

<b>3.5 REFERENCE NO - 15/500671/OUT</b>			
<b>APPLICATION PROPOSAL</b>			
Outline application for residential development of up to 330 dwellings plus 60 units of extra care (including a minimum of 30% affordable), an allocated 1/4 acre of serviced land for potential doctors surgery, demolition of farm outbuildings, planting and landscaping, informal open space, children's play area, surface water attenuation, a vehicular access point from London Road and associated ancillary works. (Access being sought)			
<b>ADDRESS</b> Land Off London Road Newington Kent			
<b>RECOMMENDATION</b> This application is the subject of a planning appeal. As such this application will not be determined by the Swale Borough Council, however, the decision of the committee will indicate to the Secretary of State the Council's intended decision.			
<b>SUMMARY OF REASONS FOR RECOMMENDATION FOR REFUSAL</b>			
The proposal will not represent sustainable development, it will have a major adverse impact within the open countryside outside a defined built-up area, it will result in the significant loss of an area of the best and most versatile agricultural land, it will result in an adverse impact upon the free flow of traffic on the A2, together with the local road network, it will cause increased air pollution from increased vehicle emissions, inconsistent with the Newington AQMA, it will result in the loss of a group of listed farm buildings, which are an integral part of a Grade II listed farmhouse and it will cause the sterilization of economically important minerals,			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
The large number of objections which have been received from local residents, the Local Parish Councils and elected Members to these Significant proposals.			
<b>WARD</b> Hartlip, Newington & Upchurch	<b>PARISH/TOWN</b> Newington	<b>COUNCIL</b>	<b>APPLICANT</b> Gladman Developments <b>AGENT</b>
<b>DECISION DUE DATE</b> 15/05/15	<b>PUBLICITY EXPIRY DATE</b> 15/05/15	<b>OFFICER SITE VISIT DATE</b> 03/03/15	
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
15/500694/LBC	Listed Building Consent for the demolition of redundant farm buildings to the listed Pond Farmhouse, in association with outline application for residential development under 15/500671/OUT	Refused	08/05/15
<i>Summarise Reasons</i> The listed buildings are within the curtilage of a Grade II listed farmhouse and are an integral part of the rural setting of the listed building.			
14/502978/ENVS CR	EIA Screening opinion – Residential development of up to 300 dwellings and associated access from London Road	EIA Not required	November 2014
<i>Summarise Reasons</i> The housing development would be compatible environmentally with the adjoining housing development in the village of Newington.			

**MAIN REPORT**

**BACKGROUND**

An appeal against the non-determination of the application has been lodged by the applicants. As a result it is important for the Members of the Committee to pass a resolution to refuse the application and state the reasons for refusal which would have been used if the application was within the jurisdiction of the Council to determine. The starting date for the appeals is 29 July 2015

## 1.0 DESCRIPTION OF SITE

- 1.01 The site consists of an area of open farmland, which has been cultivated for a number of fruit farm orchards on land to the south of London Road, A2 and immediately to the west of the village of Newington. The site includes a group of two storey redundant agricultural buildings which are situated immediately to the south of Pond Farm House, a Grade II listed building, which is sited to the south of London Road (A2) but just outside the application site. The farm buildings are sited to the north of an area of orchards which are part of a large fruit farming holding, which is now abandoned. There is an area of open farmland to the south of the site, a modern residential area off Playstool Road, to the east of the site and an area of open land which adjoins the Newington Industrial Estate to the west of the site.
- 1.02 The site covers an area of 12.9 hectares (or 31.9 acres). The land has an undulating topography which rises to the south of the site. A number of fruit farms and orchards dominate the landscape as a whole. The quality of the agricultural land is high with all the farmland classified as Grade 1 or 2 farm-land, which constitutes best and most versatile agricultural land. The breakdown between the two is shown on Map 2 in the 'Soils and agricultural land use quality' report. There is a strong network of mature field boundaries throughout the landscape which have become established over a number of years.
- 1.03 The group of agricultural building on the site are sited within the curtilage and setting of Pond Farm House, which is a Grade II listed building. These buildings are considered to be within the rural setting for the listed building. The farm buildings are in a poor state of repair but they are not beyond being refurbished and retained for other beneficial uses. The buildings consist of an oast house with truncated rounded and stowage building, cart sheds, stables and animal shelters around a fold yard. The quality of the brickwork and other architectural features is good. The buildings have not been well maintained and the owners have not kept them in sound condition. A separate application – for listed building consent – has, as set out above, recently been refused for the demolition of the redundant farm buildings under (15/500694/LBC). The reason for refusal reads as follows:
- “The proposals would result in the unacceptable loss of a group of farm buildings which are an integral part of the curtilage, rural character and setting of Pond Farmhouse, a Grade II listed building. As well as the harm resulting directly from the loss of these buildings themselves, the removal of these buildings would seriously undermine the character and setting of a listed building. In the absence of a clear and convincing or exceptional justification for the loss of these buildings, this would be contrary to paragraphs 131, 132, 133 and 134 of the National Planning Policy Framework, policy E14 of the Swale Borough Local Plan 2008 and policy DM32 of the Emerging Swale Borough Local Plan Bearing Fruits 2031 – Publication Version December 2014 (submitted to PINS April 2015).”*
- 1.04 An existing public right of way cuts across the north-west corner of the site, linking land to the west of the site with London Road.
- 1.05 The site is located in the Strategic Gap between Sittingbourne and the Medway Towns.

## 2.0 PROPOSAL

- 2.01 It is proposed to develop the site for up to 330 dwellings, plus 60 units of extra care (including a minimum of 30% - or 99 units - affordable housing). The application

includes the provision of a plot of land for a doctor's surgery, demolition of a number of farm outbuildings, landscaping, informal open space, children's play area, surface water attenuation, a vehicular access point from London Road and associated ancillary works.

- 2.02 The application is in outline form with only details of the vehicular access – on to the A2 London Road – submitted for approval. As such, details of layout, scale, appearance and landscaping are reserved for future consideration.
- 2.03 The housing would be developed on 10.7 hectares of the site, according to the illustrative 'Development Framework Plan', at a density of 32 dwellings per hectare.
- 2.04 The proposed vehicular access would feature a six-metre-wide carriageway with 10-metre radii at the junction with the London Road, and would be located opposite Numbers 62 and 64, London Road, and towards the centre of the site's northern frontage. The centre-line of the access would be approximately 200 metres west of the western edge of the garden to Pond Farm House. The application envisages changes to the pavement and the provision of a right-hand turning lane, with a refuge island and crossing point, to London Road.

### **3.0 SUMMARY INFORMATION**

- 3.01 Pond Farm has a close relationship with its historic farmland to the south and south west of the site. The close visual and historic relationship between the farmhouse and the farmland is important to the setting of the listed building and is a feature of special interest. There is a strong statutory presumption towards preserving the setting of listed buildings.

### **4.0 PLANNING CONSTRAINTS**

- 4.01 Potential Archaeological Importance
- 4.02 Setting of a Grade II Listed Building

### **5.0 POLICY AND OTHER CONSIDERATIONS**

- 5.01 The National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG) are both pertinent to this case.
- 5.02 The NPPF sets out the Government's position on the planning system explaining that *"The purpose of the planning system is to contribute to the achievement of sustainable development. The policies in paragraphs 18 to 219 of the NPPF, taken as a whole, constitute the Government's view of what sustainable development in England means in practice for the planning system. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision taking. For decision taking this means:*
- *Approving development proposals that accord with the development plan without delay; and*
  - *Where the development plan is absent, silent or relevant policies are out of date granting permission unless:*
    - *Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or*

- *Specific policies in this Framework indicate development should be restricted.*”
- 5.03 It further outlines a set of core land use planning principles (para 17) which should underpin both plan-making and decision taking including to contribute to conserving and enhancing the natural environment and reducing pollution and encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high value. It further states ‘take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it’
- 5.04 At paragraph 18 it explains *“The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country’s inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.”*
- 5.05 At Paragraph 34 deals with sustainable travel modes and suggests developments generating significant vehicle movements should be located where the need to travel will be minimised.
- 5.06 At Paragraph 47 it states that *“planning authorities should meet local housing needs and identify five year housing land supply with an additional 5% buffer”*. Paragraph 49 states *“that housing application should be considered in the context of the presumption in favour of sustainable development”* and that *“Relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites.”*
- 5.07 Paragraph 64 of the NPPF states *“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.”*
- 5.08 Paragraphs 47-55 seek to significantly boost the supply of housing. NPPF paragraph 49 confirms that the lack of a 5-year land supply triggers the presumption in favour of sustainable development as set out by NPPF para. 14. It is necessary to determine what the relevant policies for the supply of housing are in order to identify which are out of date. What constitutes a policy for the supply of housing has been the subject of legal judgement, which can be interpreted as either policies that have specific and direct impacts on housing supply or more indirect, but significant impacts on supply. Regardless of the approach taken, decision makers can and do take into account whether certain aspects of policies accord with the NPPF. Importantly, the decision maker must apply themselves properly to para. 49 and in this regard, tabulated observations are offered in Appendix 1 in respect of relevant policies of the Adopted Local Plan, the Emerging Local Plan and the Kent Minerals and Waste Local Plan.
- 5.09 Paragraph 109 deals with the conservation and enhancement of the ‘natural and local environment’, and is discussed in the ‘appraisal’ section below.
- 5.10 Para 111 states ‘Planning policies and decisions should encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value. Local planning authorities may continue to consider the case for setting a locally appropriate target for the use of brownfield land.

- 5.11 Paragraph 112 goes on to say *“Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality.”*
- 5.12 Paragraph 113 explains *“Local planning authorities should set criteria based policies against which proposals for any development on or affecting protected wildlife or geodiversity sites or landscape areas will be judged. Distinctions should be made between the hierarchy of international, national and locally designated sites, so that protection is commensurate with their status and gives appropriate weight to their importance and the contribution that they make to wider ecological networks.”*
- 5.13 The impact of the proposed development upon the designated heritage assets, which are irreplaceable and any harm or loss requires clear and convincing justification (paragraph 132)
- 5.14 Where a proposed development would lead to substantial harm or loss of designated heritage asset consent should be refused unless it can be demonstrated that its loss is necessary to achieve substantial public benefits that outweigh the harm or loss. In addition, the heritage asset prevents all reasonable use of the site, no viable use of the heritage asset can be obtained through appropriate marketing, conservation by grant funding or public ownership is not possible, the harm or loss is outweighed by the benefits of bringing the site back into use (paragraph 133)
- 5.15 Where a development proposed will lead to less than substantial harm to the heritage asset, this should be weighed against the public benefits of the proposals (paragraph 134)
- 5.16 The total loss of the farm buildings at Pond Farm constitutes substantial harm to a designated asset. No attempt appears to have been made to re-use the buildings, which are capable of conversion and re-use. The tests of paragraph 133 of the NPPF are not met..
- 5.17 Paragraph 142: *“Minerals are essential to support sustainable economic growth and our quality of life. It is therefore important that there is a sufficient supply of material to provide the infrastructure, buildings, energy and goods that the country needs. However, since minerals are a finite natural resource, and can only be worked where they are found, it is important to make best use of them to secure their long-term conservation”.*
- 5.18 And at paragraph 144 it stresses that Local Authorities should *“not normally permit other development proposals in mineral safeguarding areas where they might constrain potential future use for these purposes”*
- 5.19 The adopted 2008 Swale Borough Local Plan, however, remains the primary consideration for determining this application. This will be discussed in further detail later in this section.
- 5.20 The key policies from the adopted Local Plan are:
- SP1 (Sustainable Development)
  - SP2 (Environment)
  - SP3 (Economy)
  - SP4 (Housing)

- SP5 (Rural Communities)
- SP7 (Transport and Utilities)
- SH1 (Settlement Hierarchy)
- TG1 (Thames Gateway Area)
- E1 (General Development Criteria)
- E6 (Countryside)
- E7 (Strategic Gap)
- E9 (Protecting the Character and Quality of the Borough’s Landscape)
- E19 (Good Quality Design)
- H2 (Providing for New Housing)
- T1 (Providing Safe Access to the Highway Network)
- C2 (Housing Developments and the Provision of Community Services and Facilities)
- C3 (Open Space within Residential Development)

5.21 Relevant policies of the emerging Local Plan are;  
 ST1 (Delivering Sustainable Development in Swale  
 ST3 (Swale Settlement Strategy)  
 ST5 (Sittingbourne Area Strategy)  
 CP2 (Promoting Sustainable Transport)  
 CP4 (Requiring Good Design)  
 CP7 (Conserving & Enhancing the Natural Environment – Providing for Green Infrastructure)  
 DM6 (managing transport demand and impact)  
 DM8 (Affordable Housing)  
 DM24 (Conserving and Enhancing Valued Landscapes)  
 DM25 (The Separation of Settlements – Important Local Countryside Gaps)  
 DM28 (Biodiversity and Geological Conservation)  
 DM31 (Agricultural Land)  
 The relevance of individual policies (both saved Adopted Local Plan and Emerging Local Plan), in the light of para. 49 of the NPPF, are discussed under housing land supply issues.

5.22 The emerging Minerals and Waste Local Plan for Kent, which is being completed through the statutory process at present, is also relevant as the site contains areas suitable for brick earth extraction.

5.21 Swale Landscape Character and Biodiversity Appraisal 2011 – The site is included within the Newington Fruit Belt, where the predominant landscape form consists of a number of orchards and fruit farms with a mature field boundary network. The Newington Fruit Belt has a strong landscape structure formed by the network of mature hedgerows and shelter belts that surround orchards. The area is characterised by narrow winding lanes enclosed by hedgerows, linear villages with scattered farmsteads and cottages. The area needs sensitive management and protection.

**6.0 LOCAL REPRESENTATIONS**

		COMMENTS RECEIVED	
Newington Council	Parish	- Objections; Newington does not have the capacity to accommodate the additional 330 homes, which would be built on a greenfield site. The existing levels of air pollution on the A2 in the centre of the village are already very significant. A large increase	

	<p>in vehicular traffic from the housing development would exacerbate the problems.</p>	
<p>Residential Objections Number received – 87 letters:</p>	<ul style="list-style-type: none"> <li>- Class 1 agricultural land would be developed</li> <li>- Access would be taken from a congested A2 London Road</li> <li>- No school provision for the additional children</li> <li>- Wildlife habitats would be removed</li> <li>- Newington village status would be undermined</li> <li>- Overshadowing and loss of privacy for adjoining residents</li> <li>- Increased traffic generation and highway dangers for a single carriageway road</li> <li>- Increased noise and disturbance from the activity associated with 330 homes</li> <li>- Adverse impact upon the listed Pond Farmhouse</li> <li>- No local services such as doctor, dentist for the additional people</li> <li>- No local jobs for the additional households</li> <li>- Little local shops to serve the additional people</li> <li>- Minimal public transport services for the additional people</li> <li>- The site is not allocated for housing in the local plan</li> <li>- The poor air quality issues with the centre of Newington will be exacerbated with the increased traffic flows</li> <li>- There is no scope to widen the A2 in the centre of Newington</li> <li>- There are many more suitable sites for housing development</li> <li>- Increased infrastructure to serve the additional housing will erode the rural character of the area</li> <li>- The housing development would not be sustainable</li> <li>- The strategic gap between Rainham and Sittingbourne would be undermined</li> </ul>	
<p>Residential Support Number received:</p>	<ul style="list-style-type: none"> <li>- No letters of support have been received</li> </ul>	





## 7.0 CONSULTATIONS

- 7.01 Kent Highways Services raise objections; the housing development will have a significant impact upon traffic flows on the A2 London Road. It is predicted to result in a peak-time increase of 24% in vehicle movements, which is significant. The air pollution in the Air Quality Management Area, which includes the centre of Newington, will be adversely affected by the additional traffic generation for the development. These facts are compounded by the narrow section of the A2, in the centre of Newington, which cannot allow two large vehicles to safely pass each other. On a general note parking provision within garages is not supported and there is little opportunity for cycle use along the section of the A2 which passes through Newington.
- 7.02 Environment Agency – No objections; a sustainable surface water drainage system is required to be submitted for approval. This type of drainage system offers significant advantages over conventional piped systems in reducing flood risk. Appropriate pollution prevention measures are needed to be implemented. All precautions must be taken to prevent polluted water discharges to the ground water supplies during and after the construction work on site,
- 7.03 Environmental Protection Team Leader – Objections; the proposed housing development will generate an increased level of vehicular traffic which will result in an increase in air pollution levels, particularly on the A2 London Road, in and around the centre of Newington. Noise levels associated with increased vehicular traffic will be raised for the A2 London Road and nearby industrial sites. Mitigation measures to deal with increased noise levels will be required. Contaminated land assessments are required and remediation measures carried out where necessary.
- 7.04 Medway Council – No objections
- 7.05 Highways England – Raise objection as the housing development would result in an increase in the number of vehicles travelling eastward and impacting on the Key street roundabout. It may result in severe harm to the A249 Trunk Road, increased traffic queuing which will tail back to encroach on the A249 through route.
- 7.06 Natural England – The full impact of the housing development upon the wildlife habitats of the area – particularly the SPA / SSSI / Ramsar site - needs to be fully analysed. Suitable mitigation measures are needed to be carried out where protected species are affected. European designated nature conservation sites are not adversely affected.
- 7.07 Hartlip Parish Council – Raise objection on the grounds that it is not a suitable housing site and its development is contrary to policy H2 of the Local Plan. It is not a sustainable development and is sited outside the built up area for Newington. Its development would be contrary to policy E1 of the Local Plan. Increased traffic congestion along the A2 would result. It would lead to increased air pollution in the centre of Newington. There are no additional employment opportunities and high quality agricultural land would be lost to development. The strategic gap between Rainham and Newington would be affected.
- 7.08 Upchurch Parish Council – Raise objection on the grounds of the increased traffic from the development will increase traffic congestion and air pollution levels. Access difficulties onto the A2 will increase. Other housing developments off the A2 in Rainham, Four Gun Field, and Otterham Quay Lane will add to the traffic congestion problems. Brick earth extraction in Newington will bring a large number of heavy

goods vehicles to the area. The agricultural land in the area should not be developed for more housing.

- 7.09 Public Rights of Way & Access Officer – The access to the play area and open space will involve crossing the main access point close to the exit onto London Road, which is considered unnecessary. A signalled crossing is needed to enable access to the northern continuous footway. A controlled pedestrian crossing of London Road should be provided. The housing units close to London Road should be removed to provide a greener frontage to London Road and provide a safe access to the footpaths, open space and play areas. Improvements to the National Cycle Network Route are needed and footpaths which cross the site should be safeguarded.
- 7.10 C.P.R.E. Kent – Objections are raised to the large scale housing development which is proposed for a rural area beyond the defined built-up area for Newington village.
- 7.11 Cllr. J. Wright – local councillor for Hartlip, Upchurch and Newington – Raises objections; the site is not allocated for housing in the Local Plan. It is unsustainable development and should be refused. It would increase the size of Newington by 30%, swamp local services and be inaccessible for local primary schools. Increased traffic movements and increased air pollution levels through central Newington's Air Quality Management Area would result. No additional local jobs are available, causing more traffic movements in the area. Fewer trains and buses operate in the area. There would be a loss of high grade agricultural land and brick earth extraction may be protected for the site. Access onto the A2 would cause lights to shine into properties during hours of darkness, leading to a loss of amenity. The land was considered for a bypass for Newington previously and would not be available if developed for housing as proposed.
- 7.12 Kent C.C. Archaeology – An archaeological field evaluation needs to be carried out, followed by a preservation in situ of any important archaeological remains identified on the site prior to the commencement of development on the site. These measures should be submitted to and approved by the Local Planning Authority. In addition, a programme of building recording in accordance with a written specification and timetable which has been submitted to and approved by the Local Planning Authority.
- 7.13 Kent Police – Measures to minimise the risk of crime on the site need to be incorporated into the proposals. These measures need to be undertaken in the interests of securing crime prevention and community safety.
- 7.14 The Council's Housing Officer – No objections providing between 30 and 40 per cent of the housing built is for affordable housing. The affordable housing units should be evenly distributed across the site in clusters of between 6 and 15 dwellings. Affordable wheelchair adapted houses should be included in the affordable housing provision.
- 7.15 Kent C.C. Education, Social Services and Libraries – the following provisions are needed :-  
Primary School - £590.24 per flat and £2360.96 per house  
Secondary School - £589.95 per flat and £2359.80 per house  
Community Housing - £60.43 per household  
Youth Service - £65.78 per household  
Libraries - £227.00 per household  
Social Services - £63.33 per household plus 3 wheelchair accessible units as part of the Affordable Housing delivery on the site.



## 8.0 APPLICANT'S SUPPORTING DOCUMENTS

8.01 The applicants have submitted a number of reports to support their proposals. These are as follows:

- Design and Access Statement
- Planning Statement
- Noise and Vibration Assessment
- Transport Assessment
- Framework Travel Plan
- Affordable Housing Statement
- Soils and agricultural land Use report
- Landscape and Visual Impact Appraisal
- Ecological Appraisal
- Energy Statement
- Flood Risk Assessment
- Archaeological Assessment
- Arboricultural Assessment
- Socio-Economic Sustainability Statement
- Utility Law Solutions
- Framework Travel Plan
- Assessment of Current and Future Sustainability.

8.02 The completed application forms, the site location plan, 'proposed site access and improvements' plan and the 'development framework plan' have also been provided.

## 9.0 APPRAISAL

9.01 The main issue to determine is whether the proposals represent sustainable development in terms of paras. 7-9 of the NPPF and whether they achieve the presumption in favour of such development as set out in para. 14. This requires the benefits and dis-benefits of the proposals to be considered and balanced or whether there are specific policies in the NPPF that indicate that the proposals should be resisted.

### Contribution to housing

9.02 The Borough currently has 3.2 years of housing land in its 5-year supply (2013/14). This is based on the current adopted Local Plan, although it should be noted that the possibility of a higher housing target being agreed through the Local Plan process may be a consideration for any appeal Inspector.

9.03 However, against the current target, the proposals will make a significant contribution to both this supply and housing needs generally. Furthermore, the supply of affordable housing (99 dwellings) would also be beneficial, as would the contribution made by the proposed care home. Given that paragraph 47 of the NPPF seeks a significant boost in the supply of housing, overall these benefits should be viewed as substantial.

9.04 Although the site is not allocated for housing, para. 49 of the NPPF confirms that in situations where there is no 5-year supply, housing proposals should be considered under the presumption in favour of sustainable development (para. 14 of the NPPF), whilst development plan policies that control the supply of housing may be assessed as being out of date. How this is assessed is a matter of judgement, but has been

made having regard to whether the policy both directly and specifically deals with land supply or whether it indirectly, but significantly, has an impact.

- 9.05 This position impacts to varying degrees upon a number of policies of the adopted (ALP) and emerging local plans (ELP), in particular policies H2 and E6 of the ALP. This has an effect that sites outside the built up area boundaries of settlements can be considered potentially acceptable for development. However, this is not a presumption in favour of all such developments as very careful scrutiny of their actual impacts is still required, as are the principles and policies of the NPPF and the compliance of policies and development proposals with them.

#### Effects on character and appearance of area

- 9.06 The proposals have a number of adverse visual impacts due to their scale and location. Firstly, although the site is visually well contained in longer distant views from the south, there are adverse visual and landscape impacts around the site boundaries, whilst further adverse impacts result from longer distant views from the north. Secondly, the scale of the site relates poorly to the existing settlement pattern for Newington and will be detrimental to the marked and sudden change between the village and more rural and attractive character of the land immediately to the west. This detrimental impact would be further accentuated by the harm to the existing buildings on the site because of the significant contribution they currently make to that character.
- 9.07 Thirdly, ALP policy E7 seeks to limit the consolidation of development in the A2 corridor between the Medway Towns and Sittingbourne. The proposals represent a significant encroachment onto rural open and undeveloped land in the A2 corridor that makes an important contribution to the character and appearance of the corridor and the journey for travellers. If developed, the rural outlook of the road at this point would be lost, whilst placing additional development pressure on a potentially large number of undeveloped and partly-developed sites elsewhere in this locality and further afield. Over time, development along the roads length would become consolidated and the rural and semi-rural nature of the journey between Sittingbourne and Rainham replaced with a more urbanised corridor. This would be harmful to the objective of the policy.
- 9.08 Together, the above matters are significantly harmful in landscape and visual terms, contrary to ALP policies SP2, SP5, SH1, E6, E7, E9 and E10, together with ELP policies ST1, ST3, ST5 and DM24 and DM29.
- 9.09 Whilst some policies impact upon the supply of housing and may be considered as out of date, others are not – ALP policies SP2, E9 and E10 and ELP DM24 and DM29 are judged up-to-date. However, the remaining policies, including ALP policy E6, do nevertheless contain elements compliant with the principles and policies of the NPPF – notably “to take account of the different roles and character of different areas, recognise the intrinsic character and beauty of the countryside and supporting thriving rural communities” and para. 109 of the NPPF - “to contribute to and enhance the natural and local environment by “protecting and enhancing valued landscapes...”. The proposals are therefore contrary to this NPPF principle and policy and the aspects of development plan policies considered to support this principle should be afforded significant weight.

Impacts on agriculture

- 9.10 The proposed site comprises best and most versatile agricultural land (BMV = Grades 1, 2 and 3a), which would be permanently lost. Para. 112 of the NPPF expects Councils to take into account economic and other benefits of BMV land and if the significant development of agricultural land is necessary, they should seek to use areas of poorer quality land. ELP policy DM31 also looks for the loss of BMV land to be avoided if possible.
- 9.11 Agricultural land of this scale and quality derives a number of economic and other benefits: food security and self-sufficiency; food quality; the economy; the environment and climate change; and the countryside. Economically, the value of agriculture is potentially very significant in the Swale economy and BMV is its most precious resource.
- 9.12 It is though accepted that it has already been necessary to release significant levels of agricultural land to meet development needs in the Borough and that this will remain the case, particularly if the Council were to have to meet any of the higher housing targets that will be debated at the Local Plan examination later this year. However, although the use of agricultural land may be inevitable, it is not necessarily the case that the loss of BMV land at this scale is inevitable in cases where there is a shortfall in the land supply. Whilst the Borough may have significant resources of BMV land overall, there are significant areas of the Borough with lower grades. The Council's 2013/14 Strategic Housing Land Availability Assessment identifies sites on lower quality land that are equally available and capable of replacing the dwelling numbers proposed by the application site. Even if BMV land were required to meet development needs, the balance of other planning considerations is likely to lead to the development of sites at other larger (sustainable) settlements within Policy SH1 of the ALP and ST3 of the ELP. Whilst aspects of some of these policies are affected by para. 49 of the NPPF, where they are acting in support of para. 112 of the NPPF, they should be given significant weight.

Transport effects and accessibility

- 9.13 Paragraphs 17 and 34 of the NPPF look for patterns of growth to be managed to make the fullest possible use of public transport, walking and cycling, focusing significant development in locations which are or can be made sustainable.
- 9.14 Newington is identified as one of a number of Rural/Local Service Centre by ALP policy SH1 and ELP ST3. After the main towns in the Borough, these are regarded as the next most sustainable locations. These centres are intended to provide the main focus for growth in the rural areas and as such the proposals derive some policy support from this location, however, these centres vary in the scale of opportunities available. Para. 4.3.20 of the ELP notes that *"Despite its role and level of services, development opportunities are very limited due to the valued and important heritage, landscapes and habitats to the north of the village, poor pedestrian connections between north and south of the village, a restricted internal road network, poor air quality and surrounding high quality agricultural land."* Vehicle and pedestrian movements in and around the village therefore play an important role in the scale of the development that can be accommodated at the village. If development at this scale is required in the Borough, it is likely that it can be met at other, at least equally (or more so) sustainable settlements.

- 9.15 As a result of locating development at Newington, this scale of growth will have a significant impact upon vehicular traffic flows on the A2 London Road and it is predicted they will result in a peak-time increase of 24% in vehicle movements. For the strategic highway network, the development has adverse impacts on the A249 at the A2 junction with Key Street, whilst there are more localised adverse impacts on the A2 in the centre of the village. Notwithstanding the sites location at a relatively assessable settlement with reasonable levels of services and public transport options, transport impacts are compounded by the location of the site itself relative to the rest of the village and its services, many of which are located to the north or in its centre. This leads to the need for cars and pedestrians to travel through a heavily trafficked area, often crossing the A2 for such facilities as the local school and rail station, perpetuating difficult north-south movements via an unsuitable local road and pedestrian network. Together these impacts would be contrary to para. 32 of the NPPF and ALP policies T1 and T2 and ELP policies CP2 and DM6. These policies are judged up-to-date, as they are not affected by the NPPF para. 49 issue.

#### Air Quality effects

- 9.16 The large-scale nature of the proposed housing development will result in an increase in air pollution from the additional vehicular traffic that would be generated by these proposals. The Environmental Protection Team Leader has commented that a 24% increase in peak-time traffic flows along the A2 London Road would result if these proposals were accepted. The levels of air pollution from vehicular traffic in the central parts of Newington along the A2 London Road are already significantly high and the proposed additional houses would exacerbate these problems. The A2 into and out of Newington has been declared an Air Quality Management Area as Nitrogen Dioxide levels exceed government guidelines for the control of air pollution.
- 9.17 Paragraph 17 of the NPPF require the planning system to contribute to reducing pollution, whilst paragraph 111 states that new development should not contribute to unacceptable levels of air pollution. Paragraph 124 of the NPPF states that planning policies should sustain compliance with and contribute towards EU limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and the cumulative impacts on air quality from individual sites in local areas. Paragraph 124 also requires that decisions should ensure that any new development in Air Quality Management Areas is consistent with the local air quality action plan.
- 9.18 Paragraph 4.3.20 of the ELP, together with policy ST5 highlights air quality as a constraint to development at Newington. The development is considered to be contrary to the NPPF and these policies, alongside ALP policy E1 and ELP policies ST1 and DM6. These policies are considered to be up-to-date and unaffected by the NPPF para. 49 issue.

#### Effects on heritage issues

- 9.19 It is proposed to demolish a number of disused listed agricultural buildings, which are sited within the curtilage (and rural setting) of Pond Farmhouse; a Grade II listed building. A separate application for listed building consent for the demolition of these farm buildings considered the loss of the heritage assets. This application has, as noted above, already been refused permission for the following reason:

*“The proposals would result in the unacceptable loss of a group of farm buildings which are an integral part of the curtilage, rural character and setting of Pond Farmhouse, a Grade II listed building. As well as the harm resulting directly from the loss of these buildings themselves, the removal of these buildings would seriously undermine the character and setting of a listed building. In the absence of a clear and convincing or exceptional justification for the loss of these buildings, this would be contrary to paragraphs 131, 132, 133 and 134 of the National Planning Policy Framework, policy E14 of the Swale Borough Local Plan 2008 and policy DM32 of the emerging Swale Borough local Plan Bearing Fruits 2031 – Publication Version December 2014 (submitted to PINS April 2015).”*

- 9.20 The impact of this development on the setting of Pond Farm and its outbuildings is an important consideration in the determination of this application. In this respect, the issues overlap with those related to the refusal of listed building consent.
- 9.21 Pond Farm enjoys a close relationship to its historic farmland to its south and south west. This close visual, functional and historic relationship between farm house and farmland is important to the setting of the listed building and is a feature of special interest. As such there is a strong statutory presumption towards preserving the setting.
- 9.22 The loss of historic setting through demolition of historic farm buildings and development on its historic farmland setting, would fail to preserve the special interest of Pond Farm House. The listed building would no longer be seen against its historic rural backdrop or its historic farm buildings. It would become totally surrounded by suburban residential development which would substantially lessen its significance as a heritage asset. Development in these circumstances should be assessed against: the following:
1. The LB&CA Act 1990 which requires the Council to have special regard to the desirability of preserving the listed building and its setting and any features of special interest which it possesses.
  2. The NPPF, notably paras. 17, 132-134; and
  3. Local Plan policies, notably ALP policy SP2 and E14 and ELP CP8 and DM32, which largely reflect the importance placed on preserving heritage assets and their settings in the Act and in the NPPF.
- 9.23 One of the Core Planning Principles of the NPPF set out in para. 17 is to *“conserve heritage assets in a manner appropriate to their significance so that they can be enjoyed for their contribution to the quality of life of this and future generations”*.
- 9.24 Paragraph 132 of the NPPF confirms that *“...great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing Justification”*. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, para. 133 of the NPPF states that local planning authorities should refuse consent, unless it can be demonstrated that *“... the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss...”*, or where a number of tests can be met. Finally, para. 134 requires that *“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 of the proposal, including securing its optimum viable use”*.



- 9.25 As with the application for listed building consent, it is concluded that the total loss of the listed outbuildings to Pond Farm constitutes substantial harm to a designated heritage asset. No attempt appears to have been made to reuse the buildings which are well suited to conversion and reuse so the tests in paragraph 133 are not met.
- 9.26 The Council is required to assess whether there are any substantial public benefits from the development which can be weighed against the substantial harm. Whilst clearly the proposal has a number of potential public benefits, notably by the provision of new housing and associated developer contributions, these are not unique to the application site and could equally be achieved on sites not involving heritage assets. Therefore, it is concluded that such benefits do not outweigh the substantial harm. The statutory duty and the considerable weight which the Act, the local plan and the NPPF attach to the conservation of designated heritage assets and their settings all strongly point to a refusal of planning permission on the grounds of harm to the designated heritage asset and its setting.

#### Effects on mineral resources

- 9.27 The site is located within the Swale Borough Mineral Safeguarding Area map for Brickearth (Faversham – Sittingbourne Area), as defined in policy CSM5 of the emerging Minerals and Waste local Plan for Kent. The submitted application contained no geological assessment that demonstrates the acceptability of non-mineral development in accordance with policy DM7 of that Plan or any commitment to remove any resources prior to development taking place. These policies are not judged as affected by para. 49 of the NPPF and without them being addressed, development would result in the sterilisation of economically important minerals. Members should note that these policies are subject to change and the developer may choose to address the issues prior to any appeal being considered.

#### Impacts upon biodiversity

- 9.28 Due to the sites location relative to the Medway and Swale Special Protection Areas, the Council is required to undertake a Habitats Regulations Assessment (HRA). This assessment is appended to this report.
- 9.29 Paras. 117-119 of the NPPF consider the approach toward biodiversity in respect of European sites. In the case of proposals requiring an appropriate assessment, the presumption in favour of sustainable development does not apply.
- 9.30 The HRA requires Councils to consider the impacts upon the SPA arising from recreational pressures (e.g. disturbance to birds from humans and dogs) from increased populations brought about by housing development. Evidence confirms the likelihood of significant impacts on the SPA arising from proposals within 6 km of an access onto the SPA. However, strategic actions undertaken by the North Kent Councils, as agreed by Natural England, potentially enables mitigation to be undertaken that will normally ensure that residential development can proceed avoiding a likely significant effect on the SPAs. If such actions are followed then it will normally be the case that proposals would be screened out from requiring a formal Appropriate Assessment. The policy context for such actions is provided by policies CP7 and DM28 of the ELP.
- 9.31 The application site is located within some 2-2.5 km of a popular access point onto the Medway SPA at Lower Halstow. Taking a precautionary approach it is probable that likely significant off-site effects on the SPA would occur. However, the applicant has indicated a willingness to address the off-site impacts by use of a dwelling tariff,

but has not committed to the actual proposed tariff contained in the Thames, Medway and Swale Estuaries – Strategic Access Management and Monitoring Strategy (Footprint Ecology 2014), neither has this been amplified in any draft S106 agreement.

- 9.32 If the full tariff were is committed to, it could be concluded that the proposals could be screened out for purposes of Appropriate Assessment as they would not lead to likely significant effects on the SPA. However, until matters affecting the tariff are resolved it would not be safe to assume this position and on this basis the application should not be allowed to proceed without a full Appropriate Assessment because of likely significant effects on the SPA. In the absence of the evidence required to justify this approach, planning permission should be refused.

#### Do the proposals represent sustainable development?

- 9.33 In terms of the three dimensions of sustainable development – economic, social and environmental – paragraphs 7 to 9 of the NPPF expects development to seek improvements across all three.
- 9.34 It is acknowledged that the proposals will achieve social gains in terms of the provision of substantial numbers of new housing (inc. affordable homes and a care home) in an area with an acknowledged shortfall and that Newington has reasonable levels of services. Little weight is given to the proposed GP surgery, as it is not currently a firm commitment. In turn these would make a positive contribution toward the economic role of sustainable development, but are potentially substantially diminished by the loss of economic (and other) benefits of BMV, alongside the economic potential of brickearth reserves. To some degree there would also be a diminishment arising from additional congestion within the A2 and A249 corridors. As a result, it is therefore not possible to conclude that net economic gains would accrue from the proposals.
- 9.35 In the case of the environmental role of sustainable development, adverse landscape, visual and agricultural land impacts are demonstrated by the development, whilst heritage, transport, air quality and SPA impacts are additionally adverse and significant/substantial. The proposals therefore clearly fail to contribute to the environmental role of sustainable development.
- 9.36 Even if the brickearth and SPA issues are capable of resolution, there remains a clear failure to secure improvements across all three strands and as such the proposals cannot be regarded as sustainable development. It is concluded that they are contrary to ALP policy SP1 and ELP ST1 and ST5. These policies are judged up-to-date, as they are not affected by the NPPF paragraph 49 issue.

#### Overall conclusions

- 9.37 Notwithstanding the conclusions as to whether development represents sustainable development, as a result of the shortfall in housing land supply in the Borough, NPPF para. 49 require the proposals to be considered under the 'presumption in favour of sustainable development' as set out by NPPF para. 14. For decision-making, this firstly means approving development proposals that accord with the development plan. As highlighted in the discussion section, the proposals do not accord with a number of the policies of the adopted and emerging LPs. Whilst it is acknowledged that aspects of some of these policies are out of date due to their influence on housing supply (NPPF para. 49), they are considered to carry significantly weight

- where they support principles and policies in the NPPF, notably those concerned with environmental protection.
- 9.38 Paragraph 14 of the NPPF requires the Council to consider whether the adverse impacts of development would significantly and demonstrably outweigh the benefits, or whether there are specific policies of restraint in the NPPF that indicate that planning permission should be refused in their own right.
- 9.39 Firstly, considering the balance of benefits and disbenefits, the housing development would cause significant/substantial harm to the appearance of the local landscape and to a designated heritage asset. It would also result in the significant loss of an area of the best and most versatile agricultural land and give rise to unacceptable traffic flows beyond the capacity of the existing highway network with additional air quality impacts within an Area Quality Management Area. Unless addressed, there would also be significant impacts on mineral reserves and the SPA. Added to these issues are the economic dis-benefits arising from the loss of best and most versatile agricultural land and mineral reserves.
- 9.40 These significant/substantial impacts need to be weighed against the Council's inability to demonstrate a 5-year housing land supply and the substantial benefits of the proposals in terms of meeting housing needs, including affordable housing and boosting housing supply. However, in this case, in terms of the scale, location, severity and permanence of the adverse impacts, it is the Council's opinion that they would be so significant and demonstrable as to outweighs the identified benefits. This conclusion is reached in the knowledge that mineral and SPA impacts may be addressed by the time an appeal is considered.
- 9.41 Members should be aware that some of the above matters and their contribution to the overall planning balance are potentially open to a different interpretation as to their scale of impact and relevance. However, paragraph 14 of the NPPF also support the refusal of planning permission where specific policies of the Framework indicate development should be restricted. Aspects of the harm from this application – heritage, minerals, SPA, transport and air quality – strongly point toward a refusal of planning permission in their own right, regardless of the overall planning balance, because of the restrictive nature of relevant policies of the NPPF.
- 9.42 Given that there is an appeal already lodged against non-determination, it will be important that the Council is supported at any public inquiry by witnesses to address policy, conservation, landscape, transport and air quality issues.
- 9.43 Finally, in recommending that planning permission should be refused, Members should be aware that a number of matters might potentially impact upon the context and reasons for refusal for this application over the coming 12 months. These include:
- The likely adoption of the Kent Waste and Minerals Local Plan.
  - Consideration of the emerging Local Plan at its Examination in November and any matters relating to housing requirements that may arise.
  - New housing land supply data for 2014/15 which may impact upon housing land supply.
  - The possible resolution of minerals issues.
- 10.0 RECOMMENDATION** – REFUSE for the reason set out below. This application is, as explained above, the subject of a planning appeal. As such this application will not be determined by the Swale Borough Council, however, the decision of the committee will indicate to the Secretary of State the Council's intended decision



### **Reason for refusal**

The proposed development, due to its location, scale and form, will not represent sustainable development as it fails to seek positive improvements across its three dimensions as required by paragraphs 7-9 of the National Planning Policy Framework 2012. Furthermore, notwithstanding the lack of availability of a 5-year supply of housing land, in accordance with paragraph 14 of the National Planning Policy Framework 2012, the proposals do not achieve the presumption in favour of sustainable development. The adverse impacts of development are considered to significantly and demonstrably outweigh any benefits (and/or specific policies of the NPPF indicate development should be restricted) as a result of:

1. Change to the visual amenity, settlement form and landscape character of the area;
2. The significant loss of best and most versatile agricultural land (including its economic and other benefits);
3. Vehicular traffic flows on the A2 London Road leading to traffic congestion and limits on the free flow of traffic on the strategic road network and the A2, together with impacts on the local road network and pedestrian connections in the vicinity of the site, particularly at peak traffic times;
4. Air pollution from vehicle emissions, particularly nitrogen dioxide, resulting in cumulative air pollution levels on the A2 that would be inconsistent with the local air quality action plan for the Newington AQMA;
5. The loss of a group of listed farm buildings which are an integral part of the curtilage, rural character and setting of Pond Farmhouse, a Grade II listed building. As well as the harm resulting directly from the loss of these buildings themselves, their removal, without any clear and convincing or exceptional justification, would also seriously undermine the character and setting of a listed building (including its close visual, functional and historic relationship between farmhouse and farmland);
6. The unjustified sterilisation of economically important minerals; and
7. The failure to provide information to determine and address the mitigation necessary to avoid likely significant effects upon Special Protection Areas contrary to Article 4 of the EC Birds Directive.

As a result, the proposals do not accord with paragraphs 14, 17, 109, 112-113, 117-119, 124, 131-134, 142-144 of the National Planning Policy Framework 2012. The proposals are also contrary to the following Development Plan policies: SP1, SP2, SP5, SH1, TG1, E1, E6, E7, E9, E12, E14, E15, E19, H2, T1 and T2 of the adopted Swale Borough Local Plan 2008; ST1, ST3, ST5, CP2, CP4, CP7, CP8, DM6, DM14, DM24, DM28, DM29, DM31, DM32 and DM33 of Bearing Fruits 2031: The Swale Borough Local Plan April 2015 (submission draft to PINS); and CSM5 and DM7 of the Kent Minerals and Waste Local Plan 2013-2030 November 2014.

### **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 to be fundamentally contrary to the provisions of the Development Plan and the NPPF and there were not considered to be any solutions to resolve this conflict.

## **APPENDIX: HABITATS REGULATIONS ASSESSMENT**

### **Context**

This HRA has been undertaken without information provided by the applicant.

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.*

For proposals likely to have a significant effect on a European site, the Conservation of Habitats and Species Regulations (2010) requires the Council to make an appropriate assessment of the implications for the site. Para. 119 of the NPPF states that *“The presumption in favour of sustainable development ... does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined.”*

Given the scales of housing development proposed around the North Kent SPAs, the North Kent Environmental Planning Group (NKEPG) commissioned a number of reports to assess the current and future levels of recreational activity on the North Kent Marshes SPAs and Ramsar sites. NKEPG comprises Canterbury, Dartford, Gravesham, Medway and Swale local authorities, together with Natural England and other stakeholders. The following evidence has been compiled:

- Bird Disturbance Study, North Kent 2010/11 (Footprint Ecology).
- What do we know about the birds and habitats of the North Kent Marshes? (Natural England Commissioned Report 2011).
- North Kent Visitor Survey Results (Footprint Ecology 2011).
- Estuary Users Survey (Medway Swale Estuary Partnerships, 2011).
- North Kent Comparative Recreation Study (Footprint Ecology 2012).
- Recent Wetland Bird Surveys results produced by the British Trust for Ornithology.
- Thames, Medway and Swale Estuaries – Strategic Access Management and Monitoring Strategy (Footprint Ecology 2014).

In July 2012, an overarching report summarised the evidence to enable the findings to be used in the assessment of development. The report concluded (in summary):

- There have been marked declines in the numbers of birds using the three SPAs.
- Disturbance is a potential cause of the declines. The bird disturbance study provided evidence that the busiest locations support particularly low numbers of birds.
- Within the Medway, the areas that have seen the most marked declines are the area north of Gillingham, including the area around Riverside Country Park. This is one of the busiest areas in terms of recreational pressure.
- Access levels are linked to local housing, with much of the access involving frequent use by local residents.

- Bird disturbance study - dog walking accounted for 55% of all major flight observations, with a further 15% attributed to walkers without dogs along the shore.
- All activities (i.e. the volume of people) are potentially likely to contribute to additional pressure on the SPA sites. Dog walking, and in particular dog walking with dogs off leads, is currently the main cause of disturbance.
- Development within 6km of the SPAs is particularly likely to lead to increase in recreational use.

Natural England's advice to the affected local authorities is that it is likely that a significant effect will occur on the SPAs/Ramsar sites from recreational pressure arising from new housing proposals in the North Kent coastal area.

The agreed response between Natural England and the local authorities is to put in place strategic mitigation to avoid this effect – a 'strategic solution.' This provides strategic mitigation for the effects of recreational disturbance arising from development pressure on international sites and will normally enable residential development to proceed on basis of mitigation provided avoiding a likely significant effect.

This strategic approach is set out in the Thames, Medway and Swale Estuaries – Strategic Access Management and Monitoring Strategy (Footprint Ecology 2014). It will normally require the creation of on-site mitigation, such as the creation of open space suitable for dog walking and, secondly, via payment of a dwelling tariff for off-site impacts. The money collected from the tariff would be used by the North Kent Councils and its partners for mitigation projects such as wardening, education, diversionary projects and habitat creation. The policy context for such actions is provided by policies CP7 and DM28 of the ELP.

### **Associated information**

The applicant's ecological appraisal dated October 2014 contains some information to assist the HRA. These matters have been considered, particularly those contained in Section 4. However, the appraisal does not include sufficient information to enable the HRA to be undertaken in its own right. As an example, it does not appear to contain a full assessment of the evidence collected by NKEPG and although it does commit the applicant to a per dwelling payment for off-site mitigation it is not clear as to whether this is the full commitment as recommended by The Thames, Medway and Swale Estuaries – Strategic Access Management and Monitoring Strategy (Footprint Ecology 2014). This would need to be clarified before the granting of any planning permission.

Natural England's letter to SBC dated 2 March 2015 has also been considered; in particular that they have raised no objections to the proposals in terms of their impact on designated nature conservation sites.

In advising SBC on the requirements relating to the Habitats Regulations Assessment, and to assist it in screening for the likelihood of significant effects, based upon the information provided, Natural England offered the following advice:

- The proposal are not necessary for the management of the European sites.
- That subject to an appropriate contribution being made to strategic mitigation, the proposal is unlikely to have a significant effect on any of the European sites mentioned above, and can therefore be screened out from any requirement for further assessment

Natural England considered that the following information should be referred to justify any conclusions regarding the likelihood of significant effects:

- The applicant has confirmed in section 4.12 of the Ecological Appraisal dated October

2014 submitted in support of the application that they will make a financial contribution to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy in accordance with the recommendations of the North Kent Environmental Planning Group. This strategic mitigation will need to be in place before the first dwelling is occupied.

As detailed in their letter of the 6 January 2015, Natural England has confirmed that a suite of strategic measures similar to those set out in the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy will provide appropriate mitigation. However, they consider it is up to the local authorities to ensure that appropriate measures are in place to allow the strategic mitigation to be delivered. This would include consideration of the appropriate tariff.

### **The Assessment of Pond Farm**

The application site is located within some 2-2.5 km of a popular access point Medway SPA at Lower Halstow. The statement in para. 4.7 of the applicant's Ecological Appraisal is not accepted. Whilst there is not a direct point to point footpath between the application site and the SPA, a mixture of footpaths and rural lanes make the SPA readily assessable on foot at Lower Halstow. In any event, recreational impacts are equally likely to occur as a result of visitors arriving by car.

This assessment has taken into account proposals for on-site mitigation, such as dog-walking areas and the availability of other inland public footpaths close to the site. Whilst these would no doubt supplement many day-to-day recreational activities, the coastal SPA is nevertheless considered likely to be a likely draw of activity for residents and as such these factors will not be sufficient to prevent off site recreation taking place on the SPA.

### **Conclusions**

Taking a precautionary approach leads to the conclusion that the proposals would give rise to likely significant effects on the SPA. Although the applicant has indicated a willingness to address the off-site tariff, there is no commitment to the actual proposed tariff contained in the Thames, Medway and Swale Estuaries – Strategic Access Management and Monitoring Strategy (Footprint Ecology 2014).

At this stage it therefore cannot be concluded that the proposals can be screened out for purposes of Appropriate Assessment as without payment of the full off-site mitigation tariff the suite of mitigation measures across the SPA could not be guaranteed. These would lead to likely significant effects on the SPA. On this basis the proposals cannot be screened out for purposes of the HRA and the development should not be allowed to proceed without a full Appropriate Assessment. In the absence of the evidence required to justify this approach, planning permission should be refused.

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.