

PLANNING COMMITTEE – 7 JANUARY 2021**PART 3**

Report of the Head of Planning

PART 3

Applications for which **REFUSAL** is recommended

3.1 REFERENCE NO - 20/500617/FULL			
APPLICATION PROPOSAL			
Demolition of existing structures and erection of a detached dwelling and a detached tractor shed/stable building.			
ADDRESS Land At The Corner Of Seasalter Road And Monkhill Road Graveney Kent ME13 9ED			
RECOMMENDATION - That Members resolve that planning permission would have been refused if the appeal for non-determination of the application had not been submitted.			
REASON FOR REFERRAL TO COMMITTEE			
Parish Council Support, and to establish the Committee's position in relation to the appeal.			
WARD Boughton And Courtenay	PARISH/TOWN COUNCIL Graveney With Goodnestone	APPLICANT Mr & Mrs Carol and Roger Mitchell	AGENT Jhd Architects
DECISION DUE DATE 28/04/20	PUBLICITY EXPIRY DATE 25/03/20		

Planning History

18/502512/FULL

Demolition of existing dilapidated structures and erection of a new 3 bedroom dwelling with associated garaging/workshop and drive.

Withdrawn Decision Date: 08.11.2018

1. DESCRIPTION OF SITE

- 1.1 The site is a small open field (0.68ha) situated outside any Local Plan defined built up area boundary at the junction of Seasalter Road and Monkhill Road to the north of Graveney. Both roads are designated rural lanes, and the site lies within an Area of High Landscape Value (Kent Level).
- 1.2 The site is used for the grazing of horses and it has an existing vehicular access on Monkhill Road. The site is surrounded by a timber post and rail fence and has an open rural character. A commercial building is located on the opposite side of Monkhill Road but otherwise the site is separated from urban development.
- 1.3 The application follows withdrawal of a previous application intended to be considered an acceptable exception to the Local Plan's normally restrictive settlement policy on the

basis of its design quality. That application was reviewed by Design South East in October 2018. The summary of that design review said, in summary:

- The proposal falls well short of demonstrating that it would meet the NPPF requirements for a design of outstanding quality. In the absence of greater detail, it is difficult to envisage how such a house would be constructed, what it might look like, or how it would be sensitive to the defining characteristics of the area.
- The proposal to integrate rooftop planting with the roof as a ‘pergola’ type structure doesn’t yet explain how the planting could be successfully established, maintained and survive.
- The location of the house and supporting buildings and site infrastructure has not been given much consideration beyond apparently positioning the main building on the site of the previous brickworks and utilising the current access point. The siting and layout needs further justification.
- If the very exacting tests of the NPPF are to be met, the team needs to be strengthened. Securing such expertise should not simply be seen as a way of overcoming a planning hurdle, but more as a path to developing and testing the proposition in its early stages.

2. PROPOSAL

- 2.1 Members should note that this report is presented in order to establish the Council’s formal position in relation to this application which is now subject to a non-determination appeal. The appeal was lodged on 19 October 2020 and made live by The Planning Inspectorate (PINS) on 26 November (just after the deadline for completion of reports to the 10 December 2020 meeting), with PINS requiring the Council to submit its formal response by 31 December 2020. Accordingly, I propose to submit this report to PINS by the deadline as an interim statement, and confirm with PINS the formal decision of the Committee as soon as possible after the meeting. In other words, the Committee cannot grant or refuse planning permission, but can simply confirm what decision it would have made if the application was still before the Council.
- 2.2 The application seeks planning permission for the erection of a two storey three bedroom detached house whose design has been sculpted by the applicants’ interests in the outdoors. The garden of the applicants’ current home is characterised by pergolas to provide shaded areas, and the scheme architects have developed a design around the pergola, thereby naming this proposal “The Pergola House”.
- 2.3 The concept is that of a tubular metal arched ‘pergola’ spanning a total of 33.6m, and rising over the house to a maximum height of 7.5m, with the actual house structure and its first floor terraces sitting separately beneath. The house itself measures 20m in width. The arched structure would form a north-south aligned framework for climbing plants rooted at each end. The arched pergola would provide support for the suspended roof of the house, and the house would be constructed of prefabricated Structural Insulated Panels (SIPs units). Access would be via the existing Monkhill Road opening which would be improved, where a short driveway would lead to a turning area close to the house.

- 2.4 The original proposals for corrugated metal cladding and for solar panels on the pergola structure (which would have been affected by any growth across the full width of the pergola) have been amended to timber rainscreen cladding and ground mounted solar panels.
- 2.5 The house itself would have two bedrooms, a snug, a snug/ living room, study, utility, hallway and integral garage at ground floor level, with one large open plan living space and two first floor terraces above.
- 2.6 In addition to the house itself, the application proposes a detached outbuilding housing a tractor shed and stable measuring 12.2m x 5.5m under a curved roof situated towards the rear corner of the site backing on to Monkhill road.
- 2.7 The proposal is overtly seeking approval contrary to adopted Local Plan settlement policies in accordance with guidance in paragraph 79(e) of the NPPF regarding planning applications for isolated houses in the countryside, which reads as follows (omitting the irrelevant parts):

“Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:

e) The design is of exceptional quality in that it:

Is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and

Would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.”

- 2.8 The current application is for a very similar design to the recently withdrawn application (18/502512/FULL) but it has been revised since the previous application and is now supported by a Design and Access Statement which states that the applicants would be willing to participate in a second review by Design South East if officers are supportive of the scheme. The agent was asked if the applicants would be willing to partake in another review panel for this current application prior to a decision on the likely recommendation, but this request was turned down. There has therefore been no design review of the current application.
- 2.9 The application is supported by a great number of drawings and statements from which I draw the following points:

Design and Access Statement

- We believe that the scheme is both outstanding and innovative because of the way the design uses the truss structure to create a “pergola roof” with plants growing over it with the building tucked underneath. Moreover the simple design of the building under the “pergola roof” sensitively responds to the characteristic agricultural buildings of the area, using common materials used by local farmers. It regenerates an unloved field of poor pasture, unsuited to agriculture, to enhance its immediate setting. It also significantly enhances the landscape and ecology of the area using carefully designed planting that improves the views of the site and increases the

habitats for mammals and birdlife. Support from Swale for the scheme would provide a lead to raise standards of design in the borough and beyond.

- According to the Swale Local Plan 2017 the site is within an ‘Area of High Landscape Value’, but considering its physical condition with areas of rubble and fill from past commercial activities, its location on the periphery of a village, opposite a small business park and warehouse, we are of the opinion this should be designated a Brownfield Site.
- The applicants purchased this plot 22 years ago as a horse paddock and for the last three years they have been pursuing their dream of building a highly sustainable and accessible home on this plot for their retirement. Their present use of pergolas, shelters and gazebos in their garden, allow them to sit in shaded areas of dappled light, enjoying cool breezes, but protected from the harsh glare of direct sunlight.
- We developed this idea further by creating a pergola structure over the house with courtyards, arbours and first floor living, with external decks where they could experience within their living space the beauty of climbing plants and wildlife directly above and around them, take in the sights, smells and sounds of nature and at the same time architecturally “rooting” the building to the site to give the impression of it growing out of the landscape.
- To achieve this concept the “pergola” is designed as a shallow arch structure forming a framework for the climbing plants, habitat for birds and insect life, as well as to the communities they form and the habitats in which they live, including bird boxes and feeders. The “pergola” structure spans 20m over the house and first floor terraces supported by intermediate steel columns and requires steel bracing at each end. These struts are utilised as a framework for north and south arbours, with climbing plants rooting the building to the ground and providing natural shaded areas to sit or walk through. The steel structure is covered in stainless steel mesh and tensile rods, creating an elegant, robust, environmentally friendly support system for plant growth. The mesh also provides robust support for access and maintenance purposes.
- The main criteria in the design of this project is the inter connection between building and landscape, incorporating a seamless experience of internal and external spaces and the beauty of living within nature. The building is designed to have a very low profile that grows from and becomes an integral part of the site, with occupants experiencing the landscape on each level of the house.
- All spaces are designed with accessibility in mind with the provision of a glass lift and carers facilities for future requirements of aging, to allow the owners to live in their home for as long as possible. The house is designed to accommodate our client’s home office and the accommodation is easily converted to a five bedroom family home in the future.
- The roof climber growth we have shown will obviously depend on nature taking its course, however we believe that the extent of the growth indicates a plausible extent after five years. The extent of climber cover on the north side is expected to be less than the south.

- The landscape effects of the proposed development are considered to be beneficial rather than adverse: the landscape proposals are to strengthen and enhance historic field boundaries, and will have a moderately beneficial impact on the landscape. In summary, the proposed new development at will significantly enhance its setting within Graveney and adjacent to the Swale SSSI and RAMSAR site.
- The design includes high levels of insulation to reduce energy demand at source in the winter months as well as careful detailing of the south elevation to incorporate sun shading and natural ventilation to avoid over-heating in summer months. Having reduced energy demand we looked at how we can incorporate on-site energy generation using systems such as ground source heating and photo-voltaic panels.

Landscape and Visual Impact Assessment

- There could be adverse visual impacts on visual receptors to the east of the site such as passengers in vehicles, cyclists and pedestrians travelling west along Monkhill Road which were deemed to be moderately adverse. The landscape proposals however would screen and frame the views from the east, resulting in a minor adverse visual impact.
- Part of the mitigation landscape proposals are to retain and strengthen the site boundaries by planting new, native hedgerow and shelterbelt trees, the proposed development after mitigation would have a minor beneficial landscape impact.
- The biodiversity of the site will be improved by the planting of native hedging, native and fruiting trees, wildflower meadow and the ongoing planting and management of trees, shrubs, climbers, hedges, perennials and grasses throughout the site. In summary it is considered that the proposed new development will significantly enhance its setting within Graveney and adjacent SSSI and RAMSAR site.

Landscape Report

- South Arbour to include evergreen clematis, evergreen honeysuckle, white wisteria, climbing roses, star jasmine.
- North arbour to include Boston ivy, climbing hydrangea, common ivy.
- Species rich hedgerow including pussy willow, hawthorn, dog rose, blackthorn, guilder rose, hazel.
- Shelterbelt to include sycamore, whitebeam, Corsican pine, rowan, aspen, white poplar.

Energy Statement

- Predicted CO2 emissions of the proposed development will be reduced by at least 35% compared with a typical 2013 Building Regulations Part L compliant building.
- Photovoltaic panels and a ground source heat pump were identified as being feasible for the proposed development.

Sustainability Statement

- Apply energy efficient thermal insulation

- Adopt principles of air tight construction and minimise air leakage
- Use high thermal mass building materials
- Rainwater harvesting

3. PLANNING CONSTRAINTS

3.1 Potential Archaeological Importance

Environment Agency Flood Zone 2

Environment Agency Flood Zone 3 141081

4. POLICY AND CONSIDERATIONS

4.1 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies:

ST1 (Delivering sustainable development within Swale)

ST3 (The Swale settlement strategy)

CP4 (Design)

DM14 (General development criteria)

DM19 (Sustainable design and construction)

DM21 (water, flooding and drainage)

DM24 (Conserving and enhancing valued landscapes)

DM26 (Rural lanes)

DM30 (Enabling development for landscape and biodiversity enhancement)

4.2 Supplementary Planning Guidance (SPG) entitled “Parking Standards” (May 2020) was adopted by the Council in June 2020 and is a material consideration in the determination of planning applications. The recommended parking provision for this property is two spaces.

4.3 The Council’s Landscape Character and Biodiversity Appraisal (November 2011) sees this site set within the Graveney Arable Farmlands landscape, which is described as:

- *Graveney Arable Farmlands describes the area that stretches south in a narrow corridor from Cleve Marshes to Goodnestone. It is an area of mixed geology, containing fertile drift soils including Thanet, Woolwich and Oldhaven beds, and also large outcrops of heavy London clay as well as head brickearth. The topography is gently undulating, rising from 5 to 15m with localised areas of higher ground, such as at Cleve Hill, which forms a modest raised backdrop to the marshes to the north. The recent development of a large substation for an offshore windfarm at Cleve Hill forms a distinct and visually prominent feature within the landscape.*
- *The land is managed for the production of arable crops and fields have generally been enlarged to accommodate this practice. On the edge of settlements many fields have been subdivided to accommodate horse pasture and other rural fringe activities such as playing fields. Many internal hedgerows have been lost and remaining corridors are generally limited to road verges and enlarged external boundaries. Post and wire fencing becomes common in the more remote northern areas. Elm*

dominates roadside hedgerows, but these become increasingly fragmented towards the north.

- *As well as arable, this landscape is also used for the production of fruit. Traditional over-mature orchards are falling into decline, but cherries are still sold in the area. Elsewhere poly-tunnels have been erected for the production of strawberries in the fields around Graveney. Unlike other fruit producing areas, there is no strong boundary pattern of shelterbelts here.*

4.4 Guidelines for landscape restoration and creation include:

- *Conserve the remaining landscape structure of trees, scrub, hedgerows and orchard and look for opportunities to restore and improve landscape structure through the establishment and maintenance of hedgerows along roadsides, the integration of new and existing development into the landscape using woodland blocks and hedgerows and the linking of existing isolated woodlands and hedgerows.*
- *Avoid proposals that would be unduly prominent on high or open ground, and have particular regard to sensitive views from the marshes to the north.*
- *Use local and vernacular materials appropriate to the location: for boundaries - red or yellow stock brick, estate iron railings, red brick and flint or hedgerows, for roofs - Kent-peg tiles and occasional thatch or slate and corrugated sheeting on outbuildings and for building walls - weatherboarding, timber frame and plaster infill, mathematical tiles, red (predominantly) or yellow stock brick and white/rendered painted brick, timber and plaster. For new hedges and hedgerow trees - hawthorn, hazel, elder, field maple, blackthorn, dog rose, dogwood, oak and ash, for mixed woodland or other planting - pedunculate oak, ash, willow, wild cherry, hazel and field maple.*

4.5 The National Planning Policy Framework (NPPF): Paragraphs 8, 11, 79 and 170.

4.6 In response to this clear Local Plan position which indicates that a new house would not normally be approved here, this application scheme has been submitted with the advice in paragraph 79(e) of the NPPF in mind. This sets two tests for the possible exception to the normal policy position of resisting the development of new isolated dwellings. These are that:

The design is of exceptional quality in that it:

Is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and

Would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.

4.7 From research and a review of appeal decisions surrounding paragraph 79 house applications I conclude that there are a number of key points that should be borne in mind in assessing an application that aspires to be approved under the guidance of paragraph 79. These are:

- There are two strands to section e) of paragraph 79 and both must be satisfied. Outstanding design without accompanying landscape enhancement means that a scheme should not be approved under paragraph 79. Landscaping should not be seen as optional, or an afterthought.
- The first test in paragraph 79 e) of the Framework requires proposals to be truly outstanding or innovative, and not both.
- Paragraph 79 of the Framework is a material consideration that carries substantial weight but the starting point for the consideration of any proposal remains the adopted Development Plan. If a scheme is not exceptional the application should be determined in accordance with the Development Plan (Local Plan).
- Where a proposal does not comply with the locational policies of the Development Plan, for planning permission to be granted it must be shown to be of the exceptional quality required by paragraph 79 of the Framework and that this outweighs the conflict with the adopted plan.
- Paragraph 79 sets a high bar, and a favourable design review does not guarantee approval.
- Even if the building is not readily visible from public viewpoints, this does not reduce the need for the building to be of 'exceptional quality' in its intrinsic design if it is to be justified by paragraph 79.
- Materials used ought to be sympathetic to local character and history.
- Any new house reflecting the highest standards in architecture would be expected to fully maximise energy efficiency. Whilst excellent environmental build credentials are always a benefit, this does not in itself make a building one of exceptional quality, nor would it necessarily help raise the standards of design more generally in rural areas.
- The use of renewable energy systems would result in a low carbon home which would have sustainability benefits in terms of its own use of resources, but this does not necessarily show the use of ideas which are new or particularly original and creative.

5. LOCAL REPRESENTATIONS

5.1 The Faversham Society commented as follows:

"This application should be REFUSED because this is a prominent site beyond the edge of the built-up area of Graveney. This development would be visible from the marsh and the trees around the site are visible for long distances as shown on the photographs submitted.

The provision of a large house on the site is not welcomed because the village lacks services and is not sustainable."

6. CONSULTATIONS

6.1 Graveney Parish Council:

"It was agreed to support the approval of the application, but to request that the following factors should be taken into account if Swale Borough Council were minded to grant consent.

- 1. There should be adequate screening for the Outbuilding where it is sited close to the boundary with Monkhill Road.*
- 2. The Local Planning Authority should be satisfied that the proposed planting scheme for the pergola roof and arbours is appropriate in terms of plant types and the time scale for these becoming established to provide an effective screen*
- 3. The Parish Council would not wish to see the development on this site potentially setting a precedent for future development on the remaining open land leading towards Denley Hall."*

6.2 Environment Agency – The application is covered by the Flood Risk Standing Advice.

NOTE: The very lowest parts of the site at its eastern end are potentially affected by tidal flooding zones, but not the part where the house is proposed.

- 6.3 Natural England – The application will result in a net increase in residential accommodation within 6km of the Swale SPA and as such, SAMMS payment required.
- 6.4 Kent Highways – The proposal does not meet the criteria to warrant involvement from the Highway Authority.
- 6.5 KCC Economic Development sought contributions on the development due to the site being over 0.5ha however, Swale only seeks contributions on development over 10 units unless an outline application covers over 0.5ha.

7. BACKGROUND PAPERS AND PLANS

- 7.1 All plans and documentation relating to 18/502512/FULL and 20/500617/FULL.

8. APPRAISAL

- 8.1 The Council's Local Plan Bearing Fruits 2031 was adopted in July 2017 and states that development proposals will be supported in accordance with the settlement hierarchy which is set out in Policy ST3. This identifies settlements in descending order of sustainability. Locations in the open countryside outside the built up area boundaries are the lowest settlement tier and this site is therefore ranked at the bottom in terms of where the Council wishes to direct new homes and jobs. For locations such as this, policy ST3 states;

"At locations in the open 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."

Accordingly, it is very clear, and accepted by the applicants, that this site is not one which would normally be seen as suitable for a new house, not least because of its

remote location and poor access to services other than by private car. A raft of appeal decisions since adoption of the Local Plan have supported policy ST3 in relation to its resistance to single new houses in isolated and rural locations.

- 8.2 The key question then is the extent to which the application scheme meets the tests of paragraph 79 e) of the NPPF. The question then is not whether the design is good, or attractive, or shows good energy efficiency, but whether it meets the high bar of exceptional architecture as set out paragraph 79. The Council does not have an up to date design review of the current application to inform its decision.
- 8.3 However, on the basis of the detailed construction design and landscape design drawings provided with this application, it is now possible to understand how the building is intended to be constructed and thereafter function in parallel with the proposed landscaping scheme for the site. This fundamentally includes a living green roof grown over the bridge-like steel arch structure which spans over the proposed accommodation spaces and lends the scheme its name.
- 8.4 The key innovation here is the roof truss design, from which the development derives its proposed name ('The Pergola House'). Whilst this type of arched structure is not unusual in engineering terms and provides the basis of the structural form for many bridges through its compressive strength. The way in which it is deployed here as a supporting superstructure to the house itself, in combination with the grow roof, is considered to be unique, and it is interesting to see how it deploys the structural arch form in a very different way to that used on other well known buildings, such as the Sainsbury Centre, at the University of East Anglia in Norwich. The complementary and unusual cascade gutter design on the roof of the building which feeds the planters at either end of the curved roof, as illustrated on the Roof Drainage drawing, reinforces the uniqueness of the design concept. I consider from a design perspective, that the scheme is an innovative one which displays a high standard of design in its three dimensional form and the manner in which it is intended to function with the proposed landscaping, and draw on shapes and structures found in the wider landscape character area i.e. polytunnels.
- 8.5 It might be said that the whole concept of NPPF paragraph 79 e) is peculiarly English and draws on what the former MP John Gummer referenced as drawing on '...one of the great glories of England' – namely the country house. The 'country house clause' (sometimes referred to as 'Gummer's Law') has been adapted since its establishment in 1997 and the focus on innovation and enhancement of setting, together with a necessary parallel thrust in the planning system towards sustainability, has resulted in designs which are typically very different in appearance from our traditional understanding of a country house, but which nevertheless have the capacity to be appealing and enduring in their own way.
- 8.6 The critical thing here in my view, is to only support these very specific policy exception type developments where they respond strongly and creatively to their specific landscape context and ultimately have the very clear potential to create something rather special that can be valued not only by their owners, but by the wider community; and also have the genuine scope to become a positive talking point, and something

which could be recognised as being of real value in any future landscape appraisal of the area.

- 8.7 I consider the scheme to be quite reliant on the grow roof (some of which faces north and will receive little direct sunlight) for much of its design innovation, and were this element of the scheme to materially or completely fail after 15 years, then the development would not only inappropriately appear as a more visually intrusive and potentially negative feature in the local landscape, but the development as a whole would also fail to continue to deliver the standard-raising precedent on which its approval would in large part have been based. It could even be argued that the failure of a key element of such a supposedly exemplar development could send out the wrong kind of signals to other individuals/developers considering proposing equivalent types of what they at least consider to be an example of a development exceptional in design quality terms. Design quality should be based on the principle of permanence, which would in the circumstances equate to the anticipated practical lifespan of the building/development in question.
- 8.8 On balance, I conclude that the design in itself is unusual, but not truly outstanding or innovative to the extent that it passes the high bar test of paragraph 79 e). It uses commonly found technologies, and its energy saving techniques are not novel. They are the sorts of technologies that could produce far greater benefit if applied to all new dwellings, and will achieve relatively little here on a single new house set in a remote unsustainable location, where any energy saving benefits will be significantly diluted by the additional travel involved in reaching service and facilities by private transport on an ongoing basis. In my view that house will appear as an incongruous and intrusive structure that is harmful to its rural surroundings.
- 8.9 Turning to the second requirement of an NPPF paragraph 79 e) scheme, the application site itself, whilst a little scruffy is not in any real need of enhancement and it not untypical of small parcels of largely enclosed land found on the edge of hamlets and villages elsewhere in the Borough. The proposed development would enhance/supplement the existing trees and shrubs at the site and potentially increase its ecological value as a direct result. However, I consider that it would introduce a somewhat alien form of development into the generally open landscape, albeit one which picks up to some degree on building materials and building forms found in the local area. If approved, this development would almost certainly come as a surprise in the landscape to visitors to the area.
- 8.10 The submitted landscaping proposals do provide new planting, but not to an extent well beyond the level that one might hope to be achieved by any new rural dwelling. It does include a wide variety of species set in a complicated and intricate pattern that to my mind suits only the site occupants and does not result in any significant enhancement of the surroundings proposed here. The landscape here is characterised by discontinuous hedgerows and traditional agriculture with an increasing sense of remoteness as one approaches the marshland beyond. It is not characterised by small heavily landscaped plots, and I am concerned that this development will appear as an inappropriate and complex concentration of ornamental domestic style planting accompanying a structure of alien appearance, that will significantly detract from the current simple traditional orchard landscape with its large fields and small range of species. The proposed

shelterbelt planting is not entirely inappropriate, but the small size of the site does not create potential for any significant landscape benefit as required by paragraph 79 e). The applicants suggest that the site should be regarded (brownfield land) and that (in their own words) the proposed development after mitigation would “*have a minor beneficial landscape impact*”. This is far from the high bar set by paragraph 79 e) and is to my mind a fundamental failure of the scheme.

9. CONCLUSION

- 9.1 The applicants' overall suggestion here seems to be that Swale has not approved any high quality developments to date, when in fact, this is not the case, with there being many examples of Borough Council approved schemes in different parts of the Borough. I consider that it is certainly the case that the proposed development is innovative in a number of respects, but it is arguable whether it reflects the highest standards in architecture and would help to raise standards of design more generally in rural areas. . It does nevertheless in my view provide the potential to help raise design standards to some degree, albeit I would advise that the scope for this may be somewhat limited because of the very specific type of design suggested.
- 9.2 In landscape terms, the additional planting will draw attention to the fact that the site is developed rather than actually enhancing the existing landscape features
- 9.3 In other words, I do not believe that the scheme meets either test of paragraph 79, and therefore does not warrant an exception to newly adopted Local Plan policies aimed at securing a sustainable pattern of development with joined up standards of design and sustainability; not that which selects individual elements to the exclusion of all others.

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 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.

Due to the recommendation below I have not raised this matter with the applicants and there is not yet any mechanism submitted by the applicants to address this matter. This will need to be dealt with by the appeal Inspector.

10. RECOMMENDATION - That Members resolve that planning permission would have been refused if the appeal for non-determination of the application had not been submitted:

REASON

- (1) The proposed house, being situated outside of the Local Plan defined built-up area boundary of Graveney would constitute unsustainable, unnecessary and unwelcome development which would cause harm to the character and appearance of the area contrary to policies ST3, DM14 and DM24 of Bearing Fruits 2031 – The Swale Borough Local Plan 2017 without being exceptional in terms of design or landscape impact to outweigh that harm.

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.

