

Agenda

Planning Committee Meeting

Date: Thursday, 17 August 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 by 16 August 2023.

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

2. Apologies for Absence

3. Minutes

To approve the [Minutes](#) of the Meeting held on 20 July 2023 (Minute Nos. 207 – 210) as a correct record.

4. Declarations of Interest

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

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

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

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

Part B reports for the Planning Committee to decide

To consider the attached report (Parts 2 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 16 August 2023.

Issued on Tuesday, 8 August 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

17 AUGUST 2023

Standard Index to Contents

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 – 17 AUGUST 2023

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

PART 2

2.1	23/500942/FULL	DUNKIRK	Woodseaves Staplestreet Road
2.2	23/500263/REM	BORDEN	Land At Wises Lane

PART 5

INDEX

5.1	21/506105/LDCEX	SITTINGBOURNE	22 East Street
5.2		MURSTON	Land at Murston Playing fields Church Rd
5.3	22/501313/FULL	SITTINGBOURNE	Car park adj to Church Road
5.4		LEYSDOWN	Land adjacent to 241 Leysdown Road
5.5	21/502256/OUT	MINSTER	Pandora & land north east of Nelson Ave
5.6	22/500084/FULL	MINSTER	Garage rear of Riverbank House Ash Lane
5.7	22/500942/FULL	SITTINGBOURNE	53 Millfield

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PLANNING COMMITTEE – 17 AUGUST 2023**PART 2**

Report of the Head of Planning

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

2.1 REFERENCE NO: 23/500942/FULL		
PROPOSAL Raising the roof height and a loft conversion with dormers to front and rear including 6 no. roof lights and changes to fenestration.		
SITE LOCATION Woodseaves Staplestreet Road Dunkirk Kent ME13 9TJ		
RECOMMENDATION – Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions as set out in the report, with further delegation to the Head of Planning to negotiate the precise wording of conditions, including adding or amending such conditions.		
APPLICATION TYPE Householder		
REASON FOR REFERRAL TO COMMITTEE Dunkirk Parish Council Objection		
Case Officer: Mandi Pilcher		
WARD Boughton and Courtenay	PARISH/TOWN COUNCIL Dunkirk	APPLICANT Mr & Mrs Glaiser-Cred AGENT Blink Architecture
DATE REGISTERED 28/2/23	TARGET DATE 25/4/23	CASE OFFICER: Mandi Pilcher
BACKGROUND PAPERS AND INFORMATION: https://pa.midkent.gov.uk/online-applications/applicationDetails.do?keyVal=RQJ2Q7TYHNI00&activeTab=summary		

1. SITE LOCATION AND DESCRIPTION

- 1.1 Woodseaves is a detached 'L' shaped bungalow situated in the defined built-up area boundary of Boughton Under Blean. The property is set back from the highway, with a driveway leading to an attached garage and landscaped front garden. To the rear is an enclosed private amenity.
- 1.2 The properties in the surrounding area are a mix of sizes and designs, including bungalows and two storey properties.

2. PLANNING HISTORY

- 2.1 **SW/89/0015** – Planning permission granted on 02.03.1989 for a ‘Proposed front and rear extension.’

3. PROPOSED DEVELOPMENT

- 3.1 Planning permission is sought for the raising of the roof height by 1.4m, including three rear facing and one front facing pitched roof dormers. The front projecting element of the property would be altered from a hipped roof to a front facing gable end. The alterations would turn the property from a bungalow into a 1 and a half storey dwelling with rooms in the roofspace to form a chalet bungalow.
- 3.2 The proposal includes six rooflights, two on each of the side facing roofslopes of the front projecting element of the dwelling and two on the front roofslope. The changes to the fenestration would include the removal of a window on the south elevation at ground floor level, the introduction of bi-fold doors for the kitchen/dining area and glazed doors at first floor level with a Juliet balcony on the front elevation. The materials proposed are brickwork and tiles to match that of the existing dwelling and the introduction of white render.

4. CONSULTATION

- 4.1 The application was advertised via a site notice and neighbour notification letters. Three neighbour letter objections were received, raising the following summarised concerns. Full details of representations are available online.:
- Loss of privacy
 - Create overshadowing
 - Loss of sunlight
 - Out of character with surrounding pattern of development
 - Located next to one of the oldest houses in the village [Officer note – this property is not listed and therefore the age of the property as a standalone matter is not material to the consideration of this scheme]
- 4.2 Dunkirk Parish Council object to the application for the following reasons:
- Concerns regarding the scale, bulk and design
 - The front dormer is not in accordance with the Council’s SPG
 - Concerns regarding impact upon the living conditions of neighbouring occupiers in respect of overshadowing and loss of privacy
 - Increase in height would potentially have an impact upon solar panels on the neighbouring bungalow
- 4.3 Following amended drawings being provided and a change to the description of development the application was re-advertised. In response, no further letters from neighbouring occupiers were received.
- 4.4 In respect of this further consultation Dunkirk Parish Council continue to maintain their objection based on the bulk and mass that will be introduced to the streetscene. It was acknowledged that any impact upon the privacy of neighbouring occupiers is now less of an issue in comparison to the originally submitted scheme.

5. DEVELOPMENT PLAN POLICIES

5.1 Bearing Fruits 2031: The Swale Borough Council Local Plan 2017

ST3 The Swale Settlement Strategy

CP4 Requiring good design

DM7 Vehicle parking

DM14 General Development criteria

DM16 Alterations and extensions

5.2 Neighbourhood Plans

The Boughton and Dunkirk Neighbourhood Plan (BDNP) was recently approved by referendum and now forms part of the statutory development plan for Boughton and Dunkirk Parishes. The relevant policies within the BDNP are as follows:

“E7 - Development within the village envelope will be supported in principle providing it promotes the re-use, recovery and restoration of previously developed sites.

E9 - Variety in density, layout, building orientation and sizes will be sought to reflect the local context. Building styles and materials must also respect and positively contribute to local distinctiveness.”

5.3 Supplementary Planning Guidance/Documents

Supplementary Planning Guidance Designing an Extension – A guide for Householders
Supplementary Planning Document - Swale Parking Standards

6. ASSESSMENT

6.1 This application is reported to the planning committee because the Parish Council has objected to the proposal. Considering these comments and the proposal that has been submitted, the committee is recommended to carefully consider the following main points:

- The Principle of Development
- Design of the proposed development
- Living Conditions of neighbouring occupiers

Principle

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

6.3 The National Planning Policy Framework provides the national policy context for the proposed development and is a material consideration of considerable weight in the determination of the application. The NPPF states that any proposed development that accords with an up-to-date local plan should be approved without delay. At the heart of the NPPF is a presumption in favour of sustainable development and for decision-taking this means approving development that accords with the development plan.

6.4 Policy ST3 of the Local Plan 2017 supports the principle of development within the built up area boundary of established towns and villages within the Borough.

- 6.5 The site lies within built confines of Boughton Under Blean and therefore the principle of development is considered acceptable subject to the consideration of other material planning considerations.

Character and Appearance

- 6.6 The National Planning Policy Framework attaches great importance to the design of the built environment and that design should contribute positively to making places better for people. The Local Plan reinforces this requirement.
- 6.7 The surrounding area is comprised of dwellings constructed in a variety of styles and designs. There are both single storey and two storey dwellings in the local context, and the site is flanked on one side by a bungalow and on the other by a two storey dwelling. On this basis, the chalet bungalow that the proposal would create would sit comfortably in the streetscene. The dormer windows are appropriately scaled in relation to the roof and incorporate a pitched roof design which is acceptable. The external finishing materials, which comprise brickwork and tiles to match the existing dwelling and the introduction of render, would not be out of keeping with the surrounding area on the basis of the wide range of materials already present.
- 6.8 Taking the above into account, in respect of the character and appearance of the proposal the scheme is considered to comply with policies CP 4 and DM 16 of the Local Plan, the Boughton and Dunkirk Neighbourhood Plan and the NPPF.

Living conditions

- 6.9 The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers.
- 6.10 The main properties impacted upon the proposal are those either side of the application site and those to the rear. Whilst the increase in ridge height and alterations to the roof form will add bulk to the host dwelling it will not project beyond the rear elevation of 'Sayerland' - the adjacent property located to the north of the application site. Furthermore, the extension to the frontwards projection is considered to be suitably separated. Any impacts from the proposal upon this property are therefore considered to be acceptable.
- 6.11 Turning to the dwelling located to the south known as Jubilee House, this dwelling is located approx. 10.5m from the application site and as such any impact of the proposal upon the living conditions of the occupants of this dwelling is considered to be acceptable.
- 6.12 The properties to the rear are located approx. 26m from the host property and as such are considered to be suitably separated to avoid any harmful overlooking impacts.
- 6.13 There are a number of rooflights to be included within the frontward projection, however, given their upward orientation within the roof space coupled with the separation distance from neighbouring occupiers any impact from these windows in respect of a potential loss of privacy is considered to be acceptable.
- 6.14 Taking the above into account the proposal is considered to have an acceptable impact upon the living conditions of surrounding dwellings in accordance with policies DM 14 and DM 16 of the Local Plan 2017, the Boughton and Dunkirk Neighbourhood Plan and the NPPF.

Transport and Highways

- 6.15 The NPPF promotes sustainable patterns of development and expects land use and transport planning to work in parallel in order to deliver such. A core principle of the NPPF is that development should:

“Actively manage patterns of growth to make the fullest use of public transport, walking and cycling and to focus development in locations which are sustainable.”

- 6.16 The NPPF also states that:

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”

- 6.17 Local Plan policy promotes sustainable transport through utilising good design principles. It sets out that where highway capacity is exceeded and/ or safety standards are compromised proposals will need to mitigate harm.

- 6.18 In this case, the development will increase the number of bedrooms at the property to three. To accord with the adopted Parking Standards SPD, a three bedroom dwelling proposed in this location should provide two to three parking spaces. I note the property currently has off-road parking on a very long driveway and an attached garage. The driveway is sufficient to park three vehicles and as such the proposal is acceptable in this regard, and in accordance with the Council’s Parking SPD and policy DM 7.

Other Matters

- 6.19 Although the majority of the comments made by interested parties have been discussed by virtue of the appraisal above, of the matter that remains the following comment is made. In respect of the solar panels on the adjacent dwelling, it is not considered that the limited increase in height of the dwelling would give rise to a significant loss of sunlight to the solar panels.

7. CONCLUSION

- 7.1 On the basis of the above, the scheme is considered to be in compliance with policies CP4, DM7, DM14, DM16 of the Local Plan, the SPG and the relevant policies of the BDNP. I recommend planning permission be granted.

8. CONDITIONS

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

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

- (2) The development hereby permitted, including the specification of materials to be used shall be carried out in accordance with drawing P02 rev C.

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



2.2 REFERENCE NO 23/500263/REM		
PROPOSAL Approval of Reserved Matters for Scale, Appearance, Landscaping, Layout being sought for the Sittingbourne Rugby Club and Community Hub including, 2x RFU compliant rugby pitches and associated parking, pursuant to application 17/505711/HYBRID		
SITE LOCATION Land At Wises Lane Borden Kent ME10 1GD		
RECOMMENDATION Delegate to the Head of Planning to grant reserved matters approval subject to appropriate conditions with further delegation to the Head of Planning /Head of Legal Services (as appropriate) to negotiate the precise wording of conditions, including adding or amending such conditions as may be consequently necessary and appropriate.		
APPLICATION TYPE <i>Large Major Other</i>		
REASON FOR REFERRAL TO COMMITTEE Borden Parish Council objects		
Case Officer Simon Dunn-Lwin		
WARD Borden and Grove Park	PARISH/TOWN COUNCIL Borden	APPLICANT Quinn Estates AGENT None
DATE REGISTERED 30/01/23	TARGET DATE 17/04/23	CASE OFFICER Simon Dunn-Lwin
BACKGROUND PAPERS AND INFORMATION: 23/500263/REM Approval of Reserved Matters for Scale, Appearance, Landscaping, Layout being sought for the Sittingbourne Rugby Club and Community Hub including, 2x RFU compliant rugby pitches and associated parking, pursuant to application 17/505711/HYBRID. Land At Wises Lane Borden Kent ME10 1GD (midkent.gov.uk)		

1. SITE LOCATION AND DESCRIPTION

- 1.1. The application site is an open field which is square in shape and measuring approximately 3.76 hectares in area. It has a frontage of approximately 200m in length on Cryalls Lane with a depth of approximately 187m to the southern boundary. It sits behind Orchard Cottages and Wises Oast Business Centre on Wises Lane to the west. The site forms part of the larger site allocated in the Local Plan for the approved urban extension across 74 hectares of land to the southwest of Sittingbourne.
- 1.2. The site is enclosed on Cryalls Lane by hedging and bordered by woodland to the east, referred to as Borden Nature Reserve, although it has no formal designation in the Local Plan. The southern site boundary terminates approximately 40m from the enclosing hedgerow to the field. It is currently accessed from Wises Lane to the south of Orchard Cottages. In the wider context it is agricultural land located in the rural area approximately 132m north of Borden Village edge at the nearest point. The site is situated within Flood Zone 1 with a low probability of flooding.

1.3. As well as the MU3 allocation cited above, the site is impacted by the following Local Plan designations: -

- The northern section of the site is located in the built-up area boundary (Policy ST3).
- It is within the Kent Minerals Brickearth Area
- Wises Lane is identified as a Rural Lane under Policy DM26
- The southern section of the site is allocated as an Important Local Countryside Gap under Policy DM25.
- Grade 1 agricultural land (Policy DM31)
- The western portion of the site nearest to Wises Lane sits within an area of archaeological potential under Policy DM34

1.4. No public footpaths cross the site. The nearest public footpath is ZR121 which is located to the southwest of Orchard Cottages on the west side of Wises Lane. Footpath ZR122 is situated approximately 140m to the southeast connecting Auckland Drive in the northeast to Borden Village in the south. The nearest heritage assets are Thatch Cottage (Grade 2 Listed) to the southwest in Borden 210 metres away. Another Grade 2 Listed Building at Cryalls Farmhouse sits 235metres to the east on Cryalls Lane.

2. PLANNING HISTORY

2.1. **17/505711/HYBRID** - Hybrid planning application with hybrid planning permission (all matters reserved except for access) sought for up to 595 dwellings including affordable housing; a two-form entry primary school with associated outdoor space and vehicle parking; local facilities comprising a Class A1 retail store of up to 480 sq m GIA and up to 560sqm GIA of "flexible use" floorspace that can be used for one or more of the following uses - A1 (retail), A2 (financial and professional services), A3 (restaurants and cafes), D1 (non-residential institutions); a rugby clubhouse / community building of up to 375 sq m GIA, three standard RFU sports pitches and associated vehicle parking; a link road between Borden Lane and Chestnut Street / A249; allotments; and formal and informal open space incorporating SuDS, new planting / landscaping and ecological enhancement works. Full planning permission is sought for the erection of 80 dwellings including affordable housing, open space, associated access / roads, vehicle parking, associated services, infrastructure, landscaping and associated SuDS.

For clarity - the total number of dwellings proposed across the site is up to 675.

Appeal Allowed Decision Date: 29.04.2021

2.2. **21/506820/SUB** - Submission of details pursuant to condition 60 (Skylark Mitigation Strategy produced by Aspect Ecology and dates December 2021) in relation to planning reference 17/505711/HYBRID and appeal decision V2255/W/19/3233606.

Approved Decision Date: 30.09.2022

2.3. **22/500132/SUB** - Submission of Details to Discharge Condition 53 - Contaminated Land assessment - i) A desk study, ii) Site investigation strategy, iii) An investigation -Soil, Soil gas, Surface and groundwater, iv) A site investigation report, v) Verification plan, Condition 57 - Scheme of gas protection measures and Condition 69 Soil Management strategy Phases 1A and 1B subject to 17/505711/HYBRID (V2255/W/19/3233606).

Approved Decision Date: 23.05.2022

2.4. **22/500133/SUB** - Submission of Details to Discharge Condition 58 Ecological Report - 1) Breeding bird survey Areas of site not originally surveyed, 2) Breeding Bird Survey Proposed skylark mitigation area(s), 3) Bat activity survey, 4) Reptile survey and 5) Dormouse Survey and Condition 59 (Part

Discharge Phase 1A only) - Updated badger survey subject to 17/505711/HYBRID (V2255/W/19/3233606).

Approved Decision Date: 06.04.2022

- 2.5. **22/500134/SUB** - Submission of details pursuant to Condition 17 (measures to minimise risk of crime) of application 17/505711/HYBRID (allowed on appeal V2255/W/19/3233606).
Approved Decision Date: 20.06.2022
- 2.6. **22/500639/SUB** - Submission of details pursuant to Condition 61 (Construction Ecological Management Plan) of Planning Application 17/505711/HYBRID Appeal reference (APP/V2255/W/19/3233606).
Approved Decision Date: 06.05.2022
- 2.7. **22/500782/SUB** - Submission of details pursuant to condition 2 (a phasing plan for delivery of the development) in relation to planning permission 17/505711/HYBRID (allowed at appeal under reference APP/V2255/W/19/3233606) in relation to the whole site.
Approved Decision Date: 06.05.2022
- 2.8. **22/500783/SUB** - Submission of Details to Discharge Condition 28 - Scheme to demonstrate the retention and phasing of road connections subject to 17/505711/HYBRID (V2255/W/19/3233606).
Approved Decision Date: 14.12.2022
- 2.9. **22/500784/SUB** - Submission of Details to Discharge Condition 20 - Construction Management Plan - Measures to manage HGV movements, Loose arriving/departing are sheeted, Temporary traffic management and signage, Parking and turning areas, Loading and unloading, storage of plants and materials, Security hoarding, wheel washing facilities, measures to control emission of dust and dirt and scheme for recycling/disposing of waste subject to 17/505711/HYBRID (V2255/W/19/3233606).
Approved Decision Date: 01.11.2022
- 2.10. **22/501634/SUB** - Submission of details pursuant to condition 41 (advance soft landscaping scheme) of application 17/505711/HYBRID (allowed on appeal APP/V2255/W/19/3233606).
Approved Decision Date: 06.02.2023
- 2.11. **22/502221/SUB** - Submission of details pursuant to Condition 70 - (details of the scheme of air quality mitigation) in relation to planning application 17/505711/HYBRID and appeal decision (APP/V2255/W/19/3233606).
Approved Decision Date: 06.02.2023
- 2.12. **22/502773/SUB** - Submission of details pursuant to condition 66 - (programme of archaeological field evaluation works relating to the rugby club site (Phase 2E)) in relation to planning permission 17/505711/HYBRID.
Approved Decision Date: 05.06.2023
- 2.13. **22/503698/NMAMD** - Non-material amendment in relation to planning permission 17/505711/HYBRID and appeal reference V2255/W/19/3233606: To change the wording of condition 66 to 'Before the approval of reserved matters for any phase (excluding Phase 1A), the applicant (or their agents or successors in title) shall secure and have reported a programme of archaeological field evaluation works for that phase, in accordance with a specification and written timetable which has been submitted to and approved by the local planning authority'.
Approved Decision Date: 06.09.2022

Related Applications

2.14. **22/504823/REM** - Approval of Reserved Matters (Layout, Scale, Appearance and Landscaping being sought) for the western spine road (Phases 2B & 2C) pursuant to 17/505711/HYBRID - Hybrid planning application with hybrid planning permission (all matters reserved except for access) sought for up to 595 dwellings including affordable housing; a two-form entry primary school with associated outdoor space and vehicle parking; local facilities comprising a Class A1 retail store of up to 480 sq m GIA and up to 560sqm GIA of "flexible use" floorspace that can be used for one or more of the following uses - A1 (retail), A2 (financial and professional services), A3 (restaurants and cafes), D1 (non-residential institutions); a rugby clubhouse / community building of up to 375 sq m GIA, three standard RFU sports pitches and associated vehicle parking; a link road between Borden Lane and Chestnut Street / A249; allotments; and formal and informal open space incorporating SuDS, new planting / landscaping and ecological enhancement works. Full planning permission is sought for the erection of 80 dwellings including affordable housing, open space, associated access / roads, vehicle parking, associated services, infrastructure, landscaping and associated SuDS.
Pending Consideration

2.15. **22/504937/REM** - Approval of Reserved Matters (appearance, landscaping, layout and scale) for Phase 1B, 2A, 2B and 2C for the erection of 209no. dwellings including affordable, together with associated access, landscaping, equipped play, drainage, infrastructure and earthworks, pursuant to 17/505711/HYBRID - Hybrid planning application with hybrid planning permission (all matters reserved except for access) sought for up to 595 dwellings including affordable housing; a two-form entry primary school with associated outdoor space and vehicle parking; local facilities comprising a Class A1 retail store of up to 480 sq m GIA and up to 560sqm GIA of "flexible use" floorspace that can be used for one or more of the following uses - A1 (retail), A2 (financial and professional services), A3 (restaurants and cafes), D1 (non-residential institutions); a rugby clubhouse / community building of up to 375 sq m GIA, three standard RFU sports pitches and associated vehicle parking; a link road between Borden Lane and Chestnut Street / A249; allotments; and formal and informal open space incorporating SuDS, new planting / landscaping and ecological enhancement works. Full planning permission is sought for the erection of 80 dwellings including affordable housing, open space, associated access / roads, vehicle parking, associated services, infrastructure, landscaping and associated SuDS.
Pending Consideration

3. PROPOSED DEVELOPMENT

3.1. Approval of reserved matters is sought for scale, appearance, landscaping and layout for the Sittingbourne Rugby Club and Community Hub including, 2x Rugby Football Union compliant rugby pitches and associated parking, pursuant to application 17/505711/HYBRID.

3.2. The proposal comprises a two storey club house/community building (with single storey side wings) located to the west of the site with access from Cryalls Lane. The building provides the following internal space: -

First Floor

- Main hall that can be subdivided -101 sqm
- Kitchen - 6.2 sqm
- Store - 6.2 sqm
- Bar Servery - 8.3 sqm
- Cellar (store) - 5.2 sqm
- Plant room - 8.1 sqm
- Cleaners store - 3.1 sqm

- WC 1&2 upstairs - 6.2 sqm
- Entrance, circulation space, lift core and stairs – 11.5 sqm

First floor total – 155.8 sqm

Ground floor

- WC 3.6 sqm
- Official changing 1 – 6.3 sqm
- Official changing 2 – 5.9 sqm
- Physiotherapy room – 10 sqm
- Equipment store – 7 sqm
- 18-20 persons changing room with showers 76.2 sqm
- 15-16 persons changing room with showers 61.8 sqm
- Entrance, circulation, lift and stair core 43 sqm.

Ground floor total 213.8 sqm

- 3.3. The total floor space within the building is 370 sqm (GIA) with a 39sqm first floor external balcony to the front facing the rugby pitches. Car parking provision amounts to 65 spaces, including 4 disabled spaces located to the rear and side of the building adjacent to the on-site central access. The eastern part of the site consists of two full size rugby pitches. The entire site is enclosed by landscaping, tree and hedge planting.

4. CONSULTATION

- 4.1. One round of consultation has been undertaken, during which letters were sent to neighbouring occupiers; a notice was displayed at the application site and the application was advertised in the local newspaper. Full details of representations are available online.

- 4.2. A total of 52 letters of representation were received in relation to the consultation, 17 of which objected to the application. Concerns / comments were raised in relation to the following matters: -

- Significant traffic generation, particularly on match days
- Highway safety issues in Cryalls Lane
- Cumulative impact of traffic from Playstool cricket and football matches at weekends and evenings
- Insufficient parking provision to meet demand
- Lack of facilities for disabled players
- Generate air pollution
- Increased light and noise pollution in area from club house use and cars coming and going.
- Hours of operation
- Clubhouse use will encourage anti-social behaviour
- Loss of Grade 1 agricultural land for food production
- Loss of countryside to development
- Not a suitable location for emergency vehicle access

- Negative impact on local wildlife, particularly on adjacent nature reserve
- Loss of Skylark habitat
- Impact on nocturnal fauna, including foxes, badgers, Barn Owl, Tawny Owl and Little Owl.
- Rugby ball kicked into nature reserve will damage local flora/protective fencing/netting required
- No badger proof fencing to protect the pitches/loss of wildlife corridors
- Cryalls Lane requires parking restrictions to prevent overspill parking
- Inadequate toilet facilities.
- Poor design out of keeping with rural setting
- No storage facility for grounds equipment
- Landscape management plan inadequate – no organic products mentioned particularly for weed control.
- Water supply capacity for watering programme questioned
- Conflicts with SBC Playing Pitch Strategy 2016-2026 – surplus of playing fields.

4.3. The 35 letters of representation received supporting the proposal raised the following matters which are summarised: -

- Will benefit young and old in the community to participate
- Current facilities are overcrowded and out of date
- Expand rugby facilities for wider community
- Benefit to commerce and trade in Sittingbourne
- Considerately designed and well placed
- Good for health and wellbeing (physical and mental)
- Provide modern enhanced facilities
- Access improved and reduced traffic on Borden Lane
- First opportunity in 50 years for a “home of their own”
- Offer opportunity for the disadvantaged and isolated people in the community

4.4. **Borden Parish Council** objected to the application on the following grounds: -

- Estate Managing Agent should be defined
- Badger survey out of date
- Condition required for long term management of landscaping
- Stop netting required to east, south and west boundaries to prevent balls entering neighbouring land
- Restrict vehicle access to Cryalls Lane only which should be widened to 5.5m from Wises Lane junction
- Cryalls Lane should be 20mph zone
- Ecology Report reliance on low ecological significance of Borden Nature Reserve (BNR) is incorrect
- Further ecological surveys required before any works and due weight should be given to BNR
- No reference to gas leaks from BNR. Appropriate safeguards should be in place
- Playing pitches require time to ‘settle’ as per RFU regulations affecting occupation usage timeline

- Clubhouse design not in keeping with rural setting
- Archaeological assessment required before any works with ongoing monitoring during works
- Construction and Ecological Management plan should be approved before any works start
- Insufficient toilet facilities for non-players which should provide separate male and female toilets
- Insufficient storage for grounds maintenance, playing and training equipment
- Inadequate parking provision for players/away teams with prospect of further 2 junior and 1 senior pitch likely to displace parking on nearby roads and verges
- Inadequate space for coaches to manoeuvre within site
- Dispute Transport Statement estimates of 75 people for match days and trips
- Draw attention to completion trigger for rugby club facility on occupation of 180 dwellings and the completion of Wises Lane and Spine Road link.

The full response is attached as Appendix 1.

5. REPRESENTATIONS

SBC Conservation: - No objection subject to condition on facing materials

SBC Tree Officer – No objection subject to conditions

Mid Kent Environmental Health: - No objection subject to conditions

KCC Archaeology – No objection

KCC Ecology: - No objection

KCC Flood and Water Management: -No objection

KCC Minerals – No objection

KCC Highways: - No objection

KCC PROW: - No objection

Natural England - No objection

Sport England: - No objection subject to conditions

Southern Water: - No objection to the application and comment that *“The sewers services at this location are the responsibility of ICOSA There is an inset agreement/NAV agreement in place between Southern Water and ICOSA for the supply of sewerage services. The connection/ discharge points to the public network and agreed discharge flow rates must be complied with inset/NAV agreements terms.”*

Lower Medway Internal Drainage Board – No comments to make.

Kent Police: - Advise applicant to contact Designing Out Crime Officers (DOCOs) to address CPTED (Crime Prevention Through Environmental Design) and incorporate Secure by Design (SBD) as appropriate.

SBC Greenspaces Manager: - recognises that at peak times there is no surplus of rugby pitches in the area.

6. DEVELOPMENT PLAN POLICIES

6.1. **Bearing Fruits 2031: The Swale Borough Council Local Plan 2017 –**

ST 1 (Delivering sustainable development)

ST 5 (Sittingbourne area strategy)

MU 3 (Land at south-west Sittingbourne)

CP 4 (Requiring good design)

CP 5 (Health and wellbeing)

CP6 (Community facilities and services to meet local needs)

CP 8 (Conserving and enhancing the historic environment)

DM 6 (Managing transport demand and impact)

DM 7 (Vehicle parking)

DM 14 (General development criteria)

DM 17 (Open space, sport and recreation provision)

DM 19 (Sustainable design and construction)

DM 21 (Water, flooding and drainage)

DM 24 (landscape)

DM 28 (Biodiversity and geological conservation)

DM 29 (Woodland, trees and hedging)

DM 31 (Agricultural land)

DM 32 (Development involving listed buildings)

DM 34 (Scheduled Monuments and archaeological sites)

6.2. **Supplementary Planning Guidance/Documents**

- Parking Standards (May 2020)
- Swale Landscape Character and Biodiversity Appraisal (November 2011)
- Air Quality and Planning – Technical Guidance (Updated May 2021)
- Planting on New Developments

7. **ASSESSMENT**

7.1. This application is reported to the Committee because Borden Parish Council has objected to the proposal. Considering these comments and the proposal that has been submitted, the committee is recommended to carefully consider the following points which are the main considerations of this application.

- Principle of Development
- Landscape and Visual Impact
- Heritage Impact
- Archaeology
- Design, layout and appearance
- Landscaping
- Ecology
- Transport and Highways
- Air Quality
- Flood Risk, Drainage and Surface Water
- Contamination
- Living Conditions
- Sustainability / Energy

7.2. **Principle**

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

7.2.2. In this case, the principle of the development is established by the appeal decision dated 29th April 2021 granting hybrid planning permission for a rugby clubhouse/community building up to 375 sqm (GIA), 3 standard RFU sports pitches and associated vehicle parking within Phase 2F (the current application site) of the overall hybrid development across the MU3 allocated land to the south-west of Sittingbourne. This proposal only includes the provision of two pitches in line with the approved parameter plan. The third sports pitch is provided to the west of the site as part of the school grounds (Phase 2F) to accord with the approved parameter plans.

7.2.3. The National Planning Policy Framework provides the national policy context for the proposed development and is a material consideration of considerable weight in the determination of the application. The NPPF states that any proposed development that

accords with an up-to-date local plan should be approved without delay. At the heart of the NPPF is a presumption in favour of sustainable development and for decision-taking this means approving development that accords with the development plan.

- 7.2.4. Representations have expressed concern about the loss of agricultural land, but members are asked to note that this issue was considered at the appeal stage for the principle of the development and the proposal is considered compliant with Policy DM31.

7.3. Landscape and Visual Impact

- 7.3.1. The NPPF requires decisions to ensure that development is '*sympathetic to... landscape setting.*' The landscape and visual impacts of the overall development scheme was considered at the appeal stage to be acceptable, given the site allocation under Policy MU3. The Inspector considered that the landscape impacts would be acceptable and accord with Policy DM24.

- 7.3.2. The site accords with the hybrid masterplan approved at outline stage where the impact of the proposal upon the wider landscape was carefully considered by the Planning Inspector to be acceptable. Given broad accordance with the approved masterplan and parameter plans any impact upon the landscape is considered to be acceptable therefore the proposal accords with Policy DM24 of the Local Plan 2017.

7.4. Heritage Impact

- 7.4.1. The National Planning Policy Framework states that local planning authorities should identify and assess the particular significance of any heritage asset and consider the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits that may arise and this is endorsed by the Local Plan.

- 7.4.2. The Heritage Statement submitted in support of the application concludes that the significance of the identified heritage assets potentially impacted by the proposal will be preserved. The statement has been reviewed by the Council's Conservation and Design Manager who concurs.

- 7.4.3. For clarity, the heritage assets potentially impacted by the proposal are all designated assets consisting of the following identified on the submitted heritage asset plan: -

Borden (The Street) Conservation Area
Grade I listed Parish Church of SS. Peter & Paul
Grade II* listed Borden Hall
Grade II listed Dovecote, north of Borden Hall
Grade II listed Cryalls Farmhouse
Grade II listed Thatch Cottage
Grade II listed Oak House
Grade II listed Street Farm House

Grade II listed Apple Tree Cottage
Grade II listed Forge House/Barrow House and railings
Grade II listed Forge (east of Forge House)
Grade II listed Holly Tree Cottage
Grade II listed Yew Tree Cottage

- 7.4.4. It is considered that the only structures of the proposed development which could have any material degree of intervisibility with some of the aforementioned heritage assets will be the upper parts of the rugby pitches goal post, so any visual impact would be minimal. However, any proposal to introduce floodlighting to the pitches could make the proposed development materially more impactful in the wider landscape. No floodlighting is proposed in the current application. The committee is asked to note that should flood lighting be required following reserved matters approval it will be subject to a standalone application for determination on the basis that condition 43 of the outline permission prevents the sports pitches from being illuminated.
- 7.4.5. Equally, heritage impacts on listed buildings (Cryalls Farmhouse and Thatch Cottage – both included in the List of Buildings of Special Architectural or Historic Interest as Grade II) were considered in the context of the NPPF and S.66 of the Planning (Listed Buildings and Conservation Areas) Act at the appeal stage to be acceptable. The heritage impacts were considered ‘low’ and substantially outweighed by the public benefit of the scheme. Consequently, the appeal decision determined that the hybrid proposal would accord with Policy DM32. Further consideration of the heritage impact of this reserved matters proposal is considered below.
- 7.4.6. In considering the impact of this proposal on designated heritage assets, officers have had regard to the Council’s obligations pursuant to the Planning (Listed Building and Conservation Areas Act) 1990. The setting of the listed buildings nearby (Thatch Cottage and Cryalls Farmhouse) would be preserved. The overall impact on heritage assets identified would be less than substantial at the lower end in NPPF terms. Consequently, due to the public benefits of this element of the proposal in the form of dedicated sports provision the proposal would be Policy DM32 compliant.

7.5. Archaeology

- 7.5.1. The NPPF sets out that where development has the potential to affect heritage assets with archaeological interest, LPAs should require developers to submit an appropriate desk-based assessment, and where necessary, a field evaluation.
- 7.5.2. Policy DM 34 of the Local Plan sets out that planning applications on sites where there is or is the potential for an archaeological heritage asset, there is a preference to preserve important archaeological features in situ, however, where this is not justified suitable mitigation must be achieved.
- 7.5.3. The applicant submitted a programme of field evaluation work under Condition 66 of the hybrid permission which was part approved on 05/06/23 following KCC Archaeology consideration and confirmation (ref: 22/502773/SUB). The field evaluation has been

monitored by KCC Archaeology and completed. The applicant has submitted the findings in a preliminary report which has been considered by KCC, who confirm that while some amendments to the report are needed to address it is sufficient to satisfy Condition 66 of the hybrid permission to enable the reserved matters application to be determined for this site.

- 7.5.4. In view of this, officers consider that the proposal is compliant with Policy DM 34 of the adopted Local Plan, together with Section 16 of the National Planning Policy Framework.

7.6. Design, Layout and appearance

- 7.6.1. The National Planning Policy Framework attaches great importance to the design of the built environment and that design should contribute positively to making places better for people. The Local Plan reinforces this requirement under Policies CP 4 and DM14.
- 7.6.2. The proposed two storey club house building is considered appropriate in scale to the surrounding context of existing and emerging phased development under the hybrid permission on the north side of Cryalls Lane. The scale and land use proposed conforms with the approved building heights parameters plan 2574-304 Rev P and the land use parameters plan 2574-300 Rev N.
- 7.6.3. The proposed layout conforms with the approved masterplan 2574-401 rev J by locating the clubhouse/community building and car parking to the western part of the site with the remaining eastern part laid out as rugby pitches and surrounded by landscaping.
- 7.6.4. The architecture of the building presents a contemporary character as a new landmark statement. The materials proposed for the clubhouse comprise a combination of dark coloured vertical metal cladding and red stock brick. Elements of infill vertical timber cladding are also incorporated. The lift and stair core are expressed in a contrasting-coloured metal panel system. The windows and doors are proposed as dark grey finished frames. The pitched roof is finished in standing seam metal material.
- 7.6.5. The applicant has submitted details of existing and proposed site levels to discharge Condition 15 of the hybrid permission which is required at the reserved matters stage. There is no significant level change in levels around the clubhouse, parking areas or pitches and the information is considered sufficient to discharge Condition 15 of the hybrid permission.
- 7.6.6. Officers consider the design of the building is appropriate to the context. During the assessment stage minor amendments were requested to provide lean-to pitch roofs over the side single storey wings (originally flat roofs) which have been incorporated to improve the overall symmetry of the design. The appearance is considered a reflection of a high-quality contemporary design to comply with relevant policy requirements and is acceptable in the context of the hybrid scheme in an emerging semi-rural/suburban setting. Subject to details of facing materials to be reserved by condition for further approval there is no objection to the scale, layout and appearance which is considered compliant with Policies CP 4 and DM14.

7.7. Landscaping

- 7.7.1. The NPPF recognises the contribution of trees to the intrinsic character and beauty of the countryside. The Local Plan requirement is recognised through policy DM 29 of the Local Plan.
- 7.7.2. Extensive landscaping is proposed within the site, which forms 5-6m wide buffers along the site boundaries. The new entrance on Cryalls Lane requires removal of part of the hedging. Native planting including 111 trees of a native woodland mix, low level native shrubs and native boundary hedges are proposed to complement its setting. The site remains largely green with natural turf for the rugby pitches conforming with Sport England design guidance. This would also comply with Condition 43 of the hybrid permission to secure grass sports pitches.
- 7.7.3. The Council's Tree Officer has considered the landscaping proposal and planting specification, together with the Landscape Management Plan, which are considered acceptable, subject to the submitted details being secured by condition for this site, notwithstanding the indicative landscaping strategy has been approved within the hybrid permission and the requirements of Condition 62 (CEMP) as referred in the ecology section below.
- 7.7.4. Overall, officers consider that the landscaping proposal would mitigate the impact on the local landscape, including the adjacent Borden Nature Reserve, contribute to ecology and visual amenity to comply with Policy DM 14 and DM 24.

7.8. Ecology

- 7.8.1. National planning policy aims to conserve and enhance biodiversity and encourages opportunities to incorporate biodiversity in and around developments. Under the Natural Environment and Rural Communities Act (2006), "every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of these function, to the purpose of conserving biodiversity".
- 7.8.2. In terms of the Local Plan, policy DM 28 sets out that development proposals will conserve, enhance, and extend biodiversity, provide for net gains where possible, minimise any adverse impacts and compensate where impacts cannot be mitigated. The issue of Biodiversity Net Gain has been dealt with in the appeal. Overall BNG is 12.9%.
- 7.8.3. Pre-commencement conditions in the hybrid permission relating to ecology require the following details: -
- Condition 58 – Updated baseline surveys for breeding birds, bats, reptiles and dormouse;
 - Condition 59 – Updated Badger Survey;
 - Condition 60 – Revised Skylark Mitigation Strategy;
 - Condition 61 -Construction Ecological Management Plan (CEMP); and
 - Condition 62 – Landscape and Ecological Management Plan (LEMP) to be submitted within 6 months of the commencement of development of any phase.

- 7.8.4. The above requirements are considered to address the concerns raised by local residents and Borden PC on biodiversity/habitat impact. Members are also asked to note that in response to local concerns relating to Skylarks, a mitigation strategy has been approved under Condition 60 of the hybrid permission, as referenced above on 11/04/2022 (21/506820/SUB). A legal agreement is also in place dated 15/09/2022 to fulfil the requirements of the approved Skylark mitigation strategy.
- 7.8.5. A site wide Construction Ecological Management Plan (CEMP) pursuant to Condition 60 of the hybrid permission was also approved on 06/05/2022 under reference 22/500639/SUB as listed above. Should the application be approved, further details relating to Conditions 58, 59 and 62 require submission for approval before works start on this site.
- 7.8.6. This application is supported by an Ecology Technical Note by Aspect Ecology acknowledging the requirements under the hybrid permission as set out above.
- 7.8.7. The application and supporting information have been considered by KCC Ecology who confirm that ‘it is sufficient to determine the application.’ KCC Ecology acknowledge that with the exception of the new access creation on Cryalls Lane the hedgerows are to be retained and enhanced within the site. KCC Ecology also confirm the following:
- Measures detailed within the CEMP submitted under Condition 61 are valid for this application to avoid impact on bats, badgers, dormouse, nesting birds and reptiles;
 - The submitted plans confirm that hedgerows within the site will be enhanced by native species planting/woodland buffer and the grassland surrounding the pitches are to use flowering lawn mix which is mown more regularly but provide benefits to biodiversity;
 - A management plan has been submitted indicating that habitats will be managed sensitively. However, the management plan (Landscape Management Plan by Aspect Ecology referred above under landscaping) was written in November 2021 and recommend that on completion of all the reserved matters the management plan for the site is reviewed and takes account of any changes.
- 7.8.8. In view of the above, officers consider that there are existing conditional safeguards to protect biodiversity and the application should be supported on ecological grounds subject to the discharge of relevant safeguarding conditions referred above. Consequently, officers consider the proposal is Policy DM 28 compliant.

7.9. Transport and Highways

- 7.9.1. The NPPF promotes sustainable patterns of development and expects land use and transport planning to work in parallel in order to deliver an integrated approach. A core principle of the NPPF is that development should:

“Actively manage patterns of growth to make the fullest use of public transport, walking and cycling and to focus development in locations which are sustainable.”

7.9.2. The NPPF also states that:

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”

7.9.3. Local Plan policy promotes sustainable transport through utilising good design principles. It sets out that where highway capacity is exceeded and/ or safety standards are compromised proposals will need to mitigate harm.

7.9.4. The proposal should be viewed in the context of the hybrid scheme and the provision of the spinal link road from Key Street serving the overall MU3 development site including access to the proposed development. Local concerns relating to traffic congestion and highway safety were dealt with extensively at the public inquiry. The Inspector concluded on the complex transport issue that *‘subject to the implementation of mitigation measures the appeal scheme would not have an unacceptable impact on highway safety or the free flow of traffic on the local or strategic road network contrary to Policy DM 6’* (paragraph 11.11).

7.9.5. KCC Highways have considered the amended plan and confirm that they are satisfied with the amendments. KCC Highways also confirm that Cryalls Lane will become a residential road with a 30mph speed limit from the current 60mph national speed limit. The road will also be widened to 5.5m. The latter address local concerns albeit the speed limit is not the 20mph requested by Borden PC. Given the context of the site and surroundings and KCC’s acceptance on the speed limit change, officers consider it is acceptable (notwithstanding that this is not a matter which this reserved matters application can control). Subject to an informative KCC Highways confirm that they have no objection to the proposal.

7.9.6. The application is supported by a Transport Statement (TS) which has been considered by KCC Highways, who acknowledge that the highway impacts on the local road network was accepted at the appeal stage for the hybrid application.

7.9.7. KCC Highways initially raised concerns about coach turning areas and parking for a 12m coach within the site. In addition, minimum size of parking spaces of 2.5m by 5m and 6m by 3.7m for disabled spaces with a 0.2m extra edge to end spaces abutting landscaped edges were requested. The applicant has submitted an amended plan to address the issues in drawing number 21-100-002 Rev B.

7.9.8. Car parking provision at 65 spaces with 4 disabled spaces complies with the SBC Parking Standards for D2 use (outdoor sports facilities) which requires an advisory number of 25 spaces based on projected players and spectators for both pitches. One coach parking space is provided within the site. The clubhouse with D2 community use also adds a requirement of one space per 22sqm of floor space equating to a further 7 spaces if both facilities are in use. The total SPD requirement is therefore 32 car parking spaces. The scheme is therefore in accordance with the Council’s adopted Parking Standards SPD and Officers consider the total car parking provision, including a coach parking space, complies

with is SPD and Policy DM 7 compliant. However, no EV charging points are proposed which can be secured by condition to meet the 10% SPD requirement for active charging spaces or 7no.

- 7.9.9. Conditions of the hybrid permission on highway matters require submission and approval on the following matters: -

Conditions 33 (Travel Plan);

Condition 36 (covered secure cycle parking provision); and

Condition 37 (details of roads and footpath finishes, including lighting, drainage

- 7.9.10. Condition 36 (covered secure cycle parking) is satisfied by details submitted in this application for 10 spaces which complies with the SBC standard requiring at least 6 spaces and therefore this condition can be discharged. Conditions 33 requires further details for approval prior to occupation. Condition 37 requires further details for submission and approval before construction begins.

- 7.9.11. In addition to the above, the Transport Statement points out that once the western link road and local access roads in the overall MU 3 estate are completed a dedicated local bus service, cycle ways and footways will enable alternative sustainable modes of travel to access the site from surrounding residential areas.

- 7.9.12. In view of the above, the proposal is considered compliant with Policies DM 6 and DM7 and the NPPF.

7.10. Air Quality

- 7.10.1. The importance of improving air quality in areas of the borough has become increasingly apparent over recent years. Legislation has been introduced at a European level and a national level in the past decade with the aim of protecting human health and the environment by avoiding, reducing or preventing harmful concentrations of air pollution.

- 7.10.2. The NPPF states that the planning system should contribute to and enhance the natural and local environment by preventing new/existing development from contributing to or being put at unacceptable risk from, or being adversely affected by, inter alia, unacceptable levels of air pollution. It also requires the effects of air pollution and the potential sensitivity of the area to its effects to be taken into account in planning decisions.

- 7.10.3. The Planning Practice Guidance on Air Quality states that

“whether or not air quality is relevant to a planning decision will depend on the proposed development and its location. Concerns could arise if the development is likely to generate air quality impact in an area where air quality is known to be poor. They could also arise where the development is likely to adversely impact upon the implementation of air quality strategies and action plans and/or, in particular, lead to a breach of EU legislation.....”

- 7.10.4. The Local Plan at Policy DM 6 sets out that development proposals will integrate air quality management and environmental quality into the location and design of, and access to development and in so doing, demonstrate that proposals do not worsen air quality to an unacceptable degree.
- 7.10.5. Air quality was considered in the Public Inquiry across the whole MU3 development site. Substantive evidence and representation from all parties, including local residents (BRAD) on the issue was considered by the Planning Inspector. The LPA acknowledged at the inquiry that air quality objectives would not be breached but additional pollution is being introduced. The Inspector considered ‘that position had already been accepted in the site allocation, despite the LPA and BRAD’s approach for no-development which given the need for new housing is an unrealistic argument.’
- 7.10.6. The Inspector concluded that ‘with the link road and direct access onto the A249 it would result in reductions in traffic on the existing A2 and Key Street (roundabout which were the most sensitive receptors) with consequent decrease in congestion and improvements in air quality through reduced vehicle emission. Whilst the development would involve changes in air quality at the appeal site through vehicle emissions where no houses currently exist and traffic levels are lower, with the direct mitigation measures and conditions to reduce dwelling emissions it is reasonable to conclude that air quality levels would be well below the objective limits. Thus, while the effects of the development could, simplistically be described as redistribution, the objectives to Policy DM 6 (2d) that “....proposals do not worsen air quality to an unacceptable degree.....” is acknowledged.
- 7.10.7. Members are asked to note that details of the scheme of air quality mitigation under Condition 70 of the hybrid permission was approved on 06/02/2023 under reference 22/502221/SUB. Given the appeal consideration on this issue and subsequent approval of details officers consider that the concerns on air quality are adequately dealt with.
- 7.10.8. Notwithstanding the above local concern on air quality impacts, this matter has been mitigated through the outline permission via associated condition and Section 106 agreement. On this basis the Environmental Health have raised no objections. On this basis the proposal is considered to accord with Policy DM 6 of the Local Plan 2017.

7.11. Flood Risk, Drainage and Surface Water

- 7.11.1. The NPPF states that local planning authorities should ensure that flood risk is not increased elsewhere and that any residual risk can be safely managed. This is reflected in policy DM 21 of the Local Plan. The hybrid permission is supported by a Flood Risk Assessment (FRA) and Addendum to Flood Risk Assessment dated May 2018. Each phase within the overall development site is subject to a detailed drainage strategy to be submitted and approved before works commence (Condition 49) and ongoing maintenance (Condition 50). The applicant acknowledges this will be submitted should the reserved matters be approved.
- 7.11.2. KCC have been consulted formally on this application and comment that ‘due to the large amount of space available for infiltration features, we would have no objection to the determination of reserved matters.’

- 7.11.3. In view of the above, the proposal is considered to comply with Policy DM 21 subject to further details for approval under the hybrid permission as stated.

7.12. Contamination

The NPPF states that local planning authorities should ensure that the site is suitable for its new use taking account of various matters, including pollution arising from previous uses.

- 7.12.1. Condition 53 of the hybrid permission required the submission of a contaminated land assessment. The details have been submitted and approved under Condition 53 on 23/05/2022 under reference 22/500132/SUB as listed above. The assessment also considered the risk of ground gas is acceptable. The EHO however considers a contamination watching brief condition is necessary. The proposal is therefore considered compliant with Policy MU 3 (10).

7.13. Living Conditions

Existing residents

- 7.13.1. The Local Plan Policy DM 14 requires that new development has sufficient regard for the living conditions of neighbouring occupiers.
- 7.13.2. The nearest residential properties lie to the southwest at 1 and 2 Orchard Cottages, a semi-detached pair. No.1 Orchard Cottage is located approximately 50m in a straight line from the proposed club house. The car parking area behind the cottages are approximately 12m from the common boundary. Considering the separation distances with the nearest residential neighbours any impact of the proposal upon the living conditions including noise and light pollution is considered to be acceptable. SBC Environmental Health has raised no objection to the proposal subject to conditions relating to the submission of an operational management plan, which will include details of the hours of operation and a external lighting strategy. These conditions can be reasonably imposed upon this application avoid any undue impact upon neighbouring occupiers. The proposal is therefore considered to comply with Policy DM 14.
- 7.13.3. The committee is asked to note that the use of the clubhouse is subject to a 'Community Uses Agreement' (CUA) required by the existing S106 agreement covering the hybrid development. The CUA secures, among others, the opening hours to be approved by the Management Committee which includes an SBC officer, SBC Councillor and a Borden Parish Councillor.' The CUA must be in place before the facility can be used

7.14. Sustainability / Energy

- 7.14.1. Policy DM 19 of the Local Plan requires development proposals to include measures to address climate change.
- 7.14.2. The proposal has been designed to provide a sustainable development to achieve a BREEAM "very good" rating demonstrating recognised sustainability credentials in accordance with adopted policy DM19 and adheres to the requirements of Condition 14 (BREEAM 'very good rating') of the hybrid planning permission. The verification certificate is also required for approval under the same condition.

7.15. Other matters

- 7.15.1. The concerns expressed by local residents and the Borden Parish Council are largely addressed within the body of the report.
- 7.15.2. With regard to safety netting around the rugby pitches this is not a statutory or Sport England requirement and rugby pitches are generally not subject to safety netting, given the risk from bodily injury by a rugby ball is less than a cricket ball. The rugby pitches are contained within the site with wide landscaped edges to the boundaries and tree planting. In terms of the potential impact on Borden Nature Reserve (BNR) from a displaced ball, goal posts from pitch 1 (south) are approximately 36m to the BNR boundary and 42m for pitch 2 (north) and considered a minimal risk given the distances involved, notwithstanding the existing tree screening on the BNR boundary.
- 7.15.3. With regard to concerns over insufficient toilet facilities within the club house, there are 15 toilets provided. 13 on the ground floor and 2 on the first floor for dual use, including 2 disabled toilets. A lift is also provided for disabled use in the main stair core.
- 7.15.4. With regard to the concern relating to the conflict with SBC Playing Pitch Strategy 2016-2026 on the surplus of playing pitches, the Greenspaces Manager has provided the following comments: -

“The paragraph (page 2) identifies that at the time of the study there was a theoretical surplus of rugby pitches across the Borough, however this is attributed to pitches that were not available to community use such as those within Fulston’s school field. Some surplus capacity does exist in Sittingbourne, but it goes on to identify that use at specific peak times pitches are at capacity which in reality means that there is no surplus.

Further on page 25 in the Assessment Summary Section it identifies that “Sittingbourne Rugby Club confirm their number of teams is increasing at both senior and junior level. Difficulties with obtaining pitches for all teams means the club will need to look for other options in addition to their base at Gore Court Sports Ground.”

Further on page 60 in the Action Plan it identifies the need to address Sittingbourne’s significantly overplayed pitches”.

- 7.15.5. The committee is also asked to note that the strategy was not fully adopted due to difficulties with engagement with some of the National Governing Bodies at the time.

7.16. Conclusion

- 7.16.1. The proposal adheres to the approved parameter plans and masterplan of the hybrid permission. Its design, layout, appearance, and landscaping are considered acceptable and policy compliant, for the reasons set out in this report.
- 7.16.2. The proposal would provide a permanent home to Sittingbourne Rugby Club with space for community use secured by the existing S106 legal agreement tied to the hybrid permission.

The facility will benefit the community and meet NPPF and local plan policy aspirations for health and wellbeing (Policy CP5) and community facilities (Policy CP 6).

- 7.16.3. In view of the above, the committee is recommended to grant reserved matters approval subject conditions.

Conditions

- 1 The development hereby permitted shall be carried out in accordance with the following approved plans:

21.048-002 B Site Location Plan with existing levels
21.048-150 -Cycle Storage Details
21.048-010 J Proposed Site Layout Plan
21.048-012 J – Proposed Site Plan Layout Plan with Levels
21-100-001 B - Site Access and Tracking Diagram
21-100-002 B - Internal Layout and Tracking Diagram
30625A-10-P2-P3 -Proposed Floor Plans and Elevations

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

- 2 Prior to the construction of the development above ground details of all external finishing materials, including roofing materials and window systems, including reveals, shall be submitted to and approved in writing by the Local Planning Authority. The development shall proceed in accordance with the approved details.

Reason: To secure and appropriate design and finish to the development in the interests of the visual amenities of the area.

- 3 The landscaping scheme and planting specification shown on drawing nos. 7796.LP.1.0 Rev A shall be carried out within 12 months of the completion of the development and maintained in accordance with the Landscape Management Plan by Aspect Landscape Planning dated November 2021 (Ref: 7796.Lan. Man.001). Any trees or shrubs 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.

Reason: To ensure a satisfactory external appearance and provision for landscaping in accordance with Policy DM14 of the Local Plan 2017.

- 4 Prior to the occupation of the development, a management plan covering the entirety of the operation shall be submitted for approval to the local planning authority. The plan shall include but not be limited to hours of operation and delivery, control of noise from plant and machinery, noise from internal and external activities. The plan should include procedures for response to complaints from residents or the local authority. It should include a review mechanism in response to justified complaints. Once approved the plan shall be implemented to the satisfaction of the local planning authority.

Reason: To safeguard the living conditions of existing and proposed residential neighbours to comply with Policy DM 14 of the Local Plan.

- 5 No external lighting shall be installed until a detailed scheme of lighting has been submitted to and approved in writing by the Local Planning Authority prior to the commencement of the development. This scheme shall take note of and refer to the Institute of ILP Guidance Note 01/21 The Reduction of Obtrusive Light (and any subsequent revisions) and shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles) and an ISO lux plan showing light spill. The scheme of lighting shall be installed, maintained, and operated in accordance with the approved scheme unless the Local Planning Authority gives its written consent to any variation.

Reason: To safeguard the living conditions of residential neighbours and biodiversity to comply with Policies DM 14 and DM 28 of the Local Plan.

- 6 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.

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

7. No development shall commence [or other specified time period] until the following documents have been submitted to and approved in writing by the Local Planning Authority after consultation with Sport England:

(i) A detailed assessment of ground conditions (including drainage and topography) of the land proposed for the playing field which identifies constraints which could adversely affect playing field quality; and

(ii) Where the results of the assessment to be carried out pursuant to (i) above identify constraints which could adversely affect playing field quality, a detailed scheme to address any such constraints. The scheme shall include a written specification of the proposed soils structure, proposed drainage, cultivation and other operations associated with grass and sports turf establishment and a programme of implementation.

The approved scheme shall be carried out in full and in accordance with the approved programme of implementation [or other specified time frame – e.g., before first occupation of the establishment]. The land shall thereafter be maintained in accordance with the scheme and made available for playing field use in accordance with the scheme.

Reason: To ensure that the playing field is prepared to an adequate standard and is fit for purpose and to accord with Policy DM 17.

8. No development shall commence [or other specified time period] until a schedule of playing field maintenance including a programme for implementation for a minimum period of [five] years starting from the commencement of use of the development [or other specified time period] has been submitted to and approved in writing by the Local Planning Authority after consultation with Sport England. Following the commencement of use of the development the approved schedule shall be complied with in full.

Reason: To ensure that the playing field is first established as a functional playing field to an adequate standard and is fit for purpose and to accord with Policy DM17.

9. Prior to the use hereby permitted commencing, details of active electric vehicle charging points, to serve 7 car parking spaces shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be completed prior to first public use of the building and maintained thereafter.

Reason: In the interests of sustainable development to comply with Policy DM 19.

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 applicant amended the proposal in response to officer requests.

The application was considered by the Planning Committee where the applicant/agent also 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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APPENDIX 1

Appendix 1: Borden PC Final Comments

From: Clerk <clerk@bordenparishcouncil.gov.uk>
Sent: 28 March 2023 12:47
To: Simon Dunn-Lwin
Subject: FW: APPLICATION REF: 23/500263/REM - Land at Wises Lane.

Hi Simon

Regarding Borden Parish Councils comments below which were submitted on 17th February, can you please add that the Parish Council Objected to this application for the following reasons:

APPLICATION REF: 23/500263/REM

The Council are concerned that:

- The Estate Managing Agent should be defined.
- The Badger Survey is over 12 months old and a more up to date one is required.
- There should be a condition that specifies the number of years that defines '...long term management of the proposed landscaping.'
- There should be sufficient 'stop netting' to the east, south and west boundaries to prevent balls entering the Nature Reserve, fields where horses are stabled and free to roam and the cottages and Oast Business Centre.
- Vehicular access should only be from Cryalls Lane which should be widened to 5.5m from its junction with Wises Lane. There should be no access from Wises Lane.
- Cryalls Lane should be 20mph zone.
- The Ecological Report relies heavily on the fact that this is currently an arable site with very little ecological significance and the Aspect Report asserts it is bounded by more arable land to the east, which would be assumed to have equal low ecological significance. However, to the east is the Borden Nature Reserve which will have significant ecological significance to the proposed rugby site.
- Further ecological surveys are required before any works are started for significant change. Due weight should be given to the Nature Reserve on the eastern side.
- There is no mention of possible gas leakage from the Nature Reserve. Appropriate safeguards should be in place.
- We are concerned of the provision of playing pitches will take considerable time to settle as per RFU regulations. Concerns are that this could drastically affect the timeline between occupation and usage.
- The design of the clubhouse is not in keeping with the rural nature of Borden.
- There should be an archaeological study carried out before any works are started and appropriate experts should be on hand during the works.

APPENDIX 1

- Construction and Ecological Management Plans must be developed and approved before any works start.
- There are insufficient toilet facilities for non-players. The Department for Levelling Up, Housing and Communities announced on 4th July 2022 that all new public buildings should have separate male and female toilets.
- There is insufficient provision for storage of equipment such as ground maintenance, playing/training equipment e.g., scrum machine, lawnmower.
- Given the specification of 2 pitches there is insufficient parking, partly because the application figures presume away teams will travel by coach, however, due to the nature of local Kent teams playing, they will generally travel by car. This will be more inadequate with the prospect of further 2 junior and 1 senior pitch as specified in the planning conditions. This will result in cars parking on nearby roads and verges.
- There is inadequate space for coaches to manoeuvre safely within the club house community area.
- The Transport Statement estimates 75 people for match days. A figure of at least 107 people is more realistic, 46 players, 15 coaches and 46 spectators. The Statement estimates worse case scenario 90% travel by car and on average 2 sharing, equating to 39 car trips. A realistic figure is at least 53 car trips. These figures are for 1 pitch. There are 2 pitches, enabling 2 home games from any Section of the Club, so the figures should be doubled at least.
- We would remind planners that ‘no more than 180 dwellings shall be occupied until the community facility/rugby clubhouse and associated pitches have been completed and made available for use’. Furthermore in 2.2.2 of the Transport Statement states that the rugby club will not be used until the Wises Lane and Spine Road link to the Club are in place.

Kind Regards

Teresa

Teresa Millum

Clerk to Borden Parish Council

In order to deal with your issue we may need to share your personal data that we hold with other data controllers, such as local authorities, community groups, charities, other not for profit entities and where appropriate contractors. The local authority and/or any named contractor will become joint 'data controllers' under the General Data Protection Regulations (GDPR) which means we are all collectively responsible to you for your data. Where each of us above are processing your data for our own independent purpose then each of us will be independently responsible to you and if you have any questions, wish to exercise any of your rights under GDPR or wish to raise a complaint you should do so directly to the relevant data controller. If you wish us to desist in dealing with your matter by sharing your details as described above please let us know immediately.

A full privacy notice relative to GDPR is available upon request.

This email and any other accompanying document(s) contain information from Borden Parish Council, which is confidential or privileged. The information is intended to be for the exclusive use of the

PLANNING COMMITTEE – 17 AUGUST 2023**PART 5**

Report of the Head of Planning

PART 5Decisions by County Council and Secretary of State, reported for information

- **Item 5.1 – 22 East Street Sittingbourne**

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

The application site is a three storey building that was previously in use as a Public House but was granted permission to be converted to three flats in 2015. These works were not carried out in accordance with the approved plans, and this application sought a Lawful Development Certificate for the works as built.

The Inspector agreed with the Council that the development would have to be in situ for 10 years in order to become lawful through the passage of time, and as this is not the case, dismissed the appeal, concluding that the Council's refusal to grant a certificate of lawfulness to be well-founded.

- **Item 5.2 – Land at Murston Playing Fields Church Road Murston**

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

The application site is a small area adjacent to Murston Playing Fields which was previously used as an unofficial car park. 13no. shipping containers used for storage in connection with a cleaning business and palisade fencing was erected at the site without any consent. Planning permission was refused and an enforcement notice was served, requiring removal of the containers and fencing within 4 months. The appellant appealed the enforcement notice under grounds (a) and (f).

The Inspector agreed with the Council that the development harms the open character and appearance of the surrounding area, making note of the utilitarian character and appearance of the fencing and containers which is incongruous and out of keeping with the open character of the playing fields and the verdant appearance of Hugh Price Close. The Inspector also agreed with the Council that there was no visual association with the industrial park on the opposite side of the road which is beyond the bollards. The Inspector failed the appeal on ground (a).

The appellant requested a 9 month period to remove the containers and fencing under ground (f) which was contrary to the 4 months required on the enforcement notice. The Inspector was not convinced that 9 months was necessary and concluded that 6 months would be an acceptable length of compliance time. The notice was amended to reflect this.

- **Item 5.3 – Car Park adj to Church Road Sittingbourne**

APPEAL DISMISSED

DELEGATED REFUSAL

Observations

As linked to the above enforcement case (Item 5.2) the appellant also appealed against the Council's decision to refuse the retrospective planning application for the siting of 13no. shipping containers and palisade fencing. The Inspector agreed with the Council that the development harms the open character and appearance of the surrounding area.

- **Item 5.4 – Land adj to 241 Leysdown Road Leysdown**

APPEAL DISMISSED

ENFORCEMENT APPEAL

Observations

The application site consists of agricultural land in designated countryside where the grazing of horses is taking place. The site is an undeveloped field with some low level fencing. A motor home and caravan have been sited on the site without planning permission with small fenced off curtilages containing domestic paraphernalia. An enforcement notice has been served, requiring the removal of the motor home, caravan and fencing from the site. The appellant has appealed the enforcement notice under grounds (a) and (b).

The Inspector agreed with the Council that a breach has occurred making reference to the character and nature of the site being materially changed with the addition of the units for residential use with domestic enclosures and paraphernalia and dismissed the appeal under ground (b).

The Inspector also agreed that the development harms the open character and appearance of the surrounding area, noting that the presence of two separate domestic enclosures within a field with the units and the domestic paraphernalia is out of keeping and incongruous in a countryside location of a field used for the grazing of horses. The appeal was also dismissed under ground (a).

- **Item 5.5 – Pandora and land north of Nelson Avenue Minster**

APPEAL DISMISSED

NON-DETERMINATION

Observations

In landscape terms, the Inspector reported that the site, together with adjoining open space, additionally plays an important role in providing a vestigial link between the historic core of Minster and the wider open landscape. In this regard it helps to recall a time when Minster was a more rural settlement. Further, he states that whilst this is

particularly apparent in views which feature both the site and the tower of the Abbey Church, it is also directly experienced in walking footpath ZS8, from which the site is clearly visible. This crosses the field to the east, skirts the north edge of the site, and, via other adjoining open space, ultimately leads to the Abbey Church itself. In so doing it passes between only a small group of buildings close to the churchyard. For all the above reasons the site makes a strongly positive contribution to the character and appearance of the area. This contribution is not diminished in any significant way by the fact that the site is currently in equestrian use for horse grazing, nor by a broad characterisation of the landscape surrounding Minster as being in 'poor' condition.

In addition, the Inspector stated that the development would see most of the site covered by a small housing estate. Given the slope, this would be highly exposed within views to the south, and would require terracing, thus significantly altering the existing topography. Though a narrow strip of open space could be retained toward the top of the slope, this would inevitably form a suburbanised component of the overall layout. The development would see the last meaningful link between the historic core of the settlement and the landscape beyond wholly compromised, and the positive role that the site plays within the visual and physical setting of Minster would be almost entirely lost. Given that the value of the site stems from its openness, the adverse effects could not be successfully alleviated or masked by design or landscaping. The development has been promoted as a 'natural extension' and as 'rounding off' of the settlement. However, based on my assessment of the relationship between the site and existing development above, its attributes do not lend support to either claim.

My findings above indicate that the development would cause significant harm to the character and appearance of the area. In these circumstances Policy DM 24 of the Local Plan, which seeks to protect and enhance non-designated landscapes, requires harm to be weighed against social and economic benefits. This is something that I shall return to below.

In Heritage terms, the Abbey Church of St Mary and St Sexburga, and the associated Abbey Gatehouse are both Grade I listed buildings, and therefore designated heritage assets of the highest significance. Here the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out the desirability of preserving the setting of listed buildings. Paragraph 199 of the Framework further makes clear that great weight should be given to the conservation of designated heritage assets, and that the more important the asset, the greater the weight should be. Insofar as it is relevant to this appeal the special interest and significance of the listed buildings resides in their historic association as surviving fragments of Minster Abbey, their fabric and architecture, which is substantially medieval but includes Saxon material, the continuing role they play as landmarks, and the ongoing function of the church as a place of worship. As outlined above, the buildings lie at the historic core of the settlement, and within the context of their ridge top location, provide a key source of local identity.

Set within the context of the surrounding landscape it is apparent that the Abbey was purposely founded in a highly prominent location. But though the prominence of the ridge remains appreciable from within the broader landscape, appreciation of the landmark quality and historic context of the surviving Abbey buildings is much obscured by later development. I have already established above that the site provides a vestigial link between the historic core of Minster and the open landscape beyond. Whilst I have also established the value that this holds in relation to the broader character and appearance of the area, it additionally enables continued appreciation of the historic rural and landscape context of the Abbey. Given both limited intervening development and the open foreground, this is clearly perceived in views from within the site, in views from gardens towards the south, and is again directly experienced in use of footpath ZS8.

The openness and undeveloped character of the site therefore makes a positive contribution to the setting of the listed buildings, and this in turn makes a modest contribution to their significance.

The Inspector further advised that I therefore find that the development would fail to preserve the positive contribution that the site makes to the settings of the listed buildings, in turn failing to conserve the positive contribution that this makes to their significance. The adverse effects would be modest, and the harm less than substantial. Such harm attracts considerable importance and weight. In accordance with paragraph 202 of the Framework it is necessary to weigh this harm against the public benefits of the scheme.

In terms of the Planning Balance, it is reported that the development would provide a net increase of up to 63 market dwellings within a location well served by a range of facilities and services. This would help to meet a general need for additional housing, and, assuming its deliverability, would also help to address a minor shortfall in the Council's demonstrable 5-year supply of deliverable housing sites (5YHLS). This is acknowledged by the Council to lie at 4.83 years, and was not a position disputed at the Hearing, despite speculation that the figure should be lower. The development mix would however fail to fully reflect local needs as identified within the Strategic Housing Market Assessment, and this could not be remedied by condition. Moreover, though the development would additionally generate short- and long-term economic activity during the construction and occupation phases, such benefits would be unremarkable in context. The above being so I attach limited weight to the social and economic benefits of the scheme's provision of housing. I therefore find that the public benefits of the development would not outweigh the harm that it would cause. This provides a clear reason for refusing planning permission. The same range of benefits are relevant in relation to the balance required by Policy DM 24 of the Local Plan as noted above. Here I am again satisfied that the social and economic benefits of the development would not outweigh the harm caused.

In conclusion, the Inspector advised that I conclude that the site would be an unsuitable location for the proposed development given the unacceptable harm it would cause to the character and appearance of the area, including by its failure to preserve the settings of Grade I listed buildings. The development would therefore conflict with Policies ST 3 and DM 24 of the Local Plan as set out above, Policy DM 14 of the Local Plan, which amongst other things seeks to secure development that reflects the positive characteristics and features of the site and locality, taking into account the desirability of sustaining and enhancing the significance of heritage assets; and Policy CP 4 of the Local Plan, which amongst other things seeks the retention and enhancement of features which contribute to local character and distinctiveness.

The Appeal was dismissed and planning permission refused on the 28th July 2023.

- **Item 5.6 – Garage rear of Riverbank House Ash Lane Minster**

APPEAL DISMISSED

DELEGATED REFUSAL

Observations

The Inspector agreed with the Council that the proposed conversion of the garage into a dwelling would result in a contrived development that would fail to provide adequate

living conditions for future occupiers, particularly with regard to outlook and privacy due to the proximity of the site to adjacent dwelling, Myrtle House. The Inspector also agreed that the development would fail to provide appropriate mitigation for the increased recreational disturbance to the nearby SPA sites.

- **Item 5.7 – 53 Millfield Sittingbourne**

APPEAL DISMISSED

DELEGATED REFUSAL

Observations

The Inspector agreed with the Council that the proposed new dwelling would harm the living conditions of neighbouring properties, with particular regard to outlook, privacy, and daylight and sunlight due to the constrained nature of the site, in close proximity to neighbours to the east. The Inspector also agreed that the development would fail to provide appropriate mitigation for the increased recreational disturbance to the nearby SPA sites.

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Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 14th JULY 2023

Appeal Ref: APP/V2255/X/22/3300931

22 East Street, SITTINGBOURNE, ME10 4RT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Trevor Ranger against the decision of Swale Borough Council.
 - The application ref 21/506105, dated 8 December 2021, was refused by notice dated 6 May 2022.
 - The application was made under section 191(1)(c) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is C3 – Dwellinghouses, building works in contraventions of planning permission.
-

Decision

1. The appeal is dismissed.

Planning history

2. The most relevant elements of the history of the site for the purposes of this appeal are:
 - 14/504983/FUL, grant of permission dated 22 June 2015 for change of use to form 3 no. additional self contained flats. Demolition of rear two storey projection together with all the single storey extensions and outbuilding. Proposed single storey rear extension, external staircase and rear dormer ('the 2015 Permission');
 - 17/504907/FULL, refusal of Minor Material Amendment ('the MMA') to Condition 2 of 14/504983/FULL dated 24 November 2017. The reason for refusal was that the dormer window, by virtue of its increased depth and height, and its use of white cladding rather than matching hanging tile, is substantially different to that originally approved and does not constitute a minor material amendment to planning permission 14/504983/FULL.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant the LDC was well-founded.
4. The description of the development in the application form is identified in paragraph 4 as being "an existing use, building work or activity in breach of a condition" and refers to "C3 – Dwellinghouses". Paragraph 5 goes on to describe the development as "Building works in contravention of planning permission". Paragraph 6 states that the building works were substantially completed and the use as a single dwellinghouse began more than four years before the date of the application, and also states that the LDC is sought for a

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Appeal Decision APP/V2255/X/22/3300931

- use, operation or activity in breach of a condition and provides the planning permission reference number of 14/500983 , condition number 2 (which is presumably a typological error and should refer to 14/504983 as the 2015 Permission).
5. Taking the application form as a whole, it is quite clear that the applicant was wishing to ascertain whether the failure to comply with the 2015 Permission, condition 2 ('Condition 2') is lawful pursuant to section 191(1)(c) of the 1990 Act.
 6. In the decision notice, the Council described the proposal as "Lawful Development Certificate (Existing) for building works not in accordance with approved plans attached to planning permission 14/504983/FULL". The ground for refusal was that there had been a breach of Condition 2 and that as such the relevant time limit under section 171B(3) of the 1990 Act was 10 years beginning with the date of breach which had not yet expired.
 7. The appeal form describes "building works in contravention of the planning permission" with actual use of the site at the time of the application identified as 4 self-contained flats. However, the appellant argues that the development was substantially complete in August 2017 and that as the works were not completed in accordance with the approved drawings the development as a whole is unauthorised and does not have the benefit of planning permission. On this basis the appellant argues that there has been a breach of planning control for a period more than four years and that enforcement action may therefore not be taken.
 8. It is necessary to first consider whether the 2015 permission was implemented. The parties agree that the only element of the 2015 permission that is different in the as built development is the rear dormer. The change of use and creation of 3 additional self-contained flats pursuant to the 2015 Permission was implemented as was the demolition of the previous extensions and provision of new external staircase. This change of use and the associated works were undertaken pursuant to the grant of the 2015 Permission which was therefore implemented.
 9. This is further supported by the fact that when submitting the MMA application, the appellant considered and treated this dormer as being part of the original permission, and indeed at that time was arguing that it was not substantially different in the context of the overall development to that which had originally been granted permission.
 10. As the 2015 Permission is for the material change of use of the building with the associated operational development, and there is nothing before me to suggest otherwise, I find the works to construct the dormer were part of the overall operations to implement the development authorised by the 2015 Permission. As the 2015 Permission was implemented, and as the unauthorised operations are as a matter of fact and degree part of the overall development authorised by that permission, they are covered by Condition 2. The Council could therefore have taken enforcement action on the date of the LDC application under section 171B (3) of the 1990 Act as the appellant does not contend that the works were substantially completed more than 10 years earlier.

Appeal Decision APP/V2255/X/22/3300931

Conclusion

11. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of building works in contravention of planning permission was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Zoë Franks

INSPECTOR

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Appeal Decisions

Site visit made on 28 June 2023

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 17th July 2023

Appeal A Ref: APP/V2255/C/22/3313067

Land at Murston Playing Fields, Church Road, Murston, Sittingbourne, Kent

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Dirty Harry's against an enforcement notice issued by Swale Borough Council.
- The notice was issued on 11 November 2022.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of Land for the stationing of shipping containers enclosed by palisade fencing in connection with the use.
- The requirements of the notice are
 1. Cease the use of the Land for the stationing of shipping containers.
 2. Permanently remove from the Land all shipping containers (currently 13)
 3. Dismantle and remove all of the palisade fencing from the Land.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Appeal B Ref: APP/V2255/W/22/3312318

Car Park adjacent to Church Road, Sittingbourne, Kent

- 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 Dirty Harry's against the decision of Swale Borough Council.
- The application Ref 22/501313/FULL, dated 25 March 2022, was refused by notice dated 6 June 2022.
- The development is described as 'Retrospective application for siting of 13 no. shipping containers enclosed by palisade fencing in association with Use Class B8'.

Decisions

Appeal A

1. It is directed that the enforcement notice is varied by
 - i) Deleting the allegation in full and replacing it with "Without planning permission the material change of use of Land for the stationing of shipping containers used for storage (Use Class B8) enclosed by palisade fencing in connection with the use."
 - ii) Deleting requirement 1 from the notice and replacing it with "Cease the use of the land for the stationing of shipping containers used for storage (Use Class B8)."
 - iii) Deleting "4 months" as the period for compliance and replacing it with "6 months."

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Appeal Decisions APP/V2255/W/22/3312318 and APP/C/22/3313067

2. Subject to these variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

3. The appeal is dismissed.

The Notice

4. The allegation for Appeal A refers to the stationing of shipping containers but it needs to specify what use of land the containers are sited for. There is no dispute that the containers are being used for storage and that use was taking place when the enforcement notice was served. The use was included in the planning application that was refused and is the subject of Appeal B. The appellants' evidence has addressed the use of the containers in both appeals.
5. I will therefore amend the allegation to "Without planning permission the material change of use of Land for the stationing of shipping containers used for storage (Use Class B8) enclosed by palisade fencing in connection with the use." I will amend the corresponding requirement to "Cease the use of the land for the stationing of shipping containers used for storage (Use Class B8)". No injustice is caused to any party as a result of these amendments.

Appeal A ground (a) and Appeal B

Main Issue

6. The main issue is the effect of the development on the character and appearance of the surrounding area.

Reasons

7. Church Road itself is physically divided by large bollard type structures and the two sections of the road are of a different character. To the north of the bollards, there is an industrial park with substantial buildings. To the other side of the bollards, Hugh Price Close marks the beginning of largely residential development with areas of green space and mature trees and planting to the roadside.
8. The appeal site is located on the corner of Church Road and Hugh Price Close and has boundaries to the rear and at one side with the playing fields. The main access to the appeal site is through gates at the front on Church Road. There is a path on Hugh Price Close to the other side boundary which provides access to the playing fields. The location of the appeal site in relation to the bollards means that vehicular access to it is along the residential part of Church Road which extends beyond Hugh Price Close.
9. The development consists of an area of hardstanding with thirteen green shipping containers with a boundary treatment of green palisade fencing of around 2.1 metres in height with gates. Five containers front onto Church Road close to the boundary with the pavement, four are on the rear boundary with the playing fields and four are on the boundary with the path on Hugh Price Close. The containers are in use as storage of cleaning products and vending machines used in the appellants' businesses.

Appeal Decisions APP/V2255/W/22/3312318 and APP/C/22/3313067

10. There is shrubbery and planting to the far side of the path on Hugh Price Close which provides screening on approaching the site. However, there is very limited screening of the development as a whole with prominent views of the development from the path itself, the front of Church Road and from the playing fields.
11. The containers have a utilitarian character and appearance which combined with the palisade fencing is incongruous and out of keeping with the open character of the playing fields and the verdant appearance of Hugh Price Close. The appeal site is on the corner of the playing fields and has no visual association with the industrial park on the opposite side of the road which is beyond the bollards.
12. The appellant has proposed conditions. However, a condition limiting the number and height of the containers does not address existing harm. The appellant has suggested a condition requiring additional boundary landscape planting to the north, east and southern boundaries. However, no details are provided in terms of exactly where any planting would be located, what type and height of planting is proposed and if the planting is in addition to or instead of the existing fencing as there is limited space within the appeal site and at the site boundaries. On the evidence before me, having particular regard to the scale and height of the containers, I am not satisfied that a landscaping condition can mitigate the visual harm arising from the development.
13. The appellant cites compliance with Policy CP1 (Building a strong competitive economy) of the Bearing Fruits 2031 The Swale Local Plan (the Local Plan) as a material consideration. The policy supports economic development in appropriate existing or allocated employment locations subject to exceptions which fit within identified criteria and which do not compromise the Local Plan Strategy. The appellant considers the appeal site to be a logical small extension to the existing industrial park which is located on the opposite side of the road. There are no physical links or shared characteristics between the appeal site and the industrial park which consists of permanent substantial buildings to support the view that the appeal site is a logical extension to it.
14. Nevertheless, an extension to an existing employment site is only acceptable as an exception in policy terms if no site can be found in more suitable locations which are either designated or in existing employment use in accordance with paragraph 5 of Policy CP1. There is no evidence before me to show that is the case and the development is therefore not compliant with Policy CP1.
15. Paragraphs 81 and 83 of the National Planning Policy Framework collectively refer to giving significant weight to the need to support economic growth and local business needs and making provision for storage operations in suitably accessible locations. However, the appellant has not provided information to show why a single storage facility for a collection of businesses that are located elsewhere has to be at the appeal site as opposed to any other suitably accessible locations.
16. Planning permission has been previously granted for a single storage container at Woodcombe Sports and Social Club which is on the opposite side of Church Road to the appeal site. However, the presence of a storage container for sports equipment for use at the nearby playing fields is not comparable in terms of scale and appearance or location to the development.

<https://www.gov.uk/planning-inspectorate>

3

Appeal Decisions APP/V2255/W/22/3312318 and APP/C/22/3313067

17. For the reasons given, the development does therefore harm the character and appearance of the surrounding area. It is in conflict with Policy CP4 of the Local Plan which requires development to be of high quality design that is appropriate to its surroundings. It is also contrary to Policy DM14 of the Local Plan, which refers amongst other things, to development that is well sited and of a scale, design and appearance and detail that is sympathetic and appropriate to the location. Policy CP1 of the Local Plan is less relevant to the main issue than the other policies referred to by the Council.

Conclusion

18. I have found that the development does harm the character and appearance of the surrounding area. I have to determine the request for planning permission in accordance with the development plan as a whole and none of the considerations raised outweigh the harm that I have found. I therefore conclude that planning permission should not be granted and the appeal on ground (a) fails.

Appeal under ground (g)

19. An appeal under ground (g) is that the time allowed for compliance with the notice is too short. The period for compliance is 4 months. The appellant is asking for 9 months and refers to a shortage of suitable sites to either lease or buy followed by a period of around 3 to 4 months to complete legal transactions when a suitable site is found. In assessing whether or not the timescale is reasonable, the time scale is assessed from the issue of the decision letter not from when the appeal was lodged as the appellant is entitled to assume success on other grounds.

20. The appellant's timescales refer only to finding a permanent site for all of the containers rather than looking at alternative options and I do consider 9 months to be excessive. However, 6 months would strike an appropriate balance between the public interest in achieving compliance and the circumstances of the appellant. The appeal under ground (g) therefore succeeds to that extent. I will amend the notice accordingly.

Overall Conclusion

21. For the reasons given above, I conclude that Appeal A should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. Appeal B is dismissed.

E Griffin

INSPECTOR



Appeal Decisions

Site visit made on 28 June 2023

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 17th July 2023

Appeal A Ref: APP/V2255/C/22/3313067

Land at Murston Playing Fields, Church Road, Murston, Sittingbourne, Kent

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Dirty Harry's against an enforcement notice issued by Swale Borough Council.
- The notice was issued on 11 November 2022.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of Land for the stationing of shipping containers enclosed by palisade fencing in connection with the use.
- The requirements of the notice are
 1. Cease the use of the Land for the stationing of shipping containers.
 2. Permanently remove from the Land all shipping containers (currently 13)
 3. Dismantle and remove all of the palisade fencing from the Land.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Appeal B Ref: APP/V2255/W/22/3312318

Car Park adjacent to Church Road, Sittingbourne, Kent

- 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 Dirty Harry's against the decision of Swale Borough Council.
- The application Ref 22/501313/FULL, dated 25 March 2022, was refused by notice dated 6 June 2022.
- The development is described as 'Retrospective application for siting of 13 no. shipping containers enclosed by palisade fencing in association with Use Class B8'.

Decisions

Appeal A

1. It is directed that the enforcement notice is varied by
 - i) Deleting the allegation in full and replacing it with "Without planning permission the material change of use of Land for the stationing of shipping containers used for storage (Use Class B8) enclosed by palisade fencing in connection with the use."
 - ii) Deleting requirement 1 from the notice and replacing it with "Cease the use of the land for the stationing of shipping containers used for storage (Use Class B8)."
 - iii) Deleting "4 months" as the period for compliance and replacing it with "6 months."

<https://www.gov.uk/planning-inspectorate>

Appeal Decisions APP/V2255/W/22/3312318 and APP/C/22/3313067

2. Subject to these variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

3. The appeal is dismissed.

The Notice

4. The allegation for Appeal A refers to the stationing of shipping containers but it needs to specify what use of land the containers are sited for. There is no dispute that the containers are being used for storage and that use was taking place when the enforcement notice was served. The use was included in the planning application that was refused and is the subject of Appeal B. The appellants' evidence has addressed the use of the containers in both appeals.
5. I will therefore amend the allegation to "Without planning permission the material change of use of Land for the stationing of shipping containers used for storage (Use Class B8) enclosed by palisade fencing in connection with the use." I will amend the corresponding requirement to "Cease the use of the land for the stationing of shipping containers used for storage (Use Class B8)". No injustice is caused to any party as a result of these amendments.

Appeal A ground (a) and Appeal B

Main Issue

6. The main issue is the effect of the development on the character and appearance of the surrounding area.

Reasons

7. Church Road itself is physically divided by large bollard type structures and the two sections of the road are of a different character. To the north of the bollards, there is an industrial park with substantial buildings. To the other side of the bollards, Hugh Price Close marks the beginning of largely residential development with areas of green space and mature trees and planting to the roadside.
8. The appeal site is located on the corner of Church Road and Hugh Price Close and has boundaries to the rear and at one side with the playing fields. The main access to the appeal site is through gates at the front on Church Road. There is a path on Hugh Price Close to the other side boundary which provides access to the playing fields. The location of the appeal site in relation to the bollards means that vehicular access to it is along the residential part of Church Road which extends beyond Hugh Price Close.
9. The development consists of an area of hardstanding with thirteen green shipping containers with a boundary treatment of green palisade fencing of around 2.1 metres in height with gates. Five containers front onto Church Road close to the boundary with the pavement, four are on the rear boundary with the playing fields and four are on the boundary with the path on Hugh Price Close. The containers are in use as storage of cleaning products and vending machines used in the appellants' businesses.

Appeal Decisions APP/V2255/W/22/3312318 and APP/C/22/3313067

10. There is shrubbery and planting to the far side of the path on Hugh Price Close which provides screening on approaching the site. However, there is very limited screening of the development as a whole with prominent views of the development from the path itself, the front of Church Road and from the playing fields.
11. The containers have a utilitarian character and appearance which combined with the palisade fencing is incongruous and out of keeping with the open character of the playing fields and the verdant appearance of Hugh Price Close. The appeal site is on the corner of the playing fields and has no visual association with the industrial park on the opposite side of the road which is beyond the bollards.
12. The appellant has proposed conditions. However, a condition limiting the number and height of the containers does not address existing harm. The appellant has suggested a condition requiring additional boundary landscape planting to the north, east and southern boundaries. However, no details are provided in terms of exactly where any planting would be located, what type and height of planting is proposed and if the planting is in addition to or instead of the existing fencing as there is limited space within the appeal site and at the site boundaries. On the evidence before me, having particular regard to the scale and height of the containers, I am not satisfied that a landscaping condition can mitigate the visual harm arising from the development.
13. The appellant cites compliance with Policy CP1 (Building a strong competitive economy) of the Bearing Fruits 2031 The Swale Local Plan (the Local Plan) as a material consideration. The policy supports economic development in appropriate existing or allocated employment locations subject to exceptions which fit within identified criteria and which do not compromise the Local Plan Strategy. The appellant considers the appeal site to be a logical small extension to the existing industrial park which is located on the opposite side of the road. There are no physical links or shared characteristics between the appeal site and the industrial park which consists of permanent substantial buildings to support the view that the appeal site is a logical extension to it.
14. Nevertheless, an extension to an existing employment site is only acceptable as an exception in policy terms if no site can be found in more suitable locations which are either designated or in existing employment use in accordance with paragraph 5 of Policy CP1. There is no evidence before me to show that is the case and the development is therefore not compliant with Policy CP1.
15. Paragraphs 81 and 83 of the National Planning Policy Framework collectively refer to giving significant weight to the need to support economic growth and local business needs and making provision for storage operations in suitably accessible locations. However, the appellant has not provided information to show why a single storage facility for a collection of businesses that are located elsewhere has to be at the appeal site as opposed to any other suitably accessible locations.
16. Planning permission has been previously granted for a single storage container at Woodcombe Sports and Social Club which is on the opposite side of Church Road to the appeal site. However, the presence of a storage container for sports equipment for use at the nearby playing fields is not comparable in terms of scale and appearance or location to the development.

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3

Appeal Decisions APP/V2255/W/22/3312318 and APP/C/22/3313067

17. For the reasons given, the development does therefore harm the character and appearance of the surrounding area. It is in conflict with Policy CP4 of the Local Plan which requires development to be of high quality design that is appropriate to its surroundings. It is also contrary to Policy DM14 of the Local Plan, which refers amongst other things, to development that is well sited and of a scale, design and appearance and detail that is sympathetic and appropriate to the location. Policy CP1 of the Local Plan is less relevant to the main issue than the other policies referred to by the Council.

Conclusion

18. I have found that the development does harm the character and appearance of the surrounding area. I have to determine the request for planning permission in accordance with the development plan as a whole and none of the considerations raised outweigh the harm that I have found. I therefore conclude that planning permission should not be granted and the appeal on ground (a) fails.

Appeal under ground (g)

19. An appeal under ground (g) is that the time allowed for compliance with the notice is too short. The period for compliance is 4 months. The appellant is asking for 9 months and refers to a shortage of suitable sites to either lease or buy followed by a period of around 3 to 4 months to complete legal transactions when a suitable site is found. In assessing whether or not the timescale is reasonable, the time scale is assessed from the issue of the decision letter not from when the appeal was lodged as the appellant is entitled to assume success on other grounds.

20. The appellant's timescales refer only to finding a permanent site for all of the containers rather than looking at alternative options and I do consider 9 months to be excessive. However, 6 months would strike an appropriate balance between the public interest in achieving compliance and the circumstances of the appellant. The appeal under ground (g) therefore succeeds to that extent. I will amend the notice accordingly.

Overall Conclusion

21. For the reasons given above, I conclude that Appeal A should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. Appeal B is dismissed.

E Griffin

INSPECTOR



Appeal Decision

Site visit made on 28 June 2023

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 27th July 2023

Appeal Ref: APP/V2255/C/23/3315214

Land adjacent to 241 Leysdown Road, Leysdown-on-Sea, Sheerness, Kent ME12 4AB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Stephen Dobkin against an enforcement notice issued by Swale Borough Council.
- The notice was issued on 15 December 2022.
- The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the Land for the stationing of a mobile home and a motor home for residential use together with the erection of fencing and hard surfacing in association with the unauthorised use.
- The requirements of the notice are
 1. Cease the residential use of the Land.
 2. Cease the residential use of the mobile homes shown in its approximate position marked "X" on the attached plan and the motor home shown in its approximate position marked "Y" on the attached plan.
 3. Permanently remove from the Land the mobile home and motor home shown in their approximate position marked "X" and "Y" on the attached plan.
 4. Permanently remove all fencing hard surfacing and domestic paraphernalia associated with the residential use of the Land.
 5. Remove from the Land all materials, rubbish, debris and waste arising out of steps 1 to 4 above.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - 1.) Deleting the allegation in full and replacing it with "Without planning permission, the material change of use of the Land to a mixed use for agriculture and for the stationing of a mobile home and a motor home for residential use together with the erection of fencing in association with the unauthorised use."
 - 2.) Deleting requirement 1 from the notice and replacing it with "1. Cease the mixed use of the Land for agriculture and the stationing of a mobile home and motor home for residential use."
 - 3.) Deleting the words "hard surfacing" from requirement 4.
2. Subject to the corrections and variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the

<https://www.gov.uk/planning-inspectorate>

Appeal Decision APP/V2255/C/23/3315214

application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Notice

3. The allegation and requirement No 4 refers to hard surfacing. As there is no hard surfacing which is associated with residential use, I can remove the references to hard surfacing. The allegation refers to the material change of use of the Land which is the land within the red line boundary which is a field. However, the residential use alleged is not taking place across all of the field. The use of the field as agricultural land including the grazing of horses continues and the allegation should therefore relate to a mixed use. I will therefore amend the allegation to 'Without planning permission, the material change of use of the Land to a mixed use for agriculture and for the stationing of a mobile home and a motor home for residential use together with the erection of fencing in association with the unauthorised use.'
4. The requirements will then need to reflect the mixed use. Requirement 1 will be replaced with "Cease the mixed use of the Land for agriculture and the stationing of a mobile home and motor home for residential use." Requirements 2, 3, 4 and 5 remain unaltered apart from the deletion of hard surfacing in requirement 4. The variations do not widen the scope of the appeal. The cessation of the residential use will end the mixed use and allow reversion to agricultural use. I do not therefore consider that there is injustice to any party as a result of the amendments and I will amend the notice accordingly.

The appeal under ground (b)

5. This ground of appeal is that, as a matter of fact, the breach of planning control has not occurred. In order to succeed on ground (b), the appellant would need to show that the mixed use which includes the stationing of a mobile home and a motor home for residential use together with the erection of fencing in association with the unauthorised use has not occurred. The burden of proof is on the appellant and the relevant test is the balance of probabilities.
6. The motor home and mobile home (the units) both have a bedroom, kitchen facilities and a shower, toilet and sink with a fenced enclosure. The enclosures include paraphernalia such as tables and chairs usually found in domestic gardens. It is not clear why the appellant considers the use to be recreational rather than residential when both units are fully equipped for residential use with bedrooms and have been used as such.
7. The absence of payment of rent by family users or legal agreements does not mean that residential use is not taking place. The appellant refers to overnight use by him and members of his family. Nevertheless, the units with fenced domestic enclosures are in a field which is not part of a domestic setting and residential use has taken place.
8. The appellant states that the units are not permanent structures and are stored temporarily on the land. The allegation does not refer to the units as permanent structures. However, the extent and nature of the development goes beyond temporary storage use. If the units were simply being stored on the land, there would be no need to provide sitting out areas in the form of

<https://www.gov.uk/planning-inspectorate>

2

Appeal Decision APP/V2255/C/23/3315214

fenced enclosures with table and chairs. The appellant accepts that residential use has occurred. The appeal site was previously a field largely used for grazing of horses and the character and nature of the site has materially changed with the addition of the units for residential use with domestic enclosures and paraphernalia. The breach of planning control alleged has, therefore, as a matter of fact occurred. The appeal under ground (b) must fail.

The appeal under ground (a) and the Deemed Planning Application (the DPA)

Main Issue

9. The effect of the development on the character and appearance of the surrounding area.

Reasons

10. The appeal site consists of a field which has hedges and mature planting to the rear and sides and a two bar fence to the front boundary with the pavement. Beyond the appeal site, the character of the area is of open, largely undeveloped countryside and the appeal site as a field forms part of that countryside character. The appeal site fronts onto Leysdown Road and there is a housing estate to the west beyond mature trees and hedging. To the east, there is a small holding and stables owned by the appellant and access to the appeal site is through a gap in the hedge.
11. The units are located along the eastern boundary of the appeal site and domestic style fencing surrounds each home creating two separate areas within the field. There is also domestic paraphernalia in the form of tables, chairs, garden plants and children's play equipment within the two fenced enclosures. Although the appellant refers to the arrangement as being similar to camping facilities, whether or not camping facilities require planning permission will depend upon the nature and extent of the use taking place which is not necessarily comparable to the development.
12. There are clear views of the field from Leysdown Road due to the level ground and the absence of mature hedging to the front of the appeal site. The units and the surrounding fencing are particularly visible when approaching the appeal site from the west. The presence of two separate domestic enclosures within a field with the units and the domestic paraphernalia is out of keeping and incongruous in a countryside location of a field used for the grazing of horses. The development does harm the character and appearance of the surrounding area.
13. It is therefore in conflict with Policy ST3 of Bearing Fruits 2031: The Swale Borough Plan 2017 (the Local Plan) which, amongst other things, states that in the open countryside outside of the built up boundaries shown on the proposals map, development will not be permitted unless it enhances or contributes to the beauty of the countryside. It is also in conflict with Policies DM14 and CP4 of the Borough Plan which collectively refer to development being well sited and of a scale and appearance that is sympathetic to the location and retains local character.

Appeal Decision APP/V2255/C/23/3315214

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

E Griffin

INSPECTOR



Appeal Decision

Hearing held on 11 July 2023

Site visit made on 11 July 2023

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 28 July 2023

Appeal Ref: APP/V2255/W/22/3313783
Pandora, and land to the north east of Nelson Avenue, Minster-On-Sea, Kent ME12 3SF

- 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 Michael Piper against Swale Borough Council.
 - The application Ref 21/502256/OUT, is dated 21 April 2021.
 - The development proposed is a residential development of up to 64 No 3 and 4 bedroom dwellings of 1 storey, 1 and half storey, 2 storey, and 2 and half storey dwellings with all associated parking, infrastructure and landscape amenity spaces.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Preliminary Matters

2. I have modified the site address by including reference to 'Pandora', which would be demolished to provide the main access to the development.
3. The application was made in outline with all matters reserved. Specific details are however provided within the description. Insofar as detailed plans have also been submitted in response to landscape concerns, it appears likely that a scheme of very similar nature would be presented at a later stage. I therefore place significant weight on the details of layout and scale shown.
4. The Council failed to determine the application within the required timeframe. I have however been provided with a report which was presented to the Council's Committee, which sets out draft reasons for refusal. I have taken this into account in defining the main issues below.

Main Issue

5. The main issue is whether the site is a suitable location for the proposed development having regard to its effect on the character and appearance of the area, including whether the development would preserve the settings of two Grade I listed buildings.

Reasons

Background

6. Policy ST 3 of The Swale Borough Local Plan 2017 (the Local Plan) sets out the Council's settlement strategy. This directs development to settlements based

<https://www.gov.uk/planning-inspectorate>

Appeal Decision APP/V2255/W/22/3313783

on their position within a hierarchy, and to locations within defined built up area boundaries, outside of which development is restricted. Within this context the supporting text identifies Minster-on-Sea (Minster) as a third tier 'other urban local centre' within the 'West Sheppey Triangle', within which growth is planned on a collective basis between the settlements, but not at the expense of their individuality or character.

7. Pandora and part of the proposed secondary access onto Scocles Road each fall within the built-up area boundary of Minster, however the rest of the site falls outside. In these circumstances bullet 5 of Policy ST 3 states that development will not be permitted unless it is supported by national planning policy, and it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside. The latter itself broadly reflects similar considerations set out within paragraph 174 of the National Planning Policy Framework (the Framework). In this regard the Council's concern is the effect that the development would have on the landscape, and the role that this plays in the setting of Minster.

Assessment

(a) Landscape

8. The appeal site chiefly consists of a large field with a pronounced slope. This forms part of the southern side of the ridge upon which Minster Abbey was historically founded, and the settlement of Minster grew. This is in turn located within an expansive low-lying coastal landscape characterised by its flatness, within which the ridge is a distinctive feature. It is therefore a key means by which Minster is identified, as is apparent within elevated views provided towards it from the Sheppey Crossing, and from which the site is clearly visible.
9. Minster's built-up area boundary closely corresponds with the plot boundaries of existing dwellings to the north, south and west of the site. Viewed on the ground these provide a reasonably regular edge to the built-up area, which is readily distinguished from open space beyond. This is exemplified by the existing relationship between the site and the ribbon of dwellings which line Nelson Avenue immediately to the south, particularly insofar as these both lie at a distinctly lower level and turn their backs on the site.
10. The site is otherwise separated from existing housing towards the north and west by other open spaces, and other similarly sloping fields adjoin towards the east. The latter help to provide both a physical and visual link between the site and the broader landscape setting of the settlement; a relationship which is reinforced within a variety of local views where perspective and topography combine to limit or obscure the visibility of existing development to the north and south of the site. These notably include views from footpath ZS7 and Lower Road to the south. For this and the above reasons, the site, excluding the proposed access points, is perceived to both fall outside the established built-up area of the settlement, and to form a component of its landscape setting.
11. The site, together with adjoining open space, additionally plays an important role in providing a vestigial link between the historic core of Minster and the wider open landscape. In this regard it helps to recall a time when Minster was a more rural settlement. Whilst this is particularly apparent in views which feature both the site and the tower of the Abbey Church, it is also directly

<https://www.gov.uk/planning-inspectorate>

2

Appeal Decision APP/V2255/W/22/3313783

experienced in walking footpath ZS8, from which the site is clearly visible. This crosses the field to the east, skirts the north edge of the site, and, via other adjoining open space, ultimately leads to the Abbey Church itself. In so doing it passes between only a small group of buildings close to the churchyard. For all the above reasons the site makes a strongly positive contribution to the character and appearance of the area.

12. This contribution is not diminished in any significant way by the fact that the site is currently in equestrian use for horse grazing, nor by a broad characterisation of the landscape surrounding Minster as being in 'poor' condition. Though equestrian use of land is often a feature of the urban fringe, it is similarly a feature within rural areas. Indeed, there is nothing inherently 'suburban' in the character of such use. Other open spaces within the vicinity are similarly used, and associated paraphernalia and management varies. In this regard there is little paraphernalia currently on site, and the wildflower rich pasture which covers it had not been subject to overgrazing at the time of my visit. There was as such little to differentiate it from the character of adjoining open land to the east. Even if the nature of equestrian activity on site were to change, the essential characteristics and value of the site would remain much the same.
13. The development would see most of the site covered by a small housing estate. Given the slope, this would be highly exposed within views to the south, and would require terracing, thus significantly altering the existing topography. Though a narrow strip of open space could be retained toward the top of the slope, this would inevitably form a suburbanised component of the overall layout. The development would see the last meaningful link between the historic core of the settlement and the landscape beyond wholly compromised, and the positive role that the site plays within the visual and physical setting of Minster would be almost entirely lost. Given that the value of the site stems from its openness, the adverse effects could not be successfully alleviated or masked by design or landscaping.
14. The development has been promoted as a 'natural extension' and as 'rounding off' of the settlement. However, based on my assessment of the relationship between the site and existing development above, its attributes do not lend support to either claim. Consequently, the indicative plans depict a development lacking direct integration, and largely isolated within space to the rear of Nelson Avenue. As if the emphasise the point the plans furthermore show a moat-like swale between the proposed housing and rear gardens of dwellings on Nelson Avenue. Given topographical considerations, it is unlikely that this could be relocated.
15. Policy ST 3 was prepared on the basis of now outdated housing figures. Whilst this may therefore indicate a need to develop sites outside the built up area boundaries, this does not in itself indicate that the site is a suitable location for the proposed development. Though the appellant further claims that were the appeal to be dismissed a site of greater landscape value would be developed in its place, I have been provided with no supporting evidence. I therefore attach little weight to this claim.
16. My findings above indicate that the development would cause significant harm to the character and appearance of the area. In these circumstances Policy DM 24 of the Local Plan, which seeks to protect and enhance non-designated

<https://www.gov.uk/planning-inspectorate>

3

Appeal Decision APP/V2255/W/22/3313783

landscapes, requires harm to be weighed against social and economic benefits. This is something that I shall return to below.

(b) *Heritage*

17. The Abbey Church of St Mary and St Sexburga, and the associated Abbey Gatehouse are both Grade I listed buildings, and therefore designated heritage assets of the highest significance. Here the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out the desirability of preserving the setting of listed buildings. Paragraph 199 of the Framework further makes clear that great weight should be given to the conservation of designated heritage assets, and that the more important the asset, the greater the weight should be.
18. The submissions of both parties are inconsistent in their consideration of the above matters. Though both the Council and the appellant identified 'less than substantial harm' within their assessments at application stage, at appeal the appellant's assessment shifted to 'no harm'. This was therefore the position the appellant took during the Hearing, and it was also presented as agreed within the Statement of Common Ground (SOCG).
19. The Council was however unable to provide a sound explanation for its position during the Hearing. Indeed, though its Conservation Officer had identified harm, and this was reported within the Council's Committee Report, the latter contained no explicit consideration of the balance required by paragraph 202 of the Framework. The report's finding that harm 'would not be of sufficient magnitude to sustain a heritage-related reason for refusal', consequently lacked proper foundation. It was also obviously inconsistent with the position then taken within the SOCG. The Vice Chair of the Council's Committee additionally stated at the Hearing that the Committee did not conclude that heritage harm would be outweighed. The minutes of the meeting however provide little further clarification of how the issue was addressed. Against this background, it remains my statutory duty to consider the matter in further detail.
20. Insofar as it is relevant to this appeal the special interest and significance of the listed buildings resides in their historic association as surviving fragments of Minster Abbey, their fabric and architecture, which is substantially medieval but includes Saxon material, the continuing role they play as landmarks, and the ongoing function of the church as a place of worship. As outlined above, the buildings lie at the historic core of the settlement, and within the context of their ridge top location, provide a key source of local identity.
21. Set within the context of the surrounding landscape it is apparent that the Abbey was purposely founded in a highly prominent location. But though the prominence of the ridge remains appreciable from within the broader landscape, appreciation of the landmark quality and historic context of the surviving Abbey buildings is much obscured by later development. I have already established above that the site provides a vestigial link between the historic core of Minster and the open landscape beyond. Whilst I have also established the value that this holds in relation to the broader character and appearance of the area, it additionally enables continued appreciation of the historic rural and landscape context of the Abbey. Given both limited intervening development and the open foreground, this is clearly perceived in views from within the site, in views from gardens towards the south, and is again directly experienced in use of footpath ZS8. The openness and

Appeal Decision APP/V2255/W/22/3313783

undeveloped character of the site therefore makes a positive contribution to the setting of the listed buildings, and this in turn makes a modest contribution to their significance.

22. I have again already considered the impact that the development would have in relation to the landscape. On that basis the development would clearly not preserve the positive role that the site plays in the setting of the listed buildings, or the contribution that this in turn makes to their significance. The adverse effects would be amplified by the fact that the role played by the site is not directly duplicated anywhere else within the setting of the listed buildings.
23. Designed, publicly accessible viewpoints towards the listed buildings could be provided within the layout of the development, and some views might continue to exist from the retained strip of open space which would remain abutting footpath ZS8. However, all such views would exist within a much-suburbanised context, consequently lacking the positive attributes and integrity of the current setting.
24. A dismissed appeal relating to the field adjoining the site to the east (the Elm Lane appeal) has been brought to my attention. In that case the Inspector found that a housing development on that site would not have 'an unduly harmful effect' in relation to the listed buildings. Whilst this was a somewhat ambiguous finding, the sites in any case occupy different positions relative to the listed buildings, the level of intervisibility differs, and the way in which the significance of the listed buildings is experienced through use of footpath ZS8 did not form part of the Inspector's assessment. The Inspector's findings within the Elm Lane appeal do not therefore alter my own assessment above.
25. I therefore find that the development would fail to preserve the positive contribution that the site makes to the settings of the listed buildings, in turn failing to conserve the positive contribution that this makes to their significance. The adverse effects would be modest, and the harm less than substantial. Such harm attracts considerable importance and weight. In accordance with paragraph 202 of the Framework it is necessary to weigh this harm against the public benefits of the scheme.

(c) *Balance*

26. The development would provide a net increase of up to 63 market dwellings within a location well served by a range of facilities and services. This would help to meet a general need for additional housing, and, assuming its deliverability, would also help to address a minor shortfall in the Council's demonstrable 5-year supply of deliverable housing sites (5YHLS). This is acknowledged by the Council to lie at 4.83 years, and was not a position disputed at the Hearing, despite speculation that the figure should be lower. The development mix would however fail to fully reflect local needs as identified within the Strategic Housing Market Assessment, and this could not be remedied by condition. Moreover, though the development would additionally generate short and long term economic activity during the construction and occupation phases, such benefits would be unremarkable in context. The above being so I attach limited weight to the social and economic benefits of the scheme's provision of housing.
27. Insofar as benefits in relation to the landscape have been claimed, these clearly do not attract weight in favour of the scheme. This is because I have

Appeal Decision APP/V2255/W/22/3313783

established both that the scheme would cause significant harm to the landscape, and because this forms the basis of the heritage harm identified above. Further claims that the development would enhance biodiversity also fail to weigh in favour of the scheme. This is given that greater value could be derived from simple improvements in the way the existing site is managed.

28. Insofar as the development would provide accessible open space, this would be primarily required to service the needs of its occupants. Whilst improved pedestrian linkages across the site between Nelson Avenue and Scocles Road have also been identified, it is unlikely that these would be any more convenient for use by existing residents than current routes. Improvements to footpath ZS8 have also been noted, however, whilst it remains unclear what form these would take, formalisation of the path would simply amplify the adverse effects of suburbanisation identified above. As such, these considerations attract negligible weight at most.
29. I therefore find that the public benefits of the development would not outweigh the harm that it would cause. This provides a clear reason for refusing planning permission.
30. The same range of benefits are relevant in relation to the balance required by Policy DM 24 of the Local Plan as noted above. Here I am again satisfied that the social and economic benefits of the development would not outweigh the harm caused.
31. I am mindful of the fact that heritage was not identified as a contested matter prior to the Hearing. Nonetheless, given the background to the appeal, and in view of the fact that both parties had the opportunity to address the matter at the Hearing, I am satisfied that no prejudice arises from my findings.

Conclusion

32. For the reasons outlined above I conclude that the site would be an unsuitable location for the proposed development given the unacceptable harm it would cause to the character and appearance of the area, including by its failure to preserve the settings of Grade I listed buildings. The development would therefore conflict with Policies ST 3 and DM 24 of the Local Plan as set out above, Policy DM 14 of the Local Plan, which amongst other things seeks to secure development that reflects the positive characteristics and features of the site and locality, taking into account the desirability of sustaining and enhancing the significance of heritage assets; and Policy CP 4 of the Local Plan, which amongst other things seeks the retention and enhancement of features which contribute to local character and distinctiveness.

Other considerations

33. The scheme would conflict with the development plan taken as a whole. In the absence of a 5YHLS, the Framework however indicates that for the purposes of decision making the policies most important for determining the application are deemed 'out-of-date'. I have otherwise already established this in relation to Policy ST 3. Even so, I am satisfied that its concern with landscape protection is broadly consistent with similar considerations set out within the Framework, as are other policies with which I have identified conflict. When assessed against the Framework itself, my findings in relation to heritage in any case provide a

Appeal Decision APP/V2255/W/22/3313783

clear reason for refusing planning permission. Insofar as it has been referenced, the 'tilted balance' is not therefore applicable.

34. A Section 106 agreement has been provided which secures a wide range of financial contributions covering education, libraries, social care, waste, highways, recreation, healthcare and the mitigation of likely significant effects on the Swale Special Protection Area. Had I been minded to allow the appeal, and the conditions thus existed for me to grant planning permission, it would have been necessary for me to consider these matters in greater detail. However, as I am dismissing it for other reasons no further consideration is necessary.

Conclusion

35. For the reasons set out above the effects of the development would be unacceptable, giving rise to conflict with the development plan. There are no other considerations which alter or outweigh these findings. I therefore conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR

Appeal Decision APP/V2255/W/22/3313783

APPEARANCES

For the Appellant

David Allen	Allen and Allen Partnership
John Collins	DHA Planning
Thomas Copp	RPS
Daisy Noble	Counsel for the appellant, FTB

For the Council

William Allwood	Interim Major Team Lead
Stuart Watson	Principal Policy Planner

Interested parties

Any Booth	Borough and County Councillor
Stuart Brown	Local resident
Chris Clarke	Local resident
Julie Clarke	Local resident
Lee Jarmain	Local resident
Trish Hamilton	Parish Council
Elliot Jayes	Borough and Parish Councillor
Tom Nundy	Borough and Parish Councillor
Chester Partington	Local resident
Steve Silk	Local resident
Dolley White	Parish Councillor

Documents presented at the Hearing

Annotated photos illustrating landscape views
 Final draft S106
 Footpath map
 Photos illustrating local parking
 S106 correspondence from Kent County Council



Appeal Decision

Site visit made on 27 June 2023

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2023

Appeal Ref: APP/V2255/W/22/3298340

Garage at rear of Riverbank House, Ash Lane, Minster-On-Sea ME12 2BF

- 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 Ms Anna Domican against the decision of Swale Borough Council.
 - The application Ref 22/500084, dated 07 January 2022, was refused by notice dated 10 March 2022.
 - The development proposed is conversion of existing garage into a one-bedroom chalet bungalow, with associated parking and amenity space.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - Whether the proposal would provide adequate living conditions for future occupants, with particular regard to outlook and privacy; and
 - The effects of the proposal on the integrity of the Swale, Thames Estuary and Marshes Special Protection Areas.

Reasons

Living conditions

3. The appeal site comprises an existing detached garage building formerly related to adjacent dwelling, Myrtle House, which was previously known as Riverbank House.
4. The garage abuts the shared boundary and Myrtle House is set back from the boundary by a narrow section of garden. The rear elevation of the proposed dwelling would be oriented at 90 degrees to the rear elevation of Myrtle House, which would be clearly visible above the height of the fence from the proposed dwelling's kitchen and rear garden. Therefore, from the proposed dwelling, the two-storey rear elevation of Myrtle House would appear close and imposing and would have an enclosing effect on the rear amenity space. The proposed dwelling would therefore offer poor outlook for future occupants.
5. The fence along the shared boundary would obstruct views between the dwellings at ground floor level. However, a first-floor window serving a bedroom on the rear elevation of Myrtle House would directly overlook the proposed dwelling's rear garden and would provide a clear line of sight to the proposed dwelling's kitchen. Irrespective of the room's use as a bedroom, the first-floor window would provide opportunities for overlooking at any time of

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Appeal Decision APP/V2255/W/22/3298340

day and would therefore have a significant adverse effect on the standard of privacy at the proposed dwelling.

6. For these reasons, the proposal would not provide adequate living conditions for future occupants, with particular regard to outlook and privacy. The proposal would therefore conflict with Policies CP4, DM14 and DM16 of Bearing Fruits 2031: The Swale Borough Local Plan 2017 (LP) which together require proposals to be of high-quality design which is appropriate to its surroundings and protects residential amenity.

European sites

7. The appeal site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA). The conservation objectives for the SPA are to ensure that the integrity of the site is maintained or restored as appropriate and ensure that the site contributes to achieving the aims of the Wild Birds Directive. The qualifying features include its assemblage of breeding birds and waterbirds, including populations of dark-bellied brent goose, common shelduck, northern pintail, pied avocet, ringed plover, grey plover, red knot, dunlin, common redshank, and little tern.
8. Natural England were consulted on the proposal and advised that, since the proposed development will result in a net increase in housing and therefore an uplift in population, the proposed development increases the risk of recreational disturbance on the SPA. The scheme would therefore have likely significant adverse effects on the integrity of the SPA in isolation and in association with other similar development.
9. The Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy¹ requires development to provide a financial contribution toward off-site strategic mitigation measures to conserve the integrity of the SPA. The appellant has expressed willingness to make this contribution prior determination of this appeal. However, I have been provided with no evidence that a contribution has been made, or of any mechanism put in place to secure payment of the financial contribution.
10. In the absence of a secured scheme of mitigation, I must conclude that the proposal would have likely significant adverse effects on the SPA's integrity. On this basis, the proposal would conflict with LP Policies ST1, CP7, DM14, and DM28, which together seek to conserve and enhance the natural environment and biodiversity and apply the highest level of protection to internationally designated habitats sites, requiring any harm to be mitigated or compensated. The proposal would also fail to satisfy the Conservation of Habitats and Species Regulations 2010 (as amended) and paragraphs 174, 180 and 181 of the National Planning Policy Framework (the Framework) which protect sites of biodiversity value and require significant harm to biodiversity be avoided.

Other Matters

11. The proposal would provide an additional dwelling and would thus contribute to the supply of windfall housing sites in the area. Through conversion of the existing garage, the proposal would make use of previously developed land. The appeal site would be generally accessible, located within an existing built-up area served by busses and the proposal includes provision of two parking

¹ Bird Wise North Kent Mitigation Strategy 2018

Appeal Decision APP/V2255/W/22/3298340

spaces. The tree and hedge at the western boundary would be retained. The proposal would therefore provide very modest social, economic and environmental benefits commensurate in scale to the development of a single dwelling.

12. The Council cannot demonstrate a five-year supply of deliverable housing sites and has a shortfall against its Housing Delivery Test requirement. In these circumstances, footnote 8 of the Framework establishes that the policies which are most important for determining the application are out of date. However due to the proposal's likely significant effects in respect of harm to the integrity of the SPA, the Framework's policies which protect assets of particular importance provide a strong reason for restricting development. On this basis, the proposal does not benefit from the presumption of favour of sustainable development, as set out at paragraph 11.d) of the Framework.
13. The proposed dwelling would provide the appellant with year-round accommodation, not subject to a seasonal occupancy restriction. However, this is a private benefit to which I can ascribe no weight in my decision.

Conclusion

14. 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 not succeed.

E Dade

INSPECTOR

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Appeal Decision

Site visit made on 27 June 2023

by E Dade BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2023

Appeal Ref: APP/V2255/W/22/3301131
53 Millfield, Sittingbourne, Kent ME10 4TP

- 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 Ajit Singh against the decision of Swale Borough Council.
 - The application Ref 22/500942/FULL, dated 27 March 2022, was refused by notice dated 31 May 2022.
 - The development proposed is erection of a two-storey side extension to form 1no. semi-detached dwelling with associated parking and alteration to fenestration of existing building.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - The effects of the proposed development on the living conditions of the occupants of Nos 57 to 67 Millfield, with particular regard to outlook, privacy, and daylight and sunlight; and
 - The integrity of European sites, namely the Swale, Thames and Medway Estuary Special Protection Areas.

Reasons

Living conditions

3. The appeal property is an end of terrace dwelling within a broadly triangular plot that is wider at the front and narrower toward the rear. Adjoining the appeal site's angled side boundary are the rear gardens of Nos 57 to 67, a three-storey terrace row with small rear gardens. The back corner of the proposed dwelling would almost abut the shared boundary and, due to short garden length, would appear very close to No 61.
4. Due to its two-storey height and siting close to the shared boundary, the proposed development would appear imposing and have an enclosing effect on the rear of the adjacent terrace row. The proposed development would therefore result in a loss of outlook, particularly from the back gardens and rear habitable rooms of Nos 57 to 63.
5. The proposed development would be lower in height than surrounding dwellings. The appellant asserts that the proposed development would lie within the shadow cast by the appeal property. However, no technical daylight and sunlight assessment has been submitted to demonstrate this.

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Appeal Decision APP/V2255/W/22/3301131

6. As a result of the proposed development's siting close to shared boundary, I consider the rear gardens and rear habitable rooms of Nos 59 to 63 would experience a loss of daylight and sunlight, particularly after noon. Limiting the height of the proposal to two-storeys would not therefore be sufficient to prevent a loss of daylight and sunlight.
7. Windows on the side elevation would be fixed and obscure glazed. However, the first-floor window at bedroom 1 would directly overlook the rear gardens of Nos 63 to 67. The short distance between bedroom 1's window and the rear elevation of the adjacent terrace row would result in overlooking of habitable rooms, particularly at Nos 63 and 65. The separation distance between those windows would not satisfy Swale Borough Council's 'Designing an Extension: A Guide for Householders' Supplementary Planning Guidance which requires windows to the rear to be at least 21m from the windows of other houses to the rear.
8. The proposal would therefore result in a loss of privacy for the occupants of Nos 63 to 67 through overlooking of habitable rooms and rear gardens from the first-floor bedroom window.
9. The appellant has drawn my attention to nearby developments similar to the proposal. During my site visit I identified two-storey side extensions at No 5 Millfield and No 6 Kiln Close. In both examples, the side extensions are positioned at a greater distance from neighbouring dwellings than the proposed development and thus would not have comparable effects in respect of the living conditions of neighbouring occupants.
10. As set out above, the proposal would harm the living conditions of the occupants of Nos 57 to 67 Millfield, with particular regard to outlook, privacy, and daylight and sunlight. The proposal would therefore conflict with Policies CP4 and DM14 of 'Bearing Fruits 2031: The Swale Borough Local Plan 2017' (LP) which together require proposals to be of high-quality design appropriate to its surroundings, to comply with local design guidance, and to cause no harm to amenity.

European Sites

11. The appeal site is located within 6km of The Medway Estuary and Marshes Special Protection Area. The conservation objectives for the SPA are to ensure that the integrity of the site is maintained or restored as appropriate and ensure that the site contributes to achieving the aims of the Wild Birds Directive. The qualifying features include its assemblage of breeding birds and waterbirds, including populations of dark-bellied brent goose, common shelduck, northern pintail, pied avocet, ringed plover, grey plover, red knot, dunlin, common redshank, and little tern.
12. Natural England were consulted on the scheme and advised that, since it would result in a net increase in residential accommodation, the proposed development risks increasing recreational disturbance on European sites identified in the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy¹. The scheme is therefore likely to have a significant effect on the SPA's integrity in isolation and in association with other similar development.

¹ Bird Wise North Kent Mitigation Strategy 2018

Appeal Decision APP/V2255/W/22/3301131

13. The strategy requires a financial contribution toward strategic off-site mitigation of the effects on European sites arising from development. However, no contribution, or mechanism to secure such a contribution, has been provided.
14. In the absence of a secured scheme of mitigation, I must conclude that the proposal would have likely significant adverse effects on the integrity of the SPA. On this basis, the proposal would conflict with LP Policies ST1, DM14, and DM28, which together seek to conserve and enhance the natural environment and biodiversity and apply the highest level of protection to internationally designated habitats sites, requiring any harm to be mitigated or compensated. The proposal would also fail to satisfy the Conservation of Habitats and Species Regulations 2010 (as amended) and paragraphs 174, 180 and 181 of the National Planning Policy Framework (the Framework) which protect sites of biodiversity value and require significant harm to biodiversity be avoided.

Other Matters

15. The proposal would provide an additional dwelling thereby contributing to the area's housing supply and would include an electric vehicle charging point thus supporting a transition to low-emission vehicles. The proposal would therefore provide very modest social, economic and environmental benefits commensurate in scale to the development of a single dwelling.
16. The Council cannot demonstrate a five-year supply of deliverable housing sites. Its supply is equivalent to 4.83 years, representing a modest shortfall against the requirement. In these circumstances, footnote 8 of the Framework establishes that the policies which are most important for determining the application are out of date. However, since I have found the proposal would have likely significant effects on the SPA, the Framework's policies which protect assets of particular importance provide a strong reason for restricting development. On this basis, the proposal does not benefit from the presumption of favour of sustainable development, as set out at paragraph 11.d) of the Framework.
17. No objections were raised by the Council's Environmental Health team regarding matters within its remit, including noise, contaminated land, air pollution or lighting, and the appellant confirms that the suggested condition stipulating working hours during construction would be adhered to, and the proposal would avoid disturbance to neighbours. However, the absence of harm in this regard neither weighs against nor in favour of the development.

Conclusion

18. For the reasons given above, having assessed the case against the development plan as a whole and having had regard to all other relevant material considerations, I conclude that the appeal should be dismissed.

E Dade

INSPECTOR

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