

2.6 REFERENCE NO - 14/504984/OUT			
APPLICATION PROPOSAL			
Outline application for the erection of 5 detached dwellings with all matters reserved for future consideration			
ADDRESS Harbex Quality Profiles Ltd High Oak Hill Newington Kent ME9 7HY			
RECOMMENDATION: GRANT subject to conditions			
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL			
Whilst this development would normally be considered contrary to Policy and unacceptable as a matter of principle, taking into account the exceptional circumstances of this site, I am of the view that outline planning permission should be granted, subject to the receipt of additional, satisfactory information relating to protected species and to any appropriate conditions requested by the KCC Ecologist.			
REASON FOR REFERRAL TO COMMITTEE			
The Head of Planning Services considers that the application warrants consideration by the Planning Committee due to the issues inherent in the application			
WARD Hartlip, Newington & Upchurch	PARISH/TOWN Newington	COUNCIL	APPLICANT Hoo Developments Ltd AGENT Mr Paul Sharpe
DECISION DUE DATE 30/12/14	PUBLICITY EXPIRY DATE 30/12/14	OFFICER SITE VISIT DATE	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/88/1761	Use of site for steel profiling	GRANT	1988
SW/08/1259	Existing LDC for breach of conditions of SW/88/1761	GRANT	2009
SW/09/0194	Retention of concrete yard	GRANT	2012
SW/13/1117	Variation to route of forklift trucks within yard	GRANT	2013

MAIN REPORT

1.0 DESCRIPTION OF SITE

1.01 The site is located outside the built up area of Newington as defined in the Swale Borough Local Plan 2008, and lies in the countryside. Land to the south east, south west and north east is in agricultural use. 'High Oak Hill Farm', the closest dwelling, lies to the west and shares a common boundary with the site the subject of this application.

- 1.02 Access is taken from High Oak Hill and leads eastwards. The site is occupied by a number of mobile buildings, a small workshop, a large workshop (both former agricultural buildings) and a yard area. A public footpath crosses the site from north west to south east, roughly aligned with the access track.
- 1.03 Planning permission was granted for the use of High Oak Hill Works for steel profiling and grinding by Harbex in 1988 (SW/88/1761). The site continues to be occupied by Harbex, and is in a general B2 use (albeit that the use of the site is restricted to occupation by Harbex only).
- 1.04 An LDC application for breach of numerous conditions of this planning permission was approved in 2009 (SW/08/1259) and application SW/09/0194 granted permission for the retention of the concrete yard at the site. An application to vary the route of forklift trucks within the approved yard area was subsequently approved (SW/13/1117).

2.0 PROPOSAL

- 2.01 This application seeks outline planning permission for the demolition of the buildings within the site, and the erection of five houses. All matters are reserved for future consideration, and this application therefore only seeks to establish whether the principle of residential redevelopment would be acceptable.
- 2.02 An indicative plan has been submitted, showing a potential layout for development of the site.
- 2.03 The application is accompanied by a contamination assessment, an ecological appraisal (further information in this regard has recently been submitted) and a Planning, Design and Access Statement, an extract from which is as follows:

"[The site is] located in the rural area where countryside policies of general constraint on development apply, para 55 of the NPPF and Policies SH1 and E6 of the Local Plan (relating to settlement hierarchy and development outside the defined built up area boundary, respectively) suggest that housing redevelopment of the site would not normally be acceptable.

However, it is clear that the Borough Council Officers consider the activities of Harbex to be wholly inappropriate in this location, giving rise to noise and disturbance to occupiers of the closest dwelling and to a lesser extent those further afield. The noise generated by the grinding process in particular disrupts the otherwise tranquil nature of the surrounding rural area.

Although the Council has issued a Noise Abatement Notice the activities of the company are within its terms and the established lawful use of the site (established over a period in excess of 20 years) prohibits the Council from taking any further action against the company, in planning and environmental health terms.

In all the circumstances therefore the staff time taken from planning, environmental health and legal departments; time taken by local residents and not least the management time consumed at Harbex in responding to issues rather than focusing on the main activities of the business – all suggest that the ultimate extinguishment of the problem and issues constitute very special circumstances which, alone, would override the planning policy objections to the proposed redevelopment.

Almost the whole of the application site is covered by buildings, concrete hardstandings or gravelled parking areas and it can truly be described as a “brownfield site”.

Currently, Harbex sustains a payroll of 12 employees, most of whom travel to and from work by car. In terms of traffic generation there are regular deliveries of steel as a raw material (2 or 3 deliveries per day); deliveries by Harbex of finished product; deliveries of office consumables; industrial consumables; visitors and customers and bulk deliveries of oxygen, the latter by a 44 ton articulated tanker. Clearly such traffic movements are not to be encouraged in a rural area and certainly the to-ing and fro-ing, generally, by 5 domestic dwellings would be significantly less and of a nature less intrusive and more appropriate to a rural area.”

3.0 PLANNING CONSTRAINTS

High Pressure Gas Pipe - Inner Zone

Located outside settlement boundary

4.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF)

The NPPF does not specifically address loss of employment sites. However – it does set out at paragraph 19 that “Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.”

Paragraph 28 states that “planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local and neighbourhood plans should: support the sustainable growth and expansion of all types of business and enterprise in rural areas”

Paragraph 55 states that “to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities.... Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances.” The paragraph lists examples of “special circumstances”, none of which are applicable here.

Paragraph 128 states that “planning policies and decisions should aim to:

- avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development;
- mitigate and reduce to a minimum other adverse impacts on health and quality of life arising from noise from new development, including through the use of conditions;
- recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established.”

National Planning Practice Guidance (NPPG)

The following are extracts from the NPPG on Noise:

“Local planning authorities’ plan-making and decision taking should take account of the acoustic environment and in doing so consider:

- *whether or not a significant adverse effect is occurring or likely to occur;*
- *whether or not an adverse effect is occurring or likely to occur; and*
- *whether or not a good standard of amenity can be achieved.*

At the lowest extreme, when noise is not noticeable, there is by definition no effect. As the noise exposure increases, it will cross the no observed effect level as it becomes noticeable. However, the noise has no adverse effect so long as the exposure is such that it does not cause any change in behaviour or attitude. The noise can slightly affect the acoustic character of an area but not to the extent there is a perceived change in quality of life. If the noise exposure is at this level no specific measures are required to manage the acoustic environment.

As the exposure increases further, it crosses the lowest observed adverse effect level boundary above which the noise starts to cause small changes in behaviour and attitude, for example, having to turn up the volume on the television or needing to speak more loudly to be heard. The noise therefore starts to have an adverse effect and consideration needs to be given to mitigating and minimising those effects (taking account of the economic and social benefits being derived from the activity causing the noise).

Increasing noise exposure will at some point cause the significant observed adverse effect level boundary to be crossed. Above this level the noise causes a material change in behaviour such as keeping windows closed for most of the time or avoiding certain activities during periods when the noise is present. If the exposure is above this level the planning process should be used to avoid this effect occurring, by use of appropriate mitigation such as by altering the design and layout. Such decisions must be made taking account of the economic and social benefit of the activity causing the noise, but it is undesirable for such exposure to be caused.

This table summarises the noise exposure hierarchy, based on the likely average response:

<i>Perception Examples of Outcome</i>		<i>Increasing Effect Level</i>	<i>Action</i>
<i>Not noticeable</i>	<i>No Effect</i>	<i>No Observed Effect</i>	<i>No specific measures required</i>
<i>Noticeable & not intrusive</i>	<i>Noise can be heard, but does not cause any change in behaviour or attitude. Can slightly affect the acoustic character of the area but no such that there is a perceived change in the quality of life.</i>	<i>No Observed Adverse Effect Lowest Observed Adverse Effect Level</i>	<i>No specific measures required</i>
<i>Noticeable & intrusive</i>	<i>Noise can be heard and causes small changes in behaviour and/or attitude, e.g. turning up volume of television; speaking more loudly; where there is no alternative ventilation, having to close windows for some of the time because of the noise. Potential for some reported sleep disturbance. Affects the acoustic character of the area such that there is a perceived change in the quality of life.</i>	<i>Observed Adverse Effect Significant Observed Adverse Effect Level</i>	<i>Mitigate and reduce to a minimum</i>
<i>Noticeable and disruptive</i>	<i>The noise causes a material change in behaviour and/or attitude, e.g. avoiding certain activities during periods of intrusion; where there is no alternative ventilation, having to keep windows closed most of the time because of the noise. Potential for sleep disturbance resulting in difficulty in getting to sleep, premature awakening and difficulty in getting back to sleep. Quality of life diminished due to change in acoustic character of the area.</i>	<i>Significant Observed Adverse Effect</i>	<i>Avoid</i>
<i>Noticeable and very disruptive</i>	<i>Extensive and regular changes in behaviour and/or an inability to mitigate effect of noise leading to psychological stress or physiological effects, e.g. regular sleep deprivation/awakening; loss of</i>	<i>Unacceptable Adverse Effect</i>	<i>Prevent</i>

	<p><i>appetite, significant, medically definable harm, e.g. auditory and non-auditory</i></p>		
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The subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. This will depend on how various factors combine in any particular situation.

These factors include:

- the source and absolute level of the noise together with the time of day it occurs. Some types and level of noise will cause a greater adverse effect at night than if they occurred during the day – this is because people tend to be more sensitive to noise at night as they are trying to sleep. The adverse effect can also be greater simply because there is less background noise at night;*
- for non-continuous sources of noise, the number of noise events, and the frequency and pattern of occurrence of the noise;*
- the spectral content of the noise (ie whether or not the noise contains particular high or low frequency content) and the general character of the noise (ie whether or not the noise contains particular tonal characteristics or other particular features). The local topology and topography should also be taken into account along with the existing and, where appropriate, the planned character of the area.*

How can the adverse effects of noise be mitigated?

This will depend on the type of development being considered and the character of the proposed location. In general, for noise making developments, there are four broad types of mitigation:

- engineering: reducing the noise generated at source and/or containing the noise generated;*
- layout: where possible, optimising the distance between the source and noise-sensitive receptors and/or incorporating good design to minimise noise transmission through the use of screening by natural or purpose built barriers, or other buildings;*
- using planning conditions/obligations to restrict activities allowed on the site at certain times and/or specifying permissible noise levels differentiating as appropriate between different times of day, such as evenings and late at night, and;*
- mitigating the impact on areas likely to be affected by noise including through noise insulation when the impact is on a building.*

Development Plan: (Swale Borough Local Plan 2008)

Policy SP2 states that development proposals will, amongst other things,

protect and enhance the special features of the visual, aural, and ecological environments of the Borough and promote good design in its widest sense. Development will avoid adverse environmental impact, but where there remains an incompatibility between development and environmental protection, and development needs are judged to be the greater, the Council will require adverse impacts to be minimized and mitigated. Where a planning decision would result in significant harm to biodiversity interests, which cannot be prevented or adequately mitigated against, appropriate compensation measures will be sought.

Policy SP5 states that development proposals will, amongst other things, protect, and where possible, enhance the quality and character of the wider countryside.

Policy SH1 states that residential development outside the defined built up area boundaries within the Borough should not normally be permitted.

Policy E1 – amongst other things, development proposals are expected to:

- accord with the policies and proposals of the Plan unless material considerations indicate otherwise;
- respond positively by reflecting the positive characteristics and features of the site and locality;
- protect and enhance the natural and built environments;
- be both well sited and of a scale, design and appearance, that is appropriate to the location with a high standard of landscaping;
- cause no demonstrable harm to residential amenity and other sensitive uses or areas;
- provide safe vehicular access, convenient routes and facilities for pedestrians and cyclists and, where appropriate, enhanced public transport facilities and services;

Policy E6 – The quality, character and amenity value of the wider countryside of the Borough, which is all the land falling outside the built-up area boundaries as defined on the Proposals Map Insets, will be protected and where possible enhanced.

Policy E11 – The Borough's biodiversity and geological conservation interests will be maintained, or enhanced, particularly where they have been identified as national and county priorities in the UK and Kent Biodiversity Action Plans or through protected species legislation. Developments will be permitted that conserve or enhance the biodiversity of the area and/or locality.

Policy E19 – The Borough Council expects development to be of high quality design.

Policy B1 – Land and buildings currently in employment use will be retained for that use unless it is:

- a. inappropriately located for any employment use, and having an unacceptable environmental impact in an area; or

- b. demonstrated by expert advice that the site is no longer suitable for any employment use; or
- c. demonstrated by market testing that there is insufficient demand to justify its retention for any employment use; or
- d. allocated in the Plan for other purposes.

In cases involving a change of use or redevelopment for residential purposes, the Council will additionally require proposals to: (a) demonstrate, by reference to (a) to (d) above, that a mixed use approach to the site, involving a viable level of replacement or alternative employment provision, is not appropriate; and (b) that there is no conflict with Policy SH1.

Policy T3 - The Borough Council will only permit development, or the change of use of existing premises, if appropriate vehicle parking is provided, in accordance with the adopted Kent County Council parking standards.

5.0 LOCAL REPRESENTATIONS

5.01 Newington Parish Council do not raise objection, and comment as follows:

"We have no objections in principle but we note that this is a brownfield site outside of the village boundary and that the usually planning rules to such an application should be applied. We also note that the applicant's agent is also the agent of Harbex. We consider that 3.9 to 3.25 [of the Planning Design and Access Statement] portray a very biased view but we consider these points irreverent to the application therefore do not intend to comment nor challenge the accuracy of these."

5.02 Four representations in support of the application have been received, summarised as follows:

- I am happy for a few more homes to be built at the top of High Oak Hill but I need to stress my concerns that this will not be the beginning of an expansion of a quaint village.
- I would like to strongly request that these houses are in keeping with the existing properties on High Oak Hill (no affordable housing), no flats, only 2 storeys and not overlooking any existing properties.
- The location is entirely unsuited to its current industrial use and some sympathetically designed houses would be a much better use of this beautiful countryside location.
- This site is only a fifteen minute walk from the local school and church and only twenty minutes from shops and the train station which makes it a sustainable option for meeting the demand for housing in the parish.
- Notwithstanding noise abatement notices and various attempts by Swale Borough Council to control the noise nuisance from the site, ourselves and other local people have suffered significant noise impacts over a long period of time. The nature, tone and volume of the activity of the site activities remains extremely intrusive in this countryside location.
- Experience over the past few years demonstrates that the Council have been unable to prevent the harm occurring and therefore we support the

proposals on the basis that they will ensure the removal of the harmful activity.

- The nature of vehicles that need to serve and visit the premises, as well as the frequency of such movements, is totally unsuited to the highway network serving the site. The vehicles are of themselves noisy but in addition cause conflicts and potential hazards on the local highway network.
- In visual terms the site is currently visually intrusive and harmful to the character and appearance of the countryside.
- There is a public right of way that runs through the site which means the visual harm is highly visible from public vantage points. Well designed, vernacular properties would in our view be an improvement to the character and appearance of the site.
- The circumstances of this case are such that the site is a “brownfield” site and is and has been for some time causing demonstrable harm to residential and visual amenity as well as highway safety.
- Removal of the current use and replacement with 5 No. dwellings as proposed is fully supported subject to cessation of all current Industrial activities, no more than 5 No. units of two storeys, no first floor windows to be sited such as to have clear line of sight to the private garden areas of neighbouring properties, landscaping to secure screening of the new development from the public highway, including on land to the NE of the Units shown as Plots 4 and 5, adequate parking and turning facilities.
- This application is the best thing to happen to the community of High Oak Hill, after so many years of suffering from Harbex Ltd – no more horrendous noise, no more massive lorries, no more grinding machines;
- Another bonus would be to have the public footpath reinstated properly;
- One writer has lived close to the site for 35 years, 20 of which (he says) have been affected by noise and pollution from this site.

5.03 Three representations (all from the same address – High Oak Hill Farm, the closest dwelling to the site) have been received. Summarised as follows:

- Houses on this site, and particularly the trees planned the whole length of our back fence, would completely overshadow our property causing shade across the whole of our rear garden where we have our allotment and greenhouse;
- Considering the sparse nature of High Oak Hill I would consider the plans to be an overdevelopment of the land and cause complete loss of privacy to our property;
- The application has omitted our rear access and right of way. This affects the plans to House 5 as it runs directly through the proposed rear garden;
- We grow produce throughout the year in designated, cultivated areas, inclusive of a greenhouse at the rear South-East side of our property. The planned line of trees outlined ‘screen planting’ will block sunlight to our produce, much of which is ripened by direct sunrays;
- The Harbex site, and field land beyond is entirely viewable from our property. Any houses built on the current concrete area directly behind our home will be imposing, overlook our property and create a loss of privacy;

- At present the site is fully open with far reaching views in keeping with local environment. The current plan screens off all of our direct sunlight to the back garden and plans for dwellings only a few metres away. Both are highly imposing, against the nature of the local environment and detrimental to both our produce and enjoyment of our garden;
- There is no doubt that a new housing estate will project noise of some description into our property;
- At present the neighbourhood has a sparse, open countryside aspect with five isolated dwellings among farmland and woodland. Residential properties are over 100 metres apart. The current plans are incredibly dense in comparison, which is not only out of character with surroundings, but will also effectively double the population of the area in a tiny condensed space.
- Further development, even in small stages, is highly likely, as the landowner owns over 100 acres of adjoining farmland;
- Should this project be approved in its current design; a new precedent for dense population will have been set which could see a fast decline of green land.
- High Oak Hill is a dispersed settlement where development proposals should be considered very carefully. The proposed development is imposing, over-bearing and out-of-scale with existing development in the vicinity. The layout and siting, both in itself and relation to surrounding buildings, spaces and views, is inappropriate and unsympathetic to the appearance and character of the local environment;
- The mass, bulk and proximity of the proposed estate would present an overbearing and intrusive element.
- Paragraph 64 of the National Planning Policy Framework states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. The current design appears to have been designed around profit alone;
- We do not support the erection of a dense and imposing housing estate as a viable solution to the disturbance from Harbex. Being the sole complainants of this case, this 'solution' seems to benefit all parties to who are not affected;
- The Human Rights Act, Article 1, states that a person has the right to peaceful enjoyment of all their possessions, which includes the home and other land. Additionally, Article 8 of the Human Rights Act states that a person has the substantive right to respect for their private and family life. In the case of Britton vs SOS the courts reappraised the purpose of the law and concluded that the protection of the countryside falls within the interests of Article 8. Private and family life therefore encompasses not only the home but also the surroundings.
- I am completely against the Harbex site changing to residential use as a 'solution' to our on-going noise nuisance complaint.
- Before even considering using loopholes in the law to allow a dense and imposing residential estate in the middle of a sparse green area; we should be in receipt of a clear and DETAILED document outlining the EXACT reasons as to why no action can be taken to stop the excessive

noise. Thus far all attempts to gain such a response have been blatantly ignored and a past statement from the CEO (regarding lack of action based upon their B2 class) has now been proven ridiculously and embarrassingly false. The more research we undertake the more we realise how unbalanced the service is and how false the information has been.

- This is not a simple case of 'Harbex being a nuisance for years' this is a case of Swale being far too light handed with an irresponsible company and dragging out a very straight forward process.
- Let it be known that the majority of our correspondence is questioning and disproving Swale statements and actions. It appears that Swale have made so many blunders and poor decisions (including the Unilateral Agreement being dramatically changed without Planning Committee approval) that the case has now become far too complex to deal with easily. From this position it could be perceived that changing the use to residential is a lazy solution for closing the case.
- From my perspective, with all of the research and information from councils across the UK, and considering no information from Swale to the contrary, all current noise can be dealt with effectively in UK law. I therefore do not believe this application to be a sensible or beneficial option

5.04 The Swale Footpaths Group raises no objection.

6.0 CONSULTATIONS

6.01 Kent Highway Services raise no objection, subject to conditions, commenting as follows:

“It is appreciated that the application is made in outline form with all matters reserved, so it is just the principal of residential development on this site that needs to be considered at this time. Although an indicative layout of the development has been provided, it must be acknowledged that the layout will not be assessed as part of the current application, and will need to be submitted as reserved matters should planning approval be granted for this outline scheme. As such, the response I provide now should not be taken as an indication of whether the layout shown would be deemed appropriate or not, including the off-street parking provision. I concur with the suggestion made in the Design and Access Statement that residential scheme would be likely to generate less traffic movements than the current industrial use of the site, and would remove the frequent HGV movements that are generated by the existing activities. The proposal is therefore likely to have less impact on the local highway network than at present.”

6.02 The Environmental Health Manager supports the application, subject to conditions, commenting as follows:

“The Council’s Environmental Protection Team has for several years now been regularly involved with Harbex, the engineering company currently occupying this site.

The main issue has been one of nuisance at times from the various inherently noisy processes associated with metal cutting, profiling and grinding.

The two main workshop buildings on this site were formally circa 1960's agricultural buildings which were subsequently poorly converted for industrial use some thirty years ago. The combination of lightweight corrugated panels and asbestos cement sheets to walls and roofs of the structures provide little in the way of noise insulation to mechanical plant and equipment operating inside.

The Council has served a number of Noise Abatement Notices on Harbex to secure a reduction in noise, most recently in October 2014 for a newly installed plasma cutter and associated diesel generator. Unfortunately the company have not complied with the latest requirements and legal proceedings are in hand.

The expectations of the closest residents that the Council should be able to successfully reduce all noise sources to a level acceptable to them is neither realistic nor would it be reasonably practicable to achieve.

Clearly the significant adverse impact that Harbex's activities have on nearby residential amenity is the result of incompatible uses in such close proximity to one another.

This outline application therefore seeks to give permanent resolution to a long term ongoing problem by a proposal to redevelop the site with a small number of houses.

It is my view that this is a complete solution and will totally ameliorate the current unacceptable environmental impact on the nearby community.

I therefore give full support to this application."

- 6.03 The Kent County Council Public Rights of Way Officer raises no objection, stating that the development would improve the public right of way.
- 6.04 The County Ecologist objects to the detail provided in the ecological appraisal and surveys, and does not consider that the information is sufficient to demonstrate that no harm to protected species would occur. She has requested additional information, which is awaited. As set out below, the applicant is reluctant to commission his ecologist to provide this information without a decision from this Committee as to whether or not the application is likely to be approved.
- 6.05 The HSE do not advise against the development of the site.

7.0 BACKGROUND PAPERS AND PLANS

- 7.01 Application form, site location plan, proposed illustrative site layout, preliminary ecological appraisal (and subsequent additional information),

Planning, Design & Access Statement, Contamination Desk Based Assessment

8.0 APPRAISAL

- 8.01 As set out above, the application is made in outline, and all matters are reserved for future consideration. Whilst I note the comments made on the layout and landscaping of the site as shown on the indicative layout plan, these would be considered under a future application for approval of reserved matters and are not under consideration here.
- 8.02 Members will note that Kent Highway Services do not raise objection and I concur that the proposed development would have less of an impact on highway safety and convenience than the existing use. Subject to the conditions below, I consider the proposal acceptable in this regard.
- 8.03 The key issues for consideration here are the principle of the development, whether the development of the site with five dwellings would be acceptable in visual terms and whether it would be acceptable in respect of impact on residential amenity.

Principle of Development

- 8.04 The site lies outside the built up area of Newington, in a comparatively unsustainable location, and in an area where residential development would normally be considered unacceptable as a matter of principle, contrary to the Policies of the Swale Borough Local Plan 2008. In addition, as set out above, the NPPF advises against the grant of permission for isolated new dwellings in the countryside, unless special circumstances apply.
- 8.05 The development of the site would also result in the loss of a rural employment site, contrary to the Policies of the Swale Borough Local Plan 2008.
- 8.06 However – in my view there are material considerations here, which must be given significant weight in the decision making process.
- 8.07 The principal consideration in favour of the grant of outline permission here is the removal of a bad neighbour use. Members may be aware, or recall having visited this site, which lies in an otherwise comparatively tranquil area of the Borough. As set out above, the site is in use for metal grinding and cutting, and is an extremely noisy and intrusive use. Officers have attempted to mitigate the noise from the use, both through the planning process and through Environmental Health legislation. However – the use has planning permission, and is also the subject of an LDC for various breaches of condition (meaning that no enforcement action can now be taken against them) such that, despite the efforts of officers, the site can and does cause significant, demonstrable harm to the character of the countryside, to the amenities of the area and to amenities of nearby residents, including those abutting the site, and further afield. In my view, the current use of the site, and

the noise it generates, can be considered inappropriate in this area. The Environmental Health Manager considers the level of noise emanating from the site to be “noticeable and disruptive” under the terms of the NPPG, and the advice is clear that this level of noise from a particular use in close proximity to residential uses should be avoided.

- 8.08 In my view, the cessation of this use is a significant material benefit, which is capable of overriding the presumption against residential development in this area. I consider it to amount to exceptional circumstances, as set out in paragraph 55 of the NPPG, which warrants favourable consideration of this proposal.
- 8.09 Policy B1 of the Local Plan sets out that redevelopment of employment sites can be considered acceptable if, amongst other things, the site is inappropriately located for any employment use, and having an unacceptable environmental impact in an area. I am firmly of the opinion that this is the case here. The environmental impact of the use of the site is pronounced, and its location in the countryside is inappropriate.
- 8.10 Policy B1 also requires it to be demonstrated that a mixed use redevelopment of the site would not be appropriate. The agent sets out in the supporting statement that the current situation at the site demonstrates that a mixed use of the site for residential and employment purposes would not be appropriate. I do not find this convincing, as redevelopment of the site could include provision of some limited employment use which might sit comfortably within the site. That said, the site is located in an inherently unsustainable location, and employment uses generally generate a larger number of vehicle movements (including larger vehicles) than residential uses. As such, in my view it can be argued that a wholly residential scheme here is appropriate, bearing in mind the very specific circumstances of the site.
- 8.11 Reference is made in the supporting statement to the Council lacking a five year supply of housing land, which the agent argues weighs in favour of approval of this application. I give this matter limited weight. The site is located in an unsustainable location, and residential development here, in the absence of the arguably compelling justification relating to the existing use, would not be considered acceptable.
- 8.12 Members must, in considering this issue, balance the potential cessation of the existing use and the benefits this would bring to the character of the countryside, the amenities of the area and residential amenity, against the unsustainable, normally unacceptable location of the site and the failure of the application to propose a mixed use redevelopment of the site.
- 8.13 I am of the opinion that the significant benefits of the proposed development, which are wholly due to the specific and unusual circumstances of this site, outweigh the material planning harm associated with new dwellings in the countryside, such that the development is acceptable as a matter of principle.

Visual Impact

- 8.14 Whilst the proposal seeks outline permission only, and all matters are reserved for future consideration, Members must consider whether the proposed development would have a harmful impact on visual amenity.
- 8.15 As I set out above, the site contains a number of temporary buildings, some of which are in very poor repair. In addition, the existing workshop buildings are unattractive and functional. The yard area, whilst unobtrusive, does cause some harm to the character of the area, and parking areas, external plant etc all contribute to a general appearance which in my view is harmful to the visual amenities of the area.
- 8.16 Any development in the countryside can be considered to harm its character and appearance, and I am of the view that the erection of 5 houses on this site would cause some harm to the rural character of the area. However – I am mindful of the buildings and use of land that would be replaced. I am also mindful that a public footpath runs through the centre of the site, and as such the industrial nature of the site is very visible from close proximity and from public vantage points. I note the comments made regarding the scale of the dwellings proposed. In my view, bearing in mind the location of the site, dwellings of more than two storeys in height would not be appropriate and accordingly I recommend imposing condition 17 below which would prevent this.
- 8.17 In my opinion, the development proposed, in replacing an industrial site, would (if carefully designed, using sympathetic materials and landscaping) improve the visual amenities of the area and I find the proposals unobjectionable in this regard.

Residential Amenity

- 8.18 I set out above the impact of the existing use of the site and the benefits that its cessation would bring. In this section I concentrate on the impact on residential amenity of the development proposed.
- 8.19 The site is in my view of a sufficient size to accommodate five dwellings with an appropriate area of private amenity space for each dwelling, and with separation distances between each which would ensure no significant overlooking or loss of outlook. Whilst the layout plan is indicative only, it does demonstrate that dwellings could be accommodated within the site which would not overlook or overshadow the existing dwelling abutting the site.
- 8.20 I conclude that the development of this site with five dwellings would not lead to a harmful impact on the amenities of the adjacent dwelling.

Ecology

- 8.21 As I set out above, the KCC Ecologist does not consider that the information submitted to date is sufficient to demonstrate that the proposal would not lead to harm to protected species.
- 8.22 This application cannot be approved in the absence of satisfactory information setting out either that no protected species would be harmed, or that the impact on protected species can be mitigated satisfactorily.
- 8.23 This requires the submission of further information in the form of surveys relating to Bats, Great Crested Newts, and consideration of parts of the site not currently covered by the submitted information.
- 8.24 The applicant has signalled that he is unwilling to commission such work unless he is confident that, notwithstanding this issue, outline planning permission is likely to be granted.
- 8.25 In view of this, I am seeking delegated authority to approve the application, subject to the receipt of satisfactory information in this regard, and to any appropriate conditions (meeting the tests set out in the NPPG) as requested by the KCC Ecologist.

Other Matters

- 8.21 Reference is made by the objectors to articles 1 and 8 of the Human Rights Act. As with many applications, these articles are engaged by this application. In my view, approval of this application would not lead to a harmful interference of the Human Rights of the adjoining owners. I have, above, balanced the benefits and harm caused by these proposals, and do not consider that the development would lead to a harmful impact on the adjoining dwelling.
- 8.22 A high pressure gas pipeline runs to the south of the site. The application has been assessed using the HSE IT system, which sets out that, subject to the condition below, the HSE would not advise against the grant of outline planning permission on safety grounds.

9.0 CONCLUSION

- 9.01 Whilst this development would normally be considered contrary to Policy and unacceptable as a matter of principle, taking into account the specific circumstances of this site, I am of the view that outline planning permission should be granted, subject to the receipt of additional, satisfactory information relating to protected species and to any appropriate conditions requested by the KCC Ecologist.

10.0 RECOMMENDATION – GRANT Subject to the following conditions:

- 1) Details relating to the layout, scale and appearance of the proposed dwellings the access thereto and the landscaping of the site shall be submitted to and approved by the Local Planning Authority before any development is commenced.

Reasons: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2) Application for approval of reserved matters referred to in Condition (1) above must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission.

Reasons: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 3) The development to which this permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

Reasons: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 4) The dwellings hereby approved shall achieve at least a Level 3 rating under The Code for Sustainable Homes or equivalent, and no development shall take place until details have been submitted to, and approved in writing by the Local Planning Authority, which set out what measures will be taken to ensure that the development incorporates sustainable construction techniques such as rainwater harvesting, water conservation, energy efficiency and, where appropriate, the use of local building materials; and provisions for the production of renewable energy such as wind power, or solar thermal or solar photo voltaic installations. Upon approval, the details shall be incorporated into the development as approved.

Reasons: In the interest of promoting energy efficiency and sustainable development

- 5) Adequate underground ducts shall be installed before any of the buildings hereby permitted are occupied to enable telephone services and electrical services to be connected to any premises within the application site without resource to the erection of distribution poles and overhead lines, and notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 no distribution pole or overhead line shall be erected other than with the express consent of the Local Planning Authority.

Reasons: In the interests of visual amenity

- 6) No floodlighting, security lighting or other external lighting shall be installed or operated at the site, other than in accordance with details that have first been submitted to and agreed in writing by the Local Planning Authority. These details shall include:

- A statement of why lighting is required, the proposed frequency of the use and the hours of illumination.
- A site plan showing the area to be lit relative to the surrounding area, indicating parking or access arrangements where appropriate, and highlighting any significant existing or proposed landscape or boundary features.
- Details of the number, location and height of the lighting columns or other fixtures.
- The type, number, mounting height and alignment of the luminaries.
- The beam angles and upwards waste light ratio for each light.
- An isolux diagram showing the predicted illuminance levels at critical locations on the boundary of the site and where the site abuts residential properties.

Reasons: In the interests of visual amenity and the residential amenities of occupiers of nearby dwellings

- 7) No development shall take place until a programme for the suppression of dust during the demolition of existing buildings and construction of the development has been submitted to and approved by the Local Planning Authority. The measures shall be employed throughout the period of demolition and construction unless any variation has been approved by the Local Planning Authority

Reasons: In the interests of residential amenity

- 8) 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.

Reasons: In the interests of residential amenity.

- 9) During construction of the development adequate space shall be provided on site, in a position previously agreed by the Local Planning Authority to enable all employees and contractors vehicles to park, load and off load and turn within the site.

Reasons: In the interests of highway safety and convenience.

- 10) As an initial operation on site, adequate precautions shall be taken during the progress of the works to guard against the deposit of mud and similar

substances on the public highway in accordance with proposals to be submitted to, and agreed in writing by the Local Planning Authority.

Reasons: In the interests of amenity and road safety

- 11) No asbestos associated with the demolition of the existing buildings shall remain on the site.

Reasons: In the interests of appropriate contamination control

- 12) Owing to the proposed removal of the existing hard standing area and demolition works, a Waste Management Plan/Site Materials Plan shall be submitted to and approved by the Local Planning Authority prior to the commencement of development.

Reasons: In the interests of appropriate contamination control

- 13) Prior to the works commencing on site details of parking for site personnel/operative/visitors shall be submitted to and approved by the Local Planning Authority and thereafter shall be provided and retained throughout the construction of the development. The approved parking shall be provided prior to the commencement of the development.

Reasons: To ensure provision of adequate off-street parking for vehicles in the interests of highway safety and to protect the amenities of local residents.

- 14) Provision shall be made within the site for the disposal of surface water so as to prevent its discharge onto the highway details of which shall have been submitted to and approved in writing by the Local Planning Authority.

Reasons: In the interests of highway safety and convenience

- 15) The details submitted in pursuance of reserved matters shall show adequate land, to the satisfaction of the Local Planning Authority, reserved for parking in accordance with the Approved County Parking Standards and, upon approval of the details this area shall be provided, surfaced and drained to the satisfaction of the Local Planning Authority before any building is occupied and shall be retained for the use of the occupiers of, and visitors to, the premises. Thereafter, no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order), shall be carried out on the land so shown or in such a position as to preclude vehicular access to the reserved vehicle parking area.

Reasons: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to parking inconvenient to other road users and detrimental to highway safety and amenity.

- 16) No dwelling, nor any curtilage of any dwelling, shall be sited within the inner consultation zone relative to the adjacent gas pipeline.

Reasons: To prevent risk to human life and property

- 17) The details submitted pursuant to condition 1) shall show dwellings of no more than two storeys in height.

Reasons: In the interests of visual amenity.

The Council's approach to this application:

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

Offering pre-application advice.

Where possible, suggesting solutions to secure a successful outcome.

As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

Case Officer: Rob Bailey

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.