

3.3 REFERENCE NO - 22/502340/OUT			
APPLICATION PROPOSAL			
Outline application (all matters reserved except access) for the erection of a single detached self-build dwellinghouse and carport/garage.			
ADDRESS Land Adjacent Westfield Cottages Breach Lane Lower Halstow Kent ME9 7 DD			
RECOMMENDATION That planning permission is Refused			
SUMMARY OF REASONS FOR REFUSAL			
The proposed development would represent unjustified and unnecessary residential development within the countryside, and outside of the defined built up area boundary, in a manner harmful to the character, appearance, and intrinsic amenity value of the countryside.			
REASON FOR REFERRAL TO COMMITTEE			
Support by Lower Halstow Parish Council Called in by Ward Councillor			
WARD Bobbing, Iwade and Lower Halstow	PARISH/TOWN COUNCIL Lower Halstow	APPLICANT Mr & Mrs Keith Tress AGENT TaD Planning Ltd	
DECISION DUE DATE 15/07/22	PUBLICITY EXPIRY DATE 08/08/22	CASE OFFICER Rebecca Corrigan	
Relevant Planning History			
Ref No.	Description	Decision	Decision Date
19/500764/OUT	Outline application (all matters reserved except access) for the demolition of former farm building/garage and erection of 10no. two, three and four bedroom dwellings with garages, associated landscaping and parking, together with new access and part widening of Breach Lane.	Refusal The refusal was appealed and subsequently Dismissed (W/4000612)	19.08.2019 Appeal Decision 29.06.2020
17/502046/OUT	Outline application (Some Matters Reserved) for erection of nine dwellings and garages, new access, with associated landscaping and parking – Access to be sought at this stage	Refused	11.07.2017
SW/84/0270 This application relates to the neighbouring site immediately to the north	Outline application for erection of one detached house	Refused	30.04.1984

SW/79/1491	Demolition of existing tin garage and erection of brick built garage	Approved	21.01.1980
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1. DESCRIPTION OF SITE

- 1.1 The application site relates to a parcel of land on the west side of Breach Lane, to the north of an existing dwelling, Westfield House.
- 1.2 The site is roughly rectangular in shape. It measures 65m north to south with an average width of 42 meters east to west, with a site area of approximately 0.25ha. Access to the land is from Breach Lane and towards the northern section of the site, directly opposite The Club House/Club Cottages at the north end of the terrace of dwellings on Breach Lane. There is a line of small-medium trees (hawthorn, elder, English elm, willow) just outside of the western boundary. A small brick building (11m x 5m) is positioned towards the western side of the site. The land is generally clear of vegetation.
- 1.3 The site is bordered by open countryside to the north and west. Westfield House is located to the south, beyond which is more open land. There are residential dwellings to the east situated on the opposite side of Breach Lane, including a row of 17 no. two storey terraced dwellings running north to south along the eastern side of Breach Lane with a further 7 running west to east. At the northern end of Westfield Cottages are 4 more terraced dwellings known as Club House & Club Cottages which are opposite the site entrance, 28 cottages in total.
- 1.4 The site is located approx. 150m to the south of Lower Halstow, and falls outside of the built confines of the village. The village of Lower Halstow is a Tier 5 settlement under the local plan settlement strategy (ST3) where development is generally restricted to small scale proposals within the village boundaries. This means that the urban centres and the larger well-connected villages occupy the higher settlement tiers, whilst those with strong environmental character, poorer access to services and/or limited capacity for change generally occupy the lower. Settlements are assigned to the Tiers as shown in Table 4.3.1 (ST3) with development on a descending scale; in other words the lower the tier of settlement, the reduced amount of development envisaged. Lower Halstow is located in one of lower least desirable tiers for future development.
- 1.5 There is a public right of way (footpath, ZR43) situated immediately to the north of the site.

2. PROPOSAL

- 2.1 This is an outline planning application for the erection of a single detached self-build dwellinghouse and carport/garage. All matters other than access are reserved for future consideration.
- 2.2 Indicative plans have been submitted which show a form of development that could be built, incorporating a two storey detached dwelling and a carport/garage located towards the northern side of the site.
- 2.3 The existing site access would be utilised for the development.

3. RELEVANT PLANNING HISTORY

3.1 The site has the following planning history, being the northern (Plot B) part of the two plots included in the following applications:

- **17/502046/OUT** – outline application (some matters reserved) for the erection of 9 dwellings and garages, new access with associated landscaping and parking – access to be sought at this stage – Refused 11.7.2017

Refused on the following grounds:

The application site is located outside of the built confines of Lower Halstow and within the open countryside where the Council's adopted and emerging Local Plan policies aim to restrict residential development other than in specific circumstances. The proposed development would fail to protect the intrinsic value, tranquillity and beauty of the countryside by virtue of its location and likely layout and form, and would be contrary to policies ST3, CP3, CP4 and DM14 of the emerging Swale Borough Local Plan "Bearing Fruits 2031", and policies E1 and E19 of the adopted Swale Borough Local Plan.

The Reptile Survey submitted with the application does not accord with Natural England standing advice regarding the number of visits required to establish a population estimate, and does not provide sufficient information on the location or suitability of an off site receptor site. On this basis, the survey fails to suitably demonstrate the presence of protected species on the site, or adequate mitigation measures. This would be harmful to biodiversity and contrary to policies E11 of the adopted Swale Borough Local Plan 2008 and DM28 of the emerging Swale Borough Local Plan "Bearing Fruits 2031".

- **19/500764/OUT** – outline application (all matters reserved except access) for the demolition of former farm building/garage and erection of 10 no. 2, 3- and 4-bedroom dwellings with garages, associated landscaping and parking, together with new access and part widening of Breach Lane – Refused 19.8.2019

Refused on the following grounds:

The proposed development represents unsustainable development and therefore fails to comply with the requirements of paragraph 8 and 79 of the National Planning Policy Framework 2018. By virtue of its location outside any well-defined urban boundary and remote from the nearest settlements where a good range of services are available, the lack of prospect of residents being able to integrate with the existing communities and the limited public transport to service the site which will result in a car dependent population. Furthermore, the proposed development would fail to protect the intrinsic value, tranquillity and beauty of the countryside and rural context by virtue of its location and likely layout and form. This harm, both significantly and demonstrably, outweighs any benefits from the proposal (including its contribution to the overall supply of housing in the Borough). Development is therefore contrary to policies ST1, ST3, CP3, CP4, DM9, DM14, DM24 of the Bearing Fruits 2031: The Swale Borough Local Plan (2017) and would be contrary to paragraphs 8, 11, 79, 127, 130 and 170 of the National Planning Policy Framework.

The application was subject to an appeal which was dismissed, dated 31.7.2020

- 3.2 The Planning history is a material planning consideration of some weight in the determination of the outline planning application, having regard to the key differences between the 2017 and 2019 applications and the current scheme which proposes a single self-build detached dwelling, with a reduced site area (parcel B only) and reduction in the number of dwellings and site coverage by built form.

4. **PLANNING CONSTRAINTS**

- 4.1 In the countryside outside the built-up area confines
- 4.2 Public footpath, ZR43 is situated to the north of the site

5. **POLICY AND CONSIDERATIONS**

- 5.1 The National Planning Policy Framework (NPPF): Paragraphs 8 (sustainable development); 11 (The presumption in favour of sustainable development); 55 (re-use of redundant buildings); 59 – 76 (delivering a sufficient supply of homes); 77 – 79 (Rural housing); 127 and 130 (good design); 148 (transition to low carbon future); 165 (sustainable drainage systems); 170 (enhance the natural and local environment) are relevant to this proposal.
- 5.2 Bearing Fruits 2031: The Swale Borough Local Plan 2017 – Policies ST1 (delivering sustainable development in Swale); ST3 (the Swale settlement strategy); ST4 (Meeting the Local Plan development targets); ST5 (The Sittingbourne area strategy); CP2 (Promoting sustainable transport); CP3 (Delivering a wide choice of high quality homes); CP4 (Requiring good design); DM6 (managing transport demand and impact); DM7 (Vehicle parking); DM14 (general development criteria); DM19 (Sustainable design and construction); DM21 (sustainable drainage / flood mitigation); DM24 (conserving and enhancing valued landscapes); DM28 (biodiversity conservation); DM29 (Woodlands, trees and hedges); DM31 (agricultural land).
- 5.3 Landscape SPD – Swale Landscape Character and Biodiversity Appraisal 2011. The site falls within character area 32: Upchurch and Lower Halstow which falls within the Fruit Belt Landscape Types. The landscape condition is described as ‘moderate’ with a ‘moderate’ sensitivity. The guidelines for this area are to conserve and create.

6. **LOCAL REPRESENTATIONS**

- 6.1 Twenty-one letters of representation have been received. Of these, seventeen are letters of support and four are letters of objection.
- 6.2 Of the seventeen letters of support, the content can be summarised as follows:
- Good use of brownfield site
 - Would enhance the appearance of the local area
 - Sustainable location - Good access by foot to Lower Halstow via the pavement opposite
 - Demand for properties high in the area – village needs more housing
 - Would not be an isolated position based upon Westfield cottages opposite

- Self-build - all LPAs are required to meet demand for Self-Build and Custom-Build homes.
- Swale has a shortfall in meeting its housing requirements/obligations and approval of this dwelling will go towards meeting the deficit.
- Contribute to the economy and vitality of the village
- Small number of car journeys are likely to be south bound away from village centre where at school times there is already road congestion
- Entrance to the site is not a blind bend – having this development will not impact on safety
- Concerns raised that land could be put to more unsightly and inconvenient uses
- Easily accessible due to street lighting and footpath at its widest point, 20mph speed limit soon to be introduced
- Beneficial visual impact - appropriate landscaping
- Meets the Lower Halstow Parish Council Application Assessment Criteria

6.3 Of the four letters of objection, the content can be summarised as follows:

- The land is not a brownfield site – the site has never been developed
- Development applications for this site have been submitted previously and have each time been declined, including at appeal. This application fails to overcome the concerns and points raised in the refusals.
- Represents unsustainable urban expansion; being outside the village boundaries and an unsustainable development as there has been no increase in public services, including footpaths, since the last development application which was refused.
- Open the door to further expansion into the countryside
- The site is outside of the Lower Halstow settlement boundary
- Safety concerns - The entrance and to the site will be at a point in the road which is a blind spot and already difficult for road users, creating highway and safety concerns.
- Environment negative impact- light and noise and habitat. There is little or no light on the street which would discourage pedestrians and cyclists on an everyday basis
- This would represent the first development in the proximity to Westfield cottages since the building of Westfield house in about the 1930s.
- Concerns raised that the site has been cleared, resulting in the loss of significant valuable habitat from the site resulting in a net deficit of biodiversity

7. CONSULTATIONS

7.1 Lower Halstow Parish Council - Agree to support this application in line with the village planning strategy for the following reasons:

- This is only outline planning with no major specifics, but the design looks in keeping with its surroundings
- Homeworking is given – would like to see local trades people being used for the build where possible
- Would like to see downlights used outside no outside lighting
- It is being built to current standards but would like to see solar panels, battery banks and electric boundaries of what we can encourage builders to build.

7.2 Environmental Health - No objection, subject to relevant planning conditions – contaminated land.

7.3 Health and Safety Executive - No comment to make

- 7.4 Natural England - No objection, subject to SAMMS and Appropriate Assessment
- 7.5 KCC Highways - No objection, subject to relevant planning conditions
- 7.6 KCC Ecology – Raised concerns that prior to the undertaking of the Preliminary Ecological Appraisal (PEA) in March 2022, the site has been cleared of most vegetation. Aerial photography of the site prior to the PEA indicates that the land was covered in scrub, grasses, and tall herbs, which would have been suitable sheltering and foraging habitats for reptiles and amphibians. KCC advise that the works should not have taken place in advance of any planning application and highlight that the clearance of the vegetation may have resulted in a breach of legislation. KCC highlight that the applicant will need to continue management within the development footprint as it is currently to discourage protected species from beginning to use the site, as recommended in the PEA. The submitted site plan shows that only half of the site is proposed to be impacted by the development footprint and recommend the remaining half is revegetated and suitable habitat to support protected/notable species is established. In the event of the application approved, a number of planning conditions are proposed.

8. **BACKGROUND PAPERS AND PLANS**

- 8.1 Existing plans
- 8.2 Proposed plans

9. **APPRAISAL**

Principle of Development

- 9.1 The site is located within the countryside and outside of the built area boundary of Lower Halstow. The main relevant planning policy is ST3 of the Local Plan, which states that at locations in the open countryside outside the defined built up area boundaries, development will not be permitted unless supported by national policy and where it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings, and the vitality of rural communities.
- 9.2 The Council's spatial strategy is set out in Policy ST3 of the Swale Borough Local Plans 2017 which identifies a hierarchy of 5 types of settlement. Lower Halstow is one of many villages in Tier 5 that provides basic services to meet some of the residential day to days needs and policy restricts development in these villages to minor infill and redevelopment within the built-up area boundaries only. In this regard, Policy ST 3 of the Local Plan (2017) paragraph states:

All other settlements and sporadic buildings are considered to sit within the open countryside where the primary objective will be to protect it from isolated and/or large scales of development. Some minor development may though be essential for the social, economic or environmental health of a community, but are not necessary to meet the Local Plan housing target. In doing so, they will be required to protect and, where required, enhance, the intrinsic value, character, beauty, wildlife value, tranquillity and undeveloped nature of the countryside and its communities and buildings.

- 9.3 The location of the site, beyond the boundary of a Tier 5 village, makes it one of the least desirable locations for new residential development. The principle of residential development in this location is not supported under the local plan.
- 9.4 However, the Council cannot currently demonstrate a five-year supply of housing land. The position for 2020/2021 that Swale now has an identifiable 4.8 years supply of housing land.
- 9.5 In addition, the current adopted local plan is now 5 years old and, in relation to policies for the supply of housing, is “out-of-date”. This means that performance against housing delivery is no longer assessed against the annual local plan figure of 776 but that of the “standard method”. For Swale, this means that the target will increase to 1,048 (or whatever the standard method figure is for that monitoring year).
- 9.6 For these reasons, paragraph 11 of the NPPF applies (the tilted balance). Paragraph 11 d) states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole.

Location of development

- 9.7 Lower Halstow is a Tier 5 settlement with limited services. The location of the site is remote from village being some 170m to the south. Access to the village is possible via a footpath on the east side, although this is largely unlit. Given the limited services available in the village, the remote location of the site away from the village, and the unlit nature of the road, I consider that occupants of the development would be likely to rely on car-borne journeys.
- 9.8 It is also material to highlight an appeal decision for 10 dwellings which included the land subject to this application (following the Council’s decision to refuse permission under 19/500764/OUT) The appeal Inspector stated in paragraph 11

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

- 9.9 Whilst the current application is now for a single dwelling only, I remain of the view that the site is not in a suitable location for such development, and that the scheme performs poorly under policy ST3 of the Local Plan.

Impact on character and appearance of area

- 9.10 The site incorporates a small brick building and remnants of a hardstanding. The NPPF definition of brownfield / previously developed land in Annex 2 excludes ‘land that was previously developed but where the remains of the permanent structure or fixed

surface structure have blended into the landscape.’ The existing outbuilding would be considered previously developed, however the remainder of the site is currently open in character and appearance. In my opinion, whilst parts of the site could be held to be previously developed land, the extent to which this impacts upon the character and appearance of the area is very limited.

- 9.11 The site is largely of an open and undeveloped character and appearance. It forms part of the generally open landscape to the south of Lower Halstow. Whilst the line of terraced cottages lies to the east of the site, the essential characteristics of the west side of Breach Lane are of an open and rural landscape – albeit with some minor exceptions such as Westfield House. My assessment is similar to that of the appeal inspector for 19/500764 who stated in paragraph 12 that the site has “an undeveloped appearance and makes a significant contribution to the open rural landscape of the area which extends beyond the appeal site towards Upchurch”.
- 9.12 Although the proposed dwelling would not be isolated in the true sense of the word given the proximity to the cottages to the east and the dwelling further south, I consider that the proposal would have a significant urbanising impact on the west side of Breach Lane, which would be harmful to the character and appearance of the countryside and wider landscape. Although the development is for one dwelling and the precise detail is not known at this stage, I consider this would still introduce an urban and domestic character and appearance to the site through the built form, layout and domestic paraphernalia that would arise from any residential development, and which would be harmful to the rural surroundings.
- 9.13 Policies ST3, CP3, CP4, DM14 and DM24 of the Local Plan seek to ensure that development is steered to the right locations, is of high quality design appropriate to its context, and strengthens / reinforces local distinctiveness. The development of a dwelling and associated structures and paraphernalia in this location would not be appropriate to its rural context and would harm the character and appearance and intrinsic value, beauty and functioning of the countryside and landscape. In addition, the likely form of the dwelling would fail to reinforce local distinctiveness and, as such, would be contrary to the above policies. This is considered to be a significant negative impact and would be contrary to the aims of paragraphs 127, 130 and 170 of the NPPF as it would not significantly enhance its immediate setting, and it would not be sensitive to the defining characteristics of the local area due to the harmful impact on the countryside and contrary to the aims of the Swale Landscape Character and Biodiversity Appraisal 2011 SPD which seeks to restore the rural environment whilst creating a landscape structure that will improve the areas strength of character.
- 9.14 This concern is supported by the Planning Inspector for the previous appeal on this site. In concerns arising from harm to the character and appearance of the area, the Planning Inspector commented (para 14)

The development proposed would have a significant harmful effect on the open landscape appearance of the appeal site and would not enhance its immediate setting. It would be contrary to the aims of the Swale Landscape Character and Biodiversity Appraisal 2011 Supplementary Planning Document which seeks to restore the rural environment, whilst creating a landscape structure that would

improve the areas strength of character. Overall, the development proposed, would have a significant adverse impact on the contribution the appeal sites undeveloped appearance makes to the open landscape character of the surrounding area. (para 14)

I conclude that the development proposed would have a significant detrimental impact on the setting of the open countryside and would be contrary to policies CP3, CP4, DM9, DM14 and DM24 of the LP and would be contrary to paragraphs 8,11,127, 130 and 170 of the Framework. When read together these policies seek to deliver sustainable development which directs new development to be within the defined settlement hierarchy, contributes to the move towards a low carbon future and protects and enhances the intrinsic character of the rural landscape in the area. (para 15)

- 9.15 Whilst the proposal would be for one dwelling rather than the ten dwellings previously refused, this would still be harmful to the rural character and appearance of the area as set out above.

Residential Amenity

- 9.16 Policy DM14 of the Local Plan states that all developments should cause no significant harm to the amenities of surrounding uses or area. The detailed scheme for the new dwellings would be secured at the reserved matters stage and this will include the design and form of the dwelling including details such as window/door placement and details of boundary treatments.
- 9.17 The closest residential property is Westfield House which is to the south of this application. Whilst layout and design are matters for future consideration, the application shows an illustrative layout which avoids any direct overlooking of this property, and a good degree of space can be maintained between it and the development.
- 9.18 The properties on the opposite side of Breach Lane would be in direct view of the new dwelling. Again, the illustrative layout as shown indicates that good separation distances and appropriate layouts could be created to avoid any unacceptable impacts on these existing properties.
- 9.19 Taking the above into account, it is considered that the development could be designed to avoid unacceptable impacts on neighbours and comply with the above policy.

Highways

- 9.20 It is proposed to utilise the existing vehicular/pedestrian access onto Breach Lane. Neither the 2017 nor 2019 applications were refused on the inadequacy of using the access to serve new residential development, particularly having regard to its historic use as a car park for the club opposite with associated traffic generation. The Highway Authority has been consulted who raise no objection to the proposal and I have no reason to raise any highways issues.
- 9.21 The illustrative layout indicates the possibility of providing vehicle parking in accordance with Policy DM7 and KCC Vehicle Parking Standards.

Landscaping and biodiversity

- 9.22 Landscaping is a reserved matter. Policy DM14 requires the provision of an integrated landscape scheme that would achieve a high standard of landscaping within the development and given this is a countryside setting further details would be required at the reserved matters stage if the application was found acceptable in principle.
- 9.23 The NPPF requires new development to minimise impacts on biodiversity and provide net gains in biodiversity, where possible. Local planning authorities are required to conserve and enhance biodiversity when determining planning applications and take opportunities to incorporate biodiversity in and around developments. Policy DM28 also requires that development proposals will conserve, enhance and extend biodiversity, provide for net gains in biodiversity, where possible, minimise any adverse impacts and compensate where impacts cannot be mitigated. KCC Ecology has been consulted who raised concerns that prior to the undertaking of the Preliminary Ecological Appraisal (PEA) in March 2022, the site has been cleared of most vegetation. Notwithstanding, should the application be considered favourably a number of safeguarding conditions are proposed.
- 9.24 In wider ecology terms, site lies within 6km of the Swale SPA and a contribution is therefore required to mitigate the potential impacts of the development upon that protected area, in accordance with the Council's standing agreement with Natural England. The applicant has made the necessary financial contribution to mitigate the impact in accordance with the established SAMMS procedure.

Self-Build development

- 9.25 A further material consideration is the submission of the application as a self build/custom build housing project. Self-build and custom build housing is a specialist form of residential development, and the Council is required to keep a register of individuals seeking to acquire serviced plots of land within the Borough for their own self build and custom housebuilding.
- 9.26 Paragraph 62 of the NPPF sets out the Government's objective to significantly boost the supply of housing. Paragraph 61 of the NPPF stipulates:

'Within this context, the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies (including, but not limited to, those who require affordable housing, families with children, older people, students, people with disabilities, service families, travellers, people who rent their homes and people wishing to commission or build their own homes).'

Footnote 28 further states, *'Under section 1 of the Self Build and Custom Housebuilding Act 2015, local authorities are required to keep a register of those seeking to acquire serviced plots in the area for their own self-build and custom house building. They are also subject to duties under sections 2 and 2A of the Act to have regard to this and to give enough suitable development permissions to meet the identified demand. Self and custom-build properties could provide market or affordable housing'. (Footnote 28)*

- 9.27 The Council Self-Build Register as at August 2022 contains approximately 110 individuals and 5 associations of individuals. A self/custom build development has been permitted nearby at Callum Park which allowed for 9no. custom build homes (Ref: 20/501002/OUT). Although this site was also isolated from Lower Halstow, weight was given to the removal of existing significant built form on the site and to the financial benefits to the existing equestrian centre as a rural facility.
- 9.28 Whilst I give weight to the need for sites for self-build /custom housing, I consider that the site performs poorly in terms of its location and impact on the character and appearance of the area as set out above. The benefit of providing a self-build unit on the site against this harm is balanced further below

10. CONCLUSION

- 10.1 The site is located outside of the built confines of the village and within the countryside. In the absence of a five year housing supply, the tilted balance under paragraph 11d) of the NPPF applies. The proposal would offer benefits in terms of adding to the housing supply in the Borough, and delivering a self-build plot. However I would only give these benefits a small degree of weight given that the proposal relates to 1 dwelling.
- 10.2 The proposal would conflict with policies in the local plan relating to the location of development and the need to protect the local and natural environment, which are generally consistent with the aims of the NPPF. The development would result in significant harm to the character and appearance of the countryside through development of a site that forms part of an existing open and rural landscape and future occupants would be likely to be reliant on the private car. Whilst the level of harm would be lower than the 10 dwelling scheme refused by the previous Inspector, at the same time the benefits of the development are also diminished through the provision of only one dwelling into the housing supply. Whilst the scheme would enable a self-build dwelling, I consider that the poor location of the site and harm to rural character and appearance that would arise to significantly and demonstrably outweigh this benefit arising from 1 dwelling. Likewise, I consider the benefits of re developing a partially brownfield site are diminished by the generally open and undeveloped existing character of the land and by the harm identified above.
- 10.3 For the reasons set out above, I conclude that the benefits of the development are limited and significantly outweighed by the harm to the character, appearance, and intrinsic amenity value of the countryside and the unsustainable location of the site and for these reasons the development is unacceptable.

RECOMMENDATION

REFUSE for the following reasons:

REASON FOR REFUSAL

1. The proposed development would represent unjustified and unnecessary residential development within the countryside, and outside of the defined built-up area boundary, in a manner harmful to the character, appearance, and intrinsic amenity value of the countryside. The proposal is therefore contrary to policies ST1, ST3, ST5, CP3, CP4, DM9, DM14 and DM24 of Bearing Fruits 2031 - The

Swale Borough Local Plan 2017; and to the advice of paragraphs 8, 11, 80, and 174 of the National Planning Policy Framework.

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

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

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

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

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

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

The recent (April 2018) judgement (*People Over Wind v Coillte Teoranta*, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, *"it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site."* The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group.

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

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

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

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

In this regard, whilst there are likely to be impacts upon the SPA arising from this development, the mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff (which has been secured prior to the determination of this application) will ensure that these impacts will not be significant or long-term. I therefore consider that, subject to mitigation, there will be no adverse effect on the integrity of the SPA.

The Council's approach to the application

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

