

**PLANNING COMMITTEE – 9 DECEMBER 2021****PART 3**

Report of the Head of Planning

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

<b>3.1 REFERENCE NO - 21/500173/FULL</b>			
<b>APPLICATION PROPOSAL</b>			
Retrospective application for change of use of land from agricultural to animal rescue including new stock fencing and gates, mobile field shelters, small animal houses, shipping containers for storage, associated boundary treatment and stationing of a mobile caravan for use as a residential unit for staff.			
<b>ADDRESS</b> Land East Of Hawes Woods High Oak Hill Iwade Road Newington Kent ME9 7HY			
<b>RECOMMENDATION</b> Refusal			
<b>SUMMARY OF REASONS FOR REFUSAL</b>			
The proposal does not accord with the core principle of sustainable development within the countryside and is harmful to its intrinsic value, visual amenity, key characteristics, sensitivity, landscape setting, functioning and purposes of the countryside. Moreover, the structures, fence and gates are considered to cause substantial harm to the rural character and appearance of the streetscene and the general character of the rural area. Insufficient information is provided for the Council to reasonably assess whether the proposed use (open days) would, by reason of the sites unstainable location, result in the significant uplift in traffic levels, to a manner harmful to the character, appearance, and intrinsic visual amenity value of a designated Rural Lane (Iwade Road) and countryside setting.			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
A high volume of support and in the interests of transparency			
<b>WARD</b> Bobbing, Iwade And Lower Halstow	<b>PARISH/TOWN COUNCIL</b> The site is subdivided by Parish Council boundaries. The front section to the east is located within Bobbing Parish Council and immediately to the west towards the rear section of the site sits within the remit of Lower Halstow Parish Council.	<b>APPLICANT</b> The Happy Pants Ranch <b>AGENT</b>	
<b>DECISION DUE DATE</b> 23/07/21		<b>PUBLICITY EXPIRY DATE</b> 25/08/21	
<b>PLANNING HISTORY</b>			
<b>Reference Number</b>	<b>Description</b>	<b>Decision</b>	<b>Determination Date</b>
No relevant planning history			

<b>ENFORCEMENT HISTORY</b>		
<b>Reference Number</b>	<b>Description</b>	<b>Determination Date</b>
21/500003/CHANGE	Pending Investigation	

## 1. DESCRIPTION OF SITE

- 1.1 The subject site is situated within the countryside outside of any designated built-up area boundary. It is located along the western side of Iwade Road and is broadly L-shaped measuring 400 metres east to west, and 300m north to south when measured from its widest point. The total area of the site is approximately 88,763 metres (8.9 hectares).
- 1.2 To the north, the application site is boarded by open countryside and sporadically placed farm buildings, all of which are located within an Area of High Landscape Value Swale Level (Policy DM24 of the Local Plan (2017), adopted).
- 1.3 To the east, the eastern site boundary provides the sites main entrance with direct access taken from Iwade Road. Iwade Road is a single-track lane, unclassified road which serves a single flow of traffic only having intermittent lay-bys for passing vehicles. Members will note that this is a designated Rural Lane (Policy DM26 Local Plan (2017) adopted).
- 1.4 Immediately to the south, the site is bordered by Hawes Wood, an area characterised by high density woodlands and recognised as Ancient Woodlands. The Ancient Woodland is also recognised as a Locally Designated Site of Biodiversity Value and Local Wildlife Site (Policies DM28 and DM29 of the Local Plan (2017) as adopted).
- 1.5 The application site is located, as the crow flies, roughly 1.17km away from the built up area of Newington to the south, approximately 1km to the built up area of Lower Halstow to the north and approximately 2.7km to Iwade to the northeast. The site is subdivided by Parish Council boundaries. The front section to the east is located within Bobbing Parish Council and immediately to the west towards the rear section of the site sits within the remit of Lower Halstow Parish Council.
- 1.6 Turning to the existing site, the main access point utilises an existing access leading from Iwade Road. The original access point appears to have been widened and is surrounded by a 1.6m high closed boarded timber fence. The section of the ground has been roughly laid with heavy hardcore which accommodates a parking area located immediately to the left upon entry. There are no clear road markers or associated vehicle parking signage.
- 1.7 To the left, along the southern site boundary immediately adjacent to Hawes Wood, there is a collection of outbuildings associated with the use of the site. These comprise of a large collection of shipping containers, various garden sheds and outbuildings, children's dens, a small caravan, outdoor furniture and other items generally associated with outside domestic use. These appear to be used as ancillary storage and staffing facilities. Further along there are mounds of rubble and hardcore. The development along this boundary falls within the 15m mitigation buffer of Hawes Wood, which is designated as ancient & semi natural woodland and is separated from the woodland by plastic sheeting nailed to various trees and posts along the edge of Hawes Wood.

- 1.8 Situated to the right (north east) of the main access leading through the site, there is a large undeveloped section of land that has been cleared and the beginnings of a pond which appeared (at the time of my site visit) to be in mid-construction. Towards the centre of the site within a cleared area devoid of grass, scrub or mature trees is a static caravan surrounded by clutter generally associated with domestic use.
- 1.9 The rear of the site is largely sub-divide by small paddocked areas and is the main location for the keeping of animals.

## **2. PROPOSAL**

- 2.1 This application seeks retrospective permission for the change of use of land from agricultural land (Agricultural Land Classification Grade 3b) to an Animal Rescue Centre.
- 2.2 The site would be open to the public 1 or 2 days a month to non-paying guests focusing primarily on the benefits of education and mental health. Both days would bring approximately 20 visitors and include 10 visits per day between the hours of 10-4pm.
- 2.3 In terms of access, the existing site access has been utilised and the application includes the construction of a vehicle path leading through the site to a mid-point where it aligns with a large three berth caravan which is intended to be used both night and day by staff to ensure safeguarding of the animals. The application also includes the construction of a large area of hardstanding constructed from a hardcore material base for vehicle parking. The application form stipulates parking provision for up to 10 parked cars.
- 2.4 In addition, the application also seeks consent for a number of shipping containers, various garden sheds and outbuildings, children's dens, a small caravan, outdoor furniture and other items generally associated with outside domestic use which are situated along the southern boundary with Hawes Woods. These are currently used for ancillary storage and ancillary staffing facilities.
- 2.5 Boundary treatments include the installation of new close boarded timber fencing and associated entrance gates fronting Iwade Road. Additional boundary treatments include the installation of traditional style stock fencing within the site, and around the perimeter of the site.

## **3. PLANNING CONSTRAINTS**

- 3.1 Located in the countryside outside of any defined Built-up area boundary.
- 3.2 Site lies immediately adjacent to Ancient Woodland (Hawes Wood) and the southern boundary falls within the 15m buffer of Hawes Wood, which is designated as ancient & semi natural woodland.
- 3.3 Area of High Landscape Value Swale Level
- 3.4 Iwade Road is a designated Rural Lane
- 3.5 Potential Archaeological Importance
- 3.6 Agricultural Land Classification Grade 3b

- 3.7 Designated Local Wildlife Site; ‘Hawes Wood and Wardwell Wood, Newington’.

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

- 4.1 National Planning Policy Framework (NPPF) 2021: Paras 8 (Three dimensions of sustainable development); 10, 11, 12 (Presumption in favour of sustainable development); 47 (Determining applications); 81 (Building a strong, competitive economy); 84, 85 (Supporting a prosperous rural economy); 93 (Promoting healthy and safe communities); 104 (Promoting sustainable transport); 112, 113 (Considering development proposals); 119 (Making effective use of land); 126, 130, 134 (Achieving well-designed places); 152, 153 (Meeting the challenge of climate change, flooding and coastal change); 168, 169 (Planning and flood risk); 174 Conserving and enhancing the natural environment; 180, 182 (Habitats and biodiversity); 185 (Ground conditions and pollution).
- 4.2 Bearing Fruits 2031: The Swale Borough Local Plan 2017: Policy ST 1 Achieving sustainable development in Swale; Policy ST 3 The Swale settlement strategy; Policy CP1 Building a strong, competitive economy; Policy CP2 Promoting Sustainable Transport; Policy CP4 Requiring good design; Policy CP7 Conserving and enhancing the natural environment – providing for green infrastructure; DM3 The rural economy; Policy DM 6 Managing Transport Demand and Impact; Policy DM 7 Vehicle Parking; Policy DM12 Dwellings for rural workers; Policy DM 14 General Development Criteria; Policy DM 19 Sustainable Design and Construction; DM21 Water, flooding and drainage; DM24 Conserving and enhancing valued landscapes; DM26 Rural Lanes; DM28 Biodiversity and geological conservation; DM29 Woodlands, tress and hedges; DM31 Agricultural land.
- 4.3 The Swale Borough Parking Standards 2020 – Non residential Car Parking Standards. The proposed use is considered as Sui Generis which under Appendix D, sets out a requirement of 1 space per 2 staff with further visitor parking to be assessed individually.
- 4.4 Swale Landscape Character and Biodiversity Appraisal (June 2010) – Members will note that the site identifies as ‘Iwade Arable Farmlands’, where the landscape condition of the land is ‘Poor’ and the sensitivity is ‘Moderate’.

#### **5. LOCAL REPRESENTATIONS**

- 5.1 Bobbing Parish Council – No objection (06.05.2021), whilst no comments have been received from Lower Halstow Parish Council.
- 5.2 Newington Parish Council (30.07.2021). No comments to make on the principle of development given that the site is located outside of Newington, however concern was raised concerning the impact of the traffic on local roads, Iwade Road, Church Lane, Boxted Lane and Mill Lane, also known as Bricklands. Moreover, Newington PC were not reassured regarding the applicant’s projection of visitor numbers and were aware of the problems off-road parking is currently causing visitors to residents in Iwade Road.
- 5.3 The application was published in the press on 06.05.2021 which welcomed comments to the Council by 06.05.2021. A site Notice was also erected at the site which welcomed comments until 07.06.2021
- 5.4 In response to the public consultations the Council received 187 representations in support of this application. The support is far reaching and not just contained to the local area.

The thread running through all letters of support is that the location of the ranch is in a rural area with very little housing and this type of development needs to be accommodated in the countryside. The proposal would bring a derelict & disused site back into positive use which would benefit the area, the local community and allow the charity to continue to rescue animals that are abandoned and abused. Many have cited the welfare of the animals and what would happen to these animals in the eventuality that Happy Ranch was closed. The ranch is staffed by volunteers, and the ranch proposes mental health days with many people supporting this work and the benefit that it would bring to the local community.

5.5 A total of 4 letters of objections were received on the following grounds:

- Excessive noise and disturbance
- Surface water runoff
- Smells
- Security issues
- Intensified impact upon rural lane
- Use of inappropriate materials
- Waste disposal

## 6. CONSULTATIONS

6.1 KCC Biodiversity – Objection on the following grounds (10.08.2021):

- *The aerial imagery available to us shows the site as having high ecological interest previously, including a pond, scrub, grassland and woodland. Almost all of this habitat has been lost to the development which we highlight is extremely bad practice and has likely resulted in a breach of wildlife legislation. We point out the irony of an animal rescue centre which has displaced or even harmed wildlife in facilitation of the development.*
- *The design and access statement notes “The site was extremely overgrown, covered in rubbish and was an unusable piece of land”. We highlight that the land was likely rich in biodiversity, utilised by protected species and had high ‘ecosystem service’ value (the importance of which is referenced in paragraph 174 of the NPPF 2021). The amount of habitat clearance shown within the design and access statement is significant and completely unacceptable.*
- *The site is also directly bordered ancient woodland. As such, we highlight paragraph 180 of the NPPF, which states “development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists”. Natural England and the Forestry Commission’s standing advice states that there should be a minimum of 15m between development footprint and ancient woodland. The submitted plans show that this has not been adhered to. Of note, this ancient woodland area is also a designated Local Wildlife Site; ‘Hawes Wood and Wardwell Wood, Newington.’*
- *We highlight that indirect impacts associated with the operational development can contribute to the ancient woodland deterioration, such as light and noise pollution, surface runoff, the spread of invasive species and recreational disturbance. It is unclear how these operational effects have been/will be mitigated for.*

- *Under section 40 of the NERC Act (2006), and paragraph 180 of the NPPF (2021), biodiversity must be maintained and enhanced through the planning system. Additionally, in alignment with paragraph 180 of the NPPF 2021, the implementation of enhancements for biodiversity should be encouraged.*
- *Taking the ecological baseline from the April 2020 aerial imagery, it is clear that the proposed development is not/cannot achieve biodiversity net-gain.*
- *With the amount of habitat destruction, overall biodiversity loss, lack of measures to safeguard the adjacent ancient woodland/Local Wildlife Site and no habitat restoration/compensation plans, we cannot support this application in its current format and recommend outright refusal.*

6.2 Tree Consultant – Objection on the following grounds (02/08/2021):

- *Piles of crushed rubble, shipping containers and building materials are all stored along the edge of Hawes Wood within the root protection areas (RPA) of trees growing along the woodland periphery. Temporary boundary screening in the form of white plastic sheeting has been erected along the woodland edge secured to a number of the trees using wooden blocks and nails (as seen in photo 2 below.) The nailing of structures to the existing boundary trees is likely to have caused stem damage, thus exposing the trees to decay/disease.*
- *The tree survey submitted with the application (by David Archer Associates) would appear to give an accurate account of the tree stock present on the site. However, as the construction of the new access and siting of the buildings/containers are fairly recent (within the last 6 months,) so in my view it is too early to assess the full impact of their construction within the root protection area (RPA) of the trees, as symptoms of root death/disturbance does not generally show on trees for a couple of years following the initial works/damage taking place. Therefore, at this point in time I do not support the author's view in the arb report that the retrospective works have/will not impact on the long-term health of the trees.*
- *In addition to the retrospective works encroaching within the RPA of the woodland trees, the development also falls within the 15m buffer of Hawes Wood, which is designated as ancient & semi natural woodland. The NPPF sets a high bar for development that would result in loss or deterioration of ancient woodland - paragraph 175c "development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists").*
- *Nearby development can have an indirect impact on ancient woodland or ancient and veteran trees and the species they support. These can include... reducing the amount of semi-natural habitats next to ancient woodland... increasing the amount of pollution, including dust... increasing disturbance to wildlife from additional traffic and visitors... increasing light or air pollution... increasing damaging activities like fly-tipping and the impact of domestic pets". There also tends to be a certain amount of ancillary 'spillage' from dwellings/buildings into surrounding natural areas, in the form of outbuildings, children's dens, compost heaps, outdoor furniture and other items kept outside. These*

*indirect impacts would be considered to result in a deterioration of ancient woodland. The proximity of the proposal to the ancient woodland boundary means that it is impossible to achieve a 15m minimum semi-natural buffer to mitigate those impacts. It is also clear that the laying of the hardcore road and siting of the outbuildings, containers and storage of materials, all within the 15m buffer, has resulted in the destruction of a significant area of semi natural habitat next to the ancient woodland contrary to paragraph 175c of the current NPPF.*

### 6.3 Environmental Services Objection (20.07.2021)

- The Council's Environmental Response Team received complaints from nearby residents alleging noise nuisance following commencement of the use and occupation of the application site as an animal sanctuary. The complaints required investigation under the statutory nuisance provisions of the Environmental Protection Act 1990 to determine whether the impact of the use and resulting noise generated, constituted a statutory nuisance. The evidence gathered from officers' site visits and from precision sound recording equipment located in a nearby residential premises confirmed the occurrence of noise at a level amounting to a statutory nuisance. Notices in respect of statutory noise nuisance arising from a generator supplying electricity to the site and from the animals being accommodated there have been served on the applicant. This requires the applicant to take all steps necessary to abate the nuisance and prohibit a recurrence of the same.*
- Under the current situation and before any appeal against the notices has been decided or works carried out in compliance with them, I am unable to comment further or offer any support to this retrospective application and therefore object to it.*

### 6.4 KCC Highways Initial Response - raise no objection on behalf of the local highway authority (04.05.2021)

*Additional information was submitted regarding the applicant's intention to open up the site to the public 1 or 2 days a month.*

Second Response received from KCC (19.08.2021) Further information is required as to the number of additional trips this would generate. Whilst it is appreciated the intention is to open the site for just 2 days a month there is the potential for this to become more frequent. The proposed open days would intensify the use of the access and potentially increase the parking requirements at the site I note that improvements to the site are needed before visitors can attend these open days and we would need more details as to what these plans would be.

*Further additional information has been received from the applicant however, at the time of writing this report I still wait a response from KCC, I will update Members at the meeting.*

### 6.5 KCC Flood and Water Management – No objection (12.08.2021) subject to the following advisory comments:

- Potentially contaminated water from activities associated with the proposed facilities should only be directed to a dedicated foul water system. It will be unacceptable to direct this runoff to a watercourse or direct to ground.*

Following ongoing deliveries of hard core delivered to the site, KCC Flood and Management were re-consulted.

- *Given that this is a retrospective application we had assumed that the access road and car park were formed? We would advise that the use of recycled material is unacceptable as a permeable surface given the possibilities of it containing contaminants which could affect water quality, but it seems the EA have taken this in hand. (18.11.2021)*

#### 6.6 Rural Consultant (27.08.2021)

The Rural Consultant was contacted to provide specialist advice on the retention and occupation on the caravan for the purposes of staff accommodation being located in the countryside. The response is set out below:

- *Having now accessed the submitted information, I would agree that the continued operation of this registered animal charity on this site does require the sort of on-site attendance that a mobile home provides, for the proper care of the relatively large number and variety of animals involved, out of normal working hours (as well as day-time first aid point/shelter etc. for staff/volunteers).*
- *Given the nature of the use, it seems unlikely that the charity would meet the usual financial tests that are applied to proposals for permanent rural workers' dwellings; however I note that the mobile home proposal is linked specifically to this specific charity and to the temporary period sought for the charity's use of the site. The applicant has confirmed (para 4.4 of the submitted Statement) willingness to accept an appropriate condition to this effect.*

6.7 Environment Agency – Initially the EA raised no objection on the ground that the development did not fall within their remit (29.04.2021). However, due to on-going deliveries of hardcore the EA has cited various concerns namely burning and lorries entering the site and depositing illegal waste and following numerous visits to the site now raise strong objections to the ongoing nature of works onsite. The EA has liaised directly with the applicant and requested Waste Transfer notes, however at the time of writing this report, this information was not forthcoming and EA is considering serving a Section 34 Notice. The notice gives the applicant 7 days to respond and if no response, this amounts to an offence under EPA and the applicant could potentially be issued with a fixed penalty notice.

6.8 KCC Archaeologist No objection (28.04.2021)

6.9 Natural England – No objection (11.05.2021)

6.10 Kent Police – No objection (14.05.2021)

6.11 Landscape Officer (23.08.2021) *No landscape design and management/maintenance proposals are provided therefore there is not much to comment on. However, I note KCC Ecology's comments and concur regarding concerns about the clearance of possible/probable habitats and vegetation of value.*

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



- 7.1 Site location plan 001, Single field shelter 003, Double field shelter 004, Details (Fence and Gates) 017, Proposed Block Plan 012, Proposed Plan 015, Proposed Plan 016, Proposed Elevations 018

## 8. APPRAISAL

### Principle of Development

- 8.1 The site lies within the countryside and was undeveloped land before the application development was commenced. There are both local and national policies that restrict development in the countryside. Policy ST3 of the Local Plan sets out that *“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.”*
- 8.2 In this regard, while it is recognised that the site lies outside of any defined built up area boundary, paragraph 85 of the NPPF (2021), stipulates that decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In this respect, I acknowledge that an Animal Rescue Centre is a service that is not offered elsewhere in the Borough and that the keeping of animals is generally considered consistent with a use generally dependant on a countryside setting and for this reason a degree of flexibility can be warranted here. However, I am concerned that no site-specific reasoned justification has been provided to demonstrate the need for this particular site and that alternative more suitable sites were not reasonably explored. In this regard Policy DM3 (b) of the Local Plan (adopted 2017) stipulates that in the countryside, for all proposals, the Council should, *‘firstly consider the appropriate re-use of existing buildings or the development of other previously developed land, unless such sites are not available or it is demonstrated that a particular location is necessary to support the needs of rural communities or the active and sustainable management of the countryside’*.
- 8.3 Notwithstanding this, even if the Council were to consider the location of the Animal Rescue Centre outside of any defined built up boundary acceptable without firstly providing clear evidence that more suitable sites were reasonably explored as per the provisions of Policy DM3 set out above, the thread running through both the Local Plan (adopted 2017) and the NPPF (2021) remains firmly that this should only be in such circumstances where the development represents sustainable development, and respects the character, appearance, intrinsic value and importantly, the ecological/biodiversity of the countryside while also being consistent with all other material considerations.
- 8.4 Members will be aware that this is a retrospective application and throughout the course of the application concerns have been raised regarding the environmental impacts of the development namely burning of waste and lorries entering the site and depositing illegal hardcore waste and the loss of existing habitat and biodiversity.
- 8.5 In this respect the NPPF paragraph 8 (c) set outs the objectives of achieving sustainable development whereby the Environmental Objective is, *‘to protect and enhance our natural, built and historic environment; including making effective use of land, improving*

*biodiversity...'. Paragraph 174 (b) states that decisions should 'recognise the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland', furthermore paragraph 180 of the NPPF, Habitats and biodiversity, states that when determining planning applications, local planning authorities should apply the following principles:*

*a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;*

*c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists;*

8.6 At local level, Policy DM28 of the Local Plan (adopted) 2017, sets out that development proposals will conserve, enhance and extend biodiversity, provide for net gains in biodiversity and where possible, minimise any adverse impacts and compensate where impacts cannot be mitigated. In matters involving biodiversity, specialist advice was sought from KCC Ecology/Biodiversity and their response is set out below:

- *The design and access statement notes "The site was extremely overgrown, covered in rubbish and was an unusable piece of land". We highlight that the land was likely rich in biodiversity, utilised by protected species and had high 'ecosystem service' value (the importance of which is referenced in paragraph 174 of the NPPF 2021). The amount of habitat clearance shown within the design and access statement is significant and completely unacceptable.*
- *The site is also directly bordered ancient woodland. As such, we highlight paragraph 180 of the NPPF, which states "development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists". Natural England and the Forestry Commission's standing advice states that there should be a minimum of 15m between development footprint and ancient woodland. The submitted plans show that this has not been adhered to. Of note, this ancient woodland area is also a designated Local Wildlife Site; 'Hawes Wood and Wardwell Wood, Newington.'*
- *We highlight that indirect impacts associated with the operational development can contribute to the ancient woodland deterioration, such as light and noise pollution, surface runoff, the spread of invasive species and recreational disturbance. It is unclear how these operational effects have been/will be mitigated for.*
- *Under section 40 of the NERC Act (2006), and paragraph 180 of the NPPF (2021), biodiversity must be maintained and enhanced through the planning system. Additionally, in alignment with paragraph 180 of the NPPF 2021, the implementation of enhancements for biodiversity should be encouraged.*
- *Taking the ecological baseline from the April 2020 aerial imagery, it is clear that the proposed development is not/cannot achieve biodiversity net-gain.*

- 8.7 In addition, Members will note that temporary boundary screening in the form of white plastic sheeting has been erected along the woodland edge secured to a number of the trees using wooden blocks and nails. The Council's Tree Consultant advises that the nailing of structures to the existing boundary trees is likely to have caused stem damage, thus exposing the trees to decay/disease. As a result of the unsympathetic built development along the southern boundary, these indirect impacts would be considered to result in a deterioration of ancient woodland. The proximity of the proposal to the ancient woodland boundary means that it is impossible to achieve a 15m minimum semi-natural buffer to mitigate those impacts. It is also clear that the laying of the hardcore road and siting of the outbuildings, containers and storage of materials, all within the 15m buffer, has resulted in the destruction of a significant area of semi natural habitat next to the ancient woodland, contrary to paragraph 175c of the current NPPF.
- 8.8 As such, based upon the above, while the siting of an animal rescue centre located in the countryside outside of any defined built-up area boundary is broadly acceptable on the basis that the keeping of animals is generally reflective of a use associated with the countryside, any benefit to the community is significantly out-weighted by the serious harm caused by continual site erosion, biodiversity loss and habitat destruction, lack of measures to safeguard the adjacent ancient woodland/Local Wildlife Site and no habitat restoration/compensation plans.
- 8.9 Therefore, for the reasons set out above, the development is contrary to policies ST3, DM3 and DM28 of the Local Plan (2017) and fails to represent sustainable development within the countryside contrary to paragraphs 8, 174, 175c and 180 of the National Planning Policy Framework 2021. The proposal therefore directly conflicts with both local and national policy and is therefore wholly unacceptable in principle.

### **Visual impact**

- 8.10 The site identifies as an Area of High Landscape Value Swale Level, 'Iwade Arable Farmlands', where under the assessment within the Swale Landscape Character and Biodiversity Appraisal (June 2010), the landscape condition of the area is described as 'Poor' and the sensitivity is 'Moderate'.
- 8.11 Policy DM3 of the Local Plan 2017, supports development in the countryside where: *The design and layout is sympathetic to the rural location and appropriate to their context.*
- 8.12 In addition, policy DM24 of the Local Plan (2017 adopted) sets out that permission will only be granted subject to:
- *Conservation and enhancement of the landscape being demonstrated*
  - *Avoidance, minimisation and mitigation of adverse landscaping 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 Swale level landscape value of the designation concerned.*
- 8.13 The site has been the subject of continual harmful development over a period of approximately 6 months without suitable management plans in place to help lessen or mitigate against harm to the countryside, including any adverse visual impacts. At the time of writing this report, large lorries of hardcore were being delivered with rubble piled high

throughout the site at various locations to provide foundations to hardstanding areas, where all previously grassed areas have been lost with no adequate landscaping proposals in place. The following statement provided by the applicant is also of concern, '*The current car parking area (left hand side of the sanctuary through the entrance gates) holds a maximum of approx. 10 cars, however the site allows ample space (on right hand side) for an overflow car park so there would be no parking of vehicles outside of the site, in the lane etc.* Members will note the area referred to by the applicant is currently undeveloped land. As such, the development has and continues too, result in the significant erosion of the site detrimental to the character and appearance and visual amenities of the area, to the detriment of this countryside setting with no safeguarding mitigations in measures in place.

- 8.14 In addition, all development in and around the site and most specifically, the development along the southern boundary immediately adjacent to Hawes Wood located within the 15m Ancient Woodland buffer zone, represents ad-hoc development of structures of all shapes and sizes, including residential paraphernalia which collectively appear unjustified and incongruous within the countryside and which falls to sympathise with this countryside setting, to the detriment of the appearance and intrinsic character and beauty of the surrounding countryside.

### **Residential Amenity**

- 8.15 Policy DM14 of the Local Plan 2017 supports development that would, '*...cause no significant harm to amenity and other sensitive uses or areas*'.
- 8.16 Planning decisions should ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development.
- 8.17 Members will note that a Noise Assessment Report was not submitted with the application and Members will be aware that the Council's Environmental Response Team received complaints from nearby residents alleging noise nuisance following commencement of the use and occupation of the application site as an animal sanctuary. The complaints required investigation under the statutory nuisance provisions of the Environmental Protection Act 1990 to determine whether the impact of the use and resulting noise generated, constituted a statutory nuisance. A range of parameters are considered in determining whether a noise amounts to a statutory nuisance and these include how often it happens, how long it goes on for, the time of day/night it occurs as well as the level or volume of the noise, all of which were thoroughly investigated.
- 8.18 The evidence gathered from officers' site visits and from precision sound recording equipment confirmed the occurrence of noise at a level amounting to a statutory nuisance. Notices in respect of statutory noise nuisance arising from a generator supplying electricity to the site and from the animals being accommodated there have been served on the applicant. This requires the applicant to take all steps necessary to abate the nuisance and prohibit a recurrence of the same.
- 8.19 The Noise Abatement Notices were served on 6<sup>th</sup> July 2021. One Abatement order related to the noise escape from a generator (21 day notice) and the second from noise issues for the keeping of animals (90 day notice). Swale Environmental Response Team

acknowledge that steps have been taken to relocate the generator, and that some animals have been relocated to an alternative location within the site, however noise concerns remain ongoing and Swales Environmental Health Team are not satisfied that noise escape has been reasonably addressed and that investigations are still ongoing.

- 8.20 Therefore, it is reasonable to conclude that at the time of writing this report, the intended use of the site gives rise to unacceptable levels of noise and disturbance to the residents of adjacent dwellings, in a manner harmful to residential amenity to a degree that adversely impacts upon current living conditions. This amounts to a reason for refusal.

### Highways

- 8.21 In terms of access, the existing site access has been utilised and the application includes the construction of a vehicle path leading through the site to a mid-point where it aligns with the static caravan. Members will note that KCC Highways raised no objection to the access point noting that both the gates and the fences are set back far enough to have no concerns over obstructing visibility or highways movement.
- 8.22 Turning to the future opening of the site to the public, minimal information has been provided. The applicant states the intention is to open the site to the public 1 or 2 days a month to non-paying guests focusing primarily on the benefits education and to mental health. The proposed open days would intensify the use of the access and potentially increase the parking requirements at the site and KCC Highways notes that improvements to the site are needed before visitors can attend these open days and, requires more details as to what these plans would be.
- 8.23 The application has advised that *'each open day will allow for an extra 10 additional trips to the sanctuary; The entrance gates will be open so visiting cars do not cause any congestion in the lane; Any visitors will have allocated time slots again to allow for a controlled, steady flow of vehicles; The current car parking area (left hand side of the sanctuary through the entrance gates) holds a maximum of approx. 10 cars, however the site allows ample space (on right hand side) for an overflow car park so there would be no parking of vehicles outside of the site, in the lane etc.* At the time of writing the report I am yet to hear back from KCC Highways, however in my opinion sufficient information has not been provided to reasonably assess the potential impact upon the highway network. I will update Members at the meeting.
- 8.24 In addition and notwithstanding the above, Policy DM3 1(f) of the Local Plan (2017) stipulates that development should, *'avoid scales of traffic generation incompatible with the rural character of the area, having regard to Policy DM 6 and Policy DM26'*
- 8.25 In this regard, Iwade Road is an attractive designated Rural Lane and is the location of the main site access. Policy DM 26, Local Plan (2017) states *'planning permission will not be granted for development that would either physically, or as a result of traffic levels, significantly harm the character of rural lanes...development proposals should have particular regard to their landscape, amenity, biodiversity and historic or archaeological importance.*
- 8.26 The application site is located, as the crow flies, roughly 1.17km away from the built up area of Newington to the south, approximately 1km to the built up area of Lower Halstow to the north and approximately 2.7km to Iwade to the northeast. Public transport links in this area

are poor, there is a train station in Newington and few bus links in and around the built up area boundaries but none of which service the site. Iwade Road leading to and from the application site is mainly unlit consisting of a single-track rural lane and is without pedestrian footways. Given the distances to the above mentioned services and the lack of public transport and footways close to the site, future visitors would be highly dependent on the use of private car and mobility buses due to the unsustainable location of the site. Opening the site to the public two days per month '*for an extra 10 additional trips to the sanctuary*', would ultimately result in a significant uplift of traffic levels due to the sites unsustainable location, to a manner harmful to the character, appearance, and intrinsic visual amenity value of this rural lane and countryside location contrary to policies ST3, DM3 (1e) and DM26 of the (adopted) Local Plan (adopted 2017).

- 8.27 In terms of parking provision, Swale Borough Parking Standards 2020 for 'Sui Generis' such as this, requires 1 space per 2 staff with visitors to be assessed individually. In this instance, 10 spaces are provided however no parking plan, details of staff levels or confirmed visitor numbers have been provided and therefore I am unable to assess whether they meet the minimum space standards with a sufficient distance of manoeuvrability retained between bays.
- 8.28 No electric vehicle spaces are proposed nor is there suitable cycle parking facilities and given the unsustainable location of the site, these measures should be implemented into the design to comply with policies DM6(3e) and DM7 (3).

### **Biodiversity**

- 8.29 As noted above, there is evidence to suggest the site was previously of high ecological interest, including a pond, scrub, grassland and woodland. Almost all of this natural habitat has been lost to the development and, as raised by KCC Biodiversity, has likely resulted in a breach of wildlife legislation.
- 8.30 At local level, Policy ST1 11.(f) of the Local Plan (adopted 2017) states that development should '....avoid significant harm to biodiversity or, when not possible, adequately mitigating it, or, as a last resort compensating for it with off-site action' and Policy DM28 of the Local Plan (adopted) 2017, sets out that development proposals will conserve, enhance and extend biodiversity, provide for net gains in biodiversity and where possible, minimise any adverse impacts and compensate where impacts cannot be mitigated.
- 8.31 In matters involving biodiversity, specialist advice was sought from KCC Ecology/Biodiversity and their response was fully assessed under 'Principle of Development', as set out above. In addition, specialist opinion was also sought from the Council's Tree Consultant with their concerns discussed in full within paragraph 8.9. It was concluded that the level of biodiversity loss surrounding the ongoing site erosion, biodiversity loss and habitat destruction, lack of measures to safeguard the adjacent ancient woodland/Local Wildlife Site and without any habitat restoration/compensation plans, the harm caused to biodiversity is so destructive that the application should be refused on these grounds.
- 8.32 Members are referred to Biodiversity net gain provision under policy 24 of the emerging draft plan. The Council has commenced work on a Local Plan Review and this document was subject to a Borough-wide consultation earlier in 2021. Work on this document is on-going and therefore significant weight cannot be afforded to its policies in the determination of

planning application in this instance. Notwithstanding this, no net gains have been reasonably demonstrated throughout the course of this application.

## **9. CONCLUSION**

- 9.1 As such, for the reasons set out above, I consider the adverse impacts of the development would significantly and demonstrably outweigh the benefits, when assessed against the Local Plan (adopted 2017) and NPPF July 2021 and the other material planning considerations, and for this reason I therefore recommend that planning permission is refused for this application.

## **10. RECOMMENDATION**

REFUSE for the following reasons:

- 1) The animal rescue sanctuary comprising of mobile field shelters, small animal houses, shipping containers for storage, associated boundary treatment and stationing of a mobile caravan for use as a residential unit for staff, by reason of its countryside setting and location (in part) within the 15m buffer area of Hawes Woods, ad-hoc nature of development and associated inappropriate use of hardcore materials, causes significant and demonstrable harm to this countryside setting by reason of its failure to conserve, enhance or extend biodiversity, provide for net gains in biodiversity or minimise any adverse impacts or compensate where impacts cannot be mitigated. As such, the proposal does not accord with the core principle of sustainable development within the countryside and is harmful to its intrinsic value, visual amenity, key characteristics, sensitivity, landscape setting, functioning and purposes of the countryside, contrary to policies ST3, DM3, DM24, DM28 and DM29 of Bearing Fruits 2031: The Swale Borough Local Plan, and to the provisions of paragraphs 8, 10, 11, 12, 152, 153, 174 and 180 and 182 of the National Planning Policy Framework (NPPF) 2021
- 2) The fencing and gates to the front of the site amount to prominent, obtrusive and visually harmful development, which cause substantial harm to the rural character and appearance of the streetscene and the character of the rural area, contrary to Policy DM14 of the Swale Borough Local Plan 2017.
- 3) The significant number and location of structures and buildings at the site give rise to a cluttered appearance, with consequent harm to the character and appearance of the area, contrary to Policy DM14 of the Swale Borough Local Plan 2017.
- 4) The development, as a result of the cumulative constant daily noise from animals including cockerels, geese, sheep, cattle and dogs being accommodated there, results in an unacceptable level of noise and disturbance to the residents of adjacent dwellings in a manner harmful to, and adversely impacts upon current living conditions. The application is therefore contrary to Policy DM14 of the "Bearing Fruits 2031: The Swale Borough Local Plan 2017".
- 5) Insufficient information is provided for the Council to reasonably assess whether the proposed use (open days) would, by reason of the sites unstainable location, result in the significant uplift in traffic levels, to a manner harmful to the character, appearance, and intrinsic visual amenity value of a designated Rural Lane (Iwade Road) and countryside setting as a whole, contrary to policies ST3, DM3 (1e) and DM26 of the (adopted) Local Plan (adopted 2017).

### **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.



