

PLANNING COMMITTEE – 14 OCTOBER 2021**PART 3**

Report of the Head of Planning

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

3.1 REFERENCE NO - 21/502877/FULL			
APPLICATION PROPOSAL Erection of 1no. detached dwelling house with associated access, parking and landscaping.			
ADDRESS Land Adjacent To 72 Courtenay Road Dunkirk Kent ME13 9LH			
RECOMMENDATION - Refusal			
REASON FOR REFERRAL TO COMMITTEE Parish Council support			
WARD Boughton And Courtenay	PARISH/TOWN COUNCIL Dunkirk	APPLICANT Mr & Mrs M Bradley AGENT The JTS Partnership	
DECISION DUE DATE 29/07/21		PUBLICITY EXPIRY DATE 11/08/21	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/81/1432	Erection of a bungalow and garage (OUTLINE)	REFUSED	1982
SW/78/0645	Erection of 6 semi detached bungalows (OUTLINE)	REFUSED	1978

1.0 DESCRIPTION OF SITE

- 1.01 The site is located on the eastern side of Courtenay Road and lies just outside the Local Plan defined built-up area boundary of the village, which abuts the site to the south and in the defined countryside. It is also located within the Area of High Landscape Value (Kent Level) and on a designated rural lane.
- 1.02 The site is a grass covered plot, considerably larger than any of the nearby residential plots, and lies directly adjacent to Courtenay Road where it is fronted by a tall established hedge on its western boundary between the site and the road. An access road/track to land to the rear of the site lies to the south and then residential properties which face onto Courtenay Road. Opposite and in the immediate vicinity on Courtenay Road are semi-detached, on the whole single storey, residential properties of mixed vernacular character facing onto the road with low brick wall or open front gardens. To the north of the site is an established hedge and beyond is Maytree Plant Nursery and the associated agricultural dwelling.

- 1.03 To the rear of the site is land owned by the applicants which contains a number of buildings of mixed sizes and condition and a menage. Additionally Blean Woods lies directly behind the site.

2.0 PROPOSAL

- 2.01 The application is for the construction of a detached two storey 4 bedroom property. The property is to be sited in the front half of the plot with its side elevation facing Courtenay Road and the main entrance facing south. It is shown to be approx. 15m x 8m with a 2m 2 storey overhang.
- 2.02 The property is shown to be of a barn style but with extensive glazing particularly on the north and south elevations providing natural light. The south elevation is shown to be weatherboarded with the other elevations brick facing. No details of the roofing material have been provided.
- 2.03 Given the size of the plot a generous area of garden and an extensive patio area is shown to surround the property, this being divided by a newly planted native hedge with a gated access to the property. The rear section of the site is to provide a large area of hardsurfacing, a wildflower grass area and this will also be surrounded by additional native hedge planting. A gate is shown on plans in this area of the site though no details are given as to its height or design.
- 2.04 Additional native hedging is proposed along the southern and eastern boundary to screen the site. along with a scheme of landscaping.
- 2.05 Access to the site will remain via the existing access road/track to the south of the site.
- 2.06 The application is accompanied by a Planning Statement, a Preliminary Ecological Appraisal, a Planning Statement and letters of support from family members and the neighbour.
- 2.07 The Preliminary Ecological Appraisal assesses the habitats found on site and identifies the potential for the presence on site of any protected species, alongside a desk top study to identify the presence of any statutory/national/local designations or protected species in the area to assess the need any further surveys which were required to determine the presence of any protected species.
- 2.08 The report described the site as “comprises a short mown managed lawn area bounded by species poor hedgerow... no trees with bat roosting potential are situated on site... existing hedgerows will be retained, with no tree or hedgerow loss required to implement the proposal.”
- 2.09 It recommends new native planting on the southern and eastern perimeters, the inclusion of native/wildlife friendly planting in landscape scheme and new planting including trees internally within the boundaries of the site. It further recommends that a bat considerate lighting scheme in respect of both the construction and completed phases, the use of a bat and bird box, Installation of 2x invertebrate boxes and a Construction Management Plan be produced (CMP). To enable wildlife to continue using the development area post development, it is advised that boundaries remain relatively open such that wildlife can continue to radiate in the area. This includes the use of permeable boundaries such as tree lines and hedgerows, in addition to leaving hedgehog gaps in any new fencing proposals.
- 2.10 The application acknowledges that the project will require a financial contribution to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring

(SAMM) Strategy in accordance with recommendations of the North East Environmental Planning Group (NKEPG).

3.0 PLANNING CONSTRAINTS

Ancient Woodland

Potential Archaeological Importance

Tree Preservation Order Polygon MBC_SBC Reference: 7925/TPO
Description: Bossenden Wood, Dunkirk

4.0 POLICY AND OTHER CONSIDERATIONS

- 4.01 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.
- 4.02 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.
- 4.03 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.*

- 4.04 This policy is compatible with NPPF advice (paragraph 78) 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 but the want of the applicant. The “affordability” of this proposal is largely based on the existing ownership of the site by the applicant. Clear local links and the applicant’s profession as a builder assists in his ability to build his own home rather than having to rely on other building contractors.
- 4.05 Finally, I note the applicants’ mention the self-build aspect of the proposal as being a positive factor. the NPPF and the Local Plan provide for a wide choice of high quality homes and as part of this, and with no locally adopted policy support for self-build, in 2016 Swale Borough Council established the Self Build Register, para 5.3.19 states that “*over time this register will inform the assessment of future housing requirements and policy . In the meantime it is anticipated that such provision will generally be made via the Councils windfall allowance in Policy ST4*”
- 4.06 Policy ST4 (Meeting the Local Plan development targets) describes the windfall sites as those “*sites which have not been specifically identified as available in the Local Plan process that normally comprise **previously-developed sites** that have unexpectedly become available*” This however is an undeveloped site within the countryside. 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.
- 4.07 The National Planning Policy Framework 2019 (NPPF): Paragraphs 8, 11, 12, and 78 are especially relevant

5.0 LOCAL REPRESENTATIONS

- 5.01 One letter of support was received from a neighbour, saying “*This application is fully supported by its closest neighbour. The property and landscape are in keeping with the surrounding area and will be a welcome addition. Furthermore this space has been barren for a long period and it’s about time it was transformed into a usable space.*”

6.0 CONSULTATIONS

- 6.01 Dunkirk Parish Council (DPC) offered support for the proposal stating:

DPC decided unanimously to support the application.

There were a number of points made which weigh against the application, but overall members felt there were sufficient reasons to support the application.

The site is on the edge of the village envelope, but outside it and therefore in the countryside where normally development would not be allowed, unless NPPF, local plan or other reasons outweigh this consideration. DPC feels that the case for development far outweighs local plan policies.

The site has a hedge on the North boundary, over which is a permitted house build for Mr & Mrs May, owners of Maytree Nursery. This property is also outside the village envelope, yet with sensitive landscaping proposed it is hardly visible.

It should be noted that on the West side of Courtenay Road, directly opposite the site, the village envelope includes 3 properties and still further North, two more substantial house both much larger than the proposed dwelling.

There have been messages and letters of support from neighbouring properties, including the two either side of the site (inc. Mr & Mrs May).

It was felt that there would be no adverse impact to the street scene (as it is set back), it would use an existing entrance and therefore have little or no impact on the traffic and is surrounded on three sides by housing development.

It is in close proximity of bus services to Faversham and Canterbury, with easy access to a farm shop, public house and a short distance for the facilities on the adjoining village of Boughton under Blean.

The design is intended to provide a pleasant, attractive building with high eco values.

It would also add to the housing in Swale as currently they are unable to show a 5 year supply (4.6), and NPPF states that in such cases there should be a presumption in favour of the proposal.

6.02 Natural England raises no objection, subject to the payment of a SAMMS contribution to mitigate adverse effects on The Swale SPA.

6.03 The County Archaeological Officer has recommended a condition requiring the applicant to submit and implement a programme of archaeological work

7.0 BACKGROUND PAPERS AND PLANS

7.01 All plans and documentation relating to 21/502877/FULL

8.0 APPRAISAL

8.01 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

8.02 The key principle at stake in this case is that of constructing a new build residential property outside the built-up area boundary and thus in an unsustainable development. There are a number of planning policies which would preclude such development and such proposals represent unnecessary and undesirable development in the countryside, which would be contrary to policies ST3 and DM14 of Bearing Fruits 2031: the Swale Borough Local Plan 2017.

8.03 The site is located outside of the built-up area boundary of the village of Dunkirk in the countryside. Dunkirk itself is a fifth-tier settlement and is therefore ranked at the bottom in terms of where this Council wishes to direct new homes and jobs. It has a very limited range of local services, and is defined in the Local Plan as a settlement that displays less sustainable characteristics, stemming from its relative remoteness from the nearest town and/or its generally poorer level of public transport provision or local facilities.

- 8.04 The proposal site is some distance from any major local services and amenities, such as supermarkets and surgeries, with Boughton village providing some level of service for daily needs. This in itself is somewhat of a barrier given the route would include using Boughton Hill whose length and gradient is likely to put off all but vehicular options. I note the submission includes details of suggested walking and cycling times to Boughton, however, the 28 minute walk to the modest convenience store in the village is likely to be considerably longer on the uphill journey home. Therefore, it seems sensible to assume that any journeys for services, recreation, shopping, etc. would need to be to Faversham or Canterbury and that these journeys would also usually need to be made by private car, although I acknowledge that there is a rather infrequent bus route serving the village.
- 8.05 The key theme running through the NPPF is sustainability and, whilst I acknowledge there may be some benefits from the proposed development in terms of the addition of one additional dwelling to the local stock and potential associated limited economic and social benefits, these benefits will be very limited and to the benefit of the applicant primarily they outweigh the significant harm in relation to the settlement strategy, accessibility to services and sustainability that residential development here would result in.
- 8.06 As such, I consider the site to be an unsustainable location for new housing, and the National Planning Policy Framework (NPPF) in paragraphs 7 and 8 states that new development should be sustainable. I therefore consider that the proposal would be contrary to national planning policy.
- 8.07 Having regard to the Government's Housing Delivery Test (HDT) Swale has an identifiable 4.6 years supply of housing land, which amounts to a slight shortfall in housing delivery. As such I apply weight to this accordingly, but I am of the opinion that one dwelling would make a very limited contribution towards meeting that shortfall. Such a contribution could be made in more acceptable (in policy terms) and sustainable locations elsewhere in the Borough. There is no need for the housing land shortfall to be addressed at this location, and other more acceptable locations should first be considered. The Council has commenced preparing a Housing Action Plan to address the shortfall. In addition, a number of major developments are coming forward in the short term which will contribute significantly to the Council's supply and reduce the shortfall.
- 8.08 The submission makes much of the site's position adjacent to the built-up area boundary of the village, but there are large areas around all villages within the Borough where this is also the case. Whilst it may well seem harsh to some that this site has been excluded from the built-up area boundary, boundary lines like this are not drawn without purpose or in the absence of careful deliberation, and are not accepted without independent examination for soundness. In this case it was as recently as 2016/2017, when the existing situation on the ground in terms of the character of the area and buildings was exactly the same as today. Such boundaries are also not to be regarded as 'fuzzy edges', and to do so, even where only single dwellings are proposed, would inevitably lead to incremental outward expansion of urban areas, the piecemeal erosion of rural margins and the undermining of the quantitative and locational reasons that gave rise to the actual boundary alignment in the first place.
- 8.09 I further note the submission frequently refers to this as being an "infill" development plot and further that individual circumstances of each site should be given "considerable weight"
- 8.10 In this case reference is extensively made by the applicants' agent to the site of Maytree Nursey to the north. However, it must be made clear that this is a policy compliant site. The nursery has existed on this rural site for nearly 20 years and its development as a successful business only then led to the approval of a dwelling on the site, in line with

established policy DM12 (Dwellings for rural workers). This by no way provides a “default” position to the neighbouring sites, or indicates that land outside of the built up area boundary in the countryside is now an appropriate location for the development of a private residential dwelling.

- 8.11 Due to the current shortfall in housing delivery paragraph 11(d) of the NPPF is triggered. This means that where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, granting permission unless, according to paragraph 11:
- 11.d) i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - 11.d) ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole
- 8.12 However, whilst the Local Plan policies in terms of housing distribution may be “out of date” due to the lack of 5 year housing land supply this does not mean those policies that restrict development generally, including housing for e.g. ST3 are to be ignored and seen as irrelevant in the overall planning balance.
- 8.13 When considering the NPPF test as to whether this application constitutes sustainable development and whether any harm arising from the proposal would significantly outweigh the benefits, the adopted Local Plan should still be taken into account as the starting point for decision making.
- 8.14 The Local Plan promotes sustainable development proposals in accordance with the settlement hierarchy set out in Table 4.3.1 where settlements are ranked in tiers 1 to 6, ranging from main urban centres (tier 1) to open countryside (tier 6). This site falls within tier 6 where it is ranked at the bottom in terms of where the Council wishes to direct new homes and jobs and relates to “*All other settlements and sporadic buildings are considered to sit within the open countryside where the primary objective will be to protect it from isolated and/or large scales of development.*”
- 8.15 Policy ST3 (The Swale Settlement Strategy) states that “*At locations in the open countryside, outside the built-up area boundaries 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*”
- 8.16 Whilst the site is located close to the built-up area boundary around Courtenay Road it remains some distance away from the day to day amenities and services that any new residents would require. The village of Dunkirk is closest but is ranked low at tier 5 of 6 in the order of settlements where new development could be pursued, classified as a smaller to medium sized settlement displaying less sustainable characteristics stemming from its relative remoteness from the nearest town and/or its generally poorer level of public transport provision or local facilities.
- 8.17 There is limited public transport, no railway station and very limited facilities and as such it is likely that the new residents would still be highly dependent on the use of private transport, probably by car to access most residents needs out of the village. Furthermore, the addition of just one house can be viewed as only having a very limited impact on the vitality of the local community.

- 8.18 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 plots of agricultural land to be developed for housing.

Residential Amenity

- 8.19 The house is positioned in the front of the plot and I note the separation distance and existing vegetation to sufficiently screen the site to the north.
- 8.20 However, I do note that due to the orientation of the property, in contrast to others in the vicinity, the south elevation will be the main entrance and this elevation is also shown to be most prevalent in terms of glazing. Additionally, this is the elevation with the defined primary outdoor amenity space, in terms of the patio area and, whilst the 1.8m high closeboard fencing will provide some screening to the properties to the south, this will be the most utilised area and likely to impact on the neighbouring property to the south.

Visual Impact

- 8.21 I am not adverse to the design of the proposed house. However, it is proposed to be orientated at right angles to Courtenay Road. This is in contrast to the clear character of Courtenay Road as a whole where the properties all orientate forwards on to the road. This will result in a prominent and awkward addition to the streetscene at this point on Courtenay Road where the character is of open fronted bungalows. Its bulk, size and the proliferation of glazing sets it out and is likely to result in it being a rather prominent addition to this small scale street scene.
- 8.22 Whilst roofing materials are not specified, the brick and weatherboard are vernacular materials, but that in itself does not justify new development in the countryside
- 8.23 The existing hedgerow to the west of the site, adjacent to Courtenay Road is to remain but it will only offer limited screening of a two storey property. Whilst any increase in height would screen the property further it would also result in the plot being a further removed from and in contrast to the open fronted other properties.
- 8.24 I note the proposed new native hedgerow to the south and east. However, this is to be only within the boundary of the new property and 1.8m high closeboarded fencing is proposed along the majority of the southern and eastern boundaries which will create a harsh and urbanising harmful impact on this rural site and the countryside and be in contrast to the character of the area.
- 8.25 The rear part of the site is divided from the main residential dwelling by a further 1.8m high close boarded fence and the area is dominated by a wide access and an additional larger area of hardstanding. The rear of the site also includes an existing large building and this is also to be accessed via the gate, although no details of the height or appearance are given.
- 8.26 The change to a reduced height, 1.2m post and twin rail fence adjacent to the access to this part of the site is noted but will limit the effect of any mitigation provided by the hedging will have in reducing the impact of the use of the large hardstanding area.

Highways

- 8.27 Supplementary Planning Guidance (SPG) entitled "Parking Standards" (May 2020). recommends parking provision for a four bedroom property here is at least three spaces with 0.2 spaces per property as visitor parking. The area of hardstanding to the rear of the

site appears sufficient to provide this and I note an electric vehicle charging point is proposed, though its exact location is not shown on any submitted plans.

Landscaping/Ecology

- 8.28 Policy DM24 of the adopted Local Plan identifies the site as an Areas of High Landscape Value (Kent Level). These areas are designated as being of significance, and where planning permission will only be granted subject to the conservation and enhancement of the landscape being demonstrated, and the avoidance, minimisation and mitigation of adverse landscape impacts as appropriate and, when significant adverse impacts remain, that the social and or economic benefits of the proposal significantly and demonstrably outweigh harm to the Kent or Swale level landscape value of the designation concerned.
- 8.29 This particular landscape is identified within the Swale Landscape Character and Biodiversity appraisal (2011) (SPD) as falling within the “Woodland Landscape Types” category and the Blean Wood West character area.
- 8.30 This remains one of the most extensive semi-natural woodlands in the south east of England containing many varied habitats of national and international importance reflected in their designations. The SPD concludes that the Western Blean woodland character should be “conserved and reinforced”. Importantly, it recommends conserving the woodland fringe which provides the unique interface between open and wooded area and conserve the largely undeveloped and heavily wooded character of the landscape which forms part of the wider Blean Woods complex.
- 8.31 There is no doubt, in my view, that the presence of an additional dwelling here will have an impact on the character of the landscape. The proposal would represent an extension of the existing village envelope representing an incursion into open countryside. It would also interrupt views towards Blean Woods from Courtenay Road. The scale of the development and particularly the orientation of the house would be at odds with the existing linear pattern of the houses along Courtenay Road and further afield within Dunkirk village.
- 8.32 The application site currently creates a buffer that is open and rural in character between the houses along Courtenay Road and Blean Woods and further on to the open fields to the north. This relationship is important as Blean Woods adds significantly to the special character of the landscape and there would be some view of the application site from Blean Woods. I am not convinced that the development of the site and the addition of a new dwelling, and the associated hardstanding, boundary treatment and urbanising details could be described as conserving or enhancing the landscape or that the soft landscaping proposed sufficiently minimises or mitigates this harm.
- 8.33 I acknowledge that the development would provide soft landscaping. I note the creation of additional native hedgerow, but the majority of this would not be visible from outside the site and would be behind a 1.8m closeboard fence; adding a suburban element to this rural site. It is disappointing that there is no intention to replace the conifer hedging that dominates the site. The site is currently cut grass and I note this would be replaced following construction, so I see this as a neutral element. The proposal includes for an extensive concrete patio area, concrete paving pathways and a large area of gravel on a hardcore base. The area of wildflower grass mix is proposed and also 10 modestly sized trees and ornamental shrubs. I do not consider that this soft landscape scheme would go far enough to outweigh the harm that I have identified to the AHLV and to the countryside as a whole.

Biodiversity

- 8.34 The submission was accompanied by a Preliminary Ecological Appraisal which described the existing site and recommended additional planting and a number of mitigation measures largely in relation to Blean Woods to the rear of the site. It is a report largely concerned with the identification and mitigation for protected species.
- 8.35 The planting proposals are set out on the accompanying Landscape Plan and however despite the submission's reference to Policy DM28 (Biodiversity and Geological Conservation) I remain unconvinced. The submission makes no meaningful reference to the AHLV designation for the site, where Policy DM28 requires that any harm from development here should be avoided or adequately mitigated.
- 8.36 Whilst the additional measures and planting are recommended, the primary objective should be to conserve or enhance biodiversity here. There is no assessment as to the harm of building a new residential property here, the increase in hardstanding, the increase in concrete paving over the site, the impact of the boundary treatment, the impact of a suggested lighting scheme or the impact of disturbance here. The Appraisal recommends the boundaries remain relatively open such that wildlife can **continue** to radiate in the area; this of course suggests there is a biodiversity value to the whole site. It also suggests the use of permeable boundaries but, given the proposed use of closeboard fencing along the southern and west boundaries, the opportunity for any wildlife to "continue to radiate in the area" would be severely restricted by the interrupted route from Blean Woods. To the rear of the site where the point of access and hardstanding is proposed again, I am not convinced that the level of disturbance and harm at this point in the area of the site is adequately mitigated, and the submission provides no evidence to persuade me.
- 8.37 The submission goes further and argues that it is compliant with Policy DM30 (enabling development for landscape and biodiversity enhancement). However, I am not convinced that this level of landscaping is sufficient to suggest compliance with Policy DM30 which requires that proposals offer "*substantial and disproportionate benefits to landscape and biodiversity*" and the proposal provides no evidence that it meets any of the criteria of the policy.
- 8.38 I note the proposed biodiversity mitigation elements and these would largely be expected given the rural nature of the site. However, it remains the case that these measures do not, in my view, outweigh the harm of building on this undeveloped countryside site as a whole

Other Matters

- 8.39 I note the references to paragraph 84 (now paragraph 85 of NPPF 2021) relating to the consideration of meeting "business and community needs" that may have to be found on sites adjacent to or beyond existing settlements. However, it does not support this at all costs and should amongst other things need to be "*sensitive to its surroundings*". However, the proposed dwelling does not follow the character of development in the vicinity with its orientation, nor with its extensive use of 1.8m high closeboard fencing as a boundary treatment, and the proliferation of hardstanding.
- 8.40 I note the submission concedes the proposal does not meet the requirements of ST3, although it then argues that the site can be seen as a "minor infill development", but this is not the case. Acceptable Infill development is clearly defined within Policy ST3 point 4 stating "*other villages with built-up area boundaries...will provide development on minor infill...within the built-up area boundaries*"

- 8.41 Furthermore, I note that the submission states the site “*does not fall within “open Countryside”*” again this is incorrect. The Local Plan is clear in setting out its settlement strategy and in para 4.3.14 it explains that “*beyond the defined built up area boundaries, land and other settlements are regarded as being within the open countryside*” That definition of open countryside is not open to interpretation dependent on the nature of an application, and it continues in point 5 of policy ST3 that in these locations in the open countryside “*development will not be permitted unless supported by National policy and able to demonstrate 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 or rural communities.*”
- 8.42 The submission considers the proposal to be described as an affordable housing scheme. However, policy DM9 is clear as to what can be included as rural exceptions housing and I note the proposal meets none of the policy criteria. 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.
- 8.43 I note the letters of support in the submission, but support for this application as an exception to the rule is based on the past contribution of the applicants to the local community and the economy. Whilst that is to be noted, this is not a matter that should play any part in determining the current application. This is essentially a personal issue, rather than a planning issue, and planning decisions must be made on planning grounds. The NPPG advice is that planning conditions should not be applied to achieve a personal planning permission, and in the absence of any such condition the development is essentially just another house beyond the village boundary.
- 8.44 I note the applicants’ agent’s reference to a 2015 appeal case (The Firs, Dunkirk Road South, APP/V2255/W/15/3004335) but this historic case was considered prior to the adoption of the current development plan and it remains the case that each case must be assessed on its own site specific circumstances.
- 8.45 I note the further appeal reference case Black Cottages, Ospringe (APP/V2255/W/20/3253055) but ,again the site specific circumstances are not the same. The inspector weighed up all factors including it being on previously developed land, located close to Faversham and on a site in the conservation area, close to listed buildings, and that the site was deemed an eyesore. I do note that the Inspector commented that the provision of two new dwellings whilst making “a small contribution to the shortfall, but in itself this fact is not of significance in this appeal.” I am unclear how any parallels can be drawn between the two cases.
- 8.46 In contrast, I would draw Members’ attention to a more recent appeal decision (APP/V2255/W/21/3268779) for a Land Adjacent to Hole Street Farm, Kingsdown Road, Lynsted which is reported elsewhere in this agenda. Here a new dwelling in the countryside was proposed and the Inspector concluded that “Given that the site’s location would be outside any established built-up area boundary the appeal site would not be an appropriate location for residential development.” And dismissed the appeal.

9.0 CONCLUSION

- 9.01 This site is located in the defined countryside, in an Area of High Landscape Value and is adjacent to Blean Woods. It has been deliberately excluded from the built-up part of the village in the Local Plan as recently as 2016/17 and previously in 1978 and 1982 planning permission was refused for residential dwellings on the site.

- 9.02 This is a rural site poorly served by local services and is in 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 outside the built-up area boundary is not a suitable location for residential development. 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.
- 9.03 The Council has demonstrated that the proposal does not represent sustainable development and will in fact result in an intrusive form of development at odds with the typical plot form and character of the area, to a harmful degree. I consider the proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this.
- 9.04 I therefore recommend the application is refused.

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.

11.0 RECOMMENDATION – Refuse planning permission for the following reasons:

- (1) The proposed dwelling would, by virtue of being situated in an unsustainable location outside the established built-up area boundary of Dunkirk, in an Area of High Landscape Value, and in the countryside be contrary to national and local policy which seeks to guide development to locations more accessible to services and amenities, and which afford the countryside long term protection. The proposed development would detract from the intrinsic value, tranquillity and beauty of the countryside and the quality and character of the landscape and the setting of Blean Woods, and would significantly and demonstrably outweigh the benefits of the development and would fail to result in a sustainable form of development. This would be contrary to policies contrary to policies ST1, ST3, ST7, DM14, DM24 and DM28 of Bearing Fruits 2031: The Swale Borough Local Plan 2017
- (2) The proposed dwelling would be outside the defined settlement boundary and given its size, bulk and orientation would introduce a prominent and intrusive form of development which would be at odds with the typical plot form and grain of the wider area in a manner harmful to the character and appearance of the area and of the countryside, and it would encourage sporadic development in the countryside which is unacceptable as a matter of principle. As such the proposal does not represent sustainable development and is contrary to policies ST1, ST3, CP3, and DM14 of the Bearing Fruits 2031: The Swale Borough Local Plan and to the provisions of the NPPF.

The Council's approach to the application

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2021 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.

