

2.7 REFERENCE NO 23/504718/FULL		
PROPOSAL Erection of two detached dwellings with solar panels, associated access, parking, landscaping, bin and shed/cycle stores.		
SITE LOCATION The Vicarage 101 The Street Boughton Under Blean Kent ME13 9BG		
RECOMMENDATION Delegate to the Head of Planning to grant planning permission subject to securing a SAMMS payment and subject to appropriate safeguarding conditions as set out in the report, with further delegation to the Head of Planning to negotiate the precise wording of conditions, including adding or amending such conditions as may be consequently necessary and appropriate.		
APPLICATION TYPE Minor Dwellings		
REASON FOR REFERRAL TO COMMITTEE Boughton under Blean and Dunkirk Parish Council object to the application.		
CASE OFFICER Guy Martin		
WARD Boughton and Courtenay	PARISH COUNCIL Boughton under Blean	APPLICANT Canterbury Diocesan Enterprises Ltd AGENT Bishops Planning
DATE REGISTERED 01.11.23	TARGET DATE 29.02.24	
BACKGROUND PAPERS AND INFORMATION: All drawings submitted: Existing Site Plan A1652-02-P1 Site Location Plan A1652-01 Rev 3 Proposed Site Plan – Ground Floor Layout A1652-10 Rev P3 Proposed Site Plan – First Floor Layout A1652-11 Rev P3 Proposed Site Plan A1652-09 Rev P3 Proposed Bin Store Plans and Elevations A1652-200 Rev P2 Proposed Shed Cycle Store Plans and Elevations A1652-201 Rev P2 Dwelling 2 Floor Plans and Elevation A1652-101 Rev P3 Proposed West Elevation / Street Scene A1652-20 Rev P4 Landscaping Plan 0656-24-1 LPP Proposed South Elevation A1652-21 Rev P4 Architects Notes and Images Typical Section A1652-300 Rev P1 Dwelling 1 Floor Plans and Elevation A1652-100 Rev P3 Solar Roof System Solar Tile Details The full suite of documents submitted pursuant to the above application are available via the link below: - https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=S2MNCZTYJK900		

1. SITE LOCATION AND DESCRIPTION

- 1.1 The site comprises part of the rear garden of a residential property - The Vicarage. The majority of the site is broadly rectangular in shape although it does also include a slither of land extending to the side of The Vicarage adjacent to the boundary with the highway. The northern part of the site lies within the Boughton Street Conservation Area. The site lies immediately adjacent to Arthur Kennedy Close, situated to the west of the site. This cul-de-sac slopes down from The Street and comprises modest detached and semi-detached bungalows.

2. PLANNING HISTORY

19/504115/TCA – No objection raised on 07.10.2019 to: Fell eight Conifers; Crown reduce two Fruit trees to spread of 2.5m.

TC/00/0002 - No objection raised to 1.) Selectively cut back branches from row of Monterey Cypress trees adjacent to The Street. 2.) Reduce row of 6 Leylandii and row of 5 Leylandii trees and two large Conifers adjacent to Arthur Kennedy Close.

3. PROPOSED DEVELOPMENT

- 3.1 This application seeks planning permission for the erection of two detached dwellings with solar panels, associated access, parking, landscaping, bin and shed/cycle stores.
- 3.2 The proposed development located within part of the rear garden of the existing property known as 'The Vicarage' would comprise a 4 bedroom property and a 3-bedroom property with three and two parking spaces respectively. Access to the properties would be from Arthur Kennedy Close which the dwellings would front onto. The properties would be two stories, rising to a height of 8.4m to match the height of the Vicarage and would possess a mix of modern and traditional materials incorporating brickwork, cladding and hanging tiles. Each property incorporates an electric vehicle charging point, a cycle store, water butt and an air source heat pump. To the rear of both properties would be private amenity space.

4. CONSULTATION

- 4.1 Two rounds of consultation have been undertaken, during which letters were sent to neighbouring occupiers, a notice was displayed at the application site and the application was advertised in the local newspaper. Full details of representations are available online.
- 4.2 During the first round of consultations letters of representation from 10 separate addresses were received, all objecting to the application. Concerns/comments were raised in relation to the following matters:-

Comment	Report reference
That the proposal would impact adversely upon the Boughton Street Conservation Area.	7.27
That the proposed dwellings are out of character with the area and would represent overdevelopment.	7.15-7.17
That trees were removed unlawfully prior to the submission of the proposal.	7.65

That the proposal would be overbearing upon neighbouring properties adversely impacting upon neighbours privacy and light.	7.32-7.34
That the proposal would exacerbate local flooding issues.	7.65
That there would be an impact upon neighbour's foundations and subsidence.	7.65
That the loss of parking and proposed access would have an adverse impact locally.	7.43-7.45
Increase in traffic adversely impacting upon highway safety.	7.45
Adverse impact upon local amenities during the construction process.	7.35
Residents of Arthur Kennedy Close had not been consulted.	7.65
That the proposal would set a precedent for future development.	7.65
Adverse impact upon the landscape.	7.18-7.19
That there would be insufficient access for emergency services and refuse vehicles.	7.45-7.46
That the hours of operations on site are unacceptable.	7.35
That the Diocese signed an agreement not to carry out further housing building work on the site when The Vicarage was built.	7.65
That the site is not agreed for housing within the Local Plan / Neighbourhood Plan.	7.4-7.7
That the Vicarage is a community asset with the garden used for events which will be lost.	7.65
That no further housing sites would be allocated by SBC within the area.	7.4-7.7
That the proposal does not take account of the Boughton and Dunkirk Neighbourhood Plan.	7.59-7.61
That the land represents previously development land and that the land is therefore exempt from development.	7.65
That the proposal would have an adverse impact upon biodiversity.	7.62-7.63
That no confirmation has been provided that Biodiversity Net Gain will be provided.	7.62-7.63
That no ecological surveys have been submitted as required by policy DM28.	7.62
That no SAMMS mitigation payment has been offered.	7.57
That the proposal would have an adverse impact upon the nearby listed building.	7.27
That no sunlight/daylight modelling has been carried out to determine the impact upon the vicarage.	7.32-7.36
That the proposal does not provide sufficient parking for the two dwellings and will result in parking overspill onto The Street.	7.43-7.44
That hard surfacing will result in surface runoff impacting upon neighbouring properties.	7.65
That the proposal would set a precedent within the local area.	7.65

- 4.3 During the second round of consultations letters from 3 separate addresses were received. 2 of these letters were from addresses that had previously objected to the application, maintaining an objection. 1 letter set out that it was neither objecting to nor supporting the application. Concerns/comments were raised in relation to the following matters (only additional matters which have not been included above are set out below):-

Comment	Report reference
That the site noted as similar to the proposal by the applicant is located approximately 0.5 miles from this site.	7.17
That the proposed hedgehog highways would not be located within the applicant's fence.	7.64
That additional trees adjacent to a telegraph pole may cause access issues for the operator.	7.65

- 4.4 During the first round of consultation Boughton under Blean Parish Council objected to the application for the following summarised reasons:

Comment	Report reference
Adverse impact upon local amenities from noise and disturbance from the proposed properties.	7.35
Overlooking and loss of privacy, loss of daylight and overshadowing of neighbouring properties.	7.32-7.36
Overdevelopment of the site in respect to size, scale and number of proposed dwellings.	7.15-7.17
Adverse visual impact upon the street scene.	7.19
Adversely impact upon the character and appearance of the adjacent Conservation Area and adjacent heritage assets.	7.27
Insufficient parking provision impacting upon neighbouring properties.	7.43-7.44
That trees within the garden of The Vicarage were cut down prior to the submission of the proposal.	7.65
That the site suffers from flooding and that a concise sewage/drainage report should be provided prior to further consideration of the proposal.	7.65
That design guidance within the Boughton and Dunkirk Neighbourhood Plan has been ignored failing to meet the requirements of policies H5 relating to design and being sympathetic to the street scene, and paragraph 62.3 regarding carbon neutrality and reductions in energy usage.	7.18-7.19
Concern was raised over access of construction traffic to the site and impact upon pedestrians.	7.35
Concern was raised over any profits from the development going to the Diocese of Canterbury rather than the Parish benefiting directly.	7.65
Local residents had not been consulted.	7.65

- 4.5 During the second round of consultation Boughton under Blean Parish Council continued to object to the application, reiterating the comments as set out above and raising the following further summarised points:

Comment	Report reference
That there is insufficient visitor parking conflicting with policies H8 and T3 of the Boughton and Dunkirk Neighbourhood Plan (BDNP);	7.43-7.44
That the proposal would result in the loss of parking spaces within Arthur Kennedy Close;	7.43-7.44
That the proposal fails to provide Biodiversity Net Gain (BNG) as set out within BDNP policy E8.	7.59-7.63

- 4.6 During the first round of consultation Dunkirk Parish Council objected to the application for the following summarised reasons:

Comment	Report reference
That the proposal would have an adverse impact upon the adjacent Conservation Area, Listed Buildings and setting of the Vicarage.	7.27
That the scale and bulk of the proposal would be out of keeping with the wider area.	7.15-7.17
That the proposal would result in overshadowing, overlooking, loss of privacy and an adverse outlook to neighbouring properties.	7.32-7.36
That the loss of the Vicarage garden would have an adverse impact upon its community use.	7.65
Insufficient parking resulting in additional cars and the loss of three parking spaces would adversely impacting upon highway safety within The Street failing to meet the requirements of policies H8 and T3 of the BDNP.	7.43-7.44
That there would be additional pressures upon local infrastructure including schools.	7.65
That BNG is required on site and trees were previously felled on site prior to the submission.	7.59-7.65
Inadequate landscaping on site;	7.18

- 4.7 During the second round of consultation Dunkirk Parish Council continued to object to the application, raising the further summarised points:

Comment	Report reference
That the houses are not in keeping with the other properties within the Close.	7.19

5. REPRESENTATIONS

- 5.1 **KCC Archaeology** – No objection subject to an archaeological evaluation and mitigation condition.
- 5.2 **KCC Ecology** – No objection subject to a condition requiring ecological enhancements.
- 5.3 **KCC Highways** - The proposal does not meet their criteria to warrant involvement from the Highways Authority.
- 5.4 **SBC Conservation Officer** – No objection subject to conditions relating to materials, detailing, landscaping and the removal of permitted development rights.

5.5 **SBC Environmental Health** – No objection subject to a construction hours condition.

6.0 DEVELOPMENT PLAN POLICIES

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

ST 1	Delivering sustainable development in Swale
ST 3	The Swale settlement strategy
CP 2	Promoting sustainable transport;
CP 3	Delivering a wide choice of high-quality homes;
CP 4	Requiring good design
DM 3	The rural economy
DM 7	Vehicle Parking
DM 14	General development criteria
DM 16	Alterations and extensions
DM 19	Sustainable design and construction
DM 24	Conserving and enhancing valued landscapes
DM 28	Biodiversity and geological conservation
DM 32	Development involving listed buildings
DM 33	Development affecting a Conservation Area
DM 34	Scheduled Monuments and archaeological sites

Supplementary Planning Guidance / Documents:

Conservation Area Supplementary Planning Guidance (SPG)
 Swale Borough Council Parking Standards SPD 2020
 Boughton Street Conservation Area Character Appraisal and Management Strategy
 2019

Boughton & Dunkirk Neighbourhood Plan

H1	Housing
H3	Housing mix
H5	New Residential Development
H8	Residential Parking
T3	Residential Parking
E6	Environmental Impacts
E8	Biodiversity Net Gain
E9	Local building distinctiveness
E10	Design and Planning

7.0 ASSESSMENT

7.1 This application is reported to the Committee because Boughton Under Blean Parish Council and Dunkirk Parish Council object to the proposal. 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
 Character and appearance
 Heritage
 Living Conditions
 Transport and Highways
 Archaeology
 Ecology

Other Matters

Principle

- 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 Policy ST 3 of the Swale Local Plan 2017 supports development within the built-up area boundaries in the borough.
- 7.5 Policies H1 and H3 of the Boughton and Dunkirk Neighbourhood plan states that the provision of new housing within the Plan area, particularly to meet local needs, should include a mix of housing types and will be supported, where such proposals comply with all other relevant policies in this Plan and those in the adopted Swale Borough Local Plan.
- 7.6 In this case, the proposed development site lies within the built-up area boundary of Boughton under Blean, near the centre of the village and within the curtilage of an existing residential dwelling. Policy ST3 of the Local Plan places Boughton under Blean in tier 4 of the settlement hierarchy and states *“Boughton: There are some minor opportunities for development, but its setting and the valued habitats and landscapes around the village constrain its major expansion. Given its population, local services are not as extensive as other centres and could be enhanced.”*
- 7.7 In light of this the principle of carrying out development on the site is considered acceptable, subject to the proposal meeting the policy requirements set out below.

Character and appearance

- 7.8 The National Planning Policy Framework attaches great importance to the design of the built environment and that design should contribute positively to making places better for people. The Local Plan reinforces this requirement.
- 7.9 Policy CP 4 of the Swale Local Plan 2017 requires development proposals to be of high-quality design and to be in keeping with the character of the area. It states that particular regard should be paid to the scale, height, materials, detailing, mass, bulk, articulation and site coverage of any future proposals.
- 7.10 Policy H5 of the Boughton and Dunkirk Neighbourhood Plan supports new residential development that are of good design, sympathetic to the street scene and achieve reductions in energy use.
- 7.11 Policy E10 of the Boughton and Dunkirk Neighbourhood Plan states that schemes must produce a cohesive and high-quality design approach for car parking, charging points, boundary treatments, bin stores, utility storage boxes, lighting and street furniture. All landscaping and boundary planting should be of native species.

- 7.12 Policy E6 of the Neighbourhood Plan states that development proposals which minimise the adverse environmental impacts of new development and promote sustainable forms of development will be supported.
- 7.13 Policy E9 of the Neighbourhood Plans states that variety in density, layout, building orientation and sizes will be sought to reflect the local context. Building styles and materials must also respect and positively contribute to local distinctiveness.
- 7.14 The proposal comprises of the erection of two detached properties, with barn hip roof design with an M shaped gable on the rear elevation. On the front elevation each property would incorporate a two-storey canopy porch with a catslide roof feature. The proposed new dwellings are to be constructed using a mix of modern and traditional materials incorporating brickwork, cladding and hanging tiles. The dwellings will benefit from three parking spaces for the 4-bedroom property and two parking spaces for the 3-bedroom property. The two proposed properties are located 2m apart with the southernmost dwelling located 2.7m from no. 12 Arthur Kennedy Close which would prevent visual terracing with the street.
- 7.15 The proposed dwellings located within the rear garden of the Vicarage would be set back on their plots, rising to a height of 8.4m which would match the height of the Vicarage. Whilst the remainder of Arthur Kennedy Close comprises of single storey dwellings, through the proposal lying to the rear of the Vicarage the erection of the two storey dwellings would be consistent with the height of this property with a density in keeping with the wider locality. It is also taken into account that The Street, from which there is some inter-visibility with the site, includes single storey, two storey and two and a half storey buildings.
- 7.16 It is of importance to note that The Vicarage occupies a corner plot and as a result, the rear garden runs along the boundary with Arthur Kennedy Close. This allows the proposed dwellings to be laid out in such a way that they are fronting onto the highway, in a manner consistent with the established pattern of development in the area. Taking all the above into account it is considered that the introduction of two storey dwellings in this location would be not give rise to any unacceptable harm to the character of the area.
- 7.17 The Vicarage and the properties within Arthur Kennedy Close were all erected post 1960 with the proposal representing a more contemporary design. There are a wide variety of building designs in the local context and as such it is considered that the design of the properties proposed here is acceptable.
- 7.18 The proposal incorporates a landscaping plan which would result in hedging along boundaries and the planting of trees which would further enhance the setting of the site and the street scene. Conditions are recommended to ensure the reduction in dwelling emission rates and controls over water consumption to promote sustainable development.
- 7.19 The proposal would incorporate a high-quality design of a scale and height in keeping with the Vicarage and which would not be significantly at odds with the character of the wider area, meeting the requirements of policy CP 4 of the Swale Local Plan and the requirements of the Boughton and Dunkirk Neighbourhood Plan.

Heritage

- 7.20 The National Planning Policy Framework states that local planning authorities should identify and assess the particular significance of any heritage asset and consider the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits that may arise and this is endorsed by the Local Plan.
- 7.21 Policy DM 32 of the Local Plan states that proposals that affect a listed building, or its setting, will be permitted only where the building's special architectural or historic interest, and its setting and any features of special architectural or historic interest which it possesses, are preserved.
- 7.22 Policy DM 33 of the Local Plan states that new development within, affecting the setting of, or views into and out of a conservation area, will preserve or enhance all features that contribute positively to the area's special character or appearance.
- 7.23 The Boughton and Dunkirk Neighbourhood Plan sets out that in the Boughton Street Conservation Area, Objective 2 of the Plan is to preserve and enhance the area's special interest and its setting.
- 7.24 The boundary of the Boughton Street Conservation Area passes through the site, cutting through the most northerly proposed dwelling. A number of listed properties are located within the wider area with the closest being the Red Lion public house and 142 The Street, both Grade II listed, lying approximately 40m and 60m from the application site. Due to the intervening buildings between these properties and the site there is very limited visibility ensuring that these buildings settings would not be adversely impacted upon.
- 7.25 The Boughton Street Conservation Area Character Appraisal and Management Strategy amongst other matters identifies the significance of the heritage asset and highlights particular issues and features which detract from the character and appearance of the Conservation Area.
- 7.26 The Council's Conservation Officer was consulted on the proposal, noting that both The Vicarage and the adjacent bungalows at the northern end of Arthur Kennedy Close make a neutral contribution to the Conservation Area and that Arthur Kennedy Close is a pleasant but otherwise unremarkable residential development with little historic or architectural merit in comparison to other parts of the conservation area and wider village.
- 7.27 The site comprises predominantly of open grass, forming part of the rear garden of The Vicarage. The proposed development of this site within the cul-de-sac with appropriately designed dwellings would ensure that the character of the Conservation Area would be retained and would not have an adverse impact upon the setting of the adjacent listed buildings. The Conservation Officer as a result did not object to the proposal. Conditions were recommended in respect of the materials and specific design related elements of the scheme which have been included below. The Conservation Officer has also requested removal of permitted development rights. These rights would already be restricted for the most northly located dwelling as it is partly in the conservation area.

However, a further removal of permitted development rights is not considered reasonable and as such this has not been recommended.

- 7.28 In light of the above, the proposal is considered to be in accordance with policy DM32 and DM33 of the Local Plan.
- 7.29 In considering the impact of this proposal upon designated heritage assets, officers have had regard to the Council's obligations pursuant to the Planning (Listed Building and Conservation Areas Act) 1990.

Living Conditions

- 7.30 The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers. Specifically, policy DM 14 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, in an unreasonable loss of privacy, in an unreasonable loss of outlook or in excessive noise or odour pollution.
- 7.31 The proposal would erect two detached dwellings to the rear of The Vicarage and to the north of No. 12 Arthur Kennedy Close. The proposal would not possess any side windows ensuring no direct overlooking of these neighbours. The Vicarage would be sited 11m to the north of the nearest proposed dwelling which would provide a sufficient separation distance to ensure an acceptable outlook from the rear of this property and that property would still retain an appropriately sized garden.
- 7.32 The proposed dwellings would be located to the north of No. 12 Arthur Kennedy Close. The closest proposed dwelling would extend marginally beyond the front building line of this property but due to the separation distance would not give rise to any significant harm in respect of overshadowing or a loss of light. The closest proposed dwelling would not extend beyond the rear of No.12 Arthur Kennedy Close and as such there would be unacceptable impacts in this regard.
- 7.33 The rear of the properties would face toward the rear garden of No.99 The Street. The distance from the properties to the closest part of the rear garden of this neighbouring property would be approximately 11m, however, large parts of the neighbouring garden would be separated by a distance considerably in excess of this. Due to the proposed properties being at a 90 degree angle to the rear of No.99, it is not considered that there would be opportunities for harmful levels of overlooking between rear windows of this existing property and those proposed.
- 7.34 Nos. 4 and 5 Arthur Kennedy Close on the opposite side of the highway would face towards the application site. At the closest point these properties would be separated by a distance of approximately 20m. Although the proposed dwellings are two storey in scale with those facing the site single storey, due to the distance involved and given that a highway separates the dwellings the relationship would not give rise to harmful levels of overshadowing or a loss of privacy.
- 7.35 It is not considered that the erection of two new dwellings within this location would result in an adverse impact upon neighbours' amenities from noise and to protect resident's

amenities during the build, a Construction Management Method Statement condition and hours of works conditions are recommended.

- 7.36 In conclusion it is considered that the proposal would not have an unacceptable impact upon the living conditions of existing occupiers.
- 7.37 In terms of future occupiers of the dwellings, the proposed dwellings meet the national space standards for properties of this size and both have appropriately sized rear gardens.
- 7.38 On the basis of the above the scheme is in accordance with policy DM14 of the Local Plan.

Transport and Highways

- 7.39 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.”

- 7.40 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.”

- 7.41 Local Plan policy promotes sustainable transport through utilising good design principles. It sets out that where highway capacity is exceeded and/ or safety standards are compromised proposals will need to mitigate harm.
- 7.42 Local Plan Policy DM 7 and policies H8 and T3 of the Boughton and Dunkirk Neighbourhood Plan states that parking requirements in respect of any new proposed developments should be in accordance the Councils vehicle parking standards SPD.
- 7.43 The proposal would incorporate three parking spaces for the four-bedroom property and two parking spaces for the three-bedroom property. Swale Borough Councils Parking Standards SPD sets out that for properties with 3 bedrooms in a suburban area that 2-3 spaces should be provided and for a 4 bedroom property, 3+ spaces. The scheme therefore complies with the Council's Parking SPD and the Boughton and Dunkirk Neighbourhood Plan. The proposal does not incorporate a designated visitor parking space however there would be sufficient room for a visitor to park on the respective drives.
- 7.44 The proposal through providing two new accesses onto Arthur Kennedy Close would result in the loss of the ability for approximately two to three cars to be able to park on the highway. However, in carrying out a site visit it was identified that whilst there were cars parked on the highway, that there were spaces available within the Close with further parking available within the wider local streets.
- 7.45 KCC Highways were consulted on the proposal. However, the application did not meet the criteria for which they would respond. The addition of two additional dwellings would not result in an increase in car numbers on local roads that would adversely impact upon highway safety.

- 7.46 In summary it is concluded that the scheme would be in general accordance with DM7 of the Local Plan and policies H8 and T3 of the Boughton and Dunkirk Neighbourhood Plan.

Archaeology

- 7.47 The NPPF sets out that where development has the potential to affect heritage assets with archaeological interest, LPAs should require developers to submit an appropriate desk-based assessment, and where necessary, a field evaluation.
- 7.48 Policy DM 34 of the Local Plan sets out that planning applications on sites where there is or 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.
- 7.49 The northern part of the site lies within an Area of Archaeological Potential. KCC Archaeology were consulted on the proposal and noted that due to the proximity of the site to what was the main Roman road between the Kent coast and London that there is archaeological potential.
- 7.50 It was therefore recommended that if permission were to be granted that a condition be imposed to ensure that any features of archaeological interest are examined and recorded. This condition is included below and as a result the scheme is in accordance with policy DM 34 of the Local Plan.

Ecology

- 7.51 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.
- 7.52 Under the Natural Environment and Rural Communities Act (2006), the authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions for the purpose of conserving biodiversity. Furthermore, the National Planning Policy Framework states that 'the planning system should contribute to and enhance the natural environment by minimising impacts on biodiversity and delivering net gains in biodiversity where possible'. The National Planning Policy Framework states that 'if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or as a last resort, compensated for then planning permission should be refused.'
- 7.53 National planning policy aims to conserve and enhance biodiversity, and encourages opportunities to incorporate biodiversity in and around developments. Under the Natural Environment and Rural Communities Act (2006), "every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of these function, to the purpose of conserving biodiversity".

- 7.54 In terms of the Local Plan policy DM 28 sets out that development proposals will conserve, enhance, and extend biodiversity, provide for net gains where possible, minimise any adverse impacts and compensate where impacts cannot be mitigated.
- 7.55 The site lies within 6km of The Medway Estuary and Marshes Special Protection Area (SPA), a European designated site which has been afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).
- 7.56 SPAs are protected sites classified for the prevalence of rare and vulnerable birds and for regularly occurring migratory species on the site. Article 4(4) of the Birds Directive (2009/147/EC) requires steps to be taken by the relevant authorities to avoid activities on the site which are likely to result in pollution or in the deterioration or disturbance of bird habitat.
- 7.57 It is acknowledged that the proposed development has potential to increase footfall to the area, which has the potential to result in a degree of harm to the SPA. A fee of £328.27 will be sought for each dwelling prior to the grant of planning permission to mitigate this harm and an appropriate assessment is set out at the end of this report.
- 7.58 The Environment Act 2021 introduced mandatory biodiversity net gain (BNG), although confirmed that BNG only applies to applications made on or after 12 February 2024 and for 'small development' – which would apply to this development – after 2 April 2024. This application was made prior to either of these dates.
- 7.59 However, policy E8 of the Boughton and Dunkirk Neighbourhood Plan requires a minimum level of at least 10% Biodiversity Net Gain (BNG) for proposed new developments and during the course of the application Officers informed the agent of this policy requirement. A response was received setting out that in the agent's view Government guidance was clear that decision makers should not give weight to local policy which requires biodiversity net gains for development which was exempt from being required to do so.
- 7.60 As a result of the situation as described above, Counsel advise was sought by Officers in respect to whether the BNG, as required by the Boughton and Dunkirk Neighbourhood Plan was required. The legal view received was that the Government guidance, worded as below, did relate to this development as it was exempt under the statutory framework.
- "Decision makers should generally not give weight to local policy which requires biodiversity gains for types of development which would now be exempt under the statutory framework."*
- 7.61 On this basis the legal advice concluded that the agent's interpretation was correct. As such, it is not considered that weight, in terms of this specific proposal, can be given to the requirements of policy E8 of the Boughton and Dunkirk Neighbourhood Plan and failure to comply with it could not substantiate a reason for refusal.
- 7.62 The site comprises of closely cut grass ensuring that there would not be an adverse impact upon biodiversity and would not require a preliminary ecological survey as confirmed by KCC Ecology. Ecological enhancements (which would not amount to a minimum fixed percentage increase due to the matter set out above) have been recommended via condition which is an approach accepted by KCC Ecology and this is included below.

- 7.63 In respect of planting, a detailed landscaping scheme has been provided, which KCC Ecology have commented as being acceptable. The landscaping scheme includes trees, hedgerows and shrubs which are considered to be appropriate for this site in terms of layout and number.
- 7.64 A neighbour has noted that the applicant does not own all the fences within which hedgehogs highways are being proposed however their inclusion solely within the fences within the applicants control would still be beneficial to ecology. On the basis of the above it is considered that the scheme would be in accordance with policy DM28 of the Local Plan.

Other Matters

- 7.65 Although a number of the matters raised by the comments set out above have been addressed in the assessment above, of those that remain they are responded to as follows. Concern has been raised regarding the removal of trees within the rear garden of The Vicarage prior to the submission of this application, however from the information available the trees that were removed lay outside of the Conservation Area and were not covered by Tree Preservation Order ensuring that any felling was lawful. The issue of subsidence on site is a matter that would be addressed through Building Control regulations. Any agreement by the Diocese to restrict future development on site would be a legal matter outside of the remit of the planning process. Each planning application is considered on its own merits and accordingly if granted the current proposal would not set a precedent for future development. The property is not formally listed as an Asset of Community Value. Residential gardens within built-up areas do not represent previously developed land although this does not automatically exclude the site from development. The Swale Local Plan supports the development of windfall sites within existing settlements for homes which this site would represent. Two rounds of consultation were made to the properties surrounding the site, a site notice was posted and an advert placed in the Press ensuring that consultation was made with neighbours in accordance with the Council's statutory requirements. The outcome of where profits from the development reside are not a planning issue. The proposed planting of trees adjacent to a BT pole would be a matter for the applicant to agree with BT. The addition of two new dwellings would have a minimal impact upon local infrastructure. The application site lies within flood zone 1 (i.e. an area with the lowest probability of flooding).

Conclusion

- 7.66 The proposal would add two dwellings within the built confines of Boughton under Blean which would not have an unacceptable impact upon the street scene, conservation area, adjacent listed buildings, local amenities, highway safety, biodiversity or flooding.
- 7.67 On the basis of the above, it is recommended that planning permission be granted, subject to the conditions below and securing a SAMMS payment for the two new dwellings.

Conditions

- 1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2) The development hereby permitted shall be carried out in accordance with the following approved drawings: A1652-09 P3, A1652-10 P3, A1652-11 P3, A1652-20 P4, A1652-21 P4, A1652-100 P3, A1652-101 P3, A1652-200 P2, A1652-201 P2, 0656-24-B-1 LPP, A652-300 P1.

Reason: For the avoidance of doubt and in the interests of proper planning.

- 3) To assess and mitigate the impacts of development on significant archaeological remains:
 - i) Prior to any development works the applicant (or their agents or successors in title) shall secure and have reported a programme of archaeological field evaluation works, in accordance with a specification and written timetable which has been submitted to and approved by the local planning authority.
 - ii) Following completion of archaeological evaluation works, no development shall take place until the applicant or their agents or successors in title, has secured the implementation of any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved by the local planning authority.
 - iii) The archaeological safeguarding measures, investigation and recording shall be carried out in accordance with the agreed specification and timetable.
 - iv) Within 6 months of the completion of archaeological works a Post-Excavation Assessment Report shall be submitted to and approved in writing by the local planning authority. The Post-Excavation Assessment Report shall be in accordance with Kent County Council's requirements and include:
 - a. a description and assessment of the results of all archaeological investigations that have been undertaken in that part (or parts) of the development;
 - b. an Updated Project Design outlining measures to analyse and publish the findings of the archaeological investigations, together with an implementation strategy and timetable for the same;
 - c. a scheme detailing the arrangements for providing and maintaining an archaeological site archive and its deposition following completion.
 - d. The measures outlined in the Post-Excavation Assessment Report shall be implemented in full and in accordance with the agreed timings.

Reason: To ensure that features of archaeological interest are properly examined and recorded in accordance with policies in the Local Plan and the National Planning Policy Framework.

- 4) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
- i. the parking of vehicles of site operatives and visitors
 - ii. loading and unloading of plant and materials
 - iii. storage of plant and materials used in constructing the development
 - iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v. wheel washing facilities
 - vi. measures to control the emission of dust and dirt during construction
 - vii. a scheme for recycling/disposing of waste resulting from demolition and construction works

Reason: In the interests of the amenities of the area and highway safety and convenience.

- 5) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:

Monday to Friday 0730 – 1900 hours, Saturdays 0730 – 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- 6) No impact pile driving in connection with the construction of the development shall take place on the site on any Saturday, Sunday or Bank Holiday, nor any other day except between the following times: -

Monday to Friday 0900-1700 hours unless in association with an emergency or with the written approval of the Local Planning Authority.

Reasons: In the interests of residential amenity.

- 7) No development beyond the construction of foundations shall take place until the following information has been submitted to and approved in writing by the Local Planning Authority.

- i. Samples and/or details of the specific clay facing bricks (including contrasting bricks for window headers), clay wall hanging tiles, weatherboarding and plain clay roof tiles (including ridge and hip tiles) and front parking area surface treatment(s) to be used (which shall be a permeable material).
- ii. Manufacturer/supplier colour brochure and technical data sheet details of specific timber composite external doors to be used.
- iii. Manufacturer/supplier colour brochure and technical data sheet details of specific uPVC windows, which shall have a flush (not stormproof profile) to be used.

- iv. Details of the cills to be used for the windows (which shall be manufactured from reconstituted stone).

Reason: In the interest of visual amenity and to preserve the character and appearance of the conservation area.

- 8) The rainwater goods to be used shall have a black cast iron effect finish and shall be installed in accordance with the profiles shown on drawing no. A652-300 P1.

Reason: In the interest of visual amenity and to preserve the character and appearance of the conservation area.

- 9) The dwellings hereby approved shall not be occupied until one electric vehicle charging point has been installed for each dwelling as shown on drawing A1652-09 P3.

All Electric Vehicle chargers provided must be to Mode 3 standard (providing a minimum of 7kw) and SMART (enabling Wifi connection). Approved models are shown on the Office for Low Emission Vehicles Homecharge Scheme approved chargepoint model list:

<https://www.gov.uk/government/publications/electric-vehicle-homecharge-scheme-approved-chargepoint-model-list>

Reason: To encourage the use of electric vehicles, in the interests of climate change and reducing pollution.

- 10) The scheme of tree planting and landscaping within the application site shown on drawing no. 0656/24/B/1 shall be carried out within 12 months of the completion of the development. Any trees or shrubs removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority.

Reason: In the interests of the visual amenities of the area.

- 11) No development beyond the construction of foundations shall take place until a biodiversity enhancement plan has been submitted to and approved in writing by the Local Planning Authority, which shall include 2 integrated bird boxes and 2 integrated bat boxes to be installed upon the dwellings hereby approved. The approved plan will be implemented within 12 months of the completion of the development and shall be maintained thereafter.

Reason: In the interest of biodiversity enhancement and protection.

- 12) The dwellings hereby approved shall be constructed and tested to achieve the following measure:

At least a 50% reduction in Dwelling Emission Rate compared to the Target Emission Rates as required under Part L1A of the Building Regulations 2013 (as amended);

No development shall take place until details of the measures to be undertaken to secure compliance with this condition have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

Reason: In the interest of promoting energy efficiency and sustainable development.

- 13) The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the dwelling shall not be occupied unless the notice for the dwelling of the potential consumption of water per person per day required by the Building Regulations 2015 (As amended) has been given to the Building Control Inspector (internal or external).

Reason: In the interests of water conservation and sustainability.

- 14) The area shown on drawing A1652-09 P3 as car parking space shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown (other than the erection of a private garage or garages) or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling(s) hereby permitted.

Reason: Development without adequate provision for the parking or garaging of cars is likely to lead to car parking inconvenient to other road users.

- 15) Notwithstanding the provisions of Class A, Part 2, Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) no gates, fences, walls or other means of enclosure shall be erected or provided in advance of any wall or any dwelling fronting on a highway.

Reason: In the interests of visual amenity.

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 Swale Special Protection Area (SPA) which is a European designated site 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 dwellings are occupied.

Based on the correspondence with Natural England (via the NKEPG), it is concluded 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 will be 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.

It can be noted that the required mitigation works will be carried out by Bird Wise, the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, which itself is a partnership of local authorities, developers and environmental organisations, including SBC, KCC, Medway Council, Canterbury Council, the RSPB, Kent Wildlife Trust, and others (<https://birdwise.org.uk/>).

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.

INFORMATIVES

KCC Highways

It is important to note that planning permission does not convey any approval to carry out works on or affecting the public highway.

Any changes to or affecting the public highway in Kent require the formal agreement of the Highway Authority, Kent County Council (KCC), and it should not be assumed that this will be a given because planning permission has been granted. For this reason, anyone considering works which may affect the public highway, including any highway-owned street furniture, is advised to engage with KCC Highways and Transportation at an early stage in the design process.

Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the public highway. Some of this highway land is owned by Kent County Council whilst some is owned by third party owners. Irrespective of the ownership, this land may have highway rights over the topsoil.

Works on private land may also affect the public highway. These include works to cellars, to retaining walls which support the highway or land above the highway, and to balconies, signs or other structures which project over the highway. Such works also require the approval of the Highway Authority.

Kent County Council has now introduced a formal technical approval process for new or altered highway assets, with the aim of improving future maintainability. This process applies to all development works affecting the public highway other than applications for vehicle crossings, which are covered by a separate approval process.

Should the development be approved by the Planning Authority, it is the responsibility of the applicant to ensure, before the development is commenced, that all necessary highway approvals and consents have been obtained and that the limits of the highway boundary have been clearly established, since failure to do so may result in enforcement action being taken by the Highway Authority. The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under the relevant legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

Guidance for applicants, including information about how to clarify the highway boundary and links to application forms for vehicular crossings and other highway matters, may be found on Kent County Council's website:

<https://www.kent.gov.uk/roads-and-travel/highway-permits-and-licences/highways-permissionsand-technical-guidance>.

Alternatively, KCC Highways and Transportation may be contacted by telephone: 03000 418181.

