

PLANNING COMMITTEE –**PART 3**

Report of the Head of Planning

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

3.1 REFERENCE NO – 23/501613/FULL		
PROPOSAL Erection of a 1no. three bedroom dwelling with associated landscaping, parking and access		
SITE LOCATION Land To The East Of Orchard House London Road Upchurch Kent ME8 8PT		
RECOMMENDATION- Refuse		
APPLICATION TYPE Minor residential development		
REASON FOR REFERRAL TO COMMITTEE The application has been referred to Planning Committee by Councillor Palmer		
Case Officer Rebecca Corrigan		
WARD Hartlip, Newington And Upchurch	PARISH/TOWN COUNCIL Upchurch	APPLICANT Mr & Mrs Rowe AGENT Urban Curve Architecture Limited
DATE REGISTERED 14.04.2023	TARGET DATE 12.06.2023	CASE OFFICER Rebecca Corrigan
BACKGROUND PAPERS AND INFORMATION: 23/501613/FULL Erection of a 1no. three bedroom dwelling with associated landscaping, parking and access. Land To The East Of Orchard House London Road Upchurch Kent ME8 8PT (midkent.gov.uk)		

1. SITE LOCATION AND DESCRIPTION

- 1.1 The site is located in the countryside outside of the settlements of Rainham, Newington and Hartlip. It relates to a parcel of land on the northern side of London Road, to the east of Orchard House, a two storey property within the same ownership. The land consists of scrubland / grassland, with a building to the rear which was originally used as a pool house. It appears there was also once an outside swimming pool in front of the pool house.
- 1.2 The site rises in a northern direction towards a railway embankment which forms the northern boundary. The southern boundary of the site fronts the London Road (A2).

This boundary is heavily vegetated. Within this frontage there is a field entrance proposed to be utilised as the entrance for the development subject to this application.

2. PLANNING HISTORY

- 2.1 **14/503968/FULL** – Planning permission granted on 13.04.2015 for The construction of a 4-bay carport on the side of an existing detached garage, with an extension of the current driveway to suit.
- 2.2 **SW/94/1037** – Planning permission granted on 18.01.1995 for Alterations and extensions to existing house and construction of a detached replacement garage.

3. PROPOSED DEVELOPMENT

- 3.1 Planning permission is sought for the erection of a three bedroom dwelling with associated landscaping, parking and access.
- 3.2 The dwelling would be set back from the boundary of the site with the A2 by approximately 32m. The access and driveway would be located to the east of the dwelling. Soft landscaping to include areas of lawn, a wildflower meadow and additional hedgerow and tree planting is also proposed.
- 3.3 The proposed dwelling itself is single storey and of a contemporary design, incorporating two wings with a monopitch roof flanking a central flat roofed element of the dwelling. The footprint of the dwelling measures approximately 19m x 22m, and is approximately 3m in height to the eaves and 5m to the highest point of the roof.
- 3.4 The external finishing materials would be vertically laid timber cladding for the walls, with the two monopitched flanks of the dwelling incorporating a green roof. The windows would be constructed from grey timber / aluminum composite.

4. REPRESENTATIONS

- 4.1 One round of consultation has been undertaken, during which letters were sent to neighbouring occupiers and a notice was displayed at the application site. Full details of representations are available online.
- 4.2 Eleven letters of support were received in relation to the consultation raising the following points: -
- The development would contribute to housing shortfall
 - The development would contribute to supply of custom build homes
 - Shortages of bungalows in the local area
 - Makes good use of previously developed land
 - Renewable energy/low carbon footprint
 - Would achieve biodiversity enhancements
 - This is a sustainable location within close proximity to the amenities of Rainham and Newington as well as a bus route
 - Increase in trees and hedgerows
- 4.3 **Upchurch Parish Council** raise no objections but ask for neighbours' comments to be taken into consideration.

5. CONSULTATIONS

- 5.1 **Mid Kent Environmental Health:** - No objection subject to conditions relating to land contamination and noise outbreak from the inverter related to the solar panel system.
- 5.2 **KCC Minerals and Waste:** - No objections.
- 5.3 **KCC Highways:** - No objection subject to conditions relating to parking, EV charging, cycle parking, set-back of gates from the highway and use of a bound surface adjacent to the highway.
- 5.4 **Network Rail:** - provide advisory informatives for development in proximity to rail infrastructure.
- 5.5 **Natural England:** - No objection subject to securing appropriate mitigation for recreational pressure impacts on habitat sites (SAMMS).
- 5.6 **KCC Archaeology:** - No objection subject to condition.
- 5.7 **KCC Ecology:** - No objection subject to conditions.

6. DEVELOPMENT PLAN POLICIES

6.1 **Bearing Fruits 2031: The Swale Borough Council Local Plan 2017**

Policy ST1 Delivering sustainable development in Swale
Policy ST3 The Swale settlement strategy
Policy ST4 Meeting the local plan development targets
Policy ST5 The Sittingbourne Area Strategy
Policy CP2 Promoting sustainable transport
Policy CP3 Delivering a wide choice of high quality homes
Policy CP4 Requiring good design
Policy DM6 Managing transport demand and impact
Policy DM7 Vehicle parking
Policy DM14 General development criteria
Policy DM19 Sustainable design and construction
Policy DM28 Biodiversity and geological conservation

6.2 **Supplementary Planning Guidance/Documents**

Landscape Character Assessment and Biodiversity Appraisal 2011

Swale Parking Standards 2020

7. ASSESSMENT

- 7.1 This application is reported to the Committee at the request of Cllr Palmer.
- 7.2 The main considerations involved in the assessment of the application are:
- The Principle of Development
 - Location of the development
 - Landscape and Visual Impact

- Archaeology
- Design of the proposed development
- Ecology
- Transport and Highways
- Living conditions
- The provision of a self-build development

Principle

- 7.3 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 sets out that the starting point for decision making is the development plan unless material considerations indicate otherwise.
- 7.4 The National Planning Policy Framework provides the national policy context for the proposed development and is a material consideration of considerable weight in the determination of the application. The NPPF states that any proposed development that accords with an up-to-date local plan should be approved without delay. At the heart of the NPPF is a presumption in favour of sustainable development and for decision-taking this means approving development that accords with the development plan.
- 7.5 The site is located within the countryside and approximately 1.2km from the edge of the built settlement of Rainham to the west and 1.5km from the built up area boundary of Newington to the east. Policy ST3 of the Local Plan states that development in the open countryside will not be permitted unless supported by national policy. The principle of residential development in this location is not supported under the Local Plan.
- 7.6 However, the Council cannot currently demonstrate a five-year supply of housing land. 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”.
- 7.7 For these reasons, paragraph 11 of the NPPF applies. 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

- 7.8 The site is divorced from the settlements of Rainham to the west and Newington to the east. The local shopping centre in Rainham is approximately 2.2 km from the site and the train station is approximately 2.5km. Local facilities and the train station at Newington – which is classed as a Tier 4 Rural Local Service Centre under policy ST 3 of the Local Plan - are a similar distance to the east.
- 7.9 The site is located on the north side of the A2 which has a continuous, albeit narrow footpath in both directions to Newington and Rainham. As such it would be possible to

walk to both settlements, although this would not be a particularly pleasant experience along the A2 London Road. An hourly bus service operates along the A2 between Medway and Sittingbourne.

- 7.10 It is therefore considered that the site would be distant from local services and facilities. There are some sustainable travel options, but given the relatively infrequent bus service and the distance to the nearest settlements, and the need to use the walkway on the main A2, the location of the proposed dwelling would be likely to predominantly give rise to car borne journeys. It would be possible to cycle on the A2 but this would again not be a particular pleasant or safe experience. Policy CP2 of the Local Plan seeks to minimise the need to travel and promote use of sustainable transport. As future residents would rely to a considerable extent on the private car to get around, the scheme would be contrary to this policy.
- 7.11 As such, the distant location of the site from services and facilities is not considered to be suitable for housing and with particular regard to minimising travel and promoting sustainable travel options, contrary to policies CP2, ST3 and ST5 of the Local Plan which seeks, amongst other matters, to support the aims of sustainable development, and adhere to the Council's settlement strategy.

Self-Build Development

- 7.12 The application has been submitted as a self build / custom build housing project. 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.
- 7.13 The Council's 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). In this instance, 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. A further self build development was permitted at planning committee - Westfield Cottages, Breach Lane (22/502340/OUT). This brings the total number of self-builds in the local area outside of the built-up area boundaries to 10 dwellings.
- 7.14 Whilst weight is given to the need for sites for self build /custom housing in the borough, the site performs poorly in terms of its location.

Landscape and Visual Impact

- 7.15 The supporting statement sets out that the site is brownfield due to the presence of the pool room situated toward the northern boundary of the site. The NPPF definition of brownfield / previously developed land is land that is or was occupied by a permanent structure, including the curtilage of the developed land. The definition makes clear that it should not be assumed that the whole of the curtilage should be developed. The existing outbuilding would be considered previously developed land, however

predominantly the site is undeveloped and open in character and appearance. As such, whilst a building on a very small part 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. As such this is given little weight.

- 7.16 Although it is recognised that the proposed dwelling would not be isolated in the true sense of the word given the proximity to Orchard House to the west and the further sporadic development to the east, the site is largely of an open and undeveloped character and appearance. It forms part of the generally open landscape to the north of the A2 which has an undeveloped appearance and makes a significant contribution to the open rural landscape of the area, despite the presence of the A2 itself.
- 7.17 The proposal is to create a new single storey, 3no bedroom dwelling set in a generous garden. The scheme will provide a custom built dwelling offering biodiversity enhancements by incorporating a sedum (green) roof and landscaping.
- 7.18 The dwelling is designed with two main parallel pitched roof wings separated east to west by a central flat roofed element and partially covered courtyard. The southern wing is connected to a flat roof covered carport and garage.
- 7.19 The supporting design and access statement places great emphasis on the sensitivity of the design for this rural location. The design of the dwelling is good quality. However, the building has an expansive footprint positioned centrally in an open field and proposes a sweeping entrance through the centre of an adjoining field. The dwelling as proposed, in addition to the service road and area of hard landscaping would add further built form to an otherwise undeveloped landscape and this would be to the detriment of the character and appearance of the countryside.
- 7.20 The site is currently largely screened from the road by landscaping. There would be some removal and replacement landscaping to facilitate visibility splays. However, whilst landscaping may offer screening, this cannot be guaranteed to remain in place. In addition, landscaping should not be used to hide otherwise inappropriate forms of development.
- 7.21 The site is not located within an Important Countryside Gap. However Policy ST5 of the Local Plan sets out that important countryside gaps should be maintained in accordance with Policy DM25, and within the A2 corridor to the west of Sittingbourne through to Rainham. The supporting text to the policy sets out that the cumulative impact of development pressures within the A2 corridor between Sittingbourne and Rainham would have a negative impact upon the character of settlement patterns. In this instance, the development would add built form on the A2 between Newington and Rainham. However, given this is limited to one dwelling and the site is not part of a defined Important Local Countryside Gap, this is not considered to be significantly harmful in isolation.
- 7.22 Nonetheless, the proposal would encroach into largely undeveloped land, resulting in an urbanising infill effect on the northern side of London Road (A2) by introducing an

urban and domestic character and appearance to the site through the built form, layout and domestic paraphernalia that would arise from residential development. This would be harmful to the character and appearance of the countryside and would be contrary to the aims of paragraph 174 of the NPPF, as well as policies ST3 and DM14 of the Local Plan.

Archaeology

- 7.23 Policy DM 34 of the Local Plan sets out that for development on sites where there is the potential for an archaeological heritage asset, there is a preference to preserve important archaeological features in situ, however, where this is not justified, suitable mitigation must be achieved.
- 7.24 The main archaeological potential arises from the location of the site immediately to the north of the A2, the main roman road between the coast and London. Given the site's location, there is potential for archaeological remains to be present and the KCC Archaeological Officer advises that a planning condition should be secured for the implementation of archaeological works to be submitted and approved by the Local Planning Authority. Subject to this the proposal would be compliant with policy DM 34 of the Local Plan.

Ecology

- 7.25 The site falls within 6km of the Thames, Medway and Swale Estuary SPA and Ramsar sites. The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') affords protection to certain species or species groups, commonly known as European Protected Species (EPS), which are also protected by the Wildlife and Countryside Act 1981. This is endorsed by policies CP 7 and DM 28 of the Local Plan, which relates to the protection of sites of international conservation importance including Special Areas of Conservation (SAC), Special Protection Areas (SPA) or Ramsar Sites.
- 7.26 The proposal would add to recreational pressure on the SPA's and Ramsar sites. The application has been the subject of an Appropriate Assessment (AA), as set out below. The AA concludes that these impacts can be mitigated. In this regard, a SAMMS payment of £314.05 has been received by the LPA and is therefore acceptable.
- 7.27 In terms of site specific ecological impacts, KCC Ecology have been consulted as part of this application and advise that the development has limited potential to result in significant ecological impacts. Subject to conditions to secure ecological enhancements, no objections are raised on ecology grounds.

Transport and Highways

- 7.28 The NPPF promotes sustainable patterns of development and expects land use and transport planning to work in parallel in order to deliver such. A core principle of the NPPF is that development should:

Actively manage patterns of growth to make the fullest use of public transport, walking and cycling and to focus development in locations which are sustainable.”

7.29 The NPPF also states that:

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”

7.30 The site would be accessed by upgrading an existing field access from London Road. There is also an existing field gate from the land onto the scrubland on the eastern boundary of the garden. This is the location of the proposed new entrance gate. A permeable surface drive will be formed to provide access to the site. The existing access is also used for maintenance access to the pylon located in the scrubland. KCC Highways have been consulted and raise no objection to the proposal on highway safety grounds.

7.31 Turning to parking, Swale Parking Standards 2020 requires 3 spaces for a 3 bedroom dwelling in this location. At the request of KCC Highways the parking arrangement has been revised and the resulting revised scheme is found to be acceptable.

7.32 An electric vehicle space is proposed and there are suitable cycle parking and refuse facilities to comply with policies DM6(3e) and DM7(3).

Living Conditions

7.33 The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers. Specifically, policy DM14 states that any new proposed developments should not cause significant harm to the amenities of surrounding uses or areas and due consideration will be given to the impact of the proposed development upon neighbouring properties. Any new proposed schemes should not result in significant overshadowing through a loss of daylight or sunlight.

7.34 In terms of potential impact upon neighbouring properties, the closest and only residential property likely to be affected is Orchard House which is a two storey dwelling as opposed to the single storey build of the new dwelling. The new dwelling would be set back and roughly align with the rear flank of Orchard House and a separation distance of 20.5m would be retained between dwellings at their closest point. Overall, based upon the relationship between dwellings the proposal would not result in an unreasonable loss of privacy, or an unreasonable loss of outlook or loss of privacy for the residents of Orchard House.

7.35 Turning to noise, the proposal would generate domestic noise over and above the existing situation however due to the proximity of Orchard House and the London Road (A2), this is unlikely to cause unacceptable impacts to a degree that would be harmful.

7.36 The Local Plan requires that new development has sufficient regard for the living conditions of future occupiers and in this regard, the proposal would provide a good standard of living accommodation for future occupiers. It provides a single storey development with three bedrooms and accords with the National Space Standards. All habitable spaces are provided with natural light and ventilation.

8. CONCLUSION

8.1 The site is located outside of any built confines and within the countryside, some distance from the nearest settlements of Newington and Rainham. However in the absence of a five year housing supply, the tilted balance applies. The proposal would offer benefits in terms of adding to the housing supply in the Borough, and delivering a self-build plot. However, these benefits are given a small degree of weight given that the proposal relates only to 1 dwelling.

8.2 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. It is noted that the site is not truly isolated from other built form but is in an area of rural character and appearance, and that some public transport options do exist, although these are considered to be limited for the reasons set out above. Overall it is considered that the development would result in harm to the character and appearance of the countryside through development of a site that forms part of a predominantly rural landscape, and the development is not in a sustainable location. Significant weight is given to these harmful impacts. Whilst the scheme would also be for a self-build dwelling, it is considered that the poor location of the site and harm to rural character and appearance that would arise would significantly and demonstrably outweigh the benefits arising from 1 dwelling.

8.3 For the reasons set out above, it is considered 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.

REASON FOR REFUSAL

1. The proposed development would represent an unacceptable form of residential development in an unsustainable countryside location, giving rise to a harmful impact upon the character, appearance, and intrinsic value of the countryside and to the purposes of sustainable development. The proposal is therefore contrary to policies ST1, ST3, ST5, CP2, DM6 and DM14 of Bearing Fruits 2031 - The Swale Borough Local Plan 2017; and to the advice of paragraphs 8 and 174 of the National Planning Policy Framework. The harm identified significantly and demonstrably outweighs the benefits of the scheme.

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.

