

<b>2.6 REFERENCE NO - 21/506750/FULL</b>			
<b>APPLICATION PROPOSAL</b>			
Erection of 2 no. 3 bedroom detached houses with associated parking.			
<b>ADDRESS</b> Land Adjacent To Eastchurch Village Hall Warden Road Eastchurch Kent ME12 4EJ			
<b>RECOMMENDATION</b> Grant subject to securing a SAMMS payment and subject to conditions .			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>			
The principle of development of this site has been established through the outline permission granted on appeal and subsequent reserved matters approval for a dwelling. The proposal for two dwellings would contribute towards the Borough's housing land supply at a time when the Council does not have a five-year supply of housing land. Impacts upon the character and appearance of the area have been reasonably considered, and the proposed layout is considered to integrate successfully with the character of the area and would adequately safeguard the amenities of neighbours, whilst providing a good standard of amenity for future occupiers. In addition, the proposed layout, parking and access arrangements are acceptable in highway terms. As such, subject to securing of SAMMS contributions, the application is recommend for approval.			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
Objection from Eastchurch Parish Council			
<b>WARD</b> Sheppey East	<b>PARISH/TOWN</b> Eastchurch	<b>COUNCIL</b>	<b>APPLICANT</b> KJN Developments Ltd <b>AGENT</b> Woodstock Associates
<b>DECISION DUE DATE</b> 15/02/22		<b>PUBLICITY EXPIRY DATE</b> 22/03/22	
<b>RELEVANT PLANNING PERMISSION</b>			
<b>Ref No.</b>	<b>Proposal</b>	<b>Decision</b>	<b>Determination Date</b>
16/501159/OUT	Outline (All matters reserved) - Single dwelling and associated residential curtilage	Refused (overturn at planning committee) (allowed on appeal- APP/V2255/W/17 /3168745).	09.09.2016
20/501538/REM	Approval of Reserved Matters for access, appearance, landscaping, layout and scale following application 16/501159/OUT - Outline (All matters reserved) Single dwelling and associated residential curtilage (allowed on appeal- APP/V2255/W/17/3168745).	Approved	29.07.2020
SW/78/0926	Erection of a detached	Refused	18.10.1978

	bungalow		
SW/76/0666	Erection of a detached bungalow	Refused	22.09.1976
SW/90/0051	Erection of lofted bungalow	Refused	
<b>APPEAL HISTORY</b>			
17/500059/REF	Outline (All matters reserved) - Single dwelling and associated residential curtilage	Appeal Allowed and or Notice Quashed	15.09.2017

## 1. DESCRIPTION OF SITE

- 1.1 The application site is located on the western side of Warden Road. It is located just outside of the defined built-up area boundary of Eastchurch which ends at the southern boundary of the site.
- 1.2 The site is a relatively small area of undeveloped land, recently cleared and is surrounded by an overgrown hedge containing a number of trees. When viewed from Warden Road the site is heavily screened by existing planting along the boundary. The site measures approximately 23m north to south and 32m east to west and there is an existing access point located centrally which provides direct access onto Warden Road.
- 1.3 Immediately to the rear there is a small plot of overgrown undeveloped land. This site has been subject of a recent refusal for 'Outline application for the erection of 4 no. dwellings (Access and Layout being sought (Ref:21/505921/OUT dated 4<sup>th</sup> February 2022)). The reasons for refusal were based on the undesirable form of backland development on land outside of the village boundaries, the impact on the setting of the church (the site is in a more open position to the rear of the church), lack of visibility splays, contamination and noise impacts (part of the site directly faces the rear of the village hall), lack of an ecological assessment, and failure to provide a SAMMS payment.
- 1.4 The application site is bounded on the north and west sides by a further site which includes rough ground and an unmade track from Warden Road. This too is surrounded by an overgrown hedgerow and open countryside, in the form of paddocks, lie beyond this. The village hall lies immediately to the south of the site.
- 1.5 To the south east of the application site, approximately 85m away is Eastchurch Church of England Primary School. Eastchurch village centre which includes local amenities lies approximately 160m to the south and there is a maintained footpath which runs from the front of the application site directly into the village centre.
- 1.6 A small group of three Listed Buildings are located approximately (110m) south of the site. These comprise of the Grade I listed Church of All Saints and, the Old Rectory associated to the church and 2 Warden Road both listed Grade II.

## 2. PROPOSAL

- 2.1 This application seeks permission for the erection of 2no. detached four bedroom dwellings (the fourth bedroom annotated as office space) with associated parking, amenity space and landscaping.
- 2.2 The built form of development would be two storeys in height, with an eaves height of 4m and a maximum ridge height of 7.5m. During the course of this application the ridge height has been reduced by 700mm to address visual impact and heritage considerations. The first floor is partially built into the proposed eaves and the first floor side windows are designed as half dormer windows to allow for sufficient head room.
- 2.3 The dwellings are rectangular in shape, set back from Warden Road by 9m at the closest point and measure 7.5m by 9.6m in footprint with an additional small single storey front and rear element. Plot A would be set 2m from the shared boundary with Eastchurch Village Hall and Plot B incorporates a 1.8m set back from the northern boundary at the closest point. A distance of 3.6m would be retained between properties.
- 2.4 The dwellings incorporate gable ends and a combination of stock brickwork, render and cedar cladding is proposed for the external finishes and the roof would be finished in Rivendale slates. Windows and doors to be finished in grey UPVC.
- 2.5 The existing access from Warden Road would be retained and permeable hardstanding to the front of the site is proposed to accommodate two car parking spaces per property.

## 3. PLANNING CONSTRAINTS

- 3.1 In the countryside, outside of the defined built-up area boundaries.
- 3.2 Within relative proximity to Listed Buildings - These comprise of the Grade I listed Church of All Saints and, the Old Rectory associated to the church and 2 Warden Road both listed Grade II.

## 4. POLICY AND CONSIDERATIONS

### 4.1 The National Planning Policy Framework (NPPF) 2021

Chapter 2: Sustainable Development; Chapter 6: Building a strong, competitive economy; Chapter 9: Promoting sustainable transport; Chapter 11: Making effective use of land; Chapter 12: Achieving well-designed places; Chapter 14 :Meeting the challenge of climate change, flooding and coastal change; Chapter 15: Conserving and enhancing the natural environment; Chapter 16: Conserving and enhancing the historic environment

### 4.2 Bearing Fruits 2031: The Swale Borough adopted Local Plan 2017

Policy ST1 Delivering sustainable development; Policy ST3 The Swale settlement strategy; Policy ST6 The Isle of Sheppey area strategy; Policy CT2 Promoting sustainable transport; Policy CP3 Delivering a wide choice of high quality homes; Policy CP4 Requiring good design; Policy CP8 Conserving and enhancing the historic environment; Policy DM7 Vehicle parking; Policy DM14 General development criteria;

Policy DM19 Sustainable design and construction; DM21 Water Flooding and Drainage; DM28 Biodiversity and geological conservation; DM32 Development involving listed buildings.

4.3 Swale Parking Standards SPD 2020

## 5. LOCAL REPRESENTATIONS

5.1 None received.

## 6. CONSULTATIONS

6.1 Eastchurch Parish Council - object to this application as excessive development outside the built confines and raise concern regarding the potential for noise impacts (which is assumed to be from the village hall). State that only one dwelling was permitted at appeal.

6.2 KCC Highways (10.01.2022) Initially sought amendments to the application which included amendments to both pedestrian and vehicle visibility splays. The car parking allocation and dimensions were found to be in accordance with Swales SPD 2020 and a request to enlarge the cycle storage although this can be secured by condition.

Revised plans received 18<sup>th</sup> February 2022 – KCC Highways is satisfied with the revised drawings – subject to conditions (21.02.2022)

6.3 Natural England – No objection, subject to SAMMS payment and an Appropriate Assessment

6.4 Environmental Health – No objection, subject to condition (02.02.2022)

6.5 KCC Biodiversity Officer – Raise some concern that the development would not achieve biodiversity net-gain. However, if the Council views the application favourably a condition/informative is proposed to require enhancements. (07.02.2022)

## 7. BACKGROUND PAPERS AND PLANS

7.1 Existing plans: RE/21/158.01R

7.2 Revised plans: RE/21/158.01A, RE/21/158.02A, RE/21/158.03A, RE/21/158.04A  
RE/21/158.05A, RE/21/158.06A

## 8. APPRAISAL

Principle of Development

8.1 The key issue in determining this application is whether the proposed new dwellings are acceptable as a matter of principle, and furthermore if the circumstances involved outweigh any harm to the character of the countryside or to heritage assets.

8.2 The Council's 2017 adopted Local Plan states that development proposals will be supported in accordance with the settlement hierarchy which is set in Policy ST3. This identifies settlements in descending order of sustainability and Eastchurch, which is the nearest settlement to this site, is a tier 4 settlement identified as a Rural Local service centre. RLS centres can generally accommodate growth provided it relates well to the settlement pattern and the character of the surrounding countryside. The supporting text states that Eastchurch village is open in landscape terms, less accessible, and can accommodate only minor development for local needs.

8.3 The site itself is located within tier 6, in the open countryside, outside any defined settlement boundary and therefore where development will not normally be permitted. Policy ST3 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.'*

8.4 However, the Council does not have a five-year supply of housing land, which then engages para. 11 of the NPPF. The outcome of the Housing Delivery Test is that Swale now has an identifiable 4.6 years supply of housing land. In this regard, Paragraph 11 (d) of the NPPF sets out the presumption in favour of sustainable development. It states that where relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the whole framework, or where specific policies in the framework indicate development should be restricted.

8.5 The site already benefits from planning permission for a dwelling, allowed on appeal. The appeal inspector concluded that the site was close to the village centre, did not make a strong contribution to the open countryside, and that a dwelling would not cause harm to the character or appearance of the countryside. The principle of development on the site has therefore been established. The key question in applying paragraph 11(d) of the NPPF is whether two dwellings on the site would be materially harmful, to the extent that such harm would significantly and demonstrably outweigh the benefits of allowing another dwelling on the site.

#### Visual Impact

8.6 The development would incorporate a 2 detached dwellings of identical footprint and with parking to the frontage. When travelling north along Warden Road away from the application site, on the eastern side of the highway is existing residential development. Further to this, immediately to the south of the application site the environment becomes built up in nature. Therefore, although to the north and west of the application site the setting is largely rural this does not solely define the characteristics of the surrounding area in my view.

8.7 In this regard, the Planning Inspectorate found the following (APP/V2255/W/17/3168745):

- *It appears to me therefore that the division between the developed part of the village and the countryside is not clear-cut at this point. The appeal site is, furthermore, set apart from and makes no particularly strong contribution to the open countryside. Indeed, due to its size and shape, and domestic-looking boundary hedge, it relates more closely in appearance to the adjacent developed part of the settlement than to the countryside. It would, as a result, be hard to categorise the appeal site as rural or unspoilt in nature or its boundary with the Village Hall the natural end to development on the north side of Warden Road.*
- *Consequently, it appears to me that notwithstanding its location immediately outside the built-up boundary, the creation of a dwelling on the site, subject to appropriate appearance and detailing, would not have a harmful effect on the character or appearance of the countryside. It also appears to me that, as every case should be dealt with on its own merits, and given the particular circumstances of the site, its development would not be likely to set a precedent for the expansion of the village envelope elsewhere or ribbon development along Warden Road.*

8.8 Turning to scale and site density, each dwelling would have a length of 9.5m, with a maximum width of 7.5m and a height of 7.5m. In terms of footprint, the dwellings would be comparable to the scale of the two storey dwellings further south along Warden Road. Furthermore, the dwelling sizes are compliant with National Space Standards and can accommodate sufficiently sized amenity spaces and off road parking for two cars without any compromise.

8.9 The reserved matters approval for the dwelling allowed on appeal was for a single detached building of 7m in height, and 14m in width. It was designed partially with rooms in the roofspace, but also with a large two storey gable feature running front to rear. Whilst the proposal for two dwellings would subdivide the plot, I do not consider the built form to be substantially greater than the development as approved, and I note that the immediate surrounding area is varied in character as is typical with organic village development.

8.10 As such, I consider the overall scale to be reasonable and does not constitute an over development of the site that would cause unacceptable harm to the character and appearance of the countryside or edge of village environment, particularly when considered in the context of the fallback position for the approved single dwelling on the site.

#### Potential impact upon heritage assets

8.11 The site is located to the north of three listed buildings with varying distances of between 85m and 110m to these heritage assets. The key setting is identified as the Grade I Church of All Saints, which is at 100m distance. The church tower is prominent in local views and the development could have some impact on the setting of these views. However, there is intervening development between the site and the church (the village hall and 2 x dwellings) and I do not consider that the proposal would have a materially greater impact on any longer-range views than the approved scheme for a single dwelling. Such harm would be less than substantial and whilst this still carries significant weight (given the requirement under S66 of the Town and Country Planning (Listed

Buildings and Conservation Areas) Act 1990 for a local authority to have special regard to preserving listed buildings and their setting), I consider the harm to be at a low level even though this relates to a Grade I listed building, and not materially greater than the impacts that would arise from the existing approved development.

- 8.12 The NPPF states that less than substantial harm should be weighed against the public benefits of the proposal, which in this instance would relate to the delivery of housing. Given the low level of harm identified and the fallback position on the site, I consider the development to be acceptable in relation to heritage impacts and in accordance with Policy DM32 of the Local Plan.

#### Residential Amenity

- 8.13 The application site is bounded to the south by the village hall with no other immediate residential properties nearby so no neighbouring residents will be negatively impacted by the proposal.
- 8.14 Due to the nature of the development it is also necessary to consider the amenities of future occupiers. The internal spaces are generous and meet nationally set standards. Additionally, the properties would have a functional amenity rear garden which would meet and exceed the recommended 10 metres depth for new build development.
- 8.15 Some concern has been raised regarding noise from the village hall. I note that the closest dwelling would not have any habitable windows in the flank wall adjacent to the hall, and that whilst the development would bring one of the dwellings closer to the boundary than the approval for the single dwelling, I do not consider this would significantly increase the likelihood of noise impacts from the village hall compared with the approved scheme. The Council's Environmental Health officer recommends that a condition is added to require suitable internal noise levels are achieved through sound insulation and noise reduction measures, and I consider this to be an appropriate measure to mitigate any impacts.

#### Highways, Access, Parking

- 8.16 In terms of access and highway safety, no changes are proposed to the existing site entrance. At the request from KCC Highways revised plans have been received which sufficiently address pedestrian and vehicle visibility and this aspect of the proposal does not present with any immediate concern.
- 8.17 With regard to parking, vehicle parking would be located to the front forecourt which is a common design approach. Two car parking spaces are proposed per dwelling. Swale Parking Standards states that a dwelling with 3 or more bedrooms has a requirement of 2 accessible spaces per dwelling with a minimum size requirement of 2.5m x 5m. As such, the minimal standards have been achieved and therefore sufficient in this regard.

#### Landscaping

- 8.18 The layout plan includes the provision / retention of landscaping on all boundaries of the site, the details of which can be secured by condition.

## Ecology/SAMMS

- 8.19 Since this application would result in a net increase in residential accommodation on the site, impacts to the SPA and Ramsar sites may occur from increased recreational disturbance. An HRA/AA is appended below. Due to the scale of the development there is no scope to provide on site mitigation and therefore off site mitigation is required by means of developer contributions at the rate of £253.88 per dwelling. The agent has provided written confirmation that the applicant would be willing to pay this mitigation fee before issuing the decision notice.

## 9. CONCLUSION

- 9.1 The principle of development of this site is established under the appeal decision and subsequent reserved matters approval. It would contribute towards the Borough's housing land supply at a time when the Council does not have a five-year supply of housing land. Impacts upon the character and appearance of the area have been reasonably considered, and the proposed layout is considered to integrate successfully with the character of the area and would adequately safeguard the amenities of neighbours, whilst providing a good standard of amenity for future occupiers. Any harm to the setting of the Grade I Church would be limited by distance, intervening buildings and landscaping, and not materially greater than the impact of the dwelling already approved on the site. In addition, the proposed layout, parking and access arrangements are acceptable in highway terms. I do not consider that the proposal for two dwellings to replace the approved single dwelling would cause any substantial harm. In applying paragraph 11(d) of the NPPF, I would conclude that the benefits of the scheme in providing additional housing, albeit limited to one dwelling, would significantly and demonstrably outweigh any harm, and that any harm to the setting of the church would be very limited and would not provide a clear reason to justify refusal of the scheme. As such, subject to securing of SAMMS contributions, the application is recommended for approval.

## 10. RECOMMENDATION

That planning permission is GRANTED Subject to securing an appropriate SAMMS payment and subject to the following conditions:

### CONDITIONS to include

1. The development which this permission relates shall be begun not later than the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town & Country Planning Act 1990

2. The development hereby approved shall be carried out in accordance with drawing title number(s): RE/21/158.01A, RE/21/158.02A, RE/21/158.03A, RE/21/158.04A RE/21/158.05A, RE/21/158.06A

Reason: For the avoidance of doubt, and in the interests of proper planning.

3. The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those specified on the application form



and drawings Numbers RE/21/158.01A, RE/21/158.02A, RE/21/158.03A, RE/21/158.04A RE/21/158.05A, RE/21/158.06A terms of type, colour and texture

Reason: In the interests of the character and appearance of the area, and visual protection of this countryside setting,

4. The dwelling(s) hereby approved shall be constructed and tested to achieve the following measure:

At least a 50% reduction in Dwelling Emission Rate compared to the Target Emission Rates as required under Part L1A of the Building Regulations 2013 (as amended);

No development shall take place until details of the measures to be undertaken to secure compliance with this condition have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: In the interest of promoting energy efficiency and sustainable development.

5. The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the dwellings shall not be occupied unless the notice for the dwellings of the potential consumption of water per person per day required by the Building Regulations 2015 (As amended) has been given to the Building Control Inspector (internal or external).

Reason: In the interests of water conservation and sustainability.

6. No development shall take place, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- (a) Routing of construction and delivery vehicles to / from site
- (b) Parking and turning areas for construction and delivery vehicles and site personnel
- (c) Timing of deliveries
- (d) Provision of wheel washing facilities

Reason: In the interests of the amenities of the area and highway safety and convenience.

7. Prior to the occupation of the development hereby permitted, the access and vehicle crossing shall be completed as shown on the submitted plan, ref, RE/21/158.01A and maintained thereafter.

Reason: To ensure that a satisfactory means of access is provided for the site.

8. The access shall be constructed using a bound surface material for the first 5 metres of the access from the edge of the highway, and with drainage measures to prevent the discharge of surface water onto the highway.

Reason: To secure a satisfactory form of development, in the interests of highway safety.

9. No dwelling shall be occupied until the vehicle visibility splays as shown on the submitted drawing (ref RE/21/158.01A), with no obstructions over 0.6m above carriageway level within the splays, have been completed in accordance with the approved plans. The splays shall be maintained as such thereafter.

Reason: In the interests of highway safety.

10. No dwelling shall be occupied until 2metres x 2metres pedestrian visibility splays behind the footway on both sides of the access with no obstructions over 0.6m above footway level within the splays, have been completed in accordance with the approved plans. The splays shall be maintained as such thereafter.

Reason: In the interests of highway safety.

11. The area shown on the submitted plan Ref: RE/21/158.01A as car parking space shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of any of the dwellings hereby permitted.

Reason: Development without adequate provision for the parking or garaging of cars is likely to lead to car parking inconvenient to other road users

12. No development beyond the construction of foundations shall take place until details of Electric Vehicle charging points for each dwelling have been submitted to and approved in writing by the local planning authority. The charging points shall be provided to Mode 3 standard (providing up to 7kw) and SMART (enabling Wifi connection).(Approved models are shown on the Office for Low Emission Vehicles Homecharge Scheme approved chargepoint model list:

<https://www.gov.uk/government/publications/electric-vehicle-homecharge-scheme-approved-chargepoint-model-list>)

Reason: In the interest of promoting energy efficiency and sustainable development

13. Notwithstanding the approved plans, details of secure, covered cycle parking facilities shall be submitted to and approved in writing by the local planning authority and completed on site prior to first occupation of the dwellings, and shall be continuously available and retained for the life of the development hereby approved.

Reason: To provide adequate bicycle storage in the interests of sustainable transport provision

14. Prior to the commencement of the development hereby approved, a scheme to demonstrate that the internal noise levels within the residential units and the external noise levels in relevant amenity areas will conform to the standard identified by BS 8233 2014, Sound Insulation and Noise Reduction for Buildings - Code of Practice, shall be submitted to and approved in writing by the Local Planning Authority. The work specified in the approved scheme shall then be carried out in accordance with the approved details prior to occupation of the

premises and be retained thereafter.

Reason: In the interests of residential amenity.

15. No development approved by this permission shall be commenced prior to a contaminated land assessment (and associated remediation strategy if relevant), being submitted to and approved in writing by the Local Planning Authority, comprising:
  - a) A desk study and conceptual model, based on the historical uses of the site and proposed end-uses, and professional opinion as to whether further investigative works are required. A site investigation strategy, based on the results of the desk study, shall be approved by the Local Planning Authority prior to any intrusive investigations commencing on site.
  - b) An investigation, including relevant soil, soil gas, surface and groundwater sampling, carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology.
  - c) A site investigation report detailing all investigative works and sampling on site, together with the results of analyses, risk assessment to any receptors and a proposed remediation strategy which shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment, including any controlled waters.

Before any part or agreed phase of the development is occupied, all remediation works identified in the contaminated land assessment and approved by the Local Planning Authority shall be carried out in full (or in phases as agreed in writing by the Local Planning Authority) on site under a quality assured scheme to demonstrate compliance with the proposed methodology and best practice guidance. If, during the works, contamination is encountered which has not previously been identified, then the additional contamination shall be fully assessed and an appropriate remediation scheme agreed with the Local Planning Authority.

Upon completion of the works identified in the contaminated land assessment, and before any part or agreed phase of the development is occupied, a closure report shall be submitted which shall include details of the proposed remediation works with quality assurance certificates to show that the works have been carried out in accordance with the approved methodology. Details of any post-remediation sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.

Reason: In the interests of residential amenity.

16. No construction activities shall take place, other than between 0730 to 1800 hours Monday to Friday and 0800 to 1300 hours Saturday, with no working activities on Sunday or Bank Holiday.

Reason: In the interest of residential amenity.

17. No development beyond the construction of foundations shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting

species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

18. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed in writing with the Local Planning Authority

Reason: In the interest of the visual amenities of the area.

19. Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with tree or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reason: In the interest of visual amenities of the area and encouraging wildlife and biodiversity.

20. No development beyond the construction of foundations shall take place until a scheme of biodiversity enhancement measures have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details prior to first occupation of any dwelling and thereafter retained.

Reason: In the interests of encouraging wildlife and biodiversity.

## **INFORMATIVES**

The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended (section 1), it is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this Act. Breeding bird habitat is present on the application site and assumed to contain nesting birds between 1st March and 31st August, unless a recent survey has been undertaken by a competent ecologist and has shown that nesting birds are not present

### **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.

