

**PLANNING COMMITTEE – 10 NOVEMBER 2022****PART 3**

Report of the Head of Planning

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

<b>3.1 REFERENCE NO - 20/505046/FULL</b>			
<b>APPLICATION PROPOSAL</b> Erection of 2no. holiday homes			
<b>ADDRESS</b> High Hopes Poot Lane Upchurch Sittingbourne Kent ME9 7HL			
<b>RECOMMENDATION</b> Refusal			
<b>SUMMARY OF REASONS FOR RECOMMENDATION FOR REFUSAL</b> This site is located in the countryside, is not previously developed land and the proposal does not represent the re-use of an existing rural building or farm diversification. Although proposed for holiday accommodation, the design and layout of the units would appear as and be capable of occupation as dwellings and no business case has been provided to demonstrate that there is a clear unmet need and market for such holiday accommodation, with a resultant risk of future pressure to convert to dwelling houses. Overall, the proposal to erect new buildings to create new holiday let accommodation in this countryside location represents an unnecessary, undesirable and unsustainable form of development. The unsustainable location of the site and harm to the countryside that would result from this proposal is not outweighed by the limited contribution made to the rural economy when assessed against the policies of the Local Plan and NPPF.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Support from Upchurch Parish Council			
<b>WARD</b> Hartlip, Newington And Upchurch	<b>PARISH/TOWN COUNCIL</b> Upchurch	<b>APPLICANT</b> Mr Curtis <b>AGENT</b> Woodstock Associates	
<b>DECISION DUE DATE</b> 24/12/20	<b>PUBLICITY EXPIRY DATE</b> 04/08/22	<b>CASE OFFICER</b> Rebecca Corrigan	
<b>RELEVANT PLANNING HISTORY</b>			
<b>PLANNING REF.</b>	<b>DESCRIPTION</b>	<b>DECISION</b>	<b>DECISION DATE</b>
SW/10/1429	Single storey pitched roof car port and store	Approved	03.11.2020
SW/08/0686	Extensions and Improvements to provide lounge/bedroom/conservatory to ground floor with additional bedroom in roof void	Refused	20.06.2008
SW/94/0019	Single storey extension to provide bedroom and dining room	Approved	12.01.1994

SW/88/1441	Erection of three loose boxes and garage	Approved	16.12.1988
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## 1. DESCRIPTION OF SITE

- 1.1 The application site relates to a parcel of land to the east of Poot Lane, situated adjacent to the residential curtilage of the host property identified as 'High Hopes'.
- 1.2 The site is a regular shaped plot and measures 40m across - north to south, and 62m east to west, with a total site area of 0.24ha. The site is essentially flat and open. It has been cleared during the course of this application having previously been grass/scrub with a small detached outbuilding. A row of dense hedging comprised of shrubs and small trees lines both the northern side boundary and eastern rear boundary. To the southeast is High Hopes, a large residential property with a detached garage and associated hardstanding to the front.
- 1.3 Within the immediate area there is a cluster of residential, commercial and farm buildings largely grouped to the east of the site. Further afield, the area is predominantly undeveloped open countryside.
- 1.4 The site and the property known as 'High Hopes' - are both located in relatively close proximity to a Scheduled Monument which is spread out in two large, separate areas (intercepted by the site of Upchurch Poultry Farm) and which together are listed as the site of a "World War II Heavy Anti-aircraft gunsite (TS3) at Wetham Green, 460m north of Red Brick Cottage." (List entry 1020387).
- 1.5 The site is located approx. 0.61km north, as the crow flies, from Upchurch and falls outside of the built confines of the village and therefore in the countryside. Upchurch itself 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.
- 1.6 The front part of the site falls within a coastal change management area and most of the site falls within flood zone 3. There is a public right of way (footpath, ZR3) situated further north of the site. The land on the west side of Poot Lane falls within an Area of High landscape Value. Poot Lane itself is a designated rural lane.

## 2. PROPOSAL

- 2.1 Planning permission is sought for the erection of 2no. detached, one bedroom holiday homes with associated access, parking and landscaping.
- 2.2 The application has been revised since being originally submitted. The original submission proposed a semi-detached development of 1 x 2 bedroom and 1 x 3 bedroom units. The building was located in the centre of the regular shaped plot and designed with a half hipped roof profile and abundant fenestration including rooflights to the front and rear elevations with a dormer window at the rear.
- 2.3 Under the revised proposal, the applicant has reduced the size and altered the design of the proposed holiday lets. A Design and Access Statement was provided and at the request of SBC Design and Conservation, a Heritage Statement was submitted. At the request of the

Environment Agency, Lower Medway Internal Drainage Board and Natural England a revised Flood Risk Assessment including Drainage Strategy was provided.

- 2.4 The revised proposal comprises of two detached, 1 x bedroom, buildings of contemporary design. The units would have varying eaves heights of 1.9m and 2.5m with a high pitched roof reaching to a height of 6.25m at the ridge. Internally, the ground floor would have an open plan kitchen/living area. A mezzanine level would accommodate one bedroom and on-suite with each unit having a total floor area of 94m<sup>2</sup>. The units would have large glazed frontages and would be finished in timber cladding with a brick base.
- 2.5 A new site access would be created with a large area of hardstanding. Two parking spaces are proposed for each unit. A landscaping plan shows a belt of landscaping to the front and side boundaries to include Hawthorn, Hazel, Dogwood, Holly, Field Maple and Guelder Rose.

### **3. PLANNING CONSTRAINTS**

- 3.1 Environment Agency Flood Zone 3 and partially within a coastal change management area
- 3.2 Located within close proximity to a scheduled monument - "World War II Heavy Anti-aircraft gunsite (TS3) at Wetham Green, 460m north of Red Brick Cottage." (List entry 1020387).
- 3.3 Potential Archaeological Importance
- 3.4 Poot Lane is a designated rural lane
- 3.5 Grade I Agricultural Land

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

#### **4.1 National Planning Policy Framework (NPPF)**

The National Planning Policy Framework (NPPF) (published in 2012 and revised in 2021) and National Planning Practice Guidance (NPPG) encourage the provision of new dwellings within the defined built up areas, or outside of those areas in certain exceptional circumstances such as for the provision of agricultural worker's accommodation, or the provision of affordable dwellings to meet an identified local need.

At paragraph 80 the NPPF says:

*"Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:*

- a) *there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;*
- b)
- c) *the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;*
- d) *the development would re-use redundant or disused buildings and enhance its immediate setting;*
- e) *the design is of exceptional quality, in that it:*

- *is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas;*
- *would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.*

4.2 Paragraphs 84 and 85 of the NPPF seek to support sustainable growth of business in rural areas, including sustainable rural tourism developments which respect the character of the countryside. The NPPF recognises that sites for such development may have to be found beyond existing settlements, and that sites on previously developed land and physically well related to existing settlements should be encouraged. The NPPF makes clear that in such locations it will be important to ensure that development is sensitive to its surroundings.

#### 4.3 Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies

Policy ST1 Delivering sustainable development  
 Policy ST3 The Swale Settlement Strategy  
 Policy ST5 The Sittingbourne Area Strategy  
 Policy CP1 Building a strong, competitive economy  
 Policy CP3 Delivering a wide choice of high quality homes  
 Policy CP4 Requiring good design  
 Policy CP8 Conserving and enhancing the historic environment  
 Policy DM3 The rural economy  
 Policy DM7 Vehicle Parking  
 Policy DM14 General development criteria  
 Policy DM19 Sustainable design and construction  
 Policy DM21 Water, flooding and drainage  
 Policy DM23 Coastal Change Management Areas  
 Policy DM24 Conserving and enhancing valued landscapes  
 Policy DM26 Rural Lanes  
 Policy DM29 Woodlands, trees and hedges  
 Policy DM28 Biodiversity and geological conservation  
 Policy DM31 Agricultural Land  
 Policy DM34 Scheduled Monuments and archaeological sites

4.4 Supplementary Planning Document (SPD): “Parking Standards” (May 2020) was adopted by the Council in June 2020 and is a material consideration in the determination of planning applications.

4.5 The Swale Landscape and Biodiversity Appraisal SPD was adopted in 2011 and is a material consideration in the determination of planning applications.

## 5. LOCAL REPRESENTATIONS

5.1 None received.

## 6. CONSULTATIONS

6.1 Upchurch Parish Council - *The proposal supports the local economy and local services. Upchurch Parish Council supports the application.*

6.2 Health and Safety Executive – No objection

6.3 Environmental Health – No objection, subject to conditions

- 6.4 Lower Medway Internal Drainage Board - 1<sup>st</sup> response – A Drainage Strategy or plan is required. We would recommend that the proposed strategy is supported by ground investigation to determine the infiltration potential of the site and the depth to groundwater.

2<sup>nd</sup> Response (summarised) – *The proposal may need land drainage consent (specifically byelaw 3). If the proposal involves alteration of a water course consent would be required under the Drainage Act 1991 (Byelaw 4)*

- 6.5 Natural England – (latest response) – No objection subject to securing the appropriate financial contribution (SAMMS) to mitigate impacts on the Medway Estuary and Marshes SPA and Ramsar site.

- 6.6 Historic England - *On the basis of the information available to date, we do not wish to offer any comments.*

- 6.7 KCC Highways – Do not comment on the application.

- 6.8 SBC Destination and Place Manager -*The proposal meets the aspirations of the visitor economy framework which in part is about having a diverse range of accommodation available for guests and the location is well placed to take advantage of those who want to be relatively close to urban for access and egress for wider geographical exploration but also responds well to those seeking a rural location for more local leisure pursuits. To compete with existing accommodation - particularly that held by Airbnb - the accommodation will need to be of high specification and offer an exceptional rural experience to have a competitive edge. It has the potential to form part of a wider offer in conjunction with nearby and neighbouring visitor attractions and venues supporting either those seeking a staycation and/or wedding and conference market. It will require a significant amount of marketing to establish within the local and wider Kent offer.*

- 6.9 SBC Design and Conservation – 1<sup>st</sup> response (summarised) - *On its own merits, I would not tend to support the holiday homes since they – as a semi-detached pair – are designed in such a way as to be neither a utilitarian agricultural building or conversion nor domestic looking holiday cottages. I would tend to encourage the construction of clearly domestic looking cottage type homes with domestic vernacular materials, treatments and detailing rather than faux- agricultural buildings that blur the boundaries between two typologies. I would not therefore support this application in principal as it stands, since I am at this time, unable to provide a properly considered decision until the necessary missing heritage information is submitted.*

**(Following receipt of revised drawings)** 2<sup>nd</sup> Response (summarised) – *From a Design and conservation perspective, the proposed scheme is acceptable as presented and is considered to not have an impact on the historic environment but may be subject of planning policy considerations.*

- 6.10 KCC Biodiversity – Following the submission of additional information, no objection is raised, subject to conditions

- 6.11 Environment Agency – No objection, subject to conditions

- 6.12 KCC Archaeology – No objection subject to conditions

## 7. APPRAISAL

### Principle of Development

- 7.1 Paragraph 84 c) of the National Planning Policy Framework supports sustainable rural tourism and leisure developments which respect the character of the countryside. Paragraph 85 of the National Planning Policy Framework also states that planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. The NPPF states that in these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable. The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist. Notwithstanding, the National Planning Policy Framework (NPPF) is clear that planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 7.2 In this case, the application site is located outside of the built-up area boundary of Upchurch village, in a rural location, in the designated countryside and therefore subject to countryside restraint policies in the adopted Local Plan.
- 7.3 The main relevant policy is ST3 of the Local Plan (see above), which states that *'At locations in the open countryside, outside the built-up area boundaries shown on the Proposals Map, development will not be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquility and beauty of the countryside, its buildings and the vitality of rural communities'*.
- 7.4 In this instance, there is potential support for development (with conditions) that facilitates a prosperous rural economy in the NPPF, as set out above. In addition, Policy DM3 of the Local Plan specifically relates to the rural economy and states at criteria 1.b, for all proposals, *firstly consider the appropriate re-use of existing buildings or the development of other previously developed land, unless such sites are not available or it is demonstrated that a particular location is necessary to support the needs of rural communities or the active and sustainable management in the countryside.*
- 7.5 Policy DM3 No.2.b continues, for tourism and leisure, that planning permission should *'provide for an expansion of tourist and visitor facilities in appropriate locations where identified needs are not being met by existing facilities in the locality or where able to increase facilities available to local communities as well as visitors.'*
- 7.6 The application lacks any supporting statement or business plan, other than a short letter from an Estate Agents based in Strood which states that there is a demand for holiday lets in rural and village locations such as Upchurch. The application provides no information or business case to demonstrate that there is a clear unmet demand for holiday accommodation of this scale and type in this location, or that the development proposed would be viable as holiday accommodation.

- 7.7 The NPPF and Policy DM3 support the location of business development within existing rural settlements first, and if not available that the conversion of buildings or use of previously developed land should be preferred. In this instance, the proposal does not relate to development within a settlement, on previously developed land, or involve the conversion of existing buildings. The impact of the development on the character and appearance of the countryside is considered further in the sections below.
- 7.8 In terms of demonstrating a need for development, I would direct members to a recent appeal decision at Rides House in Eastchurch (W/21/3274235). Whilst this appeal decision relates to the creation of a new caravan park rather than new units, the principle of new tourism development on previously undeveloped land in the countryside has similarities to this application. The Inspector placed great weight to the lack of supporting information under the requirements of policy DM3 in the following paragraphs

*To be supported by national planning policy paragraph 4.3.17 of the LP explains applications should be accompanied by evidence to show how it will support the viability of existing services and/or how it will bring new services to the community. The Council's Cultural and Leisure adviser suggests the development would have some benefits to nearby facilities. Paragraph 7.1.23 of the LP acknowledges holiday parks provide direct employment, and their users support shops, pubs, restaurants, and visitor attractions. This development would meet some of the broad policy objectives of CP1, DM3, ST3 and ST6 of the LP and paragraph 84a) of the Framework. However, little substantive evidence has been provided by the appellant of its practical effects in this regard. Given the scale and nature of the development, it is likely the support would be limited. (para 7)*

*Policy DM3 of the LP supports the sustainable growth and expansion of rural businesses. This is provided amongst other things, the design and layout is sympathetic to the rural location, it is in appropriate locations where identified needs are not being met by existing facilities, or, where able to increase facilities available to local communities and visitors, and, proposals are a [sic] in accordance with Policy DM4. (para 8)*

*It is not clear that other previously developed sites have been considered as sought by DM3 1)b). Even if it had, the evidence provided does not identify needs not met by existing facilities in the locality, as expected by DM3 2)b). The text at paragraph 7.1.25 of the LP suggests to the contrary on Sheppey. While there may be some limited support to existing services, it is not demonstrated this development would increase facilities available to local communities as well as visitors sought by DM3 2)b). (para 10)*

- 7.9 In balancing the material planning considerations the Inspector concluded the following:

*For the reasons set out above, given the benefits visitors would bring in supporting services, facilities and tourism assets, the proposal gains support from some objectives and criteria in Policies ST3, CP1 and DM3 of the LP and the Framework. However, it conflicts with the strategy for and would not be in a suitable location having regard to policies for such development, in conflict with Policy DM3 and DM4 as a whole, the relevant provisions of which I have set out above. The broad support from the other aspects of policies, does not overcome the conflict identified. (para 12)*

*In a similar manner to Policy ST3, paragraph 84c) of the Framework states that planning decisions should enable sustainable rural tourism and leisure developments which*

*respect the character of the countryside. Therefore, my findings in respect of meeting that aspect of ST3 and paragraph 84c) will be dependent upon my findings in respect of character and appearance. (para 13)*

- 7.10 In a similar thread as the Rides Farm application set out above, I consider that the application fails to demonstrate that there is an identified need in the area for holiday accommodation that is not being met by existing facilities in the locality. I am also concerned that in the absence of a business case to demonstrate the viability of the proposed development, there is a risk that the use as holiday lets may not succeed, with resultant pressure to allow occupation of the units as permanent dwellings. Nor does the application provide any supporting information as to why this site has been selected in preference to other sites – including sites within village confines, on previously developed land, or through conversion of existing buildings. I consider this to be in conflict with Policy DM3 of the Local Plan.
- 7.11 In this regard, applications for new build holiday lets in the countryside, as in this case, raise similar issues to those of a proposal for a new dwelling albeit with some economic benefits; hence the preference for the conversion of existing buildings. Such new build development, especially if repeated, would lead to the creation of an unlimited number of new dwellings in remote unsustainable locations to serve a market that could be met from existing rural assets which is, in itself, a more sustainable approach. Policy DM3 makes clear that the expansion of tourism facilities should be on the basis that identified needs are not being met by existing facilities, again which has not been demonstrated.
- 7.12 The applicant has drawn attention to a scheme which was approved for new holiday development at Willow Farm, Ospringe (Ref 19/502483/FULL approved 27.10.2021) for the ‘*Erection of 4no. specialist equestrian holiday lets and 2no. stable buildings, installation of new sand school and associated site works.*’ However, under that application the proposed holiday lets were connected to long-established and large scale equestrian use of the site and need for the on-site facilities, to allow owners to stay over with their horses. As this was very much linked to an existing equestrian operation, I consider that to be materially different to the scheme now under consideration.
- 7.13 Moreover, the Council has further examples of refusals for the construction of new build holiday lets in the countryside. Perry Oaks, Selling (Ref: 20/505248/FULL) and Dickens Inn, Eastchurch (Ref: 21/504668/FULL). Both applications were refused on the basis that they provided no supporting information to demonstrate need and were refused on the basis that they represented unjustified and unacceptable development within the countryside contrary to policies ST3 and DM3 of the adopted Swale Borough Local Plan 2017; and the National Planning Policy Framework.

#### Impact upon character and appearance of countryside

- 7.14 Poot Lane is a largely single track rural lane, often enclosed by hedging but also providing open views towards the estuary in places. Although located by a small loose-knit cluster of farm, business and residential buildings, the application site and surrounding area is predominantly rural in character and appearance. The site is located some distance from the nearest settlement which has a limited range of services and facilities, and on a rural lane with no footpath or lighting. Occupants of the holiday lets would be likely to rely on the private car for access to services and facilities.



- 7.15 Due to the absence of development on the existing plot, the proposed development would urbanise and fundamentally alter the character and appearance of the site. Landscaping would soften this to a degree but the appearance of the site would change markedly.
- 7.16 The proposal is for holiday accommodation that would offer all facilities for day to day living and be constructed to a standard that could be suitable for permanent residential use. The units would appear as dwellings. The application site, while grouped within a small cluster of development, visually functions as part of the wider countryside which is sensitive to new development. The proposed development and associated access and parking and domestic paraphernalia would have an urbanising impact upon the land and would significantly change its undeveloped character, resulting in significant harm to the intrinsic character, appearance and beauty of the surrounding countryside contrary to policies ST3 and DM14 of the adopted local plan.
- 7.17 The site is designated as being within the Upchurch and Lower Halstow Fruit Belt under the Swale Landscape Character and Biodiversity Appraisal SPD. Although this is an undesignated landscape, the appraisal recognises the sensitivity of the distinctive coastal edge landscape and the need to conserve the undeveloped and distinctive character of Horsham Marsh, which is located on the west side of Poot Lane. Landscape condition and sensitivity are both rated as moderate, although it is acknowledged that coastal edge areas are more sensitive. Whilst there is built form in the surrounding area, in my opinion, the development and further consolidation of built form in this location would not be compatible with the sensitive marshland and coastal edge landscape. This would be in conflict with Policy DM24 of the Local Plan.

#### Heritage Impact

- 7.18 Obligations fall upon the council in determining any application which affects a listed building or its setting or within a conservation area, including its setting. The Town & Country Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) at section 66 places a duty on the Local Planning Authority to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.
- 7.19 Furthermore, at section 72 it is required that Local Planning Authorities pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. When considering potential impacts, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be) at para 199 of the NPPF; and any harm/loss of a designated heritage asset requires clear and convincing justification (at para 200). The NPPF gives presumption in favour of the conservation of heritage assets and applications that directly or indirectly impact such assets require appropriate and proportionate justification.
- 7.20 The subject site is in relatively proximity to a Scheduled Monument which is spread out in two large, separate areas (intercepted by the site of Upchurch Poultry Farm) and which together are listed as the site of a "World War II Heavy Anti-aircraft gun site (TS3) at Wetham Green, 460m north of Red Brick Cottage."
- 7.21 Neither the SBC Design and Conservation Manager or the KCC Archaeological Officer raise objection to the proposal (as amended), based on the separation distance to the Scheduled

Monument and intervening landscaping. Therefore, it is considered that the proposed development will have a neutral impact on the significance of ancient scheduled monument.

#### Residential Amenity

- 7.22 I have no concerns relating to overlooking or loss of privacy arising from the location of the windows or door openings. The bedroom windows shown within the first-floor rear elevation would afford views of the rear garden area of 3A Upchurch Poultry Farm however, due to the distances between properties and the presence of the existing row of trees and hedges this would, overall, obstruct views to a degree that overlooking would not be harmful, in my opinion.
- 7.23 In terms of noise and disturbance, holiday uses are not inherently noisy or disturbing over or beyond what would occur from the usual comings and goings of a residential property. The two immediately neighbouring properties, enjoy spacious curtilages with the houses set well away from the boundary with the application site. With these factors in mind, the proposed development is unlikely to cause any significant harm to the living conditions of local residents and would not conflict with Policy DM14 of the Local Plan.

#### Highways

- 7.24 The application proposes a new site access from Poot Lane which is a designated rural lane. The submitted application provides for an access point leading direct from Poot Lane with a minimum width of 5m. This distance is sufficient to allow for two cars to pass. A distance of 6m would also be retained immediately forward of the proposed entrance gates (details of which would be subject to condition should the application be approved) and this would provide sufficient space for cars to pull safely off of the highway to ensure that no highway obstruction would occur on Poot Lane. Overall, I am satisfied that the new access would not lead to highway safety concerns consistent with the aims of policy DM7 of the local plan.
- 7.25 In line with the adopted SBC Parking Standards SPD, one bedroom properties in this rural location should provide one/ two parking spaces and two spaces are provided. I am satisfied that the proposal complies with the requirements of the SBC parking standards SPD and the development would provide suitable parking provision.
- 7.26 The proposal would lead to increased use of a designated rural lane. However, taking into account the existing use of the lane for access to dwellings, farms, businesses, and recreational activities, I do not consider the traffic generated by two additional units would be likely to cause harm to the character of the lane. As such I do not consider there would be a conflict with Policy DM26 of the Local Plan.

#### Flood Risk

- 7.27 The site is located within flood zone 3. The Environment Agency and Lower Medway Drainage Board both raised concerns specifically in relation to ground water drainage. Groundwater is particularly sensitive in this location because the proposed development site is located upon a secondary aquifer with a very shallow water table.
- 7.28 Further information was provided namely a revised Flood Risk Assessment which also included a Foul Drainage Strategy which sets out that the foul drainage plans have been

amended to include sealed cesspools, and subsequently this raised no further objection from the Environment Agency, subject to conditions. In addition, the Lower Medway Drainage Board is also satisfied with the additional information as provided subject to land drainage consent, specifically byelaw 3 and 4. However, Byelaws are separate from planning and in this instance I am satisfied that the proposal is in accordance with policy DM21 of the Local Plan.

#### Ecology and Biodiversity

- 7.29 The NPPF requires new development to minimise impacts on biodiversity and provide net gains in biodiversity, where possible. Policy DM28 also requires that development proposals will conserve, enhance and extend biodiversity, provide for net gains in biodiversity, where possible, minimise any adverse impacts and compensate where impacts cannot be mitigated. The application includes an ecology report and following the submission of further information, KCC Ecology are satisfied that the development would not adversely affect protected species and raise no objection to the development, subject to conditions including a scheme of ecological enhancements. I find the proposal acceptable under Policy DM28 of the Local Plan.

#### Swale SPA

- 7.30 The site lies within 6km of the Swale SPA and subject to the approval of any new residential unit a contribution would be required to mitigate against the potential impacts of the development upon that protected area in accordance with the Council's standing agreement with Natural England. This is otherwise referred to as a SAMMS payment. Had I been minded to approve the application I would have requested this mitigation payment however as the application already fails I have not, and this constitutes an additional reason for refusal. For the sake of thoroughness, I have set out an appropriate assessment at the end of this report

#### Archaeology

- 7.31 The site lies adjacent to an area of archaeological potential and was previously identified as being archaeologically sensitive due to some findings of prehistoric and roman remains to the north of the site. Therefore, a planning condition will be required in the event of any future consent relating to the implementation of a programme of archaeological work.

#### Agricultural Land

- 7.32 The site is classed as Grade 1 agricultural land. Policy DM31 of the Local Plan states that development on such land will only be permitted where there is an overriding need that cannot be met on land in built up areas. Whilst the area of land is small, no evidence has been provided of alternatives sites that would not involve the loss of BMV land. On this basis, the application would conflict with Policy DM31 of the Local plan.

## **8. CONCLUSION**

- 8.1 The site is located some distance from local services and public transport and occupants would be likely to rely on the private car for most journeys. The development would result in the erection of two holiday lets that would appear as dwellings in a rural location and this

would be harmful to the character and appearance of the area and the intrinsic beauty of the countryside and landscape. The proposal would also result in the loss of best and most versatile agricultural land, albeit on a small scale. Whilst the provision of sustainable tourism facilities is generally supported under Policy DM3 of the Local Plan, the application fails to provide any detailed evidence that there is clear and viable demand for this type of holiday accommodation in this location, or whether other less harmful sites (such as on previously developed land or through conversion of an existing building) have been considered.

- 8.2 The proposal would bring some benefits to the local economy, primarily through increased tourism facilities and local spending. However, this would be limited due to the number and size of the units proposed. In addition, I would raise concern that were the holiday let enterprise not to succeed, the Council would most likely be put under pressure to remove the any holiday let occupancy conditions and to permit the units as permanent dwellings. This risk of this is greater in the absence of any information to support the business case for the development. On this basis I consider that the adverse impacts of the proposal would outweigh any benefits, and that the application would be contrary to policies ST3, DM3, DM14, DM24 and DM31 of the Local Plan.

## **9. RECOMMENDATION**

That planning permission is REFUSED for the following reasons:

- 1) The proposal would represent an unnecessary, undesirable, and unsustainable form of development, harmful to the character, appearance and intrinsic beauty of the countryside and landscape, and which would also result in the loss of Best and Most Versatile agricultural land. Although proposed for holiday accommodation, the design and layout of the units would appear as and be capable of occupation as dwellings and no business case has been provided to demonstrate that there is a clear unmet need and viable market for such holiday accommodation, with a resultant risk of future pressure to convert to dwellinghouses. The proposal would fail to comply with policies ST1, ST3, DM3 DM14, DM24 and DM31 of Bearing Fruits 2031: The Swale Borough Local Plan 2017; and paragraphs 8, 84 and 174 of the National Planning Policy Framework. The identified harm that would result from this proposal is not outweighed by the limited contribution made to the rural economy when assessed against the policies of the Local Plan and NPPF.
- 2) The proposed development will create potential for recreational disturbance to the Swale Special Protection Area. The application submission does not include an appropriate financial contribution to the Thames, Medway and Swale Strategic Access Management and Monitoring Strategy (SAMMS), or the means of securing such a contribution, and therefore fails to provide adequate mitigation against that potential harm. The development would therefore affect the integrity of this designated European site, and would be contrary to the aims of policies ST1, DM14, and DM28 of Bearing Fruits 2031 - The Swale Borough Local Plan 2017; and paragraph 181 of the National Planning Policy Framework.

## **APPROPRIATE ASSESSMENT**

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.

