

**PLANNING COMMITTEE – 21 JULY 2016**

**PART 3**

Report of the Head of Planning

**PART 3**

Applications for which **REFUSAL** is recommended

<b>3.1 REFERENCE NO - 15/506513/FULL</b>			
<b>APPLICATION PROPOSAL</b>			
Conversion of existing redundant building to form one no. two bedroom dwelling and one no. three bedroom dwelling with associated amenities.			
<b>ADDRESS</b> Tranquility Otterham Quay Lane Upchurch Kent ME8 7UT			
<b>RECOMMENDATION</b> Refuse			
<b>REASONS FOR REFUSAL</b>			
<ul style="list-style-type: none"> <li>- The application site lies within an unsustainable countryside location and the applicant has failed to sufficiently demonstrate that there is no demand for an alternative use of the building for employment or community purposes or that the building would be undesirable or unsuitable for a non residential use in its own right.</li> <li>- The existing windows on the west elevation are located on the boundary with the private amenity space of No.3 Hubbards Cottages and as such the proposal would lead to an unacceptable loss of privacy for neighbouring occupiers and give rise to significantly harmful levels of mutual overlooking between the neighbouring and host property.</li> <li>- A Phase 1 Ecological Survey has not been submitted with the application and therefore the Council can not be certain that the proposal would not harm protected species.</li> <li>- Insufficient parking spaces have been provided which would likely lead to parking inconvenient to other road users.</li> </ul>			
<b>REASON FOR REFERRAL TO COMMITTEE</b>			
Called in by Cllr Wright			
<b>WARD</b> Hartlip, Newington & Upchurch	<b>PARISH/TOWN</b> Upchurch	<b>COUNCIL</b>	<b>APPLICANT</b> Mr C Agley <b>AGENT</b> Richard Baker Partnership
<b>DECISION DUE DATE</b> 02/10/15	<b>PUBLICITY EXPIRY DATE</b> 23/02/2016		
<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>
SW/13/1119	Change of use to dwelling; alterations to window and door configuration; and internal alterations	Refused	18.11.2013
SW/06/0520	Outline application for the demolition of 12 garages and workshop and closure of	Refused and subsequently	26.07.2006

	existing access road, and the erection of four detached houses, the conversion of the old social club into two semi detached cottages and the construction of a new access road to adoptable standards.	dismissed at Appeal	
SW/00/0219	Erection of 10 four & five-bedroom houses, each with either integral or detached double garages, combined with the construction of a new road.	Refused and subsequently dismissed at Appeal	03.05.2000
SW/76/0309	Continued use as workshop for car repairs	Refused	08.06.1976

## MAIN REPORT

### 1.0 DESCRIPTION OF SITE

- 1.01 The application site is located in the countryside to the west of Upchurch and comprises a now vacant two storey building, situated amongst a number of other buildings.
- 1.02 The building measures approximately 18m in length and ranges between 5.6m and 4.3m in width. It is 4.5m to the eaves and 6.1m to the ridge. The building is orientated approximately north to south and is agricultural in character with a roller shutter door in the northern flank.
- 1.03 On the southern end of the building it adjoins a terrace known as Hubbards Cottages. The garden for No.3 abuts the full length of the host building and the access track and parking area abuts the northern and eastern flanks.
- 1.04 A row of 12 detached garages are located to the east of the building, on the other side of the access track and a detached workshop sits to the north. The dwelling known as 'Tranquility' is situated to the northeast, behind the garages.
- 1.05 The site is accessed by a track which runs from the northwestern corner and there is a large area of open grass / paddock behind the garages, to the south of Tranquility.

### 2.0 PROPOSAL

- 2.01 This application seeks planning permission for the change of use of the existing redundant building to 1 x 2 bedroom dwelling and 1 x three bedroom dwelling with 2 existing garages allocated to the new dwellings in addition to 4 visitor spaces. External amenity space measuring approximately 130 sqm is provided on the opposite side of the garages to the building.
- 2.02 The application proposes to insert two windows onto the eastern elevation and to remove the roller shutter door on the northern elevation and to inset a section of glazing.
- 2.03 A number of internal alterations are also proposed which would create a lounge / diner, kitchen and w.c. at ground floor level for each dwelling and then bedrooms and a bathroom for each dwelling at first floor level.

### 3.0 PLANNING CONSTRAINTS

3.01 None

### 4.0 POLICY AND OTHER CONSIDERATIONS

#### The National Planning Policy Framework (NPPF)

4.01 The NPPF at paragraph 14 states that central to the NPPF is “a presumption in favour of sustainable development.

*For decision-taking this means:*

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

4.02 At paragraph 49 the NPPF states that “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.” Further to this, paragraph 17 states that we need to take account of the different roles and characters of different areas.

#### Swale Borough Local Plan 2008

4.03 The “saved” Local Plan policies have been reviewed by the LDF Panel and assessed for compliance against the National Planning Policy Framework. The below policies are considered to accord with the guidance of the NPPF for the purposes of determining this application.

E1, E6, E7, E19, E24, H2, RC3, RC6 and T3

Policy RC6 – Re-use of rural buildings for housing - is central to this application and I set it out in full as follows:

*“To help secure the diversification of the rural economy, as promoted by Policy RC1, planning permission will not be permitted for the conversion of buildings in the rural area to residential use, or a mixed-use including residential, unless:*

1. *the Borough Council is satisfied that the applicant has made a reasonable and sustained effort to secure an alternative acceptable re-use of the building for employment or community purposes (at a price that reflects that use), and has provided a statement of such action; or*
2. *the Borough Council is satisfied that the building would be undesirable or unsuitable for a non-residential use in its own right or by way of its location or the scale of use that would otherwise result; or*
3. *a residential use, or a mixed-use including residential is the preferred way in which a historic building could be retained and/or restored.*

*In all cases, the building should be suitable for the proposed use, structurally sound and capable of conversion without: (a) the need for significant extension, alteration, or reconstruction; (b) significantly adversely affecting the countryside; and (c) without creating scales of residential use that would lead to unsustainable travel patterns.”*

Emerging Local Plan – Bearing Fruits 2031 (Proposed Main Modifications June 2016)

4.04 Due to the current advanced stage of the emerging Local Plan I also consider that policies ST1, ST3 and DM14 are relevant in the determination of this application.

4.05 Supplementary Planning Guidance – The Conservation of Traditional Farm Buildings

## 5.0 LOCAL REPRESENTATIONS

5.01 2 letters of support were received which raised the following points:

- Would be opposed to any commercial or light industry offices;
- If there is such a demand for offices then why are purpose built offices at Gills Terrace being converted to flats?;
- The access to the site is not suitable for an increase in traffic volume;
- Large vehicles accessing the site often block the road causing danger to other road users

## 6.0 CONSULTATIONS

6.01 **Upchurch Parish Council** *“can find no reason to object to this application. However we would like to reiterate our concerns with regards to the 'blind bend' on the highway that borders this proposed development.”*

6.02 **Natural England** state that *“the application site is located approximately 155m south of the Medway Estuary and Marshes Special Protection Area (SPA) and Ramsar site. This site is also designated at a national level as Medway Estuary and Marshes Site of Special Scientific Interest (SSSI).”* They also state that *“subject to appropriate financial contributions being made to strategic mitigation, the proposal is unlikely to have a significant effect on these sites, and can therefore be screened out from any requirement for further assessment.”*

Furthermore, it is stated that Natural England have not assessed this application for impacts on protected species for which Standing Advice has been published. It is recommended that Standing Advice is applied to this application as it is a material planning consideration in the same way as any individual response received from Natural England.

6.03 **KCC Highways and Transportation** state that they require further information in respect of a detailed car parking plan showing the proposed car parking provision for the development. A total of 4 car parking spaces excluding garages would be required.

6.04 The Council’s **Environmental Protection Manager** raises no objection to the application subject to conditions relating to hours of construction and dust control.

6.05 Cllr Wright stated *“I will wish to call this in unless Mr Agley [the applicant] wishes another route of action”* and then confirmed in writing that no other route had been suggested.

## **7.0 BACKGROUND PAPERS AND PLANS**

- 7.01 Application papers and correspondence related to 15/506513/FULL.

## **8.0 APPLICANT'S SUPPORTING DOCUMENTS**

- 8.01 The application includes a Supporting Statement and Design & Access Statement produced by the agent setting out the history of the building, the site itself, access and design.
- 8.02 Appendix A of the statement includes letters from four local residents stating that they support the conversion of the vacant building into residential use. Also included is a marketing advert of Tranquillity from an estate agent (Buckey & Ward) and then a further letter from the estate agent informing the applicant that they will be withdrawing the property from their register. There are also six letters from businesses stating that they will not be taking on the lease of the building.
- 8.03 The applicant has also submitted a statement which sets out rebuilding costs; rental marketing; planning status and planning considerations.
- 8.04 A letter from Ashton Burkinshaw (a local letting agent) to the applicant has been submitted. This states that *"the area is of high demand for family homes and these properties would provide a fantastic opportunity for rental accommodation, in an area that already benefits from a short drive to Rainham Town Centre, as well as reputable schools, a local golf club and numerous businesses."*

## **9.0 APPRAISAL**

### **Principle of Development**

- 9.01 The application site lies outside of the defined built up area boundary and is therefore considered to lie within the countryside where the Council's established policies of rural restraint apply. In this case policy RC6 of the Local Plan as set out above relates to the re-use of rural buildings for housing and sets out the criteria that will need to be satisfied in order for this type of development to be considered by the Council to be acceptable.
- 9.02 Policy RC6 requires that firstly, evidence will need to be provided to demonstrate that there is no demand for the building for employment or community purposes. The details submitted with the application include letters from six businesses dated from January – February 2014. Some of the letters submitted indicate that they visited the site and as such would have initially shown an interest in the premises with knowledge of the location. The reasons that they did not take up the rental was due to the specific requirements of these businesses. As such I do not consider that this demonstrates that another business, or for that matter a community use as also required by the policy would not be able to operate from the building. It is also important to note that no information at all has been provided which indicates the terms under which the property was offered to these businesses.
- 9.03 The letters from the businesses as referred to above pre date the marketing of the premises by Buckey & Ward. A follow up letter from the estate agent sent on 4<sup>th</sup> August 2015 states they will be withdrawing the premises from their register as the property *'has created no enquiries at all over the last six months'*. The letter also states that *'I do feel the location has been the hindrance'*, however it is clearly detailed in the advert that the property benefits from a *'great location'*. What has not

been made clear is how widely the marketing was distributed and whether this estate agent specialises in residential or commercial lettings / sales. As such, I do not consider that a reasonable and sustained effort to secure an alternative re-use of the building for employment or community purposes has been demonstrated to justify the conversion of this building to residential use.

9.04 Further to the above letter which states that there has been no interest in taking on the premises, the application includes correspondence from six separate companies which state that the property is not suitable for their specific needs. Although these letters pre date the letter from the estate agent they do contradict the comments made by the applicant where it is stated that *"there has been no interest at all"*.

9.05 I also note the letter sent from a local letting agent to the applicant which states that there is a high demand for family homes in the area. It may be the case that there is demand for homes in the area, however as the building lies in the rural area it must be considered whether a reasonable and sustained attempt has been made to secure an alternative use of the building. As such, I do not believe that this letter to be relevant to the determination of this application.

9.06 In relation to point 2 of the criteria as contained within Policy RC6, I note that the applicant has included the following paragraph within their statement:

*"I have received quotes for the cost of converting the outbuilding into offices/workshop of between £100,000 to £200,000. With monthly repayments on a business loan and management costs/fees the building would make little profit, if any at all and is therefore not commercially viable."*

It is unclear from the paragraph above whether the works are wholly necessary for the re-use of the building. Furthermore, there are no details provided as to where this figure was derived from or indeed who arrived at this. In any case, we would expect to see evidence of the basis for these quotes and a full structural survey from a suitably qualified person if this was intended to be relied upon. None of this has been forthcoming in the application and as such I take the view that the Council can not be satisfied that the building is undesirable or unsuitable for a non residential use. Due to this I take the view that the proposal, as well as failing to meet criteria 1 of policy RC6 also fails to meet criteria 2. Finally, with regards to criteria 3 I do not believe that the building is of historic merit and as such do not believe that this is relevant in this case. As such, I take the view that the application fails to demonstrate that there is no demand for an alternative use of the building or that the building would be unsuitable for non residential use.

9.07 However, it must also be considered as to whether the application can be considered acceptable in light of the Council's current housing supply position. As Members will be aware, the Council can not currently demonstrate a five year housing supply and as such paragraph 49 of the NPPF as set out above is relevant. Although this states that relevant policies for the supply of housing can not be considered up to date it must also be taken into account the advanced stage that the Council has reached in terms of this and the likelihood that this supply will be met in the short to medium term. I also, as required by the NPPF pay regard to whether this proposal constitutes sustainable development. The site is approximately 2.6km away from Rainham Town Centre and approximately 1.9km from the centre of Upchurch (via existing highways and not as the crow flies). I do not consider this distance to be sustainable and as such take the view that the harm caused by the location of the proposal, which is for two open market dwellings (nothing has been submitted to state otherwise) would outweigh any benefits that this development would bring.

Therefore, with the site outside of the built up area boundary and due to the above assessment I take the view that the proposal is unacceptable in principle.

### **Visual Impact**

- 9.08 The proposed conversion involves largely internal works and the insertion of two additional windows. The SPG, at paragraph 5.7 advises that existing windows or openings should be used and the pattern of openings should be informal to avoid a domestic appearance. In this case two additional windows are proposed on the east elevation and the replacement of the roller shutter door on the north elevation with a 4 pane section of glazing in the same sized opening. As such, I consider that the insertion of only two new openings, which are modest in scale would not seriously harm the character of the existing building or visual amenities.

### **Residential Amenity**

- 9.09 The building would not be extended by the proposals and lies adjacent to 1-4 Hubbards Cottages which are in residential use. The majority of the windows proposed would face onto an area of hardstanding, however, there are two existing ground floor window openings on the western elevation which due to the location of the building face directly into the amenity space of the neighbouring residential property, No.3 Hubbards Cottages. These rooms would serve the lounge / dining area of one of the proposed units and the kitchen of the other. As such, the windows would look directly into the private amenity space and due to the location on the boundary would in my view lead to a significant loss of privacy for neighbouring occupiers and give rise to significantly harmful levels of mutual overlooking. Therefore I take the view that the proposal would have an unacceptable impact upon neighbouring amenities and is unacceptable on this basis.

### **Protected Species**

- 9.10 Paragraph 99 of Government Circular (ODPM 06/2005) Biodiversity and Geological Conservation - Statutory Obligations & Their Impact Within the Planning System states that *"It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted otherwise all relevant material considerations may not have been addressed in making the decision."*
- 9.11 Further to the above, the consultation response from Natural England refers to their Standing Advice which I have paid regard to. The Standing Advice lists a number of features that are more likely to attract protected species (namely bats in this case) to buildings and due to the age, redundant nature and condition of the building I believe that a phase 1 ecological survey is required to assess the likelihood of the presence of protected species. This survey has been requested from the agent and it was suggested that particular attention should be paid to bats and barn owls. The phase 1 ecological survey has not been forthcoming and as such I take the view that the Council can not be sure as to whether there are protected species within the site or not. It is stated that when the Standing Advice is not followed, as is the case here, that a statement should be included within the application to explain why. No such statement has been submitted. I therefore take the view that the application should also be refused upon the basis that the Council is unable to be sure that there are no protected species within the building.

## **Parking**

- 9.12 I note that on the submitted drawings that two of the existing garages will be allocated to the new dwellings and 4 visitor spaces will be provided. KCC Highways and Transportation have commented on the application and stated that 4 spaces should be provided excluding the garages. I have therefore requested that the reference to 'visitor parking' is removed as otherwise the development would not have sufficient parking space and could lead to parking inconvenient to other road users. After a discussion I have received correspondence from the agent that the word 'visitor' should be removed. However, the plans as submitted have not been amended in respect of the labelling of the parking spaces. If I had been minded to approve the application then a condition could have been imposed requiring the parking spaces to be used for the occupants of the proposed dwellings notwithstanding the details on the submitted drawing. However, as the application has been recommended for refusal and as the drawing submitted with the application still refers to visitor parking, I have for completeness included the lack of parking for the development as a reason for refusal.

## **Impact upon SPA and Ramsar Sites**

- 9.13 I have for completeness set out a Habitat Regulations Assessment below. This confirms that whilst mitigation could be provided by way of developer contributions, this is not considered appropriate for developments under 10 dwellings. The cost of mitigation will be met by developer contributions on developments over 10 dwellings. In view of this it is not considered that the development will have a harmful impact on the special interests of the SPA and Ramsar sites.

## **10.0 CONCLUSION**

- 10.01 I consider that the application fails to demonstrate that there is no demand for an alternative use of the building or that the building would be unsuitable for non residential use. As such, as the site lies within the countryside, in an unsustainable location and taking into account the currently advanced stage of the emerging Local Plan I believe that the proposed conversion of the building into residential use would be unacceptable in principle. Further to this, I believe that the ground floor windows in the host property, located on the boundary with the private amenity space of No.3 Hubbards Cottages would impact unacceptably upon the residential amenities of both neighbouring occupiers and future occupiers of the host property. In addition, although requested, a phase 1 ecological survey has not been forthcoming which means that in my view the Council can not be certain as to whether there are protected species on the site or not. Finally, the application does not provide for sufficient levels of parking for future occupiers of the dwellings which would give rise to parking that is inconvenient to other road users. For these reasons I recommend that the application is refused.

## **11.0 RECOMMENDATION – REFUSE for the following reasons:**

- 1) The development site lies outside of any built up area settlement, as defined by the Swale Borough Local Plan 2008, where policies of rural restraint state that development will not be permitted unless a reasonable and sustained effort to secure an alternative re-use of the site for employment or community purposes has been demonstrated; that the building would be undesirable or unsuitable for a non residential use or where residential use is the preferred way to retain the historic building. Furthermore, given the currently advanced stage of the Emerging Local Plan, Bearing Fruits 2031, the limited benefits of the development

would not outweigh the harm caused and would result in unsustainable and unjustified residential development in the countryside in a manner harmful to its character, appearance and wider amenity value. The proposal is therefore contrary to policies E1, E6, RC6 and H2 of the Swale Borough Local Plan 2008; policies ST1, ST3 and DM14 of the Emerging Local Plan (Bearing Fruits 2031 – Proposed Main Modifications June 2016) and to the wider aim of achieving sustainable development as set out in the National Planning Policy Framework.

- 2) The existing ground floor windows on the west elevation, located on the boundary with the private amenity space of No.3 Hubbards Cottages would give rise to an unacceptable loss of privacy and would provide opportunities for mutual overlooking of both this neighbouring property and the host property which would be significantly harmful to the residential amenities of existing and future occupiers. This would be contrary to policies E1 and E24 of the Swale Borough Local Plan 2008.
- 3) The application site which includes a redundant building has been submitted without the benefit of a Phase 1 Ecological Survey. Therefore the Council is unable to be certain that the proposal would not have a detrimental impact upon protected species and as such the application is contrary to Paragraph 99 of Government Circular (ODPM 06/2005) Biodiversity and Geological Conservation - Statutory Obligations & Their Impact Within the Planning System.
- 4) The proposal for two dwellings includes two parking spaces within garages and four visitor spaces. The garage spaces are not considered to be parking spaces and as such with the other spaces reserved for visitors the application would not provide sufficient car parking spaces for future occupiers of the development. This would likely lead to car parking that was to the inconvenience of other road users and would be contrary to policies of E1 and T3 of the Swale Borough Local Plan 2008.

### **Habitats Regulations Assessment**

This HRA has been undertaken without information provided by the applicant. The application site is located approximately 1.3km south east of the Medway Estuary and Marshes Special Protection Area and Ramsar site which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2010 as amended (the Habitat Regulations).

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. The proposal therefore has potential to affect said site's features of interest.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 61 and 62 of the Habitat Regulations require a Habitat Regulations Assessment. NE also advises that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation, the proposal is unlikely to have significant effects on these sites and can therefore be screened out from any requirement for further assessment. It goes on to state that when recording the HRA the Council should refer to the following information to justify its conclusions

regarding the likelihood of significant effects; financial contributions should be made to 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); the strategic mitigation will need to be in place before the dwellings are occupied.

In terms of screening for the likelihood of significant effects from the proposal on the SPA features of interest, the following considerations apply:

- Due to the scale of development there is no scope to provide on site mitigation such as an on site dog walking area or signage to prevent the primary causes of bird disturbance which are recreational disturbance including walking, dog walking (particularly off the lead), and predation birds by cats.
- Based on the correspondence with Natural England, I conclude that off site mitigation is required. However, the Council has taken the stance that financial contributions will not be sought on developments of this scale because of the practicalities of securing payment. In particular, the legal agreement may cost more to prepare than the contribution itself. This is an illogical approach to adopt; would overburden small scale developers; and would be a poor use of Council resources. This would normally mean that the development should not be allowed to proceed, however, NE have acknowledged that the North Kent Councils have yet to put in place the full measures necessary to achieve mitigation across the area and that questions relating to the cumulated impacts on schemes of 10 or less will need to be addressed in on-going discussions. This will lead to these matters being addressed at a later date to be agreed between NE and the Councils concerned.
- Developer contributions towards strategic mitigation of impacts on the features of interest of the SPA- I understand there are informal thresholds being set by other North Kent Councils of 10 dwellings or more above which developer contributions would be sought. Swale Council is of the opinion that Natural England's suggested approach of seeking developer contributions on minor developments will not be taken forward and that a threshold of 10 or more will be adopted in due course. In the interim, I need to consider the best way forward that complies with legislation, the views of Natural England, and is acceptable to officers as a common route forward. Swale Borough Council intends to adopt a formal policy of seeking developer contributions for larger schemes in the fullness of time and that the tariff amount will take account of and compensate for the cumulative impacts of the smaller residential schemes such as this application, on the features of interest of the SPA in order to secure the long term strategic mitigation required. Swale Council is of the opinion that when the tariff is formulated it will encapsulate the time period when this application was determined in order that the individual and cumulative impacts of this scheme will be mitigated for.

Whilst the individual implications of this proposal on the features of interest of the SPA will be extremely minimal in my opinion as this is for two dwellings, cumulative impacts of multiple smaller residential approvals will be dealt with appropriately by the method outlined above.

For these reasons, I conclude that the proposal can be screened out of the need to progress to an Appropriate Assessment. I acknowledge that the mitigation will not be in place prior to occupation of the dwelling proposed but in the longer term the mitigation will be secured at an appropriate level, and in perpetuity.

**The Council's approach to this application:**

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

- Offering pre-application advice.
- Where possible, suggesting solutions to secure a successful outcome.
- As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

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

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.