

PLANNING COMMITTEE – 18 JULY 2024**PART 3**

Report of the Head of Planning

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

3.1 REFERENCE NO - 24/500022/FULL		
PROPOSAL Erection of 2no. bungalows (Revised scheme to approval 21/501243/FULL).		
SITE LOCATION Land Adj To Rides House, Warden Road, Eastchurch, Kent, ME12 4HA		
RECOMMENDATION Delegate to the Head of Planning to refuse planning permission, with further delegation to the Head of Planning to negotiate the precise wording of reasons of refusal, including adding or amending such reasons as may be consequently necessary and appropriate.		
APPLICATION TYPE Minor		
REASON FOR REFERRAL TO COMMITTEE Eastchurch Parish Council support the application		
Case Officer Rebecca Corrigan		
WARD Sheppey East	PARISH/TOWN COUNCIL Eastchurch	APPLICANT Mark Ball AGENT Morris Russell Planning
DATE REGISTERED 01.02.2024	TARGET DATE 23.07.2024	
BACKGROUND PAPERS AND INFORMATION: Documents referenced in report are as follows: - 2491-01 Site Location Plan 2491-05 Existing and Proposed Block Plans 2492 10A Proposed Site Plan, Floor Plan and Elevations The full suite of documents submitted pursuant to the above application are available via the link below: - 24/500022/FULL Erection of 2no. bungalows (Revised scheme to approval 21/501243/FULL). Land Adj To Rides House Warden Road Eastchurch Kent ME12 4HA (midkent.gov.uk)		

1. SITE LOCATION AND DESCRIPTION

- 1.1 The site is located within the countryside, outside of the built-up area confines, situated between the villages of Eastchurch to the southwest and Warden to the southeast.

- 1.2 The site forms part of a larger land area comprised of a collection of farm buildings and residential development and associated open land collectively referred to as Rides Farm.
- 1.3 The application site is an 'L' shaped parcel of land to the north of Warden Road. Access to the site is taken from the northern side of Warden Road between 'Rides Cottage' to the west and two dwellings to the east which are currently under construction (these were allowed on appeal as a replacement for the original 'Rides House' farm dwelling, appeal ref. 3262303) and the site then opens out into a rectangular shape to the rear of Rides Cottage. The site previously contained two agricultural buildings, however these have been demolished and only the concrete base remains. The site is within a cluster of sporadic residential development within otherwise generally rural surroundings.
- 1.4 To the north and east, there are a collection of agricultural buildings and open countryside which form part of the original Rides Farm.
- 1.5 To the south, on the opposite side of Warden Road the land comprises of cultivated open agricultural farm land of Agricultural Land Classification Grade 3.

2. PLANNING HISTORY

- 2.1 **21/501243/FULL** – Planning permission granted on 23.07.2023 for the conversion of agricultural buildings to form 2 no. single residential dwellings (as an amendment to the recent prior approval for the change of use of the buildings into residential units under reference 20/501903/PNQCLA).
- 2.2 **20/501903/PNQCLA** – Prior Approval granted on 30.06.2020 in relation to a Prior notification for the change of use of 2no. agricultural buildings to 2no. dwellinghouses and for associated operational development. For its prior approval to: - Transport and Highways impacts of the development. - Contamination risks on the site. - Flooding risks on the site. - Noise impacts of the development. - Whether the location or siting of the building makes it otherwise impractical or undesirable for the use of the building to change as proposed - Design and external appearance impacts on the building.
- 2.3 **19/503515/FULL** Planning permission granted on 16.10.2019 for Proposed cladding of open bays to existing agricultural barns, including insertion of doors to the east and south elevations.

PLANNING HISTORY OF ADJOINING SITE

- 2.4 The following decisions on the adjacent site are of some relevance specifically where the Inspector dismissed an appeal on sustainability grounds.
- 2.5 **20/503620/FULL** Appeal allowed on 17.05.2021 for Erection of 2no. semi-detached dwellings with associated access and parking.
- 2.6 **21/500005/FULL** Appeal dismissed on 25.02.2021 for Change of use of land for stationing of up to 15 holiday caravans together with access and hardstanding for each pitch.
- 2.7 **21/506332/FULL** – Appeal dismissed on 31.03.2023 for Erection of a dwelling.

3. PROPOSED DEVELOPMENT

- 3.1 This application seeks planning permission to erect 2 bungalows on the site. It has been submitted as an alternative to the development permitted under planning permission ref: 21/501243/FULL for the conversion of agricultural buildings to residential use.
- 3.2 The proposed bungalows would have a footprint of 14.3m x 7m and a floor area of 103m². There is a minor difference in ground levels at the site therefore taken on average the new bungalows would have an eaves height of 2.6m and a ridge height of 4.5m. The bungalows would be sited side by side with car parking in the space between the two buildings. Each bungalow would provide 3 bedrooms. The bungalows would be finished with a tiled pitched roof and weatherboarding for the external walls.
- 3.3 The red line of this application site is marginally larger than that of the previously approved scheme (ref: 21/501243/FULL). The increase is towards the northeastern corner which squares off the site and increases the amount of amenity provision to the rear of the proposed eastern bungalow.

4. CONSULTATION

- 4.1 Two rounds of neighbour consultations were undertaken, during which letters were sent to neighbouring occupiers and a notice was displayed at the application site. Full details of the representations are available online.
- 4.2 Two letters of representation were received from the same address objecting to the application. Concerns/comments were raised in relation to the following matters:

Comment	Report reference
One of the bungalows runs close to the boundary of property and will cause overshadowing and a blot on the landscape.	See para. 7.24
The layout and density of buildings will feel very cramped.	See paras. 7.10-7.16
No objection to the original layout of the site or if said property was set further to the back of the plot.	Noted.
Concern regarding flood water and drainage.	The application site is Flood Zone 1
Concern with the address listing.	The site address has been amended

- 4.3 Eastchurch Parish Council – Support the application on the following grounds:

Comment	Report reference
The development is suitably designed to avoid an unacceptable impact upon the living conditions of adjoining dwellings as this is a better design than	Paragraphs 7.23-7.25 set out that there would be no unacceptable

the 2021 application.	impacts on the living conditions of neighbours. Paragraphs 7.10-7.16 set out that the visual impact would be harmful. Paragraphs 7.5-7.6 set out that the previous permissions cannot now be implemented.
-----------------------	---

5. REPRESENTATIONS

- 5.1 **Lower Medway Internal Drainage Board** – Advise that the site is within the drainage district of the Lower Medway Internal Drainage Board; however, the proposal does not impact the Board's interests.
- 5.2 **Natural England:** Since this application will result in a net increase in residential accommodation, impacts to the coastal Special Protection Area(s) and Ramsar Site(s) may result from increased recreational disturbance. The Local Authority is advised to complete an Appropriate Assessment to ensure suitable mitigation can be achieved.
- 5.3 **Mid Kent Environmental Health:** Raise no objection, subject to a condition relating to Land Contamination and an informative relating to construction.
- 5.4 **KCC Highways:** No objection raised subject to conditions relating to the retention of vehicle parking spaces, EV charging points, cycle parking and refuse storage facilities.

6. DEVELOPMENT PLAN POLICES.

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

Policy ST1 Delivering sustainable development in Swale
Policy ST3 The Swale settlement strategy
Policy CP2 Promoting sustainable transport
Policy CP3 Delivering a wide choice of high quality homes
Policy CP4 Requiring good design
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**

- 6.3 SBC Vehicle Parking Standards Supplementary Planning Document (SPD) which is pursuant to Policy DM7 of the Bearing Fruits Local Plan Adopted 2017 was adopted by the Council in June 2020 and is a material consideration in the determination of planning applications.

7. ASSESSMENT

- 7.1 This application is reported to the Committee because Eastchurch Parish Council has supported the proposal on relevant planning grounds. Considering these comments and

the proposal that has been submitted, the committee is recommended to carefully consider the following main points:

- The Principle of Development
- Landscape and Visual
- Ecology
- Transport and Highways
- Living Conditions
- Other matters

Principle of Development

- 7.2 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.
- 7.3 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.
- 7.4 The application site lies within the countryside and is divorced from any settlement, and as such policies of rural restraint apply. Policy ST3 of the Local Plan 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, tranquility and beauty of the countryside, its buildings, and the vitality of rural communities. Policy CP3 states that homes will be steered towards the locations identified in ST3, which are focused on the main urban centres in the borough. Policy CP2 seeks to locate development in areas which minimise the need to travel for employment and services and facilitate sustainable transport.
- 7.5 In this case, it is important to consider the planning history of the site. The site originally contained two agricultural buildings which were granted Prior Approval for conversion into two dwellings in 2020 (ref: 20/501903/PNQCLA) under permitted development rights. Planning permission (21/501243/FULL) was subsequently granted for the conversion of the agricultural buildings to bungalows, and which included some physical alterations to the buildings. The physical alterations took the scheme outside of permitted development limitations, however given that prior approval had been granted, the alterations proposed (mainly to re-clad the walls and roofs of the buildings) was deemed acceptable. It is important to note that such permissions / approvals were granted for the conversion of existing agricultural buildings on the site – and that the conversion of rural buildings to alternative uses is generally permitted / supported both under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) and under national policy. In particular, the prior approval process under the GPDO only allows a narrow range of matters to be considered when assessing such applications. In addition, policy DM3 of the Local Plan supports the conversion of rural buildings, albeit not

for residential purposes. However, in considering the above planning application, the Council accepted that there was a legitimate fallback permission under the prior approval for the buildings to be converted to such use.

- 7.6 The agricultural buildings have now been demolished, and this represents a significant change in site circumstances. This means that it is not possible to carry out the developments referred to above as there are no longer any existing buildings to convert. As such, there is no fallback position now available to assess as a material consideration under this current application. The site is not classed as brownfield land as the buildings that formerly occupied the site were last in agricultural use, and as a result are excluded from the definition of previously developed land in the NPPF.
- 7.7 The application proposes to erect two new dwellings on the site, within an area in the open countryside. Such development would not protect the intrinsic character, value, landscape setting and beauty of the countryside and would conflict with Policy ST3 of the Local Plan.
- 7.8 The site is also in a location distant from services and facilities. In recent appeal decisions for new residential development immediately adjacent to the site, Inspectors have also considered the location to be remote (appeal references 3262303 and 3295953) and unsustainable.
- 7.9 As such, the location of the site within the countryside and distance from services and facilities makes this an unsustainable location not considered suitable for housing and with particular regard to minimising travel and promoting sustainable travel options it is found to be contrary to policies ST1, ST3 and CP2 of the Local Plan which seeks, amongst other matters, to support the aims of sustainable development, and adhere to the Council's settlement strategy.

Landscape and Visual Impact

- 7.10 Policies ST3, CP3, CP4 and DM14 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.
- 7.11 The previous consents (20/501903/PNQCLA and 21/501243/FULL) sought to convert the existing barns and therefore related to the conversion of existing buildings that formed part of the landscape. However, this is no longer the case given that the barns have been demolished. In addition, this application seeks a revised location for the development to reposition the footprint of the bungalows side by side sharing the same building line and this differs from the original agricultural buildings which sat at a 90 degree angle to one another. This introduces a degree of uniformity to the site which is not typical of a traditional farm arrangement, highlighted by the more conventional layout of the dwellings, garden and parking arrangements.
- 7.12 Given that the former buildings have been demolished, the starting point is that the site is now devoid of buildings and has a degree of openness. The erection of two dwellings would introduce built form onto the site in a manner harmful to its countryside location. The proposal would represent an urbanising form of backland development and the two dwellings would be set close to one another and of a uniformity that is not in keeping with the loose-knit and sporadic character of the built form in the area.

- 7.13 It is noted that on the adjoining site, permission was allowed on appeal for the construction of a pair of semi-detached dwellings following the demolition of the original farm house (appeal ref. 3262303). In that instance, the site was considered to be brownfield land and the Inspector gave weight to the existence of a previous dwelling on the site and permission to extend that dwelling. An appeal was also dismissed on sustainability grounds for a new dwelling on vacant adjacent land (3295953). In both cases, the Council could not demonstrate a 5 year housing supply at the time, and the Inspector applied the tilted balance under paragraph 11 of the NPPF. In the case of the first appeal referenced above the Inspector concluded that that the harm did not demonstrably or significantly outweigh the benefits of the development. However, in the case of the second appeal on vacant land, even in a scenario where the Council could not demonstrate a 5 year supply of housing land the appeal was dismissed, primarily due to the poor location of the site in respect of access to services and facilities.
- 7.14 Whilst in both the above cases the Inspector did not find significant harm would arise to the character and appearance of the area, the difference with the current application is that the site is not formerly brownfield land in residential use, and the current application is for two dwellings on a much narrower backland plot which differs from the prevailing more spacious and linear development in the local area.
- 7.15 Overall it is considered that the proposed development would represent an unacceptable form of backland development and would have an urbanising impact to the detriment of the rural character and appearance of this countryside setting. Moreover, the more domesticated layout, including associated paraphernalia would further urbanise and change the appearance of Rides Farm and erode this rural setting.
- 7.16 Overall, the proposal would cause significant harm to the intrinsic character, appearance, quality, value and beauty of the surrounding countryside contrary to policy ST3, CP4 and DM14 of the adopted Local Plan.

Transport and Highways

- 7.17 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.”*
- 7.18 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.”*
- 7.19 The section of this report on the principle of development has already concluded that the site is remote from services and facilities and would be reliant on private car trips, and as such is unsustainable.
- 7.20 The development will make use of the existing access road onto the site from Warden Road. KCC Highways have raised no objections to the use of this access road, nor have they raised concern about the impact of the development on highway safety or convenience and it is noted that the use of the existing access was considered acceptable under the previous application. Whilst use of this access road by future occupiers of the development may cause some disturbance to occupiers of the residential units either side of the access road, it is not considered that the disturbance would be significantly harmful when compared to the traffic that could be associated with the former agricultural use of

the buildings.

- 7.21 The Council's Parking Standards SPD sets out that a minimum of two spaces are required for a three bedroom dwelling in a rural area, and as such four spaces would be required here. In this instance acceptably sized tandem parking bays are provided and given the addition of bays to provide sufficient maneuverability the parking provision is acceptable and complies with the SPD. Following comments from KCC Highways they requested details of electric vehicle charging points, cycle storage and drag distances for refuse storage all of which have been provided and subsequently considered to be acceptable by KCC Highways.

Living conditions

- 7.22 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.
- 7.23 The proposed dwellings are single storey and would lie a minimum of 25m from the dwelling to the west of the site. Due to this distance it is unlikely that there will be any significantly harmful impacts to the living conditions of the occupants of these dwellings.
- 7.24 The bungalows would lie roughly 25m from Rides Cottage to the south which is a sufficient distance not to give rise to any serious harm to the living conditions of this property. In addition, a letter of objection has been received from the owner of the site to the east, known as Rides House Farm which raises a concern that due to the revised location of proposed bungalow to the east of the site, it would cause overshadowing. Whilst the bungalow would be located close to the boundary the closest adjacent building is an agricultural building, and the dwellings under construction to the south east would be approximately 35m away. Given the distance between the dwellings it is not envisaged that there would be any harm to these properties with regard to loss of light or outlook.
- 7.25 Considering the amenity of future occupiers of the dwellings, both properties accord with the Nationally described space standards. All habitable rooms are served by windows which will provide adequate outlook and natural light and there is a sufficient amount of amenity provision. While there would be windows within the side elevations of each dwelling facing each other, there would be little mutual overlooking between the buildings given that they are single storey bungalows and a fence is proposed between the two plots.

Ecology

- 7.26 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.
- 7.27 Since this application will result in a net increase in residential accommodation on the site, impacts to the SPA and Ramsar sites may occur from increased recreational disturbance. Due to the scale of the development there is no scope to provide on-site mitigation and therefore off site mitigation is required by means of developer contributions at the rate of £328.27 per dwelling. The applicant has paid the mitigation fee for the development via the SAMMS payment form. In accordance with the Conservation of Habitats and Species

Regulations 2017, for completeness an Appropriate Assessment has been completed and is set out within the relevant section below.

Conclusion

- 7.28 This application proposes development within the countryside and divorced from any settlement boundary or services and facilities. Although permission / prior approval has previously been granted on the site for the conversion of agricultural buildings to residential, these buildings have now been demolished and as such there is no fallback position that can be taken into account as a material consideration. The development would result in the erection of two new dwellings and would erode the rural qualities of the area, with a resultant significantly harmful and negative impact on the character, appearance and intrinsic value of the countryside, where protecting such rural qualities is a key planning purpose. It would dilute the overall strategy for the pattern of development in the Borough, and there is a risk that this could be easily repeated in the immediate area if permission were to be granted. The site is remote from services and facilities and as such represents unsustainable development and is contrary to policies ST1, ST3, CP4, and DM14 of "Bearing Fruits 2031: The Swale Borough Local Plan (2017)".
- 7.29 The Council has very recently received an appeal decision at Ufton Court Farm in which an Inspector concluded that the Council did not have a 5 year housing supply. The Council is considering its position on this decision. However, even if this application was to be considered using the "tilted balance" under paragraph 11(d) of the NPPF, the harm arising as set out above would significantly and demonstrably outweigh the benefits associated with the erection of two dwellings, and would conflict with the NPPF as a whole.
- 7.30 On this basis, the application is recommended for refusal.

Reason for Refusal

- (1) The proposed development would be in an unsustainable location outside of any defined built-up boundary and remote from services and facilities, with limited non-car options to service the site which will result in a car dependent occupancy. Furthermore the proposed development would have a harmful and urbanising impact upon the prevailing rural character and appearance of the area, and would fail to protect the intrinsic value, tranquillity and beauty of the countryside. The development is therefore contrary to policies ST1, ST3, CP4 and DM14 of "Bearing Fruits 2031: The Swale Borough Local Plan (2017)" and 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.

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), 2023 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.

