

3.2 REFERENCE NO - 20/503636/FULL**APPLICATION PROPOSAL**

Change of use of part of the ground floor of the former Public House to provide 1 no. flexible Retail space (A1, A3 or A4). Change of use of the rest of former Public House and erection of a two-storey rear extension to provide 5 no. 2 bed, 14 no. 1 bed and 1 no. studio apartment. Erection of a two-storey block of flats consisting of 7 no. 2 bed and 1 no. 1 bed apartments. With associated parking, access arrangements and landscaping.

ADDRESS The Former Kemsley Arms Public House The Square Sittingbourne Kent ME10 2SL

RECOMMENDATION Refusal

SUMMARY OF REASONS FOR RECOMMENDATION

The viability of the proposed development has been assessed as part of the consideration of the application, with the evidence tested by the Council's independent viability consultant. In summary the independent assessment undertaken has concluded that the proposed scheme would generate a negative residual land value, with or without S.106 contributions. If the requested developer contributions of £171,975.94 were sought (noting this omits the affordable housing commuted sum), this generates a residual land value of -£818,218.60. If the exercise is repeated with no S.106 contributions sought, then the negative residual land value reduces to -£631,804. The independent consultant has advised that this would not be considered to be an economically viable level of land value as required by the National Planning Policy Framework. On the basis of local and national policies in relation to viability I give this weight in the decision-making process.

When assessed against paragraph 11 of the NPPF the main benefits of the scheme would be considered to derive from the provision of additional residential dwellings in a sustainable location and the contribution to the Council's 5-year housing land supply. As set out above the proposal is considered to meet the environmental objectives with moderate weight attached to this, and there would be a degree of economic benefits from the creation of a retail unit with employment opportunities, and short term economic benefits during construction. There would also be some benefit arising from the redevelopment of the Kemsley Arms building.

However, these benefits have to be weighed against the failure of the proposal to provide contributions towards services and infrastructure, in respect of primary and secondary education; community learning; youth services; libraries; social care; NHS healthcare; highway improvements and refuse bins. The failure to provide contributions for these facilities and the significant harm that this would cause should in my view be given very significant weight in the decision-making process. The proposal would also fail to meet the aims of policy ST5 (Sittingbourne Area Strategy), specifically criteria 7 which seeks to "*reduce levels of deprivation in the most deprived wards and facilitate as required, increased capacity in infrastructure and services*" from the lack of developer contributions. The harm that would be caused in this case would be substantial and the resultant impact of the development upon specifically identified local services and infrastructure significant and unacceptable. The proposal is therefore considered to fail to meet the social objectives of the NPPF which is a considered to result in significant harm.

For the reasons given above the development is not considered to meet the social objective of sustainable development, and this issue is fundamental and would significantly and demonstrably outweigh the identified benefits. The proposal is considered unacceptable and

should be refused for the reasons outlined above.		
REASON FOR REFERRAL TO COMMITTEE Called in by Councillor Carnell, and Councillor Dendor		
WARD Kemsley	PARISH/TOWN COUNCIL	APPLICANT UK Land Investors Ltd AGENT Planit Wright
DECISION DUE DATE 03/03/21	PUBLICITY EXPIRY DATE 14/07/21	CASE OFFICER Corinna Griffiths

Planning History

14/502848/FULL

Change of use of upper floors and new rear extension to former public house to create 7 residential units (6 x1 bed and 1 x 2 bed), together with the change of use of ground floor to 346 sq m flexible retail use, (classes A1, A3 or A4). Development of additional 11 residential units (8 x 2 bed and 3 x 3 bed) to the rear of the Kemsley Arms, together with associated landscape and access arrangements, including 18 car parking spaces

Pending Decision

This application has a committee resolution for approval, however the S.106 agreement was never signed and therefore the decision was not issued.

SW/08/0178

Scheme for provision of garden, parking and smoking area.

Grant of Conditional PP Decision Date: 08.04.2008

SW/87/0275

EXTENSION TO KITCHEN OMISSION OF GARDEN BAR ALTERATIONS TO CAR PARK AND PROVISION OF EXTERNAL BLINDS (AMENDMENTS TO SW/86/1040)

Approved pre 1990 Decision Date: 27.04.1987

SW/86/1040

EXTENSION ALTERATION AND CHANGE OF USE FROM CLUB TO PUBLIC HOUSE

Approved pre 1990 Decision Date: 29.10.1986

1. DESCRIPTION OF SITE

- 1.1 The application site comprises the former Kemsley Arms public house and its associated parking area.
- 1.2 The Kemsley Arms is a large, detached building situated on The Square at the junction of Grovehurst Avenue, Ridham Avenue and Menin Road on a site measuring approximately 0.4 hectares. It is a good example of 18th century Queen Anne revivalist architecture, with keystones above tall windows; a central clock tower; and large, curved mouldings on the frontage.
- 1.3 Due to local land levels, it is highly prominent in views when approaching Kemsley from Grovehurst Road to the south, and it is an important local building in terms of its design,

placement and history (having been constructed as a central social building when Kemsley was originally built as a 'garden village' for mill workers).

- 1.4 The building is specifically referred to in Nikolaus Pevsner's "The Buildings of England," which is considered an important text on architectural history:

"A windswept model village almost on the marshes, reached up an avenue of trees. Formal layout, especially the square, with a prim neo-Queen Anne social centre on its N side designed more to be the "house" of the village than a building of the institute class. Neo-Georgian tendencies... Built in 1925-6 by Adams, Thomson & Fry. That means the young Maxwell Fry. It is a surprise to find the future partner of Gropius here so vigorously swimming against the tide of international modernism."

- 1.5 Due to its design and local historical importance the Council considers the building to be a non-designated heritage asset.
- 1.6 The building was originally used as a social club, but planning permission was granted for use as a public house in 1986. It ceased to be used as a pub several years ago and operated as an Indian restaurant until it closed permanently approximately 9 years ago (in 2013). Since that time the building has been vacant and boarded up, and is falling into disrepair. The roof of the building is open in some places with weather damage present in both the exterior and interior of the building.
- 1.7 An access road to the east of the building is shared with the village hall and nursery and leads to a large parking area to the rear of the pub. Beyond that are the newer houses on Monarch Drive, which are set down from the Kemsley Arms due to changing land levels.
- 1.8 The existing building included a large single storey rear extension which is annotated on the existing plans. However, at the time of officer site visits the rear extension had been removed.

2. PROPOSAL

- 2.1 The proposal seeks the redevelopment of the site, including the redevelopment and extension of the former Public House. The site would be redeveloped with two detached buildings, with associated parking and landscaping.
- 2.2 For the existing building on site comprising the former public house, at ground floor level a flexible retail space is proposed (use class E, formally use classes A1, A3 or A4), this would be 212sqm. The remainder of the building would be for residential use, and includes a rear two storey extension to provide 20 residential flats (1 x studio apartment; 14 x 1 bed flats; 5 x 2 bed flats). The proposals include an open air internal courtyard in the centre of the building with partially glazed walls to allow light to the centre of the building, and there is access at ground floor level for amenity space.
- 2.3 The existing façade of the main building would be retained, with a part single storey and part two storey rear extension. The extensions would have a mansard style roof with accommodation in the roofspace, and would be lower in height than the main building. The extension includes staggered elements in both height (single / two storey) and in

elevation treatment. The existing entrance into the building on the front (south) elevation is retained and would serve the flexible retail unit. A new entrance is proposed on the side (eastern) elevation to serve the residential flats. This is referred to as Block 1 on the plans.

- 2.4 The proposal includes the erection of a two storey building to the rear, which would contain 8 flats (1 x 1 bed flats; and 7 x 2 bed apartments). The building would be T shaped, and would have a mansard style roof with accommodation in the roofspace. The projecting element on the front elevation would be at first floor level only supported by pillars, with undercroft parking beneath. This is referred to as Block 2 on the plans
- 2.5 The existing Kemsley Arms building would be finished in white render, with clay roof tiles (as per the existing). The proposal includes additional accommodation in the roof which will be served by conservation style rooflights on the front elevation. In terms of materials for the extension to the Kemsley Arms building, and Block 2, this would be finished in a mix of white render and brickwork (with contrasting brickwork elements). The mansard roof and dormer windows would be finished in a grey metal standing seam roof. Windows would be a mix of timber, metal UPVC framed windows across the site.
- 2.6 In terms of parking, a few areas are proposed on the site as follows;
- 7 spaces to the front of Block 1 for retail use.
 - 20 spaces in between Block 1 & 2 for residential use
 - 10 spaces (8 residential and 2 visitor) to the east of Block 2 and to the rear of the village hall
 - 5 spaces for Nursery (to the east of Block 2 parking area)
 - 2 visitor spaces to the east of Block 1
 - 13 shared spaces are proposed to the front of the Village Hall, the plan shows a split of 5 retail spaces; 4 village hall spaces; and 4 visitor spaces. (This includes an extension to the existing parking area to the front of the village hall to create an additional 6 spaces).
- 2.7 Therefore the proposal includes 12 spaces for retail use; 28 spaces for residential use; 8 visitor spaces; 4 for the village hall; and 5 for the nursery.
- 2.8 As part of the proposals, the parking area to the front of the village hall on Ridham Avenue would be extended eastwards with the area extending to allow a further 6 parking spaces.

3. SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Site Area (ha)			
Approximate Ridge Height (m)	10.2m	Block 1: 10.2m Block 2 (new): 8.2m	n/a
Approximate Eaves Height (m)	7.1m	Block 1: 7.1m Block 2 (new): 5.5m	n/a
Approximate Depth (m)	27.8m	Block 1: 28.7m Block 2 (new): 15m	Block 1: +0.9m

Approximate Width (m)	30m	Block 1: 30m Block 2 (new): 22m	n/a
No. of Storeys	2	2	n/a
Parking Spaces	Exact number unknown (approximately 30)	57	Approx + 27
No. of Residential Units	0	28	+ 28
No. of Affordable Units	0	0	0

4. PLANNING CONSTRAINTS

- 4.1 The application site lies within the built up area, and is not subject to any designation under the adopted Local Plan.

5. POLICY AND CONSIDERATIONS

5.1 The National Planning Policy Framework (NPPF) 2021

- 5.2 Chapter 2: Sustainable Development; Chapter 4: Decision-making; Chapter 6: Building a strong, competitive economy; Chapter 8: Promoting healthy and safe communities; 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

5.3 The National Planning Policy Guidance – Viability

5.4 Bearing Fruits 2031: The Swale Borough adopted Local Plan 2017

Policy ST1 Delivering sustainable development; ST3: The Swale settlement strategy; ST5: The Sittingbourne area strategy; CP1: Building a strong, competitive economy; Policy CT2 Promoting sustainable transport; CP3: Delivering a wide choice of high quality homes; CP4: Requiring good design; CP6: Community facilities and services to meet local needs; Policy CP7 Conserving and enhancing the natural environment; Policy CP8 Conserving and enhancing the historic environment; DM7: Vehicle parking; DM8: Affordable housing; DM14: General development criteria; DM16: Alterations and extensions; DM17 Open space, sports and recreation provision; DM19: Sustainable design and construction ; DM21 Water, Flooding and Drainage; DM28 Biodiversity and geological conservation; DM29 Woodland, Trees and Hedges; IMP1 (Implementation and Delivery Plan).

Supplementary Planning Documents/Guidance:

5.5 Swale Parking Standards SPD 2020

5.6 The Conversion of Buildings into Flats and Houses in Multiple Occupation SPG

6. LOCAL REPRESENTATIONS

6.1 **The Sittingbourne Society** – No objection. We hope the provision of affordable housing will help to relieve pressure on greenfield sites on the town periphery.

6.2 **Comments on behalf of Kemsley Community Trust (Board of Trustees)** – Objection

Kemsley Community Trust has a long term lease from Swale Borough Council for the Village Hall and the grounds including the Car Park adjacent to the Kemsley Arms. The redevelopment of the Kemsley Arms is welcomed as the existing building has long been derelict. The development will tidy up the area and make use of a "brown field" site.

The Village Hall must retain at least the same amount of parking space as it currently enjoys. Car parking for large events at the hall often exceed the available space and the Trustees do not want to increase the possibility of confrontations with local residents. The hall car park spaces must be strictly for patrons of the hall.

The proposed plans show refuse facilities next to the hall. These must be sited away from the hall because of smells, pests, and waste overspill.

Access is required for fuel deliveries so refuse facilities cannot be sited next to the hall's oil store. Access is required to the hall side door for deliveries of equipment and supplies for functions.

In normal times, the hall is frequently hired out for functions that may have discos or other noisy activities. The Trust needs the income from such events but do not want friction with the new development residents over noise levels. There is scope for improvements to the hall which will have noise reduction benefits, however the Trust have no funds available for this

7. CONSULTATIONS

7.1 **National Highways (formerly Highways England)** – raise no objection, subject to a Grampian condition which sets out that no dwellings shall be occupied until the opening to the public of a Roads Investment Strategy scheme at M2 Junction 5 and Housing Infrastructure Fund scheme at A249 Grovehurst junction.

7.2 13/05/21: *"We will be concerned with proposals that have the potential to impact on the safe and efficient operation of the Strategic Road Network (SRN), in this case the A249 and M2 J5. Highways England previous noted that there is no spare capacity at M2 Junction 5 or at A249 Grovehurst Junction, any additional development would likely have detrimental impacts on the safe operations of the junctions. Highways England had previously recommended that there be no occupation of the sites prior to the completion of the junction improvements at the M2 J5 and Key Street Junction (A249). A HEPR was issued with this statement (copy attached).*

Ms Wright has provided further details in the form of a Transport Statement and additional spreadsheet modelling based upon trip generation and trip distribution. The TS notes that 3 vehicles are likely to travel through the M2 J5 within the AM Peak period. We neither agree or disagree with the figures. The fact remains that there is simply no further capacity in M2J5 and A249 Grovehurst junctions to accept any increase in traffic

Consequently, as agreed by Swale and Kent Council, we are obliged to require the recommended Grampian condition be attached to any planning permissions that would generate any additional traffic.”

- 7.3 **Natural England** - Requests that a contribution be secured in respect of the SAMMS Tariff.
- 7.4 *Since this application will result in a net increase in residential accommodation, impacts to the coastal Special Protection Area(s) and Ramsar Site(s) may result from increased recreational disturbance. Your authority has measures in place to manage these potential impacts through the agreed strategic solution which we consider to be ecologically sound. Subject to the appropriate financial contribution being secured, Natural England is satisfied that the proposal will mitigate against the potential recreational impacts of the development on the site(s).*
- 7.5 **Southern Water** – raise no objection subject to a condition regarding measures to protect the public sewer / water mains to be agreed with Southern Water, and an informative regarding foul sewerage and surface water disposal.
- 7.6 **KCC Biodiversity** – No objection subject to conditions (precautionary mitigation strategy for bats; ecological enhancements) and an informative re breeding birds.
- 7.7 *“The Preliminary Ecological Appraisal assessed that there was potential for roosting bats and breeding birds to be present within the building and subsequently a bat emergence survey was carried out on the 2nd May 2021 and assessed that it was unlikely that there was bat roosting within the building.*

However we acknowledge that the building was assessed as low potential and we accept that no further surveys are required prior to determination of the planning application. The original PEA stated the following: Most of the roof has no timber sarking or roofing felt, with the tiles simply sitting on rafters and battens; however the most western section has roofing felt below the tiles, where crevice-dwelling bats could roost. Therefore to address this concern that bats could still roost within the western section of the building we advise that we would expect a precautionary mitigation strategy to be implemented if planning permission is granted when doing works on the roof – particularly the western section.

We advise that if planning permission is granted a precautionary mitigation strategy is submitted as a condition of planning permission – suggested wording at the end of the report.”

- 7.8 **KCC Economic Development** – Request the following contributions (1 July 2021):

	Per ‘applicable’ flat (x14)	Total	Project
Primary	£1700.00	£23,800.00	Towards a new 2FE Primary School construction in Sittingbourne
Secondary Education	£1294.00	£18,116.00	Towards the new Secondary School construction upon land off Quinton Road, NW

			Sittingbourne policy MU1
Secondary Land	£658.93	£9,225.02	Towards the new Secondary school site acquisition upon land off Quinton Road, NW Sittingbourne

'Applicable' excludes: 1 bed units of less than 56 sqm GIA – the Architect has advised 14 flats are below this threshold, and the remainder (14) are above this threshold.

	Per Dwelling (x28)	Total	Project
Community Learning	£16.42	£459.76	Contributions requested towards additional equipment and resources at Sittingbourne Adult Education Centre
Youth Service	£65.50	£1834.00	Contributions requested towards additional resources for the Youth service in Sittingbourne
Library Bookstock	£55.45	£1552.60	Contributions requested towards additional services, resources, and stock at Sittingbourne Library
Social Care	£146.88	£4112.64	Towards Specialist care accommodation in Swale District
Waste	£183.67	£5142.76	Towards additional capacity at the HWRC & WTS in Sittingbourne
Broadband:	<p>Condition: Before development commences details shall be submitted for the installation of fixed telecommunication infrastructure and High-Speed Fibre Optic (minimal internal speed of 1000mbps) connections to multi point destinations and all buildings including residential, commercial and community. The infrastructure installed in accordance with the approved details during the construction of the development, capable of connection to commercial broadband providers and maintained in accordance with approved details.</p> <p>Reason: To provide high quality digital infrastructure in new developments as required by paragraph 114 NPPF.</p>		

7.9 **KCC Flood and Water Management** – No objection subject to conditions (detailed sustainable surface water drainage scheme & verification report) and advisories

7.10 *“Having reviewed the information submitted we are generally satisfied that the design proposed, namely an attenuated system with a restricted discharge to sewer, does not increase the risk of flooding and as such have no objection to the proposal with the following advisories and recommended conditions. As the site is in it's entirety impermeable we would expect for the total red line site area to be considered within the drainage calculations not just the areas comprise a new extension, new building and reconstructed hard standings and as such we will expect for this to be demonstrated as part of the detailed design. We would expect that this will require additional attenuation to be provided but believe sufficient space exists on site for this to be accommodated.”*

7.11 **KCC Highways and Transportation** - No objections to the proposals in respect of highway matters subject to conditions being attached to any permission granted, and

securing the calculated S106 highway contribution of £2,657 per dwelling towards the Grovehurst HIF recovery (30/06/21)

7.12 The plans have been amended and further information provided during the course of the application to address comments relating to parking spaces; land ownership; layby extension.

7.13 Parking and Layby extension

“I consider that the parking provision indicated on the submitted drawings to cater for the development proposals are generally in accordance with the relevant parking standards, as each flat would be provided with 1 space, and the retail space for A1 and A4 use would largely be met by the provision in front of the building and the other public spaces within the highway. It is also recognised that these spaces would historically have been available for customers of the public house previously.

The residential parking proposed at the rear of the village hall does appear to reduce the amount of parking that the village hall currently has use of. The historic imagery available suggests that around 6 allocated village hall spaces would be lost, but the proposals do include the creation of 6 spaces alongside the existing on-highway layby parking directly in front of the hall. Whilst I have no objection to this, I would note that 5 of these spaces, and the associated footway diversion and loss of 2 trees, will be constructed on land outside of the existing highway boundary. This area appears to be owned by a third party but will need to be adopted by the Highway Authority to secure public access for the footway in particular, so confirmation must be provided that the developer would have the agreement of the third party landowner to facilitate this

It must also be recognised that these 6 additional layby spaces will not be for the exclusive use of the village hall, unlike the 6 spaces they are now relinquishing at the rear. The public parking within the highway boundary in front of both buildings does provide flexibility of use between the different retail and community demands, and makes efficient use of spaces given the different times of activity between these uses. It should also be recognised that residents of the flats may also use these spaces if car ownership exceeds their allocated provision within the site itself. It is hoped this would not occur, based on the proposed residential provision meeting the Borough Council's parking standards, which are in turn derived from evidenced car ownership levels

The updated application form has now confirmed that all landowners within the application site have been served the appropriate notice of the development proposals, although I should still point out for the Applicant's information that the proposed parking layby extension will be required for adoption as public highway in order to be constructed. This will need to be progressed through a Section 278 Agreement with Kent County Council, as part of this land is already adopted highway, and will therefore need control of any third party land within those proposed highway works. On this subject, the adjacent footway to the layby is shown as being extended to match the revised parking arrangement, and I would want to see the width maintained at the wider provision along the full extent of these works, rather than providing the short narrow section at the end of the layby. It appears that the red line of the application site boundary has anticipated the wider provision, so the footway width should be increase there to follow that line.”

7.14 Layout

Within the site, the swept path analysis of the refuse vehicle demonstrates that it would overrun the planted areas either side of the entrance into the Block 1 parking area. Whilst further overrunning is indicated across the visitor space at the rear of the village hall, I note that the position of these spaces have been amended on the layout plans 20.20.PL1001 and 20.20.PL14 C, and would be clear of the vehicle's tracking.

7.15 Grampian condition & developer contribution

“As part of the HIF grant that will deliver highway improvements to the Grovehurst/A249 roundabout, planning approval will require the imposition of a Grampian condition to occupation of the new housing until the contract for the construction of the HIF improvement scheme has been awarded. In addition, as the HIF is provided as forward funding, developments are expected to contribute towards the recovery of the costs. Contributions will therefore be sought from this development in line with other developments. This is £2,657 per dwelling”

7.16 **Kent Police** – raise no objection. The layout and external design of the proposals have been discussed between the applicant & Kent Police, Kent Police advise the layout and external design is suitable. Request a condition regarding secure design to address physical security and access control.

7.17 **NHS CCG** – Requests a contribution of £16,920 towards refurbishment, reconfiguration and/or extension of one of the following: Grovehurst Surgery, Iwade Health Centre, Milton Regis Medical Partnership, The Meads Medical Practice and Sheppey NHS Healthcare Centre.

7.18 **MKIP Environmental Health** – No objection, subject to conditions regarding window glazing; dust control; construction hours and EV charging.

7.19 With specific respect to noise: *“The applicant submitted a Noise Impact Assessment Report and as a result of my concerns about the close proximity of the proposed development to the neighbouring Community Centre and my subsequent discussions with the author of the Report, I consider the following condition to be appropriate to this application:*

Window glazing installed on the building facades of the two development blocks shown on Drawing Number 20.20.PL14C forming part of this application shall be to the glazing configuration specified below:

- *Block 1 façade facing the Community Centre and front and side facades of*
- *Block 2 that has a view of the Community Centre: 6mm glass – 16mm Argon filled air gap – 6.8mm laminated glass: Sound Reduction 40dB Rw (34dB_{Rw} + C_{tr})”*

7.20 **SBC Affordable Housing Manager** (06/10/21): Raises no objection subject to securing a commuted sum of £40,000 towards off-site affordable housing.

7.21 02/09/20: *As per Planning Policy DM8 and because this development site is located in Kemsley, Sittingbourne, 10% of the total number of homes on this site should be delivered as affordable housing to provide **3 affordable homes**. I note from the*

application documents that the affordable homes offered are two one-bedroom flats and one two bedroom flat, and I can confirm that I am happy to accept these units.

Due to the low number of affordable homes required and high tenure split for Affordable/Social Rent Tenure (90%) I recommend that all three of these homes be provided as Affordable/Social rent tenure. As previously raised, it is likely to be difficult for the developer to secure a housing association on this site due to the very low number of affordable homes required. However, I will be more than happy to assist with this when the time arises.

- 7.22 Officer note: After the initial comments and during the application process, the applicants submitted a viability assessment setting out details of vacant building credit; outlining that developer contributions including affordable housing could not be afforded

The external viability consultant was asked to consider the above, and consider whether the scheme could provide on-site affordable housing; and consider an appropriate sum for off-site affordable housing contribution.

- 7.23 Affordable Housing Managers comment 06/10/21: *Thank you for sending me the commuted sum information for this scheme. I broadly agree with the proposed development valuation results within the report and which appear to be similar for these property types across the whole of the Sittingbourne area. I have also taken account of other similar applications where a commuted sum has been offered for these unit types in Sittingbourne over the last couple of years, and on balance am willing to accept the offer of **£40,000 as a total commuted sum** in lieu of for two affordable flats on this particular scheme.*

8. APPLICANTS SUPPORTING COMMENTS

- 8.1 *“Whilst, officers consider the implications of a non-viable scheme, please kindly take into account that The Kemsley Arms has now been closed and not in use for over 8 years. The enhancements that UKLI are proposing with our financial investment, will contribute to the village and The Kemsley community with a positive impact on the local economy. In addition to creating much needed local jobs and apprenticeships during the construction stage, which KCC intend to support. Completion of the development will also create long term job opportunities for local residents both within the retail sector and the property management sector for the residential properties.*
- 8.2 *Once the scheme is completed, it will produce a much needed continuous income for Swale Council, taking into account business rates and council tax for many generations to come.*
- 8.3 *I am positive that officers will take into consideration that the scheme has had the support of ward members and the whole community of Kemsley and continues to have their support, since the application was submitted. To date there have been no objections for our proposal. Kemsley, I am sure you will agree, is not the garden of England, and both public and private investment is required in the area in order to bring the village back to the setting it once enjoyed and to create a community that will thrive again whilst attracting further public and private investment.*

- 8.4 *I am certain that officers will also be aware that the scheme was without question viable at the start and changes in construction costs together with long delays due to lockdown, has resulted in the project becoming unviable. This is a factor that is beyond anyone's control and has resulted in an unviable scheme. Since the last viability report was submitted, interest rates have also increased, resulting the scheme being even more unviable.*
- 8.5 *I am certain that officers will give this application their deepest thoughts and understand the implications to the alternative of not approving this scheme and the impact on both for the community of Kemsley and Swale Borough Council, and I trust that your intention and vision is to find a solution in order to enhance the whole village and not allow any further decline to this community.”*

9. APPRAISAL

Viability, Developer Contributions and Affordable Housing

- 9.1 The use of planning obligations to address the impact of development and ensure they are acceptable in planning terms is well established in legislation and national, regional, and local planning policy. The NPPF and Swale Borough Council's Local Plan both recognise the importance of addressing the impacts of development and having effective mitigation in place to ensure that development can be accommodated sustainably.
- 9.2 The Council is keen to ensure that the new development (particularly much-needed housing) continues to be delivered, as detailed in its Local Plan and the emerging Local Plan Review. The Local Plan not only sets out plans for the delivery of development but also provides the basis on which development can be delivered sustainably, and in a way that respects environmental limits and resident's quality of life.
- 9.3 In line with this, the adopted Local Plan (Bearing Fruits) sets out requirements to ensure that new development is delivered sustainably, and the Council's Developer Contributions SPD (2009) details requirements required from new development to mitigate impacts associated with development. Policies CP 6 and IMP 1 seek to deliver infrastructure requirements and other facilities. The requested S.106 contributions are from KCC Economic Development (primary education; secondary education & land; community learning, youth services; libraries; social care and waste); KCC Highways; NHS CCG; SBC affordable housing and refuse bins, and any legal agreement would also need to include the SPA Mitigation (SAMMS payment) and total **£216,369.92**. A breakdown of these contributions and draft heads of terms (from January 2022) are included below;
- 9.4 Draft S.106 Heads of Terms:
- | | |
|--|-------------------|
| • NHS CCG | Total; £16,920 |
| • KCC: Primary Education (£1700 per applicable flat) | Total; £23,800 |
| • KCC; Secondary Education (£1294 per applicable flat) | Total; £18,116.00 |
| • KCC; Secondary Land (£658.93 per applicable flat) | Total; £9225.02 |
| • KCC; Community Learning (£16.42 per dwelling) | Total; £459.76 |
| • KCC; Youth Service (£65.50 per dwelling) | Total; £1834.00 |

• KCC; Library Bookstock (£55.45 per dwelling)	Total; £1552.60
• KCC; Social Care (£146.88 per dwelling)	Total; £4112.64
• KCC; Waste (£183.67 per dwelling)	Total; £5142.76
• KCC Highways (£2,657 per dwelling)	Total: £74,396
• SPA Mitigation (SAMMS) £253.83 per dwelling.	Total £7107.24
• SBC Affordable Housing Commuted Sum (or two affordable units on site)	Total: £40,000
• SBC Refuse Bins – the figure for flats is £189.64 per flat.	Total £5309.92
• SBC's Monitoring fee	Total £8393.98
• Soft Landscaping (for areas beyond the site boundary)	
	Total £216,369.92

Viability Information and Independent Assessment

- 9.5 A viability assessment was submitted with the application in April 2021, the initial assessment indicated that the scheme would be unviable with the provision of S.106 contributions and affordable housing.
- 9.6 The Council had the supporting viability information independently assessed, and as part of this assessment was instructed to consider an appropriate affordable housing commuted sum. The independent financial viability assessment was issued on 18th May 2021 (with revisions on 6th August 2021 and 22nd September 2021) following discussion and provision of further information regarding viability. The final version of the assessment dated 22nd September concluded the following:

“8.0 Vacant Building Credit. *We agree with the applicant that application of the VBC leads to the existing vacant floor space being equivalent to 20% of the proposed development, thus the maximum amount of Affordable Housing that could be provided, irrespective of the financial viability addressed in this report, is 8% or 2.24 homes.*

9.0. Analysis of FVA Outputs and appropriate Sensitivity Analysis.

9.1. *We have considered:*

9.2. *The proposed scheme of 28 apartments and a commercial space with 28 homes for market sale and S106 contributions of £176,273.60 and additional off site affordable housing contributions of £40,000, generates a residual land value of £400,411 (which equates to 100% of the benchmark value). This would be considered to be an economically viable level of land value as required by the National Planning Policy Framework. It notes sites need to deliver ‘a minimum return at which it is considered a reasonable landowner would be willing to sell.’ We further note in the recently published Viability Testing Local Plans document it is necessary “for the scheme to provide a competitive return to the developer to ensure the development takes place and generates a land value sufficient to persuade the landowner to sell the land.”*

10.0 Conclusions

10.1. *The FVA indicates the scheme as proposed, based on current known costs and values generates a residual land value of £400,411 assuming the provision of 28*

homes for market sale and delivering total S106 payments including for affordable housing of £216,274.

10.2. This is a level, which can be considered to deliver a minimum return to the landowner, in comparison with the established convention of consideration of current benchmark values.

10.3. It is therefore our reasonable judgment that a viable scheme is one which contains 26 homes for market sale also delivering total S106 payments including for affordable housing of £216,274.”

9.7 The independent advice received (22nd September 2021) set out that a viable scheme was one that included the provision of S106 contributions of £176,273.60 and additional off site affordable housing commuted sum of £40,000, and officers sought to agree the above heads of terms with the applicants/agent to progress the application

9.8 In February 2022, the applicant advised they were going to submit updated build cost information for consideration, and confirmed that they did not agree to the requested S.106 heads of terms. This further information which included an addendum to the original viability report, together with a building cost assessment was provided in March 2022.

9.9 This information was independently assessed, and a report was provided dated 22nd March which advised the following conclusions:

*“The FVA indicates the scheme as proposed, based on current known costs and values generates a residual land value of **£400,978** assuming the provision of 28 homes for market sale and delivering total S106 payments including for affordable housing of £132,000.*

This is a level, which can be considered to deliver a minimum return to the landowner, in comparison with the established convention of consideration of current benchmark values.

It is therefore our reasonable judgment that a viable scheme is one which contains 26 homes for market sale also delivering total S106 payments including for affordable housing of £132,000.”

9.10 Following the receipt of the independent viability advice dated 22nd March, a meeting was held between officers and the applicants on 14th April 2022 to discuss viability. It was agreed in the meeting that officers will not seek the affordable housing commuted sum noting the viability constraints, and have reduced the monitoring fee in half. At the meeting, the applicants were advised, that there are financial contributions that the Council need to secure in order to mitigate the impact of the development on services and infrastructure. These relate to the contributions from KCC Economic Development, KCC Highways, NHS CCG, SPA Mitigation: SBC Refuse Bins. If these are not provided, officers would look to refuse the application. The updated Heads of Terms (dated 14th April 2022) seeking total contribution of £171,975.94 was sent to the applicants to be agreed

9.11 S106 Heads of Terms:

- NHS CCG

Total; £16,920

• KCC: Primary Education	Total; £23,800
• KCC; Secondary Education	Total; £18,116
• KCC; Secondary Land	Total; £9225.02
• KCC; Community Learning	Total; £459.76
• KCC; Youth Service	Total; £1834.00
• KCC; Library Bookstock	Total; £1552.60
• KCC; Social Care	Total; £4112.64
• KCC; Waste	Total; £5142.76
• KCC Highways (£2,657 per dwelling)	Total; £74,396
• SPA Mitigation (SAMMS) £253.83 per dwelling.	Total; £7107.24
• SBC Refuse Bins £189.64 per flat	Total; £5309.92
• SBC's Monitoring fee	Total; £4000
• Soft Landscaping (for areas beyond the site boundary)	
	Total £171,975.94

9.12 In May 2022, the applicant submitted further information with a document called 'Planning Stage – Order of Costs' for the Kemsley Arms proposals. The applicants put forward that the scheme would not be able to provide any S.106 developer contributions.

9.13 This information was independently assessed, and a report was provided dated 20th May which concluded as follows s:

“4.0 Revised FVA.

We have considered (please see attached FVA):

The proposed scheme of 28 apartments and a commercial space with 28 homes for market sale and total S106 contributions of £132,000, generates a residual land value of -£774,886. This would not be considered to be an economically viable level of land value as required by the National Planning Policy Framework. It notes sites need to deliver 'a minimum return at which it is considered a reasonable landowner would be willing to sell.' We further note in the recently published Viability Testing Local Plans document it is necessary “for the scheme to provide a competitive return to the developer to ensure the development takes place and generates a land value sufficient to persuade the landowner to sell the land.”

If the exercise is repeated with no S106 costs being allowed the negative residual land value reduces to -£631,804. Still a level that would not be viewed as viable.

Finally, we have reduced the profit level to achieve a residual land value that equates to the benchmark, noting the PPG suggest a minimum return of 15% of GDV. The benchmark land value equalling the residual value (a viable scheme) with no S106 contributions requires a profit level of just 2.25%. This would not attract external funding or be at a credible level in normal circumstances

5.0 Conclusions

The FVA indicates the scheme as proposed, based on current known costs and values generates a residual land value of -£631,804. assuming the provision of 28 homes for market sale and delivering no S106 payments or affordable housing.

This is a level, which cannot be considered to deliver a minimum return to the landowner, in comparison with the established convention of consideration of current benchmark values, without considerable additional risk being taken.

It is therefore our reasonable judgment that a viable scheme is one which contains 26 homes for market sale but delivering no S106 payments or affordable housing and at considerable additional risk to the developer.”

9.14 The independent consultant has clarified the last paragraph of the conclusion, advising the following: *“The scheme, all for market sale, and with no S106 contributions generates a significantly negative land value (-£631,804). It can only be considered viable if the developer is prepared to take decisions to outperform the market:*

- *To accept a return of 2.25%, far less than the commercial rate (acceptable to banks of 20%)*
- *Build costs far less than the market rate*
- *Sales values ahead of the market*
- *Or a combination of the above”*

9.15 In summary the independent assessment undertaken has concluded that the proposed scheme would generate a negative residual land value, with or without S.106 contributions. If the requested developer contributions of £171,975.94 were sought (noting this omits the affordable housing commuted sum), generates a residual land value of -£818,218.60. If the exercise is repeated with no S.106 contributions sought, then the negative residual land value reduces to -£631,804. The independent consultant has advised that this would not be considered to be an economically viable level of land value as required by the National Planning Policy Framework. It notes sites need to deliver ‘a minimum return at which it is considered a reasonable landowner would be willing to sell.’ The independent consultant further notes in the recently published Viability Testing Local Plans document it is necessary “for the scheme to provide a competitive return to the developer to ensure the development takes place and generates a land value sufficient to persuade the landowner to sell the land.” The practical impact of this is that the negative value would be required to be absorbed within the developer’s profit margin, which is already lower than what would generally be accepted (typically 15-20%). This under normal circumstances creates significant risk that the development would not proceed

9.16 The latest heads of terms have not been agreed by the applicants.

Affordable Housing

9.17 The proposed development seeks the provision of 28 residential units. Policy DM 8 of the Local Plan states that development of 11 or more dwellings would need to provide affordable housing. The application site is located in Sittingbourne which require a 10% provision of affordable housing. Therefore a policy compliant scheme would include 3 on site affordable units.

- 9.18 Policy DM 8 continues to identify in section 5(c): *‘where an applicant can demonstrate that providing the full affordable housing provision would result in the scheme becoming unviable, a reduced requirement may be considered and will be subject to a legal agreement to ensure that full provision of affordable housing is reconsidered should land values rise prior to the commencement of development or any subsequent phases and/or an adjustment made to the tenure split’.*
- 9.19 Paragraph 58 of the National Planning Policy Framework states that: *‘It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker...’.*
- 9.20 Paragraph 64 of the National Planning Policy Framework states that: *‘To support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount.’*
- 9.21 A viability assessment was submitted with the application and also set out that vacant building credit would be applicable from the re-use of the Kemsley Arms building. The viability assessment (and subsequent assessments) have been reviewed independently. The independent assessment (September 2021) identified that vacant building credit would be applicable, and that the maximum amount of Affordable Housing that could be provided, irrespective of the financial viability, is 8% or 2.24 homes.
- 9.22 As part of the negotiations of the development, and the viability evidence put forward (up to September 2021) officers agreed an offsite contribution of £40,000 for affordable housing. As set out above, following the receipt of the independent viability advice dated 22nd March, a meeting was held between officers and the applicants on 14th April 2022 to discuss viability. It was agreed in the meeting that officers will not seek the affordable housing commuted sum noting the viability constraints. This was agreed to help bring forward development on site noting policy DM8 and the national policy context, notwithstanding this the Council advised that the Council need to secure the requested financial developer contributions in order to mitigate the impact of the development on services and infrastructure.
- 9.23 Policy CP6 of the adopted Local Plan sets out that development proposals will deliver timely infrastructure, especially those forming part of the Local Plan implementation and delivery schedule. It also sets out that where the viability of development may be threatened as a result of requirements of the Local Plan that if this financial position is demonstrated via an open book assessment then contributions should be prioritised in accordance with the Local Plan implementation and delivery plan.
- 9.24 I also note in the supporting text to Policy CP6, it is stated at paragraph 5.5.17 that *“In cases where developer contributions may need to be reduced for viability reasons, the Council will only agree to this where the advantages of proceeding with the development would significantly outweigh the disadvantages.”*
- 9.25 With regard to developer contributions, paragraphs 57 and 58 of the NPPF are relevant:

“57. Planning obligations must only be sought where they meet all of the following tests

a) necessary to make the development acceptable in planning terms;

b) directly related to the development; and

c) fairly and reasonably related in scale and kind to the development. 58. Where up-to-date policies have set out the contributions expected from development, planning applications that comply with them should be assumed to be viable. It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment at the application stage. The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including whether the plan and the viability evidence underpinning it is up to date, and any change in site circumstances since the plan was brought into force. All viability assessments, including any undertaken at the plan-making stage, should reflect the recommended approach in national planning guidance, including standardised inputs, and should be made publicly available”

9.26 As such, although both local and national policies recognise that a degree of flexibility should be applied when the viability of a scheme is threatened, the proposal in respect of the above quoted paragraph contained within the Local Plan and the requirements of paragraph 11 of the NPPF will need to be assessed in order to conclude whether the benefits of the proposal would outweigh the harm and whether the proposal would represent sustainable development. This is done in the sections below.

Principle of Development – Sustainable Development

9.27 The former Kemsley Arms site is located within the defined Built-up Area boundary of Sittingbourne. Policy ST 3 identifies Sittingbourne as the primary urban focus for growth in the Borough. Policy ST 6 of the Local Plan states within the Sittingbourne area, the town is the principal urban centre and focus for the main concentration of developments in and adjacent to the town. Criteria 5 and 7 are relevant, and set out;

“5) Create, where appropriate, mixed use and healthy communities and address disparities and housing market variances between communities north and south of the A2 through high quality design new facilities and new jobs as appropriate;

7) Reduce levels of deprivation in the most deprived wards and facilitate as required, increased capacity in infrastructure and services”

9.28 Furthermore, at 2.2.1 of the Local Plan, Kemsley is one of the areas identified as having pockets of deprivation, and para 4.3.58 outlines that ‘developments will target the reduction in deprivation within communities at Milton Regis, Kemsley and Murston whilst maintaining the qualities of the housing market in the south of the town.

9.29 Paragraph 119 of the National Planning Policy Framework states that:

“Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies

should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously developed or 'brownfield land'.

9.30 The application site is within a high tier settlement in Swale and is considered Previously Developed Land, as the site has an existing building on it with much of the site covered in hardstanding, where the principle of residential development would be supported.

9.31 Paragraph 11 of the National Planning Policy Framework (NPPF) states that plans and decisions should apply a presumption in favour of sustainable development. The Council's latest position indicates a demonstratable position of a 4.8-year housing supply and does not meet the minimum requirement of a 5-year housing land supply. In such situations, the NPPF advises that plans and decisions should apply a presumption in favour of sustainable development.

9.32 For decision making paragraph 11 states:

'd) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole'.

9.33 The Council cannot demonstrate a 5-year housing supply, therefore the 'tilted balance' applies. This changes the 'balancing exercise' which the decision-taker (the planning officer, Inspector or secretary of state) makes when deciding whether or not to grant planning permission; from a neutral balance where if the harms outweigh the benefits planning permission is usually withheld to a tilted balance where the harms should *significantly and demonstrably* outweigh the benefits for permission to be withheld.

9.34 Concerning the impact on nationally protected sites, in respect of footnote 6 of paragraph 11 of the NPPF, the application site falls within the North Kent Marshes (SPA) and Ramsar sites which are European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). In respect of the SPA, NPPF Para 177 confirms that the presumption in favour of sustainable development does not apply where the plan or project is likely to have significant effect on a habitat site, unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitat site. The section on this later in the report concludes that with appropriate mitigation through SAMMS payments there would be no impact on the integrity of the Habitat site. However in the absence of a S106 agreement to secure this sum, the proposal would be contrary to policies CP7 and DM28 of the Local Plan.

9.35 The proposal also seeks to provide a mixed use site with the provision of primarily residential units, with a flexible retail space. Policy CP 1 of the Local Plan seeks to support the building of a strong and competitive economy. The NPPF (at para 93) and

Policy CP6 of the Local Plan seek to protect existing community facilities where they are viable or can be made so, unless provision is being made elsewhere without leading to a shortfall. In the previous application (14/502848/FULL) a detailed viability assessment with regards to the costs involved in reinstating the pub use (given that the pub use ceased several years ago, and the building has been left in disrepair after being unoccupied for a number of years after the closure of the restaurant) was provided. It was considered in that application that it had been demonstrated that the continued use as a pub / community facility was not financially viable and the principle of change of use is therefore acceptable under terms of previous policy C1 of the Swale Borough Plan 2008.

- 9.36 Since the previous application, the site has remained closed and as evident from the site visit the building is in a poor state and its does not appear any investment into the building has been undertaken with the exception of the erection of secure fencing around the site boundaries. The application has, as noted above, been supported by a Financial Viability & Employment Potential Assessment which sets out the viability of the Kemsley Arms building as a Public House. It sets out that there would be high costs involved in restoring the public to be used as a Public House, and provides context of the decline of Public Houses in Sittingbourne. Taking this into account, and the number of years the building has been closed it is considered that the sites use a pub / community facility was not financially viable and the principle of change of use is therefore acceptable. The provision of a flexible retail space in part of the ground floor of the 'Block 1' building is considered to be acceptable and will ensure that some element of the employment/commercial/retail use within the building takes place to serve the local community.
- 9.37 Paragraph 8 of the NPPF explains that achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways:
- 9.38 *a) an economic objective – to help building a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;*
- 9.39 The proposal would provide a mixed-use site through the provision of both residential and flexible retail space (being 212sqm) at ground floor level. The benefits can be seen in an economic sense from the provision of an additional 212sqm of retail floor space in Kemsley which will provide employment opportunities within the area, but also from the secondary impact r.e. workers using local amenities such as shops and associated services. The introduction of residential development would have a somewhat lesser economic benefit. However, the proposal would see gains in terms of increased residential spend power within the town. Alongside this would be the short-term gains from the construction process.
- 9.40 The proposal would be considered to have a degree of economic benefit to the area supported by both local and national policy.

- 9.41 *b) a social objective – to support strong, responsive and competitive economy, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities, health, social and cultural well-being; and*
- 9.42 Policy CP 3 of the Local Plan seeks to ensure the delivery of a wide choice of homes. Paragraph 5.3.6 of the Local Plan states that the Strategic Housing Market Assessment (SHMA) indicates that the largest growth will come from single person and lone parent households. For market housing the need indicates a requirement for 7% 1-bedroom properties and 36% 2-bedroom properties. The proposed development would support the provision of additional housing in the Borough. Currently the Council cannot demonstrate a 5-year housing supply, as a result an additional buffer is required to address this shortfall. The proposal would seek the introduction of 28 market residential units. The provision of additional housing would contribute to the provision for present and future generations. The proposed units would be comprised of a studio flat; 15 x 1 bedroom units and 12 x 2 bedroom units. The provision of such units would be considered to have a social benefit in regard to the tenure, and siting as per the Council's SHMA.
- 9.43 The proposal's location within an existing built up area provides access to a range of local services within Kemsley including a primary school, convenience stores and post office/, village hall, nursery, pharmacy and doctors surgery. The site is located near to a bus route providing services to Sittingbourne, and Kemsley train station which connects to Sittingbourne and the Isle of Sheppey where there are a wider range of services.
- 9.44 The NPPF in terms of the social role that the planning system should perform also sets out the need for *“accessible services and open spaces that reflect current and future needs and support communities, health, social and cultural well-being.”* In this respect, although the site, by virtue of its location in the built up area boundary is well connected to local services, I note that the application is not seeking to provide any S.106 developer contributions on the grounds of viability (discussed further above). This includes requested contributions towards primary and secondary education; community learning; youth services; libraries; social care; NHS healthcare; highway improvements and refuse bins. In terms of these requests, KCC have specifically identified the primary and secondary schools and projects which the contributions will be put towards, the NHS has specifically identified the healthcare facility that the contribution will be put towards and the Council has specifically identified refuse bin requirements.
- 9.45 In respect of the above contributions, the development proposes 28 flats, including 12 2-bedroom flats, and therefore the likelihood of these two bedroom flats being occupied by families would be high. Therefore, it is extremely likely in my view that the development would give rise to demand upon local schools, as well as healthcare facilities and the increased use of the road network and local refuse capacity. The failure to provide contributions for these facilities and the significant harm that this would cause should in my view be given very significant weight in the decision making process.
- 9.46 The proposal would also fail to meet the aims of policy ST5, specifically criteria 7 which seeks to *“reduce levels of deprivation in the most deprived wards and facilitate as*

required, increased capacity in infrastructure and services” from the lack of developer contributions.

- 9.47 The harm that would be caused in this case would be substantial and the resultant impact of the development upon specifically identified local services and infrastructure significant and unacceptable. The proposal is therefore considered to fail to meet the social objectives of the NPPF which is a considered to result in significant harm.
- 9.48 *c) **an environmental objective** – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigation and adapting to climate change, including moving to a low carbon economy.*
- 9.49 Policy ST 3 of the Local Plan recognises that the Sittingbourne is the primary urban focus for growth. Further, policy DM 19 of the Local Plan seeks to ensure development includes measures to address and adapt to climate change. The application site is located within the area of Kemsley within Sittingbourne, and is within walking distance to local services within the Kemsley such as the primary school; convenience store; pharmacy and doctors surgery. The site has access to public transport via bus services which link to Sittingbourne, and the train station which provides links to Sittingbourne and the Isle of Sheppey.
- 9.50 The location of the site is considered to provide a wide extent of future occupant needs without placing an undue reliance on the car. The proposal would provide some parking on site, offers the opportunity for electrical vehicle charging points, and provides one cycle storage space per flat.
- 9.51 The application site is covered in hardstanding which has limited opportunities for environmental benefits. The proposed extended parking area on Ridham Avenue would result in the loss of existing planting here (shrubs and trees). The proposal would offer the opportunity for some landscaping across the site, adjacent to blocks 1 and 2, and within/adjacent the parking areas. Currently no planting has been shown to replace the trees and shrubs that would be lost by extending the parking area on Ridham Avenue, and additional/replacement planting would need to be secured as part of any consent. Subject to further planting, it is considered there would be some landscaping and overall improvements which would have an environmental benefit
- 9.52 As set out above the proposal is considered to meet the environmental objectives with moderate weight attached to this, and there would be a degree of economic benefits, however this needs to be weighed against the social objectives and the failure of the proposal to provide contributions to primary and secondary education, KCC services, healthcare, highways and refuse. In my view, despite the above benefits, the harm that would be caused in this case would be substantial and the resultant impact of the development upon specifically identified local services and infrastructure significant and unacceptable. The proposal would therefore fail to meet the three overarching objectives of sustainable development.

Visual Impact

- 9.53 Policies CP 3, CP 4, and DM 14 seek to ensure development has a high-quality design, is appropriate to the site context, and reinforces the local distinctiveness. Paragraph 124 (d) of the National Planning Policy Framework seeks to ensure efficient use of land which maintains the area's prevailing character.
- 9.54 The application site is located within the urban area of Sittingbourne, and is a prominent building within Kemsley, especially when approaching Kemsley from Grovehurst Road to the south, and is considered to be an important local building in terms of its design, placement and history (having been constructed as a central social building when Kemsley was originally built as a 'garden village' for mill workers). Due to its design and local historical importance the Council considers the building to be a non-designated heritage asset.
- 9.55 The proposals would seek to redevelop the Kemsley Arms site, with the existing façade of the main building to be retained. The building would be extended to the rear by a two storey extension to create sufficient space for 20 flats within the extended building.
- 9.56 The extension includes staggered elements in both height (single / two storey) and in elevational treatment, which reflects the character and design of the existing building frontage. It is considered that the proposed extensions to the Kemsley Arms building are of an appropriate scale and form as they would appear as a subordinate addition, being lower in height than the existing building and would not extend beyond the existing external walls. The extension is of a more contemporary design than the existing frontage, which will provide visual interest for the new development, whilst maintaining the existing character of the host building. The proposal would use similar proportioned windows and openings that appear on the existing building frontage. Overall, the proposed extension to the Kemsley Arms building is considered to be acceptable in terms of visual impact, and an appropriate approach for the non-designated heritage asset.
- 9.57 The proposal includes the erection of a two storey building to the rear, which would contain 8 flats (1 x 1 bed flats; and 7 x 2 bed apartments). The building would be T shaped, and would have a mansard style roof with accommodation in the roofscape. The projecting element on the front elevation would be at first floor level only supported by pillars, with undercroft parking beneath. The building is considered to be a suitable scale and form to complement the main Kemsley Arms building. The rear building would be less visible within Kemsley with existing built form to the south, west, north and east.
- 9.58 The existing Kemsley Arms building would be finished in white render, with clay roof tiles (as per the existing). The proposal includes additional accommodation in the roof which will be served by conservation style rooflights on the front elevation. In terms of materials for the extension to the Kemsley Arms building, and Block 2, this would be finished in a mix of white render and brickwork (with contrasting brickwork elements). The mansard roof and dormer windows would be finished in a grey metal standing seam roof. Windows would be a mix of timber, metal UPVC framed windows across the site. This approach is considered to be suitable, and full details for external materials and

windows/doors could be sought via condition to ensure a suitable high quality finish would be achieved.

- 9.59 The proposal would offer the opportunity for some landscaping across the site, adjacent to blocks 1 and 2 and within/adjacent the parking areas. This has been indicated as a mix of shrub/hedge planting with trees, including along the northern and western boundary of block 2 creating a soft landscape edge between block 2 and neighbouring properties, and also to the west of block 1 where the planting would be visible in the public realm. Currently no planting has been shown to replace the trees and shrubs that would be lost by extending the parking area on Ridham Avenue, and additional/replacement planting would need to be secured as part of any consent to off-set the lost planting, and to meet the requirements of the NPPF at para 131 which seeks the provision of street trees. Full details of landscaping could be sought via condition.

Residential Amenity

- 9.60 The closest residential dwellings would be situated to the west and north of the site, and would be sited closest to Block 2. To the west is a two-three storey flat block (nos. 2-26 Menin Road), and to the north are residential dwellings along Monarch Drive including two storey residential dwellings, and two flats. The properties along Monarch Drive are at a lower land level than the Kemsley Arms site
- 9.61 The development proposals have been amended during the course of the application process with regard to the siting, scale and layout of block 2. Block 2 was originally sited close to the northern boundary, and I had concerns about the impact upon neighbouring properties to the north in terms of overshadowing and outlook; and to the west in terms of overlooking and harm to privacy from first and second floor windows on the west elevation.
- 9.62 The proposals for block 2 have subsequently been amended to address the concerns raised regarding residential amenity. The building has been moved further away from the north and west site boundaries, and has a lower overall height and reduced in width. This has been demonstrated through site section drawings which shows the current proposals and neighbours to the north on Monarch Drive which are situated at a lower land level. A site layout plan has been provided to show the separation distance between block 2 and existing neighbouring properties to the north and west.
- 9.63 As a result of the amendments which have increased the separation distance between block 2 and neighbouring properties, reduced the height and scale of block 2 and have provided additional landscaping screening, it is considered that the concerns raised regarding overshadowing and outlook have been addressed. Furthermore, the location and form of windows has also been amended to remove first and second floor windows from the western boundary where a 21m separation distance would not be achieved to address privacy concerns. There are first floor rear windows on the north elevation of block 2, in the eastern part of this building the window has been obscured glazed to prevent overlooking, and in the western part of the building there is a suitable separation distance of over 21m to ensure no significant harm in terms of privacy.

- 9.64 In terms of future amenity for the proposed residential flats, it is considered each flat would have a suitable level of light, privacy and outlook. In terms of access to amenity space, the areas proposed are relatively small and are limited to an internal courtyard in the middle of block 1, and a small area of open space to the north and west of block 2.
- 9.65 The site is adjacent to a Kemsley Community Centre (Village Hall), which is in active use, holds events and its opening hours are 8am-midnight Sunday-Thursday and 8am-1am on Fridays and Saturdays. Given the neighbouring use, a Noise Impact Assessment Report was submitted to support the application to demonstrate that residential uses could be supported on the site. The report has been reviewed by the Environmental Health team who advise the contents are suitable, and requests a condition seeking specific glazing to minimise noise along windows facing the community centre.

Highways

- 9.66 The proposed development would utilise the existing access to the site, and no alterations to the access are sought as part of the proposals. In terms of traffic generation, KCC Highways have raised no objection to the proposed development. The application has been supported by plans showing that there is suitable turning space for vehicles, including refuse vehicles to enter and leave the site in a forward gear
- 9.67 KCC Highways have advised that as part of the HIF grant that will deliver highway improvements to the Grovehurst/A249 roundabout, planning approval will require the imposition of a Grampian condition to occupation of the new housing until the contract for the construction of the HIF improvement scheme has been awarded. In addition, as the HIF is provided as forward funding, developments are expected to contribute towards the recovery of the costs. Contributions will therefore be sought from this development in line with other developments. This is £2,657 per dwelling. This contribution is included in the heads of terms set out previously in the report.
- 9.68 Further to the above, National Highways raise no objection subject to a Grampian condition which sets out that no dwellings shall be occupied until the opening to the public of a Roads Investment Strategy scheme at M2 Junction 5 and Housing Infrastructure Fund scheme at A249 Grovehurst junction.
- 9.69 The proposal seeks a mix of parking to reflect the proposed flexible retail use, residential use, and existing neighbouring uses at the community centre and nursery. The location of the parking spaces are described in the proposal of the development, and in terms of total numbers includes 12 spaces for retail use; 28 spaces for residential use; 8 visitor spaces; 4 for the village hall; and 5 for the nursery. This includes the proposed extension to the parking area along Ridham Avenue which would create a shared parking area with spaces for the community centre, visitors and retail. The Parking Standards SPD advises 1 space per unit for 1 & 2 bedroom flats, and 0.2 visitor spaces per the number of dwellings (5.6 spaces), as such the proposals would meet these requirements.
- 9.70 The community centre/village hall have raised concerns regarding the loss of parking spaces as a result of the proposed development. The residential parking proposed at the rear of the village hall does appear to reduce the amount of parking that the village hall currently has use of. The historic imagery available suggests that around 6 allocated

village hall spaces would be lost, but the proposals do include the creation of 6 spaces alongside the existing on-highway layby parking directly in front of the hall. As noted above, the spaces to the front of the community centre/village hall would not be solely for their use, however the public parking within the highway boundary in front of both buildings does provide flexibility of use between the different retail and community demands, and makes efficient use of spaces given the different times of activity between these uses. As such, it is considered the approach to shared parking provision is acceptable.

- 9.71 KCC Highways have advised that the proposed extended parking area on Ridham Avenue will be required for adoption as public highway in order to be constructed. This will need to be progressed through a Section 278 Agreement with Kent County Council, as part of this land is already adopted highway, and will therefore need control of any third party land within those proposed highway works. The KCC Highways comments include a condition setting out that the development shall not be brought into use until these highway works have been completed.

Biodiversity

- 9.72 Policy DM 28 of the Local Plan states that development proposal will conserve, enhance, and extend biodiversity, and provide net gains in biodiversity where possible.
- 9.73 The application has been supported by a Preliminary Ecological Appraisal which assessed there was potential for roosting bats and breeding birds to be present within the building and subsequently a bat emergence survey was carried out on the 2nd May 2021 and assessed that it was unlikely that there was bat roosting within the building.
- 9.74 KCC Biodiversity advise that no further surveys would be required prior to the determination of the application, however as the submitted information identified that the western part of the building may be suitable for bats (due to roofing felt below the tiles, where crevice-dwelling bats could roost), a precautionary mitigation strategy would be required by condition if planning permission is granted when doing works on the roof – particularly the western section.
- 9.75 To ensure compliance with policy DM 28 a condition to secure ecological enhancement would be applied to any consent. The Ecology report submitted indicates suitable measures to enhance biodiversity including native species planting and the provision of bird/bat boxes.
- 9.76 The application site is within the 6km buffer zone from the SPA and Wetland of International Importance under the Ramsar Convention. As a result, to ensure the development would mitigate for additional recreation pressure on the designated sites an Appropriate Assessment would need to be undertaken.

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

- 9.77 The application site is located within the 6km buffer of (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species

Regulations 2017 as amended (the Habitat Regulations) and Wetland of International Importance under the Ramsar Convention.

- 9.78 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.
- 9.79 Residential development within 6km of any access point to the SPAs has the potential for negative impacts upon that protected area by virtue of increased public access and degradation of special features therein. 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.
- 9.80 The HRA carried out by the Council as part of the Local Plan process (at the publication stage in April 2015 and one at the Main Mods stage in June 2016) considered the imposition of a tariff system to mitigate impacts upon the SPA (£275.88 per dwelling as ultimately agreed by the North Kent Environmental Planning Group and Natural England for the year 2022) – these mitigation measures are considered to be ecologically sound. If proposals provide the required SAMMS payments in line within the agreement with Natural England, then there would be no impact on the integrity of the Habitat site.
- 9.81 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.
- 9.82 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.
- 9.83 The proposal would have an impact upon the SPAs, and would result in 28 new residential units within the buffer zone. On this basis, a SAMMS payment is required from the applicant and it should be collected in accordance with the Council's standing agreement with Natural England. As previously set out, the SAMMS payment was included as part of S.106 heads of terms which the applicants have not agreed to pay. In the absence of a S106 agreement to secure this sum, the scheme remains unacceptable for failing to mitigate impacts upon the SPA and the proposal would be contrary to policies CP7 and DM28 of the Local Plan

Sustainability / Energy

- 9.84 The NPPF supports proposals for improvements to environmental sustainability, placing sustainability at the heart of the framework. Paragraph 152 requires the planning system

to support the transition to a low carbon future in a changing climate, including the requirement to help shape places in ways that contribute to radical reductions in greenhouse gas emissions. Paragraph 154 goes on to require new development to reduce greenhouse gas emissions, such as through its location, orientation, and design. This is further iterated in Paragraph 157 which sets out that in determining planning applications, new development should take account of landform, layout, building orientation, massing, and landscaping to minimise energy consumption.

- 9.85 Policy DM19 of the Local Plan requires development proposals will include measures to address and adapt to climate change. The ways in which this shall be achieved are then further detailed in the policy; including measures such as use of materials and construction techniques which increase energy efficiency and thermal performance; promotion of waste reduction, re-use, recycling and composting; and design of buildings which will be adaptable to change and reuse over the long term and which include features which enable energy efficient ways of living, for example.
- 9.86 Policy DM21 also requires that new residential development, all homes to be designed to achieve a minimum water efficiency of 110 litres per person per day. The supporting Sustainability Statement confirms that the Proposed Development will be designed to ensure estimated water consumption of no more than 110 litres/person/day. It is recommended that this be secured by condition should consent be granted.
- 9.87 In addition to the above, the Council has declared a Climate Change and Ecological Emergency and all applications for new housing are expected to demonstrate how they incorporate all reasonable sustainable design and construction measures within the scheme in order to minimise environmental impacts. This can include measures such as electric vehicle charging points (provision of one per dwelling); solar panels; passive energy measures; low NOx boilers as examples. Regarding the dwellings, it is the expectation that a reduction in CO2 emissions of 50% above the requirements of the Building Regulations be achieved. If consent was granted, the Council would look to implement conditions which achieve the aims of sustainability, including CO2 emissions of 50% above the requirements of the Building Regulations, and electric vehicle charging points.

10. CONCLUSION

- 10.1 The viability of the proposed development has been assessed as part of the consideration of the application, with the evidence tested by the Council's independent viability consultant. In summary the independent assessment undertaken has concluded that the proposed scheme would generate a negative residual land value, with or without S.106 contributions. If the requested developer contributions of £171,975.94 were sought (noting this omits the affordable housing commuted sum), this generates a residual land value of -£818,218.60. If the exercise is repeated with no S.106 contributions sought, then the negative residual land value reduces to -£631,804. The independent consultant has advised that this would not be considered to be an economically viable level of land value as required by the National Planning Policy Framework. On the basis of local and national policies in relation to viability I give this weight in the decision making process.

- 10.2 When assessed against paragraph 11 of the NPPF the main benefits of the scheme would be considered to derive from the provision of additional residential dwellings in a sustainable location and the contribution to the Council's 5-year housing land supply. As set out above the proposal is considered to meet the environmental objectives with moderate weight attached to this, and there would be a degree of economic benefits from the creation of a retail unit with employment opportunities, and short term economic benefits during construction. There would also be some benefit arising from the redevelopment of the Kemsley Arms building.
- 10.3 However, these benefits have to be weighed against the failure of the proposal to provide contributions towards services and infrastructure, in respect of primary and secondary education; community learning; youth services; libraries; social care; NHS healthcare; highway improvements and refuse bins. The failure to provide contributions for these facilities and the significant harm that this would cause should in my view be given very significant weight in the decision making process. The proposal would also fail to meet the aims of policy ST6, specifically criteria 7 which seeks to "*reduce levels of deprivation in the most deprived wards and facilitate as required, increased capacity in infrastructure and services*" from the lack of developer contributions. The harm that would be caused in this case would be substantial and the resultant impact of the development upon specifically identified local services and infrastructure significant and unacceptable. The proposal is therefore considered to fail to meet the social objectives of the NPPF which is considered to result in significant harm.
- 10.4 For the reasons given above the site is not considered to meet the social objective of sustainable development is fundamental and would significantly and demonstrably outweigh the identified benefits. The proposal is considered unacceptable and should be refused for the reasons outlined above.
- 10.5 The application site is located within the 6km buffer of (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations) and Wetland of International Importance under the Ramsar Convention. The proposal would result in 28 new residential units within the buffer zone, and therefore a SAMMS payment is required from the applicant and it should be collected in accordance with the Council's standing agreement with Natural England. As previously set out, the SAMMS payment was included as part of S.106 heads of terms which the applicants have not agreed to pay. In the absence of a S106 agreement to secure this sum, the scheme remains unacceptable for failing to mitigate impacts upon the SPA and the proposal would be contrary to policies CP7 and DM28 of the Local Plan.

11. RECOMMENDATION

REFUSE for the following reasons:

1. Despite the lack of viability that has been demonstrated, which under normal circumstances creates significant risk that the proposal would not proceed, the proposal, in failing to provide developer contributions to specifically identified local infrastructure [healthcare, primary education, secondary education and land, community learning, libraries, youth services, social care, waste services, bin

provision and highways] would give rise to unacceptable harm which would outweigh the benefits of the proposal. The proposal would fail to represent sustainable development and granting planning permission would create a precedent. This would be contrary to policy ST5, CP6 of Bearing Fruits 2031: The Swale Borough Local Plan 2017 and would be contrary to the thrust of the National Planning Policy Framework 2021.

2. The proposed development will create potential for recreational disturbance to the Thames, Medway and Swale Estuaries Special Protection Areas. 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, CP7, DM14, and DM28 of the adopted Swale Borough Local Plan 2017; and paragraphs 174, 180 and 181 of the National Planning Policy Framework 2021.

The Council's approach to the application

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 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.

