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Contrary representation from the Parish Council.			
<b>WARD</b> Boughton And Courtenay	<b>PARISH/TOWN</b> Hernhill	<b>COUNCIL</b>	<b>APPLICANT</b> Ms P and Mr R Leak <b>AGENT</b> Rebus Planning Solutions
<b>DECISION DUE DATE</b> 27/12/19		<b>PUBLICITY EXPIRY DATE</b> 09/12/19	

## 1. DESCRIPTION OF SITE

- 1.1 The site consists of a small field situated which is at present laid to pasture and screened from the highway by an existing tall deciduous hedge; part of a continuous hedge running eastwards from the site. There is an existing gateway from the road into the field, and to the adjoining field, but the site is otherwise undeveloped.
- 1.2 To the immediate west of the site is a pair of cottages known as Miles Cottages, whilst to the south (across the lane) there are two pairs of cottages set on either side of a small barn. All these properties existed in 1940 according to the application papers. There is an open field to the east of the site and development in the area is sporadic and fairly scattered.
- 1.3 The site is in a Local Plan defined Area of High Landscape Value and it is situated some considerable distance outside any built-up area boundary, where policies of rural restraint apply. The site is also within 6km of The Swale Special Protection Area (SPA), and on a rural lane designated as such under Local Plan policy DM26 which has no pavements or street lighting.

## 2. PROPOSAL

- 2.1 The proposal is to erect a pair of semi-detached two bed roomed cottages, with associated parking and amenity space. The submitted drawings show a traditional rural style finished with Kentish vernacular materials.
- 2.2 The proposed houses would be situated towards the front of the site, with parking and turning areas to the side and front. Fairly large rear gardens would be provided, divided by a 1.2 metre high close boarded fence, and each property would have a shed in the garden for cycle storage. Each house would have one parking space and a large driveway with turning space fronted by low level planting; meaning that the tall hedge across the site frontage will be lost.

- 2.3 The application is accompanied by a comprehensive Planning Statement which explains that the applicants would like to build the houses as a self-build project to accommodate them and their respective partners; if necessary by signing a Section 106 Agreement restricting occupancy for the first three years. The applicants were born in the village, and they contend that the only way for them to live independently from their family but still in the village would be via this project. The statement discusses in detail the applicants' desire for the project to be 'self-build', and notes that the applicants are entered upon the Council's Self-Build Register. It also considers a number of approvals in the Borough and within Canterbury City Council's area which it is claimed support their application, and includes details of where the applicant believes their application is supported by national and local planning policy, with particular regard to the fact that being adjacent to other development the proposed cottages will not be isolated.
- 2.4 The application is also accompanied by an Ecological Scoping Survey, which records that there are no protected species on the site.
- 2.5 The application has been amended by the submission of a drawing indicating parking and cycle storage. This drawing also shows increased vehicle turning areas and sightlines requested by Kent Highways and Transportation, which I describe in more detail below.

### **3. PLANNING CONSTRAINTS & POLICY CONSIDERATIONS**

- 3.1 The Development Plan comprises Bearing Fruits 2031: The Swale Borough Local Plan 2017. Policies ST1 (Delivering sustainable development in Swale), ST3 (The Swale Settlement Strategy), ST7 (The Faversham area and Kent Downs Strategy), CP3 (Delivering a wide choice of high quality homes), CP4 (Requiring good design), DM7 (Vehicle parking), DM9 (Rural exceptions housing), DM14 (General development criteria), DM24 (Conserving and enhancing valued landscapes) and DM26 (Rural lanes) are all relevant here.
- 3.2 Policy ST1 seeks sustainable development which accords with the Plan's settlement strategy. This is set out in policy ST3 (see below) and this is a location where a new build house would not normally be approved unless related to a functional rural need. Policy ST7 relates to the Faversham planning area and protects its historic and natural environment as its primary aims. Policy DM24 seeks to protect valued landscapes and policy DM26 aims to protect the character of certain rural lanes.
- 3.3 The applicants have suggested that the proposal would create housing that is affordable to them, on the basis that they will build it themselves using local labour and contractors, in a location where they would otherwise be unable to afford to buy a house. The Council's policy for rural affordable housing schemes is DM9 which states;

#### ***Rural exceptions housing***

*Planning permission for affordable housing to meet local needs in rural areas will be granted provided:*

- 1. The site accords with Policy ST 3 and/or is in a location where access to day to day services can be conveniently and easily achieved;*

*2. The site and proposed development would not have a significant adverse impact upon the character of the settlement, the surrounding countryside and the amenity of the existing community;*

*3. A need for the scheme is clearly justified by the applicant, to the satisfaction of the Council, by providing the following to accompany a planning application:*

*a. an up-to-date parish or village housing needs assessment undertaken or carried out by a recognised and appropriate body;*

*b. a thorough site options appraisal; and*

*c. a prepared statement of community involvement that has sought to include the significant input of the Parish Council.*

*4. In addition, for schemes including unrestricted market houses/plots for sale, justification will be provided by the applicant:*

*a. to demonstrate that a scheme not relying on market housing has been considered and why it has been discounted or considered to be unviable; and*

*b. as to the number and type of houses proposed, which will be determined by the housing needs assessment and through an appraisal of viability to show the minimum provision of unrestricted market homes necessary to deliver a significantly greater proportion of local affordable homes for that site.*

*5. Proposals will be subject to a legal agreement that provides for the permanent control and management of any affordable housing to ensure its long-term retention for local need.*

3.4 This policy is compatible with NPPF advice (paragraph 77) but in my view the application is not compatible with the policy. The location is poorly related to local services, the scheme is not based on an assessment of local need, and it could in fact detract from the Parish Council's own current proposals to secure a rural exception scheme elsewhere in the parish; a scheme, which is still at draft stage and subject to ongoing local consultation. As such, I would suggest that Members should consider the present application as a purely private development which will not have the sort of lasting community benefits that such a true affordable rural housing scheme ought to provide.

3.5 The site also sits alongside a lane designated in the Local Plan as a rural lane, where policy DM26 seeks to safeguard against development that would either physically, or as a result of traffic levels, significantly harm the character of rural lanes. In this case I believe that the additional dwellings here will detract from the generally undeveloped nature of the lane in question, to its detriment especially due to highway safety requirements and loss of roadside hedging.

3.6 Finally, although the applicants mention the self-build aspect of the proposal as being a positive factor, there is no locally adopted policy support for self-build. The Council has opened a register for expression of interests, but this is meant to influence future policy

rather than ad hoc planning decisions. If the Council were to allocate land for self-build projects that would involve consideration of sustainability and it is unlikely that this location would score well in that regard.

- 3.7 The National Planning Policy Framework 2019 (NPPF): Paragraphs 8, 11, 12, 64 and 77 are especially relevant here.

#### **4. LOCAL REPRESENTATIONS**

- 4.1 Twenty six letters and emails of support have been received from local residents and from addresses as far afield as of Canterbury, Whitstable, Herne Bay, and Wantage in Oxfordshire. The comments contained therein may be summarised as follows:

- This small development will put this unused land to beneficial use; it has little potential for agriculture or anything else
- The land is adjacent to existing cottages and plans for the cottages are in keeping with the existing buildings in the village
- The size of the site means that the new cottages will not have potential for extension as so many local houses have been extended
- The increasing local need for housing has not been met. There is no local affordable housing in the village and this will put local people on the housing ladder
- The applicants (brother and sister) are employed locally and are an asset to the local community. They are the sort of people who should be allowed to stay in the village but they do not meet the criteria for the Council's housing register
- This sort of application is the only way local people can have an affordable home in the village
- Continuation of ribbon development with no impact on the landscape
- Minimal impact on traffic, and off-road parking is provided
- There is a bus service six days a week and all mains services are available
- If large housing estates can be built on agricultural land, why can't a small piece of land be used to provide new homes to maintain the rural environment

- 4.2 Four letters and emails of objection from local residents have been received. The comment contained therein may be summarised as follows:

- The character of Dargate relies on its loosely scattered building pattern. If approved, this could set a precedent for other recently subdivided parcels of land at Dargate and bring a wind-fall to land-owners who support this application, destroying Dargate's appeal
- The site is part of an area designated for its landscape value

- A previous approval is already being quoted in this application as a precedent for local plots owned by a developer, but approval of this application cannot be supported by any recent planning decision
- The site is not previously developed land, but was formerly part of an orchard which has been subdivided by a fence, but shares access to the same field.
- Local examples of self-build planning permissions at Yorkletts are in a continuous built up frontage and are not comparable to this site
- Other plans for local housing and self-build schemes have been claimed but this application should not be seen as acceptable on these grounds. Such schemes are not exempt from adopted Local Plan policies which this application is not compatible with
- This scheme seeks to exploit Swale's assets for personal reasons. There is no merit in the argument that being raised in a village brings an entitlement to build a house
- No public transport after 6:20pm and none on Sundays, nearest shops are over a mile away and any new development will lead to extra traffic on narrow twisting country lanes

## **5. CONSULTATIONS**

- 5.1 Hernhill Parish Council supports the principle of the application of the small self-build project, subject to revised plans as requested by KCC Highways on highway safety. I have not re-consulted the Parish Council on the revised highway drawings, but I do refer to them below.
- 5.2 Natural England raises no objection, subject to the payment of a SAMMS contribution to mitigate adverse effects on The Swale SPA.
- 5.3 Kent Highways and Transportation asked for amended drawings showing sight lines of 2.4m x 202m in each direction from the access (unless a speed survey can show a need for reduced visibility splays), and enhanced details of parking (only space is shown per property), turning, electric vehicle charging points and cycle storage facilities. Amended drawings have been received clarifying parking (one space per property) and showing an enlarged turning area, reducing the amount of soft landscaping to the site frontage. Cycle storage provision is now shown in garden sheds, and the drawing shows 2.4m x 200m sightlines in each direction. I await a response from Kent Highways and Transportation, which I will report to Members at the meeting. However, I am concerned to note that the proposed drawings show the sight lines extend beyond the application site boundary, meaning that they cannot be secured by a planning condition on this application. I also note that they entail removal of approximately 15m of existing roadside hedging beyond the site's eastern boundary (to be replaced by a post and rail fence) to accommodate these sight lines. Finally, the increased turning areas now leave very little room for soft landscaping on the site frontage.

## **6. BACKGROUND PAPERS**

6.1 All plans and documentation relating to 19/504833/FULL.

## 7. APPRAISAL

- 7.1 The key issues to consider in this case are the principle of development on this site, residential and visual amenity, and any other material considerations.

### Principle of development on this site

- 7.2 This site is situated some distance outside any established built-up area boundary in a location with poor accessibility to local services, so rural settlement policies are applicable in this case. The site is not allocated for housing and there are no nearby housing allocations. This is not an area where the Council's policies support new house building and development here is likely to be car dependant with any journey to nearby amenities on narrow unlit lanes with no footpaths.
- 7.3 The Council is in the fortunate position of having a recent adopted Local Plan (July 2017) which considered such matters in some depth. Recent government publication of housing delivery tests indicate that the Council has a very slight shortfall in housing delivery, but that shortfall is very slight. The Swale settlement strategy is set out in Policy ST3 of the Local Plan. Policy ST3 clearly states that;

*'At locations in the countryside, outside the built-up area boundaries shown on the Proposals Map, development will not be permitted, unless supported by national planning policy and able to demonstrate that 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.'*

This proposal fails to meet these criteria and, despite Dargate coming under considerable pressure for new residential development following the subdivision of agricultural land in recent years, there are a number of cases very close to this site where development has been refused and dismissed at appeal in recent years due to the remote location of Dargate outside any established built-up area boundary.

- 7.4 An application for a two bedroom bungalow at a nearby property known as 'Acorns' was refused by the Planning Committee in 2014 under planning reference SW/14/0391. It should be noted that this application referred to an existing garage building which had previously been a separate dwelling, but was changed to garage use many years previously. The appeal was dismissed under reference APP/V2255/A/14/2223979, with the Inspector noting that;

*'Dargate is a small village with no facilities or services, with the exception of a public house. The local filling station, just outside the village, has an associated small convenience store. However, most facilities that are required to meet the needs of residents are at either in Whitstable or Faversham, both of which are about five miles away, or in Canterbury, which requires a journey of more than six miles. Even though there is a local bus service, it seems likely to me that the car would be the most attractive and convenient way for local people to reach their preferred destinations.'*

The Inspector further noted that;

*'I conclude that the proposed dwelling would be an unsustainable form of*

*development, due to its location in the countryside and outside a defined village boundary. It would fail to comply with the Framework's objective of only allowing housing development in rural areas where it can be demonstrated that it would enhance the vitality of a rural community'.*

- 7.5 In a similar vein, an application for the conversion of an existing outbuilding to a dwelling at nearby Brook Farm under planning reference 15/510551/FULL was refused for similar reasons to those under which the 'Acorns' application was refused. That decision was again appealed and dismissed, with the Inspector concluding that;

*'I find that the benefits of this proposal are outweighed by its disadvantages and that this would be an inappropriate location for a dwelling. The appeal is therefore dismissed.'*

- 7.6 An outline application for six new dwellings at nearby Chapel Plantation was appealed under non-determination planning reference 15/505467/OUT. At that appeal the Inspector dismissed the appeal for similar reasons referring to the unsustainable location outside any established built-up area boundary.

- 7.7 It should be particularly noted that, in all of these cases, the Inspectors involved dismissed these appeals before adoption of the Local Plan when the Council could not demonstrate a 5 year supply of housing land and policy ST3 was not part of the Development Plan, ruling against unsustainable development where any benefits are plainly outweighed by the harm it would cause to the countryside. These decisions support the Local Plan settlement strategy and are a sound basis for concluding that Dargate is not an area where new residential development should be permitted due to its isolation and distance from services. Even with the current slight shortfall of housing supply across the Borough I find these decisions provide good evidence that the harm arising from the development significantly and demonstrably outweighs the benefits of a very limited number of new dwellings here, meaning that this development does not represent sustainable development.

- 7.8 This view was shared by the Inspector when determining a very recent appeal from August 2019 regarding the conversion of an existing barn at 'Bracondale', a property virtually opposite the site in question. In dismissing the appeal (APP/V2255/W/19/3226891), the Inspector noted that;

*'the nearest settlement of Dargate has few services or facilities including a pub and other settlements, such as Faversham, with a wider range of services, are a significant distance away. Therefore, it is likely that future occupiers would be reliant on the private car for daily requirements. While there is a bus service, since the road lacks footpaths and streetlights, it would be likely to discourage use of the buses for users of the site thereby leading to likely further reliance on the car. While I note that there are some services in Dunkirk, from the evidence before me, these would not remove entirely the dependence on the private vehicle for daily requirements. Therefore, for the foregoing reasons, the proposal would result in adverse environmental impacts.'*

- 7.9 Finally, much has been made by the applicants of the Council's recent approval of a new self-build dwelling at nearby Little Miss Acres Farm. However, in that instance



Members were minded to approve that application as an exception to normal Local Plan policy due to the fact that there had once been a dwelling on the site and planning permission had once been granted to replace it. That situation is not repeated here and those circumstances do not support the current application. In my view, the fact that Members have granted planning permission for a self-build project nearby on a site specific basis that must reduce the outstanding need for such development, reducing the benefits of this application.

- 7.10 In conclusion, there is no relevant planning policy which supports new residential development at this rural location, and in my view approval of this application can only lead to pressure for other subdivided plots of agricultural land to be developed for housing. I am seeing mounting pressure for new residential development at Dargate which is becoming a serious concern for me despite support from some sections of the community. I believe that it is important that the Council makes it clear that Dargate is not the sort of location where new development will be supported.

#### Residential Amenity

- 7.11 I note that the distances between the existing and proposed dwellings are within acceptable parameters, and I consider that the proposal would have little effect on the residential amenity of existing residents.

#### Visual Amenity

- 7.12 I am not adverse to the design of the proposed houses. They would appear as traditionally designed dwellings using vernacular materials, but that in itself does not justify new development in the countryside.
- 7.13 The addition of two dwellings here will detract from the character of the rural lane and will affect the open character of the area, all of which add to my concern over the acceptability of the proposal. The revised vehicle turning arrangements introduce a substantial area of prominent hardstanding to the site frontage which is not in keeping with the rural location. The requirement to have clear sightlines from the proposed access points means that the entire site frontage and a stretch of hedgerow beyond will need to be removed. This will significantly affect the amenities of the area and is a significant objection to the application.

#### Rural lanes

- 7.14 This site fronts on to a rural lane designated as one of particular value. The site itself is fronted by a tall hedge that runs elsewhere along this lane, and that across the site frontage would all be lost to facilitate this development. The creation of safe access to two new cottages requires significant hardstanding and loss of existing roadside hedging (much of which is outside the control of the applicants) that which will have a seriously detrimental impact on the character of this lane, contrary to policy DM26. This confirms my view that this site is not an appropriate one for new residential development

#### Other matters

- 7.15 The self-build and affordable benefits of this development accrue only to the applicants,

and the development will not represent a long-term affordable solution to the village's housing needs. The Parish Council is currently exploring a cross-funded scheme elsewhere in the parish, in line with the Council's adopted policy approach. Even if that were not to come forward I do not see this proposal as any kind of substitute, as this location be a favoured one to serve that local need, being in such a remote and unsustainable location. I recommend that Members consider this as a private development with limited public benefits and not as a contribution to affordable rural housing.

## 8. CONCLUSION

- 8.1 This area has come under considerable pressure for new housing recently, largely arising from the subdivision and sale of agricultural land. This is threatening the loose knit local character of the area; one which is poorly served by local services and is a location where new development is not sustainable. Whilst I appreciate the applicants' position, the policy situation clearly shows that such an application in this unsustainable location, some considerable distance outside any established built-up area boundary, should be refused. To do otherwise would simply encourage others to submit similar applications which can only lead to the erosion of the character and amenities of the area in a manner contrary to national and local planning policy.

### **Appropriate Assessment under 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 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.

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 instance.

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 and this is a matter that may still need to be resolved at appeal stage.

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.

**9. RECOMMENDATION** - Refuse for the following reason:

**REASON**

- (1) The proposed pair of cottages and associated new access arrangements would, by virtue of being situated in an unsustainable location at a considerable distance outside any established built-up area boundary, in an Area of High Landscape Value, and requiring significant changes to the appearance of the lane, represent unsustainable and undesirable consolidation of sporadic development contrary to the approved Swale settlement strategy. This would be harmful to the character of the local landscape, harmful to the character of the rural lane and detrimental to the character of the countryside as a whole, contrary to policies ST1, ST3, ST7, DM14, DM24 and DM26 of Bearing Fruits 2031: The Swale Borough Local Plan 2017; and Paragraphs 8, 11, 12, 64 and 78 of the National Planning Policy Framework.

**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.

In this instance, the application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

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

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

