

REPORT SUMMARY

REFERENCE NO – 15/510595/OUT			
APPLICATION PROPOSAL			
Outline application with all matters reserved (except for the details of a vehicular access point from London Road, including the widening and realignment of the A2) for residential development of up to 126 dwellings (including 30% Affordable), plus 60 units of Extra Care (Use Class C2), an allocated 1/4 acre of serviced land for potential doctors surgery, planting and landscaping, informal open space, children's play area, surface water attenuation, and associated ancillary works (Resubmission of 15/500671/OUT).			
ADDRESS Land Off London Road Newington Kent			
RECOMMENDATION This application is the subject of an appeal against non-determination. As such this application will not be determined by Swale Borough Council, however, the decision of the committee will indicate to the Secretary of State the Council's intended decision. (The consultation period expires on 25 th April therefore I will provide Members with an update at the meeting). If the application had not been subject to an appeal and subject to additional information in respect of brickearth, the recommendation would have been to grant permission subject to a suitably worded Section 106 Agreement and appropriate planning conditions.			
SUMMARY OF REASONS FOR RECOMMENDATION			
Whilst the proposal is contrary to the adopted and emerging Local Plans, the Council's policies regarding the provision of housing are considered out-of-date because the Council cannot demonstrate a 5 year supply of housing land as set out in paragraph 49 of the NPPF. Therefore, the application must be considered in the context of the presumption in favour of sustainable development as required by paragraph 14 of the NPPF, and whilst finely balanced, the benefits of the proposal outweigh the costs to a degree that the proposal constitutes sustainable development and in the absence of material considerations that indicate otherwise, planning permission should be granted in my opinion.			
REASON FOR REFERRAL TO COMMITTEE			
The significant amount of objection including from residents, Parish Councils, Ward Member and MP, and so that Planning Committee can determine this significant controversial application.			
WARD Hartlip, Newington & Upchurch	PARISH/TOWN Newington	COUNCIL	APPLICANT Mr Gladman Developments
DECISION DUE DATE 8/4/16	PUBLICITY EXPIRY DATE 25/4/16	OFFICER SITE VISIT DATE 28/1/16	
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
15/500671/OUT	Outline application for residential development of up to 330 dwellings plus 60 units of extra care (including a minimum of 30% affordable), an allocated 1/4 acre of serviced land for potential doctors surgery, demolition of farm outbuilding, planting and landscaping, informal open space, children's play area, surface water attenuation, a vehicular access point from London Road and associated ancillary works. (Access being sought)	Appeal against non-determination with Public Inquiry scheduled for June 2016.	

15/500694/LBC	Listed Building Consent for the demolition of redundant farm outbuildings to the listed Pond Farm, in association with outline application for residential development covered under 15/500671/OUT	Refused	8/5/15
SW/95/0714	Conversion of agricultural buildings into 3 residential units	Withdrawn	

MAIN REPORT

BACKGROUND

An appeal against non-determination of the application has been lodged by the applicants. As a result it is important for Members of the Committee to pass a resolution as to whether they would have approved or refused the application if the application was within the jurisdiction of the Council to determine.

1.0 DESCRIPTION OF SITE

- 1.01 The site consists of 8 hectares of gently undulating land currently used for agricultural purposes in the form of fruit orchards. The eastern parcel of land is used for blackcurrant production with the western used for apple production. There are no buildings within the application site. The site is directly to the south of the A2 London Road and to the south west of Newington, immediately adjoining the built up area boundary.
- 1.02 To the east of the site are the residential dwellings fronting Playstool Close. To the south are a playground, sports pitches, allotments and community woodland. To the west is a further agricultural field and beyond this are an area of open land, Newington Industrial Estate and a small collection of dwellings fronting the A2 London Road. To the north of the site are the former outbuildings of Pond Farmhouse which have been excluded from the application site. It had previously been considered that these outbuildings were listed buildings by virtue of the fact they were within the curtilage of the grade II listed Pond Farmhouse which fronts the A2 London Road. Following legal advice which included a thorough assessment of relevant case law, it is now considered that the cluster of agricultural buildings to the north of the application site are in fact not listed buildings. A vehicle access from the A2 London Road serves these outbuildings.
- 1.03 A number of fruit farms and orchards dominate the landscape to the south of the site, particularly beyond the cluster of community uses immediately to the south of the site. There are further significant agricultural areas to the north of the railway. Immediately to the north and east are residential areas and to the west there is an industrial estate. This context is considered to reflect the edge of village location of the site.
- 1.04 A public right of way crosses the north west corner of the site, linking land to the west of the site with London Road. The site consists of grades 1 and 2 agricultural land which constitutes best and most versatile for planning purposes. There is a strong network of mature field boundaries within and surrounding the site.
- 1.05 The site is located within the countryside and a strategic gap as defined by the Proposals Map of the Swale Borough Local Plan 2008. Under the emerging local plan

‘Bearing Fruits 2031’, the site is located within the countryside and the cluster of community uses to the south are designated as a proposed local green space.

2.0 PROPOSAL

- 2.01 This is an outline application with all matters reserved except for the main site access from the A2 London Road. It is proposed to develop the site for up to 126 dwellings (30 dwellings per hectare on approximately four hectares of the site) including 30% affordable dwellings (38 dwellings). An extra care facility of 60 units is proposed and would fall within use class C2. ¼ of an acre of serviced land would be provided so that a doctors’ surgery could be built on the land at some point in the future (no building is proposed under this application). Indicative planting and landscaping are shown on the development framework plan (Revision I), as are an informal open space, children’s play area and surface water attenuation. The open space includes a community orchard to the east of the dilapidated farm outbuilding with the children’s play area and further open space to the west. The serviced land for a potential doctors’ surgery is near the A2 with the extra care facility set further south. The indicative plan shows the dwellings to the south of the open space around a circular main street. It is also proposed to retain existing field boundaries and existing hedgerows as far as possible and plant new ones around the periphery of the site. Indicative footpaths are shown around the periphery of the site with a further footpath running up the centre of the site. Footpath links to the wider area are proposed near the community woodland and Orchard Drive to provide permeability.
- 2.02 A vehicular access point from London Road to the site is proposed in detail and would entail the widening and realignment of the A2 London Road to the south. The footway to the northern side of the A2 between 60 to 74 London Road would be widened to aid pedestrian movement. The widening of the A2 would allow the inclusion of a right turn lane for the east bound traffic. A new footway would be provided to the south side of the A2 roughly between 52 and 72 London Road with a puffin crossing (traffic signal controlled pedestrian crossing) to the front of 52 and pedestrian refuge to the front of 70. Two bus stops with shelters would be provided on the A2 heading in both directions, the first to the front of No. 74 and the second on the opposite side from No. 60. The public right of way would be upgraded to 2m wide with a tarmac surface and would cross the proposed vehicle access via a raised table. The existing hedge fronting the A2 would be removed almost in its entirety to allow the access works and appropriate visibility splays proposed.
- 2.03 The design and access statement sets out that the buildings within the site would not exceed 2.5 storeys reaching a maximum of 10.5m in height, with the vast majority of buildings being no more than 2 storeys in height, between 7.5 to 8.5m. It is anticipated that the extra care facility would be no more than 2.5 storeys in height.

3.0 SUMMARY INFORMATION

	Existing	Proposed	Change (+/-)
Site Area (ha)	8 hectares (approximately 20 acres)	8 hectares	0
Approximate Ridge Height (m)	0	Max 10.5m and 7.5/8.5m	+ 10.5m and 7.5/8.5m
No. of Storeys	0	2/2.5	+2-2.5
No. of Residential Units	0	126 and 60	+186

No. of Affordable Units	0	38	+38
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4.0 PLANNING CONSTRAINTS

4.01 The site is within the setting of the grade II listed Pond Farmhouse. The site has archaeological potential, consists of best and most versatile agricultural land, and is in a mineral safeguarding area for brick earth. Newington High Street is subject to a designated Air Quality Management Area. There is a public right of way in the north west corner of the site.

5.0 POLICY AND OTHER CONSIDERATIONS

5.01 The National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG) are both pertinent to this case.

5.02 The NPPF sets out the Government’s position on the planning system explaining that *“The purpose of the planning system is to contribute to the achievement of sustainable development. The policies in paragraphs 18 to 219 of the NPPF, taken as a whole, constitute the Government’s view of what sustainable development in England means in practice for the planning system. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision taking. For decision taking this means:*

- *Approving development proposals that accord with the development plan without delay; and*
- *Where the development plan is absent, silent or relevant policies are out of date granting permission unless:*
- *Any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or*
- *Specific policies in this Framework indicate development should be restricted.”*

5.03 It further outlines a set of core land use planning principles (para 17) which should underpin both plan-making and decision taking including to contribute to conserving and enhancing the natural environment and reducing pollution. It further states – at bullet point (5) ‘take account of the different roles and character of different areas, promoting the vitality of our main urban areas, protecting the Green Belts around them, recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it’.

5.04 At paragraph 18 it explains *“The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country’s inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.”*

5.05 Paragraph 34 deals with sustainable travel modes and suggests developments generating significant vehicle movements should be located where the need to travel will be minimised.

5.06 At Paragraph 47 it states that *“planning authorities should meet local housing needs and identify five year housing land supply with an additional 5% buffer”*. Paragraph 49 states *“that housing application should be considered in the context of the presumption in favour of sustainable development”* and that *“Relevant policies for the supply of housing should not be considered up to date if the local planning authority*

cannot demonstrate a five year supply of deliverable housing sites.”

- 5.07 Paragraph 64 of the NPPF states *“Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.”*
- 5.08 Paragraphs 47-55 seek to significantly boost the supply of housing. NPPF paragraph 49 confirms that the lack of a 5-year land supply triggers the presumption in favour of sustainable development as set out by NPPF para. 14. It is necessary to determine what the relevant policies for the supply of housing are in order to identify which are out of date. What constitutes a policy for the supply of housing has been the subject of legal judgement, which can be interpreted as either policies that have specific and direct impacts on housing supply or more indirect, but significant impacts on supply. Regardless of the approach taken, decision makers can and do take into account whether certain aspects of policies accord with the NPPF. Importantly, the decision maker must apply themselves properly to para. 49.
- 5.09 Paragraph 109 deals with the conservation and enhancement of the ‘natural and local environment’, and is discussed in the ‘appraisal’ section below.
- 5.10 Paragraph 112 goes on to say *“Local planning authorities should take into account the economic and other benefits of the best and most versatile agricultural land. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality.”*
- 5.11 Paragraph 113 explains *“Local planning authorities should set criteria based policies against which proposals for any development on or affecting protected wildlife or geodiversity sites or landscape areas will be judged. Distinctions should be made between the hierarchy of international, national and locally designated sites, so that protection is commensurate with their status and gives appropriate weight to their importance and the contribution that they make to wider ecological networks.”*
- 5.12 When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification (paragraph 132).
- 5.13 Paragraph 135 advises that 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.
- 5.14 Paragraph 142: *“Minerals are essential to support sustainable economic growth and our quality of life. It is therefore important that there is a sufficient supply of material to provide the infrastructure, buildings, energy and goods that the country needs. However, since minerals are a finite natural resource, and can only be worked where they are found, it is important to make best use of them to secure their long-term conservation”.*
- 5.15 In preparing Local Plans, local planning authorities should:..... define Minerals Safeguarding Areas and adopt appropriate policies in order that known locations of

specific minerals resources of local and national importance are not needlessly sterilised by non-mineral development, whilst not creating a presumption that resources defined will be worked; and define Minerals Consultation Areas based on these Minerals Safeguarding Areas; set out policies to encourage the prior extraction of minerals, where practicable and environmentally feasible, if it is necessary for non-mineral development to take place (Paragraph 143).

- 5.16 And at paragraph 144 it stresses that Local Authorities should “*not normally permit other development proposals in mineral safeguarding areas where they might constrain potential future use for these purposes*”.
- 5.17 The adopted 2008 Swale Borough Local Plan, however, remains the primary consideration for determining this application. This will be discussed in further detail later in this section.
- 5.18 The key policies from the adopted Local Plan are:
- SP1 (Sustainable Development)
 - SP2 (Environment)
 - SP3 (Economy)
 - SP4 (Housing)
 - SP5 (Rural Communities)
 - SP6 (Transport and Utilities)
 - SP7 (Community Services and Facilities)
 - TG1 (Thames Gateway Area)
 - SH1 (Settlement Hierarchy)
 - E1 (General Development Criteria)
 - E6 (Countryside)
 - E7 (Strategic Gap)
 - E9 (Protecting the Character and Quality of the Borough’s Landscape)
 - E10 (Trees and Hedges)
 - E11 (Protecting and enhancing the Borough’s Biodiversity and Geological Interests)
 - E12 (Sites designated for their importance to biodiversity or geological conservation)
 - E14 (Development Involving Listed Buildings)
 - E16 (Scheduled Ancient Monuments and Archaeological Sites)
 - E19 (Good Quality Design)
 - H2 (Providing for New Housing)
 - H3 (Providing Affordable Housing)
 - RC1 (Helping to Revitalise the Rural Economy)
 - T1 (Providing Safe Access to New Development)
 - T2 (Essential Improvements to the Highway Network)
 - T3 (Vehicle Parking for New Development)
 - T4 (Cyclists and Pedestrians)
 - C2 (Housing Developments and the Provision of Community Services and Facilities)
 - C3 (Open Space within Residential Development)
- 5.19 Relevant policies of the emerging Local Plan are;
- ST1 (Delivering Sustainable Development in Swale)
 - ST2 (Development targets for jobs and homes 2011-2031)
 - ST3 (Swale Settlement Strategy)
 - ST5 (Sittingbourne Area Strategy)
 - CP1 (Building a Strong Competitive Economy)
 - CP2 (Promoting Sustainable Transport)
 - CP3 (Delivering a wide choice of high quality homes)
 - CP4 (Requiring Good Design)
 - CP5 (Health and Wellbeing)

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 (The rural economy)
 DM6 (Managing transport demand and impact)
 DM7 (Vehicle Parking)
 DM8 (Affordable Housing)
 DM14 (General development criteria)
 DM17 (Open space, sports and recreation provision)
 DM19 (Sustainable design and construction)
 DM21 (Water, flooding and drainage)
 DM24 (Conserving and Enhancing Valued Landscapes)
 DM28 (Biodiversity and Geological Conservation)
 DM29 (Woodlands, trees and hedges)
 DM31 (Agricultural Land)
 DM32 (Development involving listed buildings)
 DM34 (Scheduled Monuments and archaeological sites)

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

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

6.0 LOCAL REPRESENTATIONS

6.01 122 letters of objection have been received from residents, some of which are from the same address, which are summarised as follows;

- London Road pedestrian crossing will cause queuing traffic within the AQMA which would harm air quality and human health.
- The A2 cannot cope with existing traffic levels. The proposal will make this worse. Temporary traffic lights already cause delays. Proposal will exacerbate existing parking problems. Parked cars make it harder to drive down already narrow lanes including Church Lane. Bull Lane will become a rat run. Traffic noise, vibration, loss of privacy, odours, fumes and pollution will increase. Harm to pedestrian safety. Train station car park very congested. Inadequate road links. Negative impact on highway safety and convenience.
- The existing general infrastructure cannot cope with the existing population. Hospitals (Medway Hospital is in special measures), police, ambulance and fire service are overstretched. There is no local police station, dentist, doctor or health centre in the village. The play group, local school and nurse has no room for the amount of extra pupils that would be generated. Pressure on recreational facilities.
- The site is not allocated for housing in emerging or local plans.
- A significant amount of best and most versatile agricultural land would be lost which is needed for food production.

- Loss of wildlife including bats, habitat including trees, hedges and orchards.
- The proposal would increase the size of Newington by approx. 20% and increase the population significantly.
- There are no plans to improve transport infrastructure. Trains are overcrowded/downgraded, and bus service is very limited.
- Would change the character of a low density quiet village to that of a town. Proposals of this sort should be on the outskirts of towns or cities not small villages.
- Previous applications have been refused because there is no bypass.
- Safety is a concern when walking near groups of youths. There is concern about existing increases in crime. There are many elderly people in Newington and the influx of people won't help them feel safer.
- Newington cannot offer employment opportunities for new residents.
- Would rather have a green field to look at than a housing estate.
- Impact on social cohesion of Newington.
- Merging of settlements into ribbon development would be exacerbated by the proposal.
- The reduction in the size of the proposal compared to the previous application does not address any of previous objections.
- There are alternative brownfield sites available.
- The land for a doctors surgery is a red herring because the days of single GPs surgeries are coming to an end because of reductions in the Minimum Practice Income Guarantee and the aim/Government Policy for large GP practices offering a range of services.
- Public transport is insufficient to allow residents of extra care facility to access medical care, putting health at risk.
- The access road onto London Road (A2) would cause noise and disturbance to existing houses opposite the junction.
- Proposal is for wealth creation for applicant.
- People enjoy walking on the application site.
- Lack of water, drainage, accessibility, electrical services, parking for shopping, turning points for delivery vehicles, police presence and public transport.
- Council Tax will increase to fund the shortfalls in service provision created by the development.
- Cumulative impact with other applications in the area.
- Overshadowing, overlooking, loss of light, loss of outlook and loss of privacy to neighbours. Loss of property value. Hours of operation. Headlights will shine into houses opposite proposed junction.
- Contributions should be sought towards a Newington bypass.
- The proposed junction with the A2 should be a roundabout.
- Will set a precedence eventually leading to settlement coalescence akin to Medway Towns.
- Pre-application advice lacks public consultation.
- Previous appeal decisions and planning inquiry reports- previous similar applications on orchards rejected.
- Impact on listed building and conservation area.
- Layout and density of building design, visual appearance and finishing materials. Area at risk of subsidence with several sink holes appearing over the last year.
- Who will compensate residents for negative impacts?
- This application should be refused as per the previous application. If approved the applicant will apply for the additional properties.
- There are not enough shops in the village.

- Newington should expand in a manner to unite the school and church to the rest of the village, and not away from the core. Expansion would ensure retention of the train station and local amenities.
- There are two other developments in the area. We should not be forced to accept a third.
- Affordable housing would have to be incredibly cheap because there are few local jobs.
- We chose to live in the countryside, not a town.
- Lack of sewerage capacity.
- Harm to the public footpaths on the site.
- Houses would be ugly and not in keeping with the village.
- Object to commercial doctor's surgery due to parking/traffic problems and on a greenfield site. Lack of information re doctors surgery and would need detailed application.
- Wickham Close should have had a doctors surgery but the developer did not deliver.
- Loss of local employment at the farm land to be developed.
- Newington is not in need of housing.
- Ancient hedgerows will be destroyed.
- Are there plans for an archaeological survey?

6.02 Gordon Henderson MP objects to the application for the following summarised reasons;

- Site not included in Adopted or Emerging Local Plans.
- Significant pressure on already stretched local services such as health and education.
- Adverse impact on air quality through Newington.
- Disruption of flow of traffic along the A2, and would exacerbate already intolerable effect on the A2 of closures, of Detling Hill, the M2 or M20 for Operation Stack. The effect would be worsened still should the Lower Thames Crossing traffic be routed along the M2 and A249 as proposed.
- Pedestrians will have to cross the A2 thereby disrupting the traffic flow and causing traffic to queue to the detriment of air quality.
- Sterilisation of brickearth mineral deposits.

6.03 Ward Councillor John Wright commented twice as follows;

“This application is not sustainable proposing to add a very large number of properties to a small village, putting pressure on already minimal services that would require out commuting through AQM's in Rainham in one direction or through AQM in Newington in the other. This proposed estate would not integrate well with the village meaning the new population would have to cross the A2 to the church /village hall / primary school / etc. If the permission was granted access to a known safeguarded brickearth reserve could be sterilised at paradise farm as the new and existing properties would be within 100metres of the proposed development. This site does not feature in the local plan or emerging local plan or very low in list of sites when compared for sustainability, etc. I would wish to reserve my right to comment further or appear at appeal to point out the practical constraints.”

“This proposal may sterilise a brickearth reserve by placing highway infrastructure or houses within the exclusion zone of a haul road. The cumulative effect of this development increases the pollution within the Newington High Street. The current AQMA figures do not quantify the cumulative effect of development already granted

such as the working mens club and other increases in traffic from Medway and Sittingbourne developments .there are no mitigation measures or plans put in place to protect public health in the high street when pollutant levels go over the safe levels especially with the increased use of the zebra crossing and stationary vehicles. This is not the best site and performs badly within the local assessment and is not sustainable with all people moving here travelling away to work not in Newington.

Train services have already been reduced to Newington station.

Bus services are also not good.

Loss of most versatile agricultural land.

Would wish to speak at any planning committee or inquiry.”

6.04 Newington Parish Council objects for the following summarised reasons;

- Loss of best and most versatile agricultural land.
- There are alternative ‘brownfield’ sites available in the Borough.
- The site is outside both the current and the emerging Local Plans.
- Pond Farm has never been considered suitable for development. The proposal is contrary to policies E1 and H2. Under the terms of the NPPF site is not sustainable and the application is contrary to the Development Plan.
- Application destroys the setting of listed buildings.
- Children could not walk from the development to the schools/bus stops in the area safely.
- Increased car traffic on to a B quality London Road which struggles and fails to meet it’s A designation. Newington was designated by KCC as a priority for a by-pass but this was dropped 20 years ago due to costs at a time of budget cuts.
- The A2 has long traffic queues, two miles west at Rainham and two miles east at the Key Street A249 junction, each morning and evening. The designation of the A249 as part of ‘operation stack’ will result in greater gridlock whenever the scheme is in operation.
- Newington village is 400 yards to the east, well-known as the narrowest part of the whole A2, where it is not possible for lorries to pass at the same time as vehicles from the opposite direction (a frequent problem due to a large cold store two miles to the west). Traffic collisions at this point have necessitated the replacement of the pedestrian-safety railings on three occasions in the past year.
- Newington centre is an AQMA where levels of NO2 pollutant consistently exceed EEC safety limits. The factors the applicant describes as causing this (canyon effect and congestion) are constant factors due to narrowness of the road and proximity of unbroken buildings; the Pond Farm development could only increase congestion and so cause greater harmful air pollution to pedestrians and village-centre residents.
- The Air Quality Assessment submitted by Gladman Developments Limited is dated October 2014, using 2013 data; presumably this was commissioned for their previous planning application.
- Local infrastructure cannot support a development of this scale. Newington Primary School is close to capacity, local bus and rail services are poor and Medway Hospital is in special measures. Whilst we note that the outline plans include land allocated for a doctor’s surgery, this is for future provision by a third party and not part of the building proposed by Gladman.
- Newington Parish Council formally request that, should officers recommend the acceptance of this application, it should be called-in for full discussion and a decision by Swale Borough Council Planning Committee.

6.05 Hartlip Parish Council objects for the following summarised reasons;

- Site falls outside adopted and emerging local plans and is a premature application. The site has never been considered a suitable site for housing development, is contrary to Policy H2 and is outside the built up area boundary. The site has been looked at by the LDF Committee and judged unsuitable in the emerging Local Plan.
- Not sustainable development as defined by the NPPF.
- Local schools are full and Medway Hospital is in special measures. There are waiting lists at the nearest doctors and dentists surgeries (none in Newington).
- The proposal would swamp local services.
- Contrary to Policy E1 of adopted local plan as it would harm residential amenity and fail to protect and enhance the natural and built environments; detrimental to visual amenity.
- Would exacerbate existing traffic, congestion and air quality problems. Residents of the proposal would have to use their car to get anywhere. Bus and train services are very poor.
- Lack of employment opportunities within Newington or nearby, and none are likely to arise.
- Loss of best and most versatile agricultural land.
- There is an appeal for 250 houses on land north of Moor Street, Rainham, and a further application for 200 houses in Otterham Quay Lane, Rainham. Both sites are less than 2 miles away. These three applications by the same applicant are for about 650 houses to be built in an area where traffic is already at a standstill for much of the day.
- There is an application for brickearth extraction only a few hundred yards from the site which is on hold which, if granted, would bring dozens of extra lorry movements a day along the same stretch of road.
- This agricultural land generates employment and local fruit. Loss of business to the farmer on the site.
- The listed farm buildings must be preserved.

6.06 Upchurch Parish Council objects for the following summarised reasons;

- The impact on the local infrastructure and services. The developers cannot possibly guarantee any increase in services offered by other organisations such as the NHS.
- Air pollution levels will increase in Newington Village Centre which currently regularly exceed EEC safety limits.
- Proposal would exacerbate existing traffic problems and tailbacks throughout the village, hampered further by the narrow A2 in Newington where two large vehicles cannot pass each other.
- The site is outside both the current and emerging local plan and would obliterate working agricultural land.
- With regards to Newington the draft local plan states: Despite its role and level of services, development opportunities are very limited due to the valued and important heritage, landscapes and habitats to the north of the village, poor pedestrian connections between north and south of the village, a restricted internal road network, poor air quality and surrounding high quality agricultural land. The local school and Doctors surgery could not facilitate the families from a development of this size and the local hospital remains in special measures.

7.0 CONSULTATIONS

- 7.01 **The Council's Strategic Housing and Health Manager** confirm the requirement for 30% affordable housing. This does not include the extra care element because this falls within C2 use class not C3. Of the 30%, 70% of this should be affordable rent

tenure and the remaining 30% should be shared ownership tenure. Despite the affordable housing statement, without a full accommodation schedule it is not possible to confirm whether the spread of affordable units is acceptable and proportionate to the open market housing. Concern is raised with regard to securing the affordable housing via condition rather than as part of the S106 agreement as suggested by the applicant. It was confirmed that there is a requirement for affordable housing in the Newington and Sittingbourne areas for all types and sizes of accommodation. In line with the Swale SPD on developer contributions it is expected that the units to be offered be evenly distributed across the site and in appropriately sized clusters (the stated intention to form clusters of between 6 and 10 units) is acceptable. Fully adapted affordable wheelchair homes would be sought, the number of which would be agreed with the preferred registered provider. Evidence to support the requirement of an extra care scheme should be sought.

7.02 The Council's Environmental Protection Manager comments;

"Air Quality

Further to my memo dated 26th January, I have now been made aware of an updated AQ assessment, dated January 2016. This is an updated assessment and whilst the core part of it is the same, there is recognition of the importance of mitigation measures, as I suggested in my previous memo. The measures suggested in paragraph 8.2.13 on pages 41, and concluded on 44 in 9.2.8 (which are discussed at paragraph 9.20 below) are acceptable and should make a difference to reducing numbers of vehicle movements and hence a contribution to existing air pollution levels.

I remain concerned about cumulative impacts of several developments on air quality, not just at Pond Farm affecting Newington, but elsewhere in the Borough. However, I am comforted by the leeway that exists between actual Nitrogen Dioxide continuous monitoring results at Newington and the exceedance value, and the effect of Pond Farm and other recent proposals in and around Newington.

I accept the report and its conclusions and remove my objections from an air quality standpoint.

Similarly, I have no noise objections provided the mitigation measures suggested in the report are carried out as described. As before, I do not see a contaminated land assessment included with the documentation – this will be necessary for complete reassurance about this site and any potentially previous contaminative uses and practices." A contaminated land assessment condition is recommended accordingly.

7.03 The Council's Greenspaces Manager welcomes the amount of green space proposed and questions the need for such a large landscaped area between the proposal and the listed building to the north when there is the chance to increase the size of the recreation ground to the south. The same applies to the proposed play area. If the applicant is to provide and manage the proposed greenspace and play area themselves the Council only requires details of the play equipment. If the Council is to adopt and subsequently maintain the greenspace and play area, a contribution of £861 per dwelling is required. There would need to be details of facilities such as litter and dog bins. If the land is to be transferred to the Council a 10 year commuted sum maintenance contribution is required. The scheme has now been amended so that less than 200 dwellings are proposed therefore no sports pitch contribution is required.

7.04 The Council's Climate Change Officer has highlighted some inconsistencies and lack of detail regarding sustainability measures proposed.

7.05 **The Council's Landscape and Visual Impact Consultant** comments;

“The landscape condition/quality of the site and the surrounding countryside is considered to be good. The site is not within any national or local landscape designations, and there are some urban influences. However it is considered to derive some landscape value from its attractive orchard farmland and the immediate context of a listed building and a community woodland.

The proposed development would represent a substantial, approximately 20% increase in the existing built up area of the village of Newington, and the scale of the proposals are not considered to be appropriate to the established landscape character of the area, or to take appropriate account of the existing townscape of the village.

From a review of the development proposals there are considered to be some serious concerns about whether the proposed western boundary would represent a logical, defensible, long term boundary for the village and there are a number of other uncertainties relating to the height of the proposed development, setbacks and the landscape strategy in the absence of clear parameters being set.

It is further considered that the proposed development would be likely to give rise to a number of significant, localised adverse landscape and visual amenity effects ie result in harm to the site and its immediate contest and to users of some of the local PROWs. This harm would be likely to arise from the proposed access, from the loss of characteristic orchard farmland to residential development and from the implicit extent, scale and height of the development.

Overall it is considered that the development would be in conflict with relevant National Planning Framework policies in respect of landscape and design, in particular paragraph 17 bullet point 5 (set out in full at paragraph 5.03 above), paragraph 64, together with local plan policies E7 and E9, and the adopted Supplementary Document Swale Borough Council Landscape Character and Biodiversity Appraisal Guidelines.

Taking account of the above conclusions, it is considered there would be a strong justification for Swale Borough Council to refuse the planning application on landscape and visual grounds.”

7.06 **The Council's Rural Planning Consultant** sets out the scale of development, and notes that the site now consists of 8.2 hectares and is a mix of grade 1 and grade 2 (the larger proportion) land, which is best and most versatile for planning purposes, and states;

“To summarise, the NPPF states that necessary development that impacts on agricultural land should take place on poorer land in preference to land of higher quality. Firstly, therefore, it must be decided whether this development is "necessary"; that would be a Planning matter outside my own advisory remit. If "necessary", the next stage is to decide whether sufficient arguments have been presented for overriding the NPPF guidance, such that, in this case, poorer land should not be sought in preference to this higher quality land. Again, balancing those arguments would be a Planning decision, outside my remit.”

7.07 **KCC Ecology** advises that bat activity surveys have been carried out and detail that bats are foraging in low numbers within the site along the hedgerows. The ecological survey details that the majority of the hedgerows are to be retained and therefore retaining the connectivity for foraging/commuting bats within the proposal. Lighting can be detrimental to bats and so should be designed with the input of an ecologist and it is advised in accordance with the Bat Conservation Trust's Bats and Lighting in the UK

guidance. Bat emergence surveys were carried out on the agricultural buildings north of the application site which are not being demolished as part of this proposal. There is a contradiction in the report because it states that a common pipistrelle appeared to emerge from the building but goes on to state that a roost had not been identified as a statutory constraint to the proposal. KCC Ecology advises additional information is not required because the buildings are not being demolished, open space will be created adjacent to the buildings, and existing hedgerows will be retained within the development.

The site is within 3km of the Medway Estuary and Marshes Special Protection Area and Ramsar site and 7km of the Swale Special Protection Area and Ramsar site. Mitigation measures will be required to prevent an adverse effect on the integrity of these sites. The amount of greenspace proposed is not sufficient to rule out any likely significant effects on the designated site therefore contributions are required towards a Strategic Access Management and Monitoring Plan (SAMMP). Ecological enhancements should also be conditioned if the application is approved.

- 7.08 **Natural England** notes the site is 2.7km south of the Medway Estuary and Marshes Special Protection Area (SPA) and Ramsar site and therefore has the potential to affect their interest features. These sites are also a SSSI. European sites are afforded protection under the Conservation of Habitats and Species Regulations 2010, as amended (the 'Habitats Regulations'). Regard should be had to the potential impacts on these European sites. The Conservation objectives for each European site explain how the site should be restored and/or maintained and may be helpful in assessing what, if any, potential impacts a plan or project may have.

The consultation documents do not include information to demonstrate the requirements of Regulations 61 and 62 of the Habitats Regulations have been considered by your authority, i.e. the consultation does not include a Habitats Regulations Assessment (HRA). In advising your authority on the requirements relating to the HRA, and to assist you in screening for the likelihood of significant effects, based upon the information provided, Natural England offers the following advice:

- The proposal is not necessary for the management of the European sites.
- Subject to appropriate financial contributions being made to strategic mitigation, ie the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG), and that the strategic mitigation is in place before the dwellings are occupied, the proposal is unlikely to have a significant effect on these sites, and can therefore be screened out from any requirement for further assessment.
- This should also include proportionate contributions made for the proposed care home accommodation, if they include permanent staff accommodation and/ or the residents are likely to have some ability to recreate on the SPA.

The applicant has agreed to pay the full SAMM tariff (of £223 per dwelling) therefore the proposal is unlikely to have a significant effect on the designated sites, and can be screened out from any requirement for further assessment.

It is advised that the SSSI does not represent a constraint to the proposal.

- 7.09 **KCC Highways and Transportation** confirms the revised junction layout has addressed previous concerns, as the footway on the northern side of the A2 has now been widened as requested, and the pedestrian crossing facilities proposed have been

upgraded from a simple refuge island to a traffic signal controlled crossing. This is a more appropriate arrangement of crossing at this location, given the volume of traffic on the A2 and the level of pedestrian activity anticipated. The type of junction to serve this development, a ghost island junction with right turn filter lane, is appropriate. Should the development obtain planning approval, I would request that the provision of these off-site works are secured by condition, to be completed prior to the occupation of any residential element on the site. The applicant should be made aware that a Section 278 Agreement will be required between them and Kent County Council Highways & Transportation to carry out these works, and this will require a separate technical submission and approval process at that time for the detailed design.

The traffic modelling undertaken for the Key Street/A249 junction shows a need for contributions towards an improvement scheme at this roundabout, as was the approach taken for the recent Spirit of Sittingbourne town centre regeneration scheme (see 14/505440/FULL). On that basis, Highways England have requested that £88,935 be sought through a Section 106 Agreement to secure that amount, and I agree that this should be obtained in accordance with their wishes. Lastly, and as highlighted in my previous response, I had asked that the applicant consider providing contributions towards bus services, as this would assist with the goals of the Travel Plan. Details are still being explored in this respect, to see whether it would be possible to enhance services or even assist with the retention of existing provision, and this may be a matter that could take some time to report back. However, at this stage I would suggest that specific details can be negotiated as part of the drafting of the S106 Agreement, and an agreeable conclusion to those discussions reached. Consequently, I have no objections to the proposals in respect of highway matters subject to conditions.”

7.10 Highways England raises no objection and its comments are summarised below;

- Its key interest is the impact on A249 trunk Road.
- Application indicates the development will generate 55 trips in the AM peak and 60 in the PM peak that will access the A249 Key Street Junction which will operate over capacity in the peak hours in 2025. As a result of the trips generated, the performance of the A249 Key Street Junction will be adversely affected.
- Mitigation at A249 Key Street Junction will be necessary.
- Whilst we have some concerns about the modelling approach undertaken in which revised entry widths, flare lengths and half widths have been utilised to better represent existing queue lengths without provision of the supporting evidence to verify this, the Transport Assessment states a willingness to make contributions towards junction improvement.
- The Spirit of Sittingbourne development is to provide a contribution of £50,000 towards improvements at A249 Key Street Junction, the Transport Assessment related to the development highlights an impact of 59 trips within the AM and PM peak. The contribution per trip can be calculated as £50,000 / 59 = £847. Applying the above value to this application would result in a contribution of £88,935. (£847 x 105 trips)
- Highways England has no objection to this subject to a financial contribution of £88,935 to provide appropriate mitigation at A249 Key Street.

7.11 KCC Developer Contributions has requested the following;

	Per Applicable House (x 126)	Per applicable flat	Total	Project
Primary Education	£2360.96	£590.24	£297,480.96	Towards Regis Manor Phase 2 expansion

Secondary Education	£2359.80	£589.95	£297,334.80	Towards Sittingbourne Academy Phase 2 expansion
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	Per Dwelling	Total	Project
Community Learning	£60.43	£7614.18	Towards new equipment at Sittingbourne Adult Education Centre
Youth Service	£37.58	£4735.08	Towards new equipment at New House Youth Centre, Sittingbourne
Libraries	£227.00	£28,602.00	Towards fitting out costs of new Library in Sittingbourne Hub and bookstock for mobile library service attending at Newington
Social Care	£63.33	£7979.58	Towards Changing Place Facility in Sittingbourne Hub
	1 Wheelchair Adaptable Home as part of the on site affordable homes delivery		
Broadband Condition	<p>Before development commences details shall be submitted (or as part of reserved matters) for the installation of fixed telecommunication infrastructure and High Speed Fibre Optic (minimal internal speed of 100mb) connections to multi point destinations and all buildings including residential, commercial and community. This shall provide sufficient capacity, including duct sizing to cater for all future phases of the development with sufficient flexibility to meet the needs of existing and future residents. The infrastructure shall be laid out in accordance with the approved details and at the same time as other services during the construction process.</p> <p>INFORMATIVE – The BT GPON system is currently being rolled out in Kent by BDUK. This is a laid fibre optical network offering a single optical fibre to multi point destinations i.e. fibre direct to premises.</p>		
Highways	<i>Kent Highway Services will respond separately</i>		

7.12 **KCC Waste and Minerals** considers the submitted minerals assessment inadequate as there is no trial trench data to corroborate just two 1950's dated bore hole logs that are not detailed as to where they are located within the planning application area. This does not result in an accurate or reliable data base on which to assess the volume of minerals. The 100m buffer zone is an arbitrary self-imposed limitation that may well be unnecessary without further justification. Economic minerals should be extracted prior to development to avoid sterilization, unless there are compelling grounds that they should be exempt from the safeguarding presumption that is in accordance with the conservation of minerals provisions of the NPPF. The information submitted makes it difficult to determine whether the minerals threatened with sterilization are of economic importance or not. It is considered by the County Council that this is a serious deficiency of the assessment. The applicant has submitted a thorough rebuttal of the comments of KCC, which in turn was rebutted by KCC. They argue that the applicant / appellant should provide more information in order to demonstrate that practicability and / or viability reasons prevent the extraction of the brickearth.

- 7.13 **KCC Public Rights of Way Officer** considers the proposed junction of public footpath ZR60 with the proposed main street is acceptable and would reiterate the need for a suitably safe crossing point over the A2. There would be no intention of adopting any of the proposed walking routes to the south of the proposed development. The express consent of the highway authority is required to disturb the surface of the right of way or erect anything on or across it. No planting should take place within 1m of the right of way. Six weeks' notice is required if the applicant needs to apply for a temporary traffic regulation order whilst works are undertaken.
- 7.14 **Swale Footpaths Group** states; "...the footpath clipping the N.W. corner of site seems to be unaffected. There is a recently created public footpath just outside the S.E. corner: please check. Although not strictly a p.r.o.w. issue crossing the A2 is already difficult at this point. A "pedestrian refuge" would be useful, but what about a light controlled crossing too?"
- 7.15 **KCC Archaeology** notes the rich archaeological potential of the site. It wishes to see evaluation of the site prior to development and should the Roman road lie within the northern part of the site then provision should be allowed to secure its preservation and recognise its alignment/presence as a historic feature in the development layout. *It is important therefore that the archaeological evaluation takes place in advance of a decision on a full application that includes development layout.* An archaeological field evaluation condition is recommended with preservation in situ of any important remains.
- 7.16 **KCC SUDS Team** acknowledge that a SUDS scheme is technically achievable on the site subject to relevant conditions listed below. It has requested an indicative masterplan with the drainage features shown.
- 7.17 **The Environment Agency** states "We have assessed this application as having a low environmental risk. We therefore have no comments to make."
- 7.18 **Southern Water** advises; the exact position of foul sewers on site must be determined before the layout is finalised; no development or tree planting within 3m of foul sewer; no soakaway, swales, ponds, watercourses or any other surface water retaining or conveyancing features within 5m of a public sewer; existing infrastructure to be protected during construction. Due to changes in legislation, sewers now deemed to be public could be crossing the property so if one is found during construction it should be assessed. The applicant is advised to contact Southern Water for discussions. Initial investigations show southern water cannot accommodate the needs of this application without the development providing additional local infrastructure. The proposal would increase flows into the wastewater sewerage system and as a result increase the risk of flooding in and around the area contrary to Para 109 (bullet point 4) of the NPPF. Section 98 of the Water Industry Act 1991 provides a legal mechanism through which the appropriate infrastructure can be requested by the developer to accommodate the proposal.

A prior to commencement foul and surface water condition with implementation timetable is requested. An informative directing the developer to enter into a formal agreement for sewerage infrastructure is advised. Advice regarding the design of an on site pumping station is provided. There are no surface water sewers in the area to serve the development so alternatives, not involving disposal to a public sewer, should be sought. If SUDS are to be used they should be appropriately designed and a perpetual maintenance programme secured. There is inadequate capacity to provide a water supply to the proposal. Additional off-site mains, or improvements to existing

mains will be required to provide sufficient capacity to serve the development. A condition requiring details of water infrastructure prior to commencement of development is requested.

I sought clarification from Southern Water regarding the content of the utility law document submitted as part of the application. In response it clarified that if the developer intends to use their statutory rights to connect to the public sewer, the capacity upgrades of the system may not necessarily keep pace with the intended development timescales because of regulatory investment system used. Therefore, the previously suggested conditions are required.

- 7.19 **Southern Gas Networks** provides general guidance in relation to construction near its apparatus. It neither objects to nor supports the application.
- 7.20 **UK Power Networks** raises no objection to the proposal.
- 7.21 **The Lower Medway Internal Drainage Board** confirms the site is outside of the IDB's district and provided that off-site surface water runoff is not increased the proposed development is unlikely to affect the Board's interests. The SUDS should be designed to accommodate runoff from the 1 in 100 year storm event (+30% to allow for the predicted effects of Climate Change). Any permission should be conditioned to this effect, and for details of drainage to be designed and agreed in direct consultation with KCC's drainage and flood risk team. This should include the details of future maintenance of the drainage system.
- 7.22 **Medway Council** raises objections due to the impact on secondary schools in Medway which can be overcome through financial contributions towards the expansion of secondary schools; and the Rainham AQMA which can be overcome by the provision of an up to date Air Quality Assessment and provision of appropriate mitigation measures. Medway Council subsequently provided a details contribution request for school contributions demonstrating CIL regulation compliance. I have asked Medway Council and KCC for a combined response to ensure the applicant is not charged twice for secondary school provision. The applicant has provided an Air Quality Assessment for the Rainham AQMA and I am currently awaiting Medway Council's comments on it with the hope that its objection in this regard will be removed.
- 7.23 **The NHS Swale and NHS Dartford, Gravesham and Swanley Clinical Commissioning Groups** considers the proposal does not warrant a new GP facility but as existing GP practices in the area are at capacity a S106 contribution of £164,160 is required towards expansion of existing practices. No project was identified nor whether 5 or more contributions had been sought for a single project so I have requested these details from the Clinical Commissioning Groups.
- 7.24 **The Campaign to Protect Rural England Kent Branch** has submitted a 14 page objection recommending refusal which is summarised as follows;
- Application inconsistent with plan-led approach the NPPF advocates. Site has not been considered at any stage of the emerging local plan.
 - Only the applicant considers this a sustainable site. The emerging local plan description of Newington is quoted as evidence of the villages unsuitability for development of this sort.
 - Saved Local Plan policies are up to date and consistent with NPPF.

- The site is not deliverable for housing because it is not suitably located for development as confirmed by the SHLAA. The SHLAA shows the site is not required to achieve the increased housing target required by the Inspector in her Interim Findings.
- The lack of a 5 year supply of housing land does not mean automatic approval given our view that the adverse impacts outweigh the benefits.
- The proposal pre-empts and undermines the emerging local plan, and it is considered that there are grounds for refusing permission based on prematurity (NPPG quoted).
- Proposal would undermine Council efforts to secure town-centre regeneration and brownfield redevelopment first, as per adopted and emerging local plan.
- The benefits of addressing housing land shortfall should be weighed against the advanced stage of the local plan.
- Loss of countryside and impact on landscape character. Proposal contrary to adopted and emerging local plan policies as it is located within the countryside, as supported by NPPF core principles regarding the countryside.
- Encroachment in a countryside gap. The site is not in a gap in the emerging local plan but Policy DM25 of the emerging local plan should apply anyway because of the stated desire to prevent settlement coalescence.
- Loss of best and most versatile agricultural land should be robustly justified. NPPF steers development away from such land and to lower quality land and is echoed in policies ST1 and DM31 of the emerging local plan.
- The proposal is not sustainable development therefore the presumption in favour in para 14 NPPF does not apply.
- The results of the submitted air quality assessment are dubious. Our analysis of their results shows that the verification procedure, when conducted on a sounder statistical basis, indicates little or no relationship between the modelled and therefore forecast pollution levels and actually recorded ones (technical appendix provided).
- There is no submitted Habitat Regulations Assessment. An appropriate contribution towards the Strategic Access Management and Monitoring programme for the Special Protection Area to the north should be agreed with Natural England before the Council can conclude 'no likely significant effect' on the SPA.

7.25 **Kent Police** note reference to crime prevention in the design and access statement. Whilst the submission is largely indicative, there has been no communication with the applicant. It is recommended that if approved a condition securing measures to minimise the risk of crime is attached, or alternatively a letter or informative.

8.0 BACKGROUND PAPERS AND PLANS

- 8.01 The applicant has provided;
- Application form
 - Location plan, as amended
 - Development framework plan, as amended
 - Planning Statement and draft heads of terms
 - Design and Access Statement
 - Arboricultural Assessment
 - Heritage statement
 - Addendum heritage note
 - Archaeology desk based assessment
 - Energy Statement
 - Socio-Economic Sustainability Statement
 - Affordable Housing Statement
 - An assessment of current and future sustainability
 - Noise and vibration assessment

- Travel plan
- Transport assessment as amended
- Air quality assessment for Newington and Rainham
- Soils and agricultural land use and quality
- Foul drainage analysis
- Utilities appraisal
- Flood risk assessment
- Ecological appraisal
- Landscape and visual appraisal
- Mineral safeguarding report
- Statistics demonstrating the requirement for extra care housing
- Statement of community involvement

9.0 APPRAISAL

Principle of Development

- 9.01 It is considered that it would not be appropriate to pursue a reason for refusal based on prematurity because the proposals seem neither of a scale or location likely to prejudice the emerging plan-making process. The proposal is contrary to policies E6 and E7 of the adopted Local Plan because it entails primarily residential development in the countryside that would erode the strategic gap. Similarly, the site is outside the built up area boundary set out by policy ST3 of the emerging Local Plan and is therefore contrary to it (noting there is no strategic gap applied to this site under the emerging Local Plan). The level of objection relating to the fact this site is not allocated for such purposes under either the adopted or emerging local plans is noted. However, it is important to draw a distinction between sites allocated for such development under adopted and emerging local plans, a process which allows the very best of the available sites to be so allocated, and the possibility that, at the point a planning application such as this is determined, if the Council cannot demonstrate a five year supply of housing land as required by paragraph 49 of the NPPF the Council's policies regarding housing are considered out of date and therefore the application should be considered in the context of the presumption in favour of sustainable development set out in paragraph 14 of the NPPF.
- 9.02 Based on the Objectively Assessed Need of 776 dwellings per annum now established under the emerging local plan examination process, the Council's housing land supply is 3.8 years. This is because the Council is yet to make the allocations sufficient to achieve the full 5 years required by the NPPF. The prospect of the Council having a 5 year supply is at best approximately a year away (when the new Local Plan is adopted) at the time of writing. Therefore, both adopted and emerging local plan policies regarding housing are out of date, paragraphs 49 and in turn 14 of the NPPF apply, and there is no timely prospect of the Council achieving a 5 year supply through the emerging local plan process such that the Council could reasonably resist this proposal because of a short term prospect of achieving a 5 year supply.
- 9.03 Within this context it would be extremely difficult to argue that the principle of development is unacceptable and the lack of a 5 year supply should weigh in favour of the development in my opinion. The positive provision the proposal would make to housing land within the Borough should be afforded significant weight because of the contribution this would make to the social strand of sustainable development.

Visual and Landscape Impact

- 9.04 The applicant's landscape and visual appraisal considers that the impact of the proposal will be acceptable. The Council's landscape and visual impact consultant's comments in relation to this assessment are provided above (at paragraph 7.05) and consider the impact in this regard unacceptable. In my opinion, the site is well contained within its immediate context because the site is reasonably flat as opposed to being on an exposed hillside for example. The existing dwellings to the east provide strong containment for the site and it will be possible to secure a sufficient separation distance at reserved matters stage from these dwellings to prevent visual harm arising for residents. The site is very well contained in views from the south, particularly by the mature community woodland and the hedgerows within the southern boundary of the site which are indicated to be retained. The western boundary hedge would be retained as far as possible which would provide containment for the site when viewed from the west and the public right of way. Immediate views from the north would, over time, become relatively well contained given the applicants stated intention of replacing the mature hedgerow fronting the A2, as necessitated by the required highway works, with a similar hedge set to the south of the realigned/widened A2 and the required visibility splays for the new vehicle access. The significant public open space to the north of the site surrounding the Pond Farmhouse outbuildings, along with the community orchard would again soften the visual and landscape impacts of the proposal.
- 9.05 The broad development scale parameters provided in the design and access statement indicate that the vast majority of the dwellings on the site are likely to be between 7.5/8.5m tall which is fairly standard. However, the potential for some of the buildings to be up to 10.5m in height and 2.5 storeys would not have an unacceptable impact in my opinion. The most significant visual and landscape impact would arise from the extra care facility given the potential for this to be a significant block of building, in the form of a 2.5 storey building up to 10.5m tall. The dwellings and extra care facility would be visible within the surrounding wider landscape, perhaps most significantly from the public right of way to the north of the railway line to the north of the application site, the public right of way to the west of the site and the public right of way to the south of the site that provides access to the cluster of community uses. I have walked the length of the public right of way to the north of the railway line (which is elevated relative to the application site) and I do not consider that there would be any significant landscape or visual harm arising from the proposal and the potential scale of development sufficient to warrant refusal of permission in my opinion. By retaining or replanting hedges and field boundaries the proposal complies with the Landscape Character and Biodiversity Appraisal 2011 guidelines.
- 9.06 In coming to this conclusion it is important to draw a distinction between this and the earlier scheme. In my view it is possible to conclude that the previous scheme was harmful in this regard and the current scheme is not because of the very significant difference in the scale of the proposals with 204 fewer dwellings now proposed and a significant reduction in the size of the application site with the western field now excluded. The lack of identifiable visual and landscape harm is a positive factor that weighs in favour of the application because of the contribution this makes to the environmental strand of sustainable development.

Residential Amenity

- 9.07 The main impact in this regard would be to residents of dwellings along Playstool Road which back onto the application site, and the limited number of dwellings along London Road which do the same. As previously stated, the site is sufficiently large to secure at reserved matters stage an appropriate separation distances between existing and

proposed dwellings to prevent harm to residential amenity via overshadowing, overbearing, overlooking, loss of light etc. Dwellings along Orchard Drive benefit from the enhanced separation distance provided by the green wedge indicatively running along the southern edge of the application site to the extent that the impact would be minimal and acceptable. The dwellings fronting London Road would benefit from the significant depth of the public open space and community orchard such that the impact on residential amenity would be minimal and acceptable. The dwellings on the northern side of London Road would not be harmed by the development including the proposed works to the London Road. The proposed vehicle access would not cause undue noise and disturbance to residents of these dwellings, nor would the pedestrian crossings and bus stops, over and above the level of disturbance currently experienced along this part of the A2. There are no dwellings immediately to the west of the main body of the application site to effect. Subject to standard conditions to control the hours of construction, construction vehicle parking etc the impact on residential amenity would be acceptable in my opinion. The lack of identifiable harm to residential amenity is a positive factor that weighs in favour of the application because of the contribution this makes to the environmental strand of sustainable development.

Highways

- 9.08 Highways England raises no objection to the impact on the strategic highway network including the A249 and M2, and KCC Highways and Transportation raises no objection to the impact on the local highway network including the A2 and Newington High Street pinch point which has raised considerable concern in the representations received. Within the area immediately surrounding the site, the vehicle access point is acceptably designed and the widened and new pedestrian footways to the north and south of the A2 are appropriate. The pedestrian crossing facilities proposed have been upgraded from a simple refuge island to a traffic signal controlled crossing which is appropriate given the busy nature of the A2 and would help to secure pedestrian safety. The widening and realignment of the A2, along with the new junction design is appropriate. The traffic modelling submitted is deemed acceptable by both Kent Highways and Highways England in relation to the Key Street/A249 junction. It is appropriate for the development to contribute towards an improvement scheme at this roundabout, as was the approach taken for the recent Spirit of Sittingbourne town centre regeneration scheme that gained approval last year. On that basis, Highways England has requested that £88,935 be sought through a Section 106 Agreement to secure that amount, an amount Kent Highways also agrees to. Contributions towards enhanced bus services and retaining existing services to assist the goals of the travel plan are still being explored and will take some time to conclude therefore it is appropriate to deal with this during the negotiation of the S106 agreement.
- 9.09 The impacts of the construction phase are considered acceptable as are the longer term traffic levels generated by the development. It is possible to consider the highway impacts of the proposal acceptable, in contrast to the original application, because of the reduced size of the proposal with commensurate highway impacts, the improved transport modelling information provided, and the ability to secure contributions towards highway improvements.
- 9.10 The submitted travel plan states a series of underlying objectives and specific outcomes which include traffic reduction, achieving the minimum number of car traffic movements to and from the development, supporting walking, cycling and public transport, and reducing the need to travel to and from the site. To assist walking the applicant proposes to;
- Install a footway to the south side of London Road, widen the footway to the north side and provide pedestrian crossings.

- The applicant will fund tactile paving at the existing Wykham Close junction via S106.
- The applicant will fund 10 additional lighting columns along Church Lane via S106 which will need to be discussed with Newington Parish Council as it controls the lighting in this area.
- The applicant will fund carriageway narrowing on Church Lane at its junction with High Oak Hill to assist pedestrian crossing movement and to help control vehicle speeds. The above 4 bullet points will encourage walking to school from the development and into Newington village centre.
- Travel plan coordinator (TPC) to hold promotional events and distribute literature to encourage walking, and prepare and arrange for distribution of maps showing safe local walking routes as part of the Residential Travel Induction Pack.
- TPC to establish cycling action plan that could include promotion of national bike week; buddy scheme for those not confident about cycling; promotional events and literature about cycling and health benefits to be arranged by TPC.
- The Residential Travel Induction Pack will encourage public transport. Two new bus stops and shelters with low floor kerb access to be provided on London Road, plus the two aforementioned pedestrian crossings to aid access to bus services.
- The applicant will fund 3 additional cycle stands at Newington Rail Station via S106 contributions.
- TPC to identify car share scheme to promote to residents.
- Each dwelling will have 32amp single phase electrical supply to allow for the future inclusion of an individual electric car charging point for each property.

9.11 These measures will be secured, if considered appropriate by KCC Highways and Transportation, by a mixture of the S106 agreement and conditions as required. The lack of identifiable highways harm is a positive factor that weighs in favour of the application because of the contribution this makes to the environmental strand of sustainable development.

Affordable Housing

9.12 30% Affordable housing has been offered by the applicant which equates to 38 affordable dwellings on site. The affordable housing statement gives an indicative mix as a starting point for negotiations. The extra care facility does not require affordable housing to be provided because it has been demonstrated that it falls within use class C2. The indicative mix provides the 70%/30% tenure split required by the Council's SPD on developer contributions. The affordable dwellings would be evenly spread across the site in small clusters of 6-10 units with external appearances similar to the private dwellings. The submitted statement suggests affordable housing is secured by condition rather than S106 which is not the Council's policy. However, the offer accords with adopted and emerging local plan policy and is acceptable in my view. The social benefits of this element of the proposal are significant and should be afforded significant weight in the decision making process because of their contribution towards the social strand of sustainable development. The precise mix would have been subject to detailed negotiations had the Council been determining the application. This mix will need to include fully adapted wheelchair homes in accordance with Council policy and KCC has also requested one wheelchair adapted dwelling.

Need for Extra Care

- 9.13 The applicant has provided data to demonstrate that within Swale there is a significant existing shortage of extra care accommodation and that this is predicted to grow by 25% by 2020 and 79% by 2030. Given the widely known aging population in the country and the Swale specific data provided by the applicant, and no evidence to the contrary, I consider there to be a compelling need for the extra care facility. The social benefits of this are significant because it has the potential to allow older local people to stay in the area they know. This could potentially result in dwellings that have single occupants or low levels of occupancy being vacated and sold on for more efficient family occupation which represents the rationalisation of housing stock. The social benefits of this element of the proposal are significant and should be afforded significant weight in the planning balance. The economic benefits include the short term construction employment and the longer term employment within the facility which should be afforded significant weight in my view.

Serviced Land for Potential Doctors' Surgery

- 9.14 The applicant has included serviced land for a potential future doctors' surgery. The response from the NHS Swale and NHS Dartford, Gravesham and Swanley Clinical Commissioning Groups makes clear that a development of this size would not generate a need for a new GP surgery and instead seeks a contribution towards expansion of existing GP surgeries in the area which it states are at capacity. The views of the NHS diminish the weight to be afforded to this element of the proposal in terms of its social benefits and it is clear that the offer of the land does not actually provide a solution to the problem of a lack of GP capacity in the area by providing a building but it does provide the potential that it may one day be addressed. The serviced land could potentially one day be used to provide a GP surgery if further development within Newington comes forward to generate the demand. This element of the proposal certainly attracts some small weight in the decision making process because of the positive contribution it makes to the social strand of sustainable development.

Heritage

- 9.15 As detailed above, the former farm outbuildings of Pond Farmhouse are not listed buildings as previously thought. However, Pond Farmhouse, to the north, is grade II listed, now considered to be a historic operational/working link between the two sets of buildings and a clear visual link/connection that still exists between them and which plays an important role in providing a beneficial and appropriately contextual setting for the grade II listed building. The outbuildings are considered to be non-designated heritage assets and para 135 of the NPPF applies in this regard. I have sought to clarify the applicant intentions for these outbuildings be clarified but such information has not been provided. In my opinion whilst this information has not been provided it does not and should not prevent the determination of this application. The buildings in question do not fall within the application site and there is no harm done to them by the proposal, subject to the considerations below and to the imposition of a condition requiring that a management plan for the farm buildings be submitted to and approved in writing by the Local Planning Authority.
- 9.16 The indicative framework plan shows an open space separating the proposed dwellings from the listed building and the former farm outbuildings which is considered would be sufficient to prevent harm to the setting of the listed building and the non-designated heritage asset former farm outbuildings. Furthermore, a tree belt is suggested along the northern boundary of the dwellings to soften views around the listed building which can be secured under the landscaping reserved matter. I consider that the statutory test in section 66 of the Planning (Listed Buildings and

Conservation Areas) Act 1990, and the associated policies of the NPPF and adopted and emerging local plans are passed. It is possible to draw such a different conclusion compared to the previous application because the outbuildings are now considered not to be listed buildings and the intervening green space between the buildings and grade II listed building would now be sufficient to prevent harm to its setting. The impact on designated and non-designated heritage assets would therefore be acceptable in my opinion. The lack of harm to heritage interests would be positive in terms of the environmental strand of sustainable development that should be afforded weight in the decision making process.

Ecology

- 9.17 The submitted ecological appraisal assesses the application site for protected species and the wider impact on surrounding designated nature conservation sites. As set out at paragraph 7.09, KCC Ecology do not raise objection to the findings of the survey and suggests that lighting be designed to protect bats. A contradiction within the report is highlighted but no additional information is required on the basis that the former farm buildings are not proposed to be demolished, open space will be created adjacent to the former farm buildings, and hedgerows would be retained. The submitted ecological appraisal agrees to provide a contribution per household towards the Strategic Access Management and Monitoring Strategy on the SPA and enhancement of local green infrastructure. Furthermore, the applicant has expressly agreed to pay the full SAMM tariff for each dwelling and a proportion tariff for the extra care facility. This would deal with the issue of increased recreational pressure on the SPA highlighted by Natural England and KCC Ecology. The proposed mitigation would not be in place before occupation of the proposal as requested by Natural England but it is unrealistic to expect this. Natural England considers the proposal can be screened out of the need for further assessment because it is unlikely to have significant effects on the sites. Natural England does not consider the SSSI to represent a constraint in determining this application. Subject to a condition requiring ecological enhancements within the development, and in light of the comments of both consultees, the on-site and off-site ecological impacts of the proposal are acceptable in my opinion. A habitat regulations screening assessment has been carried out – and is appended - and concludes that the proposal is unlikely to have significant effects which means the application benefits from the presumption in favour of sustainable development set out on paragraph 14 of the NPPF and its associated footnotes.
- 9.18 The most significant trees on the site, namely those directly to the south of the former farm outbuildings, can be retained within the development. The remaining trees around the periphery of the site may also be retained within the final development, as would the field boundary hedges as far as possible. The loss of the hedgerow fronting London Road is regrettable but necessary to achieve appropriate highway improvements and would be replaced with a hedge to the south. This is acceptable from an arboricultural perspective in my opinion. The provision of 2.95ha of open space/ green infrastructure is considered to be a positive associated with the development that would benefit residents of the proposal and existing local residents that could also use this area. The lack of ecological and arboricultural harm, and the amount of proposed open space represent environmental positives that weigh in favour of the proposal.

Sustainable Drainage (SUDS)

- 9.19 KCC Sustainable Drainage Team considers that a SUDS scheme is technically achievable on site given the underlying ground conditions and requested additional detail of where appropriately sized drainage features might be incorporated within the

development that ensures sufficient capacity is included for the proposed number of units. I would ordinarily have sought delegation to resolve this matter but in this instance I do not believe the lack of agreed SUDS is a reason for refusal as it appears to be technically achievable. This is an environmental positive that weighs in favour of the proposal.

Air quality, and noise and vibration

- 9.20 As set out at paragraph 7.02 above, the Council's Environmental Protection Manager raises no objection to the impact of the development on the AQMA in Newington. The level of third party objection in this regard is noted, but I am not in a position to dispute his findings given his expertise in the area, nor do I have any reason to doubt his conclusion that the impact is acceptable subject to the mitigation measures detailed in the submitted air quality assessment. The mitigation offered includes; contributions to highway improvements in order to reduce local traffic congestion; support for and promotion of car clubs; contributions to low emission vehicle refuelling infrastructure; provision of incentives for the uptake of low emission vehicles; financial support to low emission public transport options; and improvements to cycling and walking infrastructure. The applicant has offered each of these measures as part of the travel plan with the exception of incentives for the uptake of low emissions vehicles which is not considered necessary. KCC Highways and Transportation has indicated that it asked the applicant to explore providing contributions towards bus services to meet the goals of the travel plan and that this is still being explored and could take some time to report back on but that this specific detail can be negotiated as part of the S106. The travel plan objectives and air quality mitigation measures are broadly identical and would have been secured through the S106 therefore no condition is required.
- 9.21 The applicant has provided an air quality assessment for the Rainham AQMA within Medway. Whilst I am still currently awaiting the removal of Medway Council's objection on air quality grounds, it is anticipated that this is possible given that the applicant has stated they are willing to mitigate any identifiable harm caused.
- 9.22 The applicants noise and vibration assessment highlights that noise mitigation measures may be required for the proposal, and that no vibration mitigation is required. The development framework plan has been amended since this report was produced but the Council's Environmental Health Manager has clarified that no vibration issues are considered to arise, nor are any measures required for the potential doctors surgery at this stage because this can be dealt with under subsequent application when the design is clarified, and there would not be any dwellings close enough to London Road under the revised development framework plan to warrant noise mitigation measures.
- 9.23 For these reasons, air quality, noise and vibration issues are considered acceptable in my opinion. The lack of harm in this regard is positive and contributes towards the environmental strand of sustainable development which weighs in favour of the proposal.

Loss of agricultural land

- 9.24 The proposed site comprises best and most versatile agricultural land (BMV = Grades 1, 2 and 3a), which would be permanently lost. Para. 112 of the NPPF – which is set out in full at paragraph 5.10 above - expects Councils to take into account economic and other benefits of BMV land and if the significant development of agricultural land is necessary, they should seek to use areas of poorer quality land. Emerging Local Plan policy DM31 also looks for the loss of BMV land to be avoided if possible.

- 9.25 Agricultural land of this scale and quality derives a number of economic and other benefits: food security and self-sufficiency; food quality; the economy; the environment and climate change; and the countryside. Economically, the value of agriculture is potentially very significant in the Swale economy and BMV is its most precious resource.
- 9.26 It is though accepted that it has already been necessary to release significant levels of agricultural land to meet development needs in the Borough and that this will potentially be the case for additional housing sites being sought to meet the Council's objectively assessed need under the emerging local plan.
- 9.27 However, although the use of agricultural land may be inevitable, it is not necessarily the case that the loss of BMV land at this scale is inevitable in cases where there is a shortfall in the land supply. It is important to point out that para 112 of the NPPF does not rule out the principle of development on BMV land. The recent Court of Appeal Decision in Suffolk Coastal District Council and Richborough Estates Partnerships LLP [2016] EWCA Civ 168 is a critical consideration in this regard because it provides clarity on the meaning and effect of para 49 of the NPPF regarding the definition of 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. The Courts decision states;
- “33. Our interpretation of the policy does not confine the concept of “policies for the supply of housing” merely to policies in the development plan that provide positively for the delivery of new housing in terms of numbers and distribution or the allocation of sites. It recognizes that the concept extends to plan policies whose effect is to influence the supply of housing land by restricting the locations where new housing may be developed – including, for example, policies for the Green Belt, policies for the general protection of the countryside, policies for conserving the landscape of Areas of Outstanding Natural Beauty and National Parks, policies for the conservation of wildlife or cultural heritage, and various policies whose purpose is to protect the local environment in one way or another by preventing or limiting development. It reflects the reality that policies may serve to form the supply of housing land either by creating it or by constraining it– that policies of both kinds make the supply what it is.”
- 9.28 In my opinion, this Decision means that the Council's emerging local plan policy DM31 would be considered out of date because it seeks to influence the supply of housing land by restricting the locations where new housing may be developed, to areas of low quality agricultural land. When reverting back to para 112 of the NPPF, the economic and other benefits of the land have been taken into account, but the loss of such a large area of BMV agricultural land certainly represents an environmental negative that is a cost of the development that weighs against it.

Minerals Sterilisation

- 9.29 The site is located within the Swale Borough Mineral Safeguarding Area map for brickearth, as defined by policy CSM5 of the emerging Minerals and Waste local plan for Kent. The submitted application seeks to demonstrate that the brickearth on site is not of economic value and that the extraction would not be viable or practicable in accordance with policy DM7 of the Minerals and Waste Local Plan. The applicant considers the deposits across the site to be thin and that a significant proportion of the site is indirectly sterilised by the surrounding residential area. Consequently, the brickearth deposits on the site are not considered to be of sufficient size to be viable nor do they have the ability to be made viable, in the applicant's opinion. They also

consider that alternatively, it is possible they may have been removed under a pre-existing planning permission. KCC Minerals objects to the applicant's assertions and this has led to various responses from both the applicant and KCC Minerals with no conclusion reached.

- 9.30 The foreword to policy DM7 states that when proposals for non-minerals development within a mineral safeguarding area come forward, the need for such development will be weighed against the need to avoid sterilisation of the underlying minerals and the objectives and policies of the development plans as a whole will need to be considered when determining proposals. Policy DM7 itself states that permission will only be granted for non-mineral development that is incompatible with minerals safeguarding where it is demonstrated that, amongst others, material considerations indicate that the need for the development overrides the presumption for mineral safeguarding such that sterilisation of the mineral can be permitted following the exploration of opportunities for prior extraction.
- 9.31 In my opinion, this mineral safeguarding policy is to be afforded diminished weight because of the aforementioned Court of Appeal Decision as the policy seeks to prevent housing development on the land. Notwithstanding the above, DM7 acknowledges there is a balance to be struck here and given that there are in my opinion material considerations that indicate the need for such development overrides the presumption for mineral safeguarding, I consider that the loss of potential brickearth deposits (noting that it is not known what the site actually contains) may be acceptable. In my opinion, the Council will be in a much stronger position to resist potential mineral sterilisation proposals once it has a demonstrable 5 year supply of housing land. The loss of potential minerals certainly represents an environmental cost of the development that weighs against the proposal but as set out above it is possible that the Council may reach the view that this harm is not sufficient to justify the application being turned down on this ground. In order to inform Members' assessment of this issue, the applicant has been asked to provide further information with particular regard to the practicability and viability of extracting the brickearth from this site. I will update Members at the meeting.

Public rights of way

- 9.32 KCC Public Rights of Way considers the impact on the public right of way within the application site to be acceptable including its junction with the proposed main street. KCC requests a safe crossing point over the A2 which is provided.

Archaeology

- 9.33 KCC Archaeology notes the rich archaeological potential in the area as the A2 is a known Roman Road corridor. A condition is requested and attached below to satisfactorily deal with the issue.

Developer contributions

- 9.34 The required developer contributions have not been finalised at this point and the appeal against non-determination means that these matters will be dealt with at the appeal. The following contributions were requested at the time of writing and could be subject to change;

Kent County Council

Primary Education £2360.96 per dwelling x 126 = £297,480.96 Towards Regis Manor Phase 2 expansion.

Secondary Education £2359.80 per dwelling x 126 = £297,334.80 Towards Sittingbourne Academy Phase 2 expansion.

Community Learning £60.43 per dwelling x 126 = £7614.18 Towards new equipment at Sittingbourne Adult Education Centre

Youth Service £37.58 per dwelling x 126 = £4735.08 Towards new equipment at New House Youth Centre, Sittingbourne

Libraries £227 per dwelling x 126 = £28,602.00 Towards fitting out costs of new Library in Sittingbourne Hub and bookstock for mobile library service attending at Newington.

Social Care £63.33 per dwelling x 126 = £7979.58 Towards Changing Place Facility in Sittingbourne Hub

Kent Highways- has requested that the developer explore making contributions towards local bus services in order to retain and possibly expand services to meet the aims of their travel plan. This matter was to be left to the negotiation stage of S106.

Swale Borough Council;

Greenspaces- If the applicant is to provide and manage the proposed greenspace and play area themselves the Council only requires details of the play equipment. If the Council is to provide the greenspace and play area, a contribution of £861 per dwelling is required. There would need to be details of facilities such as litter and dog bins. If the land is to be transferred to the Council a 10 year commuted sum maintenance contribution is required.

SPA Mitigation- £223.58 per dwelling with a proportional contribution for the Extra Care facility based on residents ability to recreate on the SPA which was unresolved.

Wheelie Bins- 2 per dwelling = £75 per dwelling, with potential for larger more expensive Euro bins to be provided for the extra care facility.

Highway Improvements - £88,935.

Swale Borough Council would charge a 5% monitoring fee of the total amount of all contributions.

In addition, and further to Paragraphs 7.01 and 9.12 above, the Section 106 agreement will also need to make appropriate provision for **affordable housing**.

Medway Council;

Secondary Pupils- £286,322.40

Sixth Form Pupils- £83,720

I have contacted both Medway and KCC to ask whether they have coordinated their responses so that the applicant does not get charged twice for the same school places but a combined response has not yet been received.

The NHS Swale and NHS Dartford, Gravesham and Swanley Clinical Commissioning Groups- requests a contribution of £151,920 (reduced to reflect amended 126 dwellings proposed) towards GP facilities in the area but did not demonstrate CIL Regulation compliance in the request, which I have sought. This amount is based on its assumption that each dwelling would contain 2.4 people and each extra care unit would contain 2 people and it charges £360 per person.

- 9.35 It is not sensible to try and provide a total amount of developer contributions requested because this will inevitably change, potentially quite significantly. This issue would have been resolved through normal negotiations of the S106 if the appeal had not been submitted, and should not form a reason for refusal.

Utilities

- 9.36 UK Power Networks raises no objection with regard to electricity supply. Southern Gas Networks raises no objection with regard to gas supply but provides general guidance for the applicant. Southern Water initially provided comments that made no reference to the Utility Law document submitted with the application. I sought clarification from Southern Water as to whether this document had been considered by them. Further comments have been received essentially reiterating its initial request for drinking water, surface water drainage and foul sewerage provision at the site to be dealt with by pre-commencement condition. Surface water is being dealt with under the SUDS but drinking water and foul sewage are dealt with by condition below. It is considered that this condition is justified because Southern Water has clarified that if the developer utilises their statutory right to connect to public sewer the necessary capacity upgrades may not keep pace with the development and lead to flooding problems which should clearly be avoided. Relevant utility companies raise no objection to the proposal and this is not considered to be an impediment to development.

Sustainability measures

- 9.37 The Council's Climate Change officer has raised concerns about contradictions within the submission about what sustainability measures would be included within the development. However, it is clear from the NPPF - Planning Update: Written statement - HCWS488 that the code for sustainable homes has been abolished and the Council has no basis to attach conditions requiring the achievement of a particular level under the Code. However, it is appropriate to require the development to incorporate sustainable design and construction measures in respect of the proposed dwellings and, in respect of the care home, a level under the BREEAM system. Such conditions are set out below.

Whether sustainable development?

- 9.38 In terms of the three strands of sustainable development - economic, social and environmental- paragraphs 7 to 9 of the NPPF expects developments to seek improvements across all three.
- 9.39 The additional dwellings including affordable dwellings and the extra care facility represent social gains. Some limited weight is to be given to the serviced land for a doctors' surgery. The construction phase and longer term employment generation from the extra care facility are economic gains but these are partially offset by the loss of agricultural land and potential mineral reserves (subject to clarification) and their attendant economic benefits. The highways impacts are now acceptable. As a result, the proposal would result in some economic gains.
- 9.40 In terms of environmental considerations, the visual and landscape impacts are considered acceptable, but there would be a loss of BMV agricultural land and potential mineral deposits (subject to clarification). Heritage, transport, air quality and ecological impacts have been demonstrated to be acceptable. Therefore, the proposal goes provide environmental gains overall.
- 9.41 Overall, the proposal manages to secure gains across all three strands and as such represents sustainable development. It is concluded that they comply with policy SP1 of the adopted local plan and policies ST1 and ST5 of the emerging local plan. In my opinion and subject to clarification of the implications for brickearth extraction, the adverse impacts of the development would be significantly and demonstrably outweighed by the benefits given that the two significant costs associated with it,

namely loss of agricultural land and potential minerals, do not amount to reasons for refusal in their own right.

10.0 CONCLUSION

10.01 For the reasons stated above, the proposed development would represent sustainable development and is acceptable.

11.0 RECOMMENDATION – This application is, as explained above, the subject of a planning appeal. As such the application will not be determined by Swale Borough Council, however, the decision of the committee will indicate to the Secretary of State the Council's intended decision.

Had the appeal not be submitted, and subject to further information in respect of brickearth, the recommendation would have been to grant planning permission subject to a Section 106 Agreement and conditions as set out below.

The following conditions are recommended;

CONDITIONS to include

- 1) Details relating to the layout, scale and appearance of the proposed buildings, the access thereto (excluding the access details for the vehicle access from London Road which have already been provided) and the landscaping of the site shall be submitted to and approved by the Local Planning Authority before any development is commenced.

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

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

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

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

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

- 4) The landscaping details submitted pursuant to condition 1 above shall include a tree belt along the north boundary of the extent the dwellings to be constructed and a replacement hedge to the south of the visibility splays of the new vehicle access on to London Road. The agreed measures shall be incorporated into the development in accordance with a development phasing schedule to be agreed in writing.

Reason: In order to soften the impact on the setting of the grade II listed building and the former farm outbuildings to the north and to mitigate for the necessary removal of the existing hedge along London Road.

- 5) The details submitted pursuant to condition 1 shall include a lighting design for the site and shall be designed to minimise the impact on bats. An ecologist shall be involved in the design and it shall accord with the Bat Conservation Trusts Bat and Lighting in the UK guidelines. The agreed measures shall be incorporated into the development in accordance with a development phasing schedule to be agreed in writing.

Reason: In order to protect roosting, foraging and commuting bats.

- 6) The details submitted pursuant to condition 1 shall include details of on site ecological enhancements. The agreed measures shall be incorporated into the development in accordance with a development phasing schedule to be agreed in writing.

Reason: To secure ecological enhancements.

- 7) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of;
- (i) archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved by the Local Planning Authority; and
 - (ii) following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved by the Local Planning Authority

Reason: To ensure appropriate assessment of the archaeological implications of any development proposals and the subsequent mitigation of adverse impacts through preservation in situ or by record.

- 8) No impact pile driving in connection with the construction of the development shall take place on the site on any Saturday, Sunday or Bank Holiday, nor on any other day except between the following times :-
Monday to Friday 0900 - 1700 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- 9) No construction work and associated deliveries in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times :-
Monday to Friday 0730 - 1800 hours, Saturdays 0830 - 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- 10) No development approved by this permission shall be commenced prior to a contaminated land assessment (and associated remediation strategy if relevant), being submitted to and approved in writing by the Local Planning Authority, comprising:
- a) A desk study and conceptual model, based on the historical uses of the site and proposed end-uses, and professional opinion as to whether further investigative works are required. A site investigation strategy, based on the results of the desk

study, shall be approved by the Local Planning Authority prior to any intrusive investigations commencing on site.

- b) An investigation, including relevant soil, soil gas, surface and groundwater sampling, carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology.
- c) A site investigation report detailing all investigative works and sampling on site, together with the results of analyses, risk assessment to any receptors and a proposed remediation strategy which shall be of such a nature as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment, including any controlled waters.

Reason: To ensure any contaminated land is adequately dealt with.

- 11) Prior to the commencement of development details shall be submitted (or as part of reserved matters) for the installation of electrical services and fixed telecommunication infrastructure and High Speed Fibre Optic (minimal internal speed of 100mb) connections to multi point destinations and all buildings including residential, commercial and community. This shall provide sufficient capacity, including duct sizing to cater for all future phases of the development with sufficient flexibility to meet the needs of existing and future residents. The infrastructure shall be laid out in accordance with the approved details and at the same time as other services during the construction process. The development shall not resort to the erection of distribution poles and overhead lines, and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 no distribution pole or overhead line shall be erected other than with the express consent of the Local Planning Authority.

Reason: In order to secure appropriate high quality communications infrastructure.

- 12) Development shall not begin until a detailed sustainable surface water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The detailed drainage scheme shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100yr storm) can be accommodated and disposed of through infiltration features designed and constructed with due regard to ground and groundwater risks.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal, to ensure ongoing efficacy of the drainage provisions and to protect vulnerable groundwater resources.

- 13) No building hereby permitted shall be occupied until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:
- (i) a timetable for its implementation, and
 - (ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage system throughout its lifetime.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal, to ensure ongoing efficacy of the drainage provisions and to protect vulnerable groundwater resources.

- 14) No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority (in consultation with the Environment Agency); this shall only be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

Reason: To ensure that the principles of sustainable drainage are incorporated into this proposal, to ensure ongoing efficacy of the drainage provisions and to protect vulnerable groundwater resources.

- 15) No work shall commence on the development site until the off-site highway works shown on the approved drawings have been carried out in accordance with a design and specification to be approved in writing with the Local Planning Authority and to be fully implemented.

Reason: In the interests of highway safety and amenity.

- 16) Before any work is commenced on site, a Construction Management Plan, including details of delivery routes and the timing of these, shall be submitted to and approved in writing by the Local Planning Authority and the development shall not proceed other than in accordance with the approved programme.

Reason: In the interests highway safety and amenity.

- 17) During construction provision shall be made on the site to accommodate operatives' and construction vehicles loading, off-loading or turning on the site.

Reason: To ensure that vehicles can be parked or manoeuvred off the highway in the interests of highway safety.

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

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

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

Reason: In the interests of highway safety and convenience.

- 20) As an initial operation on site, adequate precautions shall be taken during the progress of the works to guard against the deposit of mud and similar substances on the public highway in accordance with proposals to be submitted to, and agreed in writing by the Local Planning Authority.

Reason: In the interests of amenity and road safety.

- 21) The access details shown on the approved plans shall be completed prior to the commencement of any other works authorised by this permission, the occupation of

any buildings hereby approved, the use of the site being commenced, and the access shall thereafter be maintained.

Reason: In the interests of highway safety.

- 22) The details submitted in pursuance of reserved matters shall show adequate land reserved for parking in accordance with the Approved County Parking Standards and, upon approval of the details this area shall be provided, surfaced and drained before any building is occupied and shall be retained for the use of the occupiers of, and visitors to, the premises. Thereafter, no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order), shall be carried out on the land so shown or in such a position as to preclude vehicular access to the reserved vehicle parking area.

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

- 23) The proposed estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture shall be constructed and laid out in accordance with details to be submitted and approved by the Local Planning Authority in writing before their construction begins. For this purpose, plans and sections, indicating as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.

Reason: To ensure that the roads are laid out and constructed in a satisfactory manner.

- 24) Before the first occupation of a dwelling / premises the following works between that dwelling / premises and the adopted highway shall be completed as follows:
 (A) Footways and/or footpaths shall be completed, with the exception of the wearing course;
 (B) Carriageways completed, with the exception of the wearing course, including the provision of a turning facility beyond the dwelling together with related:
 (1) highway drainage, including off-site works,
 (2) junction visibility splays,
 (3) street lighting, street nameplates and highway structures if any.

Reason: In the interests of highway safety.

- 25) Prior to the commencement of development details of the proposed means of water supply and foul water disposal and an implementation timetable shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme and timetable.

Reason: To ensure sufficient sewerage capacity to serve the development.

- 26) The areas shown on the approved drawings as proposed open space including proposed equipped area of play and community orchard shall be reserved for the general amenity of the area. Play spaces shall be surfaced and equipped with play equipment, in accordance with a schedule agreed by the Local Planning Authority before development is commenced and shall be provided before the last dwelling is

occupied; no permanent development whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 or not shall be carried out in the areas so shown without the prior written approval of the Local Planning Authority.

Reason: To ensure that these areas are made available in the interests of the residential amenities of the area.

- 27) Prior to the commencement of development a scheme outlining the phasing of development, including site layout plan identifying land uses such as formal and informal open space and infrastructure, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved phasing scheme.

Reason: In order to secure the appropriate phasing of the development.

- 28) The extra care facility hereby permitted shall be used solely for this purpose and for no other purpose, including any other purposes in Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended).

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

- 29) The development shall proceed in accordance with the following approved plans; site location plan 6363-L-01 rev C, development framework plan 6363-L-03 rev I, Ashley helme associates 1466/01 rev A.

Reason: For the sake of clarity and in the interests of proper planning.

- 30) None of the dwellings hereby approved shall be occupied until a Management Plan for the Pond Farm outbuildings has been submitted to and approved in writing by the Local Planning Authority. The buildings shall then be managed in accordance with the plan in perpetuity.

Reason: In the interests of safeguarding these heritage assets.

- 31) The care home building hereby approved shall be constructed to BREEAM 'Very Good' Standard or an equivalent standard and prior to the use of the building the relevant certification shall be submitted to the Local Planning Authority confirming that the required standard has been achieved unless otherwise agreed in writing by the Local Planning Authority.

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

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

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

33) The details submitted in pursuance of condition (1) above shall be in accordance with a Development Brief that shall first have been agreed in writing by the Local Planning Authority and which shall include the following:

- (a) Details of the road layout for the site;
- (b) A comprehensive network of segregated pedestrian and cycle routes;
- (c) An overall landscape strategy for the application site;
- (d) A strategy for the architectural treatment of the buildings on the site, including elevational treatment, roof design and the palette of colours;
- (e) A lighting plan for the site, to include details of the lighting columns, the type and luminance of the lighting units with glare shields and details of lux levels, both inside and outside the site;
- (f) A strategy for dwelling storey heights;
- (g) A strategy for cycle parking.

Reasons: In the interests of promoting a consistent quality of development, sustainable development, ecological protection and enhancement, and of visual and landscape amenity.

INFORMATIVES

1. The clearance of vegetation from the site should take place outside the breeding bird season (March to August inclusive) or following a check by an experienced ecologist.
2. The applicant is advised to contact KCC Public Rights of Way to discuss its requirements for works to the Right of Way on site by telephoning 03000 418142.
3. It is the responsibility of the applicant to ensure, before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority. The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

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 applicant/agent was provided formal pre-application advice.

Amendments were sought from the application in order to overcome identified problems.

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 SCREENING

Context

This HRA has been undertaken without information provided by the applicant. SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires

Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

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

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

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

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

- There have been marked declines in the numbers of birds using the three SPAs.
- Disturbance is a potential cause of the declines. The bird disturbance study provided evidence that the busiest locations support particularly low numbers of birds.
- Within the Medway, the areas that have seen the most marked declines are the area north of Gillingham, including the area around Riverside Country Park. This is one of the busiest areas in terms of recreational pressure.
- Access levels are linked to local housing, with much of the access involving frequent use by local residents.
- Bird disturbance study - dog walking accounted for 55% of all major flight observations, with a further 15% attributed to walkers without dogs along the shore.
- All activities (i.e. the volume of people) are potentially likely to contribute to additional pressure on the SPA sites. Dog walking, and in particular dog walking with dogs off leads, is currently the main cause of disturbance.
- Development within 6km of the SPAs is particularly likely to lead to increase in recreational use.

Natural England's advice to the affected local authorities is that it is likely that a significant effect will occur on the SPAs/Ramsar sites from recreational pressure arising from new housing proposals in the North Kent coastal area. The agreed response between Natural England and the local authorities is to put in place strategic mitigation to avoid this effect – a 'strategic solution.' This provides strategic mitigation for the effects of recreational disturbance arising from development pressure on international sites and will normally enable residential development to proceed on basis of mitigation provided avoiding a likely significant effect.

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

Associated information

The applicant's ecological appraisal dated October 2014 contains some information to assist the HRA. These matters have been considered, particularly those contained in Section 4. However, the appraisal does not include sufficient information to enable the HRA to be undertaken in its own right. As an example, it does not appear to contain a full assessment of the evidence collected by NKEPG but it does commit the applicant to a per dwelling payment for off-site mitigation as recommended by The Thames, Medway and Swale Estuaries – Strategic Access Management and Monitoring Strategy (Footprint Ecology 2014). Natural England's letter to SBC has also been considered; in particular that they have raised no objections to the proposals in terms of their impact on designated nature conservation sites. In advising SBC on the requirements relating to the Habitats Regulations Assessment, and to assist it in screening for the likelihood of significant effects, based upon the information provided, Natural England offered the following advice:

- The proposal are not necessary for the management of the European sites.
- That subject to an appropriate contribution being made to strategic mitigation, the proposal is unlikely to have a significant effect on any of the European sites mentioned above, and can therefore be screened out from any requirement for further assessment.
- Proportionate contributions for the extra care facility if they include permanent staff accommodation and or the residents are able to recreate on the SPA.

The applicant has confirmed in section 4.12 of the Ecological Appraisal dated October 2014 submitted in support of the application that they will make a financial contribution to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy in accordance with the recommendations of the North Kent Environmental Planning Group. This strategic mitigation will need to be in place before the first dwelling is occupied. As detailed in their letter of the 6 January 2015, Natural England has confirmed that a suite of strategic measures similar to those set out in the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy will provide appropriate mitigation. However, they consider it is up to the local authorities to ensure that appropriate measures are in place to allow the strategic mitigation to be delivered. This would include consideration of the appropriate tariff.

The Assessment of Pond Farm

The application site is located within some 2-2.5 km of a popular access point Medway SPA at Lower Halstow. The statement in para. 4.7 of the applicant's Ecological Appraisal is not accepted. Whilst there is not a direct point to point footpath between the application site and the SPA, a mixture of footpaths and rural lanes make the SPA readily assessable on foot at

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

Conclusions

Taking a precautionary approach, given the applicants commitment to provide on site mitigation in the form of greenspace and financial contributions towards the SAMM it leads to the conclusion that the proposals would not give rise to likely significant effects on the SPA. It is concluded that the proposals can be screened out for purposes of Appropriate Assessment. These would not lead to likely significant effects on the SPA.