

3.2 REFERENCE NO - 15/502681/OUT			
APPLICATION PROPOSAL			
Outline application for residential development (approx 55 dwellings) with associated access and parking, creation of footpath link to the Saxon Shore Way and formation of a reptile and invertebrate reserve.			
ADDRESS Funton Brickworks Sheerness Road Lower Halstow Kent ME9 7EG			
RECOMMENDATION Refusal following the expiration of the consultation period - 11 th September 2015 and further comments from KCC Ecology.			
SUMMARY OF REASONS FOR REFUSAL			
The proposed development would introduce housing to an isolated location contrary to paragraph 55 of the NPPF and would fail to support the aims and objectives of sustainable development as well as undermining the policy objectives of preventing sporadic development within the countryside which would, cumulatively, be harmful to the quality and character of the countryside. The proposed development would also increase vehicular and pedestrian traffic along narrow country lanes to the detriment of highway safety and amenity. Lastly, the development would have a significant and harmful impact on the character and appearance of the landscape and the visual amenities of the area. Despite the need for housing in the Borough and the benefits that the development would bring, the harm identified would outweigh these benefits.			
REASON FOR REFERRAL TO COMMITTEE			
Ward Member call-in			
WARD Bobbing, Iwade & Lower Halstow	PARISH/TOWN COUNCIL Lower Halstow	APPLICANT Nightingale Homes (Upchurch) Ltd AGENT Bloomfields	
DECISION DUE DATE 21/07/15	PUBLICITY EXPIRY DATE 21/07/15	OFFICER SITE VISIT DATE 18/05/15 & 30/06/15	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
SW/10/1073	Lawful Development Certificate for use of land & all buildings thereon for Class B2 (General Industrial) purposes (Existing)	Lawful	13.10.2010
14/500975/ENVS CR	EIA Sscreening Opinion - Residential development (about 55 dwellings) and outward bound centre with associated access and parking and change of use of land from B2 to nature reserve	Environmental Statement not required.	12.06.14

MAIN REPORT

1.0 DESCRIPTION OF SITE

- 1.01 The application site totals 6.5ha and fronts onto Sheerness Road that links Iwade to Lower Halstow. The site lies 2.5km to the west of Iwade and 1.5km to the east of Lower Halstow as the crow flies. The centre of Lower Halstow is 1.8km from the application site if using the most direct route travelling along roads. Iwade is 3.75km if using the most direct route travelling along roads.
- 1.02 Funton Brickworks is a former brickwork manufacturing site that ceased operating in December 2008. The lawful use of the application site remains as B2 as established by a Lawful Development Certificate issued under SW/10/1073. The site is rectangular in shape and can be divided into three distinct sections – east, central and west. The central part of the site has a number of dilapidated and/or disused industrial type buildings, including chimneys and a building containing a number of kilns. The Kiln was considered for listing but was rejected by English Heritage on 27th November 2009. Concrete hardstanding surrounds the buildings. Nos. 1 and 2 Funton Cottages, a pair of semi-detached two storey occupied dwellings, front onto Sheerness Road and are close to the existing industrial buildings within this central part of the site. The eastern part of the site is devoid of buildings and was used as a brick earth field where raw material was taken. There are three mounds of stockpiled raw material left over from the brick-making activities on this part of the site and a small reservoir. This land has become overgrown to an extent with vegetation appearing on the stockpiles and some of the ground area but there are areas of bare hardstanding. The western part of the site was previously used as a stockyard area for the manufacturing of finished bricks. There are no structures or piles of material on this land and it has a thin covering of vegetation across it. It is though possible to make out some patches of hardstanding.
- 1.03 The application site slopes gently upwards to the southwest away from Sheerness Road. Beyond the southern boundary of the application site, the land rises steeply continuing to the top of Tiptree Hill. The land to the south is farmland used for cultivating crops. The surrounding land is characterised by arable fields and orchards with occasional pockets of woodland and mature tree groups. The wider landscape is characterised by low-lying marshes, the estuary and occasional industrial chimneys and buildings. The site lies within an Area of High Landscape Value and adjacent to the North Kent Marshes Special Landscape Area as designated by the adopted Local Plan 2008. It is also within a Strategic Gap. The eastern part of the site lies within a Coastal Zone.
- 1.04 The Saxon Shore Way – public footpath ZR42 runs east-west to the south of the site, almost touching the southern boundary of the application site at one point. It joins up with public footpaths ZR98 and ZR94 to the east and, taking in a stretch of Sheerness Road to the west, links up with ZR50 and ZR41. With the exception of nos. 1 & 2 Funton Cottages, the closest residential property to the site is approximately 0.8km away from the site.

- 1.05 The application site lies to the south of the River Medway estuary, close to Barksore Marshes and the tidal mudflats of Funton Creek. It is adjacent to (opposite) the Medway Estuary and Marshes Special Protection Area, SSSI and Ramsar site and 2.8km to the west of The Swale Special Protection Area, SSSI and Ramsar sites.
- 1.06 The Funton Brickworks site is designated as a Major Hazards Site. Hazardous Substances Consent was given in the 1990s for the storage of Butane Gas. This gas and the storage thereto was removed from the site some years ago. The hazard has therefore been removed. However, there is a formal process for revoking the Hazardous Substances Consent and this has not yet taken place.
- 1.07 Five protected trees and two area TPOs (TP 10/95) are located along the eastern and southern boundaries of the eastern parcel of land that would form the Reptile and Invertebrate Reserve.
- 1.08 The site is surrounded by vegetation of various types and heights. This vegetation largely restricts views of the site from the east, north and west. Views of the site from the south, in particular the Saxon Shore Way, are easily achieved due to the higher ground level which provides a vantage point and lack of vegetation. The boundary along Sheerness Road is mostly covered in concealing vegetation with gaps where the vehicular accesses are located. Views of the site are most prominent from immediately outside the main entrance and Funton Cottages. Long-range Views of the buildings can be seen when approaching from the east.

2.0 PROPOSAL

- 2.01 This is an outline application with all matters reserved for residential development of the site in addition to a 'Reptile and Invertebrate Reserve' and footpath link to the Saxon Shore Way. The description put forward by the applicant indicates that the residential development would be for approximately 55 dwellings. Indicative plans are provided showing how the houses might be arranged and suggesting an architectural style which takes influence from the historic industrial use of the site. Indicative heights are given as ranging from 8.5m – 13.5m. The intention is to use Funton brick as finishing material for the proposed houses.
- 2.02 The proposed reptile and invertebrate reserve would be located within the eastern part of the site. An indicative landscape masterplan shows the creation and retention of ponds/reservoir, bunds, mounds and a mix of vegetation. A footpath is also shown within this land which would provide a circular route for pedestrians. All existing buildings, with the exception of the 'European Brickwork Building' located in the centre of the application site and three chimneys, would be demolished.

- 2.03 An 'outward bound' centre is indicated on the plans to be provided within the retained industrial building (former European Brickwork Building) located within the centre of the application site. This particular element of development is excluded from the current application but the planning agent stresses that the applicant has every intention to bring this element of the development forward, should planning permission for the residential use of the adjacent land be granted.
- 2.04 Three of the existing chimneys associated with the brickworks are shown to be retained on the plans and are included as features of the potential new housing layout. The indicative plans indicate that the future housing development would see the Kiln Building recreated in roughly the same location as the existing kiln.
- 2.05 The indicative plans show that two vehicular accesses would be provided from Sheerness Road, one serving the residential development (existing main entrance to the site) and a separate access serving the potential outward bound centre (existing secondary access). A third existing access would be removed or retained for maintenance access only.
- 2.06 No details of lighting have been provided at this outline stage.

3.0 PLANNING CONSTRAINTS

Potential Archaeological Importance

Environment Agency Flood Zone 3 small section of eastern part of the site.

Tree Preservation Order TP 10/95

Description: Land at Tiptree Farm, Lower Halstow

Rural Lane - Sheerness Road, Basser Hill & School Lane

Coastal Zone – eastern part of the site.

4.0 POLICY AND OTHER CONSIDERATIONS

The National Planning Policy Framework (NPPF)

- 4.1 Paragraph 7 states: There are three dimensions to sustainable development: economic, social and environmental. These dimensions give rise to the need for the planning system to perform a number of roles:
- **an economic role** – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;

- **a social role** – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community’s needs and support its health, social and cultural well-being; and
- **an environmental role** – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.

Paragraph 8 states that the three roles are mutually dependent. Paragraph 9. *“Pursuing sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people’s quality of life....”*

- 4.2 Paragraph 14 states: 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 this Framework taken as a whole; or
 - specific policies in this Framework indicate development should be restricted.

(For example, those policies relating to sites protected under the Birds and Habitats Directives (see paragraph 119) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority); designated heritage assets; and locations at risk of flooding or coastal erosion.)

17. Within the overarching roles that the planning system ought to play, a set of core land-use planning principles should underpin both plan-making and decision-taking. These 12 principles are that planning should:

- be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. Plans should be kept up-to-date, and be based on joint working and co-operation to address larger than local issues. They should provide a practical framework within which decisions on planning applications can be made with a high degree of predictability and efficiency;

- not simply be about scrutiny, but instead be a creative exercise in finding ways to enhance and improve the places in which people live their lives;
- proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area, and respond positively to wider opportunities for growth. Plans should take account of market signals, such as land prices and housing affordability, and set out a clear strategy for allocating sufficient land which is suitable for development in their area, taking account of the needs of the residential and business communities;
- always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;
- 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;
- support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change, and encourage the reuse of existing resources, including conversion of existing buildings, and encourage the use of renewable resources (for example, by the development of renewable energy);
- contribute to conserving and enhancing the natural environment and reducing pollution. Allocations of land for development should prefer land of lesser environmental value, where consistent with other policies in this Framework;
- encourage the effective use of land by reusing land that has been previously developed (brownfield land), provided that it is not of high environmental value;
- promote mixed use developments, and encourage multiple benefits from the use of land in urban and rural areas, recognising that some open land can perform many functions (such as for wildlife, recreation, flood risk mitigation, carbon storage, or food production);
- 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;
- actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable; and
- take account of and support local strategies to improve health, social and cultural wellbeing for all, and deliver sufficient community and cultural facilities and services to meet local needs.

4.3 Paragraph 32 states: All developments that generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment. Plans and decisions should take account of whether:

- the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;
- safe and suitable access to the site can be achieved for all people; and

- improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
- 4.4 Paragraph 34 states: Plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. However this needs to take account of policies set out elsewhere in this Framework, particularly in rural areas.
- 4.5 Paragraph 49 states : Housing applications should be considered in the context of the presumption in favour of sustainable development. 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.
- 4.6 Paragraph 55 states: To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as:
- the essential need for a rural worker to live permanently at or near their place of work in the countryside; or
 - where such development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets; or
 - where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting; or
 - the exceptional quality or innovative nature of the design of the dwelling.
Such a design should:
 - be truly outstanding or innovative, helping to raise standards of design more generally in rural areas;
 - reflect the highest standards in architecture;
 - significantly enhance its immediate setting; and
 - be sensitive to the defining characteristics of the local area.
- 4.7 Paragraph 69 states: The planning system can play an important role in facilitating social interaction and creating healthy, inclusive communities. Local planning authorities should create a shared vision with communities of the residential environment and facilities they wish to see. To support this, local planning authorities should aim to involve all sections of the community in the development of Local Plans and in planning decisions, and should facilitate neighbourhood planning. Planning policies and decisions, in turn, should aim to achieve places which promote:
- opportunities for meetings between members of the community who might not otherwise come into contact with each other, including through mixed-use developments, strong neighbourhood centres and active street frontages which bring together those who work, live and play in the vicinity;

- safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion; and
 - safe and accessible developments, containing clear and legible pedestrian routes, and high quality public space, which encourage the active and continual use of public areas.
- 4.8 Paragraph 70 states: To deliver the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:
- plan positively for the provision and use of shared space, community facilities (such as local shops, meeting places, sports venues, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;
 - guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs;
 - ensure that established shops, facilities and services are able to develop and modernise in a way that is sustainable, and retained for the benefit of the community; and
 - ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.
- 4.9 Paragraph 73 states: Access to high quality open spaces and opportunities for sport and recreation can make an important contribution to the health and well-being of communities. Planning policies should be based on robust and up-to-date assessments of the needs for open space, sports and recreation facilities and opportunities for new provision. The assessments should identify specific needs and quantitative or qualitative deficits or surpluses of open space, sports and recreational facilities in the local area. Information gained from the assessments should be used to determine what open space, sports and recreational provision is required.
- 4.10 Paragraph 75 states: Planning policies should protect and enhance public rights of way and access. Local authorities should seek opportunities to provide better facilities for users, for example by adding links to existing rights of way networks including National Trails.
- 4.11 Paragraph 103 states When determining planning applications, local planning authorities should ensure flood risk is not increased elsewhere and only consider development appropriate in areas at risk of flooding where, informed by a site-specific flood risk assessment following the Sequential Test, and if required the Exception Test, it can be demonstrated that:
- within the site, the most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location; and
 - development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning; and it gives priority to the use of sustainable drainage systems.

- 4.12 Paragraph 107 states: When assessing applications, authorities should consider development in a Coastal Change Management Area appropriate where it is demonstrated that:
- it will be safe over its planned lifetime and will not have an unacceptable impact on coastal change;
 - the character of the coast including designations is not compromised;
 - the development provides wider sustainability benefits; and
 - the development does not hinder the creation and maintenance of a continuous signed and managed route around the coast.
- 4.13 Paragraph 109 states: The planning system should contribute to and enhance the natural and local environment by:
- protecting and enhancing valued landscapes, geological conservation interests and soils;
 - recognising the wider benefits of ecosystem services;
 - minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;
 - preventing both new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by unacceptable levels of soil, air, water or noise pollution or land instability; and
 - remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.
- 4.14 Paragraph 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.
- 4.15 Paragraph 113 states: 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.
- 4.16 Paragraph 114 states: Local planning authorities should:
- set out a strategic approach in their Local Plans, planning positively for the creation, protection, enhancement and management of networks of biodiversity and green infrastructure; and
 - maintain the character of the undeveloped coast, protecting and enhancing its distinctive landscapes, particularly in areas defined as Heritage Coast, and improve public access to and enjoyment of the coast.
- 4.17 Paragraph 118 states: When determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying the following principles:

- if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;
 - proposed development on land within or outside a Site of Special Scientific Interest likely to have an adverse effect on a Site of Special Scientific Interest (either individually or in combination with other developments) should not normally be permitted. Where an adverse effect on the site's notified special interest features is likely, an exception should only be made where the benefits of the development, at this site, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of Sites of Special Scientific Interest;
 - development proposals where the primary objective is to conserve or enhance biodiversity should be permitted;
 - opportunities to incorporate biodiversity in and around developments should be encouraged;
 - planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the need for, and benefits of, the development in that location clearly outweigh the loss; and
 - the following wildlife sites should be given the same protection as European sites:
 - potential Special Protection Areas and possible Special Areas of Conservation;
 - listed or proposed Ramsar sites; and
 - sites identified, or required, as compensatory measures for adverse effects on European sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.
- 4.18 Paragraph 119 states: The presumption in favour of sustainable development (paragraph 14) does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined.
- 4.19 Paragraph 120 states: To prevent unacceptable risks from pollution and land instability, planning policies and decisions should ensure that new development is appropriate for its location. The effects (including cumulative effects) of pollution on health, the natural environment or general amenity, and the potential sensitivity of the area or proposed development to adverse effects from pollution, should be taken into account. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.
- 4.20 Paragraph 125 states : By encouraging good design, planning policies and decisions should limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.

- 4.21 Paragraph 128 states: In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.
- 4.22 Paragraph 129 states: Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal.
- 4.23 Paragraph 131 states: In determining planning applications, local planning authorities should take account of:
- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
 - the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
 - the desirability of new development making a positive contribution to local character and distinctiveness.
- 4.24 Paragraph 135 states : The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
- 4.25 Paragraph 140 states : Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies.
- 4.26 Paragraph 142 states: 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.
- 4.27 Paragraph 144 states: When determining planning applications, local planning authorities should:

- give great weight to the benefits of the mineral extraction, including to the economy;
- not normally permit other development proposals in mineral safeguarding areas where they might constrain potential future use for these purposes;

National Planning Practice Guidance (NPPG)

4.28 Conserving and enhancing the historic environment; Design; Determining a Planning Application; Environmental Impact Assessment; Flood Risk and Coastal Change; Hazardous Substances; Land Affected by Contamination; Light Pollution; Natural Environment; Open Space, sports and recreation facilities, public rights of way and local green space; Planning Obligations; Renewable and low carbon energy; Rural Housing; Travel plans, transport assessments and statements in decision-making; Tree Preservation Orders and trees in a conservation area; Use of planning conditions; viability; water supply, waste water and water quality.

4.29 Development Plan:

Swale Borough Local Plan 2008:

SP1 – Sustainable Development;
 SP2 – Environment;
 SP3 – Economy;
 SP4 – Housing;
 SP5 – Rural Communities;
 SP6 – Transport and Utilities;
 SH1 – Settlement Hierarchy;
 TG1 – Thames Gateway Planning Area;
 E1 – General Development Criteria;
 E6 - Countryside;
 E7 – Separation of Settlements;
 E9 – Protecting the Quality and Character of the Borough’s landscapes;
 E10 – Trees and Hedges;
 E11 – Protecting and Enhancing the Borough’s Biodiversity and Geological Interests;
 E12 – Site designated for their importance to biodiversity or geological conservation;
 E13 – The Coastal Zone and Undeveloped Coast;
 E16 – schedules ancient monuments and archaeological sites;
 E19 – Achieving High Quality Design and Distinctiveness;
 B1 – Supporting and Retaining existing employment land and business;
 B2 – Providing for new employment;
 B5 – existing and new tourist attractions and facilities;
 H2 – provision for new housing;
 H3 – affordable housing;
 RC1 – helping to revitalise the rural economy;
 RC3 – helping to meet rural housing needs;
 RC7 – rural lanes;
 T1 – providing safe access to new development;

- T3 – vehicle parking for new development;
- T4 – cyclists and pedestrians;
- T5 – public transport;
- C1 – existing and new community services and facilities;
- C2 – housing developments and the provision of community services and facilities and;
- C3 – provision of open spaces on housing development.

Emerging Local Plan – Bearing Fruits 2031 The Swale Borough Local Plan Part 1 - Publication version December 2014:

- ST1 (Delivering Sustainable Development in Swale)
 - ST2 (Development targets for jobs and homes)
 - ST3 (Swale Settlement Strategy)
 - ST4 (meeting the local plan development targets)
 - ST5 (Sittingbourne Area Strategy)
 - CP1 (building a strong and competitive economy)
 - CP2 (Promoting Sustainable Transport)
 - CP3 (delivering a wide choice of high quality homes)
 - CP4 (Requiring Good Design)
 - CP5 (health and well-being)
 - CP6 (community facilities and services to meet local needs)
 - CP7 (Conserving & Enhancing the Natural Environment – Providing for Green Infrastructure)
 - CP8 (conserving and enhancing the historic environment)
 - DM3 (rural housing)
 - DM6 (managing transport demand and impact)
 - DM7 (vehicle parking)
 - DM8 (Affordable Housing)
 - DM14 (general development criteria)
 - DM21 (water, flooding and drainage)
 - DM22 (the coast)
 - DM23 (coastal change management)
 - DM24 (Conserving and Enhancing Valued Landscapes)
 - DM25 (The Separation of Settlements – Important Local Countryside Gaps)
 - DM26 (rural lanes)
 - DM28 (Biodiversity and Geological Conservation)
 - DM29 (woodlands, trees and hedges)
 - DM34 (scheduled monuments and archaeological sites)
- 4.30 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.
- 4.31 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.

Supplementary Planning Documents:

4.32 Developer Contributions November 2009

4.33 Swale Landscape Character and Biodiversity Appraisal 2011:

4.34 The site lies within the Lower Halstow Clay Farmlands character area (CA25). Key characteristics include:

- *Mixed geology of London clay with outcrops of head brickearth and Woolwich beds, steeply rising to the south.*
- *Mixed agricultural land use with small-scale fields of pasture and localised orchards.*
- *Contrast between abutting marshland and farmland with hillside and ridge backdrop.*
- *Narrow lanes with impressive estuary views.*
- *Weak landscape structure with scattered mature standard trees and fragmented over-mature roadside hedges.*
- *Settlement limited to isolated cottages, fixed mobile homes and isolated farms. Small-scale industrial works.*

4.35 For CA25, its condition is described as moderate and its sensitivity high, leading to an overall guideline of 'Conserve and Restore'. Detailed guidelines include:

- *Conserve the strong sense of place where Raspberry Hill, orchards and associated windbreaks meet the shoreline.*
- *Reduce the intrusive influence of smaller scale urban or industrial elements by introducing appropriate planting such as already present, for example dense thorn scrub.*
- *Conserve the distinctive landscape character and contrast provided where largescale marshland landscapes abut smaller scale arable/horticultural land, including the hillside backdrop, ridge top, narrow lanes and estuary views.*
- *Avoid proposals that would be unduly prominent on high or open ground, and have particular regard to sensitive views from the marshes to the north.*

4.36 The site also lies immediately adjacent to (south of) the Chetney and Greenborough Marshes Character Area (CA1). Page 25 offers generic guidelines for marshland landscapes that include:

"The open character of most marshland landscapes accentuates the visual impact of many proposals over a wide distance as compared with more enclosed landscape types. Even small buildings and developments can be highly visible within the visually sensitive marshland. Avoid proposals that can result in the interruption of views of large open skies or horizons, or impinge on the remote undeveloped quality of marshland and its shoreline."

4.37 Key Characteristics include:

- *An area of traditional coastal marsh;*
- *Flat grazing marsh, saltmarsh and mudflats. Natural and man-made features include ditches, fleets and counterwalls;*
- *Scattered isolated patches of scrub;*
- *Major transport routes and power lines cut across the marsh;*
- *Large areas designated for the protection of internationally important habitats and species assemblages; and*
- *Atmospheric and tranquil landscape with large open and often dramatic skies.*

4.38 For CA1 its condition is described as 'Good' and its sensitivity is high leading to an overall guideline of 'conserve.' Detailed guidelines include:

As an area of extensive coastal marsh the guidelines for Chetney and Greenborough Marshes are to conserve the landscape.

- *Consider the generic guidelines for marshland landscapes and seek opportunities to restore coastal grazing marsh, wetland and/or intertidal habitat where intensive arable production currently exists.*
- *Conserve the undeveloped and distinctive character of the marshland, to maintain the integrity of the wider North Kent Marshes.*
- *New development should be carefully sited and integrated so that it does not intrude upon areas of tranquil unspoilt marshland or significantly expand or exacerbate existing visual impacts.*

5.0 LOCAL REPRESENTATIONS

5.01 Seven objections have been received. A summary of these objections is as follows:

- Additional pressure on roads;
- Noise and light pollution affecting people and wildlife;
- Insufficient schools and doctors to cope with increasing population;
- How much will Funton Creek be affected by pollution?;
- Parking provision is inadequate;
- Construction traffic should not be allowed through the village;
- Lower Halstow is used as a rat run when traffic is bad and this development would exacerbate the problem;
- If there is no social housing in the development, where is the benefit to the residents of Lower Halstow?;
- One resident claims that they own some of the land included within the blue line of the application site and this will impact on the proposed footpath link to the Saxon Shore Way. They are in the process of seeking to prove that this land is owned by them but this is being disputed by the applicant;
- Concerns about the impact of the development on the SSSI and Ramsar sites;
- The development would lead to greater instances of trespass onto the marshland impacting on birds and also livestock on the land;

- Inappropriate location;
- Increasing pressure for housing in the area;
- There is no mains water and no mains drainage at the site;
- The country lanes cannot cope with more traffic safely;
- The road through the Raspberry Hill has no sea defences and floods on high tides;
- Would the occupants be able to get house insurance?;
- Attention is drawn to the Lower Halstow Conservation Area Appraisal.

5.02 The representative of the Kent Wildfowling and Conservation Association objects to the application. They own a large proportion of land in the Medway estuary. They consider that the proposal would adversely affect the nearby marshes, its wildlife and amenity value of the land. Studies have shown the marked decline of key wild bird species. Disturbance, particularly from dog walkers, is a potential factor in this. Disturbance will increase if housing is allowed at this site.

6.0 CONSULTATIONS

6.01 Lower Halstow Parish Council object to the application on the following grounds:

- Increase in traffic on narrow local roads from houses and the outward bound centre with most journeys through Lower Halstow;
- Increased traffic would cause a hazard to walkers using the Saxon Shore Way;
- No bus services which pass the site with the service from Lower Halstow running every 2 hours and not on Sundays;
- The road can flood at high tides making the road dangerous;
- Lack of car parking within the site;
- Nearest school is Lower Halstow and school places are limited;
- Shortage of places at local doctors surgeries;
- Only one local shop in Lower Halstow;
- Parking at the nearest pub is already an issue;
- Broadband access is likely inadequate;
- The site is remote and would not integrate with either Lower Halstow or Iwade;
- The outline design is not in keeping with a rural setting and is reminiscent of a workhouse;
- The ecological survey reports are out of date and the site may have become a habitat for wildlife;
- There is a significant flood risk from run-off into the site;
- If the application is approved they ask for a speed limits to local roads reduced, improved footpath and cycleway from the site to Lower Halstow, increase in on-site parking, review of the design of the housing and, construction traffic to avoid Lower Halstow.

- 6.02 Southern Water note that they can provide foul sewage disposal to service the development but they require a formal application to be made to them by the developer. Arrangements for the long term maintenance of SUDS should be made if used at the site. They request a condition to require further details of foul and surface water drainage. They consider that there is currently an inadequate supply of water to service the development. Additional off-site mains or improvement to existing mains will be required to increase capacity. They request a condition to address this.
- 6.03 The Environment Agency have no objection to the proposal. They note that all built development would be outside of the 'at risk' area for flooding and are satisfied with the surface water drainage proposals. They note that the site is on clay geology and has a low environmental risk. No specific guidance is provided on contaminated land therefore. They request an informative dealing with the disposal of contaminated land that may be stored at the site and also dealing with the storage of fuel, oil and chemicals at the site.
- 6.04 Natural England note the close proximity of the site to SPAs, SSSIs and Ramsar sites. They advise that the LPA as the competent authority should have regard for potential impacts that a plan or project may have in the consideration of European site interest. A Habitats Regulations Assessment has not been provided and the LPA should consider whether the proposal is likely to have a significant effect on any European site, proceeding to an Appropriate Assessment (AA) where significant effects cannot be ruled out. As the proposed development is close to the Medway Estuary and Marshes SPA/Ramsar, which is accessible from the proposed houses, it is likely that new residents will frequently visit the SPA for recreation in this location. The development will therefore need mitigation that includes a contribution towards strategic mitigation and implementation of this mitigation prior to the occupation of the houses and an element of off-site green space which could be used by dog-walkers, to reduce the number of visits to the SPA. They do not consider that the proposed reptile and invertebrates reserve is compatible with dog walking and should be discounted as the desired green space therefore. Subject to these measures being provided, the proposal is unlikely to have a significant effect on the SPA/Ramsar and can be screened out of any requirement for further assessment (AA). They also consider that with the measures requested, the proposed development would not damage or destroy the interest features of the SSSIs. Their standing advice should be considered in respect of protected species. They encourage biodiversity enhancements, request a condition to ensure that foul and surface water is adequately dealt with and a condition to ensure that noise and light pollution is minimised. Upon receiving confirmation from the applicant's agent in respect of the mitigation measures requested, Natural England advise that the development can be screened out from further stages of assessment because significant effects are unlikely to occur. Natural England have considered the comment from the Public Rights of Way Officer and accept that whilst there are some doubts about the usability of a number of the alternative footpaths put forward (see para. 6.15), they do accept that one 3.6km footpath route is a suitable alternative to accessing routes within the SPA.

- 6.05 KCC Ecology advise that further information regarding the potential for the application to result in ecological impacts is sought. The submitted surveys were carried out in 2011 and 2013 and have not been informed by the biological records centre data search. The applicant should confirm the current status of the habitats on the site and informed by an updated ecological assessment. Further information should also be sought to address insufficiencies in the bat survey data, that a reptile survey is carried out and further survey work carried out on the great crested newt survey. No information has been provided to address the proximity of the site to the SPA/Ramsar sites. The delivery of the Reptile and Invertebrate Reserve is likely to increase biodiversity at the site.
- 6.06 The Manager of Environmental Services recommends conditions to require: the submission of a contaminated land assessment; the removal of asbestos from the site; restrictions on the hours of impact pile driving during construction and restrictions on the general hours of construction; the suppression of dust and; the submission of a Construction Site Management Plan.
- 6.07 The Health and Safety Executive advise that there are sufficient reasons on safety grounds, for advising against the granting of planning permission in this case. This is because the site is designated as a Major Hazard Site.
- 6.08 KCC Mineral Planning Authority note the safeguarding of minerals is an important element of sustainable development. Minerals are a finite resource and can only be worked where they are found. It is important to make the best use of them and secure their long-term conservation. The application site lies within the Swale Borough Minerals Safeguarding Areas Map for brickearth and is not within an allocated site for development. The application should therefore demonstrate the acceptability of non-mineral development against the tests of the emerging policy DM7 of the Minerals and Waste Local Plan. In response to additional information provided by the applicant's agent in which the practicalities of the site being used for brick earth extraction are listed, KCC agree that the probability of the site having a viable and practical source of Brickearth is limited. Although the information provided by the applicant does not prove this, they do not consider that they can insist on a full geological assessment given the uncertainty of the wording of policy DM7 and its status.
- 6.09 Kent Police object to the application. They draw our attention to the levels of growth in the County and seek developer contributions to ensure that existing levels of service can be maintained. If contributions are not forthcoming, then existing resources and infrastructure will have to be stretched further with resulting negative impact on the level of service provision to the public. If the required developer contributions are not forthcoming, the development would fail to comply with the NPPF in respect of paragraphs: 7; 17; 58; 69; 70; 156; 157; 162. A figure of £315.84 is required per dwelling and this would be spent on additional staff and additional staff accommodation. They consider that their request is compliant with NPPF paragraph 204.

- 6.10 UK Power Networks have no objection to the proposal.
- 6.11 The Climate Change Officer notes that the applicant has high aspirations for sustainability and recommends a condition to ensure that the homes are built to a standard of code level 4 of the Code for Sustainable Homes, or its equivalent.
- 6.12 The Head of Housing notes that there is a need for affordable housing in Lower Halstow. The planning application details 30% affordable housing delivery at the site. However, the emerging Local Plan seeks 40% and should be considered. The affordable houses should be a proportionate mix to open market homes across the site. 70% should be affordable rent and 30% for intermediate in accordance with the Kent Strategic Housing Market Assessment. These should be evenly distributed across the site and accept that no five bedroom affordable properties will be provided. Lastly, they seek fully adapted affordable wheelchair homes.
- 6.13 The KCC Archaeological Officer notes that the site is located in an area that is archaeologically sensitive. Remains of prehistoric and Romano-British have been found in the surrounding area. There is good potential for discoveries of archaeological remains at the site. Given the importance of brick making as a heritage theme for Swale and the Sittingbourne area in particular, it is important that the remains of the brickworks are properly integrated into the future development of the site and they are pleased to see that this is an intention of the proposal. The retention of the kilns in particular should be examined further. A programme of recording should be undertaken prior to the demolition and clearance of the site. A further study of the existing buildings and surrounding land should be used to inform the layout of the site. A condition is recommended to secure this recording.
- 6.14 KCC request that financial contributions are made towards: primary education - £2360.96 per applicable house; secondary education - £2359.80 per applicable house; library bookstock – £2640.67 in total and; one wheelchair accessible home. They also request that a condition be included to ensure provision of Superfast Fibre Optic Broadband to the site.
- 6.15 The KCC Public Rights of Way Officer notes that ZR42 passes to the south of the site and the Saxon Shore Way follows this route. They have serious concerns about the increase in vehicle use of the road that the proposal will generate and the impact that will have on users/potential users of the Saxon Shore Way. No objection to the proposed pedestrian link to ZR42 but it is unlikely that it would be adopted as a public footpath because it does not link to the existing highway. Its creation and maintenance would be a private matter. In response to suggestions put forward by the applicant regarding accessible walking routes from the site in relation to the impact on the Special Protection Area he notes:

“The local footpath routes suggested are, on the whole, not what would be considered suitable for walking a dog/family walks as there are quite lengthy sections of road walking. The roads in the vicinity of the

proposed site are not routes that we would recommend for walking and there are long term issues on several of the footpaths that require the diversion of paths.”

6.16 Kent Highways make the following comments:

“Whilst I understand that the site benefits from a Lawful Development Certificate for B2 use, I consider that the operations and type of buildings on site are quite specific, and the vehicle movements associated with it were restricted by the logistical peculiarities of the brickmaking activities. The Transport Statement has used a general B2 use from TRICS to determine the trip rate, but I do not think that the site could operate as intense as the trip rates suggest without wholesale changes to the buildings and layout of the site to make it practical for use as an Industrial Estate. In reality, the traffic generation from the brickworks would likely have been less intense than the numbers being put forward in the Transport Statement.

The introduction of residential traffic will bring about a change in travel patterns too, as this use would be active for 365 days a year, and would not be constrained by the weight restrictions that apply to the surrounding road network. Residential traffic would coincide with the network peaks, and the draw to local employment and facilities would send a large proportion of the traffic through Basser Hill and Stickfast Lane to access Sittingbourne.

These are narrow roads, particularly Basser Hill, where forward visibility between passing places is limited, and vehicles have great difficulty using this route when meeting a vehicle travelling in the opposite direction.

The location of the development is not sustainable, given that the site is remote from public transport services, local amenities and footway provision, so practically all journeys are going to be made by car. This also leads me to consider that the trip rates used in the Transport Statement are underestimated, as I would expect that dwellings in this location would generate more than 5.3 movements per weekday. The impact on the highway network is therefore likely to be greater than has been suggested.

I appreciate that the application is made in outline form only, with all matters reserved, so have not considered the indicative layout of the site in much detail, as this would be assessed separately at reserved matters. This does not, therefore, indicate that I am satisfied with the indicative plan and parking provision that has been included in the current submitted details.

Given the reliance on the motor car here, it may be that the indicative layout is not appropriate to cater for the level of expected car ownership. However, this is not under consideration at present.

Consequently, I recommend that this application be refused on highway grounds for the following reason:-

1. The proposal, located remote from services, employment opportunities and being unlikely to be well served by public transport, is contrary to the key aims of the National Planning Policy Framework, which seeks to reduce growth in the length and number of motorised journeys.

2 The existing road network in the vicinity of the site has insufficient capacity to accommodate the material increase in traffic likely to be generated by the proposed development by reason of its restricted width and poor alignment.

3 The proposed development is likely to generate an increase in pedestrian traffic on a highway lacking adequate footways with consequent additional hazards to all users of the road.”

7.0 BACKGROUND PAPERS AND PLANS

7.1 Flood Risk Assessment; Contaminated Land Assessment Report; EP Site Surrender Condition Report; Transport Statement; Planning Statement; Design and Access Statement; Ecological Appraisal; Landscape and Visual Impact Assessment; Bioscan letter and attachments in respect of recreational disturbance; response to Kent Highways comments; Masterplan Design Proposal; Indicative Landscape Masterplan; Existing Site Plan; Site Location Plan.

8.0 APPRAISAL

Principle of Development

8.01 The key issue is whether the proposal represents sustainable development in terms of paras. 7-9 of the NPPF and whether it achieves 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 and consideration as to whether there are specific policies in the NPPF that indicate that the proposals should be resisted.

8.02 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. However, against the current target, the proposals will make a contribution to both this supply and housing needs generally. Furthermore, it is acknowledged that the supply of affordable housing (possible 16 if 30% and 20 if 40%) would also be beneficial. Given that paragraph 47 of the NPPF seeks a significant boost in the supply of housing, overall these benefits should count in favour of the development.

- 8.04 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.
- 8.05 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. The simple point is that even in a para. 49 situation (lack of 5 year housing land supply), relevant development plan policies shown to accord with the NPPF will apply and be taken into account in the final 'planning balance'. Policy E6 (ALP) and ST3 (ELP) specifically deal with locations outside the built up area boundaries. However, the proposal enjoys no support from the exceptions listed by the policy to the normal approach of protecting the quality, character and amenity value of the wider countryside of the Borough. NPPF Core Planning Principles include that (para. 17): *"take account of the different roles and character of different areas, ... recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it."* Paragraph 109 of the NPPF - *"to contribute to and enhance the natural and local environment by "protecting and enhancing valued landscapes..."* is also relevant. The proposal is 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. Whilst there may be cases where E6 and ST3 would carry less weight, in such a remote location as this, such would be the impact on the effectiveness of these policies, there would be a clear conflict with the above NPPF principal. Permission on this site would therefore undermine this wider strategic approach and lead to widespread harm to the countryside.
- 8.06 The application site falls well beyond the defined built up area boundaries of the settlements included within the hierarchy in Policies SH1 (ALP) and ST3 (ELP). Those settlements listed within the hierarchy represent (in descending order) the most sustainable/accessible locations for development. The nearest village to the site (Lower Halstow) is within the lowest tier of settlements with a built up area boundary. In the case of locations away from services and facilities, a Core Planning Principal of the NPPF (para. 17) *"actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable"* will apply, together with the specific restrictions associated with isolated housing in the countryside (para. 55).

- 8.07 The nearest settlement to the application is Lower Halstow, located some 1.8 km distant (via roads and very slightly less if using public footpaths) from the application site. The village has relatively few facilities, but includes a small convenience store, Church and Primary School. The village (but not the application site) is served by a single bus service offering approximately 11 journeys (Mon-Fri) linking Sittingbourne with Chatham (via Newington, Upchurch, Rainham and Medway Hospital). On Saturday the service reduces to eight and there are no services Sundays or Bank Holidays. Services beyond 6.30 pm are limited.
- 8.08 The road between the application site and the village has no pavement and is not lit. It is relatively lightly trafficked, but the lane is narrow and traffic moves at speed. It would be unsafe for pedestrian usage. The walk from the site to the Three Tuns Public House (beyond which there is a pavement to the centre of Lower Halstow) would, if using the Saxon Shore Way and public footpath ZR41, still involve walking along the narrow country lane for a cumulative distance of some 0.6 km. The site is very isolated from most of the services needed by residents on a day to day basis.

Distance to services from application site:

Primary school Lower Halstow 2.4 km;

Bus Lower Halstow 1.8 km, Iwade 3.75 km, Newington 4.6 km;

Rail Newington 4.5 km, Swale Halt 4.8 km;

Secondary School Sittingbourne (Westlands) 7.0 km;

Post office Upchurch 3.7 km;

GP Iwade 5.5 km;

Local convenience store (very limited provisions available) Lower Halstow 1.6 km. Better provision available at Co-op Upchurch 3.6 km or Iwade 3.5 km;

Supermarket (Asda) Sittingbourne 6.6 km;

Take-away Upchurch 3.2 km;

Church Lower Halstow 1.6 km;

Pub Lower Halstow 1.8 km;

Cashpoint (Free) Iwade 3.5 km;

Pharmacy Iwade 3.5 km;

Petrol Station Sittingbourne (Bobbing) 5.2 km;

Strategic road network A249 (Kingsferry Bridge) 4.3 km.

- 8.09 This isolated location necessitates use of the private car for all day to day needs or, at best, the use of a bike for perhaps primary school and the limited provisions at the convenience store at Lower Halstow. Walking to the village would, at best, be for the determined and probably not considered safe for primary age children.
- 8.10 The NPPF at paragraph 55 requires local planning authorities to “*avoid new isolated homes in the countryside unless there are special circumstances*”. Given the distance from various amenities as set out above, there is no doubt as to the isolated nature of the locality. There is a total absence of other development in the locality and overall population density is low. The

character of the landscape creates and reinforces the areas actual relative wildness and isolation.

- 8.11 Para. 55 of the NPPF provides some examples of possible 'exceptions' that would apply. It is true that the applicant could potentially claim that aspects of the proposal would represent the optimal viable use of an undesignated heritage asset or would be appropriate enabling development to secure the future of undesignated heritage assets. However, no enabling development case has been made in this instance and despite the comments from the KCC archaeological officer noting the significance of the site to the history for brickmaking, I note that the key building identified - the kilns, is identified by the applicant as being structurally unfit for retention and is to be demolished. This is not a listed building and, as Members will note above, was considered by English Heritage but rejected. It is my view, as supported by the Conservation Officer, that providing there is proper recording carried out, the total demolition of the buildings on site, is accepted. Therefore, there is no enabling case to be made on heritage grounds.
- 8.12 Paragraph 55 also allows an exception "*where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting*". The applicant argues that this applies to the application site. This is strongly disputed as the proposed development would see the demolition of the majority of the buildings on site, leaving one building that may or may not be re-used as an outward bound centre. However, this does not form part of the current planning application. It is acknowledged that the para. 55 'exceptions' list is not exhaustive. The potential impacts from the resumption in B2 usage, the potential enabling of an outward bound centre, the link to the Saxon Shore Way and the creation of a reptile and invertebrate reserve might be suggested as matters unique to the site amounting to exceptional circumstances. The applicant is of the view that they are 'material considerations' that would allow the grant of planning permission contrary to the development plan.
- 8.13 The possible resumption in B2 activities is considered to be of limited relevance. The applicant strongly asserts that despite the harm caused by the development of the site for housing, the harm would be worse if the site was brought back into an active B2 use. There is some contradiction in the applicant's argument. On the one hand, when arguing the case for the loss of employment use of this site (see below), it is no longer considered appropriate and suitable for employment. On the other, they advocate that the Council should consider the risk of a recommencement in employment uses as a material reason to grant permission for housing. It is agreed that there is at least a risk that B2 operations could recommence from the site. However, the risk is diminished for this type of operator due to the investment that would need to be made, the site's location and the availability of other better located sites. Use of previously developed land, although enjoying support from the NPPF, is not an in-principle acceptance of development contrary to other statements in the framework or the local plan as appropriate. It is acknowledged that a B2 use being brought back to this site would be regrettable. Traffic and other environmental issues generated as a

consequence of a B2 use would no doubt have some negative impacts on the local area. However, there are a number of controls that the Environment Agency and our Environmental Health team can put in place to limit the environmental impacts. In terms of the highway impact, whilst there are no guarantees that heavy goods vehicles would avoid Lower Halstow and Iwade villages, it is likely, in my view, that they would opt for the routes that would take them to the A249 without having to navigate width restrictions, parked cars and road calming measures i.e. not through the villages. I understand that the traffic movements from the former brickworks were controlled by the operator (not a planning restriction) to avoid Lower Halstow and Iwade and to avoid HGVs meeting each other head on. I would anticipate that future B2 operators would want to impose similar routing rules. I also understand that there are weight restrictions to some of the surrounding roads thereby limiting the highway impact further. The B2 use of the site may of course have some noise and other impacts in terms of smells, dust etc on Funton Cottages but one must weigh-up the impact on these two properties, which will have historically experienced the noise and other disturbances from the brickworks site when it was in active use, against the harmful impacts (as set out within this discussion section) on the of the housing development of this site. I am strongly of the view that the threat of bringing a B2 activity to this site and the associated negative impacts would not outweigh the detriment that a housing development would have for the reasons set out in this discussion.

- 8.14 Of the outward bound centre, I attach limited weight to this potential proposal as it does not form part of the application and although there may be interest from an end-user at this stage, there is a significant degree of uncertainty about whether the outward bound centre would actually come to fruition. There is also little within the application details to enable this aspect to be scrutinised in order to come to any conclusions about whether 55 dwellings is sufficient to ensure delivery.
- 8.15 The link to the Saxon Shore Way is only of benefit to the residents of the scheme and as such provides no wider benefit that should be taken into account. Some weight is attached to the proposals for the reptile and invertebrate area, but the need for this is most unclear. It is not apparent that it is actually necessary for mitigation. In any event, the site will function currently to the benefit of the fauna currently on site, until such times as it regenerates and then functions to the benefit of other species. There is also very little detail as to how the reserve would be funded and managed in the long term. Only confirmation that it is the intention that the open space would be managed by a management company with contributions from the residents of the development towards its maintenance. If implemented it would have some potential benefit in terms of interpretation and education, but its lack of need and certainty diminishes these advantages, as does the possibility of tensions between its primary purpose and what would inevitably be an area used for play and dog walking unless designed very carefully. There are no guarantees at this stage that the potential clash of uses could be accommodated.

- 8.16 The proposals are clearly contrary to para. 55 of the NPPF and there is little that would amount to a compelling exception to the fundamentally restrictive nature of this paragraph. As well as being contrary to the Core Planning Principal at para. 17 of the NPPF - "*actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations which are or can be made sustainable*", Policies SP1, SP5, SP6, SH1 and E6 (ALP) and ST1, ST3 and CP3 (ELP) would be offended due to the location of the site well beyond settlement boundaries and its poor accessibility to services and the poor social cohesion that would result.
- 8.17 As an existing employment site, policies B1 (ALP) and CP2 (ELP) seek its retention unless inappropriately located or no longer suitable. The applicant highlights in support the findings of the Council's Employment Land Review (ELR). The evidence from the applicant and the ELR does not definitively point to the retention or loss of this site for employment. In terms of criterion 1a. of policy B1 (ALP), the site is not considered to be inappropriately located as it is isolated from existing properties (with the exception of Funton Cottages) and a variety of employment activities could, if need be, take place without detriment to the local area. In terms of criterion 1 b. and c., its location some distance from the strategic road network is an inhibitor to its suitability, but the evidence does not conclusively point toward a complete lack of commercial interest in the site. Furthermore, taking employment provision in its widest sense, the interest of the outward bound providers would appear to be evidence of the site's suitability (albeit appearing to need financial support from the housing) for some types of employment. However, the site would require a large amount of investment to cater for a wide range of employment uses and is difficult to travel to the site without the use of a vehicle. In this respect, the attraction of the site as an employment use is significantly diminished in my view. I do not consider therefore that the loss of this site as an employment use would cause significant harm to the local or borough-wide economy and/or social enhancements of job provision. That is not to say that the Council would not encourage employment uses at the site as an alternative to a housing development.
- 8.18 In terms of economic gains from the provision of housing, the brickworks site has been shut for a number of years and its economic contribution has gone. The construction of houses will have an economic benefit (although a benefit not unique to this site), whilst, if achieved, the establishment of the outward bound centre will support local jobs and spending. However, until a more firm proposal is made and a specific link can be made with this current application, the weight to be attached to this latter proposal is diminished. The contribution made by the proposals to the local economy should be acknowledged, but they cannot be regarded as significant; the housing contribution not reliant or unique to this site and the outward bound centre yet to be confirmed.
- 8.19 In conclusion, there are a number of NPPF, ALP and, ELP policies as set out above that the proposed redevelopment of the site for housing would fail on and this leads me to conclude that the development would be harmful to the quality and character of the countryside insofar as it would undermine the

policy objectives of preventing sporadic development within the countryside and would fail to support the social and environmental roles of sustainable development.

Landscape/visual impacts/undeveloped coast/rural lanes

- 8.21 The site adjoins the North Kent Marshes Special Landscape Area (SLA) and is within an Area of High Landscape Value (AHLV). Both are local landscape areas and are afforded weight in decision making by paragraph 113 of the NPPF. NPPF Core Planning Principle (para. 17) looks to Councils to “*contribute to conserving and enhancing the natural environment and reducing pollution.*” Paragraph 109 of the NPPF also expects the planning system to “*protect and enhance valued landscapes*”. Policies E19 (ALP) and DM24 (ELP) apply and should be regarded up to date. The site also occupies land within the undeveloped coast. Paragraph 114 of the NPPF looks to local authorities to “*maintain the character of the undeveloped coast*”. Policies E13 (ALP) and DM22 (ELP) apply and should be considered up to date. Policies RC7 (ALP) and DM26 seek to avoid significant harm to the character of rural lanes. In this instance, this issue forms part of the wider judgements around landscape and visual impact.
- 8.22 Whilst there are two separate local landscape designations, they are interrelated. The AHLV affords excellent views of the SLA, whilst the AHLV provides an important backdrop to the SLA. In some ways each provides the setting of the other. As set out in the policy section of this report, the site lies within the Lower Halstow Clay Farmlands character area and is immediately adjacent to the Chetney and Greenborough Marshes Character Area. The recommendations of the Swale Landscape Character and Biodiversity Appraisal 2011 SPD for these character areas are of ‘conserve’ for both and ‘restore’ for the Lower Halstow Clay Farmlands character area.
- 8.23 The Council has engaged a Chartered Landscape Architect to consider the submitted Landscape and Visual Impact Assessment (LVIA) and to comment on how they consider the residential development of this site may impact on the surrounding landscape and visual amenities. Our consultant is highly critical of the submitted LVIA on a number of accounts. A summary of some of these criticisms is as follows:
- Lack of clarity and certainty over the mitigation measures proposed, particularly vegetation around the boundaries of the site;
 - No consideration given to the recreational users of the estuary as a visual receptor of the site and the occupiers of Funton Cottages, which the LVIA specifically records as visual receptors, have not been considered;
 - Relevant points from the National Character Area and The Landscape Assessment of Kent have not been noted;
 - The findings in the LVIA give rise to lower rankings of landscape value or visual amenity value and sensitivity than would otherwise be expected;

- It is considered that the “key” views should have included at least one on the Saxon Shore Way west of the selected view and one additional one on Raspberry Hill Lane;
- there is no distinction made between different types of users such as, say, cyclists, walkers or horse riders;
- The text is unduly focused on the susceptibility of the landscape together with considerations as to how much of the development would be in view or what the changes would be. This not a consideration of susceptibility. In effect it results in a “double counting” when the magnitude of change is considered subsequently. This failing is common on all the photograph assessment text and thus pervades the visual effects assessment, reducing its transparency, accuracy and balance;
- All the findings in terms of character are predicated on the rankings of susceptibility and the unbalanced matrices. The lack of clarity over what the LVIA considers to be adverse, beneficial (or neutral) effects is a significant omission from this part of the assessment;
- The overall change to the visual amenity enjoyed by users of a section of the Saxon Shore Way has not been adequately considered and evaluated;
- The LVIA ranks the selected view on the eastbound approach on Raspberry Hill Lane as experiencing a “moderate / minor effect” and the text indicates would be adverse. There is no consideration of how this adverse effect would change on the approach to the site. The LVIA should have identified that the development introduces built form onto the highest part of the site, exacerbating the visual effects relative to existing visible built form. The effects on this viewpoint and others on the eastbound approach are considered to be under reported;
- The conclusion of the LVIA gives some information not explicitly referenced in the main body of the LVIA. It gives greater but seemingly confusing information on residual effects and again is not based on any firm mitigation proposal. The findings are on face value nonsensical and opaque and further undermine confidence in the LVIA.

8.24 The overall conclusions of our Landscape Consultant are as follows:

The development of the western pre-developed field is described as “representing only a very minor increase in built footprint and a minor redistribution of built form on the site”. The reality is that of the proposed 55 units, 25 would be sited on the currently open stockpile field (western parcel of land). The landscape and visual significance of this change in the disposition of built form is very largely ignored in the LVIA and this must count against the reliance that can be placed upon its findings.

By way of an overall conclusion we consider the LVIA does cover the key issues raised in GLVIA3. However findings of the LVIA are questionable in terms of overall balance, partly stemming from the issues identified with the methodology. The way the assessment findings of beneficial, adverse or neutral effect are seemingly almost masked and confusingly reported is particularly unfortunate. The illustrative landscape masterplan is not considered a sufficiently detailed plan on which the grant of planning permission should be based in so far as landscape and visual issues are

concerned. The over reliance on future architectural detail and the lack of clarity over significant elements of landscape structure that could deliver mitigation reinforce the need to take a much more precautionary approach than has been adopted in the LVIA.

It is considered that the LVIA falls short of providing Swale Borough Council with a robust, clear and objective evaluation of the expected landscape and visual effects of the outline proposal and gives little comfort as to how these effects could be appropriately mitigated with reasonable certainty over time. A precautionary approach should therefore be adopted to the LVIA's findings.

- 8.25 On the basis of the information they have reviewed, they consider that it would be unsafe to recommend the grant of outline planning permission. This is on account of the adverse landscape and visual effects that they consider would be likely to result. They have particular concerns in relation to two primary areas; the reliance of future architectural design and detailing to mitigate the effects of the scheme as opposed to adequate landscape mitigation being an intrinsic part of the proposal and; there would be locally significantly harmful effects arising associated with the dense development proposed in the western end of the site such to make the proposal unacceptable in landscape and visual terms.
- 8.26 The applicant makes the case that the proposed housing development would have a footprint that is slightly smaller than the existing buildings on the site (approx. 500 sq. m) and that the majority of housing would be of more modest proportions than the existing buildings. This doesn't account for the fact that the proposed housing would be spread across a much larger area of the site (into the western parcel), potentially having a much greater landscape and visual impact than the current concentration of buildings within the central part of the site. The applicant's arguments do not account for the outline nature of the proposal which does not guarantee that the total footprint of the houses would be less than the existing buildings.
- 8.27 The applicant's agent has responded to our landscape consultant's report and notes that despite the criticisms, it does conclude that *'the LVIA does cover the key issues raised in GLVIA3'*. They recognise that there is difficulty in assessing the application in detail because it is in outline form but consider that this detail will be adequate at the reserved matters stage. They consider that weight should be given to the visual impact that the resumption of a B2 use might have in terms of stockpiles of raw materials and other open storage, upon which there would be not planning control. They consider that any landscape harm should be weighed in the balance against the positive impacts of the proposal i.e. provision of housing on brownfield land; removal of the existing industrial buildings and; the benefits arising from mitigation.
- 8.28 It is my view that the landscape and visual harm identified above would not be outweighed by the benefits of the proposal as put forward by the planning agent. The benefits of housing and the potential impacts of the resumption of the B2 use have, and will be, discussed in this discussion. Any mitigation

proposed in terms of soft landscaping would only go a small way towards minimising the harm from the proposed housing in my view.

- 8.29 It is my view that the existing industrial buildings on the site blend into the wider landscape to a certain extent, specifically when viewed from the east and south where other industrial buildings and chimney structures are present. The Lower Halstow and Farmlands character area is characterised by: *“Settlement limited to isolated cottages, fixed mobile homes and isolated farms. Small-scale industrial works.”* (Swale Landscape Character and Biodiversity Appraisal 2011 SPD). The development of housing of such a scale (i.e. not just individual isolated homes such as the Funton Cottages) within this landscape would introduce an alien form of building type and forms at a damaging scale and density. Put simply, a housing development would look out of place within this landscape and would be harmful to its character and appearance in this respect. I have recommended a reason for refusal based on this view and the advice provided by our landscape consultant. Whilst I acknowledge that this is an outline planning application with all matters reserved, I consider that the information before us is sufficient to conclude that the proposed residential development would have significant harm on the character and appearance of the landscape and the visual amenities of the area.
- 8.30 The relevance of Policy E7 - Strategic Gap (ALP) to this application has been considered. However, on balance, it is not considered to be relevant in that the proposals would not offend the policy or its objectives as set out in paragraph 3.21 of the ALP. With regards to impact on the undeveloped coast, Policy E13 ALP and DM22 of the ELP seek to only permit proposals that conserve and where appropriate enhance the landscape, environmental quality, biodiversity and recreational opportunities of the coast. At the undeveloped coast, development proposals will not be permitted that would have a significant adverse impact on the unspoilt scenic quality of the location. Given the landscape assessment above and the harm identified, I am of the view that the development be contrary to policies E13 (ALP) and DM22 (ELP).

Highways

- 8.31 The application is accompanied by a Transport Statement (TS). This sets out the existing and proposed trips at the site and assesses the traffic impact of the proposed development on the local highway network. With regards to existing trips at the site (when the brickworks was operating), the TS notes that the site generated 126 vehicle trips per day, rising to 320 during the peak summer months when clay was imported to the site. Given the established general B2 use of the site, the TS uses data for a B2 use in the form of industrial units and industrial estates/parks at the site as the assumption is that such a use could operate from the site at any time. The data suggests that the site (excluding the eastern parcel of land) would potentially generate 343 trips daily for an industrial unit and 563 trips daily for an industrial park. The TS does not appear to take account of the particular locational difficulties

of the application site nor the fact that the buildings on the site are specifically design, in most cases, for the brickmaking process. Kent Highways argue that the actual trips generated by a B2 use at the site would be less than that suggested in the TS without *'wholesale changes to the buildings and layout of the site to make it practical for use as an Industrial Estate.'* Such a change would be highly likely to require planning permission which would in turn require an assessment of the traffic impact. Any significant increase in traffic and in particular HGV movement would be likely to be resisted in my view.

- 8.32 The TS then goes on to suggest that the residential use of the site would generate 295 trips daily i.e. less than the B2 use of the site. Even if the trips generated by the potential outward bound centre are included, the daily trips would total 303. Again, less than the B2 use of the site. The TS goes on to conclude that the trip rates generated by the proposed residential use as compared to the brickworks use of the site are on par. They note that the significant number of HGV movements associated with the brickworks and general B2 use of the site would be removed should the housing be allowed and that this would be a safety benefit. They also draw our attention to the fact that under the brickworks use, the HGV traffic was concentrated on agreed routes and that the housing development would result in a diluted impact across the network. They conclude that this would reduce the impact.
- 8.33 Kent Highways note that journeys associated with the application site will be made by car. They consider therefore that the trip rates used in the TA are underestimated and the impact on the local highway would be greater than suggested. They also note that the residential use of the site will bring about change in travel patterns which would be less concentrated than the previous brickworks use or a B2 use. It is interesting that the conclusions in the TS are that this would lead to a reduced impact. Kent Highways clearly believe that this would in fact lead to an increased impact with traffic from a residential use using narrow lanes 365 days a year, unconstrained by weight restrictions, with most traffic generated at peak times. They conclude that the existing road network in the vicinity of the site, by reason of its restricted width and poor alignment, has insufficient capacity to accommodate the material increase in traffic likely to be generated by the proposed development. They also conclude that the development would generate an increase in pedestrian traffic on a highway lacking adequate footways, with consequential additional hazards to all users of the road. The comments from the Public Rights of Way Officer support this view.
- 8.34 The applicant has responded by arguing that the reduction in HGV traffic has not been taken into consideration and that traffic associated with the former brickworks use would have used Basser Hill and Stickfast Lane during its operation. They argue that the conclusions of the TA are sound and that the trip rates applied are accurate.
- 8.35 I am of the view that Kent Highways have sound reasons for disputing the conclusions of the TA in respect of the likely traffic generation from an active B2 use of the site and the traffic generated from the potential residential use. This results in a fundamental disagreement between the conclusions of the

TS i.e. that the residential development of the site would reduce the traffic impact as opposed to Kent Highways concluding that the development would result in an increased vehicle and pedestrian traffic impact and that this would be detrimental to highway safety. Paragraph 32 of the NPPF states: *'Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.'*

- 8.36 I conclude that in light of the objection raised by Kent Highways and the conclusions drawn by them, that the development would have a severe impact on the local highway network in terms of highway safety and amenity.

Ecology/biodiversity

- 8.37 Due to the site's location relative to the Medway and Swale Special Protection Areas (SPA), the Council is required to undertake a Habitats Regulations Assessment (HRA). Paragraphs 117-119 of the NPPF consider the approach toward biodiversity in respect of European sites. A HRA is appended to this report. 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.
- 8.38 The applicant has committed to contributing the required amount (£223.58 per dwelling) towards a mitigation strategy as set out in in line with recommendations of the Thames Medway and Swale Estuaries SAMM to address recreation disturbance at the SPA. Natural England has accepted that there is a long enough route that is accessible from, but outside of, the application site to ensure that there is an alternative option for walkers and, in particular, dog walkers. As such, there is no objection from Natural England and no requirement to undertake an Appropriate Assessment. Further details of the impact on the SPA are assessed under the appended HRA.
- 8.39 There is the potential for the scheme to provide some benefit to biodiversity via the additional planting around the site boundaries and the creation of the reptile and invertebrate reserve. However, there are some doubts. In the case of the reserve, the need for this facility is unclear, given the presence of the SSSI very close to the site and the lack any apparent need for mitigation. Its value may also be diminished by its potential usage for dog walking or outward bound activities. It is also unclear as to what the value of the site would be under a 'do-nothing' scenario. The reptile and invertebrates reserve is not therefore considered to be valuable enough to outweigh the harm from the housing development.

8.40 KCC Ecology have identified a number of areas where further information is required. The applicant has sought to address these concerns and further comments from KCC Ecology are awaited. Comments received will be reported at the meeting.

Developer Contributions

8.41 Should planning permission be granted, the developer has agreed to the following obligations:

- KCC community contributions (see above);
- Affordable housing at 30% - 70% affordable rent & 30% intermediate housing;
- Wheeled bins – 2 x £39.50 per dwelling and £870.80 per 8 flats;
- Monitoring fee at 5% of total contributions.

The applicant has also agreed to pay a contribution at £223.58 per house to address SPA recreational disturbance (in line with recommendations of the Thames Medway and Swale Estuaries SAMM) (see above). Whilst this is technically not a 'developer contribution', the best mechanism for securing this payment is through the Section 106 agreement.

8.42 Whilst the developer is willing to accept a contribution towards policing, it is considered that none of the items requested by the Police Authority would accord with the Government CIL regulations and therefore should not be included should Members be minded to approve the proposals.

8.43 The developer has not provided a signed Section 106 agreement but their written agreement to the above obligations is sufficient in my view to avoid a reason for refusal based on the lack of a commitment to them. The applicant is aware that should planning permission be refused and in the event that they appeal, they will be required to engage in the signing of a Section 106 agreement.

8.44 With regards to the offer of 30% affordable housing, Members should note that this is the requirement within the adopted Local Plan. The emerging Local Plan specifies 40% affordable housing for rural sites such as this. Whilst I have sought to encourage the provision of 40% affordable housing for this site, I am mindful of the status of the emerging Local Plan which is that it is not yet adopted. I cannot therefore conclude that the application should be refused on this basis. The applicant should though be mindful that in an appeal situation, we would be looking to apply the most up to date policies and it is possible that the emerging Local Plan will be adopted prior to the conclusion of the appeal.

8.45 The above contributions should not be considered as benefits as a result of the scheme insofar as they are all necessary to address the additional demands that a housing development on this site would place on the community and the environment. If permission is granted and the developer contributions above provided, this will largely address the concerns of local residents in regards to

inadequate infrastructure.

Other issues

- 8.46 The site is located on land that has the potential for brickearth extraction. However, KCC have confirmed that the potential is very low and future brickearth extraction from the site is unlikely to be viable.
- 8.47 The application site falls within a Major Hazard Site having been granted Hazardous Substances Consent (HSC) in the early 1990s. I have evidence that the hazardous substance has been removed from the site. However, there is a process for the revocation of the HSC and I am in the process of gaining legal advice on the best form of revocation. Once the HSC is revoked, the Health and Safety Executive (HSE) have confirmed that they can withdraw their 'advise against' comment. The refusal of planning permission will not offend the comments of the HSE and so there is no immediate hurry for revocation. However, the applicant should be mindful that in an appeal situation, the matter will need to be addressed. Members should note however, that if they are minded to grant planning permission, the application should be referred to the Health and Safety Executive for their consideration as to making a request to the Secretary of State as to the need to call-in the application.
- 8.48 With regards to residential amenity, as noted above, the two closest dwellings to the site are Funton Cottages – semi-detached. The next closest dwelling is some 0.8km from the site. The introduction of residential properties to the site would increase activity and noise in comparison to the site at present which has no activity. However, I feel that a fair comparison would be to consider the activity that would have taken place whilst the brickworks was in operation. In this respect, the activity and noise at the site would be likely to be reduced with a housing use but would also introduce noise and activity during the evening when the brickworks would have been likely to have reduced or no activity. So overall, I conclude that the noise and activity experienced by the residents of Funton Cottages as a consequence of the housing development would be no worse than the use of the site as a brickworks and that levels of dust, smells and other pollution would be reduced.
- 8.49 Policy CP2 (ELP) seeks on-site provision for Gypsies and Travellers which would give rise to two on-site pitches. However, until such times as the policy is confirmed as adopted, there should be caution in its use. The applicant has not committed to providing gypsy pitches in line with the emerging policy but given the status of the local plan, I do not see this as an issue on which the application would turn but would flag this up should an appeal situation arise. It is possible that the policy would be adopted by the time an appeal is being considered.
- 8.50 Members will note that a local land owner disputes the status of a small parcel of land (outlined in blue and outside of the application site) on the southern boundary of the site. The applicant strongly refutes any claims that the land is not owned by them and I remind Members that this is a private legal matter that does not influence the consideration of this planning application.

However, should the land ownership claim by the local land owner be upheld, it would potentially impact on the connection of the site to the Saxon Shore Way. Until such time as we are provided with irrefutable evidence that the land is outside of the applicant's control (to date none has been received), we must assume that the provision of the footpath link is possible.

- 8.51 Localised flooding has been raised as an issue by the Parish Council. Should planning permission be granted, I would recommend the imposition of a condition to ensure that drainage within the site (to take account of localised flooding) is detailed and submitted for approval.
- 8.52 The proposal would be unlikely to impact upon the protected trees along the boundaries of the eastern parcel of land in my view. This element of the proposal will no doubt see the retention of the trees as part of the design of the reptile and invertebrates reserve.
- 8.53 I am encouraged to see that the applicant seeks to achieve high standards of sustainable construction for the future housing development. Whilst this is desirable, it does not overcome my concerns in respect of the harm that I have identified above.
- 8.54 The presence of contamination on the site can be adequately addressed by condition if planning permission is granted.
- 8.55 In terms of open space and play equipment provision, the reptile and invertebrate reserve will function as open space for the residential properties and a LEAP or LAP will be expected to be provided in any housing layout at the reserved matters stage, should outline permission be granted. The applicant has confirmed that they would be looking to manage the open space/reptile and invertebrate reserve through a management company as opposed to passing the land to the Council.

Does the proposal amount to sustainable development

- 8.56 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.
- 8.57 It is acknowledged that the proposals will achieve social gains in terms of the provision of new housing, including affordable homes. However, given the isolated nature of the site, the weight to be attached to this issue is diminished in my view by the fact that residents of the affordable houses (who may be less likely to have access to private cars), are entirely dependent on car access to distant facilities. The location of the site also raises other social community cohesion issues, such as those raised by paras. 69-70 of the NPPF. These concerns relate to the ability of residents to interact within the wider community (Policy CP5 ELP applies). The development would force residents to use private vehicles for even basic errands given its remote location, lack of public transport and lack of a safe walking route to the nearest village. Access to important community facilities such as schools and

doctors surgeries would, again, be reliant on private motor vehicles. In this respect, the development, in addition to the social cohesion issues highlighted above, would fail to contribute positively or even fulfil the social role of sustainable development.

- 8.58 The development would also have a harmful environmental impact by way of the impact on landscape character and visual amenities, the impact on highway safety and amenity and the increase in car usage.
- 8.59 Notwithstanding the contribution of the site toward housing land supply, it seem likely and desirable that there would be other non-allocated sites in more preferable and sustainable positions within the settlement hierarchy that could better and more appropriately contribute, e.g., a brownfield site outside but close to the built up area boundary of a higher order centre would be expected to carry greater weight.

9.0 CONCLUSION

- 9.01 The key issue is whether the proposal represents sustainable development in terms of paras. 7-9 of the NPPF (fulfilling the social, economic and environmental roles) and whether it achieves the presumption in favour of such development as set out in para. 14. It is my view that the proposed development would fail to fulfil the social and environmental roles of sustainable development.
- 9.02 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. 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.
- 9.03 These significant/substantial impacts need to be weighed against the Council's inability to demonstrate a 5-year housing land supply and the 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 outweigh the identified benefits.

- 9.04 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. This application conflicts with paragraph 55 of the NPPF insofar as the development is undoubtedly within an isolated location.
- 9.05 In terms of the overall planning balance, the impacts on highways safety/amenity, landscape character and visual amenities, it is my strong view that the harm identified above would outweigh the benefits of the proposal in respect of boosting housing supply and also any small benefits that may arise from the B2 use being extinguished at this site, introduction of the reptile and invertebrates reserve and retention of some of the historic buildings (including 3 chimneys) on the site.
- 9.06 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: consideration of the emerging Local Plan at its Examination in November 2015 and any matters relating to housing requirements that may arise and; new housing land supply data for 2014/15 which may impact upon housing land supply. However, in terms of the principle of development, I do not consider that these would have a significant bearing on the recommendation to refuse planning permission.

10.0 RECOMMENDATION – REFUSE for the following reasons:

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. The isolated location of the development and the resultant unsustainable nature of the proposal and would undermine the policy objectives of preventing sporadic development within the countryside which, cumulatively, would be harmful to the quality and character of the countryside;
2. Significant harm to the visual amenity and landscape character of the area, including to the undeveloped coast;
3. Severe harm to highway safety and amenity by way of increased vehicle and pedestrian traffic on narrow country lanes within the vicinity of the site.

As a result, the proposals do not accord with paragraphs 14, 17, 32, 34, 55, 69 and 109 of the National Planning Policy Framework 2012. The proposals are also contrary to the following Development Plan policies: SP1, SP2, SP5, SP6, SH1, TG1, E1, E6, E9, E13; H2, T1 and T4 of the adopted Swale Borough Local Plan 2008 and; ST1, ST3, CP2, CP3, CP4, CP5; DM6, DM14, DM22 and DM24 of Bearing Fruits 2031: The Swale Borough Local Plan April 2015 (submission draft to PINS).

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 these were not considered to be any solutions to resolve this conflict.

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

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

APPENDIX: HABITATS REGULATIONS ASSESSMENT

Context

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 Emerging Local Plan.

Associated information

The applicant's ecological appraisal dated January 2015 and additional information provided by Bioscan in their letter and attachments dated 8th July 2015 and subsequent Local Footpath Routes received 27th July 2015 contains information to assist the HRA. Importantly, it clarifies a suitable off-site route for dog-walking away from the SPA and that the applicant is willing to commit to contributions towards the strategic mitigation noted above.

Natural England's letters to SBC dated 14th May 2015 and 13th August 2015 have also been considered; in particular that they have raised no objections subject to conditions to ensure that contributions towards strategic mitigation is provided and that the footpath link to the Saxon Shore Way is improved in terms of its attractiveness and accessibility. They accept that a suitable alternative footpath route, away from the SPA is available for dog-walking. They also seek conditions to ensure control of surface and foul water drainage and noise and light pollution.

The Assessment of Funton Brickworks

The application site is located opposite/adjacent to the Medway SPA and 2.8km west of The Swale SPA. The application site is surrounded by public footpaths which lead to the Medway SPA in particular. There are also a number of informal and unauthorised access points from Sheerness Road onto the SPA. Therefore, there is a high possibility that future residents of the site will access footpaths and land close to and within the SPAs.

This assessment has taken into account the availability of other inland public footpaths close to the site and to a much lesser extent, the open space proposed within the site. Whilst these would no doubt supplement many day-to-day recreational activities, there would be some leakage to the SPA because of its attractiveness and the closeness of this site to access points. However, the commitment of the applicant to contribute £223.58 per house to address SPA recreational disturbance towards through strategic mitigation in line with recommendations of the Thames Medway and Swale Estuaries SAMM as detailed above, will off-set some of the impacts. This mitigation will include strategies for the management of disturbance within public authorised parts of the SPA as well as to prevent public access to privately owned parts of the SPA.

Conclusions

Taking the above into account, the proposals would not give rise to significant effects on the SPA. At this stage it can therefore be concluded that the proposals can be screened out for purposes of Appropriate Assessment.