

PLANNING COMMITTEE – 13 APRIL 2023**DEFERRED ITEM**

Report of the Head of Planning

DEFERRED ITEMS

Reports shown in previous Minutes as being deferred from that Meeting

DEF ITEM 1 REFERENCE NO - 20/505046/FULL		
APPLICATION PROPOSAL Erection of 2no. holiday homes		
ADDRESS High Hopes Poot Lane Upchurch Sittingbourne Kent ME9 7HL		
RECOMMENDATION That planning permission is refused		
SUMMARY OF REASONS FOR REFUSAL Additional information has been provided; however officers are not satisfied that it addresses original concerns as presented to the Planning Committee on 10 th November 2023. The additional information 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 sites (such as within built confines, on previously developed land or through conversion of an existing building) have been considered. In addition, the site is located within Flood Zone 3 and a sequential test has not been provided. Furthermore, a SAMMS mitigation payment to manage impacts on SPA and Ramsar Sites has not been made.		
REASON FOR REFERRAL TO COMMITTEE Deferred item from Planning Committee dated 10 th November 2022		
WARD Hartlip, Newington And Upchurch	PARISH/TOWN COUNCIL Upchurch	APPLICANT Mr Curtis AGENT Woodstock Associates
DECISION DUE DATE 24/12/20	PUBLICITY EXPIRY DATE 13/03/23	

1. INTRODUCTION

1.1 This application was initially reported to Planning Committee on 10th November 2022, with a recommendation for refusal. The Planning Committee resolved to defer the application to allow the applicant the opportunity to provide further supporting evidence to fully enable the Council to consider the proposal in the context of Policy DM3 of the Local Plan.

1.2 The committee minutes set out the following resolution:

Resolved: That application 220/505046 be deferred to allow the applicant to provide details of the business case and evidence of the identified need for the development proposal and further information as to why development of this site is necessary over other sites and locations.

1.3 In addition, the site is located in Flood Zone 3 and following an appeal decision last year for a site in Sheerness (appeal reference 3277228), it is clear that all new development within Flood Zones 2 and 3 must be accompanied by a Sequential Test to demonstrate whether other sequentially preferable sites can be identified that are at less risk from flooding. This has not been provided. This represents a material consideration that should be applied to this application and further details are set out below.

1.4 The original Committee report is attached to this report as Appendix A.

2. **ADDITIONAL INFORMATION** - The applicant has provided a Holiday Lettings Business Plan and a Design and Access Statement.

3. **CONSULTATIONS**

3.1 SBC Destination and Place Manager – Advises that Swale has a good number of Airbnb properties that enjoy good levels of occupancy, suggesting there is demand for short term lets for business and leisure purposes. Does not disagree with anything set out in the applicant's supporting evidence.

4. **APPRAISAL**

Policy DM3 – The Rural Economy

4.1 Policy DM3 sets out the Council's approach to proposals relating to the rural economy. It states that for all proposals, consideration should firstly be given to the appropriate re-use of existing buildings or the development of other previously developed land, unless such sites are not available or it is demonstrated that a particular location is necessary to support the needs of rural communities or the active and sustainable management of the countryside.

4.2 A Business Plan and Design and Access Statement has been submitted which sets out the applicant's case for holiday let accommodation. The business plan refers to an existing swimming pool facility, located within the applicant's residential property and adjacent to the lettings which currently runs scuba diving training courses. The supporting business plan identifies a need for this type of facility, including interest from Medway Marlins Scuba-Diving Club to use the existing pool and proposed accommodation following the closure of their training pool. The long-term business plan sets out the applicant's intention to offer discount packages for guests using both the scuba-diving facilities and holiday lets. Notwithstanding, it is noted that the holiday lets are not exclusively intended for visitors using the adjoining scuba diving facilities and will therefore be unrestricted and open to all visitors seeking to visit the area.

4.3 In this instance, it is acknowledged that the scuba diving business is directly reliant on the use of the existing swimming pool and while the holiday let accommodation may be attractive to persons interested in scuba diving to some degree, it would not be unreasonable to consider that visitors would be willing to travel a short distance to access specialised facilities such as this. Moreover, it is clear that the use of the holiday lets is open to all visitors and not exclusively intended for occupants using the scuba facilities. The additional information fails to provide details and as such test the availability of other more suitable sites in the area for holiday accommodation including the re-use of buildings, previously developed land, or

sites in a more sustainable location. This is not in accordance with the approach under Policy DM3.

- 4.4 Officers are also concerned that there are no records of planning permission being granted for the scuba diving business or indeed a swimming pool at the adjoining property (although it is possible that a swimming pool could be permitted development if incidental to the residential use of a dwelling). If, as stated within the supporting information, the applicants are running a business from their property, officers do not know the full extent of the commercial activity that occurs there, and whether a material change of use to a business use has occurred. There is the potential that such use and associated activity could have further impacts not previously considered in the original committee report attached in Appendix 1.
- 4.5 Policy DM3. 1.C, requires all proposals to retain or enhance the rural services available to local communities and visitors without undermining or resulting in the loss of existing services unless demonstrated to be unviable for the existing use or other employment/community use. In this regard, limited details have been provided which set out how the proposal would retain the existing rural service provision in the area. Officers are also concerned that the Business Plan is somewhat flawed. This is because the trajectories provided are all based upon two-bedroom holiday lets and the business plan suggests a need for this type of small family/group accommodation within this location given that the majority of holiday lets in the area cater for couples. However, the site is located within Flood Zone 3 and a ground floor bedroom was removed from the design to meet with the criteria of the Environment Agency. The holiday lets provide one-bedroom units and therefore are not of the same size as the existing provision identified in the business plan.

Policy DM21, Water, flooding and drainage

- 4.6 The site is located within Flood Zone 3 and on land at the highest risk of flooding. The application includes a Flood Risk Assessment although this only considers the measures to potentially make the development resilient to flood risk – i.e. raising habitable floor levels and locating bedrooms at first floor level. It does not include a sequential assessment as required under the NPPF and Policy DM21 of the Local Plan 2017. It is noted that the Environment Agency do not object to the development, however, the sequential test is a matter for the local planning authority to assess as decision maker, rather than the Environment Agency.
- 4.7 Members will note that the November committee report did not include a reason for refusal on flooding grounds. Since this application was reported to Planning Committee on 10th November 2022, officers have adopted a stricter approach to development proposals in areas at risk of flooding following an appeal decision last year in Sheerness, which confirmed that a Sequential Test was necessary for all proposals notwithstanding whether or not the Environment Agency object to the development. This clarified that the correct policy approach is to steer new development to areas of the lowest probability of flooding and that development will not be permitted if there are reasonably available sites in areas of lower risk of flooding.
- 4.8 On the basis of the clear commentary in the above appeal decision, I consider that this represents a material consideration that should be applied to this application. There are other locations in and around Upchurch and further afield that do not fall within Flood Zones 2 and

3 that would be sequentially preferable. This also ties in with my concern above that the application has not considered other locations that could be more appropriate under Policy DM3, including use of previously developed land or the re-use of buildings. I understand that this site has most likely been chosen simply on the basis that the applicant owns the land, but that does not deal with the requirement to consider other locations as required under Policy DM3 and flood policy. In this instance, officers do not consider it to be in the applicant's interest to submit a Sequential Test at a further expense to them given that it would appear a difficult task to demonstrate that there were no sequentially preferable sites in the surrounding area. The development would result in an increase in risk of flooding to people and property. As such, the development fails to comply with the NPPF and Policy DM21 of the Bearing Fruits 2031 - Local Plan and this has been added as an additional reason for refusal.

Other Matters

- 4.9 The proposed development would create potential for recreational disturbance to the Swale Special Protection Area. To date, a mitigation payment has not been received by the Council and for this reason, refusal reason 2, is still pertinent.

5. CONCLUSION

- 5.1 The additional information falls to address the original concerns presented to the Planning Committee on 10th November 2023. Moreover, the business plan is flawed and fails to provide any detailed evidence that there is clear and viable demand for one bedroom 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. The Council remains concerned that the development would result in new residential development in an unsustainable location within the countryside. There is a connected risk 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. The wording for refusal reason 1 has been amended from that in the November committee report but identifies the above harm.
- 5.2 On this basis and in light of the additional information submitted, the proposal remains contrary to policies ST3, DM3, DM14, DM24 and DM31 of the Bearing Fruits 2031 – Local Plan and for this reason should be refused. In addition and for the reasons stated above, the development is also considered to be contrary to Policy DM21 of the Local Plan.

6. RECOMMENDATION

- 6.1 Recommendation for refusal for the following reasons:

REASONS FOR REFUSAL

- 1) The proposal would amount to the erection of two new buildings of residential form and character within the open countryside and in a rural location divorced from services and amenities. 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. The application fails to demonstrate a clear or overriding need for the development in this location that would outweigh this harm.

Furthermore, in the absence of any clear unmet need, there would be a significant risk of future pressure to convert the units to permanent residential dwellinghouses in an area where such development would not normally be permitted, 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 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.
- 3) The site is located within Flood Zone 3 which is classified as being at high risk of flooding. The application fails to demonstrate through a sequential test that there are no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. This is contrary to Chapter 14 of the National Planning Policy Framework and policy DM21 of Bearing Fruits 2031 - The Swale Borough Local Plan.

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.

