

**PLANNING COMMITTEE – 26 MAY 2016**

**DEFERRED ITEM**

Report of the Head of Planning

**DEFERRED ITEMS**

Reports shown in previous Minutes as being deferred from that Meeting

<b>DEF ITEM 1 REFERENCE NO – 15/510595/OUT</b>			
<b>APPLICATION PROPOSAL</b>			
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).			
<b>ADDRESS</b> Land Off London Road Newington Kent			
<b>RECOMMENDATION</b> 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. If the application had not been subject to an appeal, the recommendation would have been to grant permission subject to a suitably worded Section 106 Agreement and appropriate planning conditions.			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>			
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to the adopted and emerging Local Plans, the Council's policies regarding the provision of housing are considered out-of-date because the Council cannot demonstrate a 5 year supply of housing land as set out in paragraph 49 of the NPPF.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.			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
Deferred from 28 <sup>th</sup> April 2016 planning 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.			
<b>WARD</b> Hartlip, Newington & Upchurch	<b>PARISH/TOWN</b> Newington	<b>COUNCIL</b>	<b>APPLICANT</b> Gladman Developments
<b>DECISION DUE DATE</b> 8/4/16	<b>PUBLICITY EXPIRY DATE</b> 25/4/16	<b>OFFICER SITE VISIT DATE</b> 28/1/16	
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
15/500671/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	Appeal against non-determination with	

	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)	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

### 1.0 BACKGROUND

1.01 Members will recall this application from the 28<sup>th</sup> April 2016 Planning Committee, where it was deferred to the next meeting of the Planning Committee so that the Head of Planning could advise Members of the prospects of such a decision if challenged on appeal and if it becomes the subject of costs.

1.02 The (draft) minutes of the meeting (appended) state:  
*“Councillor Mike Henderson proposed the following reasons for refusing the application if the motion to approve were to be lost;*

- *In principle the application is over-intensive for Newington and an expansion of 20% to the size of the village is not sustainable;*
- *Loss of potential brick earth resource;*
- *The increase in traffic would increase pollution and impact on the AQMA;*
- *Loss of high quality agricultural land;*
- *Not economically sustainable;*
- *Not environmentally sustainable. The Council’s Environmental Protection Officer has concerns;*
- *Socially unsustainable;*
- *Contrary to Policies E1, E6, E7 and E12 of the adopted Local Plan;*
- *Loss of listed building and heritage assets;*
- *Inadequate Travel Plan.”*

1.03 Amongst the extensive minutes to the meeting other issues that need to be addressed include;

- To consider the outcomes of the emerging Local Plan and KCC Waste and Minerals Plan.
- Lights from vehicles leaving the site will have an adverse impact on London Road properties.
- The Council’s landscape and visual consultants recommendation for refusal has been ignored by officers.
- Need to consider cumulative impacts of development.
- No section 106 monies for local schools or recreation area.
- Traffic assessment not carried out correctly/ vehicle movements would double.
- Does not comply with the NPPF.

- Does not improve the quality of the village.
- Contrary to the emerging local plan.
- KCC Waste and Minerals Plan states that a 25 year supply of brick earth is essential and this type of development is fundamental to promoting brick earth reserves to be used.
- Bullet point 5 of para 17 of the NPPF does apply and there is case law to support this.
- Council's Climate Change Officer has concerns- why have these been ignored?
- Developer trying to blackmail Council by stating if current application is approved the larger appeal proposal will not be pursued.
- The third traffic lane should be removed as it will cause problems.
- S106 monies should be used for Church Road Newington not Key Street roundabout.

1.04 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.

1.05 The Planning Inspectorate has agreed that the appeal should be combined with the appeal into the larger scheme, and the date for the joint inquiry has therefore been postponed from 20<sup>th</sup> June 2016. The Council will need to produce its Statement of Case shortly. It should be noted that, despite their indications that they intended to withdraw the appeal on the larger scheme if planning permission had been granted for this application, Gladman Developments Ltd are still pursuing both appeals.

1.06 I attach original officer report to which this report should be read jointly.

## **2.0 POLICY AND OTHER CONSIDERATIONS**

2.01 The policy context was fully detailed in section 5 of the original report which is appended.

2.02 The presumption in favour of sustainable development set out in NPPF para 14 applies. Where the development plan is absent, silent or relevant policies are out-of-date, permission should be granted unless “any adverse impacts of doing so would significantly and demonstrably outweigh the benefits”, when assessed against the policies in the NPPF taken as a whole. As para 49 states:

“Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.”

2.03 The Court of Appeal has considered Para 49 recently in Suffolk Coastal District Council and Richborough Estates Partnerships LLP [2016] EWCA Civ 168. The Court decided that the reference to “relevant policies for the supply of housing” must be given a wide meaning, so that any policy that constrains housing land supply is affected. 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.”

- 2.04 Whether a particular policy of the plan, properly understood, is a relevant policy "for the supply of housing" is a question for the decision-maker. But the Court went on to emphasise that these policies remain material considerations, in that:

“46. We must emphasize here that the policies in paragraphs 14 and 49 of the NPPF do not make "out-of-date" policies for the supply of housing irrelevant in the determination of a planning application or appeal. Nor do they prescribe how much weight should be given to such policies in the decision. Weight is, as ever, a matter for the decision-maker ...”

“47. One may, of course, infer from paragraph 49 of the NPPF that in the Government's view the weight to be given to out-of-date policies for the supply of housing will normally be less than the weight due to policies that provide fully for the requisite supply. The weight to be given to such policies is not dictated by government policy in the NPPF. Nor is it, nor could it be, fixed by the court. It will vary according to the circumstances, including, for example, the extent to which relevant policies fall short of providing for the five-year supply of housing land, the action being taken by the local planning authority to address it, or the particular purpose of a restrictive policy - such as the protection of a "green wedge" or of a gap between settlements. There will be many cases, no doubt, in which restrictive policies, whether general or specific in nature, are given sufficient weight to justify the refusal of planning permission despite their not being up-to-date under the policy in paragraph 49 in the absence of a five-year supply of housing land. Such an outcome is clearly contemplated by government policy in the NPPF. It will always be for the decision-maker to judge, in the particular circumstances of the case in hand, how much weight should be given to conflict with policies for the supply of housing that are out-of-date. This is not a matter of law; it is a matter of planning judgment ...”

- 2.05 The effect of this was recently considered in the appeal decision regarding Norton Ash Garden Centre, London Road, Norton (APP/V2255/W/15/3135521), dated 4 May 2016. As the Inspector concluded on the development plan and housing land supply (at his paras 5 to 19) moderate weight can still be attached to the development plan policies to the location of development and the settlement strategy. Limited weight was attached to the countryside protection policies in that case, whereas the policies on the sustainability of the location should still be accorded significant weight. The weight that can still be attached to each of the development plan policies for this application is discussed in the report.
- 2.06 Amongst the other concerns raised by Members are that the outcome of the emerging Local Plan should be considered. At the moment, the Council does not have a 5 year supply of housing land. By the date of tonight's planning committee, the additional housing sites may have been determined by the LDF panel on the 19<sup>th</sup> May. This is good evidence to show that the Council is taking steps to identify a 5 year supply, but

these sites will not have been subject to public consultation and the level of unresolved objection to the additional sites will not be known at this time. This uncertain 5 year supply position means that it would be wrong for Members to make a recommendation on the basis that the Council does have a secure 5 year supply of housing land, but the advanced stage of the Local Plan process means that more weight can be attached to the out-of-date development plan policies than otherwise would be the case (as shown in the Norton Ash Garden Centre appeal decision).

#### Kent Minerals and Waste Plan

- 2.07 In addition to this, the minerals and waste plan has advanced further. On 27<sup>th</sup> April 2016 the Planning Inspectorate issued its report on the examination into the Kent Minerals and Waste Local Plan 2013-2030. It concludes that with modifications the document is sound and is capable of adoption.
- 2.08 The relevant policy in relation to this application is on brickearth. In summary, the policy on this has been modified, so that there is a degree of flexibility allowed where the material considerations indicate that the need for the development overrides the presumption for safeguarding the mineral. Amongst other things, the minerals and waste plan states;

**52. KCC’s approach to the provision of industrial minerals reflects the guidance of the NPPF to provide a stock of permitted reserves to support the level of actual and proposed investment required for new or existing plant and the maintenance and improvement of existing plant and equipment: at least 10 years for individual silica sand sites; at least 15 years for cement primary (chalk and limestone) and secondary (clay and shale) materials to maintain an existing plant, and for silica sand sites where significant new capital is required; and at least 25 years for brick clay, and for cement primary and secondary materials to support a new kiln.”**

“Brickearth & clay for brick and tile manufacture

63. Brickearth is widespread in Kent; and the stock of existing planning permissions is sufficient for the Plan period to support the few brick and tile manufacturers in Kent together with one brickworks in East Sussex. There is also sufficient clay available should any of the dormant brick and tile works reopen. However, there will be a need to identify further supplies of brickearth through the MSP in order to maintain the required landbanks.”

“146. The NPPF says that MSAs should be defined in relation to known locations of specific minerals resources of local and national importance so that they are not needlessly sterilised by non-mineral development. I appreciate that some minerals for which there is a limited identified demand – for example brickearth – are abundant or widespread in Kent. There is an argument for not including locations of these minerals in an MSA. But, as the MSEGPA states, the use of information from BGS resource maps largely eliminates the need for MPAs to make their own judgments on which mineral deposits are or may become of potential economic interest. MSAs should usually cover the whole resource.

147. Brickearth is not a mineral identified in the NPPF as requiring a stock of permitted reserves to be provided. However, it is analogous to brick clay, for which 25 years reserves are required to be maintained. It is reasonable that the same landbank should be maintained for brickearth. I appreciate that at present brickearth sourced from Kent is used for just 2 brickworks. But over the Plan

period and beyond it is possible that demand could increase. In that context, I do not consider it unreasonable for the Plan to safeguard brickearth. The Plan is not unsound in that regard.”

“149. Notwithstanding the limited opportunities to extract mineral in a wholly or mainly built-up area, the advice is that MSAs should usually be defined in such areas to highlight (for example) the potential for extracting minerals beneath regeneration projects and brownfield sites. It also reduces the need to alter the boundaries to take account of urban expansion. The inclusion of developed areas into MSAs / MCAs is therefore not unsound. However, I appreciate that their inclusion could present District Councils and potential developers with a significant administrative and financial burden. Therefore in the interests of practicality KCC has chosen to modify the originally proposed MSAs largely to exclude urban / built up areas. I consider this to be a matter of balance, but I am content for them to be redefined in this way for each individual District. Although contrary to the advice of MSEGPA, it is not contrary to national policy as set out in the NPPF.”

2.09 At Policy DM7 the Inspector states;

“A new exemption (5) is added to cover the situation where material considerations indicate that the need for the development overrides the presumption for safeguarding. That allows a degree of flexibility to take account of other priorities. I agree with the Council that it is appropriate nonetheless that opportunities for prior extraction of minerals should be explored. This is not inconsistent. Indeed, to do otherwise could undermine the purpose of the relevant policy (Policy DM 8 as submitted / DM 9 as proposed to be modified).”

“158. Overall, I take the view that these modifications largely overcome the concerns of a number of District Councils that the policy as submitted could frustrate adopted development plan policies. They would also allow flexible judgments to be made, balancing the merits of development proposals with the desirability of safeguarding minerals for future generations.”

“163. Overall, the modifications make Policies CSM 5 and DM 7 comprehensible, flexible and effective. The introduction of minerals assessments will place an onus on developers to provide reasons why the safeguarding should not prevail in any particular circumstance.”

“Extraction of minerals in advance of surface development

“194. The NPPF requires MPAs to 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. This is addressed in the Plan under Policy DM 8.

195. As submitted, the policy says that permission will be granted for “mineral extraction that is in advance of permitted surface development”. But this would not apply to development which incorporated extraction together with surface development. It is too restrictive and thereby ineffective and unsound.

196. The shortcomings may be overcome by a modification to the policy and its supporting text [MM7/3B], the latter explicitly linking the operation of the policy to development proposed in a Minerals Safeguarding Area, and to the Safeguarding Mineral Resources Policy (“new” Policy DM 7) in order to provide context. As part

of the general reorganisation of the policies in the Plan, it is renumbered as Policy DM 9.

197. When read together with the modified supporting text, it is clear that the development being referred to is non-mineral development and that the aim of the policy is to prevent needless sterilisation of resources in line with the NPPF. There is no need to further amend the policy in the interests of soundness.”

2.10 The Inspectors proposed amendments result in DM7: Safeguarding Mineral Resources pre-text including the following considerations. “It is important that certain mineral resources in Kent are safeguarded for potential use by future generations. However, from time to time, proposals to develop areas overlying safeguarded minerals resources for non-minerals purposes will come forward. The need for such developments will be weighed against the need to avoid sterilisation of the underlying mineral and the objectives and policies of the development plan as a whole will need to be considered when determining proposals. Policy DM7 sets out the circumstances when non-minerals development may be acceptable at a location within a Minerals Safeguarding Area. This policy recognises that the aim of safeguarding is to avoid unnecessary sterilisation of resources and encourage prior extraction of the mineral where practicable and viable before non-minerals development occurs.”

2.11 The policy itself states;  
 “Policy DM7  
 Safeguarding Mineral Resources  
 Planning permission will only be granted for non-mineral development that is incompatible with minerals safeguarding, where it is demonstrated that either;

1. The mineral is not of economic value or does not exist; or
2. That extraction of the mineral would not be viable or practicable; or
3. The mineral can be extracted satisfactorily, having regard to Policy DM9, prior to the non-minerals development taking place without adversely affecting the viability or deliverability of the non-minerals development;
4. The incompatible development is of a temporary nature that can be completed and the site *returned* to a condition that does not *prevent* mineral extraction within the timescale that the mineral is likely to be needed; or.....
5. Material considerations indicate that the need for the development overrides the presumption for minerals safeguarding such that sterilisation of the minerals can be permitted following the exploration of opportunities for prior extraction.”

2.12 The now renumbered Policy DM9 states;  
 “Policy DM9: Extraction of Minerals in Advance of Surface Development  
 When development is proposal within an MSA promoters will be encouraged to extract the mineral in advance of the main development. Policy DM9 aims to manage situations where built development located on a safeguarded mineral resource is to be permitted, so as to avoid the needless sterilisation of economic mineral resources (in accordance with Policy DM7).”

### 3.0 LOCAL REPRESENTATIONS

3.01 One further letter of objection has been received from a local resident which is summarised as follows;

- Earlier reports judgements are negligent and craven.
- Prematurity is a reason for refusal.
- Existing policies should be adhered to.

- Planning should promote sustainable housing and defend communities threatened by opportunistic developers irretrievably destroying greenfield sites and distorting village evolution with out of scale proposals.
- What are we paying Council Tax for if not to have fair and transparent planning?
- Why bother having Councillors who are rendered impotent by officials weak and craven, pronouncements in any decision making?
- Why do officers bother to ask for expert advice then ignore it?
- Ignoring legal obligations on harmful pollution- Council responsibility is very clear in European and National Law. Various areas including Newington have measures harmful exceedances in pollution levels.
- Proposal contrary to NPPF re AQMA. Cumulative impacts of development to be considered and should comply with the requirements for Environmental Impact Assessments.

3.02 No further representations, beyond those in sections 6 and 7 of the first report and the tabled update to Members, have been received since the last meeting.

#### **4.0 CONSULTATIONS**

4.01 NHS Swale and NHS Dartford, Gravesham and Swanley Clinical Commissioning Groups has provided further justification for its initial request for developer contributions of £360 per resident towards the Meads Medical Practice in Sittingbourne. It also clarified this practice has not benefitted from any previous developer contributions.

4.02 Medway Council confirms it raises no objections subject to the following:

- “A condition securing the submission of an air quality mitigation assessment for approval, that outlines air quality mitigation equivalent to, or greater than, the calculated damage costs;
- If this is not achievable, or there is an underspend, then a contribution should be made to wider air quality mitigation measures, as outlined in Medway Council’s air quality action plan, through a Section 106 agreement.
- Condition(s) securing standard air quality mitigation consisting of electric vehicle charging points and low nox boilers (as per the air quality planning guidance). This is in addition to mitigation outlined in the mitigation statement.
- Mitigation in accordance with the IAQM guidance on the assessment of dust from demolition. This could be conditioned, and incorporated into a specific dust management plan, or a wider construction environmental management plan.”

They also state that “should Swale Borough Council / the Planning Inspectorate, not be able to secure the above mitigation measures by way of legal agreement, under Section 106 of the Town and Country Planning Act 1990 (as amended), or by way of Planning Condition, as may be appropriate, Medway Council would wish to maintain its objection on Air Quality Ground, as previously specified.”

4.03 Natural England has confirmed it has no further comments to make.

4.04 No further representations, beyond those in sections 6 and 7 of the first report and the tabled update to Members, have been received since the last meeting.

#### **5.0 BACKGROUND PAPERS AND PLANS**

5.01 See section 8 of the original report (appended).



## 6.0 APPRAISAL

- 6.01 The original report sets out the main considerations, and the recommendation was that planning permission for this reduced scheme should on balance be granted. The test in NPPF Para 14 applies, in that the adverse impacts of doing so would not significantly and demonstrably outweigh the benefits.
- 6.02 There are a number of further points that were raised at the last committee meeting, which have been considered further. None of these change the overall recommendation made by officers, for the reasons set out below.

### Housing Land and the emerging Local Plan / Prematurity

- 6.03 As discussed, the development plan policies relevant to the supply of housing are out-of-date, and only moderate weight can be attached to the locational policies. It is not considered that the grant of this permission would be premature to the adoption of the Local Plan. Some limited weight can be attached to the fact that this site is not one of those that has been identified as suitable for allocation in the emerging Local Plan, but there are many unresolved objections to these draft allocations.
- 6.04 National guidance is clear that prematurity will not normally amount to a reason for refusal. The grant of permission for 126 dwellings at Newington is not considered to prejudice the scale of development. This was previously addressed in the first committee report, including prematurity (see 9.01 or first report).

### Air Quality impacts

- 6.05 Members raised concerns that the increase in traffic would increase pollution and impact on the AQMA. It is important that Members note KCC Highways and Transportation, and Highways England raise no objection with regard to the impact on highway safety and convenience. The Council's Environmental Health Manager has explained why he is now satisfied that, subject to the proposed mitigation measures, there will not be an adverse effect on the Newington AQMA (see the original report on air quality, at para 9.20). As Medway Council has mentioned, the impact on the Rainham AQMA can be also made acceptable subject to the measures requested by Medway Council being secured by condition or legal agreement.

### Overdevelopment

- 6.06 It is respectfully suggested that the term over-intensive is not a clear reason for recommending that permission would have been refused. It is necessary to identify what harm would arise from this. The percentage increase in the size of Newington as a result of the proposal is a matter of record, but it is important that Members consider the proposal in the context of the development plan and the NPPF as a whole. Whilst the site area and percentage increase may seem significant, there are very limited negative impacts and many more positive impacts.

### Safeguarding minerals

- 6.07 The applicant has previously provided further information regarding the practicability and viability (to satisfy the requirements of Policy DM7 of the KCC Waste and Minerals Plan) of prior extraction of potential brick earth which were tabled at the last meeting. It is still an open question whether the brick earth present is a viable source.

- 6.08 Even if the viability and practicability of removing the brick earth was justified, this would result in prolonging the disruption caused by the development of this site and impact on the sites ability to provide housing within the next 5 years. There would be Increased HGV movements to and from the site to remove the material. Reduced levels on site would also result either importing of suitable off-site materials to bring ground levels back to existing or in property slab levels being lower than the surrounding properties (by about 1.5 – 2m depending on amount of extraction) and the potential for retaining structures of similar depths being required immediately adjacent to the boundaries
- 6.09 In light of the Inspectors considerations, my opinion remains that the information provided by the applicant as to the viability and practicability of prior extraction of brick earth does cast doubt on the ability to do so. In accordance with the NPPF, whilst this is a potential economic negative, this is outweighed by the positives including the ability to bring forward housing delivery in the next five years . In particular I would draw Members attention to the plan’s text to policy DM7 which states that “The need for such developments will be weighed against the need to avoid sterilisation of the underlying mineral and the objectives and policies of the development plan as a whole will need to be considered when determining proposals”.

#### Loss of agricultural land

- 6.10 Members raised concerns about the loss of high quality agricultural land. This was discussed in the original report, where it was acknowledged that this is an adverse consideration. But, as has been stated, this has become a necessary part of the need to identify further housing land. It has already been necessary to release large amounts of agricultural land to meet development needs in the Borough and this is also the case for additional housing sites required under the emerging local plan. Considered in the light of national policy, it is important to point out that para 112 of the NPPF does not rule out the principle of development on BMV land.
- 6.11 The Council does not yet have a policy on safeguarding high quality agricultural land, and the Council’s emerging local plan policy DM31 can only be given limited weight. It does seek to influence the supply of housing land by restricting the locations where new housing may be developed, to areas of low quality agricultural land.

#### Economic sustainability

- 6.12 Members raised concerns that the proposal is not economically sustainable. 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 (noting doubts have been cast on the viability and practicability of prior extraction) and their attendant economic benefits. As a result, the proposal would result in some economic gains, which demonstrates the proposal would be economically sustainable.

#### Environmentally sustainability

- 6.13 Members raised concerns that the proposal is not environmentally sustainable. 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 (as noted above doubt has been cast on the viability and practicability of prior extraction). Heritage, transport, air quality and ecological impacts have been demonstrated to be acceptable. Therefore, the proposal would not cause

environmental harm. Reference to the Council's Environmental Health Manager having concerns about air quality, are distinct from him raising objection, which he has not.

#### Social sustainability

- 6.14 Members raised concerns about the social sustainability of the proposal. 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. In my opinion, the proposal is clearly socially sustainable.

#### Biodiversity

- 6.15 Members raised concerns that the proposal is contrary to adopted Local Plan Policies E1, E6, E7 and E12. In my opinion, the proposal complies with Policies E1 and E12 as it is in accordance with the general development criteria and would cause no harm to designated biodiversity sites as confirmed by Natural England and as set out in the Habitat Regulations Screening set out in the original report. The proposals non-compliance with policies E6 and E7 is not as straight forward as these policies carry diminished weight because they are considered out of date given that the Council cannot demonstrate a 5 year supply of housing land. Within this context, whilst the proposal is strictly speaking contrary to the wording of policies E6 and E7, the principle of the development should be accepted in my opinion.

#### Listed building and heritage assets.

- 6.16 Members did raise concerns about the loss of a listed building and heritage assets. It is not proposed to demolish any listed buildings or other heritage assets in this reduced scheme, and the red line would now exclude the outbuildings around Pond Farm. The residual affect on them from the nearby development would be mitigated by the provision of a substantial area of undeveloped land, and would preserve the special character of the heritage assets in accordance with the statutory tests. Therefore this should not form a reason for which the Council would have refused permission.

#### Travel Plan

- 6.17 The travel plan submitted has been considered adequate and acceptable by both Highways England and KCC Highways and Transportation. Members concerns about the inadequacy of the travel plan should not form a reason for which the Council would have refused permission because ignoring the Council's specialist advisers could be perceived as unreasonable behaviour at the upcoming appeal with subsequent costs awarded against the Council amounting to several thousand pounds for this single issue.

#### Impact of lights from vehicles

- 6.18 The impact of light from vehicles leaving the site on properties on London Road is not considered to amount to a reason for which the Council would have recommended refusal here given the relatively low level of activity and the significant distance between the dwellings on the northern side of London Road and the road surface.

### Cumulative impact of development

- 6.19 Concern was raised about cumulative impact of development. There is no reference to what issues or sites this relates to. Whilst no specific sites have been identified this could reasonably be assumed, in the local area, to be 16/501266/FULL at 99 High Street Newington for 113 dwellings, and 15/509664/OUT at land East of St Mary's view for up to 26 dwellings. Near the Swale Medway boarder there is MC/15/2731 at land north of Moor Street Rainham for 190 dwellings which was refused and is the subject of an appeal, and MC/14/3784 for 200 dwellings at the same site which has an appeal against non-determination. Neither appeal has been determined. Given that none of the above planning applications have yet been approved there is no cumulative impact to assess.

### Section 106

- 6.20 At the last meeting it was suggested that there was a lack of section 106 monies for local schools or recreation areas. The S.106 items recommended by officers follows discussions and representations with key service providers, including KCC education. The Council's open spaces officer has stated that there is no requirement to contribute towards the recreation area to the south because the applicant is providing its own on site recreation area.
- 6.21 The NHS contribution request is considered to be compliant with the CIL Regulations tests and should therefore be carried forward into the legal agreement negotiations should the application progress to this stage.

### Landscape impact

- 6.22 The advice of the Council's landscape and visual consultant was taken into account. As the main report records, they would recommend refusal, but planning Officers drew a different conclusion of the landscape and visual impact after conducting a site visit and considered that the impact in this regard was acceptable given that there are only limited visual impacts from long distance views surrounding the site.

### Other Matters

- 6.23 It is respectfully submitted that it is unclear what is meant by this. The concerns raised by the Council's Climate Change Officer were dealt with by condition 32 of the original report which required the submission of details of the sustainability measures to be incorporated into the development.
- 6.24 The third traffic lane proposed by the applicant is supported by KCC Highways and Transportation and is considered to be an appropriate highway solution to serve the proposal. Officers consider a contribution towards the Key Street roundabout to be acceptable as mitigation to both the local and strategic highway network as agreed by Highways England and KCC Highways and Transportation. The ability to improve Church Lane would be fairly restricted by the narrow nature of said road and the high on street parking demands experienced and it would not be possible to attribute any potential impacts directly related to the proposed development.

Recent Appeal casesThe Barnwell Manor case and heritage assets

- 6.25 It is understood that Members referred to Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council [2014 EWCA Civ 137]. The decision is important because it provides a reminder that the graduated policy tests in the NPPF do not override statutory heritage duties.
- 6.26 In this case The Court of Appeal rejected an appeal over the quashing of a planning inspector's decision in relation to wind turbines. The inspector had found that the harm to settings of the nearby heritage assets would be less than significant. In reaching this conclusion, he placed great weight on his conclusion that observers would be able to understand that the wind farm differed in form and function from the heritage assets in question. His findings of less than significant harm had been carried forward into his balancing exercise, which he carried out by reference to policy about the general acceptability of renewable energy projects rather than to s.66 Listed Building and Conservation Areas Act 1990.
- 6.27 The inspector's balancing exercise was defective because instead of having regard to the desirability of preserving or enhancing the settings of listed buildings, he had instead considered harm by reference to general renewable energy policy, apparently because he had decided that harm would be less than significant. Lang J and the Court of Appeal held that the inspector had erred in not affording significant weight to the failure to preserve or enhance the setting of all listed buildings, as required by S.66.
- 6.28 The inspector's assessment was also partial and flawed because by focussing upon the observer's ability to understand the respective functions of heritage assets and turbines, he had left out of consideration factors which were highly material to the concept of setting as set out in national policy and English Heritage guidance. The contribution that setting makes does not depend on there being an ability to access or experience the setting.
- 6.29 This has been properly assessed in this application. The relevant statutory test is referred to in paragraph 9.16 of the original report, which accords with this case, as well as the NPPF. For this reason, it is considered that the recommendation remains unchanged.

Redrow Homes appeal decision

- 6.30 There was also reference at the last planning committee to an appeal by J M Beatty, J S Clark and Redrow Homes South Midlands at land at Station Road, Earls Barton in that the Secretary of State Eric Pickles refused permission for reasons similar to those discussed by Members and there were similar 5 year supply issues.
- 6.31 In coming to his decision, Eric Pickles gave significant weight to the conflict with the policies of the emerging neighbourhood plan, despite the fact that they had not yet been examined by a planning inspector.
- 6.32 Housebuilders JM Beatty, IS Clark and Redrow Homes South applied to Wellingborough Borough Council in September 2013, seeking outline planning permission to build 85 homes on a field immediately south of the built-up area of the village of Earls Barton. Permission was refused by the Council and the communities

secretary recovered the housebuilders' subsequent appeal for his own determination due to its potential impact on the emerging Earls Barton neighbourhood plan (NP).

- 6.33 The letter said Pickles agreed with Manning that the proposal would be "contrary to the basic intentions of the existing development plan", which sought to concentrate development in built up areas and avoid building on open countryside. The communities secretary also agreed that the Council was unable to demonstrate a five year housing land supply, however, meaning that individual housing policies in the existing spatial plan were out-of-date and a presumption in favour of sustainable development was engaged.
- 6.34 The communities secretary disagreed with the inspector's view that no demonstrable environmental harm would be caused by allowing the proposal. Unlike the inspector, Pickles found that the scheme would cause "the impression of sprawl", would reduce the visual amenity along a public footpath through the appeal site and was likely to result in the loss of high quality agricultural land: harms to which he gave "significant weight". Pickles accepted that no argument could be made for rejecting the appeal on grounds of prematurity to the NP, in light of the Council's previous approval for the much larger development at the Grange. He also agreed that substantial weight should be given to the economic and social benefits of the scheme.
- 6.35 Each appeal must be determined on its own facts. In officers' opinion, the main area of concern for the Secretary of State in that Redrow appeal was the conflict with a neighbourhood plan, which Newington does not have. Therefore this element is not comparable to the current application and it changes the complexion of the planning balance that needs to be struck. The Secretary of State also attached more weight in that appeal to the environmental effects such as the impact of that development on a footpath (and it is noteworthy that the length of the public footpath to be developed in that case was substantially more than is currently proposed), the assumption that good quality agricultural land would be lost and the claim that the development would give the impression of urban sprawl despite it being contained on three sides by existing residential development. Whilst there are some points of interest in this appeal decision, it is not directly relevant.

## **7.0 CONCLUSION**

- 7.01 For the reasons stated above, the proposed development would represent sustainable development. The adverse effects are limited and they would not demonstrably and significantly outweigh the benefits that this new housing development would provide and it is considered to be acceptable subject to suitable conditions and section 106 obligations.

- 8.0 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, the recommendation would have been to grant planning permission subject to a Section 106 Agreement, conditions and informatives as set out in the original report (appended).