

Agenda

Planning Committee Meeting

Date: Thursday, 22 June 2023

Time 7.00 pm

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

Membership:

Councillors Mike Baldock (Chair), Andy Booth, Simon Clark, Kieran Golding, James Hall, Mike Henderson, James Hunt, Elliott Jayes (Vice-Chair), Peter Marchington, Claire Martin, Charlie Miller, Julien Speed, Paul Stephen, Terry Thompson, Angie Valls, Karen Watson and Tony Winckless.

Quorum = 6

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 21 June 2023.

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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. 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.

4. Minutes

To approve the Minutes of the meetings held on:

[17 May 2023](#) (Minute Nos. 29 – 30)

[25 May 2023](#) (Minute Nos. 45 – 52)

[1 June 2023](#) (Minute Nos. 53 – 57)

[5 June 2023](#) (Minute Nos. 58 – 63)

as correct records.

Part B reports for the Planning Committee to decide

5. Planning Working Group

To approve the Minutes of the Meeting held on 13 June 2023 (Minute Nos. to follow).

To consider the following applications:

22/505618/FULL, Land at School Lane, Newington ME9 7JU

22/500007/FULL, Sheerness Bus Station, Bridge Road, Sheerness ME12 1RH

6. Report of the Head of Planning Services

5 - 94

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 or call 01795 417328) by noon on Wednesday 21 June 2023.

Issued on Tuesday, 13 June 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

**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

22 JUNE 2023

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DEFERRED ITEMS Items shown in previous Minutes as being deferred from that meeting may be considered at this meeting

PART 1 Reports to be considered in public session not included elsewhere on this Agenda

PART 2 Applications for which permission is recommended

PART 3 Applications for which refusal is recommended

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

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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INDEX OF ITEMS FOR PLANNING COMMITTEE – 22 JUNE 2023

- Minutes of last Planning Committee Meeting
- Deferred Items
- Minutes of any Working Party Meetings

PART 2

2.1	22/504625/FULL	DARGATE	Cairo Lodge
2.2	23/500162/FULL	NORTON	The Stables Rushett Lane
2.3	23/501317/ADV	FAVERSHAM	Land at Station Road; land at Market Place & land at Partridge Lane/ Court Street

PART 3

3.1	22/505870/FULL	BORDEN	Land adjacent to Pebble Court Farm
3.2	23/501726/FULL	UPCHURCH	130 Horsham Lane
3.3	22/506000/FULL	LOWER HALSTOW	Callum Park House Callum Park

PART 5

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5.1	21/505131/FULL	DODDINGTON	Greet Cottage Lady Margaret Manor Rd
5.2	21/505498/OUT	SITTINGBOURNE	Land off Swanstree Avenue
5.3	21/504369/FULL	EASTCHURCH	Land North Of Warden Road
5.4	21/505863/FULL	FAVERSHAM	2 Bells Forstal Cottages Throwley Road

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PLANNING COMMITTEE – 22 JUNE 2023**PART 2**

Report of the Head of Planning

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

2.1 REFERENCE NO - 22/504625/FULL		
APPLICATION PROPOSAL Demolition of existing bungalow. Conversion of an existing store/garage to a holiday let with the erection of a front porch with access ramp. Installation of a new metal sliding access gate.		
ADDRESS Cairo Lodge Butlers Hill Dargate Faversham Kent ME13 9HH		
RECOMMENDATION Approve, subject to the conditions below and receipts of a SAMMS payment.		
REASON FOR REFERRAL TO COMMITTEE Parish Council Objection		
WARD Boughton And Courtenay	PARISH/TOWN COUNCIL Hernhill	APPLICANT Mr Steve Waterman AGENT Ingrain Architecture Ltd
DECISION DUE DATE 06/12/22	PUBLICITY EXPIRY DATE 28/03/23	CASE OFFICER Alice Reeves

Planning History

18/506195/FULL

Conversion of detached store and garage to a self-contained holiday let.

Approved Decision Date: 12.02.2019

17/504394/FULL

Erection of replacement dwelling with associated car parking and landscaping plus demolition of existing house and as amended by receipt of drawing number 1103/01 B dated 19th October 2017.

Approved Decision Date: 26.10.2017

SW/07/0144

New garages, workshop & tack room.

Approved Decision Date: 05.04.2007

SW/06/0132

New garages, workshop and tack room.

Approved Decision Date: 27.03.2006

SW/04/1536

New sand school 20m x 40m

Approved Decision Date: 31.01.2005

1. DESCRIPTION OF SITE

- 1.1 Cairo Lodge lies in an isolated position within open countryside outside any defined built up area boundary. The nearest neighbours are Brook Farm and Oakleigh which are sited 25m and 85m from the site. The area is characterised by dwellings of various architectural design and ages. The garage/workshop building itself was approved under application SW/07/0144 as a domestic outbuilding adjacent to private stables and a sandschool; and is a generous building with existing windows, doors and rooflights. The building is clad in timber weatherboarding and is accessed via its own driveway from Butlers Hill. Part of the building was previously approved for use as a holiday let under ref. 18/506195/FULL and is regularly used by visitors to the Borough.

2. PROPOSAL

- 2.1 The application seeks planning permission for the conversion of the existing double garage. The proposal seeks to convert the existing store/garage spaces into a utility, accessible bathroom, double bedroom, and an open plan living/kitchen/diner. The design means that the building can be used as two separate holiday lets or if the dividing door is open, the space can be used as a larger unit with 3no. bedrooms available.
- 2.2 In terms of external alterations, the garage doors are proposed to be replaced with full height glazing within the existing openings. An accessible ramp will also lead to a new pitched roof entrance porch constructed in matching materials measuring 1.5m x 2.7m. A new window is proposed to the side elevation looking out over the small patio area to serve the proposed holiday let.
- 2.3 Two off road car parking spaces per holiday let are shown on the proposed site layout.
- 2.4 The application has been amended from submission as it no longer proposes to construct a new 3 bay car garage on the site of the existing bungalow to be demolished.

3. PLANNING CONSTRAINTS

- 3.1 Designated countryside
- 3.2 Area of High Landscape Value (Swale Level)

4. POLICY AND CONSIDERATIONS

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

ST3 The Swale settlement strategy

DM3 The rural economy

DM7 Vehicle Parking

DM14 General development criteria

DM16 Alterations and extensions

DM24 Conserving and enhancing valued landscapes

- 4.2 Supplementary Planning Document (SPD):

The Swale Borough Council Car Parking Standards SPD May 2020.

5. LOCAL REPRESENTATIONS

5.1 Hernhill Parish Council:

Hernhill Parish Council voted to object to the planning application on the grounds that it would be an overdevelopment of the site, which until recently was a small bungalow in a large garden. The proposed development would result in an additional large building to the two large buildings recently constructed and in nearly half the site being used for commercial purposes which is inappropriate in a rural, residential area. The commercial use would result in increased traffic in the adjacent narrow lane which is already heavily used.

Further to the receipt of amended drawings, which removed the proposed 3 bay car garage from the site the Parish Council were reconsulted and commented as follows:

Hernhill Parish Council:

Hernhill Parish Council voted unanimously noting the amended plans for there to be no change to their original comments posted on the 3rd November 2022.

5.2 Four letters of support were received and can be summarised as follows:

- The unit itself is within the existing building so only involves installation of a ramp
- Demolition of the existing bungalow is overdue and would enhance the area
- Will provide much needed holiday accommodation in the area supporting local businesses
- A number of holiday lets in the parish are no longer functioning and several that had planning approved have not materialised
- Perfect location for holiday makers

5.3 One letter neither objecting or supporting was received and can be summarised as follows:

- Any granted consent should include a condition that the demolition of the existing bungalow is carried out within a time period or ahead of the holiday let conversion
- The previous application for demolition of the existing bungalow did not see this completed and nothing included on conditions to say when demolition needed to take place

6. CONSULTATIONS

6.1 **Kent County Council Highways & Transportation:** No highways implications associated with the proposals

6.2 **Kent Police:** Recommend that CTPED principles are applied and email address provided for applicant to contact if they wish to discuss physical security

6.3 **SBC Environmental Health:** Some residential properties in the vicinity so recommend standard construction hours condition

7. BACKGROUND PAPERS AND PLANS

- 7.1 All plans and documentation relating to 22/504625/FULL.

8. APPRAISAL

Principle of Development

- 8.1 The site is situated within the designated countryside where Policy ST3 of the Local Plan seeks to resist development unless supported by the NPPF. The NPPF at paragraph 84 states that a positive approach should be taken to sustainable development to promote a strong rural economy and that support for all types of rural businesses and tourism developments can be achieved through conversion of existing buildings and well-designed new buildings which respect the character of the countryside. Paragraph 85 of the NPPF recognises that sites to meet local business and community needs in rural areas may have to be found outside existing settlements and in locations that are not well served by public transport.
- 8.2 Policy DM3 of the Local Plan supports the rural economy by encouraging economic development, especially by prioritising the re-use of rural buildings over new builds. The most relevant section of the supporting text to this policy is as follows:

For the rural tourism sector, given the outstanding environment in Swale and its potential contribution to the economy, the Council wishes to see an expansion of sustainable rural tourism initiatives that can benefit local communities, economically and socially as well as raising awareness and support for the conservation and enhancement of the Borough's natural assets.

- 8.3 The agent was advised to remove the proposed 3 bay garage from the proposal as this was considered to be an overdevelopment of the site. The amended plans were forthcoming, and the proposal is now confined to the conversion of the existing building.
- 8.4 The demolition of the bungalow would be in accordance with previously approved application 17/504394/FULL which sought its replacement with a chalet style bungalow set slightly further into the site behind the existing. The chalet bungalow was approved as a replacement dwelling to the smaller bungalow which was to be removed from site in accordance with policies ST3 and DM11 as development of a new dwelling would not normally be supported in this unsustainable location however, no condition was included for its removal and this bungalow still remains on the site. The removal of this bungalow would therefore comply with the previous permission and policies ST3 and DM11 of the Local Plan.
- 8.5 As this is an existing building and there is ample space remaining on the site for off road parking it is considered that the re-use of this building as an accessible holiday let complies with policies ST3, DM3 and DM14 of the Local Plan.

Character and appearance

- 8.6 There is very little change to the exterior of the building proposed. The glazing to replace the garage doors will match that used for the previous conversion and the proposed porch is small scale and in keeping with the surroundings. The conversion makes use of matching

materials and ensures that there will be no harmful impact upon the character and appearance of the area.

- 8.7 The new metal sliding gate to the host property's parking area is considered to be acceptable however, a condition requesting details of this prior to installation is included below to ensure that the design is appropriate.
- 8.8 It is considered that the proposed alterations would not cause any harm to the character and appearance of the area and comply with policies DM14 and DM16 of the Local Plan that seek to only approve development that responds positively to the host building and surrounding area.

Living Conditions

- 8.9 The proposed holiday let is not expected to have any identifiable harm to the living conditions of the neighbouring residents however, it is acknowledged that demolition and building work may cause disturbance if not controlled, so in line with comments from SBC Environmental Health, a condition will be included to ensure that these activities take place within set times. It is therefore considered that the application complies with policy DM14 of the Local Plan which seeks to ensure that there is no significant harm to amenity.

Highways

- 8.10 The site is situated in a rural location with limited access to public transport and in all probability, visitors would rely on a car for their journeys. However, it seems unlikely that the addition of a one bedroom holiday let with sleeping accommodation for two people would generate a significant amount of traffic and in any case it will be dispersed throughout the day. Furthermore, KCC Highways & Transportation do not consider there to be any highways implications associated with the proposal.
- 8.11 There are 4 off road parking spaces in total for use by the existing and proposed holiday let which is compliant with the Council's Parking SPD. The new 2 bay parking area is created by the removal of a small shed to the side of the stable building. The removal of this small shed would not be detrimental in any way.
- 8.12 The parking on site is considered adequate to accommodate both the existing and proposed holiday let and therefore it is not considered that there are any reasons to refuse the application on highway or traffic grounds.

SPA Impact

- 8.13 As Members will be aware, the Council seeks developer contributions on any application which proposes additional residential development within 6km of the Special Protection Area (SPA). The application site is within 6km of the SPA, and as such the Council seeks a mitigation contribution of £314.05 for each new holiday unit. This matter will need to be dealt with before any planning permission can be issued.

Other Matters

- 8.14 The application also proposes the demolition of the existing bungalow on the site. It is noted that under reference 17/504394/FULL a replacement dwelling was approved which has now been constructed. However, the bungalow has not been removed and there is no condition

on the 17/504394/FULL consent requiring its demolition to take place. Therefore, as this proposal also proposes the demolition of the bungalow it is recommended that a condition is imposed which requires the removal of the bungalow prior to the first occupation of the holiday let.

9. CONCLUSION

- 9.1 The application seeks the re-use of an existing building that will support the rural economy. The potential impact of this proposal upon the character and appearance of the rural area, highways implications and the comments of the Parish Council have been considered. The impact is considered to be minimal and considerably outweighed by the benefits it would bring to the Borough in regards to rural tourism and support of local businesses. It is therefore considered that planning permission should be approved, subject to the conditions included below and the receipt of a SAMMS payment.

10. RECOMMENDATION

GRANT Subject to the following conditions and the receipt of a SAMMS payment:

CONDITIONS

- (1) The development to which this permission relates must be begun no 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 not be carried out otherwise than in complete accordance with drawings 22103-PL-(00)-0110 1st Revision, 22103-PL-(00)-0103 1st Revision and 22103-PL-(00)-0109 Revision B.

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

- (3) Prior to the first occupation of the holiday accommodation hereby permitted, one electric vehicle charging point shall be provided in accordance with the following specification. All Electric Vehicle chargers provided must be to Mode 3 standard (providing a minimum of 7kw) and SMART (enabling Wi-Fi connection). Approved models are shown on the Office for Low Emission Vehicles Homecharge Scheme approved chargepoint model list:

<https://www.gov.uk/government/publications/electric-vehicle-homecharge-scheme-approved-chargepoint-model-list>

Reason: To encourage the use of electric vehicles, in the interests of climate change and reducing pollution.

- (4) Prior to the first occupation of the holiday accommodation hereby permitted, provision and permanent retention of secure, covered cycle parking facilities shall be completed in accordance with details that shall first have been submitted to and approved by the Local Planning Authority.

Reason: To ensure the provision and retention of adequate off-street parking facilities for cycles in the interests of sustainable development and promoting cycle visits.

- (5) Prior to the relevant works, manufacturers details of the metal sliding gates shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with these approved details.

Reason: In the interests of visual amenity.

- (6) The holiday accommodation hereby permitted shall be designed to achieve a water consumption rate of no more than 110 litres per person per day and shall not be occupied unless the notice for the dwellings 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.

- (7) Upon completion, no further development permitted by Classes A, B, C, D or E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order) or not, shall be carried out.

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

- (8) The area shown on approved drawing 22103-PL-(00)-0109 Revision B as vehicle parking space shall be provided before first occupation of the holiday let hereby permitted, and this area shall at all times be retained for the use of the occupiers of the holiday accommodation. No permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to these areas.

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

- (9) The holiday let hereby permitted shall be used solely for the purpose of holiday accommodation; shall not be used by any person or persons as their sole or main residence and the accommodation shall not be occupied by any person or group of persons for more than four weeks in any calendar year.

Reason: As the site lies outside any area intended for new permanent residential development and as the permission is only granted in recognition of the applicant's intention and the Local Planning Authority's wish to encourage suitable provision of holiday accommodation in this attractive rural area.

- (10) The existing bungalow shown to be demolished on drawing 22103-PL-(00)-0109 Revision B shall be removed from site prior to first occupation of the holiday let hereby permitted.

Reason: In the interest of visual amenity.

- (11) No demolition/construction activities shall take place, other than between 0730 to 1800 hours Monday to Friday and 0800 to 1300 hours Saturday with no working activities on Sunday or Bank Holiday.

Reason: In the interests of residential amenity.

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.

Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017.

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

The application site is located within 6km of The Swale 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.

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.

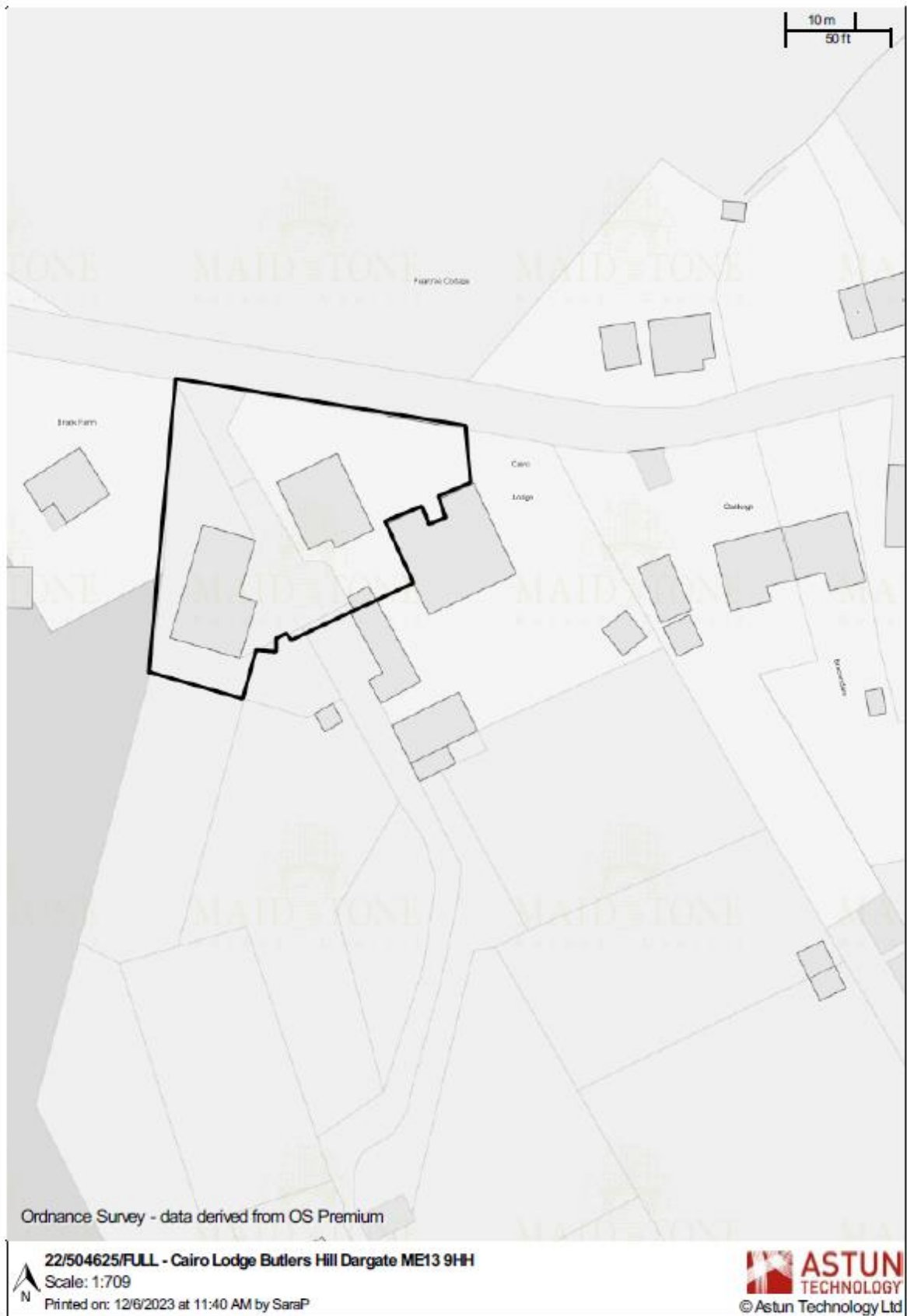
Based on the correspondence with Natural England (via the NKEPG), I conclude that off-site mitigation is required.

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 (to be 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.

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/>).

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.



2.2 REFERENCE NO - 23/500162/FULL		
APPLICATION PROPOSAL Proposed change of use of existing commercial building to single unit of holiday accommodation, with parking and turning space, amenity space and landscaping.		
ADDRESS The Stables Rushett Lane Norton Kent ME13 0SG		
RECOMMENDATION Approve subject to SAMMS PAYMENT		
REASON FOR REFERRAL TO COMMITTEE Parish Council objection.		
WARD Teynham And Lynsted	PARISH/TOWN COUNCIL Norton, Buckland And Stone	APPLICANT Mr D Petherick AGENT Kingsway Planning
DECISION DUE DATE 31/05/23	PUBLICITY EXPIRY DATE 03/02/23	CASE OFFICER Claire Attaway

Relevant Planning History of building subject to this application

19/504418/FULL

Part retrospective application for change of use from B1 commercial use of property to part residential.

Refused Decision Date: 05.11.2019

Appeal dismissed Decision Date: 10.03.2022

Enforcement notice upheld Decision date: 10.03.2022

16/503815/SUB

Submission of details pursuant to Condition 2 - Materials for Proposed Roof and Condition 3 - Hard and Soft Landscaping of 14/502507/FULL.

Approved Decision Date: 21.06.2016

15/506487/FULL

Part Retrospective - Retention of use of existing store/workshop with roof and window alterations

Refused Decision Date: 01.10.2015

14/502507/FULL

Change of use from stables to office and workshop B1 use

Refused Decision Date: 02.03.2015

Appeal allowed Decision Date: 10.03.2016

SW/04/0645

Change of use of land and erection of stable block with paddock and menage new fencing and landscaping.

Approved Decision Date: 15.07.2004

The relevant planning history in relation to the building itself begins with a planning application (14/502507/FULL) in 2014 for the change of use of the stables to an office and workshop (Use Class B1) which was refused by the Council but allowed at appeal on 26 January 2016 under ref APP/V2255/W/15/3133029. That application sought planning permission to change the flat roof of the unauthorised extension to create a double gable end to the north east elevation, as well as the insertion of a number of new windows and doors. As the appeal was allowed, the

external alterations to the appearance of the building were authorised, as well as the commercial use of the building.

An appeal against the Council's decision to refuse planning permission (19/504418/FULL) for a live/work unit was dismissed on 10 March 2022 under ref APP/V2255/W/20/3261861, and the enforcement notice upheld meaning that the residential use of the building must cease within 12 months of that date.

Planning History of wider site

SW/11/0721

Conversion of redundant general purpose farm building and change of use into Class B1, office and workshop.

Refused Decision Date: 08.09.2011

SW/09/0687

Conversion of redundant general purpose farm building and change of use into holiday let accommodation – note this is not the building subject to the current application

Refused Decision Date: 21.09.2009

Appeal dismissed Decision Date: 24.06.2010

SW/08/1135

New general purpose farm building.

Grant of Conditional PP Decision Date: 18.12.2008

SW/05/0203

Equipment store in extension to stables

Refused Decision Date: 05.04.2005

Appeal allowed Decision Date: 15.11.2005

In terms of the most relevant planning history for the wider site, an application (SW/08/1135) for a new farm building alongside the stables was approved but this was not built. Instead, a similar but substantially different (longer and wider) building (the unauthorised building) was erected, and the Council served an enforcement notice dated 4th January 2012. The enforcement appeal was dismissed on 27th June 2012 and the building was eventually demolished. In the meantime, an application (SW/09/0687) to convert the unauthorised (and now demolished) building to a holiday cottage was refused and dismissed at appeal (APP/V2255/A/10/2124902) in June 2010 due to the impact of the proposed domestic style alterations of the building on the character and appearance of the rural area. The Inspector did not consider the unauthorised building should be described as a suitable existing rural building for conversion.

1. DESCRIPTION OF SITE

- 1.1 The site, approx. 0.07 hectares in area, lies outside any Local Plan defined built up area boundary, within a small cluster of houses set along Rushett Lane. The proposal relates to a single storey timber clad building that was originally erected as stables but is now being used as a residential unit (without planning permission).
- 1.2 The building itself is L shaped and is situated on the south eastern corner of the site. The walls are clad in black stained weatherboarding above a brick plinth and the pitched roof is covered in slate tiles. The site is well screened from the road by tall boundary hedging and wooden gates. The driveway leads to a large area of hardstanding that surrounds the side of the building which is used for parking and turning. The remaining part of the

site consists mainly of a grassed area of land. Beyond that, to the north and west, the site is surrounded by paddocks which are in the applicants ownership.

2. PROPOSAL

- 2.1 This application seeks planning permission to change the use of the building permitted under 14/502507/FULL for a commercial use into a two bedroom holiday let. The proposal involves internal alterations only. The office would be used as a second bedroom. An area to the side and rear of the building will be used as garden space, and the two existing car parking spaces to the front will be retained.
- 2.2 The building will not be enlarged, and the materials will remain as existing. However, the existing elevations of the building differ slightly to that approved under 14/502507/FULL, and this application seeks to regularise the following alterations:
- South-West Elevation – glazed panel to doors altered
 - North-West Elevation – glazed panel added to door
 - South-East Elevation – fourth window deleted
 - North-East Elevation – new window inserted, and glazing added to double doors

3. PLANNING CONSTRAINTS

- 3.1 Designated countryside.

4. POLICY AND CONSIDERATIONS

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

ST1 Delivering sustainable development in Swale

ST3 The Swale settlement strategy

ST7 The Faversham area and Kent Downs strategy

DM3 The rural economy

DM7 Vehicle Parking

DM14 General development criteria

DM24 Conserving and enhancing valued landscapes

- 4.2 Supplementary Planning Document (SPD):

The Swale Borough Council Car Parking Standards SPD May 2020. The guidance advises that secure and convenient cycle parking is essential to encourage people to use this mode of travel, and that developments should incorporate electric vehicle charging points into the parking design.

The Swale Borough Council Landscape Character Biodiversity Appraisal SPD 2011. The site is located within the Lynsted Enclosed Farmlands. The overall condition of the landscape is rated good and landscape sensitivity is rated moderate. The guidelines focus on conserving and reinforcing its distinctive character.

5. LOCAL REPRESENTATIONS

- 5.1 Norton, Buckland, and Stone Parish Council recommends the application is refused, commenting as follows:

It would seem that the building as exists now is in fact that which was refused permission under application 19/504418/FULL.

This building, as now built, is a domestic dwelling, and has been occupied for some time. As such, there is no permission in place for this building. The now existing floor plan and exterior shown in this application are identical to that of refused application 19/504418/FULL.

In refusing the appeal to 19/504418/FULL the Government Inspector gave as a reason for dismissing the appeal as “Although there has been no increase in its overall size, the windows and doors that have been inserted give the building a domestic appearance. Moreover, despite the existing vegetation which partially screens the site, the residential use with its private garden area and domestic paraphernalia and associated parking has changed the rural character and appearance of the site to a harmful degree.”

What is being sought by this application is to approve the same building as was refused by Swale Borough Council and at Appeal under application 19/504418/FULL, although now as a holiday let rather than a permanent residence.

Whilst noting that the applicant suggests that if approved, occupation should be time restricted, the Council considers that such a condition would be difficult to monitor or enforce.

- 5.2 Consultation letters were sent to neighbouring properties and a site notice was displayed. One neighbour responded raising concern that further agricultural buildings could be added and then retrospective permission sought to convert to residential use resulting in a large residential site. They question if the applicant will move if the proposal is approved.

6. CONSULTATIONS

- 6.1 **Natural England:** - no objection subject to strategic mitigation (SAMMS) payment being secured in respect of possible increased recreational disturbance to The Swale SPA/Ramsar site.
- 6.2 **KCC Highways and Transportation:** - consider this to be a non-protocol matter.
- 6.3 **The Council’s Environmental Protection Team:** - no objection subject to a land contamination condition.
- 6.4 **The Council’s Economy and Community Services (ECS):** - considers the proposal supports the council’s commitment to the visitor economy and support for building the range of accommodation in the area.

7. BACKGROUND PAPERS AND PLANS

- 7.1 Application papers and drawings referring to application reference 23/500162/FULL.

8. APPRAISAL

Principle of Development

- 8.1 The site is situated within the designated countryside where Policy ST3 of the Local Plan, which seeks to resist development unless supported by the NPPF. The NPPF at paragraph 84 states that a positive approach should be taken to sustainable development to promote a strong rural economy and that support for all types of rural businesses and tourism developments can be achieved through conversion of existing buildings and well-designed new buildings which respect the character of the countryside. Paragraph 85 of the NPPF recognises that sites to meet local business and community needs in rural areas may have to be found outside existing settlements and in locations that are not well served by public transport.
- 8.2 Policy DM3 of the adopted Local Plan supports the rural economy by encouraging economic development, especially by prioritising the re-use of rural buildings over new builds. The most relevant section of the supporting text to this policy is as follows:

For the rural tourism sector, given the outstanding environment in Swale and its potential contribution to the economy, the Council wishes to see an expansion of sustainable rural tourism initiatives that can benefit local communities, economically and socially as well as raising awareness and support for the conservation and enhancement of the Borough's natural assets.

- 8.3 In this case, in terms of the current lawful use of the site, the Enforcement Notice issued by the Council in respect of the use of the building as a residential unit (which was later dismissed under ref. APP/V2255/W/20/3261861) set out that the breach of planning control was that a change of use from commercial to residential had taken place. As the Inspector did not vary the terms of the notice it must be concluded that the Inspector also concluded that the existing use at that point was commercial. On that basis, as that is the last lawful use of the site, the conversion of an existing rural building into holiday let accommodation is acceptable in terms of paragraph 84 of the NPPF and in accordance with Policy DM3 of the Local Plan. Furthermore, the Council's Tourism Officer supports the proposal and is of the view that this destination will appeal to those seeking a rural retreat.

Character and appearance

- 8.4 The Inspector for the most recent appeal (APP/V2255/C/20/3256509) considered the windows and doors that had been inserted gave the building a domestic appearance, and that its private garden area and associated parking resulted in harm to the character and appearance of the area. However, that application (19/504418/FULL) sought a residential use on a considerably larger site, where the Inspector found the benefit of one new dwelling did not outweigh the harm to the countryside. In this case, the proposal would create a good tourism opportunity in a rural location. In addition, as the site area is now much smaller, there would not be the opportunity for the same harm to the

countryside to occur. Additionally, the use of the site as a holiday let would mean that it would be less likely that residential paraphernalia associated with unrestricted residential use, such as the need for washing lines, trampolines etc. would be present on the site. Therefore, the impact on the countryside would be reduced in comparison to the harm that the Inspector identified for an alternative proposal and outweighed by the benefits the proposal would bring to the area and the Borough as a whole.

- 8.5 In respect of the differences of the external appearance of the building outlined in paragraph 2.2 above, Members should refer back to what was considered the lawful commercial use of the building. There are permitted development rights in respect of industrial / office buildings, of which these would fall within. The alternations are very minor and on this basis no concern is raised in regard to this.

8.6 Impact Upon living conditions

The closest neighbouring properties that are most affected by the proposal are situated across the lane to the south-west, and approximately 95m to the north-west. However, due to the position of the building and the significant separation distance to other properties, there is found to be no identifiable harm to the amenities of neighbouring properties surrounding the site.

Highways

- 8.7 The site is situated in a rural location with limited access to public transport and in all probability, visitors would rely on a car for their journeys. However, it seems unlikely that the holiday let would generate a significant amount of traffic, and in any case, it will be dispersed throughout the day. Furthermore, Kent Highways and Transportation does not consider the proposal meets the criteria to warrant involvement from them. The parking area is considered adequate to accommodate any visitors to the site therefore it is considered there are not any reasons to refuse the application on highway or traffic grounds.

Landscaping

- 8.8 The Planning Statement at para 19 states that additional landscaping works and biodiversity improvements could be incorporated into the scheme. Members will note condition (8) which requires landscaping details to be submitted to ensure the character and appearance of the rural landscape is enhanced.

SPA Impact

- 8.9 As Members will be aware, the Council seeks developer contributions on any application which proposes additional residential development within 6km of the Special Protection Area (SPA). The application site is within 6km of the SPA, and as such the Council seeks a mitigation contribution of £314.05 for each new holiday unit. However, the applicant has already paid £245.56 in respect of application ref 19/504418/FULL that was dismissed at appeal. Therefore, the applicant is only required to pay the difference, i.e., £314.05 - £245.56 = £68.49. This matter will need to be dealt with before any planning permission can be issued.

Other Matters

- 8.10 The status of the building as a holiday let should be protected and condition (3) will ensure this is the case. However, the Parish Council raise concern that it would be difficult to monitor or enforce. It is evident from previous appeal decisions that unauthorised use on this site was dealt with by the Planning Enforcement team. Therefore, this is not seen as a reason to justify refusal of planning permission.
- 8.11 The local representation raises concerns that further agricultural buildings could be added which would be then converted to residential use. Any future development here that is not included within the proposal, and requires planning consent, would require an application for planning permission which the Council would assess on its own merits.

9. CONCLUSION

- 9.1 The proposal will re-use an existing rural building and support the rural economy. The potential impact of this proposal upon the character and appearance of the rural area, as well as the comments of the Parish Council have been considered. The impact is considered to be minimal and considerably outweighed by the benefits it would bring to the Borough. On this basis planning permission should be granted, subject to the conditions which have been included below.

- 10. RECOMMENDATION - GRANT** Subject to the following conditions and the collection of a SAMMS payment.

CONDITIONS

- (1) The development to which this permission relates must be begun no 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 the approved drawings Floor Plans PE/13/145.01 Rev D and Block Plans PE/13/145.03 Rev D.

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

- (3) The holiday let hereby permitted shall be used solely for the purpose of holiday accommodation; shall not be used by any person or persons as their sole or main residence and the accommodation shall not be occupied by any person or group of persons for more than four weeks in any calendar year.

Reason: As the site lies outside any area intended for new permanent residential development and as the permission is only granted in recognition of the applicant's intention and the Local Planning Authority's wish to encourage suitable provision of holiday accommodation in this attractive rural area.

- (4) The area shown on approved drawing PE/13/145.03 Rev D as a vehicle parking space shall be provided before first occupation of the holiday let hereby permitted, and this area shall at all times be retained for the use of the occupiers of the

holiday accommodation. No permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to these areas.

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

- (5) Prior to the first occupation of the holiday accommodation hereby permitted, one electric vehicle charging point shall be provided in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority. All Electric Vehicle chargers provided must be to Mode 3 standard (providing a minimum of 7kw) and SMART (enabling Wi-Fi connection). Approved models are shown on the Office for Low Emission Vehicles Homecharge Scheme approved chargepoint model list:

<https://www.gov.uk/government/publications/electric-vehicle-homecharge-scheme-approved-chargepoint-model-list>

Reason: To encourage the use of electric vehicles, in the interests of climate change and reducing pollution.

- (6) Prior to the first occupation of the holiday accommodation hereby permitted, provision and permanent retention of secure, covered cycle parking facilities shall be completed in accordance with details that shall first have been submitted to and approved by the Local Planning Authority.

Reason: To ensure the provision and retention of adequate off-street parking facilities for cycles in the interests of sustainable development and promoting cycle visits.

- (7) The holiday accommodation hereby permitted shall be designed to achieve a water consumption rate of no more than 110 litres per person per day and shall not be occupied unless the notice for the dwellings 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.

- (8) Within six months of the date of this decision, full details of both hard and soft landscape works – which shall include an ecology enhancement plan demonstrating how the site will be enhanced to benefit biodiversity – shall be submitted to 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.

- (9) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be implemented 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.

- (10) 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.

- (11) If during construction/demolition works evidence of potential contamination is encountered, works shall cease and the site fully assessed to enable an appropriate remediation plan to be developed. Works shall not re-commence until an appropriate remediation scheme has been submitted to, and approved in writing by, the Local Planning Authority and the remediation has been completed.

Upon completion of the building works, this condition shall not be discharged until a closure report has been submitted to and approved in writing by the Local Planning Authority. The closure report shall include details of;

- a) Details of any sampling and remediation works conducted and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology.
- b) Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.
- c) If no contamination has been discovered during the build then evidence (e.g. photos or letters from site manager) to show that no contamination was discovered should be included.

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

- (12) Upon completion, no further development permitted by Classes A, B, C, D or E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order) or not, shall be carried out.

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

INFORMATIVES

- (1) This permission has only been granted after receipt of a financial contribution to the Strategic Access Management and Monitoring Strategy in respect of the nearby Special Protection Area.

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.

Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017.

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

The application site is located within 6km of The Swale 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.

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.

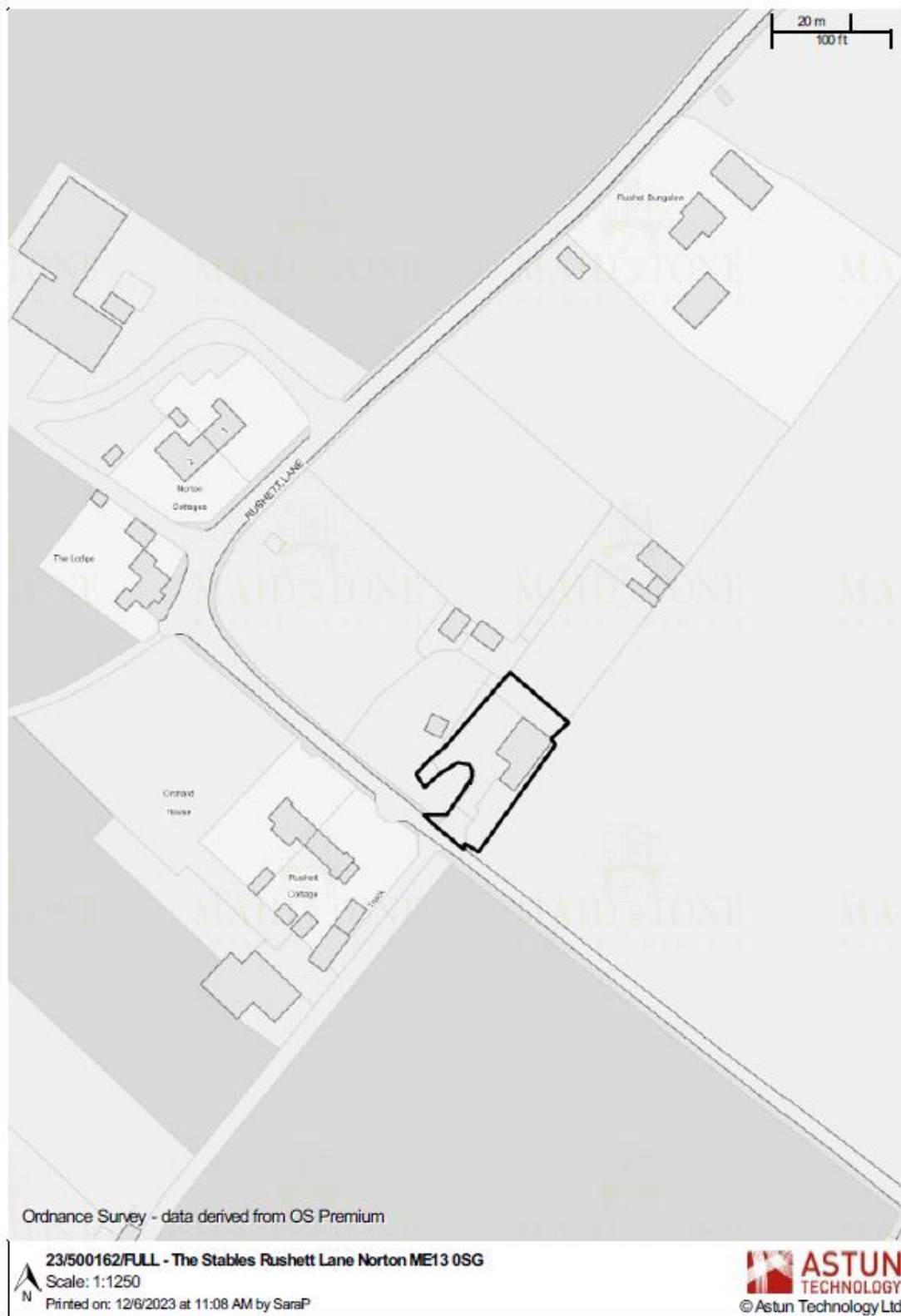
Based on the correspondence with Natural England (via the NKEPG), I conclude that off-site mitigation is required.

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 (to be 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.

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/>).

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.



2.3 REFERENCE NO - 23/501317/ADV		
APPLICATION PROPOSAL Advertisement Consent Application for 3 double sided map totems (non-illuminated) located as shown on Site Location Plan.		
ADDRESS Land At Station Road; Land At Market Place; And Land At Partridge Lane / Court Street Faversham Kent		
RECOMMENDATION That Advertisement Consent is Granted, subject to conditions		
REASON FOR REFERRAL TO COMMITTEE The Council is the applicant.		
WARD Abbey	PARISH/TOWN COUNCIL Faversham Town	APPLICANT Swale Borough Council AGENT Momentum Wayshowing
DECISION DUE DATE 16/06/23	PUBLICITY EXPIRY DATE 08/06/23	CASE OFFICER Claire Attaway

1. DESCRIPTION OF SITE

- 1.1 This application relates to three sites that comprise of Public Highway land situated within the Faversham Town Conservation Area where most of the surrounding properties are listed. The sites comprise of finger post signs that will be removed and replaced with new totems.
- 1.2 The first site is situated on the corner of the junction of Station Road and Preston Street. The site is located opposite the train station and in front of the Railway Hotel Public House.
- 1.3 The second site is situated within the core shopping area and opposite the Town Hall on the junction of Market Street and Market Place.
- 1.4 The third site is located by the pedestrian crossing at the junction of Court Street and Crescent Road.

2. PROPOSAL

- 2.1 Advertisement consent is being sought for three double sided (non-illuminated) pedestrian map totems.
- 2.2 The totems, measuring 2.2m high and 0.5m wide x 0.1m deep, will be made from aluminium and finished in deep bronze (Anolok 547) with a digital printed vinyl and a replaceable glass panel. The black text on a beige background will identify key destinations and visitor attractions that are shown on the maps. The side of each totem will be engraved with a motif featuring the three gold lions from the Faversham Town Council's Coat of Arms.

3. PLANNING CONSTRAINTS

- 3.1 Faversham Town Conservation Area
- 3.2 Potential Archaeological Importance
- 3.3 Within the setting of various listed buildings

4. POLICY AND CONSIDERATIONS

4.1 **Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies:**

ST3 The Swale settlement strategy

CP4 Requiring good design

DM14 General Development Criteria

DM15 New shopfronts, signs, and advertisements

DM32 Development involving listed buildings

DM33 Development affecting a conservation area

4.2 **Supplementary Planning Guidance (SPG):**

'The Design of Shopfronts, Signs & Advertisements' and 'Conservation Areas'.

5. LOCAL REPRESENTATIONS

- 5.1 **Faversham Town Council:** No Objection. They request the maps include reference to The Alexander Centre, The Arden Theatre, The Assembly Rooms, and the Urgent Treatment Centre.
- 5.2 Consultation letters were sent to neighbouring properties and a site notice was displayed at each of the three sites. Two local representations have been received, raising the following points: -
 - The Shrine of St Jude (Tanners Street) is not on the map.
 - The Sea Cadets are on the map at TS Hazard, but they moved out some time ago.
 - The Abbey Physic is on the map but why not the Umbrella Centre?
 - The United Reformed (Preston St) or Gospel Mission (Tanners) are not on the map.
 - The health centre is known as "Urgent Treatment Centre".
 - The new coach parking facility in Upper Brents could be included.
 - "The Alex" is the trading name for an occupier of The Alexander Centre but there may be others. Directional signage should be addressed to a fixed geographical feature or to specific buildings, not to occupiers, tenants etc where names change.

- Disappointed that the existing finger posts will be replaced with flat, sided, screen-type panels which may well attract graffiti.
- There was a well thought and consulted upon decision process to utilise the existing finger posts that blend in and which are adaptable and easily amended, or repaired if necessary.

6. CONSULTATIONS

- 6.1 **KCC Highways and Transportation:** No Objection.
- 6.2 **The Council's Conservation Officer:** No objection to the loss of the finger posts and supports their replacement with the proposed totems.
- 6.3 **KCC Archaeology** – No archaeological measures needed.

7. BACKGROUND PAPERS AND PLANS

- 7.1 Application papers and plans relating to 23/501317/ADV.

8. APPRAISAL

Under the Advertisement Regulations, the only matters for consideration are those relating to amenity and public safety.

Amenity

- 8.1 Amenity is usually defined in terms of appearance of the advertisement itself and the characteristics of the area where it is to be displayed but does not include the content or subject matter of the advertisement display. The relevant policies and the Council's SPG entitled 'The design of shopfronts, signs and advertisements' advise that such development should respect the character of the surrounding area and avoid the scenario of creating excessive visual clutter. The existing finger post signs will be removed to avoid an over proliferation of signage within this area. The totems are of an appropriate scale and height and strategically positioned to inform and direct visitors around the town. The design incorporates a three gold lion motif to reflect the town's history, and the colouring of the signage is considered appropriate. The Conservation Officer is satisfied that the totems would not be harmful to the visual amenity of the area, and as such will preserve the character and appearance of the conservation area and the setting of the surrounding listed buildings.

Public safety

- 8.2 The proposed totems have been deliberately positioned at key decision points where they will be clearly visible to pedestrians. KCC Highways raise no objection to the application on highway safety grounds and have not recommended any conditions.

Other matters

- 8.3 Local representations suggest including other visitor attractions and the local hospital on the header above the maps. However, as with all applications for advertisement consent, the content of the signage is not a matter for consideration and Members are

advised that this should not be a factor in their decision. Having said this, outside of the planning process, interested parties are discussing the content of the signage with the Council.

9. CONCLUSION

9.1 The proposed totems have been carefully designed and will assist visitors to the town centre. The proposal would not result in any harm to amenity or public safety which are the statutory tests here. Taking this into account, it is recommended that advertisement consent is granted.

10. RECOMMENDATION – That Advertisement Consent is GRANTED Subject to the following conditions:

CONDITIONS

- (1) No advertisement is to be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission.
- (2) No advertisement shall be sited or displayed so as to:
 - a. endanger persons using any highway, railway, waterway, dock, harbour or aerodrome (civil or military);
 - b. obscure, or hinder the ready interpretation of, any traffic sign, railway signal or aid to navigation by water or air; or
 - c. hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle.
- (3) Any advertisement displayed, and any site used for the display of advertisements, shall be maintained in a condition that does not impair the visual amenity of the site.
- (4) Any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a condition that does not endanger the public.
- (5) Where an advertisement is required under these Regulations to be removed, the site shall be left in a condition that does not endanger the public or impair visual amenity.

Reason: In accordance with the provisions of Regulation 2(1) of the Town and Country Planning (Control of Advertisement) (England) Regulations 2007.

Informative

It is important to note that planning permission does not convey any approval to carry out works on or affecting the public highway. It is the responsibility of the applicant to ensure, before the development is commenced, that all necessary highway approvals and consents have been obtained and that the limits of the highway boundary have been clearly established, since failure to do so may result in enforcement action being taken by the Highway Authority. The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under the relevant legislation and common law. It is therefore

important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

Guidance for applicants, including information about how to clarify the highway boundary and links to application forms for vehicular crossings and other highway matters, may be found on Kent County Council's website:

<https://www.kent.gov.uk/roads-and-travel/highway-permits-and-licences/highways-permissionsand-technical-guidance>. Alternatively, KCC Highways and Transportation may be contacted by telephone: 03000 418181

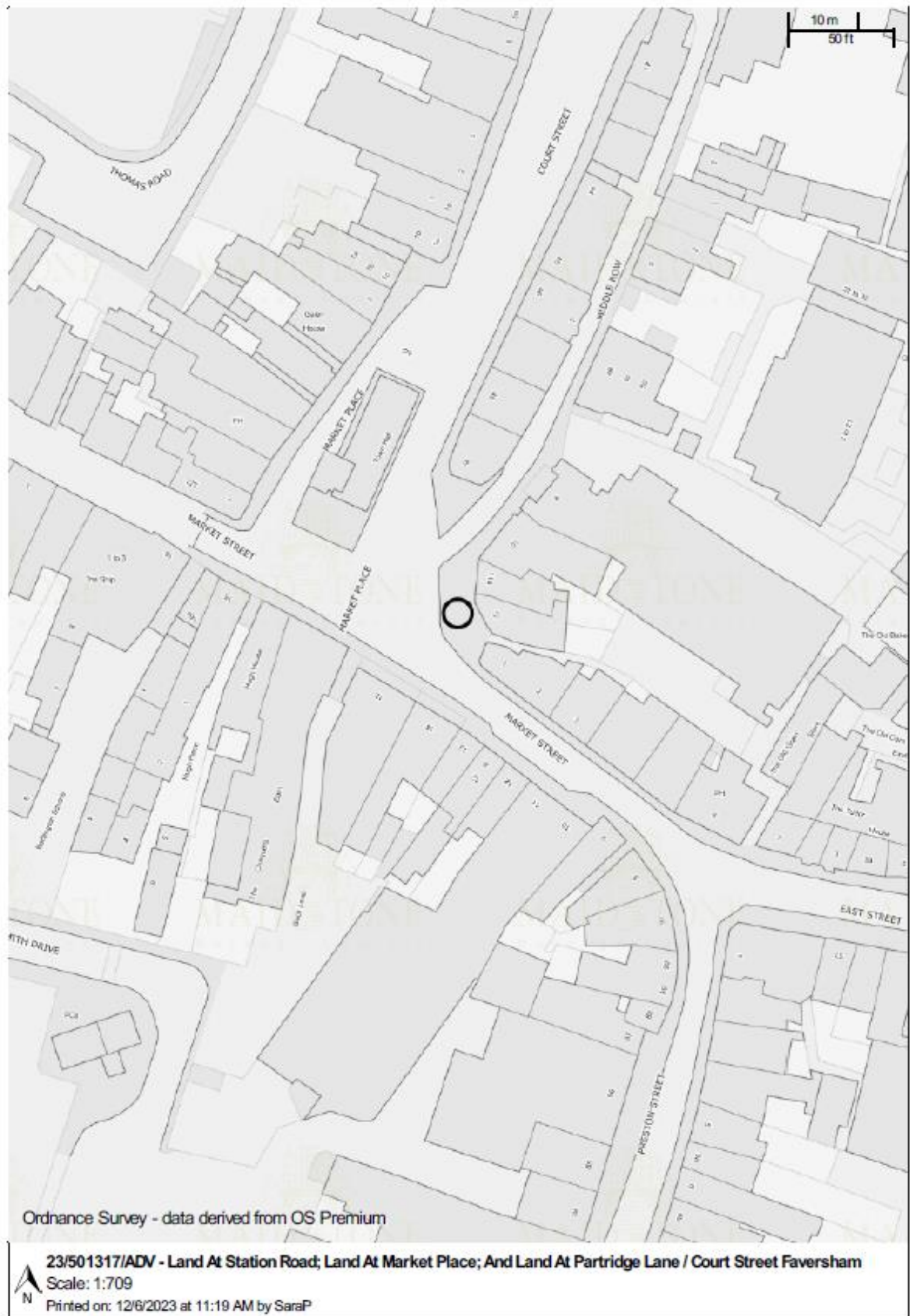
The Council's approach to the application

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 – 22 JUNE 2023**PART 3**

Report of the Head of Planning

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

3.1 REFERENCE NO - 22/505870/FULL		
APPLICATION PROPOSAL Conversion and change of use of existing detached disused and abandoned former light industrial workshop into a three bedroom dwelling (C3) and conversion and change of use of existing adjacent detached former associated office and store (previously hay barn) currently disused into a home office to be used for the dwelling occupier including part demolition of existing commercial workshop and installation of a sewage treatment plant and EV charging point.		
ADDRESS Light Industrial Unit (Disused) Land Adjacent To Pebble Court Farm Woodgate Lane Borden Kent ME9 7QB		
RECOMMENDATION REFUSE		
REASON FOR REFERRAL TO COMMITTEE Parish Council Support / Called in by (as was) Cllr Nick Hampshire		
WARD Borden And Grove Park	PARISH/TOWN COUNCIL Borden	APPLICANT Mr & Mrs Michael Miller AGENT
DECISION DUE DATE 13/02/23	PUBLICITY EXPIRY DATE 11/01/23	CASE OFFICER Alice Reeves

Planning History

21/503856/FULL

Partial demolition of existing unit and replacement of existing flat roof with new pitched roof. Works to include replacement DG windows and doors to match existing fenestration and installation of a sewage treatment plant. (Resubmission of 21/502266/FULL)
Approved Decision Date: 15.09.2021

21/502266/FULL

Partial demolition of existing unit and replacement of existing flat roof with new pitched roof.
Approved Decision Date: 23.06.2021

21/500951/PNQCLA

Prior Notification for change of use of agricultural building to 1no. dwelling and associated operational development. For it's prior approval to: - Transport and Highways impacts of the development - Noise impacts of the development - Contamination risks on the site - Flooding risks on the site - Whether the location or siting of the building makes it otherwise impractical or undesirable for the use of the building to change from agricultural use to C3 (dwellinghouses) -

Design and external appearance impacts on the building, and - Provision of adequate natural light in all habitable rooms of the dwellinghouses.

Refused Decision Date: 30.04.2021

19/506446/PNPA

Prior Notification for change of use of 1no. building from light industrial (Class B1 (c)) to 2no. dwellings (Class C3). For its prior approval to: - Transport and Highways impacts of the development - Contamination risks on the site - Flooding risks on the site - Where the building is located in an area that is important for industrial services or storage or distribution services or a mix of those services, whether the introduction of, or an increase in, a residential use of premises in the area would have an adverse impact on the sustainability of the provision of those services.

Refused Decision Date: 03.02.2020

Appeal Dismissed Decision Date: 30.09.2020

19/505970/FULL

Conversion of existing disused light industrial workshop to a four bedroom dwelling, and conversion of existing adjacent associated office and store into a home office to be used by the dwelling occupier. Proposals include part demolition of existing workshop and installation of a sewage treatment plant.

Refused Decision Date: 24.01.2020

Appeal Dismissed Decision Date: 30.09.2020

19/506161/PNOCLA

Prior notification for the change of use of an office building (Class B1 (a)) to a dwellinghouse (Class C3). For its prior approval to: Transport and Highways impacts of the development - Contamination risks on the site - Flooding risks on the site - Impacts of noise from commercial premises on the intended occupiers of the development.

Refused Decision Date: 22.01.2020

19/502883/PNPA

Prior notification for the change of use from premises in light industrial use (class B1(c)) and any land within its curtilage to 1 no dwellinghouse (class C3). For its prior approval to: - Transport and Highways impacts of the development. - Contamination risks on the site. - Where the building is located in an area that is important for industrial services or storage or distribution services or a mix of those services, whether the introduction of, or an increase in, a residential use of premises in the area would have an adverse impact on the sustainability of the provision of those services.

Refused Decision Date: 24.10.2019

Appeal Withdrawn

SW/93/0558

Lawful development certificate for extension and alteration of original double garage/workshop, use of original double garage and workshop and extensions and alterations as a workshop, use of adjoining land for uses ancillary to the workshop use.

Approved Decision Date: 12.08.1993

SUMMARY

A lawful development certificate was granted for the larger building and its surrounding land in 1993 for a mixed use relating to motor cars, camper vans, minibus hire and assembly and testing of solar panels. No specific Use Class was specified on the decision notice as the lawful use was considered to be a mixed use.

In 2019 a purported Prior Approval application for conversion to residential use from light industrial Class B1(c) use of the larger building was submitted, but evidence submitted with that application suggested that the lawful mixed use had been abandoned by 2009 and the property

de-rated as domestic storage for Pebble Court only. The Prior Approval application was therefore refused as neither the lawful use nor the (by now) lawful domestic storage use were B1(c) uses.

A number of other applications as listed above have been submitted for the site in attempt to get a change of use for at least one of the buildings for a residential dwelling, all of which have been refused and two subsequently dismissed at appeal. One of these applications (19/505970/FULL) was for the conversion of the same building to a residential dwelling as proposed now which the Inspector dismissed concluding that the lack of accessibility to services by sustainable transport modes was contrary to both the Local Plan and NPPF and the presumption in favour of sustainable development did not apply in this case.

Most recently, physical alterations to the building, including its partial demolition, were approved in 2021.

1. DESCRIPTION OF SITE

- 1.1 The site lies in a remote rural location not visible from any public vantage points, outside any defined built-up area boundary with difficult access via a private unmade track from Woodgate Lane. The buildings are adjacent to an existing bungalow known as Pebble Court, and includes two separate single storey buildings which have fallen into a state of disrepair. The nearest neighbouring property is Pebble Court sited approximately 30m from the building, with Heatherbank and Ebbisham sited over 100m from the site. The dwellings in the locality are predominantly detached bungalows however, two storey dwellings can be seen along Maidstone Road.
- 1.2 The larger building comprises metal sheet roofing, brickwork, blockwork and metal sheeting to walls and aluminium single glazed windows with timber doors. The smaller building comprises metal sheet roofing, timber boarding and timber windows and doors.
- 1.3 The site cannot be seen from any public vantage points due to the siting at the end of the private track.

2. PROPOSAL

- 2.1 The application seeks planning permission for the conversion of the larger building into a 3no. bedroom dwelling and the smaller building into a detached home office. The proposed alterations to the larger building include partial demolition of the building, replacement pitched roof in red tiles stained timber boarding exterior walls and replacement double glazed upvc windows and doors. The proposed dwelling would provide 3no. bedrooms (one en-suite), bathroom, kitchen, lounge/diner and garage/store with utility.
- 2.2 The smaller building, proposed for use as a home office would retain its metal sheet roof, stained timber boarding and include replacement brown upvc windows and doors. The building would accommodate an office, studio, kitchenette and toilet.
- 2.3 The description and site plan shows a sewage treatment plant to the rear of the proposed office building.

3. PLANNING CONSTRAINTS

- 3.1 Designated countryside

4. POLICY AND CONSIDERATIONS

4.1 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies;

ST1 (Delivering sustainable development in Swale)

ST3 (The Swale settlement strategy)

CP3 (Delivering a wide choice of high quality homes)

CP4 (Design)

DM3 (The rural economy)

DM7 (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)

4.2 Supplementary Planning Document (SPD): Swale Parking Standards

5. LOCAL REPRESENTATIONS

5.1 Borden Parish Council:

“Borden Parish Council have resolved to support the application, with the provision that a macadamised road is laid (not tarmac macadamised).”

6. CONSULTATIONS

6.1 **Kent County Council Public Rights of Way:** No comment.

6.2 **Kent County Council Highways & Transportation:** Proposal does not meet the criteria for involvement from the Highway Authority.

6.3 **Environmental Health:** No adverse comments or observations.

7. BACKGROUND PAPERS AND PLANS

7.1 Application papers and drawings referring to application reference 22/505870/FULL.

8. APPRAISAL

Principle of Development

8.1 The main consideration in the determination of this application is whether this would be classed as sustainable development. The Council's Local Plan states that development proposals will be supported in accordance with the settlement hierarchy which is set out in

Policy ST3. This identifies settlements in descending order of sustainability and this site being located in the designated countryside, outside of any built up area boundary, lies in the least desirable location for residential development as set out by this policy. Sites which are located outside of any defined built up area boundary and in the designated countryside are considered to be covered by national and local planning policies which restrict development in the countryside, in particular new residential units.

- 8.2 In respect of existing buildings in the countryside, prior to conversion to a residential use, policy DM3 of the Local Plan firstly requires evidence to demonstrate that alternative commercial / employment uses have been marketed for a reasonable period in a manner and at a price that reflects that use. The application does not contain any evidence that these alternative uses have been robustly tested for a reasonable period and it has not been sufficiently proven that the site/building is unsuitable for a non-residential use. The site has good connections to the A249 and M2 and could be ideal for a small business that would benefit from a rural location. On this basis, it is not considered that the proposal complies with policy DM3 of the Local Plan.
- 8.3 The site is located outside a defined settlement and has limited access to amenities, meaning that the use of the car is essential in order to access necessary day to day services and facilities such as a doctor's surgery and schools. The distance of the site from amenities and the lack of street lighting makes travel by foot or cycle undesirable and future occupants are likely to be largely reliant on the use of a private car to access services and facilities which is contrary to the environmental aims of the NPPF. There are also limited opportunities for public transport to be utilised.
- 8.4 An appeal for the conversion of the same unit to a dwelling as is now being proposed was previously refused and dismissed at appeal due to its unsustainable location. There has been no substantial change to national and/or local planning policy to take a different view on the principle of development now. The appeal decision has been attached as Appendix A below.
- 8.5 Based on the above it is therefore considered that the proposal would not represent sustainable development and application is considered to be contrary to policies ST1, ST3, DM3 and DM14 of the Local Plan.

Character and appearance

- 8.6 The proposed alterations to the buildings are considered to be an enhancement to the existing with higher quality materials including tiled roof and stained weatherboarding to the exterior walls rather than the existing metal sheeting and blockwork. An application for similar external alterations was previously approved (whilst the building remained in commercial use).
- 8.7 The application is considered to comply with policies CP4 and DM16 in terms of design however, the key issue here relates to the principle of development rather than the design and appearance.

Living Conditions

- 8.8 Due to the position of the building and separation distanced to other properties, there is found to be no identifiable harm to the amenities of neighbouring properties surrounding the site.

On this basis it is considered that the application complies with policy DM14 in respect of living conditions of occupants and neighbours as policy DM14 seeks to ensure that development does not cause significant harm to amenity.

Highways and Parking

- 8.9 KCC Highways & Transportation when originally consulted set out that it fell below their threshold for commenting. It is noted that neither the Council nor the Inspector when considering the previous application submitted under 19/505970/FULL took the view that the traffic generated by one dwelling would give rise to harm to highway safety and convenience. It is considered that this assessment remains valid and the proposal would not give rise to any unacceptable harm in this regard.
- 8.10 It is noted that Borden Parish Council have supported the application on the basis that Woodgate Lane (which is a Public Byway – ref ZR73) is resurfaced as per the applicant's intention. In respect of this matter, Officers have corresponded with a KCC Highways & Transportation representative and it was advised that discussions had taken place with the applicant and the intention was to lay an additional tarmac surface from Maidstone Road up to the private track where this site is accessed.
- 8.11 However, it is important to note that there is no detail provided with the application regarding this and the applicant has also provided an email which refers to this element of the proposal not forming part of the application. Despite this, even if the road was to be resurfaced, Woodgate Lane is a narrow, single-track route accessible to all traffic. As such, a separate footpath and any lighting would not seemingly be able to be provided. As a result, it is not considered that even if the surface was improved that it would provide a route which was particularly attractive to pedestrian / cyclists, particularly during winter months or hours of darkness. In any case, the route would still only provide access to a location where future occupants would be required to use an infrequent bus service to access services and facilities. Therefore, even in a scenario where the road was resurfaced, I do not consider that this would make the site sustainable.
- 8.12 Separately, whilst it is acknowledged that the appropriate resurfacing of this section of Public Byway would provide a public benefit to general users of this route, significant weight is given to the fact that it does not form part of this proposal and falls outside the red line boundary of the application site. In any case, the benefit would be limited, and it does not override the issues in relation to sustainable development as outlined above.
- 8.13 No details were shown on the proposed site plan for parking however it is considered that the site is large enough for an adequate number of cars to be parked to be compliant with the Council's Parking SPD and that this could have been dealt with by condition if there were not overriding factors relating to the principle of development.

Impact upon Special Protection Area

- 8.14 As Members will be aware, the Council seeks developer contributions on any application which proposes additional residential development within 6km of the Special Protection Area (SPA) to secure off site mitigation against the increased recreational disturbance of the SPA. The application site is within 6km of the SPA, and as such the Council seeks a mitigation contribution of £314.05 for each new residential unit. The application does not include such

a contribution or the means of securing a contribution and it is therefore considered that this amounts to a reason for refusal.

9. CONCLUSION

9.1 The negative impact of an additional dwelling in this remote location has already been established at appeal and the current application has not provided any evidence to suggest that the building/site is undesirable as a commercial or community unit or that it would represent sustainable development. It is acknowledged that the Council is unable to demonstrate a 5 year supply of housing land (currently 4.83 years) 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-date⁸, 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 proposed⁷; 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.”

9.2 In this case the benefits of 1 additional dwelling would be limited and heavily outweighed by the harm identified above. In conclusion the proposal is contrary to policies ST1, ST3, DM3 and DM14 of the adopted Local Plan. It is therefore considered that the application should be refused.

10. RECOMMENDATION

REFUSE for the following reasons:

- (1) The proposed conversion of the larger building to a residential dwelling would not represent sustainable development as this location is a considerable distance 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 commercial or community 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.
- (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.

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.

Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017.

This Appropriate Assessment has been undertaken without information provided by the applicant. The application site is located within 6km of The Swale 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.

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. The proposal thus 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 (NE) 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 advises that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation, the proposal is unlikely to have significant effects on these sites.

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 (NKEPG).

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

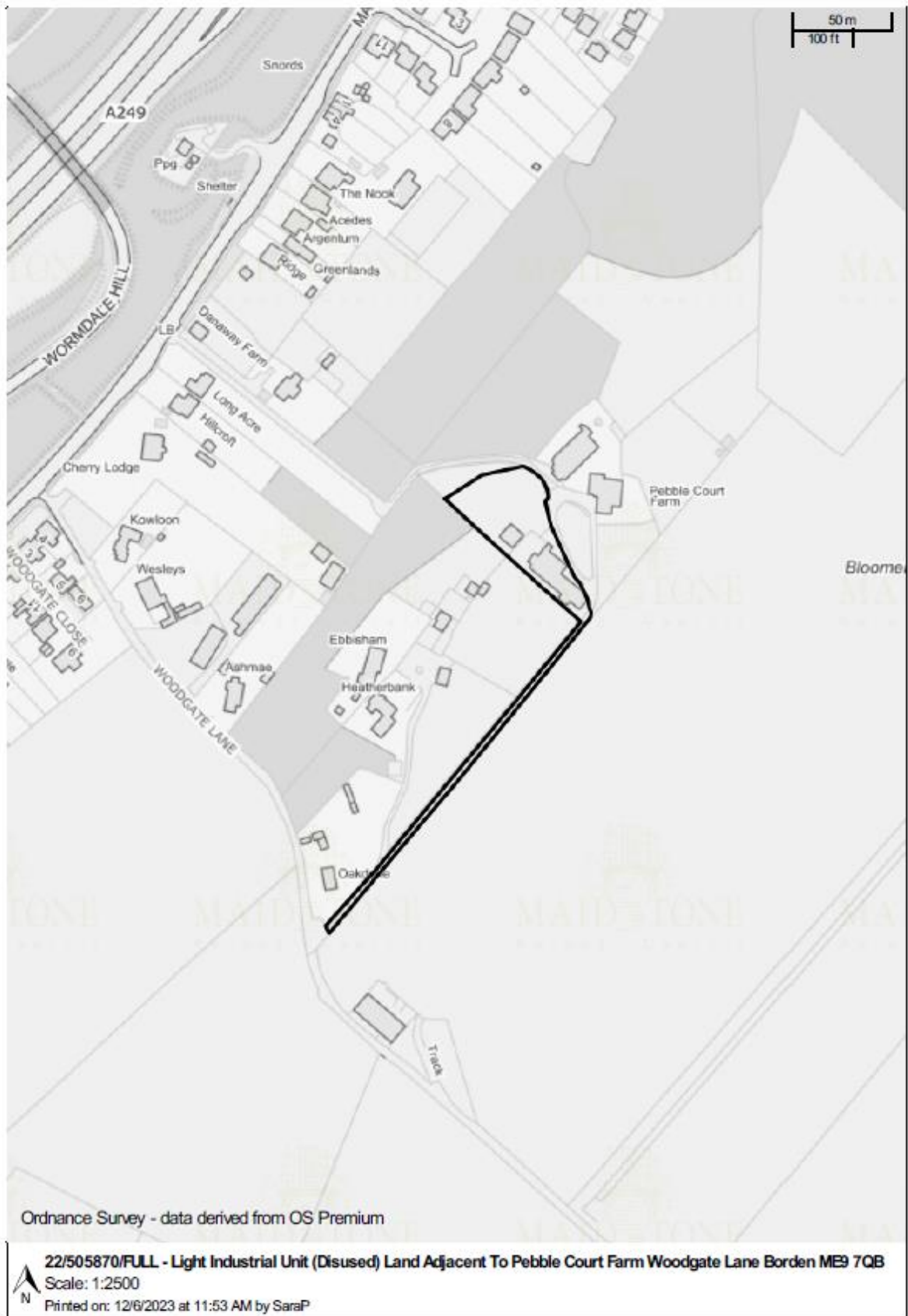
Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the (NKEPG) and that such strategic mitigation must be in place before the dwelling is occupied. Based on the correspondence with Natural England (via the NKEPG), I conclude that off site mitigation is required in this instance.

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 (to be secured by either s106 agreement or unilateral undertaking on all qualifying developments) 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 and this is a matter that may still need to be resolved at appeal stage.

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.

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.



3.2 REFERENCE NO - 23/501726/FULL		
APPLICATION PROPOSAL Erection of a single storey rear extension with rooflight to replace existing rear lobby.		
ADDRESS 130 Horsham Lane Upchurch Gillingham Kent ME8 7XB		
RECOMMENDATION Refusal		
SUMMARY OF REASONS FOR RECOMMENDATION/REASONS FOR REFUSAL The proposal would be harmful to the living conditions of the attached neighbouring dwelling.		
REASON FOR REFERRAL TO COMMITTEE The application has been referred to committee by Councillor Richard Palmer		
WARD Hartlip, Newington And Upchurch	PARISH/TOWN COUNCIL Upchurch	APPLICANT Mr Clive Piper AGENT Mr Philip Taylor
DECISION DUE DATE 09/06/23	PUBLICITY EXPIRY DATE 10/05/2023	CASE OFFICER Katie Kenney

Planning History

None.

1. DESCRIPTION OF SITE

- 1.1 130 Horsham Lane is a terraced property situated outside of any built up area boundary, and within the defined countryside.
- 1.2 The property forms part of a Victorian terrace of 6 dwellings, sited at a 90 degree angle to Horsham Lane and fronting onto a track off of the lane.
- 1.3 The property forms part of a cluster of residential development on the north side of Horsham Lane in an area of otherwise prevailing rural character.

2. PROPOSAL

- 2.1 This application seeks planning permission for the erection of a single storey rear extension that would extend across the width of the property, would project 4m in depth and would be approx. 3.3m in height. It would replace an existing lobby of smaller proportions.
- 2.2 The proposed extension would be of flat roof design with a parapet, roof lantern, and double doors to the rear elevation.
- 2.3 Materials and finishes will match the host property.

3. PLANNING CONSTRAINTS

- 3.1 Within an area of Potential Archaeological Importance

3.2 Within the countryside

4. POLICY AND CONSIDERATIONS

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

CP4 - Requiring good design

DM11 – Extensions to, and replacement of, dwellings in the rural area

DM14 - General development criteria

DM16 - Alterations and extensions.

4.2 Supplementary Planning Guidance (SPG) 'Designing an Extension - A Guide for Householders'.

5. LOCAL REPRESENTATIONS

5.1 Upchurch Parish Council – *Upchurch Parish council has no objections but ask to take into account any neighbours comments.*

6. CONSULTATIONS

6.1 KCC Archaeology – advise that given the limited ground excavations involved, no archaeological measures are necessary.

7. APPRAISAL

Principle of Development

7.1 Policy DM11 of the Local Plan allows for extensions to dwellings in the countryside, provided they are of appropriate scale, mass, and appearance in relation to the location. The Council's SPG on house extensions advises that permission will not normally be granted to extend a dwelling in a rural area if it results in an increase of more than 60% of the property's original floorspace.

7.2 In this instance, it appears that the Victorian terrace has been extended to the rear. When taking this into account, together with the proposed rear extension, the development would result in an increase of less than 50% of the property's original floor space. On this basis, and taking into account the single storey form and location of the extension to the rear of the dwelling, it is considered to be a modest addition to the dwelling that would not cause harm to the rural character and appearance of the area, and would accord with Policy DM11 of the Local Plan.

Visual Impact

7.3 Policy CP4 of the Local Plan requires development proposals to be of high-quality design and to be in keeping with the character of the area. It states that particular regard should be paid to the scale, height, materials, detailing, mass, bulk, articulation and site coverage of any future proposals. Policy DM16 of the Local Plan supports alterations and extensions to existing buildings where they reflect the scale and massing of the existing building, preserve features of interest and reinforce local distinctiveness.

7.4 The extension would only be visible to the rear of the dwelling. Whilst it contains a flat roof, this design is not of concern given the single storey nature and secluded location of the extension to the rear, and that the existing part single and part two storey extension to the property is flat roofed, as are other extensions to the rear of the wider terrace. As such it is considered that the development would comply with the above policies.

Residential Amenity

7.5 Policy DM14 of the Local Plan states that any new proposed developments should not cause significant harm to the amenities of surrounding uses or areas and due consideration will be given to the impact of the proposed development upon neighbouring properties. Any new proposed schemes should not result in significant overshadowing through a loss of daylight or sunlight, in an unreasonable loss of privacy, in an unreasonable loss of outlook or in excessive noise or odour pollution. Policy DM16 states that extensions should protect residential amenity. Paragraphs 5.6-5.9 of the Council's SPG on house extensions provides guidance for rear extensions and states (summarised) –

- That poorly designed rear extensions, especially to terraced dwellings and on a common boundary, can adversely affect sunlight, daylight and outlook to neighbouring dwellings.
- That a maximum projection of 3 metres will be allowed for single storey extensions close to a common boundary.
- That some flexibility can be applied on well spaced properties or where an extension is built away from the boundary, or where a neighbouring dwelling has an existing extension to the rear.

7.6 In this instance, the extension would be 4m in depth and would be sited close to the common boundary with numbers 128 and 132 Horsham Lane. Whilst No. 128 has an existing rear extension on the boundary that would help mitigate this impact, the proposal would extend 4 metres from the rear of the other attached dwelling at No. 132. It is considered that this projection, combined with the height of the extension at approx. 3.3m, would impede the provision of light and outlook to the attached property at number 132 to an unacceptable degree. It would exceed the 3m maximum depth projection recommended for rear extensions in the Council's SPG.

7.7 The applicant was invited to reduce the depth of the extension to 3m but declined to do so. They have stated that the rear windows in the neighbouring property serve a kitchen and not habitable rooms. The neighbour has not made representations on the application and so it is difficult to verify this. However, it appears that even if the window did serve a kitchen, this may also provide a light source to the rest of the rear part of the ground floor of the property, which otherwise does not benefit from any natural light from the rear (as currently appears to be the case with the application property). In addition, given the narrow width of the properties within the terrace, the depth and height of the extension would be likely to have an enclosing and overbearing effect that would be harmful to the living conditions of No 132, including enjoyment of the garden.

7.8 Overall, the length and scale of the extension would have a harmful impact on this neighbouring property. It would give rise to a significant loss of light, create an enclosing effect and lead to a loss of outlook to the detriment of the living conditions of the occupants of this property. This would be harmful and contrary to policies DM14 and DM16 of the Local Plan and the SPG.

8. CONCLUSION

8.1 In light of the above assessment, the proposal would not accord with the Local Plan and Supplementary Planning Guidance, and would result in significant harm to the amenities of the attached neighbouring dwelling at No 132. As such it is recommended that planning permission is refused.

9. RECOMMENDATION

REFUSE for the following reason:

- (1) The proposed extension, by virtue of its excessive length, scale and siting close to the common boundary, would have a dominating and enclosing effect that would cause an unacceptable loss of light and outlook to number 132 Horsham Lane. This would be contrary to policies DM14 and DM16 of Bearing Fruits 2031: The Swale Borough Local Plan 2017 and the Council's Supplementary Planning Guidance entitled 'Designing an Extension – A Guide for Householders'.

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.

In this instance:

The applicant/agent was informed of any issues arising during the consideration of the application and how these could potentially be overcome but sufficient information was not forthcoming.

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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3.3 REFERENCE NO - 22/506000/FULL			
APPLICATION PROPOSAL			
Section 73 - Application for Removal of Condition (ii) agricultural occupancy condition pursuant to application SW/91/456 for - Minor Alterations to previously approved design of the house (SW/90/992).			
ADDRESS Callum Park House Callum Park Basser Hill Lower Halstow Kent ME9 7TY			
RECOMMENDATION that planning permission is Refused			
SUMMARY OF REASONS FOR REFUSAL			
The application fails to demonstrate that the agricultural occupancy condition no longer serves a useful purpose and fails to provide sufficient information and evidence to demonstrate that there is no reasonable prospect that the property could be occupied by a person(s) in compliance with the condition.			
REASON FOR REFERRAL TO COMMITTEE			
Cllr Roger Clark has referred the application to the Planning Committee.			
WARD Bobbing, Iwade And Lower Halstow	PARISH/TOWN COUNCIL Lower Halstow	APPLICANT Mr and Mrs John McGee AGENT	
DECISION DUE DATE 28/02/2023	PUBLICITY EXPIRY DATE 09/02/2023	CASE OFFICER Rebecca Corrigan	
RELEVANT PLANNING HISTORY			
Application Ref:	Description	Decision	Decision Date
22/502148/FULL	Proposed new stone wall and electric gates to entrance. New field access gates.	Granted, subject to conditions	10.08.2023
20/501002/OUT	Outline application (all matters reserved except for access) for the demolition of a large equestrian centre and centre and construction of a smaller facility enabled by 9no. custom-build homes with associated landscape enhancements	Grant, subject to Section 106 and appropriate conditions	07.08.2020
17/503274/FULL	The demolition of existing buildings (totalling 2,637 sqm); the removal of 14,600 sqm of impermeable surfaces including 3 x riding arenas and car parking (overall 37% reduction of impermeable surfacing); and the erection of nine detached custom build eco houses and garages with home offices/studios (totalling 1,995sqm) (overall 24% reduction in built footprint) and associated SUDS ponds, cycle/walking paths, landscaping and wildlife planting and ecological	Refused	13.10.2017

	enhancement; along with a sand school and estate/equestrian building for personal use and estate management, and associated access road.		
SW/91/0456	Minor alterations to previously approved design of house (SW/90/0992)	Grant of conditional PP	08.07.1991
SW/90/0992	Erection of a farmhouse	Grant of conditional PP	17.10.1990
SW/87/0192	Renewal of SW/83/597 being the approval of Reserved Matters for the erection of a farmhouse	Approved pre 1990	08.04.1987
SW/83/0597	Approval of Reserved Matters 81/1023 for a farmhouse	Approved pre 1990	24.08.1983
SW/81/1023	Outline application for erection of a farmhouse	Approved pre 1990	15.07.1983
SW/79/0322	Revised location of a farmhouse approved under reference SW/76/1093	Approved pre 1990	18.09.1976
SW/76/1093	Farmhouse Bungalow	Approved pre 1990	23.08.1977

1. DESCRIPTION OF SITE

- 1.1 The application site relates to a detached residential dwelling which forms part of the larger estate of Callum Park, also operating as an equestrian and riding centre.
- 1.2 Access to the site is from Basser Hill to the north. The wide access road divides soon after it enters the site with a narrower driveway giving access to the dwelling house to the east of the riding centre currently under construction for housing development set out below.
- 1.3 Outline planning permission was recently obtained under application ref: 20/501002/OUT for the demolition of the majority of the equestrian centre to facilitate the erection of a development of nine self build / custom residential dwellings to the south west of the application site and a further application was granted for a proposed stone wall and electric entrance gates which will serve as the entrance to the Site.
- 1.4 The surrounding area is set within the open countryside and within an Area of High Landscape Value. The complex of buildings at Little Barksore Farm, including a Grade II listed farmhouse, are sited to the north west of the site, with orchards to the west. The surrounding area is strongly of rural character and appearance.

2. PROPOSAL

- 2.1 This application is made pursuant to Section 73 of the Town and Country Planning Act 1990, and seeks the removal of condition 2 pursuant to planning permission reference SW/91/0456. The condition states:

“The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed locally in agriculture as defined in section 290 (i) of the Town and Country Planning act 1971 or in forestry and any dependent of such a person residing with him (but including a widow or widower of such a person).”

Reason: As the site lies outside any area in which planning permission would normally be granted for a new dwelling and this permission is only granted because the dwelling is considered essential in the interests of forestry or agriculture.

3. PLANNING CONSTRAINTS

- 3.1 Potential Archaeological Importance
- 3.2 Within the countryside
- 3.3 Within an Area of High landscape Value
- 3.4 Basser Hill is a designated rural lane

4. POLICY AND CONSIDERATIONS

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

Policy ST3	The Swale settlement strategy
Policy DM3	The rural economy
Policy DM12	Dwellings for rural workers
Policy DM14	General development criteria
Policy DM24	Conserving and enhancing valued landscapes
Policy DM26	Rural Lane

Supplementary Planning Guidance (SPG):

- 4.1 Swale Borough Council Parking Standards 2020
- 4.2 Swale Landscape Character and Biodiversity Appraisal 2011

5. LOCAL REPRESENTATIONS

- 5.1 Lower Halstow Parish Council – Support the application although no planning reasons are given

6. CONSULTATIONS

- 6.1 No statutory consultations

7. BACKGROUND PAPERS AND PLANS

- 7.1 Planning Support Statement dated 23 December 2023
- 7.2 Planning Supporting Statement dated 25th May 2023

8. APPRAISAL

Principle of development

- 8.1 This application seeks to remove an agricultural occupancy condition (2) which restricts occupation of the dwelling to persons employed (or last employed) in agriculture. The property is located within the countryside and forms part of a high quality landscape where strong rural constraints normally apply. The only reason that planning permission was granted for the dwelling was due to a demonstrable need for agricultural workers accommodation in the area, otherwise the erection of a dwelling would have been unacceptable in this rural location. The planning condition requires that only persons employed or last employed in agriculture can occupy the dwelling. Removal of the condition would create an unrestricted dwelling that will be available on the open market.
- 8.2 National advice on the use of planning conditions is clear that such conditions should only be used where they are necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise, and reasonable in all other respects. At the time that planning permission was granted for the development, it is clear that the condition restricting occupancy would have met such tests, the case being that the dwelling was only permitted on the grounds of an essential need for an agricultural dwelling, in an area where residential development would not normally be permitted.
- 8.3 Policy DM12 of the Local Plan sets out the Council's position on proposals for rural dwellings. Understandably, this sets a high bar for applicants to demonstrate an essential need for a dwelling and a financial test to demonstrate that an enterprise is financially viable to support a dwelling – in locations where such residential development would not normally be permitted. The supporting text to the policy states that the council will control by conditions the occupancy of a dwelling permitted under DM12 to ensure they are retained for use by persons solely or last employed in agriculture.
- 8.4 The policy does not set out any criteria to be met in circumstances when the removal of an agricultural occupancy condition is proposed. Nor is there any current detailed national planning policy advice on this. However, given the high bar required to demonstrate the need for the erection of an agricultural dwelling in areas where residential development is not normally permitted, it is important that any applications to remove an occupancy condition are robustly tested. The key here is whether any need exists for the dwelling in question with the agricultural occupancy condition. It is common practice with such applications that a property is marketed for an appropriate period of time (normally for a minimum of 6 months) and at an appropriate discounted price (to reflect the restricted occupancy) to establish whether there is interest from the wider agricultural community in the property, which in turn helps demonstrate whether a need remains for the property. In this instance, the applicant has not undertaken any marketing of the property. As such, officers have raised significant concern that the application fails to evidence a lack of demand for the property with the restrictive occupancy condition. The applicant has instead presented a number of reasons why, in their opinion, the condition should be removed without the need for marketing.

The Applicants Case

i) *That the applicant has been in breach of the Agricultural Occupancy Condition (AOC) for a period in excess of ten years;*

8.5 It is the applicant's case that Callum Park House has been occupied in consistent breach of its AOC for the last 26 years and rather than submit a Certificate of Lawfulness, they have included evidence to confirm the breach of the condition for a period in excess of the last 10 years.

8.6 In this regard, even if the Council did form the view that the dwelling subject of the AOC has been occupied for a period of more than 10 years (which would normally be established through an application for a lawful development certificate and not a planning application) and that the current occupants were therefore immune from enforcement action, the planning condition is linked to the land, not the occupants, and if the occupants vacate the property, then the condition "springs back" and becomes enforceable again. As such, the condition is still held to serve a useful purpose given the property could subsequently be occupied in the future by a person who does meet the condition and thus would maintain a stock of agricultural workers living accommodation. An appeal decision elsewhere in the Borough at Lodge Farm, Hartlip and attached as Appendix A considered the very same issue. Paragraph 5 is of particular relevance and states -

The appellants are now seeking the removal of the AOC on the basis that the LDC has established that it is no longer reasonable, necessary or enforceable. This is disputed by the council which states that whilst the appellants are currently immune from enforcement action due to the LDC, if they were to cease being in breach of the AOC, then it would once again be enforceable. Either way, I conclude that should the appellants no longer occupy the dwelling, its original use which was the subject of a planning condition and a Section 106 Agreement would still apply and any breach of the occupancy condition would be enforceable.

8.7 This clearly sets out that even if it is demonstrated that the breach of condition 2 has occurred over a sufficient period to become lawful, the condition would come back into effect should the applicant ever cease to be in breach. As such, the current breach of the condition does not demonstrate that the condition no longer serves a useful purpose.

ii) *Lack of Agricultural Activity, Viability & Income Diversification*

8.8 The applicant's supporting statement sets out that the applicants have never received income from agriculture or forestry since 1996 and that for a period in excess of 10 years the land has been wholly used in conjunction with the equestrian business and that that there is no agricultural use or production at Callum Park that generates a functional need for a farm worker or owner to reside on the property. However, the condition does not tie occupancy of the dwelling to farming activity at Callum Park only, it allows a person employed or last employed locally in agriculture (or forestry) to occupy the property in accordance with the condition.

iii) The Affordability of the Dwelling

- 8.9 The applicant argues that the presence of an AOC will significantly reduce the value of the property, however this serves its purpose as it makes it more affordable for workers within the agricultural industry. The property was granted permission and erected as an agricultural dwelling, and restricted as such. The applicant should have been under no assumptions that they would be able to sell the property for market value.
- 8.10 The applicant estimates that the property would be valued in the region of £1.2 million with the agricultural occupancy condition. However, no formal valuation has been provided with the application and on this basis little weight is given to the applicant's estimation. It is accepted that the dwelling, as extended, is larger than a typical agricultural dwelling and would be likely to command a high value. However it does not automatically follow that the property must now fall outside the financial reach of a qualifying occupant without any relevant valuation and marketing to test this. The property which was the subject of the appeal attached as Appendix A was similarly a high value property – but the Inspector considered the lack of marketing to be so critical as to dismiss the appeal. Whilst the property may fall beyond the reach of an average farm worker it could, as an example, appeal to a farm owner who does not benefit from an on-site dwelling, or a retired farm owner. The point being that this cannot be discounted unless the market is tested.
- 8.11 Officers did suggest that they would be willing to consider the submission of a formal valuation and would seek views from the Council's agricultural consultant on whether this was of such a high price that marketing of the property would be a futile exercise. However, the applicant has declined to provide a valuation - partly because they maintain that any valuation must include the surrounding estate at Callum Park, even though this is not in agricultural use, and is not bound by any planning restriction that ties it to the dwelling.
- 8.12 The applicant's agent has provided details of appeal decisions elsewhere in Kent where marketing was not required in relation to the removal of an occupancy condition. However, it appears that at the very least, a valuation was provided as part of the evidence submitted with these, some reports / decisions refer to marketing information that was submitted, and others refer to other factors, such as the site location and specific wording of the condition in question. Officers do not consider that these examples provide directly comparable or overwhelming evidence to take a different approach – and the appeal decision within the Borough referred to in this report is considered to be of more direct relevance. To conclude on the above, the application contains no formal marketing or valuation of the dwelling, and no testing of the market has taken place to determine whether there would be interest and evidence of need from the agricultural community. Whilst officers acknowledge that the property is large and likely to command a higher value, without appropriate evidence it cannot be discounted that the condition still serves a useful purpose.

Other matters

- 8.13 The applicant has referred to a recent refusal for a farm dwelling at Woodland Farm. They state that as this was refused over concerns that the dwelling would not be affordable to the wider agricultural community and is considerably smaller than his property, that the Council would now be inconsistent if it refused his application. However, the two applications are different, one relating to the erection of a new agricultural dwelling, the other relating to the removal of an occupancy condition on an existing dwelling. Each application should be judged on its own merits, and as specified above the application fails to test the market to establish whether there would be interest in the dwelling from the wider agricultural community. Recent applications at Lodge Farm (18/502834 and referred to earlier in the report)), and at Kemsdale Stud Farm, Hernhill (20/504495), for removal of an occupancy condition were dismissed on appeal in part due to the lack of any marketing. As such, officers are applying consistency in raising the lack of marketing with the applicant.

9. CONCLUSION

- 9.1 In the absence of any evidence to demonstrate the level of local demand for an agricultural worker's dwelling, it would not be appropriate to remove Condition 2 which places a restriction on the occupancy. The condition supports the farm industry by maintaining a supply of agricultural worker's dwellings and avoids the piecemeal erosion of the countryside in areas of the borough where residential development would not normally be permitted. Without appropriate testing of the market, the condition continues to serve a useful purpose. Removal of the condition has not been justified and would be contrary to Policies ST3, DM12 and DM14 of the Local Plan.

10. RECOMMENDATION

That the application be Refused for the following reason.

- 1) In the absence of any marketing or formal valuation, the application fails to demonstrate that condition 2 of planning permission SW/91/0456, which places an agricultural occupancy restriction on the dwelling, no longer serves a useful purpose. It is considered appropriate and necessary to retain condition 2 to maintain a supply of agricultural dwellings in the locality, and to avoid piecemeal erosion of the countryside through future applications for agricultural worker's dwellings. The proposal is therefore contrary to the aims of policies ST3, DM12 and DM14 of the adopted Swale Borough Local Plan 2017; and paragraph 80 of the National Planning Policy Framework.

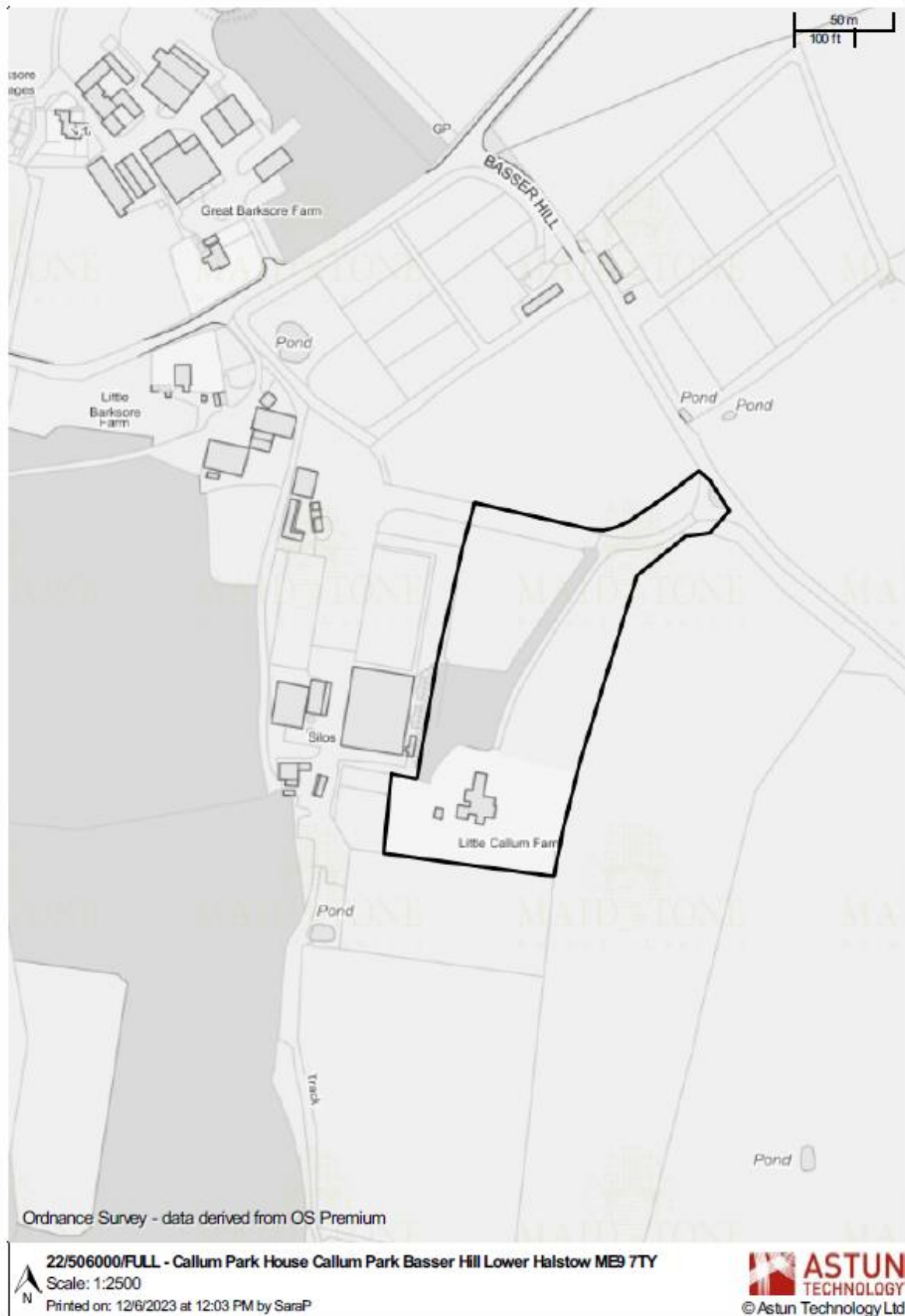
The Council's approach to the application

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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Appeal Decision

Site visit made on 7 May 2019

by **P Wookey BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25th June 2019

Appeal Ref: APP/V2255/W/19/3221958

Lodge Farm, Old House Lane, Hartlip ME9 7SN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs H Love against the decision of Swale Borough Council.
 - The application Ref 18/502834/FULL, dated 24 May 2018, was refused by notice dated 13 August 2018.
 - The application sought planning permission for an agricultural dwelling without complying with a condition attached to planning permission Ref SW/98/796, dated 8 February 2001.
 - The condition in dispute is No 2 which states that: *The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed locally in agriculture as defined in Section 336(i) of the Town and Country Planning Act 1990 or in forestry and any dependent of such person residing with him (but including a widow or widower of such a person).*
 - The reason given for the condition is: *As the site lies outside any area in which planning permission would normally be granted for a new dwelling and this permission is only granted because the dwelling is considered essential in the interests of forestry or agriculture.*
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether or not it is appropriate to remove the condition restricting occupancy of the dwelling to an agricultural worker.

Reasons

3. Lodge Farm is a detached bungalow located in the open countryside between Gillingham and Sittingbourne. It is obscured from view by mature conifer trees along its boundary with the main road. It sits within a site of approximately 3.77 hectares of agricultural land used for fruit growing.
4. The appellants state that the dwelling has been occupied by them since 1988 and that consent was granted in 2001, subject to the agricultural occupancy condition (AOC) and an associated Section 106 Agreement, which also restricted its use as an agricultural dwelling. In 2018 a Lawful Development Certificate (LDC) was granted as it was accepted by the Council that the appellants had occupied the dwelling in breach of the AOC for a period of 10 years.

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APPENDIX A

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5. The appellants are now seeking the removal of the AOC on the basis that the LDC has established that it is no longer reasonable, necessary or enforceable. This is disputed by the council which states that whilst the appellants are currently immune from enforcement action due to the LDC, if they were to cease being in breach of the AOC, then it would once again be enforceable. Either way, I conclude that should the appellants no longer occupy the dwelling, its original use which was the subject of a planning condition and a Section 106 Agreement would still apply and any breach of the occupancy condition would be enforceable.
6. The appellant has submitted a valuation of the appeal site, which includes the associated agricultural land, and asserts that the effect of the AOC is to significantly reduce the appeal site's value. Further, even at its reduced value it would be beyond the means of an agricultural worker and with the AOC it's full market value could not be achieved.
7. Based on the evidence submitted, it is not certain whether the dwelling could be afforded by those on an agricultural income. Beyond the appellants valuation report, there is no substantive evidence to support any results of a prior marketing exercise to indicate the level of demand for this type of property with an AOC. In the absence of this, I am not persuaded there is sufficient justification to support the removal of the AOC.
8. Moreover, given that the dwelling was approved only on the basis of agricultural need, the removal of a dwelling with an AOC could leave the Council in the position of having to approve further dwellings in the countryside, rather than make use of the existing stock. The Council's rural restraint policies at that time which are still relevant now, would result in the principle of a dwelling with unrestricted occupancy being unacceptable.
9. I conclude that in the absence of any evidence to demonstrate the level of local demand for an agricultural worker's dwelling, it would not be appropriate to remove Condition 2 which places a restriction on the occupancy. This would support a supply of agricultural worker's dwellings and avoid the piecemeal erosion of the countryside. Therefore, its removal would be contrary to Policies DM12 and DM14 of the Swale Borough Local Plan Bearing Fruits (2017) and paragraph 79 of the National Planning Policy Framework (2019), which when read together seek to avoid the development of isolated homes in the countryside.

Other Matters

10. Whilst I have had regard to the evidence submitted by the appellant regards case law; to other applications where an AOC condition has been removed; these do not alter my decision and in any case each case must be judged on its own merits.
11. I note reference is made by the appellant to a Prior Notification Consent for the development of a barn, but as very limited information has been submitted, it does not alter my decision and I have not pursued the matter further.

Conclusions

12. For the reasons set out above the appeal is dismissed.

Paul Wookey

INSPECTOR

PLANNING COMMITTEE – 22 JUNE 2023

PART 5

Report of the Head of Planning

PART 5

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

- **Item 5.1 – Greet Cottage Lady Margaret Manor Road Doddington**

APPEAL DISMISSED

DELEGATED REFUSAL

Observations

The Inspector disagreed with the Council's assessment of the impact of the proposed replacement dwelling upon the landscape and scenic beauty of the Area of Outstanding Natural Beauty, and found the proposal to be acceptable in this regard. However, the Inspector found that the proposed development did not adequately demonstrate the effect on biodiversity and the measures necessary to avoid, mitigate or compensate for any negative effects. The proposal therefore had potential to result in significant harm to biodiversity, including protected species and the appeal was dismissed on this basis.

- **Item 5.2 – Land Off Swanstree Avenue Sittingbourne**

APPEAL ALLOWED

NON-DETERMINATION

Observations

The Inspector found that whilst there was a moderate level of landscape and visual harm caused, he Reported that:

The public benefits identified above decisively outweigh this harm. Accordingly, there are no policies in the Framework of relevance to this appeal that protect areas or assets of particular importance that provide a clear reason for refusal, and the so called 'tilted' balance of paragraph 11(d)(ii) of the Framework is engaged.

Drawing together the above harms and benefits, even though the Council's stated housing land supply shortfall is small and alternative sites of lower grade agricultural land may be available, the adverse effects of the proposed development would not significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies in the Framework taken as a whole. The proposal therefore benefits from the presumption in favour of sustainable development. Although the proposal would conflict with the development plan as a whole, material considerations indicate a decision other than in accordance with it.

My overall planning balance concludes in favour of the development on the basis of the Council's housing supply position of 4.8 years. Therefore, even though the appellant contends that this is overstated, asserting it to be 3.4 years, it is not necessary for me to reach a finding on this dispute, regardless of any additional weight that may accrue from a reduced supply.

The appeal was therefore Allowed, subject to an agreed S106 Agreement.

- **Item 5.3 – Land North of Warden Road Eastchurch**

APPEAL DISMISSED

COMMITTEE REFUSAL

Observations

A good decision. This related to an application that was refused by the planning committee in accordance with the officer recommendation. The Inspector agreed with the Council that the development of the site to accommodate 4 residential mobile home units would be in an unsustainable location and would be harmful to the countryside. This outweighed the benefits of the development despite the current lack of a 5 year housing supply.

- **Item 5.4 – 2 Bells Forstal Cottages Throwley Road Faversham**

APPEAL DISMISSED

DELEGATED REFUSAL

Observations

The Inspector agreed with the Council that the proposed shepherd's hut would not blend into its rural surroundings and as such would not conserve and enhance the natural beauty of the AONB. Also, its isolated location would mean users of the shepherds hut would be likely to rely on a car, contributing little to the rural economy local to the site and as such any benefit the proposal might bring to the vitality of the rural community would be limited.



Appeal Decision

Site visit made on 4 April 2023

by **C Carpenter BA MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 May 2023

Appeal Ref: APP/V2255/W/22/3301412

Greet Cottage, Lady Margaret Manor Road, Doddington ME9 0NT

- 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 & Mrs Davison against the decision of Swale Borough Council.
 - The application Ref 21/505131/FULL, dated 20 September 2021, was refused by notice dated 20 December 2021.
 - The development proposed is described as "demolition of existing residential dwelling, complete with outbuildings and large Nissan Hut and construction of new detached residential dwelling complete with integral supplementary annexe."
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. No ecological survey was submitted with the planning application or with this appeal. While the appellant indicated they would provide a survey, the 'Procedural Guide: Planning appeals – England' states the appeal process should not be used to evolve a scheme¹. Therefore, I have based my decision on the proposal as set out in the application that was before the Council and upon which notification took place.

Main Issues

3. The main issues in this appeal are:
 - i. The effect of the proposed development on biodiversity and the measures necessary to avoid, mitigate or compensate for any negative effects.
 - ii. Whether the proposed development would conserve and enhance the landscape and scenic beauty of the Kent Downs Area of Outstanding Natural Beauty (AONB).

Reasons

Biodiversity

4. Habitats and features on and around the site, such as buildings, trees, grassland and shrubs, indicate potential for biodiversity to be present. This includes potential for protected species such as roosting bats. Ecological surveys are therefore necessary to ascertain whether and to what extent

¹ Annex M 'Can a proposed scheme be amended?', paragraph M2.1

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biodiversity, including protected species, might be affected by the proposed development.

5. Paragraph 99 of Circular 06/2005 states "It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted."
6. There is no evidence before me to be sure if protected species are present, which ones and the extent to which they may be affected by the proposal. Therefore, I cannot be sure what measures would be necessary to avoid, adequately mitigate or, as a last resort, compensate for any significant harm as required by paragraph 180 of the National Planning Policy Framework (the Framework); or whether such measures could be provided and secured. No exceptional circumstances have been demonstrated such that the required ecological surveys could be left to coverage by a planning condition, notwithstanding the parties' willingness to follow this approach. I am therefore not satisfied this approach would meet the requirements of Circular 06/2005.
7. For the above reasons, I conclude the proposed development does not adequately demonstrate the effect on biodiversity and the measures necessary to avoid, mitigate or compensate for any negative effects. It therefore has potential to result in significant harm to biodiversity, including protected species. This is contrary to Policy DM28 of Bearing Fruits 2031: The Swale Borough Local Plan (SBLP), which protects biodiversity and requires development proposals to be accompanied by appropriate surveys to assess impacts where it is likely the site may be used by protected species. It is also contrary to Circular 06/2005 and the Framework as summarised above.

Area of Outstanding Natural Beauty

8. Paragraph 176 of the Framework says great weight should be given to conserving and enhancing the landscape and scenic beauty in Areas of Outstanding Natural Beauty (AONB). The Kent Downs AONB comprises undulating chalk downs with a diverse topography of valleys and plateaux. It is an historic, farmed landscape of fields and hedgerows within networks of drove-ways and sunken lanes. There are scattered villages, isolated farmsteads and small, remote settlements situated amongst orchards, ancient woodlands, scrub, heath and grassland. Views can be extensive or intimate resulting in a sense of space, beauty and tranquillity.
9. The appeal site comprises a modern bungalow and outbuildings set within a relatively large garden. It is on the edge of a small, isolated cluster of traditional buildings of varying sizes. The nearest building is separated from the appeal site by a large garden and mature trees. Access to the appeal site is from a narrow lane lined by hedgerows. The appeal site's garden is lower than the lane and is therefore partly concealed by the boundary hedge. The site is bounded on two other sides by ancient woodland. These features contribute to the secluded feel of the site, which is not widely visible from surrounding locations or the nearby public footpath.

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10. The proposed dwelling would be slightly further away from the rest of the cluster than the existing bungalow. However, the area of the site currently occupied by buildings would be landscaped so would blend into its surroundings in time. This could be secured by condition were the appeal to be allowed, as could any measures necessary to protect existing trees. As a result, there would be slightly improved views of the neighbouring building on the approach down the lane. The siting of the new building would therefore continue to be well related to the existing cluster of buildings nearby.
11. At two storeys, the main part of the new house would be taller than the bungalow. However, the appearance of height would be partly reduced by the lower level of the garden area on which it would be sited, relative to the lane. It would be set further back from the site boundary than the existing dwelling and its main façade would be oriented away from the road. This, along with the boundary hedge and surrounding woodland, would also reduce the appearance of width and bulk. The single storey annexe would be largely concealed by the main building. The materials and design details of the proposed dwelling would be like those traditionally used in the area. This could be secured by condition and would be an improvement on the appearance of the current bungalow and outbuildings. Overall, the proposal would enhance, rather than be intrusive in, the nearby settlement and wider AONB.
12. It has been put to me the floorspace of the proposed house would be significantly larger than that of the bungalow. The Council refers to its 'Designing an Extension: A Guide for Householders' supplementary planning document (SPD), which advises that an extension to a dwelling in a rural area should not normally result in an increase of more than 60 percent of the property's original floorspace. However, as the proposal is for a replacement dwelling, the floorspace criteria of the SPD do not apply. The single building of a similar overall footprint to the existing ones would also consolidate the built form, rather than the current spread across the site.
13. For the above reasons, I conclude the proposed development would enhance the landscape and scenic beauty of the Kent Downs AONB. Accordingly, I find no conflict with Policies ST1, ST3, CP3, DM11, DM14 and DM24 of the SBLP; principles SD2, SD3 and SD9 of the Kent Downs AONB Management Plan; and the Framework. These policies seek to conserve and enhance the intrinsic character, beauty, landscape and tranquillity of the countryside; support replacement dwellings in rural areas of an appropriate scale, mass and appearance in relation to the original dwelling and location; and maintain and strengthen the historic and locally distinctive character of rural settlements and buildings in the Kent Downs AONB.

Other Matters

14. I appreciate the appellant sought pre-application advice from the Council. However, I have determined this appeal on its merits based on the information before me.
15. The Council is satisfied with the impact of the proposed development on the living conditions of neighbours, parking, traffic and highway safety. Even if there would be no harm, these would be neutral factors and would not weigh in favour of the scheme.

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Conclusion

16. I conclude the proposal does not adequately demonstrate the effect on biodiversity and the measures necessary to avoid, mitigate or compensate for any negative effects. It therefore has potential to result in significant harm to biodiversity, including protected species. I attribute significant weight to this harm, which outweighs my conclusion that the proposal would enhance the landscape and scenic beauty of the Kent Downs AONB. Consequently, for the reasons given above, having had regard to the development plan as a whole, the Framework and all other matters raised, the appeal should be dismissed.

C Carpenter

INSPECTOR



The Planning Inspectorate

Appeal Decision

Inquiry Held on 7-10 March 2023

Site visit made on 18 April 2023

by **Patrick Hanna MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5th May 2023

Appeal Ref: APP/V2255/W/22/3311224

Land off Swanstree Avenue, Sittingbourne, Kent

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Gladman Developments Ltd against Swale Borough Council.
- The application Ref 21/505498/OUT is dated 6 October 2021.
- The development proposed up to 135 dwellings with public open space, landscaping and sustainable drainage system (SuDS) and vehicular access point. All matters are reserved except for means of access.

Decision

1. The appeal is allowed and outline planning permission is granted for up to 135 dwellings with public open space, landscaping, sustainable drainage system (SuDS) and vehicular access point at land off Swanstree Avenue, Sittingbourne, Kent, in accordance with the terms of the application Ref 21/505498/OUT, dated 6 October 2021, subject to the conditions in the attached schedule.

Procedural matters

2. The application seeks outline planning permission with the principal means of access to be determined at this stage. Appearance, landscaping, layout and scale are reserved matters to be considered in the future. A development framework has been provided as an indicative plan for the site. I have determined the appeal on that basis. The description of development in the above decision has been amended to remove superfluous wording.
3. The Swale Borough Council (the Council) Statement of Housing Land Supply (2022) confirms that the Council cannot demonstrate a five year supply of deliverable housing sites, indicating a supply of 4.8 years (a shortfall of 202 units). This figure is disputed by the appellant who calculates the supply to be 3.4 years (a shortfall of 1,806 units). I return to this later in this decision.
4. A draft planning obligation pursuant to s106 of the Town and Country Planning Act 1990 was discussed at the inquiry, and a signed deed of agreement was submitted shortly afterwards dated 14 March 2023. The obligation contains covenants relating to financial contributions, ecological mitigation, affordable housing, first homes, and open space, to which I return below.
5. In exercise of the powers conferred on the Secretary of State by Regulations 14(1) and 7(5) of the Town and Country Planning (Environmental Impact

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Assessment) Regulations 2017, on 6 January 2023 the Secretary of State directed that the proposed development is not EIA development.

Main issues

6. Following submission of the appeal, the Council provided two putative reasons for refusal. The second putative reason, relating to infrastructure and contributions, has been addressed to the satisfaction of the Council by means of the planning obligation. On that basis, the main issues are:
- the effect on the character and appearance of the area, with particular regard to the effect on the landscape and an Important Local Countryside Gap (ILCG) designation;
 - whether the site is a suitable location for the proposed development having regard to the Council's development strategy and national policy; and
 - the effect on agricultural land.

Reasons

7. The appeal site is some 5.9 hectares of agricultural land to the south of Sittingbourne, comprising areas of orchard and arable land. The site lies adjacent to residential areas, with Swanstree Avenue to the north of the site, and Chilton Manor Farm and Highsted Road to the west. Open countryside lies beyond the eastern and southern boundaries of the site, where a dry valley rises to a ridge, with Rodmersham and Rodmersham Green beyond. The site is mostly level, with a gentle fall towards the northwest corner of the site.
8. Many of the houses to the west, north and further east of the appeal site do not face directly onto it. However, the presence of these built forms is clear from within the site, despite intervening landscaping, as is the urban influence of traffic on the roads. The relative flatness of the appeal site is also discernibly different in character from the adjacent sloping arable fields in the dry valley. As such, the appeal site is transitional in character, being both influenced by the existing settlement yet distinct from the wider surrounding countryside.
9. The proposal is for residential development of up to 135 dwellings, 30% of which would be affordable, with public open space and landscaping. Access would be taken from Swanstree Avenue.
10. The development plan includes the Bearing Fruits 2031: Swale Borough Local Plan (2017)(LP). The emerging Swale Borough Local Plan Issues and Preferred Options (eLP) was published for Regulation 18 consultation in October 2021. However, in October 2022, the Council resolved to suspend the review of the local plan until the Levelling-Up and Regeneration Bill gains Royal Assent.

Character and appearance

Landscape effects

11. The LP designates an Area of High Landscape Value (AHLV)(Kent Level) to the south of Sittingbourne including the appeal site. As such, notwithstanding subsequent consideration given by the Council to potentially redraw the AHLV boundaries, the appeal site currently forms part of a valued landscape in terms of paragraph 174 of the National Planning Policy Framework (the Framework).

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12. The landscape change that would be caused by the proposal would be low in the context of the extent of the overall Dry Valley and Downs landscape character type and Tunstall Farmlands landscape character area, for each of which the site forms only a small part.¹ The parties broadly agree there would be minor to moderate adverse effects in this respect, and I see no substantive reason to disagree. Greater change would occur to the site and surroundings; firstly, the existing orchards within the site, which contribute positively to the character of the area, would be lost; and, secondly, the introduction of new buildings and infrastructure would wholly alter the existing fabric and character of the site itself. As such, there would be a high adverse effect on the site and surroundings, notwithstanding that the retention or replacement of boundary hedgerows, along with new areas of planting, would assist with integration of the development into the surrounding landscape over time.
13. Interested parties at the inquiry expressed concern at the effect of the proposal on the tranquillity and beauty of the countryside adjacent to the settlement. However, I have already found that the character of the appeal site is partly transitional. The countryside beyond the urban edge would remain tranquil and intrinsically attractive even if the settlement were extended by the proposal.

Visual effects

14. The visual envelope of the site is relatively localised, being enclosed by the ridge to the south and south east, and elsewhere by the settlement and the Highsted Road wood. The properties at Chilton Manor Farm, immediately to the west of the site would lose open views across the countryside, which would be replaced by clear views of the proposed dwellings, resulting in a high adverse effect. The outlook from some other properties around the site would also be affected, particularly from properties to the north of Swanstree Avenue and from upper floors. Due to distance and intervening gardens, trees, fences and other features, I find that adverse effects to these properties would vary, but be no more than moderate.
15. Footpath ZU30 runs alongside the south eastern site boundary, and the experience and outlook from this path would be wholly changed on one side, resulting in high adverse effects. Footpath ZU31 runs through the northern part of the site for a short distance, where high adverse effects would again be experienced. ZU31 then continues to the south east, rising up to the ridge. From this higher ground, the proposal would be seen as part of the existing settlement and distinct from the slopes of the valley and the wider countryside, with moderate adverse effects. From ZU34A and ZU35, views would only be partial, being glimpsed through vegetation and landforms. Consequently, where the site could be seen, adverse effects would be minor. Road users would also only experience partial and fleeting views, given the existing and proposed hedgerows, such that adverse effects for those users would be minor.
16. The effects on all receptors would reduce over time with the establishment of landscaping mitigation. However, new dwellings would not be fully screened, and the effects after 15 years would be likely to be reduced by no more than a degree in each of the above scenarios.

¹ Swale Landscape Character and Biodiversity Appraisal (2011)

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Policy

17. Paragraph 174 of the Framework requires amongst other things that valued sites be protected and enhanced in accordance with its identified quality in the development plan. Policy DM24 (Conserving and Enhancing Valued Landscapes) states that within the AHLV planning permission will be granted subject to two criteria. The first is that the landscape be conserved and enhanced. Regardless of the varying values of landscapes across the AHLV, it is self-evident that building residential development on this valued landscape would not conserve or enhance it.
18. Even so, the second criterion requires the avoidance, minimisation and mitigation of adverse landscape impacts, or that any significant remaining impacts should be balanced against the social and economic benefits. My conclusions on the benefits of the proposal are set out later in this decision. Given the initial and residual harms I have already identified, my planning judgement is that the social and economic benefits of the proposal significantly and demonstrably outweigh the harm to the landscape value of the AHLV. Therefore, despite the harm, the proposal would comply with the requirements of policy DM24 and, consequently, paragraph 174 of the Framework.
19. The site is also within an ILCG as set out in policy DM25 (The Separation of Settlements – ILCGs) of the LP. The key objective of this policy is to maintain the separation of settlements, and the appeal proposal would not significantly erode this separation given the distances involved. However, the parties agree that the proposal would undermine the second and third identified purposes of the policy. That is, the development would neither safeguard the open and undeveloped character of the area, nor would it prevent encroachment or piecemeal erosion or changes to the rural open character.

Effect on heritage asset

20. At the inquiry, both main parties also agreed with the Council's conservation officer that the proposal would cause less than substantial harm, at the lower end of the scale, to the Grade II listed Chilton Manor by way of impact upon its setting. The Framework requires this harm to be weighed against the scheme's benefits, to which I return later.

Conclusion on character and appearance

21. Overall, I find that the proposal would have a moderate adverse effect on the character and appearance of the area, with particular regard to the effect on the landscape and the ILCG designation. The proposed development therefore conflicts with policy DM25 of the LP, as well as policies ST1, ST3, ST5, DM14, and CP7, aspects of which require development to protect, conserve or enhance the landscape.

Location

22. The spatial strategy is expressed primarily in policies ST3 (Swale settlement strategy) and ST5 (Sittingbourne area strategy) of the LP. Policy ST3 directs that development will not normally be permitted in the open countryside outside the built-up area boundaries. Policy ST5 identifies the main urban centre in the borough as Sittingbourne, which will provide the primary urban focus for growth and town centre regeneration with housing to be provided

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- within urban confines, or extensions to the settlement, where indicated by proposed allocations.
23. The proposals map for Sittingbourne identifies the defined built-up area boundaries. The appeal site lies adjacent to but wholly outside of this settlement boundary. The proposal is therefore in conflict with these development plan policies. However, there are a number of factors that reduce the weight to be given to that conflict, as follows.
24. The settlement boundaries are deemed to be out of date by virtue of the Council not being able to demonstrate a five year supply of deliverable housing sites and application of footnote 8 of the Framework. Furthermore, as the LP is more than five years old and has not been reviewed, the housing requirement calculated using the standard method is currently some 39% higher than that indicated in the LP. On that basis, the Council accepted at the inquiry that, as this increased requirement could not be accommodated within the 2017 settlement boundaries, those boundaries are also substantively out of date. It follows that the boundaries will therefore need to be applied flexibly.
25. The Strategic Housing Land Availability Assessment (2020)(SHLAA) identified the appeal site as suitable for development, and achievable, albeit that this document is only a high-level assessment of limited weight. The subsequent Local Plan Review Site Selection (2020)(LPRSS), also of limited weight, indicates that, even though development of the appeal site would dilute the ILCG and impact on a sensitive landscape, there is potential to progress the site. Ultimately members rejected allocation of the appeal site, but they did so on the basis of information that was at least partially factually inaccurate.²
26. The LP describes challenging landscape constraints around Sittingbourne, indicating that land to the south of the settlement has low capacity to accommodate change (as does the north, whilst the east has moderate capacity and the west has higher capacity). However, the more recent eLP also explores these constraints.³ It proposes a strategy that focuses development to the east and west but acknowledges that there are limited opportunities to allocate development on unconstrained land. Although the eLP attracts only limited weight and the spatial plan indicates only high-level constraints, it nonetheless identifies the appeal site as being within a less constrained area.
27. Consequently, the eLP recognises that some difficult choices will need to be made. Those options should properly be explored as part of the emerging development plan. However, the new local plan is, according to the Council, a minimum of two years away from adoption. In the meantime, the current appeal requires to be determined in light of the prevailing circumstances.
28. Overall, due to the conflict with policies ST3 and ST5 of the LP, the site is not a suitable location for the proposed development having regard to the Council's development strategy. National policy requires local planning authorities to identify a minimum of five years' worth of housing. Given that the Council cannot do so, these policies are of reduced, but still significant, weight. The conflict with these policies caused by the proposal attracts moderate weight for the above reasons.

² The Cabinet Meeting minute for 16 December 2020 records that the appeal site was not progressed partly because the site was part of the Area of Outstanding Natural Beauty. It is not.

³ Having regard to the Local Landscape Designation Review and Landscape Sensitivity Study.

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Agricultural land

29. The LP explains that fruit growing remains synonymous with the borough, the area having been a centre of cultivated fruit since the 16th Century. To this end, policy DM31 states that development will only be permitted on agricultural land when there is an overriding need that cannot be met within the built-up boundaries. In light of the housing land supply shortfall, the Council agree that there is an overriding need for housing development.
30. The appeal site contains some 4.3 hectares of best and most versatile agricultural land (BMV), in respect of which policy DM31 further stipulates that development will not be permitted except in specific circumstances. Those circumstances include where there is no alternative site on land of lower agricultural grade or that use of land of a lower grade would significantly and demonstrably work against the achievement of sustainable development. The appellants have carried out two option assessments against local plan review sites, but the Council remain to be convinced that there are no alternative sites, with specific reference to three potential alternatives.
31. Firstly, the appellants' assessments exclude urban land. Whilst policy DM31 is principally concerned with the development of agricultural land, there is nothing to suggest that assessment of alternative sites should not include urban land. Indeed, inclusion of brownfield sites would be consistent with the LP settlement strategy and the broader objectives of sustainable development. The LPRSS indicates that there is potential for some 850 units within the settlement of Sittingbourne. These sites form part of what is described as being a major programme of regeneration in the town centre and fringes, and were subsequently endorsed by the Cabinet.
32. Secondly, the site at Rushenden South is also identified in the LPRSS and endorsed by the Cabinet as being suitable and sustainable for some 850 units, despite some high level constraints including land at high risk of flooding. Although Rushenden South may be less sustainable than the appeal site due to its location on the Isle of Sheppey, it is located within the Thames Gateway regeneration area which seeks to make the Isle a key focus for growth.
33. The third potential alternative is at land east of Queenborough. Whilst identified in the SHLAA as suitable and deliverable, the LPRSS notes the site as being partly at high risk of flooding, within an ILCG which would erode separation between Minster and Queenborough, and highly prominent in the landscape. The LPRSS concludes that this site should not be progressed. Furthermore, this site has only been identified as being Grade 3, without distinguishing between Grades 3a and 3b. Consequently, it is not clear whether this site would indeed comprise an alternative site of lower agricultural value.
34. The evidence therefore suggests that there are alternative sites, within the built-up area of Sittingbourne and at Rushenden South, that are suitable and sustainable, and which would be of lower grade agricultural land than the appeal site. Taken together these could potentially deliver some 1,700 units.⁴ Furthermore, the proposal would result in a material loss of BMV, and this is in itself harmful, even though this would result in the loss of only a very small percentage of the overall BMV land in Swale.

⁴ Against a total undersupply of 202 units (according to the Council) or 1,806 units (as asserted by the appellants).

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35. Overall, the proposal would have a moderate adverse effect on agricultural land and conflict with policy DM31 of the LP, as well as policies ST1 and ST5 which broadly support policy DM31.

Other considerations

36. The appeal site is within the 6km buffer of the Swale and Medway Estuary and Marshes Special Protection Area and Wetland of International Importance Ramsar sites (the Sites), which are afforded protection under the Conservation of Habitats and Species Regulations 2017. The Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy (2014) (SAMMS) indicates that new development is likely to increase recreational activity and cause disturbance impacts to birds at the Sites. The proposed dwellings, in combination with other projects, are therefore anticipated to have likely significant effects on the Sites.
37. An appropriate assessment has already been carried out by the Council. This concludes that a contribution should be secured to provide the mitigation required by the SAMMS. Natural England have indicated that, subject to securing the appropriate contribution, the proposal will mitigate against the potential recreational impacts of the developments. A topic statement of common ground has been submitted to the inquiry agreeing the position between the main parties on these matters. No new environmental evidence or changes to the scheme have emerged since that time. Consequently, as competent authority, I adopt the Council's appropriate assessment.
38. Local residents raised various concerns regarding transport. Whilst existing traffic delays in the locality cannot be resolved by the appeal proposal, the Council are satisfied, having considered the Transport Assessment and related evidence, that the proposed development would not result in a severe impact on the local highway network. The Council is also satisfied that the proposed pedestrian and cycling improvements would facilitate sustainable access to local facilities. I see no substantive evidence to find otherwise.
39. Any vibration caused by construction traffic on Swanstree Avenue could be adequately addressed by the Construction Management Plan. Repairing existing potholes is not a matter for this appeal but a maintenance issue for the local highways authority. Concerns regarding the lack of footway on Highsted Road would be satisfactorily addressed by the below obligation, as would the representations about oversubscribed surgeries and schools. Finally, although several other proposals at the planning application stage were cited by the Council, it accepted at the inquiry that no weight should be given to these.

Planning obligation

40. The contribution to air quality mitigation measures, along with an electric vehicle car club scheme, is necessary following agreement of pollution damage costs. Contributions for healthcare, community learning, youth services and social care would expand local health, youth and specialist care facilities and improve adult education services, to meet demand generated by occupants of the development. Contributions for formal sports facilities within 5km of the site, and for play and recreation facilities within the vicinity of the site, would meet the recreational needs of occupants. Highways improvements would be secured as a result of additional traffic and pedestrian impacts from the development, comprising; Highsted Road pedestrian footway and safety

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scheme; improvements to the A2/Rectory Road junction and the A2/Swanstree Avenue junction; and improvements to footpaths ZU30, ZU31 and ZU35.

41. Contributions towards primary and secondary schools, and land acquisition for new schools in Northwest Sittingbourne and/or Sittingbourne South, arise from the additional pupils generated by the development. A libraries contribution would meet the demands of additional borrowers. Waste and wheelie bin contributions are required to meet the waste and recycling needs of occupants. A SPA contribution is necessary to mitigate disturbance to birds and meet the requirements of the SAMMS, as above.
42. The provision of 30% affordable housing exceeds the 10% requirement under policy DM8 of the LP. Whilst this uplift is not necessary as a result of the development, it is a benefit of the scheme which I have taken into account. Tenure would be split, at 25% First Homes at a price cap of £250,000 and 75% social rented, which the Council agree meets the needs of the area. The open space obligation is necessary to secure the management and maintenance of open space on the development site. Monitoring fees are also provided for as set out in the Council's Developer Contributions SPD.
43. For the above reasons, I am satisfied that the obligations are necessary, directly related to the development, and fairly related in scale and kind, and comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 57 of the Framework.

Conditions

44. A list of suggested conditions was submitted, which were discussed at the inquiry and have been agreed by the appellant, including pre-commencement conditions. Amendments have been made to the wording of some conditions for clarity, brevity, or to avoid duplication with other conditions, and to ensure accordance with the tests set out in paragraph 56 of the Framework. Reasons are also provided in the attached schedule.
45. A suggested condition to incorporate noise mitigation into the building specification has not been substantively justified and therefore has not been included. A condition for electric vehicle charging is not necessary because it would duplicate amendments to Building Regulations.

Planning balance and conclusion

46. Looking at the benefits of the proposal, the parties agree that substantial weight should be given to the provision of market housing and 30% affordable housing and the contribution that would be made to supply in the region. I see no substantive reason to disagree. Economic benefits, including from direct and indirect jobs created by the proposal, attract moderate weight. Green infrastructure and open space would provide some benefits for the wider community, and this is afforded limited weight. Provision of improved pedestrian and cycle facilities, along with an electric vehicle car club scheme, would be available for wider community use, and is of limited weight. Biodiversity net gain would be secured but has not been quantified, hence only attracting very limited weight.
47. Turning to the harms arising from the development, I have already found that a moderate level of landscape and visual harm would be caused. The development would also conflict with the ILCG designation, to which I attach

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- moderate weight. The conflict with the locational policies of the development plan are also afforded moderate weight, and moderate weight is also given to the loss of BMV and conflict with policy DM31.
48. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. For the above reasons, the proposed development is in conflict with development plan policies and with the development plan as a whole.
49. The Framework is a material consideration, and this states that decisions should apply a presumption in favour of sustainable development. The Council is unable to demonstrate that it has a five year housing supply. The Council is taking steps to address this shortfall and some of the reasons for the shortfall are not within the control of the Council. Nonetheless, paragraph 11(d) of the Framework indicates that the policies which are most important for determining the application should be considered as out of date.
50. In terms of Footnote 7 of paragraph 11(d)(i) of the Framework, the less than substantial harm to the significance of Chilton Manor Farm, by way of impact on its setting, should be weighed against the public benefits of the proposal as required by paragraph 202 of the Framework. Paragraph 199 advises that when considering the impact of the development on the significance of designated heritage assets, great weight should be given to the asset's conservation. The public benefits identified above decisively outweigh this harm. Accordingly, there are no policies in the Framework of relevance to this appeal that protect areas or assets of particular importance that provide a clear reason for refusal, and the so called 'tilted' balance of paragraph 11(d)(ii) of the Framework is engaged.
51. Drawing together the above harms and benefits, even though the Council's stated housing land supply shortfall is small and alternative sites of lower grade agricultural land may be available, the adverse effects of the proposed development would not significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies in the Framework taken as a whole. The proposal therefore benefits from the presumption in favour of sustainable development. Although the proposal would conflict with the development plan as a whole, material considerations indicate a decision other than in accordance with it.
52. My overall planning balance concludes in favour of the development on the basis of the Council's housing supply position of 4.8 years. Therefore, even though the appellant contends that this is overstated, asserting it to be 3.4 years, it is not necessary for me to reach a finding on this dispute, regardless of any additional weight that may accrue from a reduced supply.

Conclusion

53. I conclude that planning permission should be granted subject to the conditions in the attached schedule.

Patrick Hanna

INSPECTOR

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APPEARANCES

FOR THE APPELLANT

Zack Simons and Isabella Buono of Counsel, instructed by Christien Lee

They called

Gary Holliday BA(Hons) MPhil FLI	FPCR Environment and Design
Ben Pycroft BA(Hons) DipTP MRTPI	Emery Planning
Christien Lee BSc(Hons) MCD MRTPI	Gladman Developments
Rachel Goddard (obligation session)	Gladman Developments

FOR THE LOCAL PLANNING AUTHORITY

Isabella Tafur of Counsel, instructed by Russell Fitzpatrick

She called

Jon Etchells MA BPhil CMLI	Jon Etchells Consulting
Stuart Watson BA MSc MRTPI	Principal Policy Officer
William Allwood BA(Hons) DipTP MRTPI	Team Leader
Cheryl Parks (obligation session)	Solicitor

INTERESTED PARTIES

Cllr Monique Bonney	Ward Councillor
Cllr Tim Gibson	Ward Councillor
Rebecca Kemp	Local resident
Maryna Baxter	Local resident
Lee Baxter	Local resident

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DOCUMENTS SUBMITTED DURING THE INQUIRY

1. Opening statement for the Council
2. Opening statement and appearances for the appellant
3. Swale Borough Council Selected Designated Areas with Allocations Dwg No 06302-FPCR-XX-XX-DR-L-0007-P01
4. Thames, Medway & Swale Estuaries - Strategic Access Management and Monitoring Strategy
5. Habitats Regulations Assessment Bearing Fruits 2031 (June 2016)
6. Habitats Regulations Assessment Screening Bearing Fruits 2031 (April 2015)
7. Further Information on Thames Estuary SPA, Ramsar, HRA and AA
8. Thames Estuary & Marshes SPA EC Directive 74-409 on the Conservation of Wild Birds
9. European Site Conservation Objectives for Thames Estuary and Marshes SPA
10. Supplementary Advice Note on Thames Estuary and Marshes Conservation Objectives
11. Swale Housing Supply SOCG dated 8 March 2023
12. Swale Housing Supply Scott Schedule dated 8 March 2023
13. Issues and Preferred Options (October 2021)(full version)(CD6.07)
14. Bearing Fruits 2031 Swale Borough Local Plan (July 2017)(full version)(CD5.01)
15. Agreed Draft List of Conditions dated 9 March 2023
16. CIL Compliance Schedule dated 9 March 2023 (and KCC appeal statement)
17. Open Spaces and Play Area Strategy 2018-2022
18. Bird Wise North Kent Mitigation Strategy
19. Developer Contributions SPD (2009)
20. Closing submission for the Council
21. Closing submission for the appellant
22. Updated CIL Compliance Schedule (submitted after the inquiry)
23. Signed s106 Deed of Agreement dated 14 March 2023 (submitted after the inquiry)

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SCHEDULE OF CONDITIONS

1. Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
REASON: As required by s92 of the Town and Country Planning Act 1990.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
REASON: As required by s92 of the Town and Country Planning Act 1990.
3. The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
REASON: As required by s92 of the Town and Country Planning Act 1990.
4. The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan Drawing Reference 06302-FPCR-ZZ-ZZ-DR-L-0003 and Access Drawing Reference 1464/18/C.
REASON: To ensure that the development is carried out in accordance with the approved documents, plans and drawings submitted with the application.
5. The details submitted pursuant to Condition 1 shall be in general accordance with the indicative development framework (reference 06302-FPCR-ZZ-ZZ-DR-L-0002-P07).
REASON: To ensure that the development is carried out in accordance with the development parameters submitted with the application.
6. The quantum of residential units to be constructed for the development hereby approved shall be limited to a maximum of 135 units.
REASON: To ensure that the development is carried out in accordance with the development parameters submitted with the application.
7. The details submitted pursuant to Condition 1 shall include plans and sections indicating, as appropriate, the levels, gradients and method of construction.
REASON: To ensure that the development is satisfactorily designed and constructed.
8. The details submitted pursuant to Condition 1 shall include details demonstrating how the development meets the principles of Secured by Design. The development shall be carried out in accordance with the approved details.
REASON: In the interests of crime reduction and safety.
9. With the first reserved matters application a detailed reptile mitigation strategy shall be submitted to and approved by the local planning authority. The strategy will include timings in accordance with any planned phasing of construction and a site plan showing retained areas to be safeguarded during construction. The development shall be carried out in accordance with the approved details.

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REASON: In the interests of protected species.

10. The details submitted pursuant to Condition 1 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. The development shall be carried out in accordance with the approved details and maintained thereafter.

REASON: To protect ecological habitats.

11. The details pursuant to Condition 1 shall include a Landscape and Ecological Management Plan, which shall include the following:
- (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; and
 - (h) ongoing monitoring and remedial measures.
- The development shall be carried out in accordance with the approved details.

REASON: To manage biodiversity on site.

12. The details submitted pursuant to Condition 1 shall include details of how the development will achieve a net biodiversity gain. This will include a native species-only landscape scheme, integrated bird bricks and details of the degree of biodiversity net gain. The development shall be carried out in accordance with the approved details and be maintained thereafter.

REASON: To increase biodiversity on site.

13. Prior to the commencement of the development hereby approved an arboriculture method statement and tree protection plan in accordance with 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.

REASON: To protect trees during construction.

14. The details submitted pursuant to Condition 1 shall include an updated Landscape Strategy. The landscaping shall be comprised of 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.

REASON: In the interests of visual amenity and ecology.

15. No development shall take place prior to the implementation of a programme of archaeological work in accordance with a written specification and timetable which shall have been submitted to and approved by the local planning

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

REASON: To ensure archaeological investigation of the site.

16. No construction work (excluding impact pile driving dealt with by Condition 17) in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times: Monday to Friday 0730 to 1800 hours and Saturdays 0800 to 1300 hours, unless in association with an emergency.

REASON: To protect living conditions of occupants of neighbouring properties.

17. 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 to 1700 hours, unless in association with an emergency.

REASON: To protect living conditions of occupants of neighbouring properties.

18. Piling or any other foundation designs using penetrative methods shall not be undertaken other than with the 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 that shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

REASON: To prevent pollution of groundwater resources.

19. No development approved by this planning permission shall commence until a strategy to deal with any potential risks associated with contamination of the site shall have been submitted to and approved in writing by the local planning authority. The strategy will include the following components:

- (a) 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;
- (b) A site investigation scheme based on (a) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site;
- (c) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (b). This should give full details of the remediation measures required and how they are to be undertaken. The RMS should also include a verification plan to detail the data that will be collected to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance, and arrangements for contingency action.
- (d) A verification report shall be submitted upon completion of the works and shall include full verification details as set out in the verification plan. This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site.

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

REASON: To mitigate risks from ground contamination.

20. Prior to the commencement of the development a Construction Method Statement shall be submitted to and approved in writing by the local planning authority. The document shall be produced in accordance with the Code of Construction Practice and BS5228 Noise Vibration and Control on Construction and Open Sites, the Control of Dust from Construction Sites (BRE DTi Feb 2003) and the Institute of Air Quality Management 'Guidance on the Assessment of Dust from Demolition and Construction'. The construction of the development shall be carried out in accordance with the approved details.

REASON: To protect living conditions of occupants of neighbouring properties.

21. Development shall not commence in any phase until a detailed sustainable surface water drainage scheme for the site shall have been submitted to and approved in writing by the local planning authority. The scheme shall be based upon the Flood Risk Assessment Ref SHF.1132.260.HY.R.001.B dated October 2021 and follow up letter ref SHF.1132.260.HY.L.001.B by Enzygo Ltd 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 site without increase to flood risk on or off-site. The scheme shall also demonstrate with reference to published guidance:

- (a) that silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters; and
- (b) 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 development shall be carried out in accordance with the approved details and no building on any phase of the development hereby permitted (or within an agreed implementation schedule) shall be occupied until a Verification Report pertaining to the surface water drainage system and prepared by a suitably competent person shall have been submitted to and approved by the local planning authority.

REASON: To ensure satisfactory drainage of the site.

22. Prior to the commencement of the development details of the proposed means of foul sewerage disposal shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and maintained as such thereafter.

REASON: To ensure satisfactory foul drainage of the site.

23. The details submitted pursuant to Condition 1 shall include a scheme of highway works along Highsted Road/Swanstree Avenue, as indicatively shown on drawing number 1464/21 Rev A. The development shall be carried out in accordance with the approved details.

REASON: In the interests of sustainable travel.

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24. No development shall take place including any works of demolition until a Construction Traffic Management Plan shall have been submitted to and approved in writing by the local planning authority. The approved plan shall be adhered to throughout the construction period.

REASON: In the interests of highway safety and to protect living conditions of occupants of neighbouring properties.

25. The details submitted pursuant to Condition 1 shall provide details of the provision of residential vehicle parking and turning space in accordance with the Swale Borough Council Parking Standards (May 2020); and the provision for one secure and sheltered bicycle store for each dwelling within the site. The development shall be implemented in accordance with the approved details.

REASON: In the interests of highway safety and sustainable travel.

26. No dwelling shall be occupied until that part of the road which provides access to it shall have been constructed in accordance with the approved plans, including carriageways and footways (with the exception of the wearing course), highway drainage and street lighting. The road as constructed shall be retained thereafter.

REASON: In the interests of highway safety.

27. Development shall not commence until details of fixed telecommunication infrastructure and high-speed fibre optic connections to all residential buildings shall have been submitted to and approved by the local planning authority. The infrastructure and connections shall be installed in accordance with the approved details prior to occupation of any respective residential building and maintained thereafter.

REASON: To ensure utility provision meets local needs.

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

- (a) measures for promoting sustainable modes of travel to residents of the development;
- (b) arrangements for monitoring and reviewing the FTP's objectives including the appointment of a travel plan co-ordinator;
- (c) travel information packs for the first occupiers of each completed dwelling; and
- (d) measures for disseminating updated sustainable travel information and FTP updates to residents for the lifetime of the plan.

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

REASON: In the interests of sustainable travel.

29. 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.

REASON: To ensure satisfactory phasing of the site.

End of Schedule

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Appeal Decision

Site visit made on 24 April 2023

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2023

Appeal Ref: APP/V2255/W/22/3292612

Land North of Warden Road, Eastchurch, Kent, ME12 4EN

- 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 Mrs Pearson against the decision of Swale Borough Council.
 - The application Ref 21/504369/FULL, dated 5 August 2021, was refused by notice dated 14 December 2021.
 - The development proposed is change of use of land and the siting of 4no. specialist residential mobile homes for occupation by persons over 55 as well as associated works to provide infrastructure, access and landscaping.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are whether the site is suitable for the proposed development, having regard to the spatial strategy of the development plan, and the effect of the proposed development upon the rural character and appearance of the site and surrounding area.

Reasons

3. Bearing Fruits 2031: The Swale Borough Local Plan 2017 (the Local Plan) has defined its built-up area boundary and Policy ST3 of the Local Plan seeks to provide new homes in accordance with the settlement hierarchy for the Borough. Part 5 of Policy ST3 states *"At locations in the countryside, outside the built-up area boundaries as 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, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities"*.
4. The location of the site would be outside any established built-up area boundary and is in a countryside location. Therefore, the appeal site would not be an appropriate location for residential development despite it being only approximately 450 metres beyond the built-up boundary of Eastchurch.
5. The site is a grass field located at the junction between First Avenue and Warden Road. The site has in the past been used as a paddock for the grazing of horses. To the north side of Warden Road there is sporadic residential development and caravans with undeveloped areas of land interspersed. There is also a large holiday park complex further north east of the site.

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6. The site lies within the 'Greater Thames Estuary' National Character Area (NCA 81) as identified by Natural England. The site also falls within the 'North Sheppey' Landscape area within Kent County Council's 'Landscape Assessment of Kent'. Otherwise, the site is not subject to any specific landscape designations. The appellant's statement contains a landscape and visual impact assessment. This contends that the landscape change, as a result of the development of the land, when viewed from First Avenue and Warden Road would be 'low' and that the site context is 'heavily developed and of relatively low sensitivity to change' given the other development close by.
7. Although there is loose knit development in the area, the wider landscape area south of Eastchurch is predominantly rural. The area is sparsely populated by permanent forms of housing within the otherwise undeveloped open countryside. The site's open undeveloped character forms part of the land's distinctive quality, even if not of high scenic beauty when taken on its own individual merit. Despite there being some dwellings, caravans and other development in the locality, the site is open and undeveloped and, as such, hosts those attributes of the countryside. The site is visually separated from nearby developments by vegetation along the site boundaries. The site does not appear as part of a built-up area, rather it assimilates with and forms part of the wider rural landscape. Therefore, I do not agree with the appellant that the proposal would represent a natural extension of the existing uses that about the site.
8. The proposal would create a development of urbanised appearance with park home style structures set within formalised domestic plots, with access road and parking areas. This would substantially alter the character and appearance of this location and would diminish the intrinsic value of the rural landscape. For this reason, the proposed development would be visually harmful.
9. The development would be visible from the adjacent highways and the vegetation that surrounds the site would only provide partial screening, as can be seen from the photographs provided by the appellant. The urbanising nature of the development would also be visually apparent in views from the access to the site. Whilst the site may not be readily visible from Public Rights of Way in the locality, the lack of clear public views towards the site from these routes and/or augmenting the vegetation around the site would not constitute exceptional justification for the development.
10. For these reasons, the site would not be a suitable location for the proposed development, having regard to the spatial strategy of the development plan. Furthermore, the proposed development would be harmful to the rural character and appearance of the site and surrounding area. The proposal would therefore conflict with Policies ST1, ST3, ST6 and DM14 of the Local Plan that seek, amongst other matters, development to provide new homes in accordance with the settlement hierarchy for the Borough and to protect the tranquillity and beauty of the countryside.
11. Both parties have referred to a Council report "interim planning policy statement for park home sites". There is difference between parties as to whether this should be applied in respect of this case and the weight to be afforded to the report. However, the Council have not relied on this report in reaching its determination.

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Planning Balance

12. The Council have indicated that there is not a five-year supply of deliverable sites in place. This reduces the weight to be applied to Local Plan Policy ST3 and triggers the engagement of paragraph 11d)ii of the National Planning Policy Framework (the Framework). Furthermore, the appellant contends that the Council's housing land site shortfall may be more acute than the Council sets out.
13. The adverse impacts arising from the proposal relate to the unsatisfactory location of the development and its harmful effect on character and appearance of the site and the countryside. This brings the proposal into conflict with relevant development plan policies.
14. On the other hand, the Government's objective is to significantly boost the supply of homes and recognises that windfall and cumulative impact of developing small sites can help meet supply and can be built out quickly. These are benefits of the proposal.
15. The proposal would bring about social benefits through the provision of accommodation which is for occupation by older persons. The Council advises that there is a growing need and demand for older persons accommodation that is more affordable than conventional housing and is in short supply. The units would provide single storey accommodation that could be accessible and adaptable for those with mobility needs. The park home style units could be designed to be suitable for year-round residential occupation. The form of accommodation would allow older persons an opportunity to downsize. These are also benefits of the proposal.
16. The site would be in a location close to the services and facilities at Eastchurch, which is accessible both on foot and by bus, with the bus service also providing links to other settlements further afield. The proposal would support businesses and services through local spend, as well as provide local jobs during the construction phase. These are further benefits of the proposal.
17. Nonetheless, even if the Council's housing land supply situation is acute, the harm that I have identified relating to the unsatisfactory location of the development and its harmful effect on character and appearance of the area are not outweighed by the contribution to housing land supply or those social and economic benefits associated with the proposal.
18. I have carefully considered the development as a scheme for those aged 55 years and over. However, being a development for older persons does not alter the spatial strategy of the development plan. Although there is support for meeting the housing needs for different groups in the community within the Framework, this does not diminish other aspects of the development plan and the Framework that seek to deliver homes at appropriate locations.
19. Consequently, the adverse impacts of the site's location and its impact upon the character and appearance would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

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Other Matters

20. The Council have identified that the development would result in a net increase in residential accommodation at the site that may result in increased recreational disturbance to the Swale Special Protection Area. I note a completed unilateral obligation has been provided that would seek to secure bird protection measures. Notwithstanding this, given that I am dismissing this appeal for other reasons it has not been necessary for me to consider this matter in any further detail.

Conclusion

21. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal should be dismissed.

Nicola Davies

INSPECTOR



Appeal Decision

Site visit made on 4 April 2023

by **C Carpenter BA MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 May 2023

Appeal Ref: APP/V2255/W/22/3300169

2 Bells Forstal Cottages, Throwley, Faversham, Kent ME13 0JS

- 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 Dr Charlotte Shattuck against the decision of Swale Borough Council.
 - The application Ref 21/505863/FULL, dated 28 October 2021, was refused by notice dated 4 January 2022.
 - The development proposed is described as "To place a shepherds in garden for holiday rental. 5.5m by 2.2m on wheels."
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The word "hut" is missing from the development description. However, it is clear from the other information provided that the development proposed is a shepherd's hut in garden for holiday rental. I have therefore considered this appeal on that basis.

Main Issues

3. The main issues in this appeal are:
 - i. Whether the proposed shepherd's hut would conserve and enhance the landscape and scenic beauty of the Kent Downs Area of Outstanding Natural Beauty (AONB).
 - ii. Whether the proposal would be in a suitable location in respect to adjacent settlements.

Reasons

Landscape and scenic beauty of the AONB

4. Paragraph 176 of the National Planning Policy Framework (the Framework) says great weight should be given to conserving and enhancing the landscape and scenic beauty of Areas of Outstanding Natural Beauty (AONB). The Kent Downs AONB comprises undulating chalk downs with a diverse topography of valleys and plateaux. It is an historic, farmed landscape of fields and hedgerows set within networks of lanes. There are scattered villages, isolated farmsteads and remote buildings situated amongst orchards, ancient woodlands, scrub, heath and grassland. Views can be extensive resulting in a sense of space, beauty and tranquillity.

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5. The appeal site comprises a semi-detached house and separate garage within a large garden. The site is surrounded by fields with occasional trees and low hedges. There are long, open views of the surrounding countryside from within and across the site. The site's garden has the appearance of a large, grassy meadow with some trees. It makes a positive contribution to the sense of openness and continuity with the landscape.
6. The proposed development would interrupt the openness and views across the site by placing a structure in a prominent position. Although situated relatively close to the house, it would be within the area that currently provides uninterrupted views into and across the garden and beyond to the surrounding landscape. Notwithstanding its wheels, the proposed hut would be a fixed structure. Even if it were painted green to help it blend into its surroundings, the hut would be visible from several viewpoints including lanes and footpaths. Nearby boundary hedges and trees would only partly screen the structure for part of the year. Therefore, irrespective of the use of the proposed shepherd's hut, the proposal would result in a harmful change to the appearance of the site and the surrounding landscape.
7. I understand that shepherds' huts are an historic feature of the downlands of southern rural England and that the proposed structure would look similar to a traditional shepherd's hut. There is little evidence to support this argument. Two examples are given of similar structures within the locality of the appeal site, but limited information is provided about these. I am also not aware of their use or the circumstances of their construction. The Council indicate the one at Derbies Court may be a caravan and therefore subject to different legislation and policies. Similarly, little information is provided about the other types of holiday-let referred to as having been approved within the same parish.
8. In terms of the wider examples of shepherds' huts provided, these are from National Parks and AONBs in other parts of England and Wales. I am not aware of the circumstances of those cases. In any event, the context and characteristics of each nationally designated area are different, so comparisons between areas are of limited relevance. I have considered the appeal proposal on its own merits.
9. For the above reasons, I conclude the proposed shepherd's hut would not conserve and enhance the landscape and scenic beauty of the Kent Downs AONB. This is contrary to Policies, ST1, DM3, DM14 and DM24 of Bearing Fruits 2031 – The Swale Borough Local Plan (SBLP) and the Framework. These policies seek to conserve and enhance the natural environment and countryside, including the intrinsic value, tranquillity and beauty of the Kent Downs AONB; and provide for an expansion of tourist and visitor facilities in appropriate locations without significant harm to landscape.

Location in respect to adjacent settlements

10. The appeal site is located on the edge of a small group of some nine dwellings known as Bells Forstal. This group is not a designated settlement as defined in Policy ST3 of the SBLP. The location therefore constitutes open countryside outside a designated boundary for the purposes of that policy. The location is, therefore, isolated.

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11. Policy ST1 of the SBLP seeks to achieve a spatial development and settlement strategy that supports the economic, social and environmental sustainability of the area, including the vitality of rural communities. Part 5 of Policy ST3 of the SBLP states that at locations in open countryside, outside designated boundaries, 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, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities. The proposal involves the development of an isolated home, albeit one intended for use as a holiday let. Paragraph 80 of the Framework states planning decisions should avoid the development of isolated homes in the countryside unless one or more of five circumstances apply.
12. I have concluded under the first main issue that the proposal would not contribute to protecting and enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside or its buildings. The appellant has not suggested the proposal would meet any of the circumstances set out in Paragraph 80 of the Framework.
13. Turning to the vitality of the rural community, I note there are few local services or businesses close to the appeal site. The nearest town centre is several kilometres away in Faversham, with little public transport between there and the site. Users of the shepherd's hut would need to travel some distance for provisions and would be likely to rely on a car for most of their transport needs. This would contribute little to the rural economy local to the site. As visitors, they would also make limited use of other local services important to the vitality of rural communities, such as schools and community centres. I therefore find the proposal would make only a limited contribution to the vitality of the rural community in this part of Swale.
14. For the above reasons, I conclude the proposal would not be in a suitable location in respect to adjacent settlements. This is contrary to Policies ST1 and ST3 of the SBLP. It is also contrary to paragraph 80 of the Framework.

Other Matters

15. The appeal site is within the setting of a group of grade II listed buildings in Bells Forstal. These include The Old Cottage, an eighteenth-century red brick house, and two eighteenth-century timber-framed and weather-boarded barns associated with it. Their significance as listed buildings derives from their traditional appearance and their contribution to, and setting within, the historic group of rural buildings. The houses at nos. 1 and 2 Bells Forstal are positioned between the listed buildings and the location of the proposed shepherd's hut. As a result, there is little intervisibility between the site and those heritage assets. On balance, I consider there would be no harm from the proposal to the setting or significance of the listed buildings.
16. I note there is high demand for holiday accommodation within the Kent Downs area. Tourism makes an important contribution to the rural economy generally and the proposed accommodation for visitors would provide a modest addition to this, which is a benefit.
17. I acknowledge the attractiveness of the proposed location to potential visitors, close to open countryside and wildlife. However, this would not provide the only opportunity to stay within the AONB given the existence of other tourist

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accommodation in the locality. It is not essential to stay over-night within the AONB to appreciate its scenic beauty. This can be experienced through a range of day-time leisure pursuits, such as hiking and cycling, using a base elsewhere.

18. I understand the proposed shepherd's hut would be well insulated and energy efficient. I note there would be sufficient off-street parking and turning space to serve the proposed development, no additional hard standing is proposed, and an electric vehicle charging point would be provided. Given the scale of the proposal, the level of additional traffic generated would be modest. Bicycle rental would be offered to guests and covered bicycle storage for guests' own cycles would be available as well, which would be a benefit of the proposal. I acknowledge the appellant's willingness to maintain an up-to-date register of occupants.

Conclusion

19. For the above reasons, having considered the policies drawn to my attention, I conclude the conflict with Policies DM3, DM14, DM24, ST1 and ST3 of the SBLP means the proposal conflicts with the development plan as a whole. The other matters raised would not outweigh this conflict. Taking account of the Framework, I conclude the appeal should be dismissed.

C Carpenter

INSPECTOR