

3.2 REFERENCE NO - 20/502218/OUT			
APPLICATION PROPOSAL			
Outline Application with all matters reserved for the proposed development of six houses and three bungalows (9 in total).			
ADDRESS Home Farm Breach Lane Lower Halstow Sittingbourne Kent ME9 7DB			
RECOMMENDATION Refusal			
SUMMARY OF REASONS FOR REFUSAL			
The proposed development represents unsustainable development and therefore fails to comply with the requirements of paragraphs 8, 11 and 80 of the National Planning Policy Framework 2021. Future occupiers would be largely dependent on the private car to access a wider range of facilities and to meet everyday needs, and the proposal would have a harmful impact upon the character and appearance of the rural area and countryside. Furthermore, the proposed development is likely to generate an increase in pedestrian traffic on a highway lacking adequate footways with consequential additional hazards to all users of the highway. This harm, both significantly and demonstrably, outweighs any benefits from the proposal.			
REASON FOR REFERRAL TO COMMITTEE			
Lower Halstow Parish Council support the application			
WARD Bobbing, Iwade And Lower Halstow	PARISH/TOWN COUNCIL Lower Halstow	APPLICANT Mr A Smith AGENT Woodstock Associates	
DECISION DUE DATE		PUBLICITY EXPIRY DATE	
		10/08/21	
RELEVANT PLANNING HISTORY			
Reference Number	Proposal	Decision	Determination Date
19/503455/PNQ CLA	Prior notification for the change of use of agricultural buildings and land within their curtilage to 2 no. dwellinghouses, and for associated operational development. For its prior approval to: - Transport and Highways impacts of the development. - Contamination risks on the site. - Flooding risks on the site. - Noise impacts of the development. - Whether the location or siting of the building makes it otherwise impractical or undesirable for the use of the building to change as proposed - Design and external appearance impacts on the building.	Prior Approval Granted	27.08.2019
17/505275/FULL	Proposed replacement bungalow.	Approved	04.12.2017
17/503269/FULL	Demolition of existing bungalow and construction of a replacement three bedroom detached bungalow, with associated parking.	Approved	21.08.2017

SW/14/0604	Lawful Development Certificate for - Planning Unit A: Caravan site for the stationing of one mobile home and Planning Unit B: Residential dwellinghouse and domestic garden.	Approved	16.10.2014
SW/95/0502	Change of use of land to use for grazing by horses and the erection of two stables, feed store and bedding store and temporary manure storage		
SW/88/1002	Proposed extension to form granny annexe	Approved	18.11.1988
SW/88/0813	Erection of four stables and one tack/food store form private use	Approved	22.07.1988
SW/86/1311	Conversion and extension to garage to from granny bungalow	Refused	09.01.1987
SW/81/0649	Approval of reserved matters 79/1361 for erection of a farmhouse	Approved	03.09.1981
SW/79/1361	Outline application for erection of farm house	Approved	15.01.1981

1. DESCRIPTION OF SITE

- 1.1 The application site is located off the west side of Breach Lane, a country road that joins the A2 to the south with the settlement of Lower Halstow to the north. The site is a small field, laid to grass, to the north east of the Home Farm buildings.
- 1.2 The application site itself is roughly rectangular in shape. It measures 53m east to west and 113m north to south, with a site area of approximately 0.68ha. The land is accessed from the corner of the drive to the Home Farm buildings; the drive running parallel to the lane, emerging onto that highway at a point to the south of the farmstead. The land is hedged to varying degrees on its eastern, northern and southern boundaries, but open on its western side.
- 1.3 The site is bordered by land adjoining Westfield House to the north, with Westfield House itself just beyond the north east corner of the application site. To the north and west are further parcels of agricultural land, whilst to the south is the driveway and buildings of Home Farm.
- 1.4 The site is located approx. 200m to the south of Lower Halstow, and falls outside of the built confines of the village. The village of Lower Halstow includes the following facilities; primary school, pre-school, recreation ground including play equipment, church, community hall, retail convenience store, public house, sports club (including cricket and yacht), bed and breakfast accommodation, building trade services.

2. PROPOSAL

- 2.1 This application seeks outline consent with all matters reserved for future consideration for the proposed development of six dwellings and three bungalows to provide a total of 9 additional units.

- 2.2 Initially, the access arrangement sought to utilise the existing access that serves Home Farm and which connects with the western side of Breach Lane. The existing access track runs parallel with Breach Lane running in a northern direction where a new access point was intended to be created at the south western corner of the site. However, as a direct result of highway safety concerns, the location of the site access has been changed. The revised layout now annotates a new access point, separate from the existing arrangement located at the south eastern corner of the site fronting Breach Lane. This would have a width of 5m and no pedestrian footpath is shown.
- 2.3 The indicative site plan (SM/20/110.01A) shows nine plots of houses with associated garages and driveways designed around a cul-de-sac style development. The built form of residential units is distributed evenly throughout the site comprising of a mix of architectural designs. These include 3 x (2 bedroom) bungalows which would occupy a central location, 2 x (4 bedroom) two storey detached dwellings located towards the north and southern corners and 4 x (2 x 2 bedroom and 2 x 3 bedroom) two storey semi-detached dwellings east of the site. The semi-detached properties appear from the indicative streetscene plan (SM/20/100.03) to contain rear dormers and habitable accommodation within the roofspace. Each dwelling is provided with a single garage and a hardstanding parking area.

3. PLANNING CONSTRAINTS

- 3.1 Located on the countryside where rural constraints apply.

4. POLICY AND CONSIDERATIONS

- 4.1 National Planning Policy Framework (NPPF): Paragraphs 8 (sustainable development); 11 (The presumption in favour of sustainable development); 60 – 67 (delivering a sufficient supply of homes); 78 – 80 (Rural housing); 126 and 136 (achieving well-design places); 152 (transition to low carbon future); 165 (sustainable drainage systems); 174 (enhance the natural and local environment) are relevant to this proposal.
- 4.2 Bearing Fruits 2031: The Swale Borough Local Plan 2017 – Policies ST1 (delivering sustainable development in Swale); ST3 (the Swale settlement strategy); ST4 (Meeting the Local Plan development targets); ST5 (The Sittingbourne area strategy); CP2 (Promoting sustainable transport); CP3 (Delivering a wide choice of high quality homes); CP4 (Requiring good design); DM6 (managing transport demand and impact); DM7 (Vehicle parking); DM14 (general development criteria); DM19 (Sustainable design and construction); DM21 (sustainable drainage / flood mitigation); DM24 (conserving and enhancing valued landscapes); DM28 (biodiversity conservation); DM31 (agricultural land).

5. LOCAL REPRESENTATIONS

- 5.1 Parish Council Support (14.07.2020) and state the following “With the exception of the applicant, Lower Halstow Parish Council unanimously agreed to support this planning application”

- 5.2 A total of 9 letters of representation were received. Of these 6 were letters of objection and 3 were letters of support. Of these, one letter of objection was received following the revised consultation on the amended plans.

The content of the objections are summarised as follows:

- Isolated development without suitable supporting infrastructure
- No pavements
- Limited streetlighting
- Highways safety concerns
- Access located on a blind bend
- No footpaths
- Poor visibility
- Vehicles traveling at speed
- No visitor parking
- Adverse visual impact on the landscape and character of the local area
- Impact on residential amenity -light, noise and other pollutants
- Ecological/Biodiversity concerns – destruction of habitats, loss of wildlife

The content of the letters of support are summarised as follows:

- The villages need small developments and not large ones
- This is one of the wider roads leading into the village

6. CONSULTATIONS

- 6.1 Natural England – No objection subject to SAMMS payment and the Council to complete an Appropriate Assessment (11.06.2020 & 24.09.2020)

- 6.2 KCC Highways and Transportation

24.06.2020: KCC initially raised concern in respect of access and visibility, pedestrian safety and refuse vehicles. A refusal of the scheme was recommended on the following grounds:

- 1) The visibility available over land within the applicants and/or the highway authority's control is insufficient for the development proposed, to the detriment of highway safety.
- 2) The proposed development is likely to generate an increase in pedestrian traffic on a highway lacking adequate footways with consequential additional hazards to all users of the highway.

In response to KCC comments the scheme was revised. The site access was relocated to create a new access point independent of Home Farm, direct from Breach Lane.

23.09.2021: KCC upheld their concerns. Due to the lack of land within the applicant's control and the blind spot within the splay to the north due to the alignment of the road, it was considered unlikely that the necessary splays could be achieved. Furthermore, whilst the new access would be sited nearer to the existing footpath, north of Westfield Cottages, there would still be no direct pedestrian link from the site. As such, KCC maintained their initial reasons for refusal as set out above.

30.10.2021: Further information was submitted, however KCC maintained the view that inadequate information had been submitted to satisfy the Highway Authority that a satisfactory means of access to the site can be achieved.

05.08.2021: KCC were still not satisfied that the required visibility could be achieved from the access within land that is under the control of the applicant and/or the highway authority.

Following this, a revised plan was submitted to show the proposed path which would link to the existing footpath, to enable pedestrians to access Breach Lane. KCC raised concerns that pedestrians would be reluctant to use this longer route to reach the existing footway, especially when conditions are dark/wet. This could lead to pedestrians choosing to walk the shorter and more direct route along Breach Lane, where there is no footpath or street lighting, which would be detrimental in terms of highway safety.

For these reasons, KCC concluded that inadequate information has been submitted to satisfy the Highway Authority that a satisfactory means of access to the site can be achieved and recommend that this application be refused on highway grounds for the following reason:-

1) The proposed development is likely to generate an increase in pedestrian traffic on a highway lacking adequate footways with consequential additional hazards to all users of the highway.

- 6.3 KCC Economic Development: - Requested the payment of an appropriate financial contribution, however as the scheme proposes less than 10 dwellings mitigation is not applicable in this instance. (08.06.2020)
- 6.4 Historic England: We do not wish to offer any comments. We suggest that you seek the views of your specialist conservation and archaeological advisers, as relevant. (27.07.2021)
- 6.5 KCC Biodiversity: We have reviewed the ecological information submitted in support of this planning application and advise that sufficient information has been provided. (10.08.2021)
- 6.6 Environmental Health: No objection, subject to conditions (16.08.2021)
- 6.7 KCC Archaeological Officer: I have checked our records and early mapping. It appears that the proposed development site sits within the bounds of a former brick field. It is likely that the ground would have been excavated in this location in the late 19th and early 20th century. There does not appear to be any of the infrastructure of the former brickworks with the site boundary so the potential for industrial archaeology will be limited. On the basis of the above I am satisfied that no archaeological measures are needed in connection with this proposal. (30.09.2021)
- 6.8 SBC Conservation and Design Officer: (summarised) In terms of the NPPF, I consider that the overall harm of the impact that would arise would be in the region of lower level of “less than substantial harm”. In such circumstances, the harm should be weighed

against the public benefits of the proposal, but these in turn I would suggest are low. (15.10.2021)

7. BACKGROUND PAPERS AND PLANS

7.1 Existing Block Plan SM/20/110.02

7.2 Proposed Block Plan and Location Plan SM/20/110.01A; Transport Appraisal – Speed Surveys; Transportation Appraisal – Highway Pedestrian Link; Proposed Access Plus Footway 1193-SK06; Preliminary Ecological Appraisal

8. APPRAISAL

Principle of Development

8.1 The site is located within the countryside and outside of the built area boundary of Lower Halstow. The main relevant planning policy is ST3 of the Local Plan, which states that at locations in the open countryside outside the defined built up area boundaries, development will not be permitted unless supported by national policy and where it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings, and the vitality of rural communities.

8.2 The Councils spatial strategy is set out in Policy ST3 of the Swale Borough Local Plans 2017 which identifies a hierarchy of 5 types of settlement. Lower Halstow is one of many villages in Tier 5 that provides basic services to meet some of the residential day to day needs and policy restricts development in these villages to minor infill and redevelopment within the built-up area boundaries only. In this regard, Policy ST 3 of the Local Plan (2017) paragraph states:

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. Some minor development may though be essential for the social, economic or environmental health of a community, but are not necessary to meet the Local Plan housing target. In doing so, they will be required to protect and, where required, enhance, the intrinsic value, character, beauty, wildlife value, tranquillity and undeveloped nature of the countryside and its communities and buildings.

8.3 The site's location, just beyond the boundary of a Tier 5 village makes it one of the least desirable locations for new residential development. Lower Halstow is within Tier 5 because it has limited services. The location of the site is remote from Lower Halstow, unpaved in part, and with an unlit pavement on the remainder of the lane. In my opinion this would discourage regular use by pedestrians or cyclists which, together with the limited services on offer in Lower Halstow, would place a reliance on car trips.

8.4 There are some exceptions for development in the countryside namely 'essential for the social, economic or environmental health of a community' as set out in policy DM9 (rural exception housing) and DM12 (dwellings for rural workers). However, the dwellings are not being put forward as affordable housing to meet local needs in the area nor to

facilitate the need for rural workers and therefore there is no added benefit to this proposal.

- 8.5 It is also very material to highlight a recent application and appeal decision on a neighbouring site immediately to the north, Land adjoining Westfield House for outline consent for 10 dwellings (Ref: 19/500764/OUT). The application was refused by the Council on the grounds that the development represented unsustainable development by virtue of its location outside any well-defined urban boundary and remote from the nearest settlements where a good range of services are available. The application was appealed and subsequently dismissed in July last year by the Planning Inspectorate (Ref: W/4000612), paragraph 11, of the appeal decision states:

I conclude that the appeal site would not be a suitable location for the proposed development having regard to the settlement strategy and its poor access to local services and facilities and would conflict with policies ST1, ST3 and DM9 of the LP and paragraphs 8, 11, 79, and 170 of the National Planning Policy Framework (2019) (the Framework), which when read together seek to deliver sustainable development consistent with the settlement strategy by restricting development in the open countryside.

- 8.6 Overall, I am of the opinion that the proposal represents unjustified and unnecessary residential development outside of the defined built up area boundary, in a manner harmful to the character, appearance, and intrinsic amenity value of the countryside and would erode the intrinsic character between the settlements of Lower Halstow and Upchurch to the detriment of the individual character of the area. In this instance, the Council must decide whether the harm to the countryside would be out-weighed by other material considerations, including the Council's current lack of 5 year Housing supply.

Housing supply

- 8.7 The Council does not have a five-year supply of housing land. The outcome of the Housing Delivery Test Spring 2021, is that Swale now has an identifiable 4.6 years supply of housing land, or a shortfall of 0.4 years which amounts approximately to an additional 367 dwellings per annum before the application of the 5% buffer.
- 8.8 Nine dwellings would make very limited contribution towards meeting that shortfall. Such contribution could be made in more acceptable (in policy terms) locations elsewhere in the borough. The site is located outside of any defined area built up area boundary and in an area that would be harmful to the character, appearance, and wider amenity value of the countryside, as discussed in further detail in the Visual Impact assessment below. There is no need for the housing land shortfall to be urgently addressed at this location, and other more acceptable locations should first be considered.
- 8.9 In terms of engaging the tilted balance, I once again draw Members attention to the neighbouring appeal site, Land adjoining Westfield House - Outline consent for 10 dwellings (Ref: 19/500764/OUT appeal Ref: W/4000612). In this regard the Planning Inspectorate concluded:

On the basis of the identified shortfall in the Council's housing land supply, the appellant states that there should be a presumption in favour of development and in

accordance with Paragraph 11 of the Framework the most relevant policies for determining the application should be considered to be out of date. Paragraph 11d) states that planning permission should be granted unless any adverse impacts of doing so would demonstrably and significantly outweigh the benefits when assessing against the policies in this Framework taken as a whole. (paragraph 20)

In the context of the development plan the development proposed would conflict with the previously identified policies in the LP on both of the main issues and which are generally consistent with the aims of the Framework and paragraph 170 which broadly states the need for development to contribute and enhance the natural and local environment and recognise the intrinsic character and beauty of the countryside. Further, the development proposed would result in significant harm to the character and appearance of the surrounding area and the future occupiers of the proposed dwellings would be reliant on the use of a private motor vehicle to access everyday needs and employment opportunities. It would therefore conflict with the Frameworks aims to recognise the intrinsic character and beauty of the countryside, the need to reduce travel and the move towards a low carbon future. (paragraph 20)

The proposal would result in short term benefits with regards the construction phase and the future occupiers would contribute some spend in the local economy which would support local services and facilities in Lower Halstow and the neighbouring villages. I therefore attach only limited weight to these benefits. With regards social benefits, the addition of ten dwellings would make a modest contribution towards the Council's housing shortfall and to the range of housing available in the area, improvements to the highways and increase demand for the local school. I attach moderate weight to these benefits. The proposal would produce some environmental benefits including the remediation of previously developed land on part of Parcel B; would reduce the pressure on agricultural land for development and would make a financial contribution towards mitigation of any impacts arising from the development on the SPA. I attach moderate weight to these benefits. (paragraph 21)

However, even if I were to conclude that the Council was not able to demonstrate a five year supply of housing land and therefore its policies were out of date, the adverse effects identified would not be significantly and demonstrably outweighed by the benefits when assessed against the Framework as a whole. Consequently, the appeal proposals would not amount to sustainable development for which there is a presumption in favour of and the so-called tilted balance would not be engaged in this case. (paragraph 22)

- 8.10 For the reasons set out above, I conclude that the benefits of the development are limited and significantly outweighed by the harm to the character, appearance, and intrinsic amenity value of the countryside and the unsustainable location of the site.

Visual Impact

- 8.11 The site is open, undeveloped and rural in character and appearance. It forms part of the generally open landscape to the south of Lower Halstow, with the line of terraced cottages to the north east of the site being the exception to this. The development would have a significant urbanising impact on this rural area, harmful to the character and appearance of the countryside. Furthermore, notwithstanding that this is an outline application; I consider the nature of the development proposed would be low density, sprawling and suburban in character. This would be alien to the compact terraces to the

northeast and to the more simple and organic built form that normally characterises rural areas.

- 8.12 Westfield Cottages located on the north east of the proposal site and in conservation terms are cottages of sufficient architectural and historic interest to be considered as non-designated heritage assets and a group candidate of the Swale Local Heritage List in future. Their significance is both in their historical and architectural value, articulating the industrial heritage of brickworks of the area. There are attractive views of Westfield Cottages from the public footpath running across to west of the proposal site. The cottages also enjoy their remote, open fields setting towards the site and around them. The proposed development would be read directly with the cottages when viewed from the west and by people using the public footpath. These views would be lost because of the development. This would diminish the appreciation of the cottages and their setting entwined with their historic co-existence with the open and largely remote rural landscape. Further views of the open fields together with the proposal site are experienced from Home Farm, Westfield House and the surrounding area.
- 8.13 Overall, the development of housing in this location would not be appropriate to its rural context and would harm the character and appearance and intrinsic value, beauty and functioning of the countryside and adversely impact upon a non-designated asset. In addition, the likely form of the dwellings, as demonstrated in this outline scheme, would fail to reinforce local distinctiveness and, as such, would be contrary to the above policies. This is considered to be a significant negative impact and would be contrary to the aims of the NPPF as it would not significantly enhance its immediate setting, and it would not be sensitive to the defining characteristics of the local area due to the harmful impact on the countryside. The harm would not be outweighed by contributions to housing supply, in my opinion.

Residential Amenity

- 8.14 DM14 of the Local Plan states that all development should cause no significant harm to the amenities of surrounding uses or area. The detailed design of the new dwellings would be secured at the reserved matters stage and this will include the design, form and scale of the building including details such as window/door placement and details of boundary treatments.
- 8.15 The closest residential property to the northeast is Westfield House and additionally, Home Farm is located to the southwest. Whilst layout and design are matters for future consideration, the application shows an illustrative layout which avoids any direct overlooking of these properties and, whilst not ideal, a relatively acceptable degree of space (22m and 27m) can be maintained between these existing dwellings and the proposed development. Overall, I am satisfied that the application shows an illustrative layout which maintains sufficient spacing between the dwellings and existing neighbouring properties without resulting in a significantly harmful impact upon existing neighbouring dwellings in terms of loss of light, overshadowing, loss of outlook or privacy.
- 8.16 The illustrative plans demonstrate that the proposed dwellings are of a sufficient size to meet the minimum gross internal floor areas for three- and four-bedroom properties as

set out in the Nationally Described Space Standard and suitable amenity spaces with a minimum 10m length can be provided.

Highways

- 8.17 Policies DM6 and DM7 of the Local Plan seek to ensure that developments do not cause unacceptable highways impacts. The site access has been revised throughout the course of this application to address highway safety concerns. The proposed changes would result in a new access onto Breach Lane, which is a 'C' class derestricted, 60mph road. As such, visibility splays of 2.4m x 203m would be required in both directions, with no obstruction over 0.9m above carriageway level within the splays. A supporting speed survey was submitted to ascertain actual 85th percentile speeds and plans were submitted which show visibility splays of 2.4m x 43m in both directions, however KCC remain unsatisfied that the required visibility can be achieved for the access within the land that is under the control of the applicant and/or highway authority.
- 8.18 A revised plan was submitted to show the proposed pedestrian path which would link to the existing footpath, to enable pedestrians to access Breach Lane. However, KCC maintained concerns that pedestrians would be reluctant to use this longer route to reach the existing footway especially when conditions are dark/wet. This could lead to pedestrians choosing to walk the shorter and more direct route along Breach Lane, where there is no footpath or street lighting, which would be detrimental in terms of highway safety. For this reason, the proposed development is likely to generate an increase in pedestrian traffic on a highway lacking adequate footways with consequential additional hazards to all users of the highway and for this reason is recommended for refusal.
- 8.19 With regard to parking, the density of development as proposed is low and the layout indicated on the plans shows adequate provision for car parking connected to the development. As such I do not consider it would be likely to increase parking pressure on Breach Lane or displace existing parking.

Landscaping

- 8.20 Landscaping is a reserved matter. Policy DM14 requires the provision of an integrated landscape scheme that would achieve a high standard of landscaping within the development and given this is a countryside setting further details would be required at the reserved matters stage.

Sustainable design and construction

- 8.21 The Council has declared a Climate Change and Biodiversity Emergency, and this is a material planning consideration. If I was to recommend approval of this scheme, I would propose conditions to ensure that the final development incorporates sustainable measures.

Biodiversity

- 8.22 The NPPF requires new development to minimise impacts on biodiversity and provide net gains in biodiversity, where possible. Local planning authorities are required to conserve and enhance biodiversity when determining planning applications and take

opportunities to incorporate biodiversity in and around developments. Policy DM28 also requires that development proposals will conserve, enhance and extend biodiversity, provide for net gains in biodiversity, where possible, minimise any adverse impacts and compensate where impacts cannot be mitigated. The application has been supported by a Preliminary Ecological Appraisal. KCC Ecology are satisfied that the appropriate level of ecological survey work has been undertaken and to secure the implementation of biodiversity loss offsetting/ecological enhancement, advise that a condition is attached to any granted planning permission.

- 8.23 In wider ecology terms, site lies within 6km of the Swale SPA and a contribution is therefore required to mitigate the potential impacts of the development upon that protected area, in accordance with the Council's standing agreement with Natural England. No fee has been provided with the application and I do not consider it appropriate to request one given the in-principle objection above. I therefore consider it justifiable to include a reason for refusal on the grounds of potential harm to the objectives of the SPA.

Other matters

- 8.24 No details have been submitted regarding a surface water drainage strategy. However, these details could reasonably be controlled via planning conditions.

9. CONCLUSION

- 9.1 This application proposes development well outside of the built-up area boundary in an area of undeveloped countryside. By encroaching into this area, this proposal is considered to have a significantly harmful and negative impact on the character, appearance and intrinsic value of the countryside, and where protecting this is one of the main purposes of the built-up area boundaries. In addition, the site is poorly located in relation to services and facilities, leading to a likelihood that occupants will be heavily reliant on car journeys. The Council cannot currently demonstrate a five-year housing land supply and that there is an identified need for additional housing. However, as set out in the relevant section above, the location of the site is not considered to be sustainable for housing development and causes significant harm to the countryside. This harm significantly and demonstrably outweighs the benefits of the scheme. The site is very close to Westfield House where a similar proposal was refused and dismissed on appeal for the same reasons.
- 9.2 In addition, KCC Highways and Transportation remain unsatisfied that the required visibility can be achieved for the access, within the land that is under the control of the applicant and/or highway authority. In terms of pedestrian safety, there is no footpath or street lighting along this section of Breach Lane and concerns remain that that pedestrians would be reluctant to use this longer route, especially when conditions are dark/wet. This could lead to pedestrians choosing to walk the shorter and more direct route along Breach Lane, which would be detrimental in terms of highway safety. For this reason, the proposed development is likely to generate an increase in pedestrian traffic on a highway lacking adequate footways with consequential additional hazards to all users of the highway and is recommended for refusal for this reason.

10. RECOMMENDATION

REFUSE for the following reasons:

1. The proposed development represents unsustainable development by virtue of its location outside any well-defined urban boundary and remote from the nearest settlements where a good range of services are available, the lack of the prospect of residents being able to integrate with the existing communities and the limited non-car options to service the site which will result in a car dependent population. Furthermore the proposed development would have a significant detrimental urbanising impact upon the open countryside and would fail to protect the intrinsic value, tranquillity and beauty of the countryside and rural context by virtue of its location and likely layout and form. This harm, both significantly and demonstrably, outweighs any benefits from the proposal (including its contribution to the overall supply of housing in the Borough). The development is therefore contrary to policies ST1, ST3, CP4, DM14, and DM24 of the "Bearing Fruits 2031: The Swale Borough Local Plan (2017)" and the National Planning Policy Framework 2021.
2. The proposed development would generate an increase in pedestrian traffic on a highway lacking adequate footways with consequential additional hazards to all users of the highway and adversely compromise highway safety, contrary to policies CP4 and DM6 of the Bearing Fruits 2031: The Swale Borough Local Plan (2017) adopted.
3. The proposed development will create potential for recreational disturbance to the Swale Special Protection Area. The application submission does not include an appropriate financial contribution to the Thames, Medway and Swale Strategic Access Management and Monitoring Strategy (SAMMS), or the means of securing such a contribution, and therefore fails to provide adequate mitigation against that potential harm. The development would therefore affect the integrity of this designated European site, and would be contrary to the aims of policies ST1, DM14, and DM28 of Bearing Fruits 2031 - The Swale Borough Local Plan 2017; and the National Planning Policy Framework.

Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017.

This Appropriate Assessment (AA) has been undertaken without information provided by the applicant.

The application site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

The proposal therefore has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advise that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation and site remediation satisfactory to the EA, the proposal is unlikely to have significant effects on these sites.

The 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.

However, the proposed development is of a very small scale and, in itself and in combination with other development, would not have an adverse effect on the integrity of the SPA, subject to the conditions set out within the report.

Notwithstanding the above, NE has stipulated that, when considering any residential development within 6km of the SPA, the Council should secure financial contributions to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG), and that such strategic mitigation must be in place before the dwelling is occupied.

Due to the scale of development there is no scope to provide on site mitigation such as an on-site dog walking area or signage to prevent the primary causes of bird disturbance, which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats.

Based on the correspondence with Natural England (via the NKEPG), I conclude that off site mitigation is required.

In this regard, whilst there are likely to be impacts upon the SPA arising from this development, the mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff (which has been secured prior to the determination of this application) 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.

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.

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.

