

# Agenda

## Planning Committee Meeting

Date: Thursday, 13 April 2023

Time 7.00 pm

Venue: Council Chamber, Swale House, East Street, Sittingbourne, ME10 3HT\*

Membership:

Councillors Monique Bonney, Richard Darby, Steve Davey, Mike Dendor, Oliver Eakin, Tim Gibson, James Hall, Mike Henderson, James Hunt, Elliott Jayes, Peter Marchington, Ben J Martin, Ken Rowles, David Simmons, Paul Stephen, Tim Valentine and Tony Winckless

Quorum = 6

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Pages

### Information about this meeting

\*Members of the press and public can listen to this meeting live. Details of how to join the meeting will be added to the website by 12 April 2023.

### Recording and Privacy Notice

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## 1. Emergency Evacuation Procedure

Visitors and members of the public who are unfamiliar with the building and procedures are advised that:

- (a) The fire alarm is a continuous loud ringing. In the event that a fire drill is planned during the meeting, the Chair will advise of this.
- (b) Exit routes from the chamber are located on each side of the room, one directly to a fire escape, the other to the stairs opposite the lifts.
- (c) In the event of the alarm sounding, leave the building via the nearest safe exit and gather at the assembly point on the far side of the car park. Do not leave the assembly point or re-enter the building until advised to do so. Do not use the lifts.
- (d) Anyone unable to use the stairs should make themselves known during this agenda item.

## 2. Apologies for Absence

## 3. Minutes

To approve the [Minutes](#) of the Meeting held on 9 March 2023 (Minute Nos. 785 – 789) as a correct record.

## 4. Declarations of Interest

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves, their families or friends.

The Chair will ask Members if they have any disclosable pecuniary interests (DPIs) or disclosable non-pecuniary interests (DNPIs) to declare in respect of items on the agenda. Members with a DPI in an item must leave the room for that item and may not participate in the debate or vote.

Aside from disclosable interests, where a fair-minded and informed observer would think there was a real possibility that a Member might be biased or predetermined on an item, the Member should declare this and leave the room while that item is considered.

Members who are in any doubt about interests, bias or predetermination should contact the monitoring officer for advice prior to the meeting.

## **Part B reports for the Planning Committee to decide**

5. Planning Working Group Minutes

To approve the Minutes of the Meeting held on 4 April 2023 (Minute Nos. To-follow) as a correct record.

To Consider the application 21/505041/OUT Land North of Lower Road, Eastchurch.

Update – please note that only the minutes for this item will be considered at this meeting. The planning application will be considered at a later meeting.

6. Deferred Items

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To consider the following application:

20/505046/FULL High Hopes Poot Lane Upchurch ME9 7HL.

Members of the public are advised to confirm with Planning Services prior to the meeting that this application will be considered at this meeting.

Requests to speak on this item must be registered with Democratic Services ([democraticservices@swale.gov.uk](mailto:democraticservices@swale.gov.uk) or call us on 01795 417328) by noon on Wednesday 12 April 2023.

7. Report of the Head of Planning Services

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To consider the attached report (Parts 2, 3 and 5).

The Council operates a scheme of public speaking at meetings of the Planning Committee. All applications on which the public has registered to speak will be taken first. Requests to speak at the meeting must be registered with Democratic Services ([democraticservices@swale.gov.uk](mailto:democraticservices@swale.gov.uk) or call 01795 417328) by noon on Wednesday 12 April 2023.

### Issued on Tuesday, 4 April 2023

The reports included in Part I of this agenda can be made available in alternative formats. For further information about this service, or to arrange for special facilities to be provided at the meeting, please contact **DEMOCRATIC SERVICES on 01795 417330**. To find out more about the work of the Planning Committee, please visit [www.swale.gov.uk](http://www.swale.gov.uk)

Chief Executive, Swale Borough Council,  
Swale House, East Street, Sittingbourne, Kent, ME10 3HT

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## SWALE BOROUGH COUNCIL

### PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

**13 APRIL 2023**

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**PART 4** Swale Borough Council's own development; observation on County Council's development; observations on development in other districts or by Statutory Undertakers and by Government Departments; and recommendations to the County Council on 'County Matter' applications.

**PART 5** Decisions by County Council and the Secretary of State on appeal, reported for information

**PART 6** Reports containing "Exempt Information" during the consideration of which it is anticipated that the press and public will be excluded

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ABBREVIATIONS: commonly used in this Agenda

CDA Crime and Disorder Act 1998

GPDO The Town and Country Planning (General Permitted Development) (England) Order 2015

HRA Human Rights Act 1998

SBLP Swale Borough Local Plan 2017

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**PLANNING COMMITTEE – 13 APRIL 2023****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 - 20/505046/FULL</b>		
<b>APPLICATION PROPOSAL</b> Erection of 2no. holiday homes		
<b>ADDRESS</b> High Hopes Poot Lane Upchurch Sittingbourne Kent ME9 7HL		
<b>RECOMMENDATION</b> That planning permission is refused		
<b>SUMMARY OF REASONS FOR REFUSAL</b> Additional information has been provided; however officers are not satisfied that it addresses original concerns as presented to the Planning Committee on 10 <sup>th</sup> November 2023. The additional information fails to provide any detailed evidence that there is clear and viable demand for this type of holiday accommodation in this location, or whether other sites (such as within built confines, on previously developed land or through conversion of an existing building) have been considered. In addition, the site is located within Flood Zone 3 and a sequential test has not been provided. Furthermore, a SAMMS mitigation payment to manage impacts on SPA and Ramsar Sites has not been made.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Deferred item from Planning Committee dated 10 <sup>th</sup> November 2022		
<b>WARD</b> Hartlip, Newington And Upchurch	<b>PARISH/TOWN COUNCIL</b> Upchurch	<b>APPLICANT</b> Mr Curtis <b>AGENT</b> Woodstock Associates
<b>DECISION DUE DATE</b> 24/12/20	<b>PUBLICITY EXPIRY DATE</b> 13/03/23	

**1. INTRODUCTION**

1.1 This application was initially reported to Planning Committee on 10<sup>th</sup> November 2022, with a recommendation for refusal. The Planning Committee resolved to defer the application to allow the applicant the opportunity to provide further supporting evidence to fully enable the Council to consider the proposal in the context of Policy DM3 of the Local Plan.

1.2 The committee minutes set out the following resolution:

*Resolved: That application 220/505046 be deferred to allow the applicant to provide details of the business case and evidence of the identified need for the development proposal and further information as to why development of this site is necessary over other sites and locations.*

1.3 In addition, the site is located in Flood Zone 3 and following an appeal decision last year for a site in Sheerness (appeal reference 3277228), it is clear that all new development within Flood Zones 2 and 3 must be accompanied by a Sequential Test to demonstrate whether other sequentially preferable sites can be identified that are at less risk from flooding. This has not been provided. This represents a material consideration that should be applied to this application and further details are set out below.

1.4 The original Committee report is attached to this report as Appendix A.

2. **ADDITIONAL INFORMATION** - The applicant has provided a Holiday Lettings Business Plan and a Design and Access Statement.

### 3. **CONSULTATIONS**

3.1 SBC Destination and Place Manager – Advises that Swale has a good number of Airbnb properties that enjoy good levels of occupancy, suggesting there is demand for short term lets for business and leisure purposes. Does not disagree with anything set out in the applicant's supporting evidence.

### 4. **APPRAISAL**

#### Policy DM3 – The Rural Economy

4.1 Policy DM3 sets out the Council's approach to proposals relating to the rural economy. It states that for all proposals, consideration should firstly be given to the appropriate re-use of existing buildings or the development of other previously developed land, unless such sites are not available or it is demonstrated that a particular location is necessary to support the needs of rural communities or the active and sustainable management of the countryside.

4.2 A Business Plan and Design and Access Statement has been submitted which sets out the applicant's case for holiday let accommodation. The business plan refers to an existing swimming pool facility, located within the applicant's residential property and adjacent to the lettings which currently runs scuba diving training courses. The supporting business plan identifies a need for this type of facility, including interest from Medway Marlins Scuba-Diving Club to use the existing pool and proposed accommodation following the closure of their training pool. The long-term business plan sets out the applicant's intention to offer discount packages for guests using both the scuba-diving facilities and holiday lets. Notwithstanding, it is noted that the holiday lets are not exclusively intended for visitors using the adjoining scuba diving facilities and will therefore be unrestricted and open to all visitors seeking to visit the area.

4.3 In this instance, it is acknowledged that the scuba diving business is directly reliant on the use of the existing swimming pool and while the holiday let accommodation may be attractive to persons interested in scuba diving to some degree, it would not be unreasonable to consider that visitors would be willing to travel a short distance to access specialised facilities such as this. Moreover, it is clear that the use of the holiday lets is open to all visitors and not exclusively intended for occupants using the scuba facilities. The additional information fails to provide details and as such test the availability of other more suitable sites in the area for holiday accommodation including the re-use of buildings, previously developed land, or

sites in a more sustainable location. This is not in accordance with the approach under Policy DM3.

- 4.4 Officers are also concerned that there are no records of planning permission being granted for the scuba diving business or indeed a swimming pool at the adjoining property (although it is possible that a swimming pool could be permitted development if incidental to the residential use of a dwelling). If, as stated within the supporting information, the applicants are running a business from their property, officers do not know the full extent of the commercial activity that occurs there, and whether a material change of use to a business use has occurred. There is the potential that such use and associated activity could have further impacts not previously considered in the original committee report attached in Appendix 1.
- 4.5 Policy DM3. 1.C, requires all proposals to retain or enhance the rural services available to local communities and visitors without undermining or resulting in the loss of existing services unless demonstrated to be unviable for the existing use or other employment/community use. In this regard, limited details have been provided which set out how the proposal would retain the existing rural service provision in the area. Officers are also concerned that the Business Plan is somewhat flawed. This is because the trajectories provided are all based upon two-bedroom holiday lets and the business plan suggests a need for this type of small family/group accommodation within this location given that the majority of holiday lets in the area cater for couples. However, the site is located within Flood Zone 3 and a ground floor bedroom was removed from the design to meet with the criteria of the Environment Agency. The holiday lets provide one-bedroom units and therefore are not of the same size as the existing provision identified in the business plan.

Policy DM21, Water, flooding and drainage

- 4.6 The site is located within Flood Zone 3 and on land at the highest risk of flooding. The application includes a Flood Risk Assessment although this only considers the measures to potentially make the development resilient to flood risk – i.e. raising habitable floor levels and locating bedrooms at first floor level. It does not include a sequential assessment as required under the NPPF and Policy DM21 of the Local Plan 2017. It is noted that the Environment Agency do not object to the development, however, the sequential test is a matter for the local planning authority to assess as decision maker, rather than the Environment Agency.
- 4.7 Members will note that the November committee report did not include a reason for refusal on flooding grounds. Since this application was reported to Planning Committee on 10<sup>th</sup> November 2022, officers have adopted a stricter approach to development proposals in areas at risk of flooding following an appeal decision last year in Sheerness, which confirmed that a Sequential Test was necessary for all proposals notwithstanding whether or not the Environment Agency object to the development. This clarified that the correct policy approach is to steer new development to areas of the lowest probability of flooding and that development will not be permitted if there are reasonably available sites in areas of lower risk of flooding.
- 4.8 On the basis of the clear commentary in the above appeal decision, I consider that this represents a material consideration that should be applied to this application. There are other locations in and around Upchurch and further afield that do not fall within Flood Zones 2 and

3 that would be sequentially preferable. This also ties in with my concern above that the application has not considered other locations that could be more appropriate under Policy DM3, including use of previously developed land or the re-use of buildings. I understand that this site has most likely been chosen simply on the basis that the applicant owns the land, but that does not deal with the requirement to consider other locations as required under Policy DM3 and flood policy. In this instance, officers do not consider it to be in the applicant's interest to submit a Sequential Test at a further expense to them given that it would appear a difficult task to demonstrate that there were no sequentially preferable sites in the surrounding area. The development would result in an increase in risk of flooding to people and property. As such, the development fails to comply with the NPPF and Policy DM21 of the Bearing Fruits 2031 - Local Plan and this has been added as an additional reason for refusal.

#### Other Matters

- 4.9 The proposed development would create potential for recreational disturbance to the Swale Special Protection Area. To date, a mitigation payment has not been received by the Council and for this reason, refusal reason 2, is still pertinent.

### **5. CONCLUSION**

- 5.1 The additional information falls to address the original concerns presented to the Planning Committee on 10<sup>th</sup> November 2023. Moreover, the business plan is flawed and fails to provide any detailed evidence that there is clear and viable demand for one bedroom holiday accommodation in this location, or whether other less harmful sites (such as on previously developed land or through conversion of an existing building) have been considered. The Council remains concerned that the development would result in new residential development in an unsustainable location within the countryside. There is a connected risk that were the holiday let enterprise not to succeed the Council would most likely be put under pressure to remove the any holiday let occupancy conditions and to permit the units as permanent dwellings. The wording for refusal reason 1 has been amended from that in the November committee report but identifies the above harm.
- 5.2 On this basis and in light of the additional information submitted, the proposal remains contrary to policies ST3, DM3, DM14, DM24 and DM31 of the Bearing Fruits 2031 – Local Plan and for this reason should be refused. In addition and for the reasons stated above, the development is also considered to be contrary to Policy DM21 of the Local Plan.

### **6. RECOMMENDATION**

- 6.1 Recommendation for refusal for the following reasons:

#### **REASONS FOR REFUSAL**

- 1) The proposal would amount to the erection of two new buildings of residential form and character within the open countryside and in a rural location divorced from services and amenities. The proposal would represent an unnecessary, undesirable, and unsustainable form of development, harmful to the character, appearance and intrinsic beauty of the countryside and landscape, and which would also result in the loss of Best and Most Versatile agricultural land. The application fails to demonstrate a clear or overriding need for the development in this location that would outweigh this harm.

Furthermore, in the absence of any clear unmet need, there would be a significant risk of future pressure to convert the units to permanent residential dwellinghouses in an area where such development would not normally be permitted, The proposal would fail to comply with policies ST1, ST3, DM3, DM14, DM24 and DM31 of Bearing Fruits 2031: The Swale Borough Local Plan 2017; and paragraphs 84 and 174 of the National Planning Policy Framework. The identified harm that would result from this proposal is not outweighed by the limited contribution made to the rural economy when assessed against the policies of the Local Plan and NPPF.

- 2) The proposed development will create potential for recreational disturbance to the Swale Special Protection Area. The application submission does not include an appropriate financial contribution to the Thames, Medway and Swale Strategic Access Management and Monitoring Strategy (SAMMS), or the means of securing such a contribution, and therefore fails to provide adequate mitigation against that potential harm. The development would therefore affect the integrity of this designated European site, and would be contrary to the aims of policies ST1, DM14, and DM28 of Bearing Fruits 2031 - The Swale Borough Local Plan 2017; and paragraph 181 of the National Planning Policy Framework.
- 3) The site is located within Flood Zone 3 which is classified as being at high risk of flooding. The application fails to demonstrate through a sequential test that there are no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. This is contrary to Chapter 14 of the National Planning Policy Framework and policy DM21 of Bearing Fruits 2031 - The Swale Borough Local Plan.

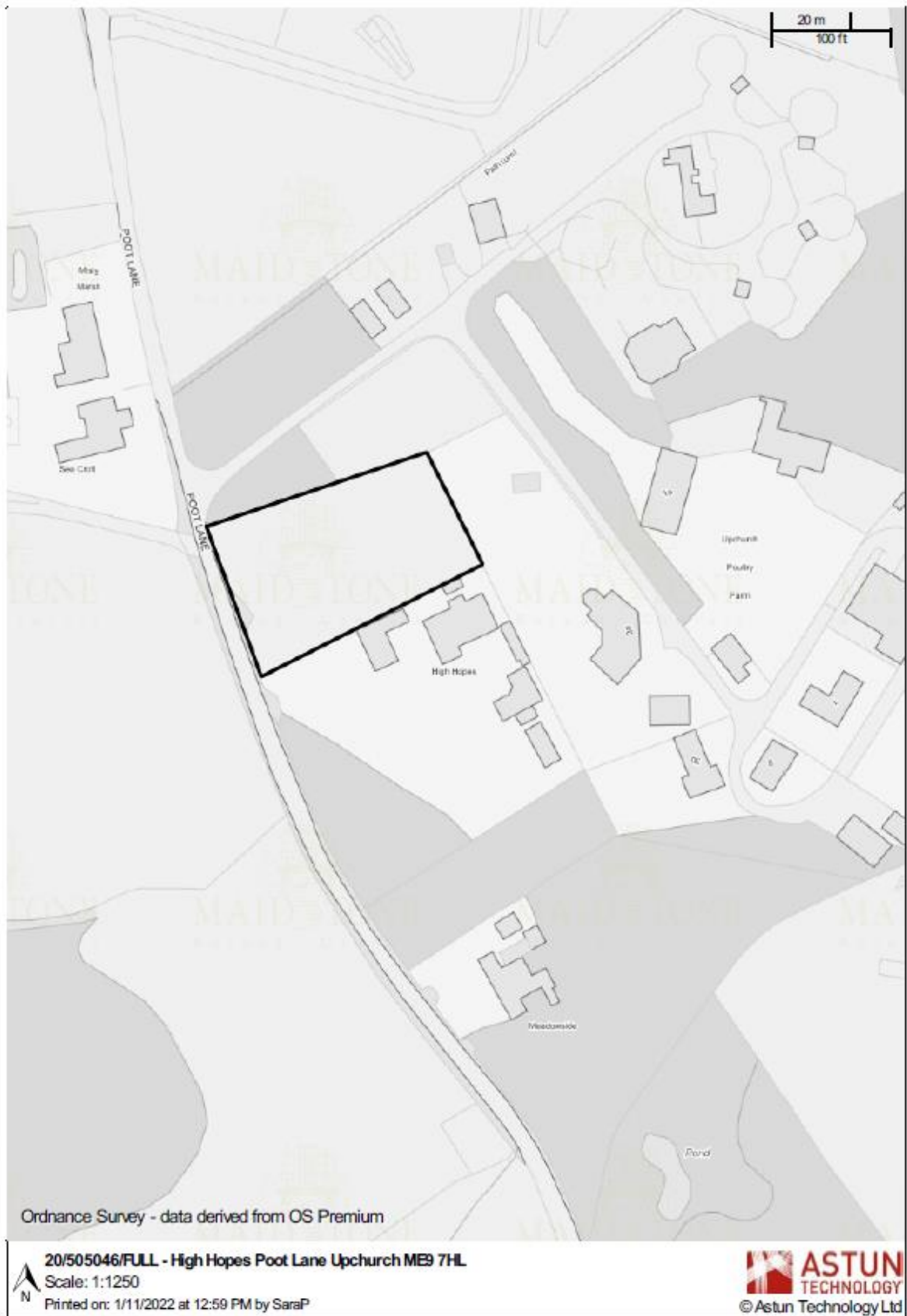
### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

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.



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Report to Planning Committee – 10 November 2022

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**PLANNING COMMITTEE – 10 NOVEMBER 2022****PART 3**

Report of the Head of Planning

**PART 3**Applications for which **REFUSAL** is recommended

<b>3.1 REFERENCE NO - 20/505046/FULL</b>			
<b>APPLICATION PROPOSAL</b> Erection of 2no. holiday homes			
<b>ADDRESS</b> High Hopes Poot Lane Upchurch Sittingbourne Kent ME9 7HL			
<b>RECOMMENDATION</b> Refusal			
<b>SUMMARY OF REASONS FOR RECOMMENDATION FOR REFUSAL</b> This site is located in the countryside, is not previously developed land and the proposal does not represent the re-use of an existing rural building or farm diversification. Although proposed for holiday accommodation, the design and layout of the units would appear as and be capable of occupation as dwellings and no business case has been provided to demonstrate that there is a clear unmet need and market for such holiday accommodation, with a resultant risk of future pressure to convert to dwelling houses. Overall, the proposal to erect new buildings to create new holiday let accommodation in this countryside location represents an unnecessary, undesirable and unsustainable form of development. The unsustainable location of the site and harm to the countryside that would result from this proposal is not outweighed by the limited contribution made to the rural economy when assessed against the policies of the Local Plan and NPPF.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Support from Upchurch Parish Council			
<b>WARD</b> Hartlip, Newington And Upchurch	<b>PARISH/TOWN COUNCIL</b> Upchurch	<b>APPLICANT</b> Mr Curtis <b>AGENT</b> Woodstock Associates	
<b>DECISION DUE DATE</b> 24/12/20	<b>PUBLICITY EXPIRY DATE</b> 04/08/22	<b>CASE OFFICER</b> Rebecca Corrigan	
<b>RELEVANT PLANNING HISTORY</b>			
<b>PLANNING REF.</b>	<b>DESCRIPTION</b>	<b>DECISION</b>	<b>DECISION DATE</b>
SW/10/1429	Single storey pitched roof car port and store	Approved	03.11.2020
SW/08/0686	Extensions and Improvements to provide lounge/bedroom/conservatory to ground floor with additional bedroom in roof void	Refused	20.06.2008
SW/94/0019	Single storey extension to provide bedroom and dining	Approved	12.01.1994

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	room		
SW/88/1441	Erection of three loose boxes and garage	Approved	16.12.1988

**1. DESCRIPTION OF SITE**

- 1.1 The application site relates to a parcel of land to the east of Poot Lane, situated adjacent to the residential curtilage of the host property identified as 'High Hopes'.
- 1.2 The site is a regular shaped plot and measures 40m across - north to south, and 62m east to west, with a total site area of 0.24ha. The site is essentially flat and open. It has been cleared during the course of this application having previously been grass/scrub with a small detached outbuilding. A row of dense hedging comprised of shrubs and small trees lines both the northern side boundary and eastern rear boundary. To the southeast is High Hopes, a large residential property with a detached garage and associated hardstanding to the front.
- 1.3 Within the immediate area there is a cluster of residential, commercial and farm buildings largely grouped to the east of the site. Further afield, the area is predominantly undeveloped open countryside.
- 1.4 The site and the property known as 'High Hopes' - are both located in relatively close proximity to a Scheduled Monument which is spread out in two large, separate areas (intercepted by the site of Upchurch Poultry Farm) and which together are listed as the site of a "World War II Heavy Anti-aircraft gunsite (TS3) at Wetham Green, 460m north of Red Brick Cottage." (List entry 1020387).
- 1.5 The site is located approx. 0.61km north, as the crow flies, from Upchurch and falls outside of the built confines of the village and therefore in the countryside. Upchurch itself is a Tier 5 settlement under the Local Plan settlement strategy (ST3) where development is generally restricted to small scale proposals within the village boundaries.
- 1.6 The front part of the site falls within a coastal change management area and most of the site falls within flood zone 3. There is a public right of way (footpath, ZR3) situated further north of the site. The land on the west side of Poot Lane falls within an Area of High landscape Value. Poot Lane itself is a designated rural lane.

**2. PROPOSAL**

- 2.1 Planning permission is sought for the erection of 2no. detached, one bedroom holiday homes with associated access, parking and landscaping.
- 2.2 The application has been revised since being originally submitted. The original submission proposed a semi-detached development of 1 x 2 bedroom and 1 x 3 bedroom units. The building was located in the centre of the regular shaped plot and designed with a half hipped roof profile and abundant fenestration including rooflights to the front and rear elevations with a dormer window at the rear.



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- 2.3 Under the revised proposal, the applicant has reduced the size and altered the design of the proposed holiday lets. A Design and Access Statement was provided and at the request of SBC Design and Conservation, a Heritage Statement was submitted. At the request of the Environment Agency, Lower Medway Internal Drainage Board and Natural England a revised Flood Risk Assessment including Drainage Strategy was provided.
- 2.4 The revised proposal comprises of two detached, 1 x bedroom, buildings of contemporary design. The units would have varying eaves heights of 1.9m and 2.5m with a high pitched roof reaching to a height of 6.25m at the ridge. Internally, the ground floor would have an open plan kitchen/living area. A mezzanine level would accommodate one bedroom and on-suite with each unit having a total floor area of 94m<sup>2</sup>. The units would have large glazed frontages and would be finished in timber cladding with a brick base.
- 2.5 A new site access would be created with a large area of hardstanding. Two parking spaces are proposed for each unit. A landscaping plan shows a belt of landscaping to the front and side boundaries to include Hawthorn, Hazel, Dogwood, Holly, Field Maple and Guelder Rose.

**3. PLANNING CONSTRAINTS**

- 3.1 Environment Agency Flood Zone 3 and partially within a coastal change management area
- 3.2 Located within close proximity to a scheduled monument - "World War II Heavy Anti-aircraft gunsite (TS3) at Wetham Green, 460m north of Red Brick Cottage." (List entry 1020387).
- 3.3 Potential Archaeological Importance
- 3.4 Poot Lane is a designated rural lane
- 3.5 Grade I Agricultural Land

**4. POLICY AND CONSIDERATIONS****4.1 National Planning Policy Framework (NPPF)**

The National Planning Policy Framework (NPPF) (published in 2012 and revised in 2021) and National Planning Practice Guidance (NPPG) encourage the provision of new dwellings within the defined built up areas, or outside of those areas in certain exceptional circumstances such as for the provision of agricultural worker's accommodation, or the provision of affordable dwellings to meet an identified local need.

At paragraph 80 the NPPF says:

*"Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:*

- a) *there is an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work in the countryside;*
- b)
- c) *the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets;*

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- d) *the development would re-use redundant or disused buildings and enhance its immediate setting;*
- e) *the design is of exceptional quality, in that it:*
- *is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas;*
  - *would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.*

4.2 Paragraphs 84 and 85 of the NPPF seek to support sustainable growth of business in rural areas, including sustainable rural tourism developments which respect the character of the countryside. The NPPF recognises that sites for such development may have to be found beyond existing settlements, and that sites on previously developed land and physically well related to existing settlements should be encouraged. The NPPF makes clear that in such locations it will be important to ensure that development is sensitive to its surroundings.

4.3 Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies

Policy ST1 Delivering sustainable development  
 Policy ST3 The Swale Settlement Strategy  
 Policy ST5 The Sittingbourne Area Strategy  
 Policy CP1 Building a strong, competitive economy  
 Policy CP3 Delivering a wide choice of high quality homes  
 Policy CP4 Requiring good design  
 Policy CP8 Conserving and enhancing the historic environment  
 Policy DM3 The rural economy  
 Policy DM7 Vehicle Parking  
 Policy DM14 General development criteria  
 Policy DM19 Sustainable design and construction  
 Policy DM21 Water, flooding and drainage  
 Policy DM23 Coastal Change Management Areas  
 Policy DM24 Conserving and enhancing valued landscapes  
 Policy DM26 Rural Lanes  
 Policy DM29 Woodlands, trees and hedges  
 Policy DM28 Biodiversity and geological conservation  
 Policy DM31 Agricultural Land  
 Policy DM34 Scheduled Monuments and archaeological sites

4.4 Supplementary Planning Document (SPD): “Parking Standards” (May 2020) was adopted by the Council in June 2020 and is a material consideration in the determination of planning applications.

4.5 The Swale Landscape and Biodiversity Appraisal SPD was adopted in 2011 and is a material consideration in the determination of planning applications.

## 5. LOCAL REPRESENTATIONS

5.1 None received.

## 6. CONSULTATIONS

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- 6.1 Upchurch Parish Council - *The proposal supports the local economy and local services. Upchurch Parish Council supports the application.*
- 6.2 Health and Safety Executive – No objection
- 6.3 Environmental Health – No objection, subject to conditions
- 6.4 Lower Medway Internal Drainage Board - 1<sup>st</sup> response – A Drainage Strategy or plan is required. We would recommend that the proposed strategy is supported by ground investigation to determine the infiltration potential of the site and the depth to groundwater.
- 2<sup>nd</sup> Response (summarised) – *The proposal may need land drainage consent (specifically byelaw 3). If the proposal involves alteration of a water course consent would be required under the Drainage Act 1991 (Byelaw 4)*
- 6.5 Natural England – (latest response) – No objection subject to securing the appropriate financial contribution (SAMMS) to mitigate impacts on the Medway Estuary and Marshes SPA and Ramsar site.
- 6.6 Historic England - *On the basis of the information available to date, we do not wish to offer any comments.*
- 6.7 KCC Highways – Do not comment on the application.
- 6.8 SBC Destination and Place Manager -*The proposal meets the aspirations of the visitor economy framework which in part is about having a diverse range of accommodation available for guests and the location is well placed to take advantage of those who want to be relatively close to urban for access and egress for wider geographical exploration but also responds well to those seeking a rural location for more local leisure pursuits. To compete with existing accommodation - particularly that held by Airbnb - the accommodation will need to be of high specification and offer an exceptional rural experience to have a competitive edge. It has the potential to form part of a wider offer in conjunction with nearby and neighbouring visitor attractions and venues supporting either those seeking a staycation and/or wedding and conference market. It will require a significant amount of marketing to establish within the local and wider Kent offer.*
- 6.9 SBC Design and Conservation – 1<sup>st</sup> response (summarised) - *On its own merits, I would not tend to support the holiday homes since they – as a semi-detached pair – are designed in such a way as to be neither a utilitarian agricultural building or conversion nor domestic looking holiday cottages. I would tend to encourage the construction of clearly domestic looking cottage type homes with domestic vernacular materials, treatments and detailing rather than faux- agricultural buildings that blur the boundaries between two typologies. I would not therefore support this application in principal as it stands, since I am at this time, unable to provide a properly considered decision until the necessary missing heritage information is submitted.*

**(Following receipt of revised drawings)** 2<sup>nd</sup> Response (summarised) – *From a Design and conservation perspective, the proposed scheme is acceptable as presented and is*

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*considered to not have an impact on the historic environment but may be subject of planning policy considerations.*

- 6.10 KCC Biodiversity – Following the submission of additional information, no objection is raised, subject to conditions
- 6.11 Environment Agency – No objection, subject to conditions
- 6.12 KCC Archaeology – No objection subject to conditions

**7. APPRAISAL**Principle of Development

- 7.1 Paragraph 84 c) of the National Planning Policy Framework supports sustainable rural tourism and leisure developments which respect the character of the countryside. Paragraph 85 of the National Planning Policy Framework also states that planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. The NPPF states that in these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable. The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist. Notwithstanding, the National Planning Policy Framework (NPPF) is clear that planning applications must be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 7.2 In this case, the application site is located outside of the built-up area boundary of Upchurch village, in a rural location, in the designated countryside and therefore subject to countryside restraint policies in the adopted Local Plan.
- 7.3 The main relevant policy is ST3 of the Local Plan (see above), which states that *'At locations in the open countryside, outside the built-up area boundaries shown on the Proposals Map, development will not be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquility and beauty of the countryside, its buildings and the vitality of rural communities'*.
- 7.4 In this instance, there is potential support for development (with conditions) that facilitates a prosperous rural economy in the NPPF, as set out above. In addition, Policy DM3 of the Local Plan specifically relates to the rural economy and states at criteria 1.b, for all proposals, *firstly consider the appropriate re-use of existing buildings or the development of other previously developed land, unless such sites are not available or it is demonstrated that a particular location is necessary to support the needs of rural communities or the active and sustainable management in the countryside.*
- 7.5 Policy DM3 No.2.b continues, for tourism and leisure, that planning permission should *'provide for an expansion of tourist and visitor facilities in appropriate locations where*

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*identified needs are not being met by existing facilities in the locality or where able to increase facilities available to local communities as well as visitors.'*

- 7.6 The application lacks any supporting statement or business plan, other than a short letter from an Estate Agents based in Strood which states that there is a demand for holiday lets in rural and village locations such as Upchurch. The application provides no information or business case to demonstrate that there is a clear unmet demand for holiday accommodation of this scale and type in this location, or that the development proposed would be viable as holiday accommodation.
- 7.7 The NPPF and Policy DM3 support the location of business development within existing rural settlements first, and if not available that the conversion of buildings or use of previously developed land should be preferred. In this instance, the proposal does not relate to development within a settlement, on previously developed land, or involve the conversion of existing buildings. The impact of the development on the character and appearance of the countryside is considered further in the sections below.
- 7.8 In terms of demonstrating a need for development, I would direct members to a recent appeal decision at Rides House in Eastchurch (W/21/3274235). Whilst this appeal decision relates to the creation of a new caravan park rather than new units, the principle of new tourism development on previously undeveloped land in the countryside has similarities to this application. The Inspector placed great weight to the lack of supporting information under the requirements of policy DM3 in the following paragraphs

*To be supported by national planning policy paragraph 4.3.17 of the LP explains applications should be accompanied by evidence to show how it will support the viability of existing services and/or how it will bring new services to the community. The Council's Cultural and Leisure adviser suggests the development would have some benefits to nearby facilities. Paragraph 7.1.23 of the LP acknowledges holiday parks provide direct employment, and their users support shops, pubs, restaurants, and visitor attractions. This development would meet some of the broad policy objectives of CP1, DM3, ST3 and ST6 of the LP and paragraph 84a) of the Framework. However, little substantive evidence has been provided by the appellant of its practical effects in this regard. Given the scale and nature of the development, it is likely the support would be limited. (para 7)*

*Policy DM3 of the LP supports the sustainable growth and expansion of rural businesses. This is provided amongst other things, the design and layout is sympathetic to the rural location, it is in appropriate locations where identified needs are not being met by existing facilities, or, where able to increase facilities available to local communities and visitors, and, proposals are a [sic] in accordance with Policy DM4. (para 8)*

*It is not clear that other previously developed sites have been considered as sought by DM3 1)b). Even if it had, the evidence provided does not identify needs not met by existing facilities in the locality, as expected by DM3 2)b). The text at paragraph 7.1.25 of the LP suggests to the contrary on Sheppey. While there may be some limited support to existing services, it is not demonstrated this development would increase facilities available to local communities as well as visitors sought by DM3 2)b). (para 10)*

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7.9 In balancing the material planning considerations the Inspector concluded the following:

*For the reasons set out above, given the benefits visitors would bring in supporting services, facilities and tourism assets, the proposal gains support from some objectives and criteria in Policies ST3, CP1 and DM3 of the LP and the Framework. However, it conflicts with the strategy for and would not be in a suitable location having regard to policies for such development, in conflict with Policy DM3 and DM4 as a whole, the relevant provisions of which I have set out above. The broad support from the other aspects of policies, does not overcome the conflict identified. (para 12)*

*In a similar manner to Policy ST3, paragraph 84c) of the Framework states that planning decisions should enable sustainable rural tourism and leisure developments which respect the character of the countryside. Therefore, my findings in respect of meeting that aspect of ST3 and paragraph 84c) will be dependent upon my findings in respect of character and appearance. (para 13)*

7.10 In a similar thread as the Rides Farm application set out above, I consider that the application fails to demonstrate that there is an identified need in the area for holiday accommodation that is not being met by existing facilities in the locality. I am also concerned that in the absence of a business case to demonstrate the viability of the proposed development, there is a risk that the use as holiday lets may not succeed, with resultant pressure to allow occupation of the units as permanent dwellings. Nor does the application provide any supporting information as to why this site has been selected in preference to other sites – including sites within village confines, on previously developed land, or through conversion of existing buildings. I consider this to be in conflict with Policy DM3 of the Local Plan.

7.11 In this regard, applications for new build holiday lets in the countryside, as in this case, raise similar issues to those of a proposal for a new dwelling albeit with some economic benefits; hence the preference for the conversion of existing buildings. Such new build development, especially if repeated, would lead to the creation of an unlimited number of new dwellings in remote unsustainable locations to serve a market that could be met from existing rural assets which is, in itself, a more sustainable approach. Policy DM3 makes clear that the expansion of tourism facilities should be on the basis that identified needs are not being met by existing facilities, again which has not been demonstrated.

7.12 The applicant has drawn attention to a scheme which was approved for new holiday development at Willow Farm, Ospringe (Ref 19/502483/FULL approved 27.10.2021) for the ‘Erection of 4no. specialist equestrian holiday lets and 2no. stable buildings, installation of new sand school and associated site works.’ However, under that application the proposed holiday lets were connected to long-established and large scale equestrian use of the site and need for the on-site facilities, to allow owners to stay over with their horses. As this was very much linked to an existing equestrian operation, I consider that to be materially different to the scheme now under consideration.

7.13 Moreover, the Council has further examples of refusals for the construction of new build holiday lets in the countryside. Perry Oaks, Selling (Ref: 20/505248/FULL) and Dickens Inn, Eastchurch (Ref: 21/504668/FULL). Both applications were refused on the basis that they

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provided no supporting information to demonstrate need and were refused on the basis that they represented unjustified and unacceptable development within the countryside contrary to policies ST3 and DM3 of the adopted Swale Borough Local Plan 2017; and the National Planning Policy Framework.

Impact upon character and appearance of countryside

- 7.14 Poot Lane is a largely single track rural lane, often enclosed by hedging but also providing open views towards the estuary in places. Although located by a small loose-knit cluster of farm, business and residential buildings, the application site and surrounding area is predominantly rural in character and appearance. The site is located some distance from the nearest settlement which has a limited range of services and facilities, and on a rural lane with no footpath or lighting. Occupants of the holiday lets would be likely to rely on the private car for access to services and facilities.
- 7.15 Due to the absence of development on the existing plot, the proposed development would urbanise and fundamentally alter the character and appearance of the site. Landscaping would soften this to a degree but the appearance of the site would change markedly.
- 7.16 The proposal is for holiday accommodation that would offer all facilities for day to day living and be constructed to a standard that could be suitable for permanent residential use. The units would appear as dwellings. The application site, while grouped within a small cluster of development, visually functions as part of the wider countryside which is sensitive to new development. The proposed development and associated access and parking and domestic paraphernalia would have an urbanising impact upon the land and would significantly change its undeveloped character, resulting in significant harm to the intrinsic character, appearance and beauty of the surrounding countryside contrary to policies ST3 and DM14 of the adopted local plan.
- 7.17 The site is designated as being within the Upchurch and Lower Halstow Fruit Belt under the Swale Landscape Character and Biodiversity Appraisal SPD. Although this is an undesignated landscape, the appraisal recognises the sensitivity of the distinctive coastal edge landscape and the need to conserve the undeveloped and distinctive character of Horsham Marsh, which is located on the west side of Poot Lane. Landscape condition and sensitivity are both rated as moderate, although it is acknowledged that coastal edge areas are more sensitive. Whilst there is built form in the surrounding area, in my opinion, the development and further consolidation of built form in this location would not be compatible with the sensitive marshland and coastal edge landscape. This would be in conflict with Policy DM24 of the Local Plan.

Heritage Impact

- 7.18 Obligations fall upon the council in determining any application which affects a listed building or its setting or within a conservation area, including its setting. The Town & Country Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) at section 66 places a duty on the Local Planning Authority to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.

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- 7.19 Furthermore, at section 72 it is required that Local Planning Authorities pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. When considering potential impacts, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be) at para 199 of the NPPF; and any harm/loss of a designated heritage asset requires clear and convincing justification (at para 200). The NPPF gives presumption in favour of the conservation of heritage assets and applications that directly or indirectly impact such assets require appropriate and proportionate justification.
- 7.20 The subject site is in relatively proximity to a Scheduled Monument which is spread out in two large, separate areas (intercepted by the site of Upchurch Poultry Farm) and which together are listed as the site of a "World War II Heavy Anti-aircraft gun site (TS3) at Wetham Green, 460m north of Red Brick Cottage."
- 7.21 Neither the SBC Design and Conservation Manager or the KCC Archaeological Officer raise objection to the proposal (as amended), based on the separation distance to the Scheduled Monument and intervening landscaping. Therefore, it is considered that the proposed development will have a neutral impact on the significance of ancient scheduled monument.

Residential Amenity

- 7.22 I have no concerns relating to overlooking or loss of privacy arising from the location of the windows or door openings. The bedroom windows shown within the first-floor rear elevation would afford views of the rear garden area of 3A Upchurch Poultry Farm however, due to the distances between properties and the presence of the existing row of trees and hedges this would, overall, obstruct views to a degree that overlooking would not be harmful, in my opinion.
- 7.23 In terms of noise and disturbance, holiday uses are not inherently noisy or disturbing over or beyond what would occur from the usual comings and goings of a residential property. The two immediately neighbouring properties, enjoy spacious curtilages with the houses set well away from the boundary with the application site. With these factors in mind, the proposed development is unlikely to cause any significant harm to the living conditions of local residents and would not conflict with Policy DM14 of the Local Plan.

Highways

- 7.24 The application proposes a new site access from Poot Lane which is a designated rural lane. The submitted application provides for an access point leading direct from Poot Lane with a minimum width of 5m. This distance is sufficient to allow for two cars to pass. A distance of 6m would also be retained immediately forward of the proposed entrance gates (details of which would be subject to condition should the application be approved) and this would provide sufficient space for cars to pull safely off of the highway to ensure that no highway obstruction would occur on Poot Lane. Overall, I am satisfied that the new access would not lead to highway safety concerns consistent with the aims of policy DM7 of the local plan.
- 7.25 In line with the adopted SBC Parking Standards SPD, one bedroom properties in this rural location should provide one/ two parking spaces and two spaces are provided. I am



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satisfied that the proposal complies with the requirements of the SBC parking standards SPD and the development would provide suitable parking provision.

- 7.26 The proposal would lead to increased use of a designated rural lane. However, taking into account the existing use of the lane for access to dwellings, farms, businesses, and recreational activities, I do not consider the traffic generated by two additional units would be likely to cause harm to the character of the lane. As such I do not consider there would be a conflict with Policy DM26 of the Local Plan.

Flood Risk

- 7.27 The site is located within flood zone 3. The Environment Agency and Lower Medway Drainage Board both raised concerns specifically in relation to ground water drainage. Groundwater is particularly sensitive in this location because the proposed development site is located upon a secondary aquifer with a very shallow water table.
- 7.28 Further information was provided namely a revised Flood Risk Assessment which also included a Foul Drainage Strategy which sets out that the foul drainage plans have been amended to include sealed cesspools, and subsequently this raised no further objection from the Environment Agency, subject to conditions. In addition, the Lower Medway Drainage Board is also satisfied with the additional information as provided subject to land drainage consent, specifically byelaw 3 and 4. However, Byelaws are separate from planning and in this instance I am satisfied that the proposal is in accordance with policy DM21 of the Local Plan.

Ecology and Biodiversity

- 7.29 The NPPF requires new development to minimise impacts on biodiversity and provide net gains in biodiversity, where possible. Policy DM28 also requires that development proposals will conserve, enhance and extend biodiversity, provide for net gains in biodiversity, where possible, minimise any adverse impacts and compensate where impacts cannot be mitigated. The application includes an ecology report and following the submission of further information, KCC Ecology are satisfied that the development would not adversely affect protected species and raise no objection to the development, subject to conditions including a scheme of ecological enhancements. I find the proposal acceptable under Policy DM28 of the Local Plan.

Swale SPA

- 7.30 The site lies within 6km of the Swale SPA and subject to the approval of any new residential unit a contribution would be required to mitigate against the potential impacts of the development upon that protected area in accordance with the Council's standing agreement with Natural England. This is otherwise referred to as a SAMMS payment. Had I been minded to approve the application I would have requested this mitigation payment however as the application already fails I have not, and this constitutes an additional reason for refusal. For the sake of thoroughness, I have set out an appropriate assessment at the end of this report

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Archaeology

- 7.31 The site lies adjacent to an area of archaeological potential and was previously identified as being archaeologically sensitive due to some findings of prehistoric and roman remains to the north of the site. Therefore, a planning condition will be required in the event of any future consent relating to the implementation of a programme of archaeological work.

Agricultural Land

- 7.32 The site is classed as Grade 1 agricultural land. Policy DM31 of the Local Plan states that development on such land will only be permitted where there is an overriding need that cannot be met on land in built up areas. Whilst the area of land is small, no evidence has been provided of alternatives sites that would not involve the loss of BMV land. On this basis, the application would conflict with Policy DM31 of the Local plan.

**8. CONCLUSION**

- 8.1 The site is located some distance from local services and public transport and occupants would be likely to rely on the private car for most journeys. The development would result in the erection of two holiday lets that would appear as dwellings in a rural location and this would be harmful to the character and appearance of the area and the intrinsic beauty of the countryside and landscape. The proposal would also result in the loss of best and most versatile agricultural land, albeit on a small scale. Whilst the provision of sustainable tourism facilities is generally supported under Policy DM3 of the Local Plan, the application fails to provide any detailed evidence that there is clear and viable demand for this type of holiday accommodation in this location, or whether other less harmful sites (such as on previously developed land or through conversion of an existing building) have been considered.
- 8.2 The proposal would bring some benefits to the local economy, primarily through increased tourism facilities and local spending. However, this would be limited due to the number and size of the units proposed. In addition, I would raise concern that were the holiday let enterprise not to succeed, the Council would most likely be put under pressure to remove the any holiday let occupancy conditions and to permit the units as permanent dwellings. This risk of this is greater in the absence of any information to support the business case for the development. On this basis I consider that the adverse impacts of the proposal would outweigh any benefits, and that the application would be contrary to policies ST3, DM3, DM14, DM24 and DM31 of the Local Plan.

**9. RECOMMENDATION**

That planning permission is REFUSED for the following reasons:

- 1) The proposal would represent an unnecessary, undesirable, and unsustainable form of development, harmful to the character, appearance and intrinsic beauty of the countryside and landscape, and which would also result in the loss of Best and Most Versatile agricultural land. Although proposed for holiday accommodation, the design and layout of the units would appear as and be capable of occupation as dwellings and no business case has been provided to demonstrate that there is a clear unmet need and viable market for such holiday accommodation, with a resultant risk of future

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pressure to convert to dwellinghouses. The proposal would fail to comply with policies ST1, ST3, DM3 DM14, DM24 and DM31 of Bearing Fruits 2031: The Swale Borough Local Plan 2017; and paragraphs 8, 84 and 174 of the National Planning Policy Framework. The identified harm that would result from this proposal is not outweighed by the limited contribution made to the rural economy when assessed against the policies of the Local Plan and NPPF.

- 2) The proposed development will create potential for recreational disturbance to the Swale Special Protection Area. The application submission does not include an appropriate financial contribution to the Thames, Medway and Swale Strategic Access Management and Monitoring Strategy (SAMMS), or the means of securing such a contribution, and therefore fails to provide adequate mitigation against that potential harm. The development would therefore affect the integrity of this designated European site, and would be contrary to the aims of policies ST1, DM14, and DM28 of Bearing Fruits 2031 - The Swale Borough Local Plan 2017; and paragraph 181 of the National Planning Policy Framework.

**APPROPRIATE ASSESSMENT**

This Appropriate Assessment (AA) has been undertaken without information provided by the applicant.

The application site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 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, and an Appropriate Assessment is required to establish the likely impacts of the development.

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 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advise that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation and site remediation satisfactory to the EA, the proposal is unlikely to have significant effects on these sites.

The recent (April 2018) judgement (*People Over Wind v Coillte Teoranta*, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, *"it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site."* The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group.

However, the proposed development is of a very small scale and, in itself and in combination with other development, would not have an adverse effect on the integrity of the SPA, subject to the conditions set out within the report.

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Notwithstanding the above, NE has stipulated that, when considering any residential development within 6km of the SPA, the Council should secure financial contributions 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), and that such strategic mitigation must be in place before the dwelling is occupied.

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 of birds by cats.

Based on the correspondence with Natural England (via the NKEPG), I conclude that off site mitigation is required.

In this regard, whilst there are likely to be impacts upon the SPA arising from this development, the mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff (which has been secured prior to the determination of this application) will ensure that these impacts will not be significant or long-term. I therefore consider that, subject to mitigation, there will be no adverse effect on the integrity of the SPA.

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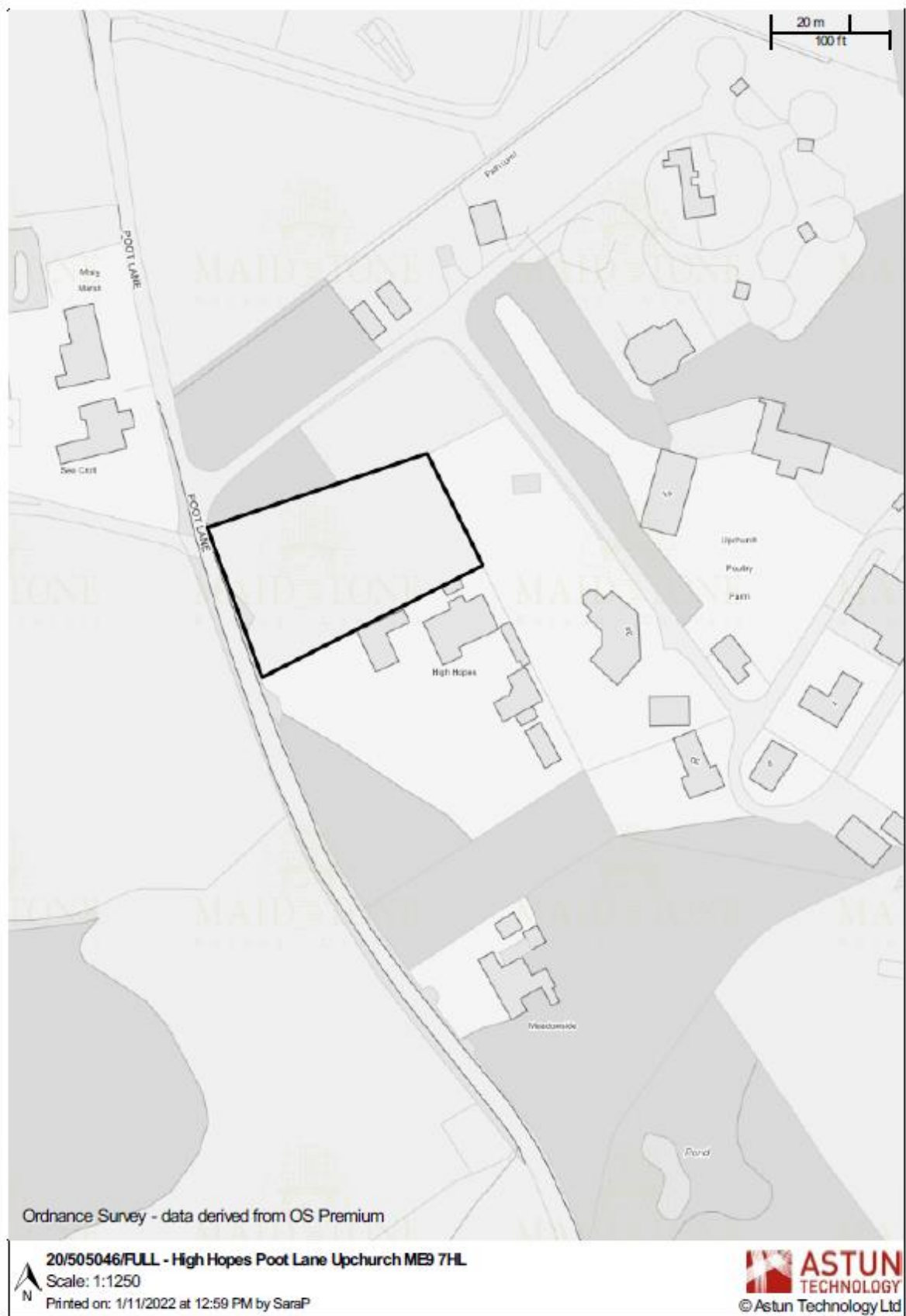
**The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

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.



**PLANNING COMMITTEE – 13 APRIL 2023****PART 2**

Report of the Head of Planning

**PART 2**Applications for which **PERMISSION** is recommended

<b>2.1 REFERENCE NO - 22/502692/FULL</b>		
<b>APPLICATION PROPOSAL</b> Section 73 - Application for minor material amendment to approved plans condition 2 (to allow an increase in size and relocation of the building within the site) pursuant to 19/500224/FULL for - Erection of a single storey storage building.		
<b>ADDRESS</b> Land North of Perry Leigh Grove Road Selling Kent ME13 9RN		
<b>RECOMMENDATION</b> Approve, subject to conditions		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council Objection		
<b>WARD</b> Boughton and Courtenay	<b>PARISH/TOWN COUNCIL</b> Selling	<b>APPLICANT</b> Mr Brian Macey <b>AGENT</b> VLH Associates
<b>DECISION DUE DATE</b> 17/10/22	<b>PUBLICITY EXPIRY DATE</b> 02.01.2023	<b>CASE OFFICER:</b> Alice Reeves

**Planning History**

19/500224/FULL  
Erection of a single storey storage building.  
Approved Decision Date: 30.04.2019

19/503507/LDCEX  
Lawful Development Certificate (Existing) for a mixed-use comprising of storage and equestrian, including use of existing building for stabling and storage, and outside storage of containers.  
Refused Decision Date: 07.05.2021

17/504527/FULL  
Retrospective planning application for the use of land for storing 15 storage containers.  
Refused Decision Date: 16.11.2017

16/502524/LDCEX  
Lawful Development Certificate (Existing) for use of land for storage of pallets.  
Approved Decision Date: 09.03.2017

**Appeal History:**

18/500093/REF  
Retrospective planning application for the use of land for storing 15 storage containers.  
Dismiss or Dismiss -Notice Upheld/Varied Decision Date: 12.12.2018

21/500122/ENF

Appeal against Enforcement Notice: Without planning permission the material change of use of the Land from the keeping and grazing of horses to a mixed use of the Land for the keeping and grazing of horses and the stationing of storage containers.

Appeal In Progress

## 1. DESCRIPTION OF SITE

- 1.1 The site is a large field within the Kent Downs Area of Outstanding Natural Beauty (AONB), which has been divided into smaller enclosures for the keeping and grazing of horses. On the eastern side of the field there is a long line of steel containers, 15 in total, with the line broken by an established small timber stable building, which appears to be in need of repair.
- 1.2 There are wooden pallets stacked on the site close to the site entrance. A Lawful Development Certificate for the use of a small part of the land for storage of these pallets was granted under reference 16/502524/LDCEX.
- 1.3 In 2017, a retrospective planning application for the use of land for storing the 15 storage containers was refused by the Council (17/504527/FULL) and dismissed at appeal (APP/V2255/W/18/3200455). The refusal decision was accompanied by the following informatives;  
  
*Informative(s):*  
  
*(1) The applicant is encouraged to explore the possibility of replacing the containers with a small, well-designed agricultural building, and to seek pre-application advice regarding same from the Local Planning Authority.*  
  
*(2) The Council's decision means that the containers continue to represent unauthorised development and the applicant is urged to remove the containers from the site without delay. The Council will not hesitate to take formal enforcement action if the containers are still in place after the end of December 2017.*
- 1.4 The applicant at that time argued that the containers were to provide secure storage for materials associated exclusively for the maintenance of the stable and livery facilities and the surrounding land; such materials previously being stored outside until becoming vulnerable to theft. The containers were said to contain tractors, tools, diesel, racking, stable related materials and crates used for repair. The Inspector found the containers incongruous within the AONB, and he saw no reason why the contents could not be housed in a building of more sympathetic design.
- 1.5 An application for a storage building (19/500224/FULL) which would house a number of storage containers in the north east corner of the site was submitted to the Council shortly after the appeal and was approved with strict conditions that no storage containers which are not housed inside the building should remain on site once the building was completed. Whilst excavations for the concrete pad have taken place and as a result the planning permission has been commenced, no other works have been undertaken to erect the storage building.



- 1.6 An enforcement notice has been served for the removal of the containers and an appeal has been lodged with the Planning Inspectorate. The Inspectorate has determined that the appeal should be dealt with by means of a Public Inquiry but no communication from the Inspectorate has been received with regards to a proposed date.

## **2. PROPOSAL**

- 2.1 This application seeks planning permission to vary condition 2 (approved drawings) pursuant to approved application 19/500224/FULL. These changes include the following:

- Increase the approved building by 4m in length; 1m in depth and 1.1m in height;
- Increase of doors from 4 to 10 to allow easier siting and access of the storage containers within the building;
- Proposed building to be sited 0.6m away from the previously approved location;
- Removal of approved earth banking around proposed building.

- 2.2 The initial drawings also sought a change in wall covering from timber weatherboarding to metal sheet cladding and metal up and over doors, however, Officers requested this was amended back to timber weatherboarding and timber up and over doors and revised drawings were received on this basis. The roofing material would remain as approved which is metal sheeting.

- 2.3 The storage containers are proposed to be sited within the building to add to the security of the site.

## **3. PLANNING CONSTRAINTS**

Area of Outstanding Natural Beauty KENT DOWNS

Potential Archaeological Importance

## **4. POLICY AND CONSIDERATIONS**

**Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017**

**ST3** (Swale Settlement Strategy)

**CP4** (Design)

**DM3** (The rural economy)

**DM14** (General development criteria)

**DM24** (Valued landscapes)

## **5. LOCAL REPRESENTATIONS**

- 5.1 The Parish Council objected to the initial submission for the following summarised reasons:

- Almost no work has taken place and as such should be a new application should be submitted;

- The previous permissions should be revoked as the applicant has not shown any special circumstances, the building does not serve a public interest and should not be built on agricultural land;
- No justification for allowing an increase in size of the building;
- Strongly oppose removal of landscaping as great emphasis was made in 2019 permission on the importance of visual amenity due to location on the edge of the AONB;
- All previous conditions should continue to apply;
- Proposal for storage of fuel is alarming;
- Applicant has shown scant regard to planning rules and hasn't responded positively to assistance given by Swale Borough Council to help mitigate the impact of the storage containers;
- Whatever permissions are given for this application it is asked that officers ensure the work is completed within the timescales given and that all conditions are adhered to.

5.2 The Parish Council comments on the amended plans were the same as submitted above.

5.3 Three letters of objection were received from neighbours before the amendments were received and can be summarised as follows:

- The original barn design and location was inconspicuous with traditional materials and colours – timber doors and cladding were to be screened with banks of earth which would provide screening from the footpath;
- The containers on site remain an eyesore;
- Do not consider this a minor amendment;
- The development has not been implemented;
- The design resembles an industrial unit out of keeping with the AONB;
- The applicant does not have a strategic plan but is wasteful of the time and resources of Swale Borough Council and local residents;
- The applicant has a history of multiple applications for various schemes to keep industrial shipping containers on site;
- The visual impact outlined by this application is completely different to the previously approved and would look like a modern commercial storage unit;
- Ten shipping containers are in excess of even generous agricultural requirements;
- The materials should be amended to reflect a traditional Kent agricultural barn;
- If approved in due course the building will be sold as commercial storage units;
- The building should not be allowed to store fuel;
- This would not be an improvement to the view of the shipping containers.

5.4 Two letters of objection were received after re-consultation on amended plans raising the same matters as above and additional matters which can be summarised as follows:

- The amendment is a marginal improvement visually but there will still be an unscreened view of a commercial storage facility;
- Fuel should not be stored in the building as the site has a history of fires;
- Further commercial traffic is undesired and would be detrimental to the safe and desired use of Grove Road which will see the completion of a number of houses nearby which is already increasing vehicle numbers.

## 6. CONSULTATIONS

- 6.1 **Natural England:** No comment
- 6.2 **SBC Environmental Protection Team:** No objection to increase the size and relocation of the building within the site.
- 6.3 **SBC Design and Conservation Manager:** No objection however, the building should be constructed in same materials as previously approved.

## 7. BACKGROUND PAPERS AND PLANS

- 7.1 All plans and documents relating to both 22/502692/FULL and 19/500224/FULL.

## 8. APPRAISAL

### Principle of Development

- 8.1 The site has a substantial planning history in relation to the siting of storage containers on the land. Two applications for these containers have been refused - a planning application that was refused and later dismissed at appeal and an application for a Lawful Development Certificate that was refused and is the subject of a current appeal (currently awaiting a date for a Public Inquiry). The Inspector that handled the dismissed appeal noted that the applicant should work with the Council to consider a well-designed storage building on the land rather than the unsightly storage containers. As a result, application 19/500224/FULL was subsequently submitted and approved for a storage building in the northeast corner of the site adjacent to an existing building.
- 8.2 This application seeks a variation to condition 2 of 19/500224/FULL. The relevant section of the Act (Section 73) that this application has been submitted under is very clear in that *“On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted”*. As a result, the only consideration as part of this application is whether the variations, as set out in the proposal section above are acceptable and therefore the principal of siting a storage building on the site has been accepted and is not able to be further considered.

### Character and Appearance

- 8.3 The site is located within the Kent Downs AONB and as such, proposals need to be sympathetic to the surroundings. The initial submission under this current application sought both an amendment to the size and position of the building but also to the approved materials, seeking permission for metal sheet wall covering and metal up and over doors. Given the sensitive location and the discussion in the previous report regarding materials, I requested that the agent amended the materials to timber weatherboarding and timber up and over doors. It is acknowledged that there are more doors proposed on this building to better access the storage containers sited within, however, a condition will be included to ensure these are painted black along with the featheredge weatherboarding to the walls, so they do not stand out. Whilst it is proposed to increase the footprint and height of the

building, this is by a limited amount and not to any degree that I would now consider to give rise to unacceptable additional harm in comparison to the previously approved scheme. Given the location in the north-east corner of the site, I do not believe this will lead to serious visual amenity concerns subject to compliance with the conditions below and would comply with policies CP4, DM3, DM14 and DM24 of the Local Plan.

- 8.4 I acknowledge the Parish Council and local residents comments with regards to landscaping and note that the proposed earth bund that was proposed to surround the previously approved building has been removed from these plans. I appreciate and share the concerns with regards to a lack of landscaping in this sensitive area within the AONB and as such will include a condition requesting details of proposed landscaping to be submitted to and agreed by the Council to ensure that sufficient screening of the building is undertaken in accordance with policies DM14 and DM24 of the Local Plan. In overall terms I am of the view that soft landscaping, as an alternative to an earth bund will give rise to visual and biodiversity benefits.

#### Living conditions

- 8.5 Given the separation distances to the nearest residential properties I am not of the opinion that there would be any loss of privacy, overshadowing or loss of light to neighbouring residents. I note the comments in relation to the storage of fuel however, this is not a planning matter and it is not unusual for agricultural storage buildings to store fuel for tractors and associated machinery.

#### Other Matters

- 8.6 Comments have been received that the building will be used as a commercial storage building however, the planning system does not allow us to make decisions on what uses could or couldn't take place in the future. Conditions are included below to ensure the use of the building is for the storage of equipment and machinery for the purposes of agriculture and the keeping of horses and any breach of this condition can be dealt with by enforcement powers available to the council should the matter arise.
- 8.7 I note the comments of local residents and the Parish Council regarding the lack of work on the site however, the digging of foundations for a concrete pad would amount to commencement of the development previously approved and as such, it is not necessary to submit a fresh planning application for the proposed changes.
- 8.8 I also note that comments have been received that the amendments are not minor. Although there is no definition of 'minor material amendments', it is clear to me in this case that the proposal is not so substantially different that it couldn't be considered under a S.73 application. The current application is subject to the same publicity requirements as a new planning application and therefore I do not believe that any interested party has been prejudiced.
- 8.9 With regards to conditions, as the previous permission has been implemented there is no requirement to include the standard time limit for implementation. All other previous conditions have been included as well as additional conditions regarding landscaping for the reasons outlined previously in the report.

## 9. CONCLUSION

- 9.1 Overall, the proposed building whilst of a slightly larger footprint and overall height, would provide a building in which to store 10 of the existing storage containers which are currently an incongruous addition to the site within the AONB. A condition requiring the removal of the remaining storage containers will ensure that all containers on the site would be held within a black stained timber featheredge boarded building which would be an improvement to the landscape and something the Council has been trying to work towards for a number of years. Now the materials have been amended to those suitable for buildings within the AONB I am of the view that planning permission should be granted.

## 10. RECOMMENDATION

GRANT Subject to the following conditions:

### CONDITIONS to include

- (1) The development hereby approved shall not be carried out otherwise than in complete accordance with drawings PL0052.18.02.C and PL0052.18.03.B.  
Reason: In the interests of visual amenity.
- (2) The building hereby permitted shall be used only for the storage of machinery, equipment, materials and items related to the use of the application site for agriculture and/or for the keeping of horses.  
Reason: In the interests of residential and visual amenity.
- (3) Any containers positioned within the building hereby permitted shall be so positioned that no part of it is visible from outside the building.  
Reason: In the interests of visual amenity.
- (4) Any container within the application site that is not re-positioned within the building hereby permitted shall be removed from the site within one calendar month of the substantial completion of the building.  
Reason: In the interests of visual amenity.
- (5) All external boarding in the development hereby permitted shall be black stained featheredged timber weatherboarding.  
Reason: In the interests of visual amenity.
- (6) The timber up and over doors to be used on the development hereby permitted shall be stained black.  
Reason: In the interests of visual amenity.
- (7) No development beyond the construction of foundations shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees,

shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

- (8) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the first use of the building or in accordance with the programme agreed in writing with the Local Planning Authority.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

- (9) Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

## **INFORMATIVES**

- (1) The applicant is hereby notified that the Council sees this approval as a solution to the unauthorised stationing of containers on the site, and that it expects the applicant to respond positively by an early commencement and completion of construction and a swift removal of all containers from the site, other than those used within the building itself.

### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

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.





<b>2.2 REFERENCE NO - 22/505535/FULL</b>			
<b>APPLICATION PROPOSAL</b> Replacement of garden shed with a single storey garden room, including link to dwelling.			
<b>ADDRESS</b> Owens Court Cottage, Owens Court Lane Selling Kent ME13 9QN			
<b>RECOMMENDATION</b> Grant planning permission subject to conditions			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council Objection			
<b>WARD</b> Boughton And Courtenay	<b>PARISH/TOWN</b> Selling	<b>COUNCIL</b>	<b>APPLICANT</b> Mr and Mrs M Homan <b>AGENT</b> Ian Barber & Associates LTD
<b>DECISION DUE DATE</b> 21/04/2023		<b>PUBLICITY EXPIRY DATE</b> 30/03/23	

**Planning History**

SW/96/0270 - Single storey conservatory at rear of property – (Not constructed).  
Approved: 14.05.1996

SW/87/1012 - Adaptation of the existing accommodation and the erection of a living room – (Not constructed).  
Approved: 24.09.1987

SW/78/0401 - Erection of a double garage – (Constructed)  
Approved: 20.06.1978

SW/77/0970 – Side extension and detached garage – (Only side extension constructed)  
Approved 31.10.1977

**1.0 DESCRIPTION OF SITE**

- 1.01 Owens Court Cottage is a detached dwelling located on a small rural lane with open countryside to the front. It is situated within the Kent Downs Area of Outstanding Natural Beauty (AONB) and positioned outside any Local Plan built up area boundary and is therefore in the countryside.
- 1.02 It is situated adjacent to a Grade II listed property known as Well House to the south east, which is set back from Owens Court Cottage and positioned at an angle where the front elevation of the listed property overlooks the rear amenity area of the application site. Well House has a large front garden which runs alongside the rear boundary of Owens Court Cottage and is separated by a brick wall of slightly differing heights.
- 1.03 Within the rear amenity area of Owens Court Cottage and positioned adjacent to the boundary wall is a brick built outbuilding.

**2.0 PROPOSAL**

- 2.01 This proposal is seeking planning permission to replace the existing outbuilding with a single storey extension which would be attached to the dwelling with a frameless glazed link.
- 2.02 The proposed extension would be positioned parallel to the rear boundary wall leaving a gap of approximately 1.05m at its widest point to the south east elevation and approximately 0.76m to the north west elevation. It will have a width measurement of approximately 5.16m and the side wall runs parallel with the boundary, resulting in the south east elevation being set further away from the boundary wall on the south east side than is currently the case with the brick outbuilding (although the front part of the garden building would be marginally closer to the boundary than the outbuilding). Due to the angled nature of the rear boundary the extension will be smaller in depth on the south east side measuring approximately 4.24m in total including the glazed link and on the north west side approximately 5.48m. The frameless glazed link will be set slightly back from each side elevation with a width of approximately 0.98m.
- 2.04 The proposed roof would be mono pitched in design, with the highest point being positioned adjacent to the rear wall of the Owens Court Cottage and the lowest point close to the common boundary. At its highest point it would measure approximately 3.77m and approximately 2.64m at its lowest. A green roof consisting of a sedum/moss type M-tray system is proposed. There will be an overhang on each side of approximately 40cm.
- 2.05 In terms of fenestration, two powder coated aluminium sliding glazed doors are proposed on the south east elevation and three sliding glazed doors are proposed on the north west elevation.
- 2.06 The walls will be faced with charred timber boarding to match those present on the existing dwelling.

### **3.0 PLANNING CONSTRAINTS**

- 3.01 Area of Outstanding Natural Beauty KENT DOWNS
- 3.02 Adjacent to Grade II Listed Well House.

### **4.0 POLICY AND OTHER CONSIDERATIONS**

- 4.01 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies:

**ST3** (The Swale Settlement Strategy)

**CP4** (Requiring good design)

**DM11** (Extensions to, and replacement of, dwellings in the rural area)

**DM14** (General development criteria)

**DM16** (Alterations and extensions)

**DM24** (Conserving and enhancing valued landscapes)

**DM32** (Development involving listed buildings)

- 4.02 The Council's Supplementary Planning Guidance (SPG): "Designing an Extension A Guide for Householders"

### **5.0 LOCAL REPRESENTATIONS**

- 5.01 The immediate neighbour at Well House has objected to this application for the following summarised reasons;

- Measurements of the proposal have not been provided;
- The proposal appears to be twice the height of the boundary wall and visually intrusive from the neighbouring garden;
- The proposed roof could be more attractive, the roof of the existing outbuilding is more in keeping with the property;
- The external materials should be dark coloured to reduce visual impact and cladding should be laid horizontally, although welcome the charred finish of the cladding;
- The setting of the adjacent listed building and the AONB has not been properly considered;
- Have been denied the opportunity to properly express concerns regarding the proposal.

5.02 One other comment has been received from a neighbouring resident which states “*I support this application and have no objections.*”

5.03 Following submission of the application, correspondence was received from the Ward Member for Boughton and Courtenay, Cllr Valentine, requesting the application to be determined by the Planning Committee if the recommendation was to approve. Cllr Simmons also requested an update on the application and a date for when it would be reported to Planning Committee. Both Councillors were advised of the later amendments to the scheme and Cllr Valentine confirmed that if the Parish Council no longer objected to the proposal he would be happy to withdraw the request for the application to be determined by the Planning Committee.

## 6.0 CONSULTATIONS

6.01 Selling Parish Council when originally consulted objected to the proposal for the following summarised reasons:

- The plans shown are misleading - The photographs show the glass tunnel as having a flat roof, whereas the plans show a three-aspect roof.
- The proposal will substantially adversely affect the opportunity of the adjacent house-owner to enjoy the occupation and use of their listed building.
- The glass tunnel if illuminated would be very intrusive in the neighbours main bedroom;
- The proposal would be overbearing when using the patio area of the adjacent listed building;
- The curtilage and the setting of the adjacent listed building should be protected and any proposals should be sympathetic to its surroundings.

Upon receipt of amended drawings I re-consulted Selling Parish Council. They have maintained an objection as they believe that the revised plan will still be visually intrusive to the adjacent listed building and is out of character for the area. Concerns regarding the potential impact that light from the proposal would cause were also reiterated.

6.02 SBC Conservation Officer - When consulted on the originally submitted scheme raised no objection to the proposed glazed link although took the view that the proposed height of the garden room as well as the form of the roof would have a negative impact on the listed building and its setting.

Upon the receipt of amended drawings I reconsulted with the Conservation Officer who is of the view that their initial concerns have been addressed and that the impact upon the setting of the adjacent listed building would be neutral. Therefore no objection is raised subject to conditions related to detailed design aspects of the proposal.

- 6.03 SBC Tree Officer states that the proposed green roof system is acceptable and requests a condition relating to maintenance details.

## **7.0 BACKGROUND PAPERS AND PLANS**

- 7.01 All plans and documents to application 22/505535/FULL.

## **8.0 APPRAISAL**

- 8.01 I believe that the main considerations in the determination of this application are as follows:

- The impact upon the character of the countryside and the setting of the AONB;
- The impact upon the setting of the adjacent listed building;
- The impact upon residential amenities;

### Impact on the countryside / AONB / setting of the listed building

- 8.02 Policy DM11 of the Local Plan sets out that extensions to existing dwellings will be permitted where they are of an appropriate scale, mass, and appearance in relation to the location. Policy DM24 seeks to conserve and enhance the special qualities and distinctive character of the AONB and the aim of policy DM32 is to, amongst other matters, preserve the setting of listed buildings.
- 8.03 As detailed above the original cottage has previously been extended with a side extension and an attached garage. I also note that other larger extensions to the property have previously been granted planning permission although were not implemented. In this case, the proposed extension would be single storey and positioned to the rear of the property. Taking into consideration that the proposed extension will be replacing an existing outbuilding I consider that this will also assist in limiting any impact.
- 8.04 Furthermore, the proposed extension would not project beyond the existing side walls of the original house and would be marginally smaller in width than the existing outbuilding where it would be set back to sit in line with the existing dining room wall. It would also be significantly screened by the rear boundary wall particularly as the proposed eaves height has been reduced to a similar height as the existing outbuilding.
- 8.05 In terms of design, the proposed garden room would have a mono-pitched roof and has been amended during the course of the application to now incorporate a green roof. The lowest point of the roof would be at the boundary with Well House. I consider this design to be an improvement to the originally proposed flat roof membrane and believe the proposed roof would assist in softening the impact of the extension when viewed from the amenity area belonging to the adjacent grade II listed property, Well House. I am also of the view that this would give rise to biodiversity benefits. I note the Council's Tree Officer comments in respect of the appropriateness of the green roof system on the basis that it is relatively easy to establish and thereafter maintain. Whilst this element of the design, combined with the mono-pitched form of the roof would add more of a contemporary design edge and feel to the scheme, the existing dwelling already incorporates some more contemporary design elements, and as such I consider that the amended proposal would sit comfortably in its immediate context. The glazed link provides an appropriate transition between the form of the main dwelling and the contemporary design of the extension.

- 8.06 I note the concerns from the neighbour at Well House relating to the original design of the garden room. I agree with the Council's Conservation Officer concerning the initial roof design and the impact that this would have had on the setting of the adjacent listed property. As mentioned above the roof would now be mono pitched and sloped away from the brick boundary wall separating the two properties, resulting in a lower eaves height adjacent to the wall which would be approximately in line with the height of the existing outbuilding. The garden room will now be parallel to the rear boundary wall and also set further away on the south east side. The wall of the existing outbuilding adjacent to the boundary is currently rendered and painted pink and as such I consider the timber boarding matching the existing dwelling will be an improvement visually. The Council's Conservation Officer raises no objection to the amendments and considers them to satisfactorily address concerns about the visual impact of the proposed development on the setting of the adjacent grade II listed building, Well House.
- 8.07 Taking the above points into consideration I believe the proposed extension would sit comfortably upon the property, would not give rise to any significant harm to the rural character of the countryside, the AONB or to the setting of the adjacent Listed Building and complies with policies DM11, DM24 and DM32 of the adopted Local Plan.

#### Residential Amenity

- 8.08 Policy DM16 states that alterations and extensions to existing buildings will be required to protect residential amenity. I note the objections received from the neighbouring occupier and the Parish Council concerning the degree of light which will be emitted and the impact this would have on the occupier of Well House.
- 8.09 The proposed glazed link would be positioned further back than the proposed side wall of the extension as well as the side wall of the existing dining room which also has an existing window which faces towards the front elevation of Well House. There is a distance of approximately 23m between the front windows of Well House and the proposed side wall of the extension where the sliding doors will be positioned, and I note when visiting the site there is a high boundary wall, fence and hedge separating the two properties. Although there is a slightly unusual arrangement here where the proposed windows would face windows positioned on the front elevation of Well House, I note that the Council's SPG in respect of house extensions ordinarily requires a minimum separation distance of 21m, which this proposal would exceed. In addition to this, despite the glazing that is proposed, including the glazed link, I am of the view that the monopitch roof would prevent any direct light spill and that the amount of light which will be produced would be likely to be the equivalent to that of a normal residential dwelling using standard domestic lighting appliances. Therefore, taking all of the above into consideration I do not consider the proposal would result in significant harm in this regard.
- 8.10 The neighbouring occupier has also raised concern regarding the overbearing nature of the proposal. In respect of this, as set out above, the eaves of the extension roof would be approximately in line with the eaves of the existing outbuilding. Although it will then increase in height this will be as the roof slopes away from the amenity space of the neighbouring dwelling. It would be modest in scale and subservient to the main elevation of the dwelling immediately adjacent to it. On this basis I am of the view that the proposal will not be overbearing to any harmful degree.

#### Other Matters

- 8.11 Although most of the points raised by the objections to the proposal have been dealt with by virtue of the discussion above, of those that remain I comment as follows. Firstly, I am

of the view that the drawings provided with the application are clear and enable a proper assessment to be made. Secondly, the drawings are appropriately scaled and therefore measurements of the proposal can be accurately taken. Thirdly, the application has been advertised in accordance with the Council's statutory requirements.

## 9.0 CONCLUSION

9.01 Overall, as set out above, I believe that the proposal would not give rise to unacceptable harm to the character of the countryside, the AONB, the setting of the listed building or residential amenities. I therefore recommend planning permission is granted.

## 10.0 RECOMMENDATION – GRANT Subject to the following conditions:

CONDITIONS to include

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) The development hereby approved shall be carried out in accordance with approved drawings:

- 257/6/04 Rev A – Proposed Plans
- 257/6/05 Rev B – Proposed Elevations

Reason: For the avoidance of doubt and in the interests of proper planning.

- (3) No development beyond the construction of foundations shall take place until samples of the vertical timber cladding (in the relevant stain finish) facing bricks (for the brick plinth) and aluminium panels (for the fascia) to be used in the construction of the garden room extension have been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interests of visual amenity.

- (4) No development beyond the construction of foundations shall take place until a manufacturer/supplier colour brochure and technical data sheet showing details of the specific colour-coated aluminium sliding patio doors and of the frameless glazed link glazing panels to be used have been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interests of visual amenity.

- (5) No development beyond the construction of foundations shall take place until the following key construction details have been submitted to and subsequently approved in writing by the Local Planning Authority:

- (a) 1:5 vertical section showing the eaves detailing, including any guttering to be provided, and the junction with the inset green living roof form;

- (b) 1:5 vertical section showing the verge detailing, including the junction with the inset green living roof form;
- (c) 1:5 vertical and/or plan section showing the external reveal depth/detail to the glazing;
- (d) 1:5 vertical section showing the junction detailing between the wall and roof planes of the glazed link; and
- (e) 1:5 plan section of the junction detailing between the glazed link and the timber boarded walls to the garden room extension, and to the existing dwelling.

The development shall be carried out in accordance with the approved details.

Reason: In the interests of visual amenity.

- (6) The green living roof to be installed shall be the Wallbarn Modular Green Roof System (as detailed in the application submission). The green living roof shall be installed prior to first occupation of the extension and prior to such installation, details of future maintenance to include details of watering, weeding and replacement of failed stock shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the roof shall be maintained in accordance with the approved details.

Reason: In the interests of visual amenity.

### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2021 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

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.





<b>2.3 REFERENCE NO – 21/506465/HYBRID</b>		
<b>APPLICATION PROPOSAL</b>		
Hybrid Planning Application consisting of a: Full planning application for 84 residential dwellings, 3 no commercial units for Class E uses, access off Love Lane, and site infrastructure. Outline planning application (with all matters reserved) for 70 residential dwellings, enterprise land development (including Class E uses), a Day Nursery and a Care Home, together with open space, sports provision, and associated works.		
<b>ADDRESS</b> Land at Lady Dane Farm Love Lane Faversham		
<b>RECOMMENDATION</b> Grant subject to conditions and Section 106 agreement with delegated authority to amend the wording of the s106 agreement and of conditions as may reasonably be required.		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>		
The proposed development would provide additional housing both market and 35% affordable within the settlement boundary of Faversham, a 2 <sup>nd</sup> Tier Settlement as defined in the Bearing Fruits 2031: The Swale Borough Local Plan 2017. The proposal would also provide for Class E commercial units, a Day Nursery, a Care Home, with open space and sports provision. Due to the Council's lack of 5-year housing supply, the tilted balance in accord with the National Planning Policy Framework applies. The proposal benefits are considered, on balance, to outweigh the harms.		
<b>REASON FOR REFERRAL TO COMMITTEE</b>		
Faversham Town Council Objection		
<b>WARD</b>	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b>
Watling	Faversham Town	Fernham Homes <b>AGENT</b> DHA Planning
<b>DECISION DUE DATE</b>		<b>PUBLICITY EXPIRY DATE</b> 1

## 1. RELEVANT PLANNING HISTORY

### 23/500857/HYBRID

Hybrid Planning Application consisting of a: Full planning application for 84no. residential dwellings, 3no. commercial units for Class E uses, access off Love Lane, and site infrastructure. Outline Planning Application (with all matters reserved) for up to 70no. residential dwellings, enterprise land development (including Class E uses), a Day Nursery and a Care Home, together with open space, sports provision/further open space, and associated works. Pending Consideration.

### 21/502927/FULL

Erection of 88no. dwellings with associated access, parking, and landscaping. Pending Consideration.

### 20/504177/S74B

Section 74B - Application for Variation of Condition 27 (relating to construction working hours to allow for construction to take place between the hours of 07:30 to 19:00 Monday to Friday, 07:30 to 18:00 Saturdays and no works to take place Sunday, including Bank Holidays) Pursuant to SW/14/0045 for - Outline application including access for a mixed use development comprising business park (up to 5385sqm of commercial units, and a

2000sqm office (innovation centre), a hotel (approx.. 70 bed), pub/restaurant (up to 400sqm), health centre (up to 300sqm), 196 residential dwellings, open space including sports pitches, amenity open space and parkland, roads, allotments, and a traveller site. Approved 22.09.2020.

20/504076/FULL

Creation of a temporary haul road for a period of 3 years, to facilitate construction of development approved under SW/14/0045. Approved 24.11.2020.

20/501347/NMAMD

Non-material amendment for internal layout alterations and house types in relation to planning permission 18/501048/REM. Withdrawn 20.07.2020.

18/501048/REM

Application for approval of reserved matters relating to appearance, landscaping, layout and scale of the proposed 196 dwellings pursuant to outline planning permission SW/14/0045 (access approved in detail). Approved 22.06.2018.

SW/14/0045

Outline application including access for a mixed-use development comprising business park (up to 5,385sqm of commercial units, and a 2,000sqm office (innovation centre), a hotel (approx. 70 bed), pub/restaurant (up to 400sqm), health centre (up to 300sqm), 196 residential dwellings, open space including sports pitches, amenity open space and parkland, roads, allotments, and a traveller site. Approved 17.02.2016.

## **2. EXECUTIVE SUMMARY**

- 2.1 The applicant has appealed to the Secretary of State against the Non-Determination of this application by the Council. This Report is therefore presented to Members to seek the putative decision of the Local Planning Authority.
- 2.2 The proposal is a Hybrid application for both housing and commercial development. It would boost housing supply providing 154 dwellings in total, including a Policy compliant affordable housing contribution, towards the Council's 5 Year Housing Land Supply. These factors carry significant weight in favour of the scheme. The proposal would also provide Class E commercial units, a Day Nursery, a Care Home, with open space and sports provision
- 2.3 It is considered that the proposals would not cause substantial harm to landscape character on an Allocated site within the Local Plan.
- 2.4 The S106 Agreement for SAMMS contributions and infrastructure costs will mitigate against the impact of the proposals on key services.

- 2.5 In terms of sustainable development, there would be clear positive social impacts through the provision of housing and affordable housing, and positive economic benefits through the delivery of commercial development and jobs.
- 2.6 Overall, the scheme is fully policy compliant. As the Borough still has not achieved a 5-year housing land supply the 'tilted balance' (NPPF Para 11d footnote 8) applies and conformity with the development plan significantly weighs in favour of approval.
- 2.7 The findings of Gladman Developments Ltd v SSHCLG & Corby BC & Uttlesford DC [2021] EWCA Civ 104 applies that the test of the NPPF can be encompassed under into decision-making under s70(2) of the TCPA 1990 and s38(6) of the PCPA 2004 in one all-encompassing stage, as here the scheme is assessed as policy compliant and in accordance with the development plan and recommended for approval.
- 2.8 If Members do not take the view that the scheme is policy compliant due to either the quantum of development or the nature of the mix of housing and commercial uses, then this has two consequences. Firstly, Policy ST2 and ST3 of the adopted Local Plan are complied with in terms of development being contained within the defined settlement boundary of Faversham. Secondly, Policy MU 6 of Bearing Fruits 2031 identifies a mixed-use scheme of housing and commercial uses, with the identification of 20,000sq.m of commercial floor space. This application however provides 11,861 sq. m of commercial floor space comprising the Class E commercial units, day nursery and care home. Therefore, and translating the floor space figures in direct jobs, it is anticipated that Local Plan scenario under Policy MU 6 would generate 376 jobs, with the current application generating 345.
- 2.9 Whatever interpretation is applied, the conclusion is the same; either a presumption in favour of the scheme because it is policy compliant or a presumption on favour of the scheme because it is not but with the tilted balance then applying as part of the presumption in favour of development.
- 2.10 The size of the scheme is useful in terms of the 5 Year Housing Land Supply, as the initial 84 units as part of the Full application would likely take no more than 18 months to 2 years to complete – resulting in an almost immediate positive impact on supply. Getting the Borough back above 5 years would be a major achievement; placing it back in control over schemes not complying with the local plan. The ability of this towards regaining a 5-year housing land supply counts strongly in favour of the scheme in the planning balance.
- 2.11 The scheme is in conformity with national policy and the local plan, and therefore it is recommended that planning permission be granted subject to conditions and the completion of a Section 106 agreement.

### **3. DESCRIPTION OF SITE**

- 3.1 The application site is generally located to the east side of Faversham Town, and specifically, to the east of Love Lane. The site has a total area of 14.5ha or 36 acres. Vehicular access to the site is off Love Lane to the west of the site, via a new access to the south of Kings Drive.
- 3.2 The present land use is predominantly arable farmland.
- 3.3 The northern boundary of the site abuts new residential development in Kings Drive and encompasses the proposed public open space, play area and sports pitches. The eastern boundary of the site partly borders residential development subject to a formal application with the outline element bordering agricultural land. The southern boundary follows the existing railway line which is at a lower level screened by some trees and existing vegetation. The western boundary is formed by Love Lane with modern housing at Buttermere/Windemere and a cemetery that is within the Faversham Conservation Area (CA) to the northwest.
- 3.4 The application site itself is located outside of the CA and not located within a countryside gap, or area of designated landscape.

### **4. PROPOSAL**

- 4.1 The proposed development is a Hybrid Planning Application consisting of a: Full planning application for 84 residential dwellings, 3 no commercial units for Class E uses, access off Love Lane, and site infrastructure. Outline planning application (with all matters reserved) for 70 residential dwellings, enterprise land development (including Class E uses), a Day Nursery and a Care Home, together with open space, sports provision, and associated works.
- 4.2 The key aspects of the proposed development are as follows:
1. Access off Love Lane
  2. Retail provision to be located to the west of the site to ensure easy access for existing and new residents in the area.
  3. Retention of the PRoW (ZF28) which runs from east-west through the site.
  4. Retain the boundary vegetation to provide ecological connectivity around the site
  5. Removal of the existing windbreak vegetations due to it low ecological and arboricultural value, enabling the provision of new, higher value and native planting throughout the site and facilitating greater, and more cohesive, connectivity.
  6. Retaining a view corridor towards the spire of church of St Mary of Charity.
  7. Setting development away from the northwest corner of the site and the existing conservation area.
  8. Facing onto Love Lane, providing active frontage to the road and a positive/active relationship with the existing residential dwellings to the west of Love Lane.
  9. Facilitating an existing underground easement that runs along the eastern boundary of the site.

10. Setting residential development away from the railway line and locating less sensitive commercial development in this area of the site.

11. Provision of open space to the north to offer recreation and ecological benefits to the site whilst also offering a buffer and break between the existing development to the north and the proposed development.

12. Offer connectivity through to the land to the east as required within the site allocation.

4.3 The detailed element of this Hybrid planning application relates to Phase 1, which comprises 84no. proposed new dwellings including 35% affordable dwellings along with commercial floor space across three units.

4.4 The Outline planning application element (with all matters reserved) will deliver 70 residential dwellings, enterprise land development (including Class E uses), a Day Nursery and a Care Home, together with open space, sports provision, and associated works.

## 5. PLANNING CONSTRAINTS

Potential archaeological importance

## 6. POLICY AND CONSIDERATIONS

### 6.1 Bearing Fruits 2031: The Swale Borough Local Plan 2017 Policies:

- ST 1 Delivering sustainable development in Swale
- ST 2 Development targets for jobs and homes 2014- 2031
- ST 3 The Swale settlement strategy
- ST 7 The Faversham Area and Kent Downs strategy
- CP 1 Building a strong, competitive economy
- CP 2 Promoting sustainable transport
- CP 3 Delivering a wide choice of high-quality homes
- CP 4 Requiring good design
- CP 5 Health and wellbeing
- CP 6 Community facilities and services to meet local needs
- CP 7 Conserving and enhancing the natural environment – providing for green infrastructure
- CP 8 Conserving and enhancing the historic environment
- DM 6 Managing transport demand and impact
- DM 7 Vehicle parking
- DM 8 Affordable Housing
- DM 14 General development criteria
- DM 17 Open space sports and recreation provision
- DM 19 Sustainable design and construction
- DM 20 Renewable and low carbon energy
- DM 21 Water, flooding, and drainage
- DM 24 Landscape
- DM 26 Rural lanes
- DM 28 Biodiversity and geological conservation
- DM 29 Woodlands and Trees

- DM 31 Agricultural Land
- DM 32 Development involving listed buildings
- DM 34 Scheduled monuments and archaeological sites
- MU 6 Land at Lady Dane Farm, east of Love Lane

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

- Paragraph 8 (the three overarching objectives of sustainable development)
- Paragraph 10 (the presumption in favour of sustainable development)
- Paragraph 11 (decision taking when local policies most important for determining the application are out of date)
- Paragraph 12 (the status of the development plan in decision making)
- Paragraph 38 (the approach to decision making in a positive and creative way)
- Paragraph 55-57 (use of planning conditions and Planning Obligations)
- Paragraph 60 (supporting the Government's objective of significantly boosting housing)
- Paragraph 62 (housing mix)
- Paragraph 63/65 (affordable housing)
- Paragraph 81 (supporting economic growth)
- Paragraph 92 (promoting healthy / safe communities)
- Paragraph 93 (providing social / recreational facilities)
- Paragraph 98 (access to high quality open space)
- Paragraph 104 (consideration of transport issues in development proposals)
- Paragraph 111 (that development should only be refused if highway impacts would be severe)
- Paragraph 112 (priority to pedestrians, cyclists and access to public transport within developments)
- Paragraph 113 (travel plan requirements)
- Paragraph 114 (need for high quality communications)
- Paragraph 119 (making effective use of land), 124 (achieving appropriate densities)
- Paragraph 126 (achieving well designed places)
- Paragraph 130 (design criteria for developments)
- Paragraph 132 (consideration of design quality between applicants, the local planning authority and local community)
- Paragraph 133 (access to / use of tools and processes for assessing and improving design)
- Paragraph 134 (refusal of poor design)
- Chapter 14 (climate change / flooding)
- Paragraph 174 (protecting / enhancing valued landscapes, recognising the intrinsic character and beauty of the countryside, minimising impacts on biodiversity and achieving net gains, preventing new / existing development from unacceptable risks from pollution / air quality)
- Paragraph 179-182 (protecting habitats and biodiversity, including Special Protection Areas / Ramsar sites)
- Paragraph 183 (land suitability and risks from contamination)
- Paragraph 185 (protection from noise / light pollution)
- Paragraph 218 -223 (the status of the NPPF in relation to development plans)

## 6.3 National Planning Practice Guidance (NPPG):

- Design; Health and Wellbeing

- Housing and Economic Land Availability Assessment
- Land affected by contamination
- Noise
- Open space, sports and recreation facilities, public rights of way and local green space
- Planning Obligations
- Use of Planning Conditions
- Water supply, wastewater, and water quality

#### 6.4 Supplementary Planning Documents:

- Developer Contributions (2009)
- Parking Standards (2020)
- Swale's Landscape Character and Biodiversity Appraisal (2011)
- Swale Landscape Assessment (2019)

#### 6.5 Faversham Neighbourhood Plan

Faversham Town Council made an application to Swale Borough Council to designate a Neighbourhood Plan Area in Spring 2020. The Regulation 14 Draft Plan consultation period ran from 3rd January 2023 to 14th February 2023. The Neighbourhood Plan currently has limited weight in the consideration of planning applications, due to any lack of judgement or scrutiny at this stage as to whether the Draft Plan is consistent with the higher tier Plan i.e The Swale Borough Local Plan 2017, together with the National Planning Policy Framework. However, the following policies of the Regulation 14 Draft Faversham Neighbourhood Plan require limited consideration in respect to this application:

- FAV2: Housing Development
- FAV3: Residential Mix and Standards
- FAV4: Mobility and Sustainable Transport
- FAV5: Critical Road Junctions
- FAV6: Footpaths, Bridleways and Cycleways
- FAV7: Natural Environment and Landscape
- FAV8: Flooding and Surface Water
- FAV9: Air Quality
- FAV10: Sustainable Design and Character
- FAV11: Heritage
- FAV12: Health, Recreation and Community
- FAV13: Local Green Space
- FAV14: Local Renewable Energy Schemes

## 7. LOCAL REPRESENTATIONS

- 7.1 91 letters were posted to residents on the original submission and the amended scheme. Additionally, the application was advertised in the local press and site notices posted. To date, a total of 21 objections have been received on both rounds of consultation, including the Faversham Society, Faversham Community Land Trust, and Swale Friends of the Earth. All concerns raised are summarised below: -

- Foul and surface water flooding
- Parking/access
- Traffic and parking congestion
- Inadequate provision for cyclist and pedestrians
- Not in accord with LP land use allocation MU6
- Minerals safeguarding
- Loss of prime agricultural land
- Loss of employment land
- Overdevelopment
- Design too urban
- Density too high
- Impact on neighbouring amenity – overlooking
- Lack of affordable housing and poor tenure mix
- Lack of community infrastructure – schools/new roads and health facilities
- Site levels/earth bund around sports pitches
- Football pitches would cause noise and disturbance
- Poor landscape strategy/BNG
- Inadequate greenspace provision
- Impact on wildlife habitat/loss of trees
- Poor air quality/generate traffic pollution
- Carbon emissions from new development – not net-zero housing
- Conflict with SBC climate emergency
- Lack of EV charging points
- Process – it should be full application.

7.2 These matters are addressed in the relevant sections of the report below.

## 8. CONSULTATIONS

8.1 The following consultation replies comprise the latest comments received on the amended scheme 2023, or previous comments in 2022 apply. Where conditions or Section 106 obligations are sought, they are indicated.

### 8.2 Environmental Health

No objection subject to conditions on air quality and construction method statement.

### 8.3 Natural England

No objection. Satisfied that if mitigation measures are appropriately secured there will be no adverse impact on the North Kent Special Protection Area (SPA) from recreational pressure.

### 8.4 KCC Flood and Drainage Management (LLFA)

No objection subject to conditions relating to surface water drainage, verification report, infiltration testing and climate change critical storm event to be accommodated.



#### 8.5 Environment Agency

No comments to make on the application. It falls outside the EA's remit as statutory authority.

#### 8.6 Lower Medway Internal Drainage Board

No objection. The development does not impact on the Board's interests.

#### 8.7 KCC Highways

No objection subject to highway conditions as set out at the end of the report. Including a construction management plan (CMP) and details of footpath ZF28 improvements, and S106 contribution towards 'sustainable transport vouchers' for future residents to promote bus, rail, and cycle travel.

#### 8.8 Highways England

No objection subject to a S106 contribution towards A2/M2 Brenley Corner.

#### 8.9 KCC Developer Contributions

No objection. S.106 contributions sought to mitigate the impact on community services (learning/youth services/library services/social care/waste) and education (primary and secondary provision) as set out in the report.

#### 8.10 KCC Ecology

No objection subject to conditions on ecological mitigation and enhancement strategy, habitat creation, management and monitoring plan, and lighting strategy.

#### 8.11 KCC Minerals and Waste

No minerals or waste management capacity safeguarding objections or comments.

#### 8.12 KCC Rights of Way

No objection subject to condition on PRow management Plan relating to Footpath ZF28.

#### 8.13 NHS (Integrated Care Boards)

No objection subject to a S.106 contribution to mitigate health impacts on GP services as set out in the report.

#### 8.14 Kent Police – Crime Prevention Design Advisor (CPDA)

No objection. Condition requested to comply with Secured by Design guidance.

#### 8.15 Southern Water

No objection. Identify connection to facilitate sewerage and SuDS disposal.

#### 8.16 Network Rail

No objection. Provides standard Asset Protection information and request applicant to engage directly with the Asset Protection team due to proximity of proposal to railway boundary.

#### 8.17 SBC Housing Officer

No objection. Affordable Housing provision is above 35% but require specific housing mix by type and size on the full application. Similar comments on the outline element.

#### 8.18 SBC Economic Development Team

No objection. In summary – The comments note the potential employment generation of 345 jobs from 11,861 sqm of E Class space is close to the 376 jobs predicted from the Local Plan allocation of 20,000 sqm, and it is more than the now lapsed outline permission that provided 7,385 sqm of former 'B' class use.

#### 8.19 SBC Climate Change Officer

Not happy with carbon savings of 15%. The reduction should be at least 31% given Building Regs cut in June 2021. Not happy that ASHPs written off as not renewable. Applicant states grid is not able to support ASHP – this requires proof. Commercial element should be BREEAM standard (DM19). Water consumption is 124.5 litres. LP Policy DM21 requires 110 litres. SBC Tree Officer. (*Officer comment – the applicant has responded to these points, and updates will be reported within the body of the Report*)

#### 8.20 SBC Tree Officer

No objection subject to landscaping conditions on replacement hedging, and arb method statement and tree protection to be secure by condition.

#### 8.21 Faversham Town Council (FTC)

Objection. Initial consultation as summarised below. It is reproduced in full as **Appendix 1** to this report.

- The DAS fails to take account of emerging Neighbourhood Plan (NP) and evidence base.

- Climate Change –Location of EV charging points unclear.

- Welcome SuDS system in open space strategy, and should be conditioned for delivery but overall, the proposal makes limited contribution to zero-carbon.

- Established mature hedgerow on Love Lane should be retained for screening and wildlife.

- The outline element should have sufficient conditions and S106 to secure community infrastructure. Concern is two applications are developed in piecemeal.

- FTC supports submission of full application to ensure community infrastructure is integral to the permission.

- Supporting Commercial Market Assessment Report (CMAR) conflicts with LP evidence on employment land review 2018 and departs from Policy MU6.
- Affordable housing concentration in layout conflicting with National Model Design Code is a significant design issue.
- Garage design/dimensions appear cramped and not fit for purpose for modern vehicles.
- Commitment to cycle storage welcomed.
- Welcome design concept to face building fronting public realm towards natural landscape features such as the green corridor a strong design feature and positive contribution to overall development.
- Housing is standard design and not a site-specific response or include design features to address climate change.
- Acknowledge proposal explores ways to enhance sustainable features such as PV and air source heat pumps but no commitment in the overall design.
- No proposed features such as rainwater harvesting within buildings or how the development is climate resilient.
- Flood risk (surface water and foul sewage)

8.22 FTC further response in January 2023 to the amended scheme maintains the objection and raises the following concerns as summarised below. It is reproduced in full as **Appendix 2** to the report.

- Disappointed that the revised details fail to acknowledge emerging Faversham NP and evidence base.
- FTC supports the commitment to BNG but require detailed monitoring and management plan.
- Overall, the development proposed still makes a limited contribution to delivering carbon zero housing. Applicant is referred to the NP guidance on green design.
- Question whether a 1.5m wide footpath across the site is wide enough for dual use.
- Request the Active Travel Officer review this component of the application.

## 9. APPRAISAL

### Principle of Development

9.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 sets out that the starting point for decision making is the development plan unless material considerations indicate otherwise.

9.2 Paragraph 10 of the NPPF states that at the heart of the NPPF is a presumption in favour of sustainable development. There are three dimensions to sustainable development: economic, social, and environmental and to achieve sustainable gains these should be sought jointly and simultaneously through the planning system.

9.3 The mechanism for applying the presumption in favour of sustainable development is set out in paragraph 11 and states that for decision-taking this means:

- “c) approving development proposals that accord with the Development Plan without delay; and,*
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or,*
  - ii. 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.”*

9.3 Assessing the development against the development plan and specifically policies ST1, ST2 and ST3 of the Local Plan, this identifies Faversham as a 2<sup>nd</sup> Tier Settlement and has a role where.... *Most services and job opportunities. Fair to good quality transport options. Smaller towns with a secondary focus for housing, retail, employment and other developments and concentration of principal or satellite public services and facilities. Likely to be acting as centres for their home and surrounding populations and close to other nearby smaller urban centres.*

9.4 When considering the Bearing Fruits Local Plan, the Inspector imposed a five-year period for reviewing the Plan, to ensure that it remained up to date and commensurate with national policy. That period has passed, and the plan is therefore ‘out of date’.

9.5 Furthermore, the Council can only demonstrate a 4.83-year supply of housing and as such cannot demonstrate a 5-year supply.

9.6 In accordance with footnote 8 to paragraph 11 of the NPPF, its relevant policies for the supply of housing cannot be considered up-to-date, and the ‘Tilted Balance’ should apply to decision making.

9.7 Rather in situations where the Development Plan policies have failed to secure a sufficient housing, the NPPF seeks to ensure that the ‘presumption in favour of sustainable development’ is duly applied. If the adverse impacts of the proposal

significantly and demonstrable outweigh the benefits, then planning permission should be refused. It is clear from the status of Faversham as a 2<sup>nd</sup> tier, as identified within Policy ST 2 of the Local Plan, that this development is appropriate for the status of the settlement.

- 9.8 The lack of a five-year housing land supply, and the fact that the Local Plan is out of date carries significant weights in favour of supporting the principle of the development, subject to other relevant planning considerations discussed in detail below.

#### Loss of Agricultural Land

- 9.9 Policy DM 31 of Swale Local Plan indicates that development on agricultural land will only be permitted where there is an overriding need that cannot be met on land within the built-up area boundaries. The policy indicates that development on Best and Most Versatile agricultural land (specifically Grade 1, 2, and 3a which is referred to as best and most versatile land – BMV) will not be permitted unless three criteria have been met.
- 9.10 However, and given the allocation of this site for a mixed residential and employment uses within Policy MU 6 Land at Lady Dane Farm, east of Love Lane, it was clearly anticipated that the agricultural land would be lost from agricultural production.
- 9.11 As such it is considered that the proposals are acceptable in relation to the loss of agricultural land and are in accordance with the requirements of Policy DM31 of the Local Plan and the NPPF in that regard.

#### Landscape/Visual Impact

- 9.12 Policy CP 7 of the Local Plan states that the Council will work with partners and developers to ensure the protection, enhancement, and delivery, as appropriate, of the Swale natural assets and green infrastructure network. These include strengthening green infrastructure and biodiversity.
- 9.13 Policy DM 24 of the Local Plan states that the value, character, amenity, and tranquillity of the Boroughs landscapes will be protected, enhanced, and, where appropriate, managed. The policy is split into parts with part B applying to this site.
- 9.14 The application site is not located within either a national, Kent or local land designation.
- 9.15 Part B of policy DM 24 relates to non-designated landscapes. It states that non-designated landscapes will be protected and enhanced, and planning permission will be granted subject to;
1. The minimisation and mitigation of adverse landscape impacts,
  2. When significant adverse impacts remain, that the social and or economic benefits of the proposal significantly and demonstrably outweigh the harm to the landscape character and value of the area.
- 9.16 The site comprises of open arable land typically used for production of corn or blackcurrants. There are some well-established boundary trees and vegetation located

along the western and southern boundaries which extensively screen the site from the wider landscape. The arable field boundaries within the site are marked by Alder windbreak planting (of up to 4 metres high) and hedges. The main landscape feature of the site is its landform. The western part of the site is low lying, being at a similar elevation to the Crest scheme which borders the northern edge of the site. The landform rises across the eastern part of the Site, along the south-east edge of the site, adjacent to the railway line.

- 9.17 This more elevated eastern part of the site results in intervisibility between the eastern part of the Site and the Crest scheme, the upper part of the spire of St Mary of Charity and the wider landscape to the north of the site. The site is not visible from the wider landscape to the west of the site, due to intervening residential land uses. Similarly, the site is not visible from within Faversham Borough cemetery, nor to the east of the A299 or to the south of the M2 and across the Kent Downs AONB. This is due to the intervening undulating landform or the density of intervening vegetation and distance.
- 9.18 The site is visible at close range from Love Lane, PRoW (footpath) 0094/ZF/28/1 and the Crest scheme. From the wider landscape to the east, the fields across the site are not visible due to the intervening vegetation and landform, but there is the potential for new buildings to be visible, particularly on the eastern part of the site. Similarly, from Ham Marshes and to the north-east of the site, the fields across the site are not visible due to the intervening vegetation, but there is the potential for development to be visible.
- 9.19 The application is supported by a Landscape Visual Impact Assessment (LVIA) and policy requirements are:
- Retain the recreational value of the Site via the PRoW and enhance with new areas of public space.
  - Retain a viewing corridor between the more elevated eastern part of the site and the Church of St Mary of Charity, along with views to the wider landscape to the north of the site.
  - Sensitively locate buildings across the site to reduce their impact in longer distance views.
  - Ensure development is located away from root protection areas, with the taller and larger massing adjacent to Love Lane and the railway corridor rather than at the eastern edge of the site
  - Reinforce existing boundary vegetation with new planting to aid in softening views of the proposed development from close range locations; and
  - Implement new planting across the site to increase the vegetation cover and opportunities for biodiversity, along with reinforcing the existing vegetation patterns across the site where practicable.
- 9.20 As advised, the Swale BC Tree Officer has no objection to the scheme, subject to landscaping conditions on replacement hedging, and arboricultural method statement and tree protection to be secure by condition. As such, and based on the above, it is

considered that the proposals would not cause substantial harm to landscape character and are therefore in accordance with the requirements of Policies ST7, CP4, CP7, DM24 and DM29 of the Local Plan, emerging Policy FAV7 of the Faversham Neighbourhood Reg 14 Draft Plan, as well as the NPPF, in so far as they have regard to matters of landscape visual impact.

#### Design/Layout

- 9.21 Policy CP 4 of the Local Plan requires all developments to achieve high quality design, appropriate to its surroundings, that creates attractive places, promotes, and reinforces local distinctiveness and strengthens sense of places.
- 9.22 Policy ST 7 seeks to provide housing in locations where the role and character of the Faversham area is maintained / enhanced and where the character, appearance and setting of the towns heritage assets are protected and enhanced.
- 9.23 Policy CP7 seeks to ensure that development comes forward in a manner that conserves and where possible enhances the Borough's natural environment. Policy DM24 looks to restrict development where it would have a negative impact on valued landscapes. Policy DM29 provides protection for existing woodlands, trees, and hedges.
- 9.24 The Government at paragraph 130 (a) – (d) of the revised NPPF attach great importance to the design of built development. It goes on to advise that planning decisions should ensure that development will function well and add quality of the overall area; not just for the short term but over the life time of a development; are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; are sympathetic to local character and history, including the built environment and landscape setting, while not discouraging appropriate innovation and change (such as increased densities); establish or maintain a strong sense of place, using the arrangements of streets, space, building types and materials to create attractive, welcoming and distinctive places to live, work and visit.
- 9.25 The National Design Guide illustrates how well-designed places that are beautiful, enduring, and successful can be achieved in practice. It forms part of the Government's collection of planning practice guidance and should be read alongside the separate planning practice guidance on design process and tools.
- 9.26 The proposal has previously been the subject of detailed urban design consultation between Swale BC and the applicant. Access from Loves Lane would see a main spine road utilised as the main access point to the development. The Master Plan indicates a series of character areas formed off the main spine road. The cul-de-sacs would be connected by a pedestrian pathway to allow pedestrian movement across the site. The use of perimeter blocks can provide continuous access, with the use of rear parking courts being kept to a minimum.
- 9.27 The development has been designed to ensure that the exposure of the rear elevations to the site are kept to the minimum, and the back-to-back distances are in accordance with acceptable tolerances.

- 9.28 Corner turner units and details side elevations have also been used across the site to ensure overlooking of public spaces and provide interest along the public realm. Enclosure details would ensure brick walls facing the public realm and detailing to the rear of properties would ensure units with public facing rear elevations would retain sufficient detailing.
- 9.29 A character study of the area was undertaken as part of the proposal. The assessment did identify several building forms in the area. The assessment identifies several key characteristics of the area include facing buff and red brickwork, weatherboarding, brick banding and arches. The assessment also identified an emphasis on well-proportioned wide fronted dwellings, a variety of roof forms with low eaves, secondary gables, hipped roofs, and dormer windows.
- 9.30 The properties in the wider area do vary in form and the architecture derives interest in the street scenes. The materiality and fabric are however reflective of Kent which does see brick and weatherboarding used constantly across the county. The proposed dwellings would have a traditional bulk and massing. The properties would range from one, two, two and a half, to three storeys in scale
- 9.31 The proposal would reflect the wider design and materiality of the local area. The use of tile hanging, and brickwork is typical of Kentish towns, including Faversham. A condition would secure details of the proposed materials to ensure the quality of the bricks and tiles.
- 9.32 The dwellings would contain pitched roofs which would be broken up by gable detailing to several the units. Porches, brick banding, window coins, and proportionate openings (windows) would draw interest to the elevations. The properties would be considered to reflect the local architectural vernacular.
- 9.33 A varied use of hard surfaces would be applied across the site including block paving and tarmac. The materials would be used to differentiate shared spaces. The use of block paving would break up the use of tarmac. Further, details of the surfaces would be secured by condition to ensure high quality fabric across the site.
- 9.34 The proposal would provide a degree of open space around the peripheral parts of the site to allow landscaping and public areas within the site. The proposal has included natural play equipment within the open space to provide enhanced interaction with the space. SUDs ponds and wildlife areas would also add to the variety of the landscaping.
- 9.35 Kent Police have responded without objection but have asked for a Secured by Design condition to ensure that the Reserved Matters application is accompanied by sufficient detail. This is a reasonable request, and one that will ensure the scheme meets the policy requirements in this regard.
- 9.36 As a result, it is considered that the proposals meet the requirements of Policies ST7, CP4, and DM14, , emerging Policies FAV2 and FAV10 of the Faversham Neighbourhood Reg 14 Draft Plan, as well as the NPPF, in so far as they have regard to matters of layout, design and character.



### Heritage

- 9.37 The Council is required by section 6 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.
- 9.38 Policy DM 33 of the Local Plan sets out the policy background for the protection, preservation, and enhancement of listed buildings. Policy DM 34 does likewise for archaeological sites. Policy CP 8 of the Local Plan seeks to ensure that developments will sustain and enhance the significance of designated and non-designated heritage assets
- 9.39 Policy DM 33 of the Local Plan states that development affecting the setting of, or views into and out of a Conservation Area, will preserve or enhance all features that contribute positively to the area's special character or appearance.
- 9.40 With regards the revised NPPF, chapter 16 sets out government advice on conserving and enhancing the historic environment. Paragraph 201 sets out its guidance where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset. Paragraph 202 advises on development proposals which will lead to less than substantial harm to the significance of a designated heritage asset. The paragraph goes on to say that the harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. Paragraph 207 informs that not all elements of a conservation area will necessarily contribute to its significance.
- 9.41 The applicant has provided a Heritage Statement within the application pack. The assessment identifies the relevant assets and provides the relevant descriptions of the assets in accord with the requirements of the National Planning Policy Framework. The application site is not subject to any designated heritage buildings and is not within the Faversham Conservation Area.
- 9.42 The application site lies to the southeast of the easternmost part of the Faversham Conservation Area. This consists of the Faversham Cemetery on Love Lane with its tree-lined frontage, in turn containing one listed structure and two non-designated heritage assets, the most notable of the latter being the charming, small, ornate C19 redbrick cemetery chapel, which is still in use for its original purpose. The listed building contained within the Faversham Cemetery is the grade II\* listed 'Memorial to the victims of the 1916 Faversham Munitions Explosion'
- 9.43 The Swale BC Conservation Manager has advised that there is limited intervisibility between the application site and the nearest part of the Faversham Conservation Area. Furthermore, and particularly given that the nearest element of built form within the application site area is set some way south from the northernmost point of the application site's frontage to Love Lane, I concur with the findings of the submitted Heritage Assessment that there would be no material impact to the nearest part of the Faversham

Conservation Area and heritage assets contained within the Faversham Cemetery. Nor would there be any material impact on other nearby listed buildings as identified in the search area for potential heritage. The Conservation Officer concludes by advising that there are no objections to the proposed application from a heritage impact perspective

- 9.44 As such I consider that the statutory test in section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is met, and the proposal complies with Policies DM 32, DM 33, DM 34 and CP 8 of the adopted Local Plan, together emerging Policy FAV11 of the Faversham Neighbourhood Reg 14 Draft Plan, and relevant paragraphs of the NPPF.

#### Residential Amenity

- 9.45 Policy DM 14 of the Local Plan provided general development criteria and requires that development does not result in significant harm to amenity. Paragraph 130 f) of the NPPF states that decisions should ensure high standards of amenity for existing and future users.
- 9.46 As a rule, 21m separation distance between dwellings (normally back-to back) is considered sufficient to prevent a significant loss of amenity relating to daylight/sunlight, visual intrusion to outlook and privacy. The distance is not applied to dwellings facing each other across a street. The closest existing residential development is located to the west of the site at Buttermere, and the proposals would not result in direct overlooking of these dwellings.
- 9.47 Views are not protected under planning legislation. The separation distance between the proposal and existing neighbours in Kings Drive to the north and along Love Lane to the west exceed 21m to prevent the development resulting in visual intrusion to outlook. Overall, the proposal would not result in any harm to existing neighbouring amenity pertaining to daylight/sunlight, outlook, or privacy.
- 9.48 The proposal would see an uplift in vehicle movements regarding the residential development. However, the upturn for 154 units with the associated commercial activity would not be considered so significant as to result in unacceptable noise implications to neighbouring residents.
- 9.49 The Environmental Health Officer has commented on the proposal and did not consider that a noise survey was required pre-determination.
- 9.50 The construction period of a development is not material to the acceptability of a proposal. However, details of dust management, construction hours, and construction management plan could be secured via condition to ensure that development mitigates impacts during the construction period.
- 9.51 The proposed units would have dual aspect views which would allow sufficient outlook and allow natural light to filter into the dwellings.

- 9.52 The dwellings have all been plotted to ensure external access to the front of properties to ensure that waste and refuse can be collected without the requirement to bring waste through the internal floor space.
- 9.53 The layout has been designed to achieve rear to rear alignment that would allow 21m which is the recommended distance to ensure sufficient privacy. In the places where closer relationship exists the orientation of the properties reduces the overall overlooking with 11m achieved between side to rear alignment.
- 9.54 The proposed properties would all benefit from sufficient residential amenity space. The permeability of the site for pedestrians would also allow for access around the site which would be well landscaped. The existing PRow (ZF28) will be upgraded to a 3m wide shared weatherproof surface as requested by KCC.
- 9.55 Overall, the proposal is considered to preserve existing amenity levels and would result in an acceptable level of amenity for future occupiers. The scheme is considered, therefore, to meet the requirements of Policy DM14 of the Local Plan, together emerging Policy FAV3 of the Faversham Neighbourhood Reg 14 Draft Plan, and relevant paragraphs of the NPPF.

#### Highways

- 9.56 Policy DM 6 of the Local Plan seeks to manage transport demand and impact. Policy DM 7 of the Local Plan provides guidance on parking standards alongside the Swale Borough Council Parking Standards SPD.
- 9.57 Paragraph 111 of the National Planning Policy Framework states that:
- 'Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or residual cumulative impacts on the road network would be severe'.*
- 9.58 The Highways Officer, Kent County Council has advised that it is noted that, in comparison of the elements that would affect the highway assessment previously undertaken, the amended plans have merely relocated plot 56 and the associated parking layout around it. The quantum of parking provision remains as previously accepted and in accordance with the adopted Swale Borough Council standards, and I am satisfied that the revised layout of these parking spaces also conforms with the relevant design standards and does not introduce concerns.
- 9.59 Further, it is advised that the highway layout has not changed because of the revisions, and I note that the extent of the roads being offered for adoption as publicly maintained highway would be as previously agreed to. Whilst no drawings have been submitted to provide street lighting design for the adoptable areas, as had been requested, it is now accepted that the indicative Masterplan shows that no trees will be located within the adoptable area, and I am therefore content that the positioning of street lighting columns are unlikely to be affected. This detail can be agreed subsequently through the technical approval process for the associated Section 38 Agreement for highway adoption.

- 9.60 It is concluded that consequently, I can confirm that the proposed development is still considered acceptable by the Local Highway Authority, provided that the obligations previously requested to be secured by Section 106 legal agreement and planning conditions are attached to any planning consent. Further, Highways England have assessed the application and have advised the following:

*Having reviewed the applicants transport assessment which has now been uploaded onto the Council's planning portal, I can confirm that our previous response to you on this application dated 11 January 2022 is still appropriate. That response requires that the applicant contributes towards A2/M2 Brenley Corner in line with previous applications and is calculated (based on the previously used formula) to be £695 x 145 AM/PM trips generated by the development or £100,775 (to be indexed linked from the July 2015 base date). As this is a hybrid application, we would suggest that 50% payment should be made prior to 42 occupancies on the section of the site to which detailed permission has been sought with the remaining 50% being payable prior to 35 occupancies on the site to which outline consent has been sought.*

- 9.61 Based on the above, I am content that the scheme would not conflict with policies DM6 and DM7 of the Local Plan, together emerging Policy FAV3 of the Faversham Neighbourhood Reg 14 Draft Plan and would not lead to unacceptable highway impacts.

#### Biodiversity

- 9.62 Paragraph 40 of the Natural Environment and Rural Communities Act, under the heading of 'duty to conserve biodiversity' states "every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity."
- 9.63 The Local Plan at Policy DM28 seeks for proposals to conserve, enhance, and extend biodiversity and provide for net gains in biodiversity where possible.
- 9.64 The revised NPPF at chapter 15 'conserving and enhancing the natural environment' sets out government views on minimising the impacts on biodiversity, providing net gains where possible and contributing to halt the overall decline in biodiversity.
- 9.65 The application was accompanied by an Ecological Assessment, which was reviewed by the Kent County Council Ecological Advice Service, and they provided the following detailed observations:

*We have reviewed the ecological information we are satisfied that sufficient information has been provided to determine the planning application.*

*The submitted information has detailed the following:*

- *At least 6 species of foraging/commuting bats*
- *3 trees with suitable features for roosting bats (no bats recorded roosting)*
- *Low numbers of Slow worms*

- *Potential for foraging/commuting badgers*
- *At least 15 species of birds (including a flock of approximately 30 Redwing – schedule 1 species)*
- *Potential for hedgehogs.*

*An overview of the mitigation and enhancements proposed has been submitted and it has detailed the following will be carried out:*

- *Creation of a reptile receptor site in a 10m grassland strip in south of the site*
- *Precautionary mitigation for the clearance of vegetation within the site*
- *Creation of hedgehog highways in close board fencing*
- *Creation of dark corridor along the N, W and S boundaries*
- *Inclusion of bat and bird bricks within the buildings on site*
- *Inclusion of bat boxes, bird boxes, insect hotels and hibernacula within the areas of open space and southern boundary.*
- *Use of native species within the open space.*

*The survey data is at least 18months old and therefore we have considered if the survey information is still valid. Aerial photos indicate that the site is either actively managed farmland fields or part of a construction site and therefore we are satisfied the conclusions of the ecological surveys are unlikely to have significantly changed.*

*We advise that if planning permission is granted, we advise that a detailed mitigation and enhancement strategy is submitted as a condition of the planning application. We suggest the following wording:*

*Prior to works commencing a detailed ecological mitigation and enhancement strategy must be submitted to the LPA for written approval. It must be based on the information within the Ecological Assessment; (Bakerwell; Nov 2021) The mitigation and enhancement strategy must include the following information:*

- *Aim and objectives of the strategy*
- *Maps demonstrating the areas where mitigation is required.*
- *Maps showing the areas of habitat creation and ecological enhancements*
- *Detailed methodology to implement mitigation*
- *Timings of works.*
- *Interim management plan for the areas of habitat creation.*
- *Details of who will be carrying out the works.*

*The strategy must be implemented as detailed.*

### **Lighting**

*The proposed development will result in an increase in lighting and therefore the proposals will have a negative impact on foraging/commuting bats and other nocturnal animals. We advise that any lighting scheme must be designed to include the dark sky area shown on Figure 5 Mitigation and Enhancement Plan (Ecological Appraisal; Bakerwell; November 2021), minimise light spill and ensure that the lighting is switched off or dimmed lower between 12am and 5am.*

*We recommend that any lighting condition wording requires the lighting plan to include the dark sky area shown on Figure 5 Mitigation and Enhancement Plan (Ecological Appraisal; Bakerwell; November 2021) and follow the recommendations within the Bats and artificial lighting in the UK document produced by the Bat Conservation Trust and Institution of Lighting Professionals. <https://cdn.bats.org.uk/pdf/Resources/ilp-guidance-note-8-bats-and-artificial-lighting-compressed.pdf?mtime=20181113114229>*

### **Biodiversity Net Gain Assessment.**

*The BNG assessment has concluded that the proposed development will result in an anticipated net gain of 10.6% for habitats and 39.95% for hedgerows. We have reviewed the submitted metric and report and we agree with the conclusions of the anticipated net gain.*

*The Biodiversity Net Gain will not be achieved if the habitats within the site are not established and actively managed and monitored therefore if planning permission is granted there will be a need for a habitat creation and as detailed above a management and monitoring plan to be produced.*

*To ensure that the habitat detailed in the BNG assessment and the ecological mitigation areas are maintained there is a need for a habitat creation, management and monitoring plan to be produced as a condition of planning permission. We suggest the following wording:*

*Prior to works commencing on the opens space of the development a habitat creation, management and monitoring plan must be submitted to the LPA for written approval. The management plan must provide the following information:*

- Map showing areas of habitats to be created and managed*
- Aims and objectives of the plan*
- Overview of habitat creation and management to be carried out*
- Detailed methodology to create the habitats*
- Management prescriptions and timetable for the works*
- Details of on going monitoring*
- Details of management plan reviews.*

- *Details of who will be carrying out the management and funding mechanisms.*

*The plan must be implemented as approved.*

- 9.66 Under section 40 of the NERC Act (2006), paragraph 174 of the NPPF (2021) and the Environment Act (2021), biodiversity must be maintained and enhanced through the planning system. Additionally, in alignment with paragraph 180 of the NPPF 2021, the implementation of enhancements for biodiversity should be encouraged.
- 9.67 While the landscape management could be secured through section 106 obligation, to ensure appropriate management to secure meaningful ecological enhancement a condition would be applied to any grant of consent securing a Landscape and Ecological Management Plan (LEMP).
- 9.68 As noted by both Natural England and KCC Ecology the site is located within a 6km buffer of the designated European sites the Swale SPA and Ramsar sites. The proposal would result in a net increase in residential dwellings which can have an associated recreational pressure on these sites. As a result, and appropriate assessment will be undertaken below.

*Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017:*

- 9.69 The application site is located within the 6km buffer of (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations) and Wetland of International Importance under the Ramsar Convention.
- 9.70 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.
- 9.71 Residential development within 6km of any access point to the SPAs has the potential for negative impacts upon that protected area by virtue of increased public access and degradation of special features therein. The proposal therefore has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.
- 9.72 The HRA carried out by the Council as part of the Local Plan process (at the publication stage in April 2015 and one at the Main Mods stage in June 2016) considered the imposition of a tariff system to mitigate impacts upon the SPA (£275.88 per dwelling as ultimately agreed by the North Kent Environmental Planning Group and Natural England) – these mitigation measures are ecologically sound.

- 9.73 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 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment.
- 9.74 The recent (April 2018) judgement (*People Over Wind v Coillte Teoranta*, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, *“it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.”* The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group.
- 9.75 The proposal would have an impact upon the SPAs; however, the scale of the development (154 residential units) is such that it would not be considered, alongside the mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff, that the impacts would be significant or long-term.
- 9.76 Based on the potential of 154 residential units being accommodated on the site a SAMMS contribution of up to £42,485.52 could be secured under the Section 106 agreement. The legal agreement could be worded such that it sets out that the SPA mitigation contribution is to be secured prior to the occupation of any dwelling. Therefore, considering the above it is considered that there will be no adverse effect on the integrity of the SPAs.
- 9.77 Finally, it can be noted that the required mitigation works will be carried out by Bird Wise, the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, which itself is a partnership of local authorities, developers, and environmental organisations, including SBC, KCC, Medway Council, Canterbury Council, the RSPB, Kent Wildlife Trust, and others. (<https://birdwise.org.uk/>).
- 9.78 The County Ecologist has responded positively to the submission, raising no objection to it. They have asked for three conditions to be attached to any approval, as set out above. These are considered to meet the tests and will ensure that the scheme contributes positively to the Council’s aims in relation to ecological conservation and enhancement.
- 9.79 Natural England have responded to the scheme with a standard no objection response, requesting SAMMS contributions.
- 9.80 As such it is considered that the proposals are in accordance with the requirements of Policy DM28 of the Local Plan, together emerging Policy FAV7 of the Faversham Neighbourhood Reg 14 Draft Plan and the NPPF, in so far as it has regard to ecology/biodiversity.

#### Water, Flooding, and Drainage

- 9.81 The Local Plan as Policy DM21 sets out a raft of criteria aimed at preventing or reducing flood risk.



- 9.82 The revised NPPF at chapter 14 sets out government views on how the planning system should consider the risks caused by flooding. The planning practice guidance under the chapter titled ‘flood risk and climate change’ gives detailed advice on how planning can take account of the risks associated with flooding in the application process.
- 9.83 Local Plan Policy CP7 requires new development to be supported by the timely delivery of green infrastructure, including SuDS.
- 9.84 The NPPF at paragraph 8 and elsewhere identifies the provision of infrastructure as part of the economic role as one of the three dimensions of sustainable development.
- 9.85 The PPG under the chapter entitled ‘water supply, wastewater and water quality’ at paragraph 20 provides advice on the considerations that apply in areas with inadequate wastewater infrastructure. The PPG explains that if there are concerns regarding the capacity of wastewater infrastructure, applicants will be asked to provide information as to how wastewater will be dealt with. The PPG goes on to provide advice on several scenarios regarding the preference to connect to the public sewerage system and the acceptable alternatives.
- 9.86 KCC Flood and Drainage have raised no objection to the scheme, subject to the imposition of conditions. The same is true of Southern Water and the Drainage Board. As such it is considered that the proposed development, with appropriate conditions, would have a suitable approach to flood water, surface water and foul water drainage.
- 9.87 The imposition of the required conditions ensures that the scheme can meet the requirements of Policies DM21 and CP7 of the Local Plan, together emerging Policy FAV8 of the Faversham Neighbourhood Reg 14 Draft Plan, and the NPPF, with respect to flood risk and drainage.

### Minerals

- 9.88 A Minerals Safeguarding Assessment was provided as part of the application by RPS Consulting. The assessment provided an overlay of the Mineral Safeguarding Area as defined for Brickearth by the British Geological Survey. The overlay indicates that only a small corner to the north-west of the site is located within the safeguarding area, which includes a limited developed area.
- 9.89 There is an area within the Mineral Safeguarding Area containing brickearth. As part of the application the only Brickearth user in the area was contacted (Weinberger Ltd). Weinberger Ltd stated that they were not interested in the site as a source of Brickearth as it would not be viable to extract the mineral.
- 9.90 Kent County Council Minerals and Waste were consulted on the application and found no objection to the proposal. The proposal would not present a viable extraction area and would not conflict with Policy DM 8: Safeguarding Minerals Management, Transportation, Production and Waste Management Facilities of the adopted Kent Minerals and Waste Local Plan 2013-30.

Affordable Housing

- 9.91 Policy DM 8 of the Local Plan identifies that for development proposals of 11 or more dwellings there will be a need to provide affordable housing. The policy requires the provision of 35% affordable units in Faversham Town and urban extensions. The size, tenure and type of affordable housing would be provided in accord with the needs of the area.
- 9.92 The proposal would provide a policy compliant on-site provision of 35% which would equate to 54 units. The units would be distributed across the site which would provide good social integration.
- 9.93 The guidance of policy CP 3 indicates a requirement for 1-, 2-, 3- and 4-bedroom dwellings. The split would not reflect this guidance. However, given the location of the site the provision of 1 bed units usually provided in a flatted form and 4- bedroom units might disrupt the grain of development and an onsite provision is welcomed.
- 9.94 Paragraph 7.3.8 of the Local Plan provides guidance for the tenure associated with the affordable housing requirement which seeks an indicative target of 90% affordable/social rent and 10% intermediate products.
- 9.95 The Housing Officer has assessed these proposals and reached agreement with the applicant on the following basis:
- 9.96 It has been agreed that the following is acceptable and will apply to this development site:
- 35% of the homes across the whole site (Phases 1 & 2) will be delivered as s106 affordable housing i.e., 54 dwelling units in total
  - Of this 31 flats will be provided on Phase 1, and 23 houses on phase 2, and therefore resulting in 54 units in total
  - On Phase 1 the affordable homes provided will be 31 flats: ie
 

16	1BF
17	15 x 2BF

The above accommodation is made up of the following:

Block B 1-10 (10 units)	1&2 bed flats above commercial
Block A 11-22 (12 units)	1&2 bed flats above commercial
Block C 30-37 (8 units)	All 1-bed flats
Plot 56 FOG (1 unit)	2-Bed flat

- The total number of M4(3) building regulation standard homes required for the whole site is 4 units and these will all be delivered on Phase 1 (Block C plots 30-33). All other affordable rented flats will be delivered to M4(2) standard
- In regard to Phase 2, 23 affordable houses are required and it has been agreed to include a clause within the Affordable Housing Schedule of the s106 that

ensures these homes will only be delivered as houses (no flats/Flats Over Garages or apartments) and that the affordable housing plan for this Phase will need to be agreed with the Council prior to the commencement of Phase 2.

On this basis, the proposal is consistent with the provisions of Policy DM 8 of the Local Plan, together emerging Policies FAV2 and FAV3 of the Faversham Neighbourhood Reg 14 Draft Plan, and the NPPF.

#### Sustainable Design and Construction

9.97 Climate change – Policy DM19 requires developments to address climate change and reduce carbon emissions in new developments. The policy does not include a threshold for such reductions. However, the Council's Ecological and Climate Change Emergency Action Plan sets out that new housing developments should achieve a minimum 50% reduction in emissions when compared to target rates in the current Building Regulations. Whilst this is not adopted planning policy, the Action Plan is a material consideration.

9.98 The application has provided enhanced information in relation to the energy and sustainability when compared to the previous scheme, in respect of the following:

- Full details of the EV charging provision on site are as detailed on drawing number 1701. This confirms that the proposals will include 1 EV charge point per house, with 10% of communal & retail parking bays to have EV charge points.
- Fernham Homes are happy to confirm that that we deliver a 31% improvement on 2013 building regulations. Regarding BNG, the proposals will deliver a biodiversity net gain of 10.06% in area habitat and 35.95% in linear habitat. This is confirmed in the preliminary Biodiversity Net Gain Assessment which forms part of the application submission.
- Fernham will be using Air Source Heat Pumps subject to energy network infrastructure being available. The climate change officer confirmed that the proposal of up to 110L (of water use) per person per day was acceptable
- Confirmation of energy performance for the non-domestic buildings that form part of the outline element of the application will be confirmed at the reserved matters application for each of these respective buildings/uses. Regarding the energy performance for the non-domestic buildings, which form part of the detailed element of the application these will have a target to achieve an EPC rating of C.

9.99 The Climate Change Officer has advised that they have no objection.

9.100 On this basis the scheme is in accordance with DM19 of the Local Plan, together emerging Policy FAV10 of the Faversham Neighbourhood Reg 14 Draft Plan, and the NPPF with respect to sustainability and climate change.

#### Contamination

9.101 The Environmental Health Officer has commented on the proposal and recommended the inclusion of Contaminated Land Conditions. There is no obvious contamination issue

related to the site other than in connection with the agricultural use and proximity to a graveyard.

9.102A Phase 1 desk study would be required in association with any grant of consent, this could be provided in the form of a pre-commencement condition. The assessment would a historic background and potential contaminated land at the site. Should contamination potential be identified a phase 2 intrusive investigation and remediation would then be triggered by condition.

9.103Pre-commencement conditions would be considered sufficient to ensure that development would provide safe habitable residential accommodation.

#### Air Quality

9.104Policy DM 6 managing transport demand and impact criteria (d) states that:

*“Integrate air quality management and environmental quality into the location and design of, and access to, development and, in so doing, demonstrate that proposals do not worsen air quality to an unacceptable degree especially taking into account the cumulative impact of development schemes within or likely to impact on Air Quality Management Areas”.*

9.105Paragraph 186 of the National Planning Policy Framework states that:

*“Planning Policies and decisions should sustain and contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas and Clean Air Zones, and the cumulative impacts from individual sites in local areas. Opportunities to improve air quality or mitigate impacts should be identified, such as through traffic and travel management, and green infrastructure provision and enhancement. So far as possible these opportunities should be considered at the plan-making stage, to ensure a strategic approach and limit the need for issues to be reconsidered when determining individual applications. Planning decisions should ensure that any new development in Air Quality Management Areas and Clean Air Zones is consistent with the local air quality action plan”.*

9.106The applicant outlined how the damage cost mitigation of the £262,746.000 which would be spent for on-site mitigation. The distribution of cost would be spent on a Travel Plan, welcome packs, car club etc. The damage cost calculation would be secured via section 106 and would in part be spent on an amount provided to each dwelling to be spent on subsidies public transport (bus/and or train travel tickets). This will be secured via the section 106 agreement.

9.107The technical transport note also provides mitigation measures through the Travel Plan which will encourage mode shifts. The provision of 12month subsidised public transport for new residents would aim to increase use of public transport. Further, the Transport Plan would encourage the use of apps for journey planning.

9.108The technical note identified that the Department for Transport ‘Sustainable Travel Towns’, indicated that some projects involving a varied range of initiatives to reduce car

reliance found an average reduction of car use of 7-10% per resident. The conclusion of the Transport note indicates that provided measures could see a reduction of trips by vehicles.

9.109 It should be noted that all dwellings would have the provision of an electrical vehicle charging point, but these are not considered as part of the mitigation package and low emission boilers would also be conditioned.

9.110 The proposal individually is not considered to have an individually a significantly negative impact. The concerns primarily derive from a cumulative impact with other committed development.

9.111 Paragraph 186 of the National Planning Policy Framework does make it clear that opportunities to improve or mitigate impacts should be considered at the plan making stage. The NPPF encourages the need for opportunities to be considered at plan making stage to ensure a strategic approach and limit the need for issues to be considered when determining individual applications.

9.112 The proposal is considered to comply with the Local Air Quality Management Plan.

9.113 The proposal is considered acceptable in this regard subject to securing of mitigation package, and therefore in accordance with Policies SP 5 and DM6 of the Local Plan and NPPF.

#### Archaeology

9.114 The application site is not located within an area of Archaeological Potential, as this extends to the north-east in a north-west/north-east trajectory. However, the local area has been subject to archaeological finds. The Archaeological assessment submitted with the application does not identify either designated or non-designated archaeological remains on site.

9.115 The assessment was based on a walkover study. No response has at this stage been provided by Kent County Council Archaeology, though I hope to be able to update Members at the meeting. The site does lie near an area of archaeological potential. Given the potential a condition would be applied to secure an investigation prior to commencement to rule out conclusively the potential for in situ remains.

#### Developer Contributions

9.116 Policy CP 6 and IMP 1 seek to deliver infrastructure requirements and other facilities to ensure the needs of the Borough are met.

9.117 The following contributions have been identified as reasonable and necessary to mitigate the impacts of the development on the surrounding area / infrastructure –

<b>Requirement</b>	<b>Value</b>	<b>Towards</b>
SAMMS payment	£275.88 per dwelling	North Kent Strategic Access Management and Monitoring Strategy
Primary Education	£4,642.00 per applicable house and £1,160.50 per applicable flat	Towards the expansion of St Mary's of Charity and/or any other school within the Faversham planning group
Secondary Education	£1294.00 per applicable flat; £5,176.00 per applicable house	Towards a new Secondary School serving this development
Secondary Land	£658.98 per applicable flat; £2635.73 per applicable house	Towards the land acquisition costs of a new Secondary School serving this development
Community Learning	£2528.68	Contributions requested towards additional equipment and resources at Adult Education Centres serving the development and outreach provision to increase capacity in the service
Youth Service	£10,087.00	Contributions requested towards additional equipment and resources for the Youth service to provide outreach services in the vicinity of the development.
Library Bookstock	£8,539.30	Contributions requested towards additional services, resources, and stock at Sittingbourne Library or any other serving the development.
Social Care	£22,619.52	Towards Specialist care accommodation, assistive technology, and home adaptation equipment, adapting existing community facilities, sensory facilities, and Changing Places Facilities within the Borough.
Waste	£28,285.18	Towards additional capacity at the HWRC & WTS in the Borough
Wheelie Bins	£109.40 per dwelling; £946.80 per 5 flats	As specification
Air Quality Damage Cost	£262,746.00	Over 5-years
NHS (Integrated Care Board)	£136,548.00	Towards refurbishment, reconfiguration and/or extension of the existing Newton Place Surgery and/or Faversham Medical Practice and/or towards new general practice premises development in the area
Highways	Having reviewed the applicants transport assessment which has now been uploaded onto the Council's planning portal, I can confirm that our previous response to you on this application dated 11 January 2022 is still appropriate. That response	

	requires that the applicant contributes towards A2/M2 Brenley Corner in line with previous applications and is calculated (based on the previously used formula) to be £695 x 145 AM/PM trips generated by the development or £100,775 (to be indexed linked from the July 2015 base date). As this is a hybrid application, we would suggest that 50% payment should be made prior to 42 occupancies on the section of the site to which detailed permission has been sought with the remaining 50% being payable prior to 35 occupancies on the site to which outline consent has been sought.
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**Table 1 – S.106 Heads of Terms**

**10.** These Heads of Terms have been provided to the applicant and agreed upon.

**11. FINAL BALANCING AND CONCLUSIONS**

- 11.1 The proposal is a Hybrid application for both housing and commercial development. It would boost housing supply providing 154 dwellings in total, including a Policy compliant affordable housing contribution, towards the Council's 5 Year Housing Land Supply. These factors carry significant weight in favour of the scheme. The proposal would also provide for Class E commercial units, a Day Nursery, a Care Home, with open space and sports provision
- 11.2 It is considered that the proposals would not cause substantial harm to landscape character on an Allocated site within the Local Plan.
- 11.3 The S106 Agreement for SAMMS contributions and infrastructure costs will mitigate against the impact of the proposals on key services.
- 11.4 In terms of sustainable development, there would be some clear positive social impacts through the provision of housing and affordable housing, and some positive economic benefits through the delivery of commercial development and jobs.
- 11.5 Overall, the scheme is fully policy compliant. As the Borough still has not achieved a 5-year housing land supply when considered against the standard method the 'tilted balance' (NPPF Para 11d footnote 8) applies and the conformity with the development plan weighs significantly in favour of approval.
- 11.6 The findings of Gladman Developments Ltd v SSHCLG & Corby BC & Uttlesford DC [2021] EWCA Civ 104 were that the test of the NPPF can be encompassed into the decision-making under s70(2) of the TCPA 1990 and s38(6) of the PCPA 2004 in one all-encompassing stage, as here the scheme is assessed as policy compliant and in accordance with the development plan the scheme is recommended for approval.
- 11.7 If Members do not take the view that the scheme is policy compliant due to either the quantum of development or the nature of the mix of housing and commercial uses, then this has two consequences. Firstly, Policy ST2 and ST3 of the adopted Local Plan are complied with in terms of development being contained within the defined settlement boundary of Faversham. Secondly, Policy MU 6 of Bearing Fruits 2031 identifies a mixed-use scheme of housing and commercial uses, with the identification of

20,000sq.m of commercial floor space. This application however provides 11,861 sq. m of commercial floor space comprising the Class E commercial units, day nursery and care home. Therefore, and translating the floor space figures in direct jobs, it is anticipated that Local Plan scenario under Policy MU 6 would generate 376 jobs, with the current application generating 345.

- 11.8 Whatever interpretation is applied, the conclusion is the same; either a presumption in favour of the scheme because it is policy compliant or a presumption in favour of the scheme because it is not but the tilted balance then applying as part of the presumption in favour of development.
- 11.9 The size of the scheme is useful in terms of the 5 Year Housing Land Supply, as the initial 84 units as part of the Full application would likely take no more than 18 months to 2 years to complete – resulting in an almost immediate positive impact on supply. Getting the Borough back above 5 years would be a major achievement; placing it back in control over schemes not complying with the local plan. The ability of this towards regaining a 5-year housing land supply counts strongly in favour of the scheme in the planning balance. This is additional to the assumptions in Bearing Fruits and the current 5YHLS which assumed the plan review and decision on the SNRR would come before delivery of this site.
- 11.10 The scheme is assessed and, being in conformity with national policy and the local plan, it is recommended that planning permission be granted for the proposal subject to conditions and the completion of a Section 106 agreement.
- 11.11 The scheme is assessed and being in conformity with national policy and the local plan. It is recommended that planning permission be granted for the proposal subject to conditions and the completion of a Section 106 agreement.

## 12. RECOMMENDATION

- 12.1 GRANT subject to the conditions as set out below and the signing of a suitably worded s106 agreement to secure the developer contributions as set out in the table above.
- 12.2 Delegated authority is also sought to amend condition wording and s106 clauses as may reasonably be required.

### 12.3 Conditions

#### Commencement

- 1) The detailed element (phase 1) of the development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2) Details relating to the layout, scale, and appearance of the proposed building(s) within a relevant phase (other than the detailed element for Phase 1), and the



landscaping of the site within that phase, shall be submitted to and approved by the Local Planning Authority before any development within that phase 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.

- 3) Application for approval of reserved matters referred to in Condition (2) above must be made no later than the expiration of five 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.

- 4) 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.

#### General

- 5) The detailed element (phase 1A) of the development shall be carried out in accordance with the following approved plans:

1000 PL B	10 December 2021	Site Location Plan
1002 PL A	09 December 2021	Existing Site Plan
1001 PL A	10 December 2021	Planning Areas Plan
1005 PL F1	3 December 2022	Site Layout
1700 PL E	13 December 2022	Refuse Plan
1701 PL F	13 December 2022	Parking Plan
1702 PL F	12 December 2022	Tenure Plan
1703 PL F	13 December 2022	Materials Plan
1704 PL E	13 December 2022	Fire Strategy Plan
1710 PL B	19 December 2022	Extent of Adoption Plan
1005 PL F	13 December 2022	Site Layout (Coloured)

Note: for the above drawings only the information within the orange dashed line is to be approved in detail. All other information is for illustrative purposes only.

3012 PL B	10 December 2021	HT3.1 Plots 23-24 Plans and Elevations
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3020 PL C	03 February 2022	HT5.1 Plot 25 Plans and Elevations
3030 PL C	03 March 2022	HT4.8 Plots 26, 44 Plans and Elevations
3045 PL B	10 December 2021	HT4.4 Plot 27 Plans and Elevations
3050 PL B	10 December 2021	HT4.3 Plot 28 Plans and Elevations
3055 PL C Elevations	16 December 2022	HT 3.4 – Plots 29, 72, 82 Plans & Elevations
3040 PL C Plans & Elevations	20 December 2022	Block C Maisonettes Plots 30-37 Floor Plans & Elevations
3070 PL B Plans and Elevations	10 December 2010	HT3.1-HT3.3 Plots 38-39, 52-53, 57-58, 62-63 Plans and Elevations
3060 PL B Elevations	10 December 2021	HT4.5 Plots 40, 49, 79 Plans and Elevations
3095 PL C	03 February 2022	HT4.9 Plot 41 Plans and Elevations
3035 PL B	10 December 2021	HT4.8 Plot 42 Plans and Elevations
3090 PL C	14 December 2022	HT 4.7 – Plots 43, 46 Plans & Elevations
3056 PL B	10 December 2021	HT3.4 Plots 45, 65 Plans and Elevations
3080 PL B Plans and Elevations	10 December 2021	HT3.5 x2_Plots 47-48, 50-51, 59-60 Plans and Elevations
3015 PL B	10 December 2021	HT3.1 Plots 54-55 Plans and Elevations
3105 PL C	19 December 2022	HT 2.3 – Plot 56 Plans & Elevations
3065 PL B	10 December 2021	HT4.5 Plots 61, 73 Plans and Elevations
3025 PL C	03 February 2022	HT5.1 Plot 64 Plans and Elevations
3100 PL B and Elevations	10 December 2021	HT3.7 Plots 66-67, 70-71, 83-84 Plans and Elevations
3011 PL B Elevations	10 December 2021	HT3.1 Plots 68-69, 74-75 Plans and Elevations
3085 PL B	10 December 2021	HT3.5 Plots 76-78 Plans and Elevations
3010 PL C	16 December 2022	HT 3.1 – Plots 80-81 Plans & Elevations
3005 PL A	19 November 2021	Apartment Block A Floor Plans
3006 PL A	19 November 2021	Apartment Block A Elevations

3000 PL A	19 November 2021	Apartment Block B Floor Plans and Elevations
1010 PL B	10 December 2021	Street Scenes A-A and B-B
1011 PL B	10 December 2021	Street Scenes C-C and D-D
3400 PL E	03 March 2022	Garages, Stores & Sub Station Plans and Elevations
LDF-EDL-XX—XX-DR-L-0100-R2	November 2021	Illustrated Masterplan
15491/S2	February 2021	Site Survey
1549/S1	February 2021	Site Survey
1823 P02	July 2021	Drainage Strategy Full Site Plan
1810 P02	July 2021	Drainage Strategy Sheet 1 of 14
1811 P02	July 2021	Drainage Strategy Sheet 2 of 14
1812 P02	July 2021	Drainage Strategy Sheet 3 of 14
1813 P02	July 2021	Drainage Strategy Sheet 4 of 14
1814 P02	July 2021	Drainage Strategy Sheet 5 of 14
1815 P02	July 2021	Drainage Strategy Sheet 6 of 14
1816 P02	July 2021	Drainage Strategy Sheet 7 of 14
1817 P02	July 2021	Drainage Strategy Sheet 8 of 14
1818 P02	July 2021	Drainage Strategy Sheet 9 of 14
1819 P02	July 2021	Drainage Strategy Sheet 10 of 14
1820 P02	July 2021	Drainage Strategy Sheet 11 of 14
1821 P02	July 2021	Drainage Strategy Sheet 12 of 14
1822 P02	July 2021	Drainage Strategy Sheet 13 of 14
1823 P02	July 2021	Drainage Strategy Sheet 14 of 14
2101 PTPP	Nov 2021	Preliminary Tree Protection Plan
15536-H-01 Rev P3	01/06/22	Northern Site Access
15536-H-02 Rev P3	01/06/22	Southern Site Access
15536-H-03 Rev P3	04/04/22	Love Lane Design
15536-H-04 Rev P1	09/05/22	Pedestrian Crossing

15536-T-01 Rev P3	09/05/22	Northern Site Access Tracking
15536-T-02 Rev P3	09/05/22	Southern Site Access Tracking
15536-T-03 Rev P1	09/05/22	Refuse
15536-T-04 Rev P1	09/05/22	Pantechnicon
15536-T-05 Rev P1	09/05/22	Fire Tender
15536-T-06 Rev P1	09/05/22	Estate Care
15536-T-07 Rev P1	09/05/22	Pumping Vehicle
15536-T-08 Rev P2	31/05/22	Articulated Lorry
15536-T-09 Rev P1	09/05/22	Crest Nicholson Access Tracking
15536-T-10 Rev P1	09/05/22	Private Access Tracking

Reason: To accord with the terms of the application and in the interests of proper planning.

- 6) The reserved matters details submitted pursuant to condition 2 shall accord with the Masterplan Parameter Plan, which for the avoidance of doubt are as listed below-

1201 PL C      18 July 2022    Land Use Parameter Plan

Reason: To accord with the terms of the application and in the interests of proper planning.

- 7) Notwithstanding the submitted plans, no development shall commence until a phasing plan for delivery of the development, including the associated highways infrastructure, open space, landscaped buffers, and sports facilities, has been submitted to and approved in writing by the Local Planning Authority. The development shall then be implemented strictly in accordance with the approved phasing scheme.

Reason: In the interests of ensuring that the development is carried out in a co-ordinated manner.

- 8) No dwelling within any phase of the development (including phase 1) shall be occupied until a housing and wastewater infrastructure phasing plan has been submitted to and approved in writing by the Local Planning Authority for that phase. Development shall take place in accordance with the approved housing and wastewater infrastructure phasing plan unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure that phasing is aligned to improvements to off-site wastewater infrastructure.

- 9) For each phase of the development hereby approved (including phase 1), no above damp proof course construction shall take place within a relevant phase until details have been submitted to the Local Planning Authority and approved in writing, which set out what measures will be taken to ensure that the development in that phase incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the potential inclusion of solar thermal or solar photo voltaic installations, and energy efficiency. Upon approval, the details shall be incorporated into the development of the phase of development in question as approved and retained as such in perpetuity.

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

- 10) The proposed residential development hereby permitted shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the residential units shall not be occupied unless the notice for that dwelling/flat of the potential consumption of water per person per day required by the Building Regulations 2015 (as amended) has been given to the Building Control Inspector (internal or external).

Reason: In the interests of water conservation and sustainability

- 11) The non-residential buildings shall be constructed to a minimum of 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.

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

- 12) No development shall take place in any phase (including Phase 1) until details of the existing site levels, proposed site levels (including any levels changes to areas to be used as open space, landscaped buffer areas and highways), and proposed finished floor levels for buildings in that phase have been submitted to and approved in writing by the local planning authority and the development shall be completed strictly in accordance with the approved levels.

Reason: To secure a satisfactory form of development having regard to the topography of the site.

- 13) No construction above damp course shall be undertaken within a relevant phase until details shall be submitted 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 within that phase. 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.

Reason: In the interests of residential amenity.

- 14) The development hereby permitted shall incorporate measures to minimise the risk of crime. No development in any phase (including the detailed element under phase 1) beyond the construction of foundations shall take place until details of such measures, according to the principles and physical security requirements of Crime Prevention through Environmental Design (CPTED) have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented before the development is occupied and thereafter retained.

Reasons: In the interest of Security, Crime Prevention and Community Safety<sup>15)</sup>

No development beyond the construction of foundations shall take place on the detailed (Phase 1A) and outline phases until written details and samples of the materials to be used in the construction of the external surfaces of the building(s) hereby permitted have been submitted to and approved in writing by the local planning authority for that phase.

Reason: To ensure a satisfactory appearance to the development.

- 16) Notwithstanding the provisions of Class A, Part 2, Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) no gates, fences, walls, or other means of enclosure shall be erected or provided in advance of any wall or any dwelling fronting on a highway, unless specifically shown on the approved plans.

Reason: In the interests of visual amenity.

- 17) The reserved matters details submitted pursuant to condition (2) shall include measures to demonstrate how the proposals will meet the needs of specific housing groups, including older and disabled persons.

Reason: To ensure that the development of this large strategic sites makes provision for different housing needs.

Construction

- 18) No development in any phase (including Phase 1) shall take place, including any works of demolition, until a Construction Management Plan (CMP) has been submitted to and approved in writing by the Local Planning Authority. The approved CMP shall be implemented and adhered to throughout the entire construction period. The CMP shall provide details of:

- (a) Routing of construction and delivery vehicles
- (b) Parking and turning areas for construction and delivery vehicles and site personnel
- (c) Timing of deliveries
- (d) Provision of wheel washing facilities

(e) Temporary traffic management / signage

(f) Any requirements for temporary construction access

Reason: To ensure that the impact of construction works on the strategic and local road network are managed, and in the interests of the amenities of the area and highways safety and convenience.

- 19) No construction work (for the avoidance of doubt to include piling) 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 0700 - 1900 hours, Saturdays 0730 - 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.

Highways

- 20) No occupation of any phase shall take place until the highways works to provide pedestrian crossings on Love Lane, as indicatively shown on drawing 15536 H-02 Rev P3, have been completed in accordance with a Section 278 agreement with the Highway Authority, unless otherwise agreed in writing by the Highway Authority.

Reason: In the interests of Highways safety

- 21) No greater than 50 occupations of dwellings shall take place until the highway works providing the northern access and Love Lane highway improvement scheme as indicatively shown on drawings 15536 H-01 Rev P3 and 15536 H 03 Rev P3 have been completed in accordance with a Section 278 agreement with the Highway Authority, unless otherwise agreed in writing by the Highway Authority.

Reason: In the interests of highways safety and to ensure early delivery of part of the spine road.

- 22) Any application submitted for the approval of Reserved Matters shall include details of areas for the parking and manoeuvring of vehicles in the development in accordance with the Council's adopted parking standards. The parking areas shall be provided in accordance with such details as approved prior to the occupation of each dwelling or building to which they relate and retained thereafter.

Reason: To ensure a satisfactory parking arrangement and in the interests of highways safety.

- 23) Prior to the occupation of any dwelling or other building, secure, covered cycle parking facilities shall be provided for the dwelling or building in accordance with the Council's adopted parking standards and submitted plan 3021 A 1701 PL Rev F, and the facilities retained thereafter.

Reason: To ensure a satisfactory cycle parking arrangement and in the interests of highways safety.

- 24) Prior to the occupation of any dwelling or other building, the following works between the dwelling or building and the adopted highway shall be provided:

(a) Footways and/or footpaths, except for the wearing course.

(b) Carriageways, except for the wearing course but including a turning facility, highway drainage, visibility splays, street lighting, street nameplates and highway structures (if any).

Reason: In the interests of highways safety.

- 25) Prior to first occupation of any phase a plan demonstrating the proposed improvement to the width, surfacing and public rights for Public Footpath ZF28 shall be submitted and agreed by the Planning Authority and thereafter implemented and open and available to the public prior to the occupation of the 50th dwelling.

Reason: In the interests of enhancing the usage of the public footpath network.

- 26) No greater than 50 occupations of dwellings shall take place until Highways works to include the provision of a puffin crossing at the East St/The Crescent Road junction have been completed in accordance with a Section 278 agreement with the Highway Authority, unless otherwise agreed in writing by the Highway Authority.

Reason: In the interests of pedestrian and highways safety.

- 27) Provision and permanent retention of the vehicle parking spaces and/or garages shown on the submitted plans prior to the occupation of each dwelling or building to which they relate and retained thereafter.

Reason: For the avoidance of doubt, and to ensure proper parking provision.

- 28) Prior to occupation of any dwelling, a temporary vehicle turning head shall be provided for the adoptable spine road in accordance with details to be submitted to and approved in writing by the Local Planning Authority and kept available for use until such time as a permanent turning facilities are provided by development approved in subsequent Reserved Matters applications.

Reason: In the interests of highways safety

- 29) Prior to the occupation of plots 73 to 78, the emergency vehicle route serving these dwellings shown on drawing 3021-A-1704-PL Revision E shall be surfaced and access controlled in accordance with details to be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of highways safety



- 30) For the purposes of the detailed (Phase 1) scheme, the area shown on the approved plans as car parking space shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown (other than the erection of a private garage or garages) or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling(s) hereby permitted.

Reason: Development without adequate provision for the parking or garaging of cars is likely to lead to car parking inconvenient to other road users.

#### Landscaping

- 31) No construction above damp course for any phase shall be undertaken until a detailed scheme and timetable of soft landscaping for that phase has been submitted to and approved in writing by the Local Planning Authority, and such planting has been completed on the site in accordance with the approved details and timetable. The soft landscaping scheme shall include proposed trees, shrubs, and other features, planting schedules of plants (which shall include indigenous species and of a type that will encourage wildlife and biodiversity), noting species, plant sizes and numbers where appropriate, measures to prevent tree vandalism, and measures to protect the advance planting from construction on the remainder of the site for the duration of such works. The works shall be carried out in accordance with the broad parameters as set out in Figure 5 Mitigation and Enhancement Plan dated November 2021 contained within the Ecological Appraisal by Bakerwell.

Reason: To accord with the terms of the application and the requirements of Policy MU 6 of the Swale Borough Local Plan - Bearing Fruits 2031. To ensure the early delivery of part of the strategic landscaping to the site, in the interests of visual amenity and wider landscape objectives.

- 32) Upon completion of the soft landscaping works, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within ten years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within the next planting season, unless otherwise agreed.

Reason: To ensure the retention and maintenance of strategic landscaping, in the interests of visual amenity.

- 33) The areas shown on the approved drawings for the detailed scheme (Phase 1) as open space and play areas 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 and timetable to be submitted to and agreed in writing by the Local Planning Authority before the first dwelling is occupied. The open space and play area within Phase 1 shall be provided prior to the occupation of no more than 40 dwellings. No permanent development whether permitted by the Town and

Country Planning (General Permitted Development) (England) Order 2015 (as amended) 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.

- 34) The sports pitches hereby permitted shall not be floodlit, nor shall they be constructed with an artificial surface.

Reason: To protect the visual amenities of the area and the functioning of the site as part of a strategic green buffer area, and to protect the amenities of the occupants of surrounding residential dwellings.

#### Drainage

- 35) No construction above damp-proof course shall be undertaken in any phase 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 be based upon the Flood Risk Assessment and Drainage Strategy dated 12th November 2021 and 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 100-year storm) can be accommodated and disposed of within the curtilage of the site without increase to flood risk on or off-site. The drainage scheme shall also demonstrate (with reference to published guidance):

- that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
- appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

The drainage scheme shall be implemented in accordance with the approved details.

Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water and to ensure that the development does not exacerbate the risk of on/off site flooding.

- 36) No building on any phase (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report, pertaining to the surface water drainage system, and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority for that building. The Report shall demonstrate that the drainage system constructed is consistent with that which was approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets, and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets

drawing; and the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.

Reason: To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those risks to controlled waters, property, and ecological systems, and to ensure that the development as constructed is compliant with and subsequently maintained pursuant to the requirements of paragraph 165 of the National Planning Policy Framework.

- 37) Where infiltration is to be used to manage the surface water from the development hereby permitted, it will only be allowed within those parts of the site where information is submitted to demonstrate to the Local Planning Authority's satisfaction that there is no resultant unacceptable risk to controlled waters and/or ground stability. The development shall only then be carried out in accordance with the approved details.

Reason: To protect vulnerable groundwater resources and ensure compliance with the National Planning Policy Framework.

- 38) With the exception of that element of the development hereby granted full planning permission, no development shall take place until the details required by Condition 2 shall demonstrate that requirements for surface water drainage for all rainfall durations and intensities up to and including the climate change adjusted critical 100-year storm can be accommodated within the proposed development layout.

Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water and that they are incorporated into the proposed layouts.

#### Contamination

- 39) No development of any phase approved by this permission shall be commenced on that phase 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 District 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.

d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved.

Reason: to ensure land contamination is adequately dealt with, and to ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution

- 40) Before any part or agreed phase of the development is occupied, all remediation works identified in the contaminated land assessment and approved by the Local Planning Authority shall be carried out in full (or in phases as agreed in writing by the Local Planning Authority) on site under a quality assured scheme to demonstrate compliance with the proposed methodology and best practice guidance. If, during the works, contamination is encountered which has not previously been identified, then the additional contamination shall be fully assessed, and an appropriate remediation scheme agreed with the Local Planning Authority.

Reason: to ensure land contamination is adequately dealt with, and to ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution

- 41) Prior to any part of the permitted development being occupied a verification report demonstrating the completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to, and approved in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.

Reason To ensure that the site does not pose any further risk to human health or the water environment by demonstrating that the requirements of the approved verification plan have been met and that remediation of the site is complete.

- 42) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved.

Reason: To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution from previously unidentified contamination sources at the development site

- 43) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning

Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

Reason: To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution caused by mobilised contaminants

#### Ecology

- 44) Prior to works commencing a detailed ecological mitigation and enhancement strategy must be submitted to the LPA for written approval. It must be based on the information within the Ecological Assessment; (Bakerwell; Nov 2021) The mitigation and enhancement strategy must include the following information:

- Aim and objectives of the strategy
- Maps demonstrating the areas where mitigation is required.
- Maps showing the areas of habitat creation and ecological enhancements
- Detailed methodology to implement mitigation
- Timings of works.
- Interim management plan for the areas of habitat creation.
- Details of who will be carrying out the works.

The strategy must be implemented as detailed.

Reason: To protect habitats and species identified in the ecological surveys from adverse impacts during construction.

- 45) Prior to works commencing on the open space of the development. a habitat creation, management and monitoring plan must be submitted to the LPA for written approval. The management plan must provide the following information:

- Map showing areas of habitats to be created and managed
- Aims and objectives of the plan
- Overview of habitat creation and management to be carried out
- Detailed methodology to create the habitats
- Management prescriptions and timetable for the works
- Details of on-going monitoring
- Details of management plan reviews.
- Details of who will be carrying out the management and funding mechanisms.

The plan must be implemented as approved.

Reason: To protect and the creation of habitats and species identified in the ecological surveys from adverse impacts during construction.



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## **Consultee Comments for Planning Application 21/506465/HYBRID**

### **Application Summary**

Application Number: 21/506465/HYBRID

Address: Land At Lady Dane Farm Love Lane Faversham Kent ME13 8YN

Proposal: Hybrid Planning Application consisting of a: Full planning application for 84 residential dwellings, 3 no commercial units for Class E uses, access off Love Lane, and site infrastructure.

Outline planning application (with all matters reserved) for 70 residential dwellings, enterprise land development (including Class E uses), a Day Nursery, a Care Home and land reserved for 2 FE Primary School, together with open space, sports provision and associated works.

Case Officer: Paul Gregory

### **Consultee Details**

Name: . Faversham Town Council

Address: 12 Market Place, Faversham, Kent ME13 7AE

Email: Not Available

On Behalf Of: Faversham Parish Council

### **Comments**

Recommendation: Object

Comments:

1) Consultation:

The Design and Access Statement makes reference to a series of pre-app discussions with FTC. At these meetings we raised the points made in this representation.

Given the application makes reference to consultation with FTC we are surprised that none of the supporting documents including the planning statement and the design and access statement acknowledge or make reference to the emerging neighbourhood plan or its evidence base.

This demonstrates how the scheme is generic and fails to make a site-specific response based on local evidence. While there are references to national design standards, and an attempt to create character areas, these are not representative of the design, locality or matters important to the community, evidenced through the neighbourhood plan process.

For information the extensive evidence base can be viewed at:

<https://favershamtowncouncil.gov.uk/neighbourhood-plan/>

2) Climate Resilient Communities:

FTC is committed to reducing carbon use and ensuring through emerging policy of the NP that all new development positively address climate change, creating climate resilient communities. For more information, please visit the neighbourhood plan page to view the Faversham Net Zero Carbon Toolkit: <https://favershamtowncouncil.gov.uk/neighbourhood-plan/net-zero-carbon-toolkit/>

It is noted in the design and access statement the commitment to delivering some sustainable design principles such as all new home will be provided with an EV charging point. However, when

## APPENDIX 1

translating these concepts to the detailed plans it is not clear on any plans for either the proposed housing or detached garages where these EV points are.

The incorporation of the SuDS system into the open space strategy is welcomed. These can make a positive contribution to the soft landscape setting if they are well designed. Within the drainage strategy it does also identify other water management design features including resin and permeable surfaces. These should be conditioned to ensure they are delivered as part of any future scheme.

Overall, the actual development makes limited contributions to delivering carbon zero development. Whilst it is appreciated that part of the application is outline, the element relating to the reserved matters shows a limited response above building regulations commitment.

The public realm and landscaping strategy does make a more positive contribution. But again, could go further with wildlife friendly fence panels where required or providing more hedging as a boundary treatment over more traditional walls and fence panels.

The established mature hedgerow parallel to Love Lane should also be retained to provide some natural screening to the new development, maintaining green and natural wildlife corridors enabling continued north-south movement on the periphery of the site. The hedgerow will also contribute to managing surface water flooding on Love Lane as a natural method contributing to the overall surface water management.

Where any existing mature hedgerows or trees are to be removed, other than the identified hedgerow on Love Lane, as recommended in paragraph 10.7 of the ecological appraisal these should be used to enhance foraging and nesting sites.

#### 3) Hybrid Application:

As it is shown, this hybrid application includes a significant proportion of the proposed planning gain and associated community infrastructure within the outline application. Our concern is that should the outline element be granted consent it is foreseeable that without sufficient condition and S106 these elements may fall to the wayside in the reserved matters. It should not be the case that the outline application is granted on the principal of the level of infrastructure. Indeed, given FTC support these elements should the application be withdrawn to address the wider points raised it could be resubmitted as a full application, ensuring the community infrastructure is an integral part of the permission.

Should the hybrid application be granted without suitable conditions our concern is that the 2 applications are developed in piecemeal. There is currently no certainty on when the trigger for building the proposed infrastructure elements would be. These are clearly marked in a phasing strategy plan within the Design and Access Statement however, it does not that make clear when they are to be delivered as part of the development, ie after X number of units are completed.

#### 4) Employment Land:

Having considered the supporting document Commercial Market Assessment Report (CMAR) it fails to make clear the planning case for reducing the current strategic site allocation commitment for the level of employment land. The argument put forward suggests there is no current demand with Swale and Faversham for employment land. This is at odds with the evidence base of the emerging local plan.

The CMAR failed to take into account the previous section of the employment land review 2018,

## APPENDIX 1

which makes clear under development opportunities how important sites such as this are without complex land mitigation required to make the development viable.

In fact, paragraph 4.135 makes clear that: There is limited opportunity for the development of traditional offices in any area of the Borough. Small purpose-built offices in the Borough are unviable which makes it challenging to bring development forward. Our evidence shows that occupiers are prepared to be flexible in how they use their accommodation through using good quality light industrial units as offices, part or in whole. Smaller, more industrial style units have cheaper build costs and more affordable rents/capital values to occupiers. units can be fitted out dependant on the occupier. This can include building industrial units with the option of a mezzanine first floor and windows in higher up the buildings. This format of development is generally viable.

It also goes on to identify that: Generally, office occupiers prefer to be in the urban areas with good amenities so any development in this quasi light industrial format should be targeted around Sittingbourne, Faversham and Sheerness/Queenborough.

Further supported by: Faversham is seen as a substitutable location for some Canterbury demand including small flexible offices.

On balance there is no clear planning argument to depart from the adopted local plan policy MU6 in relating to this site allocation and the proportion of employment land to be delivered.

#### 5) Design and Layout:

The proposed layout concentrates the affordable housing together. National Model Design Code part 2 states development should deliver: The mix and integration of housing tenures and achieving tenure-blind development.

This is a significant design issue in the layout of the site. While we have the opportunity the applicant should reconsider the tenure layout and ensure the development is tenure blind to meet BFL12 standards, national design code and good urban design principles. The applicant has demonstrated how they have considered and responded to the design code in other aspects of the scheme. This is another opportunity to address a fundamental design principal through a revised layout.

The proposed garage dimensions do not appear to accommodate a parked vehicle and enable the occupants to exit within the structure. Put simply these are not designed fit for purpose given the size of modern vehicles. Although these may meet building regulations minimum space, they are not functional for the intended purpose. The proposed commitment to cycle storage is welcomed and it is suggested that this also makes provision for charging electric cycles.

The design concept to face building fronting the public realm towards the natural landscape features such as the green corridor is a strong design feature and makes a positive contribution to the overall development.

In relation to the apartments, it is also requested that all letterboxes are accessible from public entrances to enable deliveries and post to be made easily.

The proposed houses are standard in design and proposed materials. There is not a site-specific response within the design. Nor do the proposed dwellings include design features that address climate change.

It is noted in the design and access statement that the applicant is exploring ways to enhance

**APPENDIX 1**

sustainability including through PV and air source heat pumps. However, there is no commitment to this in the overall design.

The evidence base gathered for the emerging neighbourhood plan makes clear that this is a water stressed area. There are no proposed features to address this such as rainwater harvesting within the buildings or how the development is climate resilient.



## APPENDIX 2

## Appendix 1

**Hybrid Planning Application consisting of a: Full planning application for 84 residential dwellings, 3 no commercial units for Class E uses, access off Love Lane, and site infrastructure.**

**Outline planning application (with all matters reserved) for 70 residential dwellings, enterprise land development (including Class E uses), a Day Nursery, a Care Home and land reserved for 2 FE Primary School, together with open space, sports provision and associated works.**

**Ref: 21/506465/HYBRID  
January 2023**

**Recommendation: Objection**

Representations to be incorporated into the Faversham Town Council submission for application Reference Ref: 21/506465/HYBRID.

**General:**

- This representation should be read in conjunction with the Town Councils previous representation submitted on 8<sup>th</sup> February 2022 and this is in addition, all the previous comments still stand.
- This is based on the additional information submitted.

**Consultation:**

- It is disappointing that the revised details still fail to acknowledge the emerging Faversham Neighbourhood Plan and its evidence base.

**Climate Resilient Communities:**

- FTC supports the identified commitment to Biodiversity Net Gain (BNG). However, we note the representation made by Kent County Council; Biodiversity Officer, who highlights that the BNG will not be achieved if the habitats within the site are not actively managed. Therefore, we support the requirement for a detailed monitoring and management plan to be produced.

The emerging Faversham Neighbourhood Plan contains mapping data that may be useful to inform the management plan or alternatively the DEFRA interactive mapping site that can be viewed at: <https://magic.defra.gov.uk/MagicMap.aspx>

- Overall, the actual development still makes a limited contribution to delivering carbon zero development. Whilst it is appreciated that part of the application is outline, the element relating to the reserved matters shows a limited response above the Part L building regulations commitment as shown in the submitted Energy Statement.

Given Swale Borough Council has declared a climate emergency, and indeed Faversham suffers from impacts of climate change there remain little positive changes to deliver more

**APPENDIX 2**

Appendix 1

climate resilient communities. The proposed design, layout and materials of the development do not take opportunity to create community or micro energy production or include innovative design features such as rainwater gardens and harvesting or solar shading.

Again, we direct the applicant to the emerging Faversham Neighbourhood Plan which contains policies and guidance on how to deliver green design within new developments. The Plan can be viewed at: <https://favershamtowncouncil.gov.uk/neighbourhood-plan/>

**Active Travel:**

- It was noted that the footpath across the site will be retained and become shared access. Members questioned whether 1.5metres was wide enough for dual use.
- Faversham Town Council requests that the Active Travel Officer at Swale Borough Council reviews this component of the application.

**PLANNING COMMITTEE – 13 APRIL 2023****PART 3**

Report of the Head of Planning

**PART 3**Applications for which **REFUSAL** is recommended

<b>3.1 REFERENCE NO - 22/504165/FULL</b>		
<b>APPLICATION PROPOSAL</b> Conversion of agricultural building into a single dwellinghouse, including insertion of rear dormer, alterations to fenestration, and raising and altering the roof height to allow for a second storey (change of use previously approved under 20/504753/PNQCLA).		
<b>ADDRESS</b> Forge Farm Hernhill Kent ME13 9FW		
<b>RECOMMENDATION</b> - that planning permission is REFUSED		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Parish Council Support		
<b>WARD</b> Boughton and Courtenay	<b>PARISH/TOWN COUNCIL</b> Hernhill	<b>APPLICANT</b> Dr Sam Gilbert <b>AGENT</b> Studio Ben Allen
<b>DECISION DUE DATE</b> 21/10/22	<b>PUBLICITY EXPIRY DATE</b> 17/10/22	

**Planning History**

23/501202/FULL - Conversion of an agricultural building into a single one bedroom dwellinghouse including alterations to fenestration and replacing the existing roof with red clay tiles with associated parking and landscaping.  
Pending Consideration

**20/504753/PNQCLA**

Prior notification for the change of use of building and land within its curtilage to 1 no. dwellinghouse and associated operation development.

Prior Approval Not Required Decision Date: 08.01.2021

**17/503400/PNQCLA**

Prior notification for the change of use of building and land within its curtilage from an agricultural use to a use falling within Class C3 (one dwelling) (as clarified by email dated 22/08/2017)

Prior Approval Not Required Decision Date: 30.08.2017

**17/505345/PNQCLA**

Prior notification for the change of use of a building and land within its curtilage from an agricultural use to a use falling within Class C3 (dwelling-house) and building operations reasonably necessary to convert the building

Prior Approval Not Required Decision Date: 07.12.2017

## 1. DESCRIPTION OF SITE

- 1.1 The building in question is a traditionally designed agricultural building (approximately 6m x 5m and overall height of 5.4m), likely dating from the Victorian period. It is built of brick and with a concrete tile roof that was replaced in approximately the 1970's. The internal ground floor area measures 26.25 square metres. The building has a gross external area of 30 square metres. The building is accessed from Staple Street by an existing gravelled access.
- 1.2 The building lies in the countryside, in the Swale Level Area of High Landscape Value (AHLV) approximately 24m to the north. The Staplestreet Conservation Area is approx. 28m to the west with an established orchard to the rear. The Grade II listed Forge Farmhouse lies approximately 50m to the East.

## 2. PROPOSAL

- 2.1 The application seeks planning permission for the conversion of the building to a single dwelling, the raising and alteration of the roof to allow for a second storey via a mezzanine level adding approximately 11.5m<sup>2</sup> of floorspace, changes to fenestration and the insertion of a dormer window.
- 2.2 The most significant external alterations are to the roof. It is proposed to raise the ridge height from 5.4m to 6.8m with a cat-slide roof to the southern elevation to allow for a second storey, finished in clay tiles. A rooflight is proposed within the flat roof apex to allow for further natural light into the second storey. To the rear, a hipped dormer is proposed. The existing brick walls are to be retained with the addition of timber weatherboarding to the gables.
- 2.3 With regards to window arrangement the southern elevation would see 2no. windows and an entrance door inserted into existing openings, it is proposed to insert a new window within a former opening on the northern elevation and to insert 1no. new window opening to the eastern elevation and 2no. new window openings to the western elevation. The new windows are proposed to be metal – coloured anthracite.
- 2.4 Access to the building would be via an existing access point on Staplestreet and parking for 1no. vehicle would be provided to the front of the proposed dwelling.

## 3. PLANNING CONSTRAINTS

- Within the setting of Staplestreet Conservation Area;
- Within the setting of Grade II listed Forge Farmhouse;
- Area of High Landscape Value (Swale Level).

## 4. POLICY AND CONSIDERATIONS

### **Bearing Fruits 2031: The Swale Borough Local Plan 2017**

**ST1** (Delivering sustainable development in Swale)

**ST3** (Swale settlement strategy)

**CP4** (Design)

**CP7** (Conserving and enhancing the natural environment)

**DM3** (The rural economy)



- DM7** (Vehicle Parking)
- DM14** (General development criteria)
- DM16** (Alterations and extensions)
- DM19** (Sustainable design and construction)
- DM21** ((Water, flooding and drainage)
- DM24** (Conserving and enhancing valued landscapes)
- DM26** (Rural lanes)
- DM32** (Development involving listed buildings)
- DM33** (Conservation Areas)

### **Supplementary Planning Guidance (SPGs)**

The Conservation of Traditional Farm Buildings’, ‘Designing an Extension – A Guide for Household’ and ‘Conservation Areas’.

Parking Standards 2020 (which has been adopted since the Local Plan was published and supersede the County standards referred to in policy DM14).

### **National Planning Policy Framework**

Paragraphs 8 and 11 (sustainable development)

## **5. LOCAL REPRESENTATIONS**

- 5.1 Letters were sent to neighbouring occupiers, a notice was published in the press and a site notice placed in the vicinity.
- 5.2 Three letters of objection were received from one local address and can be summarised as follows:
  - By raising the roof height and altering the profile, the proposed design does not conserve the style, character and local distinctiveness of the historic agricultural building;
  - The application does not consider the impact to the 19th century cottages immediately opposite and within the conservation area;
  - The hedge to the southern boundary should be recorded and plotted as parts of this are of regenerating elm, an important habitat for rare invertebrate species and distinctive to this part of Staplestreet;
  - Altering the shape and height of the barn has not paid attention to the architecture of surrounding buildings or the relationship of the roof with others that lie within the Conservation Area opposite;
  - The application does not comply with policy DM16 or DM33 of the Local Plan.
- 5.3 **Hernhill Parish Council** support the application on the basis they believe that it is an improvement on the previous Class Q design permission. They do, however, acknowledge that the front elevation of the roof design is somewhat unusual and not in keeping with local catslide vernacular.

## 6. CONSULTATIONS

- 6.1 **KCC Highways & Transportation:** No objection to the proposal.
- 6.2 **KCC Ecology:** No objection subject to conditions relating to the requirements for a lighting condition and biodiversity enhancements.
- 6.3 **SBC Conservation Officer:** Objects to the application because the proposal would not be representative of a Kentish barn and the historical function of the building would be difficult to discern. The essential character and appearance of building would be lost due to alterations, particularly to the roof. Furthermore, the proposal does not comply with the conservation of traditional farm buildings SPG.

## 7. BACKGROUND PAPERS AND PLANS

- 7.1 All documents relating to 22/504165/FULL.

## 8. APPRAISAL

- 8.1 The main matters for consideration as part of this application are: -

- Principle of development
- Character and appearance
- Living Conditions
- Parking
- Ecology

### Principle of development

- 8.2 The site lies outside of any defined built-up area boundary suitable for new residential development as identified by policy ST3 of the Local Plan and as such the site is in the countryside where residential development is normally held to be unacceptable under countryside protection policies. Policy DM3 of the Local Plan does allow for certain developments that support the rural economy, which includes the potential re-use of existing buildings for appropriate economic or tourist uses. The policy itself and supporting text makes clear that proposals for residential development will not be permitted where this would reduce the potential for rural employment and/or community facilities unless it can be demonstrated that there is no demand for such purposes or that the site is unsuitable.
- 8.3 However, the former agricultural building also benefits from an extant prior approval which allows for its conversion to a dwelling under permitted development rights. This process under the permitted development regime can only be considered against a very limited range of matters. The works that can be carried out under prior approval are also limited to the conversion of existing buildings only and does not allow any enlargement of the building. Given that the current application proposes alterations to extend the size of the building, it falls outside of these parameters and as such planning permission is required.
- 8.4 The applicant has indicated that the scheme as permitted under the prior approval process will not meet their needs and as such have applied to increase the floorspace of the building

with the inclusion of a mezzanine level. The residential unit approved under the prior approval process is limited to an internal floor area of just 26.25 metres. Whilst this would fall well below the internal standards normally applied for residential units, it was the case that until recently, this could not be taken into account under the prior approval process. It was only in 2022 that changes were made to the permitted development legislation which required minimum space standards to be applied to this process. Whilst there remains a theoretical fallback position that the prior approval application granted in 2021 can still be implemented, I am of the opinion that this may not in reality be a wholly realistic or viable proposition, given the very small internal space that would be provided as living accommodation. As such, I would only give this limited weight as a fallback. Members will be aware that under the permitted development regime, the matters that can be considered in assessing a proposal are extremely limited. However, when determining a planning application, then the proposal must be considered against all relevant policies in the development plan.

- 8.5 Given the policy position under Policy DM3 of the Local Plan that residential development should not be permitted unless it is evidenced that a site/building is not suitable or has no demand for economic uses, the proposed residential use would clearly be in conflict with this policy.
- 8.6 The site lies approximately 0.5km from the built-up area boundary of Boughton Under Blean which includes a limited range of services and facilities. However, both Staple Street, where the application site is located, and Bull Lane, which combined would provide the most direct route to Boughton, are both unlit and have no pavements. They are predominately narrow rural lanes which I do not believe would encourage future occupants to travel upon via sustainable modes of transport. I am of the view that a private car would be required to access services and facilities needed for day to day living, and this counts significantly against the scheme. Whilst I note that a housing development has taken place to the west of the site, this was a local needs rural housing scheme permitted in the best available location and which recognised (in the committee report for the scheme) that it was as sustainable as it reasonably could be, in the context of other potential site options. As it provided local needs affordable housing, I consider the neighbouring development was accepted in this location as an exception to established rural housing policies and does not set a precedent.
- 8.7 On this basis the application is not acceptable in principle and contrary to policies ST3 and DM3 of the Local Plan 2017 and to the aims of the NPPF in lowering carbon emissions.

#### **Character and appearance**

- 8.8 The application property, dating from the early Victorian period, is not listed or locally listed. The building is not treated as a curtilage listed building in spite of its historic functional relationship with the nearby grade II listed Forge Farmhouse. The reason for this is due to the fact the listed farmhouse and garden are enclosed within a walled area physically separating it from the former associated farm building, in addition to potentially being in separate ownership at the time of listing. However, as correctly identified in the submitted heritage statement, the redundant agricultural building (historically used in association with Forge Farm) is treated as a non-designated heritage asset.
- 8.9 The redundant building lies outside the boundary of the Staplestreet Conservation Area but is clearly visible at the western entrance to and exit from the conservation area, and as also

correctly identified in the heritage statement, it contributes to the setting of the conservation area in its present form but has the potential to contribute more significantly given sensitive alteration and associated repairs and appropriately designed external works.

- 8.10 However, in this case, the net effect of the changes is that the historic agricultural function of the application building would be difficult to appreciate/discern, and the essential character and appearance of the former agricultural building would be materially altered and lost to a significant degree. This in turn would result in harm to the setting of the conservation area and the historically associated Grade II listed Forge Farmhouse to the east on the junction with Church Hill contrary to policies DM32 and DM33 of the Local Plan.
- 8.11 The general approach to the re-use of rural buildings is that such buildings are capable of conversion without substantial changes – minimising the impact on the countryside. In this instance, the roof alterations are significant and I consider that the resultant height and bulk of the roof would be at odds with the small-scale rural form and character of the existing building. It should also be noted that the proposed curtilage is much larger than as approved under the Class Q permission and disproportionate to the very small footprint of the building. I am concerned that residential use would change the functioning and appearance of this land and with the likely siting of domestic paraphernalia within this enlarged curtilage, this would, in turn, lead to a further erosion of rural character and appearance within this countryside location. As such, I consider that the development would be harmful to the intrinsic value, setting, tranquillity and beauty of the countryside and its buildings, contrary to Policy ST3 of the Local Plan.

### **Living Conditions**

- 8.12 The Local Plan aims to secure a good standard of amenity for all existing and future occupants of land and buildings.

#### Existing neighbours

- 8.13 In light of the separation distance any impact of the proposal upon the living conditions of nearby dwellings is acceptable and as such in accordance with policy DM14 of the Local Plan 2017.

#### Future occupiers

- 8.14 The Local Plan seeks to secure suitable living standards for future occupiers of development.
- 8.15 The submitted Planning Statement states that the proposal would comprise a 1-bedroom 2-person unit over the ground floor and mezzanine level, however, given the limited floorspace of 38sqm the living space appears to be cramped, offering future occupiers a poor standard of accommodation and as such the proposal is contrary to policy DM14 of the Local Plan 2017. Whilst it is acknowledged that the applicant benefits from an extant prior approval, as specified above this could not (at the time) take into account the small internal size of the building.

### **Highways & Parking**

- 8.16 The dwelling will utilise an existing access point. Considering the limited number of vehicle movements that will be associated with the residential use the access design is suitable.

Moreover, given the limited number of vehicle movements that will be associated with the proposal on the wider highway network any impact is considered to be acceptable.

- 8.17 With regards to car parking, the application proposes one vehicle space which complies with the Council's SPD for a dwelling of this size.
- 8.18 Taking this into account the proposal is considered to accord with policies DM7 and DM14 of the Local Plan 2017.

### **Ecology**

- 8.19 The Local Plan states that development should achieve a net gain of biodiversity where possible.
- 8.20 The Preliminary Ecological Appraisal submitted detailed three species of bats were present on site. KCC Ecology have been consulted and are satisfied that the survey that has been undertaken as part of the Preliminary Ecological Appraisal is satisfactory. As such no objection is raised subject to the imposition of conditions relating to lighting and a plan providing details of native species planting and ecological enhancement features to be incorporated on to the site.
- 8.21 Taking this into account the proposal is considered to accord with policy CP7 of the Local Plan 2017.

## **9. CONCLUSION**

- 9.1 The alterations to the roof would cause harm to the views in to and out of the Staplestreet conservation area and would detract from the relationship with and the setting of the historically associated Grade II listed Farmhouse, providing a design that is not in keeping with the local vernacular.
- 9.2 I am also of the view that the principle of residential development is not accepted here on the basis that the proposal requires planning permission and that the site lies outside the built-up area boundary and is in an unsustainable location. Nor does it comply with the Council approach under Policy DM3 regarding the re-use of rural buildings. I do recognise that the Council is unable to demonstrate a 5-year supply of housing land and in cases such as these, paragraph 11 d) of the NPPF sets out that:

*“where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>8</sup>, granting permission unless:*

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>7</sup>; or*
- ii. 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.”*

- 9.3 Footnote 7 includes heritage assets, which in the case of this application is comprised of the setting of the conservation area and the nearby listed building. On the basis that harm has been identified to these designated heritage assets, this in my view provides a clear reason for refusing the application. The benefits of 1 additional dwelling would be limited

and therefore the proposal cannot be considered sustainable development for which the Framework presumes in favour.

- 9.4 In addition to the above, I have identified harm to the living conditions of the future occupants by virtue of the restricted floor area of the proposed dwelling, and to the character and appearance of the countryside through the extensions and large residential garden proposed.
- 9.5 In conclusion I am of the view that the proposal is contrary to policies ST3, DM3 DM14, DM16, DM32 and DM33 of the Local Plan and SPG for the 'Conservation of Traditional Farm buildings'.

## 10. RECOMMENDATION

REFUSE for the following reason:

- (1) The proposed method of conversion of this building with extensive roof alterations and enlarged curtilage will seriously and adversely affect its traditional agricultural appearance in a manner harmful to the character of the countryside, views into and out of the Staplestreet conservation area, and relationship with and setting of the historically associated listed farmhouse, contrary to policies ST3, DM14, DM16, DM32 and DM33 of Bearing Fruits 2031: The Swale Borough Local Plan 2017 and to the Council's Supplementary Planning Guidance (SPG) entitled "The Conservation of Traditional Farm Buildings".
- (2) The proposed dwelling would not represent sustainable development as this location is outside any established built-up area boundary where few amenities exist and occupants would be dependent on private transport for all daily needs. This would be contrary to the environmental objective of the National Planning Policy Framework (as set out in paragraph 8) which requires the planning system to facilitate the delivery of sustainable development and moving to a low carbon economy. There has also been no supporting evidence submitted with the application that the building is unsuitable for any other uses such as commercial or tourist uses. This harm would significantly and demonstrably outweigh any benefits of the scheme (including its very limited contribution to the overall supply of housing in the Borough). The application is therefore contrary to policies ST1, ST3, DM3 and DM14 of Bearing Fruits 2031: The Swale Borough Local Plan and paragraphs 8 and 11 of the National Planning Policy Framework.
- (3) The floor area of the proposed dwelling would lead to cramped living conditions for future occupiers, giving rise to harm to residential amenity contrary to policy DM14 of Bearing Fruits 2031: The Swale Borough Local Plan 2017.

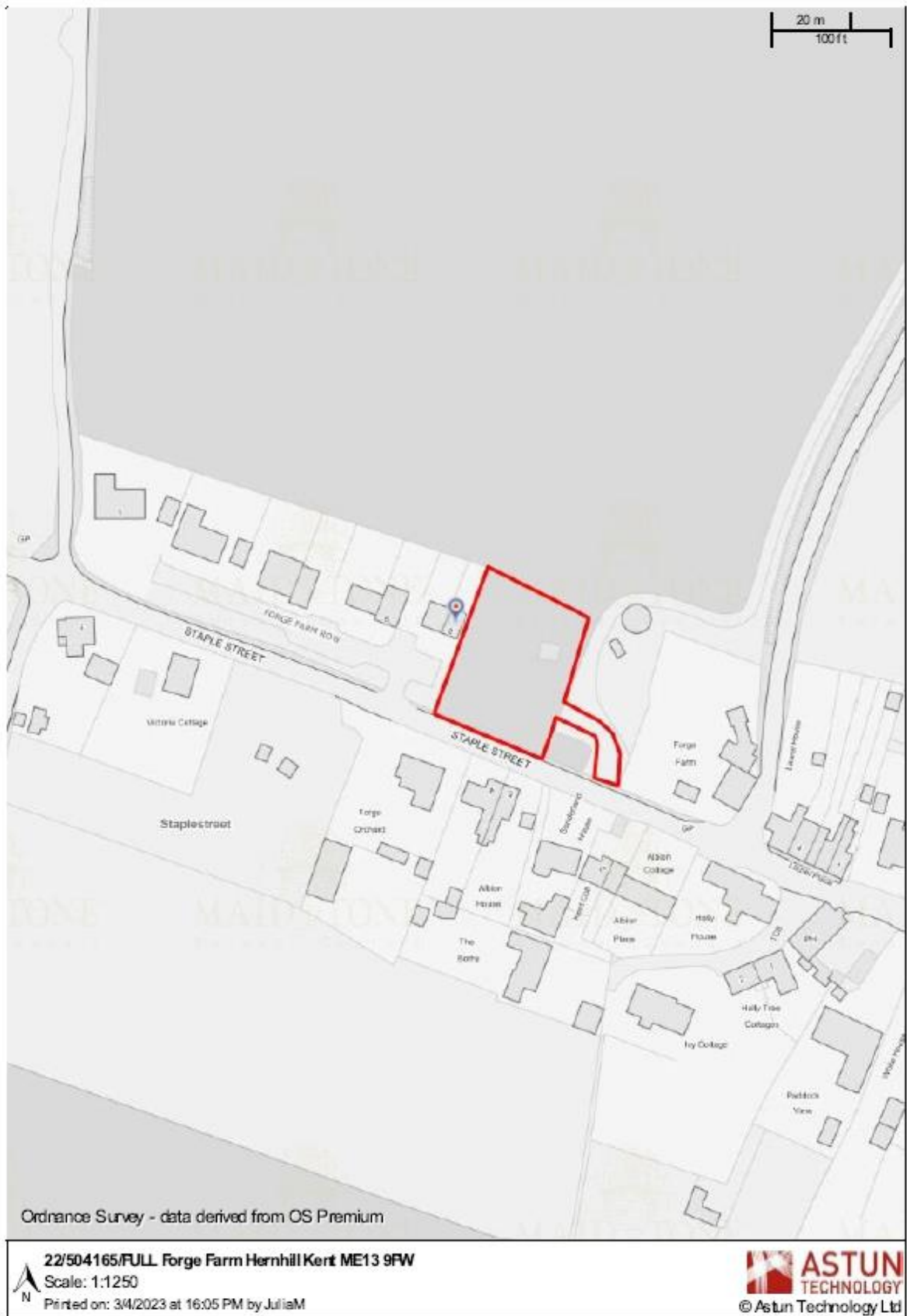
### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2018 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

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.





**PLANNING COMMITTEE – 13 APRIL 2023**

**PART 5**

Report of the Head of Planning

**PART 5**

Decisions by County Council and Secretary of State, reported for information

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- **Item 5.1 – Land at Central Car Park, Leslie Smith Drive, Faversham**

**APPEAL DISMISSED**

**DELEGATED REFUSAL**

**Observations**

A good decision where the Inspector agreed with the Council that the proposed mast would fail to preserve or enhance the character and appearance of the conservation area or preserve the setting of nearby listed buildings. The Inspector also agreed that the applicant had provided insufficient evidence that alternative and less harmful options had been explored. It was concluded that the harm identified was not outweighed by the need for the installation to be sited as proposed.

- **Item 5.2 – 8 Park Road, Faversham**

**APPEAL ALLOWED**

**AGAINST OFFICER RECOMMENDATION**

**Observations**

The Inspector disagreed that the render finish would be inappropriate to the area as there was considerable evidence of rendered finishes elsewhere, including the adjoining property where the whole of the ground floor and side boundary are rendered as well as the front elevations of several properties along Park Road. It was agreed that the unfinished treatment of the boundary wall was unsightly but included a condition for the applicant to submit details of the colour and finish of this wall within 2 months of the decision and the agreed details being implemented within 4 months of the details being approved. Given the limited depth and height of the extension it was not considered that any impact in respect of loss of light or outlook was of such an extent that permission should be refused. The Inspector concluded that the character and appearance of the conservation area would be preserved and there would be no significant harm to the living conditions of no. 9 Park Road.

- **Item 5.3 – Horseshoe Farm, Elverland Lane, Ospringe**

**APPEAL DISMISSED****ENFORCEMENT APPEAL****Observations**

A good decision that highlights the strong weight given to protection of the AONB. The Inspector agreed with the Council that this Gypsy site was in an unsustainable location, failed to conserve or enhance the qualities and character of the AONB and harmed the character of the designated rural lane. The Inspector acknowledged that the Council could not demonstrate a five-year supply of sites, but that it had nonetheless approved sites through the Local Plan policy to meet a substantial part of the forecast need in the Council's Gypsy and Traveller Accommodation Assessment. The planning history of the site was lengthy, and the appellant had not attempted to look for alternative sites in the years since 2012. The appellant's personal circumstances, lack of alternative sites in the Borough and lack of a 5-year supply did not clearly outweigh the significant weight attached to the harm to the AONB and the unsustainable location of the site. This harm also outweighed any justification for a temporary permission.

- **Item 5.4 – Land off Otterham Quay Lane, Upchurch**

**APPEAL ALLOWED****DELEGATED REFUSAL****Observations**

The Inspector outlined that the appeal scheme includes considerable and significant benefits in respect of housing and affordable housing and a range of other benefits of moderate and limited weight, some of which lead to accordance with LP policies. Even if the shortfall in five-year housing land supply would only be to the extent argued by the Council, the Inspector did not find this to be particularly determinative in respect of this appeal. Moreover, the adverse impacts of granting permission would still not significantly and demonstrably outweigh the stated benefits, when assessed against the policies in the Framework taken as a whole. As a result, the proposal would benefit from the presumption in favour of sustainable development and, for reasons advanced above, it would amount to sustainable development.

- **Item 5.5 – My Retreat, Norman Road, Eastchurch**

**APPEAL DISMISSED****DELEGATED REFUSAL****Observations**

The Inspector agreed with the Council that the location of this residential caravan was unsuitable given its remote and unsustainable location and impact on rural character and appearance. This harm significantly and demonstrably outweighed the limited benefit of a single unit to the Council's housing supply.



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## Appeal Decision

Site visit made on 7 February 2023

by **A Price BSc MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 February 2023

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**Appeal Ref: APP/V2255/W/22/3295885**

**Land at Central Car Park, Leslie Smith Drive, Faversham ME13 8PW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
  - The appeal is made by MBNL (EE Ltd and H3G UK Ltd) against the decision of Swale Borough Council.
  - The application Ref 21/504482/TNOT56, dated 12 August 2021, was refused by notice dated 29 September 2021.
  - The development proposed is the installation of an 18 metre high monopole supporting 6 antenna apertures and 2 transmission dishes, the installation of 7 equipment cabinets and ancillary development.
- 

### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received. My determination of this appeal has been made on the same basis.
3. The principle of development is established by the GPDO and the provisions of Schedule 2, Part 16, Class A of the GPDO do not require that regard be given to the development plan. I have had regard to the policies of Bearing Fruits 2031: The Swale Borough Local Plan (LP, 2017) and the National Planning Policy Framework (the Framework) only insofar as they are material considerations relevant to the matters of siting and appearance.

### Procedural Matters

4. The appellant contends that the Council failed, in accordance with the provisions of paragraph A.3(8) of the GPDO, to give the applicant or their agent written notice of its determination that prior approval was required. Nevertheless, it is clear that the decision notice was issued within the prescribed 56 day statutory period setting out that prior approval was refused. Failure to notify the appellant during the process does not invalidate the refusal.

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### **Main Issues**

5. The main issues are:

- the effect of the siting and appearance of the proposed installation on the character and appearance of the area, including on the setting of heritage assets; and
- if any harm is identified whether that harm would be outweighed by the need for the installation, taking into account any suitable alternative sites.

### **Reasons**

6. The appeal site comprises an area of hard landscaping within Central Car Park, adjacent to the existing single-storey toilet block. To the north of the site lie the rear of town centre properties forming part of West Street, Market Street and Preston Street. The appeal site lies within Faversham Conservation Area (CA). The significance of the CA lies, insofar as this appeal is concerned, in the character of historic and tightly packed town centre buildings enclosing narrow streets, together with nineteenth century residential development to the south-west, of similar development form, scale and building materials.
7. The site is also close to a series of Grade II listed buildings. These include 73-74, 76-78A and 88-90 Preston Street, 9 Market Street, 12, 14 and 15 The Market Place, 3-5 Hugh Place and the brick and stone setts within the curtilage of 1-7 Hugh Place. The significance of these buildings is derived from their age, ranging from the fifteenth to the nineteenth centuries, and architectural detail, including timber framed construction, the use of brick, and tiled gables.
8. The listed buildings are most clearly viewed, and best experienced, from the streets onto which they front. However, rear views of them allow them to be appreciated from the site and wider Central Car Park. Due to the proximity of the appeal site and these heritage assets, together with their intervisibility, the proposed installation would fall within the setting of the listed buildings.
9. The proposed installation would comprise an 18-metre high monopole and 7 ground-based equipment cabinets. The prominent location of the installation, together with its scale, is such that it would be highly visible from within the surrounding public realm and from nearby properties facing onto the site.
10. Although I appreciate that the mast has been reduced in height and coloured green since a previous planning application, and I accept that the area surrounding the site contains a range of street furniture, including lighting columns and telegraph poles, the proposed installation would be appreciably higher than those features, appearing visually intrusive and dominant. It would also project above the mature and semi-mature trees that surround the site. These are deciduous, further reducing coverage during the winter months.
11. Ultimately, a substantial extent of the modern and utilitarian mast would be viewed against the skyline. This would form a jarring and incongruous feature next to the historic buildings which surround it, interrupting views of the rear of the listed properties and marring their setting.
12. For the above reasons, the proposed installation would have a harmful effect on the character and appearance of the CA, neither preserving nor enhancing

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it, and would harm the setting of the listed buildings. Nevertheless, the harm to the setting of the heritage assets would be 'less than substantial' as only a part of their setting would be affected. In line with the requirements of paragraph 202 of the Framework, this harm must be weighed against any public benefits of the proposal.

13. There are clear public benefits to the proposed installation, including the contribution to providing good, fast, reliable and cost-effective communications, an objective supported by the Government<sup>1</sup>, and the replacement of a nearby decommissioned mast. I also appreciate that the communications provider has been awarded a contract by the Home Office to provide new Emergency Services Network and that this appeal site would form part of that network. Nevertheless, I conclude that the harm identified above would not be outweighed by the need for the installation to be sited as proposed.
14. For the above reasons, I conclude that the siting and appearance of the proposed installation would fail to preserve or enhance the character or appearance of the CA, or preserve the setting of the Grade II listed buildings. It would be contrary to the relevant provisions of LP Policies DM14, DM32 and DM33. These policies, amongst other objectives, seek to ensure that heritage assets are preserved.

#### *Alternative sites*

15. The appellant has set out 7 discounted alternative locations for a mast and associated apparatus. These were discounted for various reasons, including in some cases their inability to provide suitable coverage and their visual impact.
16. However, the level of detail submitted is limited. I have no substantive information before me which convincingly demonstrates the extent to which masts in those locations would fail to achieve the same level of coverage as the site before me, or the extent to which they would harm character and appearance.
17. Consequently, based on the evidence before me, I am not persuaded that the appellant has properly explored all other potentially available, and less harmful, alternative options.

#### **Other Matters**

18. The appellant has referred to the similarities between the proposal and schemes that were allowed at appeal at Cricklewood Lane, London<sup>2</sup>, Gillender Street, London<sup>3</sup> and Leighton Buzzard Road, Hemel Hempstead<sup>4</sup>. However, the circumstances at those sites are not directly comparable, not least as they are located in different settlements. I have assessed the appeal scheme on its own individual circumstances, based on the evidence before me and my observations on site. Ultimately, the existence of those appeals does not lead me to an alternative conclusion on the main issue in this particular case.

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<sup>1</sup> Framework paragraph 114

<sup>2</sup> Ref APP/N5090/W/20/3250662

<sup>3</sup> Ref APP/E5900/W/21/3272180

<sup>4</sup> APP/A1910/C/20/3256772, APP/A1910/C/20/3256773

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19. I also acknowledge that the proposal would not have adverse impacts on public health. However, that has not been a determining factor in this case and attracts no weight in support of the appeal.

**Conclusion**

20. For the above reasons, I conclude that the appeal is dismissed.

*A Price*

INSPECTOR





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## Appeal Decision

Site visit made on 31 January 2023

**by Mr Kim Bennett BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 02 March 2023**

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**Appeal Ref: APP/V2255/D/22/3305206**

**8 Park Road, Faversham ME13 8ES**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Alexander Rozema against the decision of Swale Borough Council.
  - The application Ref 22/501594/FULL, dated 25 March 2022, was refused by notice dated 27 July 2022.
  - The development is the construction of a single storey ground floor rear extension.
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### Decision

1. The appeal is allowed and planning permission is granted for the construction of a single storey ground floor rear extension in accordance with the terms of the application, Ref 22/501594/FULL, dated 25 March 2022, subject to the following conditions:
  - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 778/1A and 003 Rev 4.
  - 2) Within 2 months of the date of this decision, details of the colour and finish to the adjoining wall of the extension with No 9 Park Road shall be submitted to and approved in writing by the local planning authority. The agreed details shall be fully implemented within 4 months of them being approved.

### Main Issues

2. The main issues are: whether the development preserves or enhances the character or appearance of this part of the Faversham Conservation Area; and the effect of the development on the living conditions of the occupiers of the adjoining residential property at No 9 Park Road.

### Reasons

#### *Conservation Area*

3. The appeal property comprises a two storey terraced house located on the western side of Park Road and close to its junction with Chapel Street. At the rear there is a two storey extension adjoining the common boundary with No 7 Park Road, and beyond that a single storey extension with a mono pitched roof. Between the two storey extension and the rear common boundary with No 9 Park Road, a single storey extension has been constructed with a mono pitched roof facing No 9 and which has a rendered finish apart from the side of the

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common wall facing No 9 which is untreated blockwork. The Council advises that the extension is 2.2m wide x 3.05m deep x a maximum 2.8m high. It is this extension which is the subject of this appeal and which permission is sought to retain. This is not to be confused with an earlier application which was refused planning permission by the Council and which the agent advises was for a longer depth of 3.94m<sup>1</sup>.

4. Beyond the extension, a covered but open structure has also been constructed, extending to the end of the single storey extension. However, this is not shown on the submitted plans and therefore does not form part of my consideration of this appeal.
5. Because of its location within the Conservation Area, there is a statutory duty for special attention to be given to the desirability of preserving or enhancing the character or appearance of that area. In that respect, the Council is concerned that the rendered finish in particular is inappropriate and detracts from the appearance of the Conservation Area. Although the appellant suggests that did not appear to be a specific concern from the transcript of the Committee Minutes of the meeting on 21 July 2022, I note that the formal minutes included references to concern about design generally including materials.
6. The size of the extension, and particularly its depth, largely complies with the Council's Supplementary Planning Guidance on extensions which refer to extensions being a maximum of 3m in depth. As the officer report notes, such infill extensions are fairly typical on a property of this sort and indeed I noticed other similar extensions nearby. Although there is a glimpsed view of the extension from Chapel Street it is primarily the roof structure only and it is by no means prominent in the street scene.
7. Turning to materials, the roof tiles match those of the main roof. Although the walls have been finished in render rather than matching brickwork to the main house, there is considerable evidence of rendered finishes elsewhere. This includes the adjoining property at No 9, where the whole of the ground floor and side boundary wall are rendered, the front elevations of several properties along Park Road, and the rear elevations of properties in Chapel Street, including rear extensions. I therefore do not consider that the argument that a rendered finish is inappropriate to the area can be reasonably sustained.
8. Part of the Council's concern appears to relate to the unfinished treatment of the boundary wall of the extension facing No 9. That is understandable and I agree it currently looks unsightly. However, a condition can be imposed to require details of an acceptable finish to be applied and I note that the appellant is agreeable to such a condition.
9. For the reasons set out I find that, subject to an appropriate condition, both the character and appearance of the Conservation Area would be preserved. The development therefore complies with policies CP4, DM14, DM16 and DM33 of the Council's Local Plan Bearing Fruits 2031 (LP) in that amongst other criteria set out in those policies, it is appropriate to its location and surroundings, is an appropriate design and quality, and would preserve the features that contribute to the special character of the Conservation Area.

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<sup>1</sup> Application reference 18/505539/FUL



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#### *Living conditions*

10. At my site visit I was able to inspect the relationship of the extension with No 9 from within the latter's rear garden as there is a right of access to the appeal property at the rear. I noted No 9 has a rear facing window to a living room which also appears to have been increased in size from the original at some point in the past. There is also a large window and door facing the extension wall which serve a kitchen. As with any extension on the common boundary between properties, there is bound to be some impact arising. That is the case here, and indeed I note from a photograph in the grounds of appeal that the previous common boundary treatment between the two properties consisted of a high boundary wall with a trellis fencing on top. That would also have had some impact upon light entering the rear facing window of No 9 and also outlook from the room it serves. Although the boundary wall of the extension apparently projects slightly over the rear common boundary, given the limited depth and height of the extension, I do not consider that any impact in respect of loss of light or outlook is of such an extent that permission should be refused for that reason alone.
11. I therefore find that the impact upon the living conditions of the occupiers of No 9 is acceptable. Accordingly, the development complies with policies CP4, DM14 and DM16 of the LP in that amongst other criteria set out in those policies, there is no significant harm to amenity.
12. Part of the concern from the adjoining occupier at No 9 appears to relate to the apparent encroachment of the rear common boundary by the flank wall of the extension. However, I note that from a planning point of view the requisite ownership certificate has been served and that the issue is primarily a civil one, as officers advised in their report to the Planning Committee, which would need to be resolved between the parties as a separate matter to the planning process.

#### **Conclusion**

13. For the reasons set out above, the character and appearance of the Conservation Area would be preserved, and there would be no significant harm to the living conditions of the occupiers of No 9 Park Road.
14. A condition for the development to be built in accordance with the approved plans is necessary in the interests of certainty. A condition requiring details of the finish of the flank wall of the extension facing No 9 and for that finish to be completed within a reasonable timetable, is also necessary in the interests of visual amenity.
15. Accordingly, the appeal is allowed and planning permission granted.

*Kim Bennett*

INSPECTOR





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## Appeal Decision

Hearing held on 14 February 2023

Site visits made on 13 & 14 February 2023

by **Nick Fagan BSc (Hons), DipTP, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 March 2023

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**Appeal Ref: APP/V2255/C/18/3202648**

**Horseshoe Farm, Elverland Lane, Ospringe, Kent, ME13 0SP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Alfred Willet against an enforcement notice issued by Swale Borough Council.
  - The enforcement notice was issued on 19 April 2018.
  - The breach of planning control as alleged in the notice is failure to comply with a condition imposed on a planning permission.
  - The development to which the permission relates is: Non-compliance of condition 2 of planning permission 15/505252/FULL granted on 30 September 2015 which required cessation of the residential use of the land as a caravan site and for all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with that use to be removed, all by 10 August 2017.
  - The requirements of the notice are to:
    - I. Cease the residential use of the Land including the stationing of any mobile homes or caravans in connection with that use.
    - II. Remove from the Land all caravans, mobile homes, structures, materials and equipment brought onto the land, or works undertaken to it in connection with that use.
    - III. Remove from the Land all materials, rubbish and debris caused by compliance with (I) and (II) above.
    - IV. Restore the Land to its condition before the residential use took place.
  - The period for compliance with the requirements is: 12 (twelve) months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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### Decision

1. It is directed that the enforcement notice is corrected by substituting the relevant section of the Act in paragraph 1 of the notice to read `...under Section 171A(1)(b) of the above Act,..` rather than 171A(1)(a).
2. Subject to this correction the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### The Notice

3. The above correction to the notice is necessary because S171A(1)(b) refers to the breach of a condition rather than carrying out development without the required planning permission. It was agreed that this correction would not prejudice either of the main parties, because it did not affect the purpose and requirements of the notice.
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### Main Issues

4. The following are the main issues in this appeal:
- The personal circumstances of the appellant;
  - The accessibility of the site;
  - The effect on the character and appearance of the area, having regard to the location of the site within the Kent Downs Area of Outstanding Natural Beauty (AONB) wherein the statutory purpose of an AONB is to conserve and enhance the natural beauty of an area;
  - The Council's requirement for Gypsy and Traveller Sites, whether it can demonstrate a 5-year supply of sites, and the availability of alternative sites for the appellant;
  - Whether any harm arising from bullet points 2 and 3 above are outweighed by bullet points 1 and 4, taking into account compliance or otherwise with development plan and national policy.

### Reasons

5. Ground (a) is that planning permission should be granted for permanent residential use as a caravan site.

#### *Personal Circumstances*

6. The appellant is a married (or formerly married) man in his sixties, who lives in a static caravan (mobile home) on the site with his new female partner. He has two sons, three daughters and a total of 29 grandchildren all of whom live in the Borough or locality, although none of them reside on the site. He has occupied the appeal site since 2004.
7. He is a Romani Gypsy, his status being established by the 2012 appeal decision, which granted him a temporary 4-year permission.<sup>1</sup> There was some discussion of the *Lisa Smith*<sup>2</sup> judgement in relation to this. Mr Willet, who is registered with a GP in nearby Faversham, has some health conditions as described in a 2017 letter I have seen from Kings College Hospital, that have restricted the work that he is capable of doing and his nomadic lifestyle.
8. Although I have not seen any more recent correspondence regarding these health issues, I accept that they are likely to persist and be ongoing, given their nature and his age, and that they do in effect limit any nomadic lifestyle he may have previously chosen. Given the decision in the *Smith* case, that people of nomadic habit who have ceased to travel not just temporarily but also permanently because of their own or family educational or health needs or old age, there is no dispute that Mr Willet remains a gypsy/traveller although he has generally ceased to travel because of his health. Consequently, in this decision I apply government policy as set out in Planning Policy for Traveller Sites (PPTS).
9. I accept that a settled base on the site enables him to access health services easily, both attending his GP and Kings if necessary, and that this would be

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<sup>1</sup> APP/V2255/C/11/2167577 dated 10 August 2012

<sup>2</sup> *Smith v SSHCLG & Ors* [2022] EWCA Civ 1391

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more difficult if he did not have a settled base. Mr Willet breeds and grazes horses on the site and on another site nearby, and sells the horses he breeds at horse fairs. I accept that such activity would be helped by him having a permanent established residential base here, for example to be on hand when mares are foaling.

*Accessibility of the Site in Relation to Services*

10. It is at least 4 miles from the site to the centre of Faversham, with its GP surgeries, shops and facilities. It is 2.8 miles to the nearest primary school at Ospringe, the same to the nearest supermarket, the new Aldi on the southern outskirts of Faversham, and 3 miles to the butcher's in Doddington. Although relatively close, these facilities are only effectively accessible on a day-to-day basis by car, especially since the infrequent bus service running along Faversham Road at the bottom of Elverland Lane is shortly to be discontinued, as highlighted by Cllr Simmonds at the Hearing.
11. This Lane at its northern end is steep, very narrow and enclosed by high hedged banks. The whole of the Lane is too narrow for vehicles to pass each other, is unlit and has no pavement. The public footpath running northwards to Painter's Forstal and then onwards to Ospringe, and westwards to Newnham, runs across fields and is no doubt often muddy in the winter as it was when I walked it, as well as being unlit and is therefore no alternative to the car in accessing local services.
12. There are three other unauthorised traveller sites off the Lane immediately to the west but apart from these, no other houses are accessed from it. The 2018 appeal decisions in respect of these sites<sup>3</sup> raised in evidence by the Council concluded that they were all located in an area of 'no' or 'few' services in terms of the Swale Borough Local Plan 2017 (LP) and that, essentially, they failed to comply with the spatial strategy of the LP set out in Policy ST3. Whilst Policy DM10 makes no specific mention of any required distance to services or modes of transport, it does specifically require gypsy and traveller sites to accord with Policy ST3 subject to three exceptions, none of which the development complies with. The 2012 appeal decision found that this site was not well located in terms of fostering social inclusion and was remote from all services and facilities, albeit it found that the appellant's horse keeping and breeding activities reduced the necessity for daily travel.
13. However, the Inspector in 2012 found that such benefits did not outweigh the disbenefits arising from the site's isolated location. I accept that traveller sites are often located in the open countryside and there is no bar in LP Policy DM10 or in national policy in the PPTS from them being located there. I also accept that this traveller pitch/site does not dominate the nearest settled community or place undue pressure on local infrastructure. But I agree with the 2012 Inspector and with the three 2018 appeal decisions that all the sites in Elverland Lane, including the appeal site, are in remote inaccessible locations contrary to LP Policy ST3 and the development plan as a whole. The site is also clearly contrary to the intention of paragraph 25 of the PPTS, which states that local planning authorities should very strictly limit new traveller site development in open countryside away from existing settlements or outside areas allocated in the development plan, albeit it doesn't prevent them per se.

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<sup>3</sup> Hill Top Farm, Meads Farm & The Retreat



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14. I acknowledge NPPF paragraph 105, which states that opportunities to maximise sustainable transport solutions will vary between urban and rural areas and should be taken into account in decision-making. But, having done so, this does not outweigh the inaccessibility of the site by modes other than the private car and its consequent remoteness from services and facilities.

*Effect on the Countryside and AONB*

15. The site lies in the open countryside within the Kent Downs Area of Outstanding Natural Beauty (AONB). The static home is not readily visible from the site entrance at the sharp bend in Elverland Lane. I also acknowledge that the stable buildings, both the one that can be seen from the entrance and the twin stables immediately south of the static home are lawful buildings, as acknowledged by the 2012 appeal decision.
16. However, as the Inspector stated, there is an inappropriately designed entrance gate and piers, which I consider detracts from this quiet, attractive rural lane, and which is prominent when approaching from the east. LP Policy DM26 states that permission will not be granted for development that significantly harms the character of rural lanes. I consider these poorly designed entrance piers and gates to significantly harm the character of this attractive rural lane.
17. Although the static home is only visible having driven halfway down the access track, it has a prominent view over the Newnham valley to the west. It looks over the unauthorised development at Meads Farm in the valley bottom and can be seen from the static home(s) there. In this tranquil and isolated part of the AONB, notwithstanding its proximity to Faversham, this static caravan, in combination with the unauthorised caravans at Meads Farm, comprises an incongruous marring structure.
18. The Council identified four specific viewpoints from which it alleges harm to the landscape and scenic beauty of the area. The view of the site from Location A, the road bridge over the M2 to west, is now, even in mid-winter, largely shielded by trees close to the motorway. However, the view from Location B, at the high point on the farm track/public footpath off Homestall Lane closer to the site, is prominent: the static home looks particularly alien in the landscape from this location. Although it is further away from Location C, the junction between two public footpaths to the south, it is still an obviously alien residential feature in the landscape. It is also quite noticeable when travelling along the M2, in both directions but particularly on the London-bound carriageway. Its prominence arises because it sits on high ground and looks over the valley.
19. From all these locations the static home inhabited by the appellant fails to conserve or enhance the landscape and scenic beauty of the AONB landscape, contrary to Part A of LP Policy DM24 and NPPF paragraph 176, irrespective that it cannot be seen from Elverland Lane itself due to the slope of the topography and non-native species tree screening, which itself is an alien and incongruous feature in the landscape. Great weight should be given to such conservation and enhancement in nationally designated landscapes including AONBs, which have the highest status of protection in relation to landscape and scenic beauty. I note the AONB Team's objection to the deemed application on precisely these grounds and also note that the development fails to comply

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with the AONB's 2021-2026 Management Plan, specifically Policies SD1, SD2, SD3, SD8 AND LLC1, which is a requirement of LP Policy DM24 Part A.

20. The appellant argues that there is a contradiction between LP Policies DM10 (Gypsy and Traveller Sites) and DM24 (Conserving and enhancing valued landscapes) in that DM10 Criterion 7 only requires that gypsy and traveller development causes 'no significant harm' to the AONB, whereas DM24 requires conservation and enhancement of its special qualities and distinctive character. I acknowledge the argument but consider the difference between these policies to be deliberate, hence there is no contradiction. Put simply, both policies apply: criterion 7 of DM10 must be met, but so also must DM24 Part A in order to comply with the development plan as a whole. For the above reasons, the development fails to do so.

*The Requirement for Gypsy and Traveller Sites, the 5-Year Supply and the Availability of Alternative Sites for the Appellant*

21. Paragraphs 9 and 10 of the PPTS require local planning authorities to set pitch targets for gypsies and travellers as defined in Annex 1, and to identify and update annually a supply of specific deliverable sites sufficient to provide 5-years' worth of sites against their locally set targets.
22. The Council's latest Gypsy and Traveller Accommodation Assessment (GTAA) was published in November 2018, based on fieldwork carried out in January-March 2018. It is intending to update this in the next few months for the Regulation 19 LP Review draft by the end of the year. Table 8.1 of the GTAA identifies a residual pitch requirement of 68 pitches based on cultural need (i.e., based on those identifying themselves as cultural gypsies and travellers), of which 51 met the definition in Annex 1 of the PPTS for the whole of the period from 2017/17 to 2037/38.
23. However, I agree with the appellant, for the reasons set out in his submitted Supplementary Statement on the Implications of the *Lisa Smith* Judgement, that a GTAA that relies on the now acknowledged discriminatory definition of a gypsy and traveller is likely, at least some extent, to underestimate the real scale of the need, given the Council's GTAA was prepared since the 2015 PPTS but before the very recent *Smith* judgement.
24. Table 3 of the Council's Supplementary Appeal Statement dated 10 February 2023 (SAS), which I saw for the first time at the Hearing, includes the PPTS definition figure of 51 as the residual pitch requirement up to 2037/38. Considering the completion of 33 pitches up to August 2022 (as detailed in SAS Table 1) leaves a residual requirement of 18 pitches or 5.6 pitches as a 5-year requirement (1.1 pitches per year). However, the supply of deliverable sites (i.e., those not implemented and occupied) is only 2 (two), which only provides 1.8 years of supply.
25. In reality the residual pitch requirement is likely to be higher because of the *Smith* judgement, as conceded by the Council at the Hearing. It is likely to lie between 51 and 68 pitches, and so there would be less than a year's supply. Either way, the Council cannot demonstrate a 5-year supply, as it acknowledges.
26. However, its position is that the LP Examining Inspector in 2017 accepted that it did not need to allocate potential sites in a development plan document

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because its positive approach to windfall sites as expressed in Policy DM10 would enable a suitable and continuous delivery of sites. It claims that its record of approving such sites in the first five years of the GTAA, as set out in SAS Table 1 (which lists the 35 pitches granted, of which 33 have been implemented) backs that up, and that it does not regard the need figure to be a ceiling.

27. SAS Tables 4 and 5 set out respectively that either 68% or 47% of the PPTS defined need for pitches for the entire 20-year (LP and its Review) period have been granted in just the last 5 years (2018-2023), the first 5 years of the GTAA. The latter figure excludes the 11 new pitches granted in May 2018 at the site at Brotherhood Woodyard, which the appellant maintains is unavailable and is not really a gypsy and traveller site since it is predominantly occupied by single Romanian (not Roma Gypsy) men who do not and never will lead a nomadic lifestyle. Even excluding that site, 47% of the (admittedly) falsely low figure of 51 required pitches were delivered in just 5 years; if the figure was 68 pitches, it would be 35%, which is still a substantial amount.
28. The appellant argues that the need is always frontloaded and was obviously required urgently from 2018, and that fulfilment of such need in the first five years will inevitably generate an increased need in the future. I understand this, but that is why the Council are in the process of updating the GTAA now, though how they choose to address that need as part of the LP Review is unknown and therefore unclear.
29. I acknowledge the delivery of a substantial amount of new pitches with planning permission in the last five years, the ongoing review of the GTAA, and the 2017 LP Examiner's stance and reliance on windfall development. But there is no 5-year supply of pitches and there is evidence of unmet need for gypsy and traveller accommodation on the ground.
30. I am aware that there is no requirement in planning policy, or indeed within any case law, for an applicant to demonstrate that there are no other sites available, or that particular needs could be met from another site. But the appellant would have been aware from the temporary nature of the 2012 permission granted on appeal that a permanent permission on this site in the AONB was unlikely ever to be granted.
31. Nonetheless, the Council was unable to positively identify any alternative sites where he might go. The 2 unimplemented pitches at Keycol Farm are likely to be for the applicant of that permission and Mr Willet claims he would not be able or willing to occupy any of the pitches at Brotherhood Woodyard because he would not be permitted to bring his static caravan onto that site and would not feel welcome or at ease there because of its occupation by Romanian single men, even if any pitches were to become available. Consequently, I conclude that there are unlikely to be any currently suitable, available, alternative sites for him to move to.

*Planning Balance taking into account the Planning History of the site*

32. Article 8 of the European Convention of Human Rights (as incorporated by the Human Rights Act 1998) provides the right to respect for private and family life. It is clear that a refusal of planning permission would interfere with the Article 8 rights of the appellant. Indeed, the Courts have held that Article 8 imposes a positive duty to facilitate the Gypsy way of life, as defined by race

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and ethnicity rather than planning policy. Any interference in this regard must be balanced against the public interest in upholding planning policy to protect the environment generally.

33. I have found conflict with development plan policies. In particular, the location of the appeal site does not accord with LP Policy ST3 or the criteria in Policy DM10 in that it does not contribute towards establishing a sustainable pattern of development as envisaged by the LP. The development fails to conserve and enhance the special qualities and distinctive character of the AONB, and as such it is contrary to Policy DM24 and NPPF paragraph 176. This harm to the Kent Downs AONB attracts great weight. The unsightly piers, gate and entrance to the site seen from Elverland Lane fails to comply with Policy DM25.
34. Turning to the factors that could outweigh this harm and conflict with local and national policy, the Council has no 5-year supply of sites, there is evidence of unmet need for gypsy and traveller pitches, and it is unclear whether the LP Review will allocate sites to address this need. There is unlikely to be any current alternative site for the appellant to go to now, if his appeal is dismissed. That could result in a roadside existence for him, in spite of the Council saying this would be unlikely to occur. That would be make his access to healthcare including for his specific health conditions much more difficult and may put obstacles in his way to earning a living from horse breeding.
35. However, this should be considered in regard to the planning history of the site, which is set out in the Council's 2017 delegated report regarding application 17/503687/FULL. This application was refused in September 2017 essentially for the same reasons for issuing the current notice.
36. It was clear from the 2012 appeal decision (paragraph 34) that a permanent permission was not warranted because of the site's unsustainable rural location remote and inaccessible from services and its failure to conserve or enhance the natural beauty of the AONB. That remains the case now. The appellant has had plenty of time to look for an alternative site, knowing his permission to only ever likely to be temporary, but as far as I am aware he has not done so.
37. In considering the planning balance in this case I am conscious that the Council's planning permissions for new pitches are all outside the AONB and, more importantly, there are (or were in 2020 when its appeal statement was written) only six temporary or unauthorised sites in the Swale part of the AONB, four of which are at Elverland Lane.
38. All of the sites at Elverland Lane are now unauthorised. I was informed by the Council officer at the Hearing that there are current applications pertaining to The Retreat and Meads Farm. Nonetheless, the 2018 appeal decisions in respect of these sites and Hill Top Farm concluded that permanent permission was unacceptable due to their unsustainable location and harm to the AONB; the appeals at The Retreat and Hill Top Farm were dismissed and Meads Farm was only granted a temporary 4-year permission, which is now expired.
39. The Council cite intentional unauthorised development contrary to the Written Ministerial Statement (WMS) of 17 December 2015, arising from the appellant's unauthorised occupation of the site originally – in 2004. I have given this alleged intentional unauthorised development very little weight because, first, even if it occurred as the Council allege, it was way before the WMS was introduced; and, secondly, the appellant has attempted on several occasions

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including via this appeal to secure permanent planning permission by paying the necessary statutory fees.

40. Also relevant to the consideration of the planning balance is paragraph 27 of the PPTS, which states: 'If a local planning authority cannot demonstrate an up-to-date 5-year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary planning permission.' But there is also no presumption that a temporary grant of permission should be granted permanently. The PPTS also excepts specifically designated land including National Parks and AONBs from this presumption that failure to demonstrate a 5-year supply of sites should be a material consideration. But I agree with the appellant that the lack of a 5-year supply of sites still weighs in favour of the development.
41. Taking all these factors into account, I conclude that in the overall planning balance the appellant's personal circumstances, the lack of any available alternative sites for him to live, the need for sites in the District and the lack of a 5-year supply of gypsy and traveller pitches do not clearly outweigh the harm to the AONB, which attracts great weight, and the unsustainable location of the site. The development is therefore in conflict with development plan policies as well as with the NPPF.
42. The principal matter to bear in mind is the balance between the harm to the public interest and the degree of interference with the Article 8 rights of an individual arising from the dismissal of an appeal and whether the decision as a whole is necessary and proportionate in the circumstances. Interference with a person's right to respect for private and family life and the home may be justified in the public interest. The interference would be in accordance with the law provided that planning policy and relevant statutory duties are appropriately and lawfully applied.
43. The interference here would also be in pursuit of a legitimate aim. This is the economic well-being of the country which encompasses the protection of the environment through the regulation of land use. The means that would impair individual rights must be no more than necessary to accomplish that objective. I find that the legitimate aim of protecting the environment in the public interest attracts great weight and the location of the site is not in a sustainable location. Interference with the Convention Rights is therefore necessary and proportionate.
44. However, there is still a need to consider whether an additional temporary planning permission should be granted because of the appellant's personal circumstances, in particular because of his age and health needs, and taking into account that he has lived on the site for 19 years. But, as set out above, there have already been three previous temporary permissions when it was made clear that a permanent permission was not likely to be granted because of harm to the AONB and the site's unsustainable location.
45. It was not therefore unreasonable to have expected the appellant to search for and find an alternative site in the years since 2012. Additionally, the compliance period attached to the requirements of the notice is 12 months, which gives Mr Willett another year to look for such an alternative site. Furthermore, the PPG advises that it will rarely be justifiable to grant a second temporary planning permission; further permissions should normally be

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granted permanently or refused if there is clear justification to do so, as there is in this case.

**Conclusion**

46. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

*Nick Fagan*

INSPECTOR

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**APPEARANCES**

**FOR THE APPELLANT:**

- Phillip Brown, Agent
- Alfred Willet, Appellant

**FOR THE LOCAL PLANNING AUTHORITY:**

- Paul Gregory, Area Planning Officer
- Aaron Wilkinson, Senior Planning Officer
- Paul Casey, Team leader, Planning Enforcement

**INTERESTED PARTIES:**

- Cllr David Simmonds, Ward Member

**DOCUMENTS SUBMITTED AT THE HEARING**

1. AONB Management Plan 2021-2026
2. The Council's Supplementary Appeal Statement regarding current gypsy and traveller pitch supply dated 10 February 2023

**DOCUMENTS SUBMITTED AFTER THE HEARING**

1. Appellant's Supplementary Statement – Implications of the Lisa Smith Judgement
2. Revised list of the Council's suggested Conditions



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## Appeal Decision

Hearing held on 11 and 12 January 2023

Site visit made on 10 January 2023

by **Paul Thompson DipTRP MAUD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 March 2023

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**Appeal Ref: APP/V2255/W/22/3301685**

**Land off Otterham Quay Lane, Upchurch, Kent**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Gladman Developments Ltd against the decision of Swale Borough Council.
  - The application Ref 21/501839/OUT, dated 30 March 2021, was refused by notice dated 24 May 2022.
  - The development proposed is "Outline planning application for up to 74 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point. All matters reserved except for means of access."
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### Decision

1. The appeal is allowed and planning permission is granted for up to 74 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point at Land off Otterham Quay Lane, Upchurch, Kent in accordance with the terms of the application, Ref 21/501839/OUT, dated 30 March 2021, subject to the attached schedule of conditions.

### Procedural Matters

2. I have omitted superfluous information from the description of development set out above. The development proposed is therefore for 'up to 74 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point'.
3. I have amended the address in the banner heading to reflect that shown on the Decision Notice as this concisely identifies the location of the site.
4. The planning application was submitted in outline with all matters reserved, except for access. I have had regard to Drawing References: 9423-L-01 and P19081-001G in respect of the proposed access, but I have treated the other elements shown as indicative when considering the likely impact of the proposal on the matters set out in the main issues below.
5. The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') transpose the Habitats Directive and the Birds Directive into English law. The aim of the Directives is to conserve key habitats and species across the European Union by creating and maintaining a network of sites known as the Natura 2000 network. They require competent authorities before granting consent for a plan or project, to carry out an appropriate assessment (AA) in circumstances where the plan or project is likely to have a significant effect on a European site, alone or in-combination with other plans or projects.

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6. The Officer Report identifies that the Council has carried out its own assessment in this regard, but my determination of the appeal means I also must undertake the same statutory duty. I have therefore dealt with this matter as a main issue and engaged with the main parties and Natural England accordingly as part of the appeal proceedings.

#### **Main Issues**

7. The appeal is supported by a Section 106 Agreement which seeks to address the Council's second reason for refusal on the Decision Notice, which I refer to in the third main issue.
8. The main issues are therefore:
- whether the proposal would provide a suitable site for housing, having regard to the Council's Settlement Strategy; its effect on the intrinsic value, landscape setting, tranquillity, and beauty of the countryside and its role as part of an Important Local Countryside Gap; and its accessibility to services and facilities;
  - the effect of the proposal on the integrity of the features of national and European nature conservation sites at Medway Estuary and Marshes; and
  - the benefits of the scheme, including contributions toward infrastructure.

#### **Reasons**

##### *Site and Surroundings*

9. The appeal site concerns a large parcel of land to the north of Lower Rainford Road and west of Otterham Quay Lane, within the Important Local Countryside Gap between Upchurch and the administrative boundary of Medway Council. The Swale Landscape Character and Biodiversity Appraisal 2011 (SLCBA) identifies the site in the Upchurch and Lower Halstow Fruit Belt, which it defines as a small-medium rural landscape with a strong sense of enclosure. This is a wider appraisal of landscape character than the appellants' Landscape and Visual Appraisal (LVA) which is more site specific, but the findings in both documents are similar in that the condition/value and sensitivity are moderate. Swale Landscape Sensitivity Assessment (October 2019) suggests the wider area has a lower landscape sensitivity given the absence of significant valued natural features, but highlights the importance of the gap.
10. The presence of a commercial orchard within the site is characteristic of the historic pattern and use of land within the Kent countryside and is part of the agricultural land, north of Lower Rainham Road, that disconnects the built edge of Rainham from other development and the Medway Estuary further north.
11. The site is separated from Otterham Creek by houses and industrial buildings at Gills Terrace. These are prominent features in the foreground of views north and west from the footways and Public Rights of Way (PROW) through and in proximity of the site that lead to the Estuary. Behind are further commercial and residential uses, most notably the Beckenham & Otterham Residential Park, which borders the eastern side of the Creek. There are also houses dispersed along the frontages of Otterham Quay Lane further north. These developments are within the Gap. Beyond the furthest western extent of the

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orchard, in Medway's administrative area and there are houses fronting the north side of Lower Rainham Road.

12. The site makes a limited contribution to defining the built edges of development to the north and south, as the transition to its agricultural characteristics is rather abrupt, and it is Lower Rainham Road that physically contains Rainham. Similarly, while the site is at the edge of the Gap, it plays a limited role in preventing the settlements from merging as it is physically contained, west of Otterham Quay Lane. Rather, it is the space between the lane and Upchurch that performs the most significant role in ensuring the physical and visual preservation of the remoteness of Upchurch and the intrinsic value, landscape setting, beauty and tranquillity of the countryside.
13. Despite this, the site provides physical and visual separation and openness between the different distinct elements of built form at the western edge of this part of the Borough and, thereby, helps to define what is more urban and rural in character. This role is evident given the prominence of the site within its immediate surroundings from the aforementioned PROW and footways.
14. The visual qualities of the site, provided by the orchard therein, planting at its perimeter and its open and undeveloped nature, together with the separation it affords between existing built forms therefore make a positive contribution to the rural environment. While views across the site are localised due to the presence of existing development and planting, the site also contributes to the intrinsic value and beauty of the countryside.

*Location of Development and Protection of the Countryside and Settlement Gap*

15. While the site is adjacent to housing developments at the northern edge of Rainford, this is not referred to in the Council's Settlement Strategy. It is therefore situated within the open countryside, some distance southwest of the built-up area boundary of Upchurch. Policy ST3 of Bearing Fruits 2031<sup>1</sup> (LP) explains that development is not permitted there, unless it is supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity, and beauty of the countryside. Similarly, LP Policy DM25 identifies the primary aim of the Gap is to retain the individual character and setting of the settlements. It states that planning permission will not be granted for development that would undermine one or more of the purposes of the gap, as outlined in supporting text to the policy at paragraph 7.7.34.
16. The appeal scheme is indicative, but would amount to a development of significant proportions and prominence in the countryside to the edge of Rainham, within the undeveloped and open site. The subsequent loss of openness and erosion of the site's undeveloped qualities would reduce the degree of separation between existing built development and the presence of housing would also have a discernible impact. The proposal would therefore permanently change the rural character of this edge of the Borough.
17. Land is indicatively set aside within the site for open space and biodiversity enhancements, which would be accessible in the same way that PROW are. However, it would take a significant amount of time for landscaping within the site to reflect the existing character of planting found nearby and around the

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<sup>1</sup> The Swale Borough Local Plan, Adopted July 2017.

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site. There would also inevitably be a marked change in the way in which PROW and the land within the site are experienced by those using these routes.

18. Nevertheless, the visual effects of the proposal are likely to be similar to the impact of other developments that have extended north of Rainham, including within the Borough to either side of Otterham Quay Lane. Moreover, indicative open space would also be arranged in a similar way to that accommodated to the east of Quilters Yard. In views northwards from neighbouring roads, the built forms associated with the proposal are also likely to be seen against the backdrop of rising land to the north and east. In the opposite direction, they are also likely to have a similar appearance to existing built forms in the foreground, including at Gills Terrace and south of Lower Rainham Road.
19. The LVA and other supporting evidence provide thereafter strikes me as being well-reasoned and proportionate to the appeal scheme and, based on my findings above, it would accurately portray the effect of the proposal. The site is a point where development could be absorbed between that north and south of it without closing the Gap between the settlements, so it would not undermine the purposes of the Gap. Nevertheless, the proposal would result in some harm to the beauty of the countryside, albeit this would be limited due to the site's relationship with existing built form to its north and south.

#### *Accessibility*

20. The location of the appeal site north of the centre of Rainham and its facilities and services mean that future residents of the site would be likely to gravitate there to access most of their day-to-day needs, including retail and employment or access thereto. The site would be situated in excess of the distances advocated by Manual for Streets for walkable neighbourhoods. However, I am mindful that the inclination to walk will not only be influenced by distance but the quality of the experience and, the routes that future residents would be likely to take to and from Rainham on foot or by bicycle would be through residential areas with speed limits of 30mph and served by streetlighting, dedicated footways and crossing points. They would not be inconvenient, unpleasant, or unrealistic routes for people wishing to walk or cycle after dark or during inclement weather, including people with young children. The site is also close to National Cycle Network Route 1 from Dover, which leads to Medway Docks, so the principle of its use by cyclists to travel further distances is also accepted as being appropriate.
21. The proposal would also include improvements to the crossing points around the perimeter of the site and a northbound bus stop would be provided opposite the southbound stop outside the Three Sisters Public House. While the existing bus provision is limited in terms of the extent of daily services, it would offer an alternative form of transport to access Rainham, including its railway station, which has sheltered cycle spaces and car parking spaces.
22. Although some journeys would be likely to be made by private vehicle, facilities to be able to walk, cycle and use bus travel, together with the Car Club Scheme proposed to mitigate any potential harm to air quality, would offer alternative sustainable modes of transport to reduce this dependency. The development would also be supported by a Travel Plan and a coordinator, which requires dissemination of updated sustainable travel information. I am also satisfied that the extent of vehicle movements associated with the

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development would be unlikely to make such a noticeable impact that it would harm the tranquillity of the countryside in its own right.

23. With the above in mind, the proposal would be unlikely to lead to a harmful increase in the amount of unsustainable journeys made by private vehicles from the appeal site.

*Conclusions on the First Main Issue*

24. The location of the site would not offend LP Policy CP3 or the approach advocated through the National Planning Policy Framework (the Framework) in respect of transport solutions for rural housing. The proposal would also not undermine the purposes of the Important Local Countryside Gap. Nevertheless, I conclude that the proposal would not provide a suitable site for housing, having regard to the Council's Settlement Strategy and its effect on the intrinsic value, landscape setting and beauty of the countryside. Hence, the proposal would conflict with LP Policies ST1, ST3, DM14 and DM24, albeit the extent of harm would be limited for the reasons I have identified above.
25. I have not found against paragraphs 8 and 11 of the National Planning Policy Framework (the Framework), in relation to this main issue, as the Council referred to these in the context of whether the proposal would amount to sustainable development, which I address within the Planning Balance.

*National and European Nature Conservation Sites*

26. The northern edge of the site is located approximately 0.05km from the Medway Estuary and Marshes Special Protection Area (SPA), Ramsar site and Site of Special Scientific Interest (SSSI). While the SSSI is not a European designated site, it forms a contingent part of the SPA and Ramsar site, so is referred to for completeness.
27. The qualifying features of the SPA are non-breeding birds including: Common Redshank, Common Shelduck, Dark-Bellied Brent Goose, Dunlin, Grey Plover, Northern Pintail, Red Knot and Ringed Plover. Pied Avocet are also supported during breeding and non-breeding seasons, Little Tern during the breeding season, and waterbird and breeding bird assemblages.
28. The Ramsar site is designated as supporting several species of rare plants and animals, including nationally scarce flora: Annual Beard-Grass, Borrer's Saltmarsh-Grass, Curved Hard-Grass, Golden Samphire, Perennial Glasswort, Sea Barley, Sea Clover, Slender Hare's-Ear, Small Goose Foot; One-flowered Glasswort; at least twelve British Red Data Book listed wetland invertebrate species; and a significant number of non-wetland British Red Data Book species also occur. The site also qualifies due to its internationally important waterfowl assemblages and internationally important species captured under the SPA designations outlined above.
29. The European Site Objectives for the SPA are to ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive by maintaining or restoring the extent, distribution, structure and function of the habitats of the qualifying features; the supporting processes on which these rely; population of each of the qualifying features; and their distribution within the site.

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30. The appellant's Shadow HRA indicates that the SSSI is designated for its intertidal habitat, with a complex of mudflats and saltmarsh and grazing marsh intersected by dykes and fleets. The supported plant community provides habitat for wintering wildfowl and waders. In particular, the Chetney Peninsula is one of the most important wildfowl breeding and wader roosting areas in Kent and supports breeding Black-Headed Gulls and Common Terns.
31. The impact of recreational activities inside the SPA and Ramsar, along with the loss of land functionally linked to them, air and water quality, and flood risk have been identified as the main negative contributors upon the sites.
32. The proposed development, comprising up to 74 dwellings, is located within the Zone of Influence (ZOI) for the SPA and Ramsar site. Along with further new housing expected to come forward in the area, it has potential to affect air and water quality and increase recreational pressure in their habitats. This would contribute to the disturbance of these habitats, including the key bird species, contrary to the relevant conservation objectives of the European Sites. In the absence of mitigation, the proposal therefore has the potential to result in likely significant effects on the SPA and Ramsar. An appropriate assessment is consequently required. Recreational pressures are also likely to have similar effects to the SSSI.
33. The appeal site is a working orchard, which does not reflect the habitat provided by the European Sites and the SSSI and the appellants' Preliminary Ecological Appraisal satisfactorily demonstrates the site does not form functionally linked land of supporting value for the identified species of these sites. Therefore, notwithstanding my other findings, no likely significant effects are predicted from the development as a result of loss of arable land within the site or the potential disturbance of adjacent land.
34. The Strategic Access Management Monitoring Strategy (SAMMS) for the North Kent Marshes sets out the strategy to mitigate the potential in-combination impacts of new housing development on European Sites. It includes a tariff, to be secured by a S106 agreement, that should be applied to new housing developments within the ZOI. The tariff was agreed based on housing projections from the participating authorities that would require mitigation up to 2031. The contributions made through the tariff are to fund mitigation works carried out by Bird Wise for, amongst other things, wardens, provide for increased signage and interpretation, new access infrastructure, parking, enhancement and enforcement and monitoring.
35. The indicative layout for the proposed development also includes an area of accessible public open space which would provide alternative natural greenspace close to incoming residents that would encourage recreational activity away from the SPA and Ramsar site, particularly for dog exercising. This would be secured through a condition of the outline planning permission. There are also other PROW nearby which would providing access to the wider countryside for recreation away from the designated sites.
36. The proposal would also be subject to controls over the design of the proposed drainage system and measures to reduce the impact of the construction of the development and air quality, as detailed in the proposed planning conditions and S106 agreement.

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37. As the competent authority I have consulted Natural England (NE) as the appropriate nature conservation body. NE has confirmed that the relevant European Sites have been identified and have clarified the qualifying features within the sites. It is also satisfied that the avoidance and mitigation measures are appropriate to avoid an adverse effect. With the above in mind, I am also satisfied that there would be sufficient procedures in place to secure appropriate mitigation and ensure that it would be provided in a timely manner to accord with SAMMS.
38. Consequently, I am satisfied that the proposed development, either alone or in combination with other plans or projects, would not adversely affect the integrity of the European sites protected under the Habitats Regulations. As the designations of these sites align with the SSSI, I am also satisfied that, with the proposed mitigation measures, the development would not be likely to damage the features for which the SSSI has been designated. For these reasons, the proposal would accord with the habitats and species protection criteria set out in LP Policy DM28.

#### *Benefits of the Scheme*

##### Housing and Open Space

39. There is common ground between the main parties that the Council cannot demonstrate a five-year supply of deliverable housing sites. However, there is clear disagreement as to the deliverability of a number of the housing sites included in the Council's supply and how this would affect the extent of supply. The appellants calculate it to be as low as 3.77 years, whereas the Council suggest it is 4.75 years. While the current housing land supply difficulties in the area could be temporary, the Government is seeking to significantly boost the supply of homes and the provision of up to 74 housing units that would result from the proposal would help to address any shortfall in supply in Swale. This would therefore constitute a social benefit of considerable weight.
40. The Section 106 Agreement (S106) includes provisions for 40 percent of the total number of properties in the proposed development to be affordable homes, which could equate to up to 30 homes. Although this meets the policy requirement in Swale, the appellants have demonstrated through tangible evidence, including its Affordable Housing Statement, that the need for affordable homes in Swale is considerable, there are inherent problems of affordability, and the full requirement set out in permissions is met on the majority of developments for which it secures permission. The commitment by the appellant to provide such affordable homes is therefore a social benefit of significant weight.
41. The northern part of the site is within Flood Zone 2, so the indicative layout for the site includes this as public open space. A clause in the S106 refers to the provision and management of the space, including an equipped children's play area and recreation space (Local Area of Equipped Play). It could also include a community orchard and allotments and the former are encouraged by landscape guidelines in the SLCBA due to their landscape, biodiversity and cultural benefits. This would therefore potentially amount to social and environmental benefits to the occupants of the proposed dwellings and existing local residents. However, as the nature and extent of these provisions are subject to further detail, I am only able to afford these benefits limited weight.

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Other Benefits Secured by the Legal Agreement

42. The S106 would include provisions for financial contributions toward the cost of providing primary and secondary educational facilities, which could serve the development, including toward the acquisition of land.
43. Contributions would also be secured toward additional resources, services and book stock for the local library service, including the mobile library serving Upchurch; the provision of refuse bins; the costs of additional capacity at the Household Waste Recycling Centre and Waste Transfer Station in Sittingbourne; and improvements to and additional facilities for formal sports provision within 5km of the site.
44. A contribution would be secured towards the cost of refurbishment, reconfiguration and/or extension of Primary Care Premises within the Sittingbourne Primary Care Network. Further contributions would also be included toward social and youth services toward the cost of specialist care accommodation and additional resources, respectively, within the Borough.
45. As outlined above, the S106 would also include provisions to secure Air Quality Mitigation Measures, including a contribution to implementing a Car Club Scheme to discourage use of private vehicles, and the SAMM Contribution required as a result of the Appropriate Assessment.
46. As these obligations can only mitigate against the proposal, I afford them limited weight as benefits associated with it.
47. I am satisfied that the provisions outlined in the S106, including those in the previous sub-section, are supported by LP Policies CP6, CP7 and DM28 and the Council's Developer Contributions SPD (2009). They also meet all the tests set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regulations) and Framework paragraph 57. The obligations are directly related to the development because they would provide investment in infrastructure, including health services and schools, that would be impacted by additional development. The contributions are also reasonable in scale and kind, as they are informed by the latest evidence regarding what would be required to provide additional capacity to serve the proposal.

Additional Benefits

48. There would be short-term benefits to the local and wider economy from the application of the New Homes Bonus and direct and indirect employment associated with construction and associated industries, particularly given the local demand for employment in the construction industry. Future occupants would be likely to support local shops, services, and facilities through expenditure. These would all constitute benefits in social and economic terms and given the magnitude of the proposed development, they would be afforded moderate weight.
49. Council Tax receipts in conjunction with the proposal would also only be likely to make a modest contribution within the Borough, which would amount to an economic benefit of limited weight.
50. I am mindful that biodiversity net gain is not yet a mandatory requirement of development, but the Framework is supportive of measurable attempts to secure such benefits. While the indicative scheme would provide, amongst

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other things, additional tree planting, reinforcement of existing hedgerows and boundary features to improve the connectivity of habitat, the net gain is not yet known. It should be possible to achieve reasonable gains through the proposal but, in the absence of a worked-up scheme, I can only afford this environmental benefit limited weight.

51. Provision of a signalised crossing on Lower Rainham Road, footpaths along that road to the site entrance on Otterham Quay Lane, and upgrade of the existing northbound bus stop would amount to social benefits of moderate weight to existing local residents.
52. The evidence before me also indicates that it would be possible for a sustainable drainage system to provide a betterment in the quality of surface water runoff from the site. However, the final details of the system are subject to agreement so I afford this environmental benefit limited weight.
53. The dwellings within the site could be reached by various means including sustainable travel opportunities, such as walking and cycling. However, this would be a neutral benefit as it equates to an absence of harm.

#### **Other Matters**

##### Best and Most Versatile Land

54. The area within the appeal site that would be developed falls into Grade 3a agricultural land. At the Hearing the Council accepted it had no evidence to contradict the appellants' Best and Most Versatile Land Note. In accordance with the requirements of Policy DM31, and having regard to the strategic growth options identified in the Council's Local Plan Review, this identified that only one of the preferred sites did not contain Best and Most Versatile Land (BMVL), on the Isle of Sheppey, and concentration of housing there would not amount to sustainable development. There are therefore no alternative sites available within the Borough on land of lower grade than 3a. Furthermore, there is no substantive evidence before me to demonstrate that loss of the land within the site would lead to the remainder of the agricultural holding becoming unviable, rather the proposal is likely to lead to investment in it. The loss of the land would also constitute a very small amount in the context of all of the BMVL in the Borough and would fall well below the threshold for consultations with Natural England regarding such matters.
55. I have also been referred to the suitability of brownfield sites instead of the appeal site, but I have not been referred to any so I am not able to draw any reasonable comparisons with the proposal, which would accord with the requirements of LP Policy DM31.

##### Highway Safety, Operational Performance and Congestion of the Road Network

56. The appeal scheme proposes several mitigation measures, including widening of Otterham Quay Lane, extension of the 30mph restricted area further north beyond the proposed access, and the creation of a footway from the access to associated crossing points to Lower Rainham Road. Despite concerns from third parties, with these measures the evidence before me demonstrates that the proposal, including any construction traffic, would be unlikely to result in highway safety or capacity issues to the surrounding road network and users.

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57. There are also concerns raised by third parties and Medway Council regarding existing congestion at the A2/Mierscourt Road and A2/Otterham Quay Lane/Meresborough Road junctions further south of the site. The proposal is likely to result in an increase in traffic using the junctions, which would have a knock-on effect on other junctions nearby, particularly at peak times in the morning and afternoon.
58. The evidence relating to the magnitude of the vehicle trips likely to be associated with the proposal before me demonstrates that it would be unlikely to result in a severe cumulative impact on the road network relating to highway safety or its operational performance and levels of congestion. Furthermore, the extent of vehicle loading associated with the proposal is also not likely to warrant improvement of the junctions to enhance their performance and it is not the appellants' responsibility to address existing issues.
59. I note that the development proposed at Pump Lane<sup>2</sup> would have required mitigation of the A2/Mierscourt Road junction to address its impacts upon that part of the subnetwork, but this was for a development of significantly greater magnitude than that before me and, even with its traffic loading, mitigation from that scheme would have improved the subnetwork, not made it worse. In addition, while I accept the Inspector's conclusions in the Leckhampton appeal and the subsequent High Court Decision<sup>3</sup>, I have had regard to the specific circumstances affecting the road network in the vicinity of the appeal site and arrived at a different conclusion. I am also mindful that, like the Pump Lane scheme, there would have been significantly greater development of housing and other uses within a local centre, so it would not, of itself, be a scheme of comparable scale.

#### Air Quality

60. Concerns have been raised by third parties regarding the proposal's impact on air quality. The appellants' Air Quality Assessment (AQA) concludes, mitigation measures incorporated into the development would ensure there would not be harmful impacts to air quality and there is no substantive evidence before me to lead me to a different conclusion. Moreover, as outlined above, mitigation would include contribution toward the implementation of a Car Club Scheme, and on-site measures identified in the AQA during the construction and operational phases of development. The latter relate to the efficiency of gas fired boilers and provision of electric car charging points, which would need to be addressed through the Air Quality Mitigation Measures included in the S106 and by the Building Regulations respectively.

#### Ecology

61. There are some concerns from third parties that development of the site would result in loss of its ecological value. However, the evidence before me indicates that the cultivated orchard habitat would be of low intrinsic and conservation importance and any protected species utilising the site for foraging purposes would be able to continue to do so within areas of green infrastructure. Similarly, precautionary measures could be implemented for reptiles and lighting mitigation for bats and other nocturnal wildlife. The implications upon

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<sup>2</sup> Appeal Reference: APP/A2280/W/20/3259868

<sup>3</sup> Appeal Reference: APP/B1605/W/14/3001717; High Court Reference: Bovis Homes Ltd & Miller Homes Ltd v SSCLG (CO/3029/2016).



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destroying or damaging nests of birds during the breeding season are a known implication of the Wildlife and Countryside Act 1981 and do not need repeating in a separate planning condition, particularly as they could be addressed through the proposed Landscape and Ecological Management Plan, alongside other improvements to the biodiversity of the site.

#### Drainage and Water Supply

62. Surface water could be attenuated on site so that it does not increase flows off site. Southern Water (SW) has indicated that the foul sewerage network is likely to require reinforcement to accommodate the proposal, but does not object to it, so works could be implemented to serve it. Furthermore, the developer could phase the foul water scheme for the proposal to address any implications on the network, this could be secured by planning condition.
63. Despite concerns advanced by third parties as to water pressure in the locality, there is no substantive evidence before me that would lead me to doubt SW's advice that water supply can be facilitated to service the proposal.
64. There are also likely to be technical solutions with regard to addressing any conflict with the public sewer crossing the site, which should be addressed through the Building Regulations and consultation with SW rather than through the planning process.

#### School and Health Care Infrastructure

65. Concerns have been raised that local infrastructure, including health services and schools, would be unable to cope with additional development, but the responses received from the relevant Education Authority and NHS illustrate these impacts on services could be mitigated by the proposal. I also note the availability of infrastructure is a national challenge. Resisting the development on the grounds of the capacity of local infrastructure would not therefore be justified in the face of acceptable mitigation. Furthermore, while I accept there could be an impact on schools within Medway Council's administrative area, at the Hearing, the main parties agreed that Kent County Council are the Education Authority for Swale, so it is not possible for funding to be directed to a neighbouring authority to address such impacts. Any such agreement would need to be dealt with through liaison between the two Councils.

#### Living Conditions

66. Whilst the construction process is likely to be disruptive it would be temporary and mitigated by a Construction Environmental Method Statement which could be the subject of a condition. Furthermore, as the layout and scale of the development are not yet known, the potential implications to the living conditions of nearby occupiers from any dwellings are matters for future consideration.

#### Medway Landscape Designation

67. The proposal would also not prejudice the ability of Medway Council to protect land west of the site that is allocated in its development plan within the Gillingham Riverside Area of Local Landscape Importance, in the knowledge that it has also already allowed some of this land to be developed for housing.

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### Planning Balance

68. I outlined above that the evidence before me demonstrates the Council is likely to only be able to demonstrate somewhere between 3.77 and 4.75 years supply of deliverable housing sites. The policies which are most important for determining the appeal are therefore deemed to be out-of-date. In such circumstances, 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 Framework taken as a whole.
69. The proposal would comply with LP policies in respect of the accessibility of the site, and its impact on the Important Local Countryside Gap between Rainham and Upchurch and national and European nature conservation sites. In terms of harm, the proposed development would not comply with LP policies in respect of its location having regard to the Council's Settlement Strategy and its effect on the intrinsic value, landscape setting and beauty of the countryside.
70. The approach in Policy ST3 to protect the countryside beyond built-up areas from development, in isolation of other considerations, would not be wholly aligned with the more flexible and balanced approach implicit in the objectives outlined in the Framework. However, it does not fundamentally undermine its continued relevance, as the aim differs only slightly from the Framework to recognise the intrinsic character and beauty of the countryside. There is therefore still a clear rationale for built up area boundaries in order to protect the countryside while focusing growth within designated settlements. In light of this I have regarded the underlying objectives of the policy, as being generally consistent with the Framework. Nevertheless, the Settlement fails to recognise there are areas of land within the Borough adjoining settlements in adjacent authorities that provide services and facilities for surroundings areas. I referred to this point in the first main issue and, for this reason, consider that the conflict of the proposal with this policy carries moderate weight.
71. Policies ST1, DM14 and DM24 are consistent with the Framework in respect of its aims to achieve well-design places and recognise the intrinsic character and beauty of the countryside. While the proposal would conflict with these policies, in the first main issue I identified that the harm to the intrinsic value, landscape setting and beauty of the countryside would be limited due to the characteristics of the site and its surroundings. Accordingly, I afford limited weight to the conflict of the proposal with these policies.
72. I have outlined that the appeal scheme includes considerable and significant benefits in respect of housing and affordable housing and a range of other benefits of moderate and limited weight, some of which lead to accordance with LP policies. Even if I were to conclude the shortfall in five-year housing land supply would only be to the extent argued by the Council, I do not find this to be particularly determinative in respect of this appeal. Moreover, the adverse impacts of granting permission would still not significantly and demonstrably outweigh the stated benefits, when assessed against the policies in the Framework taken as a whole. As a result, the proposal would benefit from the presumption in favour of sustainable development and, for reasons advanced above, it would amount to sustainable development.
73. This leads me to an overall conclusion that material considerations indicate the decision should be taken otherwise than in accordance with the development plan. This would therefore justify the grant of planning permission.

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### Conditions

74. I have imposed standard conditions relating to the submission and timing of reserved matter applications and the commencement of development. It is necessary to require compliance with the submitted plans, but only in relation to the access as this is not a reserved matter. This includes off-site highway works, for safety reasons, detailed above. However, details of the highway layout and construction are required prior to commencement of development and thereafter implemented before occupation of the dwellings, to ensure they are laid out and constructed in a satisfactory manner for road users.
75. Conditions are necessary to ensure the details submitted for reserved matters include suitable noise mitigation measures for future occupiers informed by a noise assessment; meet the principles of secure by design, for crime reduction and safety purposes; provide parking and turning spaces and cycle storage for the proposed dwellings to ensure they are convenient and not of detriment to highway safety; a lighting design plan to ensure bat activity is not disturbed; in the interests of increasing biodiversity and the visual amenity of the area, a Landscape and Ecological Management Plan, details of how development would offset biodiversity loss or enhance it and an updated landscaping strategy are also necessary to inform reserved matters.
76. Conditions are also necessary to ensure that all works on site, including site clearance, follow the precautionary principles detailed in the appellants Preliminary Ecological Appraisal regarding reptiles; and an arboricultural method statement and tree protection plan are required to protect trees during development. Similarly, it is also necessary to secure details of hedgerows to be removed and any replacements prior to the commencement of development in the interests of the visual and ecological value of the site.
77. Pre-commencement conditions are also necessary to secure details of the proposed Local Equipped Area for Play and the phasing of the development, to ensure it is properly planned in the interests of the living conditions of existing and future residents; to ensure archaeological works are carried out in accordance with a written scheme of investigation to be agreed; and scheme of foul and surface water drainage are designed to ensure no pollution risk to receiving waters and does not lead to flood risk on or offsite. The surface water drainage would also require verification agreed by condition to ensure it is effective in meeting these requirements.
78. Conditions are also reasonable to secure details of a Construction Traffic Management Plan and to control construction working hours, including for piling, and a Construction and Environmental Method Statement and Code of Construction Practice in the interests of the living conditions of nearby residential occupiers and the ecology and biodiversity of the site and its surroundings. Details of the piling and how potential risks associated with contamination of the site and unsuspected contamination are also necessary to ensure there would be no unacceptable risk to groundwater and other water pollution. Details of digital infrastructure for residential properties and a full travel plan are also necessary in the interests of their living conditions and accessibility of the proposed development.
79. Several conditions are also reasonable to ensure that the dwellings are constructed to increase their energy efficiency and thermal performance and to minimise construction waste, alongside details of low emission boilers. These

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would ensure carbon emissions and air quality are suitably factored into the construction and operational phases of development.

### Conclusion

80. The proposed development would be contrary to the development plan, when considered as a whole. However, the Framework is a material consideration and this indicates that the proposed development should be determined other than in accordance with the development plan. Accordingly, for the reasons given, I conclude that the appeal should be allowed.

*Paul Thompson*

INSPECTOR

### APPEARANCES

(Qualifications and professional memberships are included where provided)

#### FOR THE APPELLANT:

Mr Zack Simons	Barrister, Landmark Chambers
Mr Christien Lee (BSc (Hons), MCD, MRTPI)	Planning Director, Gladman Developments Ltd
Mr David Stoddart (BA (Hons), CMILT, MCIHT)	Associate Director, Prime Transport Planning Ltd
Mr Gary Holliday (BA (Hons), MPhil, FLI)	Director, FPCR Environment and Design Ltd
Mr Ben Pycroft (BA (Hons), Dip TP, MRTPI)	Director, Emery Planning

#### FOR THE LOCAL PLANNING AUTHORITY:

Mr William Allwood (MRTPI)	Chartered Town Planner
Mr Stuart Watson	Principal Planner

#### OTHER INTERESTED PARTIES:

Mr Gary Rosewell	Upchurch Parish Council
Paul Clarke	Strategic Head of Education for Planning and Access (Medway Council)
James Rand	Paul Basham Associates (on behalf of Medway Council regarding highway matters)

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**DOCUMENTS SUBMITTED FOLLOWING THE HEARING:**

1. Agreed conditions- Otterham Quay Lane (v2 following Hearing) Final.
2. 1254515 - DATED S106 S017342 Otterham Quay Lane.
3. Transfer deed showing that Wakeley Brothers Ltd transferred its interest in the appeal site to Ayshland Ltd, as referred to in the S106 (following request for clarification regarding owners listed in the Application Form).
4. Response from the appellants' Ecologist to the queries raised by Natural England in their email dated 6 January 2023, including attachments containing the qualifying features of European Sites.
5. Natural England response to (4) above.

**SCHEDULE OF CONDITIONS**

- 1) Details relating to the landscaping, layout, scale and appearance of the proposed dwellings shall be submitted to and approved by the local planning authority before any development is commenced.
- 2) Application for approval of reserved matters referred to in Condition (1) above must be made no later than the expiration of three years beginning with the date of the grant of outline planning permission.
- 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.
- 4) The details submitted pursuant to condition (1) (the reserved matters) shall include details demonstrating how the development meets the principles of 'secure by design'.
- 5) From the commencement of works (including site clearance), all precautionary mitigation measures for reptiles shall be carried out at all times in accordance with the details contained in section 5.59 of the Preliminary Ecological Appraisal FPCR (March 2021).
- 6) The details pursuant to condition (1) (the reserved matters) shall include a lighting design plan for biodiversity. The plan will show the type and locations of external lighting, demonstrating that areas to be lit will not disturb bat activity. All external lighting shall be installed in accordance with the specifications and locations set out in the plan and shall be maintained thereafter.
- 7) The details pursuant to condition (1) (the reserved matters) shall include a Landscape and Ecological Management Plan (LEMP). The content of the LEMP shall include the following.

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- a) Description and evaluation of features to be managed (including a planting schedule);
- b) Ecological trends and constraints on site that might influence management;
- c) Aims and objectives of management;
- d) Appropriate management options for achieving aims and objectives;
- e) Prescriptions for management actions, together with a plan of management compartments;
- f) Preparation of a work schedule (including an annual work plan);
- g) Details of the body or organisation responsible for implementation of the plan;
- h) Ongoing monitoring and remedial measures.

The development shall be implemented in accordance with the approved details.

- 8) The details submitted pursuant to condition (1) (the reserved matters) shall include details of how the development will offset biodiversity loss/enhance biodiversity. This shall include a native species-only landscape scheme, integrated bird bricks and details of the degree of Biodiversity Net Gain. The approved details shall be implemented and thereafter retained.
- 9) Prior to the commencement of the development hereby approved an arboriculture method statement and tree protection plan in accordance in accordance with the BS5837:2012 shall be submitted to and approved in writing by the local planning authority. The approved arboriculture method statement and tree protection plan shall be adhered to throughout the construction phase of the development.
- 10) The details submitted pursuant to condition (1) (the reserved matters) shall include an updated Landscape Strategy. The landscaping shall be comprised native species only. The strategy shall include a programme for implementation and shall be implemented in accordance with this strategy and maintained as such thereafter.
- 11) Prior to the commencement of any development including clearance works details of all hedgerows to be removed shall be submitted to and approved in writing by the local planning authority, including those adjacent to Lower Rainham Road and Otterham Quay Lane. Details of all replacement hedgerow planting shall be included within the details. The development shall be carried out in accord with the approved details.
- 12) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved by the local planning authority. The development shall be carried out in accord with the approved details.
- 13) No construction work (excluding impact pile driving dealt with by separate condition), in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times: -

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Monday to Friday 0730 - 1800 hours, Saturdays 0800 - 1300 hours unless in association with an emergency.

- 14) 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.
- 15) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated by a piling risk assessment that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details submitted to and approved in writing by the local planning authority.
- 16) No development approved by this outline planning permission shall commence until a strategy to deal with the potential risks associated with any contamination of the site has been submitted to, and approved in writing by, the local planning authority. This strategy will include the following components:
1. A preliminary risk assessment which has identified:
    - all previous uses;
    - potential contaminants associated with those uses;
    - a conceptual model of the site indicating sources, pathways and receptors; and
    - potentially unacceptable risks arising from contamination at the site.
  2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
  3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
  4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. The report shall include results of sampling and monitoring carried out in accord with the verification plan to demonstrate that the site remediation criteria have been met.

The scheme shall be implemented as approved.

- 17) If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until a

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remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the local planning authority. The remediation strategy shall be implemented as approved.

18) The details submitted pursuant to condition (1) (the reserved matters) shall include the final layout locations of properties on the site and their associated amenity areas together with a further noise assessment, identifying properties that require noise mitigation measures and full details of any proposed mitigation measures. Upon approval by the local planning authority the noise mitigation measures shall be implemented in full prior to occupation of the premises and retained thereafter.

19) Development shall not commence 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 100 year storm) can be accommodated and disposed of in accordance with the rate agreed with Southern Water and the Lead Local Flood Authority without increase to flood risk on or off-site. The drainage scheme shall also demonstrate (with reference to published guidance):

- that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters; and
- appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

The approved drainage scheme shall be implemented in accordance with the approved details and retained thereafter. No infiltration of surface water drainage into the ground is permitted.

20) Prior to the commencement of the development hereby approved details of the proposed means of foul sewerage disposal shall be submitted to, and approved in writing by, the local planning authority in consultation with Southern Water. The development shall be carried out in accord with the approved details and maintain as such thereafter.

21) No building of the development hereby permitted shall be occupied until a Verification Report, pertaining to the surface water drainage system, and prepared by a suitably competent person, has been submitted to and approved by the local planning authority. The Report shall demonstrate that the drainage system constructed is consistent with that which was approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.

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- 22) No dwelling hereby approved shall be occupied until the off-site highway works to widen Otterham Quay Lane between Lower Rainham Road and the site access, provide a signalised crossing on Lower Rainham Road, construct a 2m wide footway between the signalised crossing and the site access onto Otterham Quay Lane and upgrade of the existing northbound bus stop as indicated on drawing number P19081-001 Revision G has been constructed in a manner to be agreed in writing by the local planning authority. The works shall be carried out in accord with the approved details and maintained as such thereafter.
- 23) No development shall take place, including any works of demolition, until a Construction Traffic Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
1. the parking of vehicles of site operatives and visitors;
  2. loading and unloading of plant and materials;
  3. recording the condition of the immediate local highway prior to commencement, and measures to make good any damage attributed to construction traffic;
  4. routing and timing of construction traffic; and
  5. wheel washing facilities.
- The development shall be carried out in accord with the approved Construction Management Plan at all times.
- 24) The details submitted pursuant to condition (1) above shall provide details of:
- a) the provision of residential vehicle parking and turning space in accordance with the Swale Borough Council Parking Standards (May 2020); and
  - b) the provision for cycles to be securely sheltered and stored for each dwelling within the site.
- 25) The access details shown on the approved plans, P19081-001 G Proposed Access Strategy) shall be completed prior to the occupation of any buildings hereby approved, and the access shall thereafter be maintained.
- 26) Prior to the commencement of the development hereby approved details of 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 submitted to and approved in writing by the local planning authority. For this purpose, plans and sections, indicating as appropriate, the design, layout, levels, gradients, materials and method of construction shall be included in the submitted information to the local planning authority. The development shall be carried out in accordance with the approved details.

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- 27) Before the first occupation of a dwelling / premises the following works between that dwelling / premises and the adopted highway shall be completed as follows:
1. Footways and/or footpaths shall be completed, with the exception of the wearing course;
  2. Carriageways completed, with the exception of the wearing course, including the provision of a turning facility beyond the dwelling together with related:
    - highway drainage, including off-site works,
    - junction visibility splays,
    - street lighting, street nameplates and highway structures if any.
- 28) The development hereby approved shall not be occupied until an application has been made for a Traffic Regulation Order to extend the 30mph speed restriction shown on drawing P19081-001 Revision G and the scheme implemented in accordance with any approval and confirmation of that Traffic Regulation Order application.
- 29) Before development commences details shall be submitted to and approved in writing by the local planning authority for the installation of fixed telecommunication infrastructure and High-Speed Fibre Optic (internal speed of up to 1000mb) connections to multi point destinations and all buildings including residential, commercial and community. The infrastructure installed in accordance with the approved details during the construction of the development shall be capable of connection to commercial broadband providers and maintained in accordance with approved details.
- 30) Prior to the construction of any dwelling in any phase details of the materials and measures to be used to increase energy efficiency and thermal performance and reduce carbon emissions and construction waste shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved materials and measures.
- 31) No gas boilers shall be fitted in the dwellings hereby permitted other than a low emission boiler of a minimum standard of <40mgNO<sub>x</sub>/kWh. No dwellings shall be occupied until details of the boilers to be installed have been submitted to and approved in writing by the local planning authority, and the development shall be carried out in accordance with such details.
- 32) No development shall take place until a Construction and Environmental Method Statement and a Code of Construction Practice has been submitted to and approved in writing by the local planning authority. The approved Statement shall be adhered to throughout the construction period. This shall include details relating to:
1. The control of noise and vibration emissions from construction activities including groundwork and the formation of infrastructure, along with arrangements to monitor noise emissions from the development site during the construction phase;

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2. The loading and unloading and storage of plant and materials on site;
3. The erection and maintenance of security hoarding including decorative displays, design and facilities for public viewing, where appropriate;
4. The control and suppression of dust and noise including arrangements to monitor dust emissions from the development site during the construction phase;
5. Measures for controlling pollution/sedimentation and responding to any spillages/incidents during the construction phase;
6. Measures to control mud deposition off-site from vehicles leaving the site;
7. The control of surface water drainage from parking and hard-standing areas including the design and construction of oil interceptors (including during the operational phase);
8. The use if any of impervious bases and impervious bund walls for the storage of oils, fuels or chemicals on-site;
9. The location and size of temporary parking and details of operatives and construction vehicle loading, off-loading and turning and personal, operatives and visitor parking; and
10. Phasing of the development.

The Code of Construction Practice shall include:

1. Hours of working and timing of deliveries;
2. An indicative programme for carrying out the works;
3. Measures to minimise the noise (including vibration) generated by the construction process to include the careful selection of plant and machinery and use of noise mitigation barrier(s);
4. Maximum noise levels expected 1 metre from the affected façade of any residential unit adjacent to the site(s);
5. Management of traffic visiting the site(s) including temporary parking or holding areas;
6. numbers, frequency, routing and type of vehicles visiting the site;
7. travel plan and guided access/egress and parking arrangements for site workers, visitors and deliveries;
8. Routing of construction and delivery vehicles to / from site;
9. Measures to manage the production of waste and to maximise the re-use of materials;
10. Measures to minimise the potential for pollution of groundwater and surface water;
11. Temporary traffic management / signage;
12. The location and design of site office(s) and storage compounds;
13. The location of temporary vehicle access points to the site(s) during the construction works;
14. Details of how the construction will proceed in accordance with the conditions sets out in the consultee response by Southern Gas Networks email dated 25th January 2017;
15. The arrangements for public consultation and liaison during the construction works.

The construction of the development shall then be carried out in accordance with the approved Code of Construction Practice and BS5228 Noise Vibration

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and Control on Construction and Open Sites and the Control of dust from construction sites (BRE DTi Feb 2003).

33) Prior to the first occupation of the development, a Full Travel Plan based on the principles set out in the Travel Plan dated March 2021 shall be submitted to and agreed in writing by the local planning authority. The Full Travel Plan shall as a minimum include:

1. Measures for promoting sustainable modes of travel to residents of the development;
2. Arrangements for monitoring and reviewing the Travel Plan's objectives;
3. Appointment of a Travel Plan Co-Ordinator;
4. Travel Information Packs for the first occupiers of each completed dwelling;
5. Measures for disseminating updated sustainable travel information and Travel Plan updates to residents for the duration of the Travel Plan's lifetime.

The Full Travel Plan shall be implemented in accordance with the agreed details and the development shall be carried-out and operated in accordance with the agreed Travel Plan thereafter.

34) No development shall commence until a site-wide phasing plan has been submitted to and approved in writing by the local planning authority. The development shall be implemented in accordance with the provisions of the approved phasing plan.

35) Prior to the commencement of the development hereby approved details of the Local Equipped Area for Play (LEAP) shall be submitted to and approved in writing by the local planning authority. The details shall include a plan illustrating all equipment appropriate for children, siting, and landscaping including enclosure treatments. The approved LEAP will be implemented as approved prior to occupation of 50% of the dwellings on the development.

**END OF SCHEDULE**



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## Appeal Decision

Site visit made on 7 February 2023

by **A Price BSc MA MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 16 March 2023**

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**Appeal Ref: APP/V2255/W/21/3286633**

**My Retreat, Norman Road, Eastchurch, Sheppey, Kent ME12 4EU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr James Bird against the decision of Swale Borough Council.
  - The application Ref 20/505789/FULL, dated 18 November 2020, was refused by notice dated 4 May 2021.
  - The development proposed is described on the application form as 'the siting of one static caravan on land owned by the applicant. Removal of second static caravan.'
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. Notwithstanding the description of development set out above, which is taken from the application form, it is clear from the plans and accompanying details that the development comprises the use of land for the permanent siting of 1 static caravan for residential use. The Council dealt with the proposal on this basis and so shall I.
3. Having visited the site, I observed that the caravan was in-situ. Therefore, the development applied for has commenced. I have determined the appeal on this basis.
4. The proposal before me follows the refusal of a previous application and the subsequent dismissal of a related appeal under reference APP/V2255/W/19/3243925. That appeal scheme also proposed the use of the land for the siting of a caravan for residential use. It was dismissed on the grounds that the site would not provide a suitable location for the development having regard to the character and appearance of the area and accessibility of employment and services.

### Main Issues

5. The main issues are:
  - whether the site is a suitable location for the development, having particular regard to the character and appearance of the site and the surrounding area and the accessibility of employment and services; and
  - whether other considerations, including the personal circumstances of the appellant, would outweigh any harm and indicate that planning permission should be granted.

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## Reasons

### *Appropriateness of location – services and facilities*

6. The appeal site lies in the open countryside outside any defined settlement boundaries. Nevertheless, there are occasional dwellings and buildings within the surrounding area, including holiday parks.
7. The nearest settlements to the site are Eastchurch and Warden, each located several miles away from the site. Eastchurch, in particular, contains a reasonable number of facilities including a village hall, public houses, a school and shops. Whilst I accept that the distance between neighbouring properties and those settlements is similar to that of the appeal site, to reach Eastchurch by foot or cycle, individuals would need to proceed along Norman Road, a private unmade road, and Warden Road, a narrow lane with limited stretches of footway, no substantial verge or street lighting.
8. These routes are unsatisfactory, and would be particularly undesirable in winter months, after dusk or during inclement weather conditions. Moreover, the nearest bus stop is accessed along those same unsatisfactory routes.
9. Paragraph 105 of the Framework acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural locations. However, in this location, the occupants of the proposed dwelling would be highly reliant on the use of private vehicles to access most services and facilities due to a lack of satisfactory cycling and walking routes or convenient public transport facilities. This would inevitably result in an increase in emissions and therefore environmental harm.
10. For the above reasons, I conclude that the appeal site forms an inappropriate location for the development, contrary to the relevant provisions of Policies ST1, ST3, CP2 and DM14 of the Swale Local Plan (LP, 2017). These policies, when taken as a whole, seek to deliver sustainable development in appropriate places and to minimise the need to travel for employment and services, as well as to facilitate sustainable transport.

### *Appropriateness of Location – character and appearance*

11. The appeal site forms a grassed parcel of land adjacent to Norman Road. It is bounded by mature vegetation along its boundary with Norman Road and Barbara Crest. Fences exist along the remainder of boundaries.
12. Despite scattered buildings, and the existence of some moderately sized holiday parks, the area is generally formed of open fields and mature landscaping. These features contribute to a rural and verdant character.
13. The site, and residential purposes, are only partially visible from Norman Road between gaps in landscaping. However, they are highly visible from the site entrance and from neighbouring properties. Also visible is the domestic paraphernalia associated with the residential use of the site, including a post box, name plate and parked vehicles. These features all contribute to the creation of a domestic setting, eroding the rural character of the site and surrounding area. This has a harmful urbanising effect.
14. I note the presence of other developments along Norman Road, including the existence of other caravans. However, I have no details of their planning



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context or status. In any case, I have assessed the development on its own individual circumstances and my observations on site.

15. For these reasons, I conclude that the development causes significant harm to the character and appearance of the countryside, contrary to the relevant provisions of LP Policies ST1, ST3 and DM14. These policies, when taken as a whole, aim to deliver sustainable development in appropriate places and seek to protect the intrinsic value, landscape setting, tranquillity and beauty of the countryside. This is in a similar vein to the objectives of paragraph 174 of the Framework in respect of recognising the character and beauty of the countryside.

#### *Other considerations*

16. Even in an area with an acknowledged lack of 5-year supply of housing (4.6 years), the proposal for the residential use of the land for a single unit would only provide a very limited contribution to the housing supply in the district. I therefore afford this consideration only limited weight.
17. As was the case under the previous appeal, I am provided with evidence setting out the appellant's personal circumstances and that the original siting of the caravan on the land was necessary to avoid the appellant becoming homeless.
18. I have had regard to Article 8 of the Human Rights Act 1988 as the dismissal of this appeal may lead to the removal of the caravan from the appeal site. This has the potential to impact on the housing needs of the appellant, specifically in that they could become homeless. The previous Inspector set out that interference with the rights of the appellant would be in accordance with the law and in pursuance of a well-established and legitimate aim of managing development in the interests of sustainability. There is no substantive evidence before me in this particular case that leads me to an alternative conclusion in this respect.
19. I have no doubt that the appellant has faced very difficult circumstances in the events leading to this appeal, and in their desire to retain the caravan on the site. However, I have been presented with no substantive evidence that demonstrates that no other form of accommodation would be obtainable, that other options have been fully explored or that the appellant would otherwise become homeless. Moreover, and as was the case under the previous appeal, I have no evidence to demonstrate that children reside at the appeal site or that the appellant or other occupants are subject to specific requirements with regard to accommodation. Therefore, I can attach only limited weight to the appellant's personal circumstances.
20. Accordingly, I conclude that dismissing the appeal would be necessary and proportionate action and the approach taken by the Council is not reason to allow the appeal.

#### **Other Matters**

21. My attention has been drawn to neighbouring sites, which includes the siting of caravans, a dropped kerb and a large extension. These are alleged not to have planning permission. My assessment is based on the plans before me and the individual circumstances of the appeal site. Any works carried out not in

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accordance with those plans, either on the site or near it, would be a matter between the Council and appellant.

22. I acknowledge that the site is connected to utilities, is served by rubbish collection and pays Council Tax. However, these matters are not in dispute between the Council and appellant and I have no reason to find differently. Nevertheless, this does not overcome or outweigh the harm identified above.
23. The site is within 6km of the Swale Special Protection Area and Ramsar Site. Therefore, a financial contribution towards mitigation measures is required. I note the appellant's willingness to secure a planning obligation, however no such obligation is before me. Habitats Regulations 63(1) states that a competent authority before deciding to give consent must make an appropriate assessment of the implications of the plan or project for that site. Given my reasoning in respect of the main issues and that the appeal is dismissed, there is no requirement upon me to consider such matters any further.

#### **Planning Balance and conclusion**

24. I have had regard to the public benefits of the scheme and the personal circumstances of the appellant, including the potential consequences of the appeal being dismissed in relation to the Human Rights Act 1988.
25. Nevertheless, the development plan and Framework are clear that development must protect the intrinsic character and beauty of the countryside and be sustainably located. As explained above, I have identified substantial harm in those respects.
26. Overall, the harm that has been identified in respect of the sustainability of the site and the effect on the character and appearance of the countryside significantly and demonstrably outweighs the limited public benefits of the development. Moreover, I conclude that the interface with the human rights of the appellant is proportionate and necessary.
27. Overall, the proposal would conflict with the development plan when read as a whole. Material considerations, including the Framework, do not indicate that a decision should be made other than in accordance with the development plan. Having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

*A Price*

INSPECTOR