

Agenda

Planning Committee Meeting

Date: Thursday, 11 January 2024

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 10 January 2024.

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1. Emergency Evacuation Procedure

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

- (a) The fire alarm is a continuous loud ringing. In the event that a fire drill is planned during the meeting, the Chair will advise of this.

- (b) Exit routes from the chamber are located on each side of the room, one directly to a fire escape, the other to the stairs opposite the lifts.
 - (c) In the event of the alarm sounding, leave the building via the nearest safe exit and gather at the assembly point on the far side of the car park. Do not leave the assembly point or re-enter the building until advised to do so. Do not use the lifts.
 - (d) Anyone unable to use the stairs should make themselves known during this agenda item.
2. Apologies for Absence
 3. Minutes

To approve the [Minutes](#) of the Meeting held on 7 December 2023 (Minute Nos. 496 - 509) as a correct record.

4. Declarations of Interest

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

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

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

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

Part B reports for the Planning Committee to decide

5. Planning Working Group

5 - 18

To approve the Minutes of the Meeting held on 20 December 2023 (Minute Nos. to follow).

To consider the following application:

- 23/500616/FULL 1 Norwood Walk West, Sittingbourne, ME10 1QF

Public Speaking

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 10 January 2024.

6.	2.1 - 23/500878/REM Land South of Dunlin Walk, Iwade	19 - 40
7.	2.2 - 22/504598/FULL Land at Queenborough Road, Isle of Sheppey	41 - 74
8.	2.3 - 23/502056/OUT Land adjacent 113 Chaffes Lane, Upchurch	75 - 92
9.	3.1 - 23/501174/FULL Land North of Horsham Lane, Upchurch	93 - 104
10.	Part 5 applications	105 - 126

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

Issued on Wednesday, 3 January 2024

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 democraticservices@swale.gov.uk. To find out more about the work of this meeting, 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

11 JANUARY 2024

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

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

PART 2 Applications for which permission is recommended

PART 3 Applications for which refusal is recommended

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

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

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

ABBREVIATIONS: commonly used in this Agenda

CDA Crime and Disorder Act 1998

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

HRA Human Rights Act 1998

SBLP Swale Borough Local Plan 2017

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INDEX OF ITEMS FOR PLANNING COMMITTEE – 11 JANUARY 2024

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

PART 2

2.1	23/500878/REM	IWADE	Land South Of Dunlin Walk
2.2	22/504598/FULL	QUEENBOROUGH	Land At Queenborough Road – Lidl Store
2.3	23/502056/OUT	UPCHURCH	Land adj 113 Chaffes Lane

PART 3

3.1	23/501174/FULL	UPCHURCH	Land North Of Horsham Lane
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PART 5

5.1	23/500709/FULL	LUDDENHAM	2 Cherry Drive
5.2	22/505025/FULL	TEYNHAM	Sunnybank Cottage, Deerton Street
5.3	22/501429/FULL	UPCHURCH	Ebenezer Chapel, Halstow Lane
5.4	22/505996/FULL	BOBBING	Webbenditch Cottage

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2.4 REFERENCE NO – 23/500616/FULL		
PROPOSAL Erection of a two storey side extension to House in Multiple Occupation (HMO)		
SITE LOCATION 1 Norwood Walk West Sittingbourne Kent ME10 1QF		
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 as may be consequently necessary and appropriate.		
APPLICATION TYPE Householder		
REASON FOR REFERRAL TO COMMITTEE The application has been referred to Planning Committee by Councillor Baldock Parish Council objection		
Case Officer Rebecca Corrigan		
WARD Borden And Grove Park	PARISH/TOWN COUNCIL Bobbing	APPLICANT Mr Tatler AGENT Oast Architecture Ltd
DATE REGISTERED 09.02.2023	TARGET DATE 12/12/23	
BACKGROUND PAPERS AND INFORMATION: 23/500616/FULL Erection of a two storey side extension to House in Multiple Occupation (HMO) (Revised description) 1 Norwood Walk West Sittingbourne Kent ME10 1QF (midkent.gov.uk)		

1. SITE LOCATION AND DESCRIPTION

- 1.1 The site is situated within the defined built-up area boundary of Sittingbourne and comprises of a two-storey end of terrace property which forms part of a small terrace on the southern side of Norwood Walk West. The property is currently in use as a house in multiple occupation (HMO), comprising of a communal kitchen / diner and 4 bedrooms. The property has a small front garden and a side and rear wraparound garden.
- 1.2 The property is located within a pedestrianised part of the estate, and in common with neighbouring properties has no direct on-site parking. One car parking space is available to the property within a communal area of garages sited adjacent to the railway line to the north. Unrestricted street parking takes place within the locality on the adjoining service roads.

2. PLANNING HISTORY

- 2.1 No relevant planning history

3. PROPOSED DEVELOPMENT

- 3.1 Planning permission is sought for the erection of a two storey side extension. This would create a communal lounge/diner at ground floor level and one additional bedroom with en-suite facilities at first floor level. The resulting development will provide a 5 bedroom House in Multiple Occupation (HMO)
- 3.2 The side extension would project 3.7m from the side wall of the property and have a length of 7.7m. It would be set back 0.5m from the front elevation of the building with a hipped roof profile and an eaves height of 5m to match existing. The plans have been amended through the course of the application to incorporate a hipped roof rather than a gable end roof profile, and to clarify that the property is and will continue in use as a HMO and not a single dwelling.

4. CONSULTATIONS

- 4.1 Three rounds of consultation were undertaken, during which letters were sent to neighboring occupiers: Full details of representations are available online.
- 4.2 A total of 21 letters of representation were received following the public consultation. Of these 14 were received from separate addresses. Objections were raised in relation to the following matters:
- Visual impact – overdevelopment, loss of openness, out of character
 - Amenity – overbearing impact, loss of outlook
 - Loss of privacy
 - Overshadowing and loss of light
 - Additional bathrooms have the potential to cause drainage problems
 - Highway safety concerns
 - Insufficient available parking
 - Noise and disturbance through construction
 - Internal layout is not as described – the house is a House in Multiple Occupation
 - Loft extension is not included in the application
 - Reduction in security in the area due to loss of visibility

- 4.3 Bobbing Parish Council – Raise objection for the following reasons:

- The proposed extension would block light to neighbouring properties.
- The proposed extension would overlook neighbouring properties.
- Could lead to more parked cars increasing congestion on the road.
- The property would be out of character for the area.
- Southern Water have problems with sewage in the area and it is known by residents that the drainage capacity is not the correct specification for the area.
- The increase in property size could add to the existing problem.

5. REPRESENTATIONS

- 5.1 **Southern Water** - Raise no objection but advise that the developer is intending to build-over a public foul sewer which is crossing the site..

6. **DEVELOPMENT PLAN POLICES**

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

Policy ST1 Delivering sustainable development in Swale

Policy ST3 The Swale settlement strategy

Policy CP4 Requiring good design

Policy DM7 Vehicle parking

Policy DM14 General development criteria

Policy DM16 Alterations and extensions

6.2 **Supplementary Planning Guidance/Documents**

Supplementary Planning Guidance (SPG): “Designing an Extension A Guide for Householders”.

The Swale Borough Parking Standards 2020

7. **ASSESSMENT**

7.1 This application is reported to the Committee at the request of Cllr Baldock and because Bobbing Parish Council has objected to the proposal. Considering these comments and on the basis of the scheme that has been submitted, the committee is recommended to carefully consider the following points: -

- The Principle of Development
- Character and Appearance
- Living Conditions
- Transport and Highways
- Flood Risk, Drainage and Surface Water
- SAMMS

Principle

7.2 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

7.3 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.

7.4 The site is situated within the defined built-up area boundary of Sittingbourne where the principle of extending a residential property is generally accepted subject to compliance with policies CP4, DM14 and DM16 of the Local Plan.

7.5 A number of objections have been received which relate to the property being in use as a House in Multiple Occupation (HMO). The application was revised to clarify this, the description was changed and the revised drawings now show the existing and proposed

internal layout as a HMO.

- 7.6 It is important for members to note that the use of a dwelling as a HMO by up to 6 persons does not require planning permission, and is permitted development under Class L of Part 3 of the Town and Country Planning (General Permitted Development (England) Order 2015 (as amended). As such the existing use of the property is lawful. The property is still a dwellinghouse (albeit one used as a HMO rather than by a single household) and the principle of extending a dwelling in an urban area is acceptable, subject to the more detailed considerations set out below.

Character and Appearance

- 7.7 The NPPF 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. Policies CP4, DM14 and DM16 of the Local Plan state that developments and extensions should be well designed and respond positively to the building and its surroundings. The Council's SPG entitled Designing an Extension – A guide for Householders recommends that two storey side extensions should be set back from the front elevation of the existing dwelling and stepped down from the existing ridge height, in order to appear subservient and preserve the original form and symmetry of the host dwelling. In this instance the extension would be set back 0.5m from the front elevation of the building and the ridge line would be 0.5m lower than the original ridge height. This is in accordance with the SPG "Designing an Extension A Guide for Householders".
- 7.8 The side extension would project 3.7m from the side wall of the property and have a length of 7.7m. A distance of more than 3m is to be retained to the side boundary of the property. The roof design has been amended to incorporate a hipped roof profile which reduces the overall bulk of development and is also consistent with other end of terrace properties in the area which are also designed with a hipped roof profile. The width of the extension would be subservient to the main house, and would not be out of keeping with the prevailing form of development in the area which comprises blocks of terraced houses.
- 7.9 Overall, the proposed two storey side extension is considered to integrate successfully with the host property and would not cause any harm to the visual amenities of the surrounding area.

Living Conditions

- 7.10 Policy DM14 states that any new proposed developments should not cause significant harm to the amenities of surrounding uses or areas and due consideration will be given to the impact of the proposed development upon neighbouring properties. Any new proposed schemes should not result in significant overshadowing through a loss of daylight or sunlight.

Potential impact upon No's 44 and 46 Norwood Walk

- 7.11 The proposal would extend the property closer to these dwellings. A distance of 11m would be maintained to the front elevation of No 46, and the extension would not be sited directly in the line of this property. The front elevation of No 44 would directly face the extension. A distance of approx. 12.6m would be retained between No. 44 and the extension. Taking into account this distance and that this property already faces towards

the flank wall of the application dwelling, the impact upon outlook is considered acceptable.

- 7.12 No's 44 & 46 are sited on a lower land level than the application property by approximately 1m and objections have been raised that the development would result in a loss of light to these properties. However, the development would comply with guidelines as set out in the BRE Daylight and Sunlight Good Practice Guide, and the impact on light provision to these neighbouring dwellings is considered acceptable.
- 7.13 Concerns have also been raised from objectors that the proposal has the potential to result in loss of privacy. However, no windows are proposed within the side elevation of the proposed extension and as such no direct overlooking would occur to these properties.

Potential impact upon No's 13-17 Woolett Road

- 7.14 The proposed extension would be located to the north of no's 13-17 (odd) and would be sited at a distance of approx. 16m from the rear elevations of these properties. The extension would not project further south than the main house and at this distance would be unlikely to cause any harmful impacts relating to light and outlook.
- 7.15 In terms of overlooking, the extension would be closer than the 21m distance normally applied to back-to-back dwellings. However this is no worse than the existing situation, and importantly the first floor rear facing window would be to a bathroom and can be restricted by condition to be an obscure glazed window.

Potential impact upon 27 Norwood Walk West

- 7.16 Given the location of this dwelling 16m from the extension and across public footways, no adverse amenity impacts would be likely to occur.

Potential impact upon 3 Norwood Walk West

- 7.17 Although the application site is attached to No 3, the extension would be erected on the other side of the site and would not cause any impacts to this property in terms of light, privacy or outlook.
- 7.18 Although the proposal would increase the number of bedrooms by 1, from 4 to 5 in total, this would be unlikely to increase activity or intensify the use of the site to an unacceptable level.
- 7.19 Overall, the proposal is not considered to cause unacceptable amenity impacts and would not be in conflict with Policy DM14 of the Local Plan.

Transport and Highways

- 7.20 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."

- 7.21 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."

- 7.22 A number of objectors have raised concerns in relation to the increased demand for parking arising from the proposal. None of the properties on Norewood Walk have on-site parking due to the estate design with pedestrianised walkways. As a result it is acknowledged that parking occurs on local residential roads. Notwithstanding this, any additional parking demand from the development would be limited and it would be difficult to argue that additional pressure from one extra bedroom would be sufficiently harmful to refuse the scheme on highways grounds.

Flood Risk, Drainage and Surface Water

- 7.23 Concerns have been raised that the foul drainage system in the area is poor. Southern Water have not raised any concerns regarding capacity. Although a condition is requested relating to protection of any public sewers on the site, this is a matter that is controlled directly by Southern Water and as such it is not considered necessary to impose a planning condition.

Impacts upon SPA and Ramsar Sites

- 7.24 Members will be aware that the Council (together with other North Kent authorities) operates a strategy to manage impacts arising from recreational pressure on the coastal SPA and Ramsar sites. A tariff-based system is in place to collect contributions to fund the management of recreation uses in these areas. The strategy includes a charging schedule in place for other types of development that do not neatly fall to be considered as “dwellings”, including for Houses in Multiple Occupation.
- 7.25 For completeness an Appropriate Assessment is set out below. Since this application will result in a net increase in residential accommodation on the site, impacts to the SPA and Ramsar sites may occur from increased recreational disturbance. Due to the scale of the development, there is no scope to provide on-site mitigation and therefore off-site mitigation is required by means of developer contributions at the rate of £314.05 per additional room for a HMO. One additional bedroom is proposed here, and therefore a total fee of £314:05 is required. The agent has paid this mitigation fee and therefore the application is acceptable in this regard.

8. CONCLUSION

- 8.1 This application would not cause adverse harm to either visual or residential amenities and the addition of one additional bedroom at the property would not have significant impacts on the parking provision of nearby roads. The application is considered to accord with relevant development plan policies and it is recommended that this application be approved.

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 approved shall be carried out in accordance with drawing title number(s): A103 (received 10th November 2023), A104 (received 6th February 2023), A105 (received 31st March 2023), A106 (received 6th February 2023).

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

- 3) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those on the existing building in terms of type, colour and texture.

Reason: In the interests of visual amenity.

- 4) Before the development hereby permitted is first used, the proposed window in the first floor rear elevation shall be obscure glazed and this window shall be incapable of being opened except for a high level fanlight opening of at least 1.7m above inside floor level and shall subsequently be maintained as such.

Reason: To prevent overlooking of adjoining properties and to safeguard the privacy of neighbouring occupiers.

- 5) No more than 6 residents shall occupy the property as a House in Multiple Occupation, as defined under Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended).

Reason: To avoid unacceptable impacts upon Special Protect Areas and Ramsar sites within the area without suitable mitigation being put in place, and because occupation by more than 6 persons would require a separate application for planning permission being a change of use from Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) to a sui generis use.

- 6) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:
- Monday to Friday 0800 - 1800 hours, Saturdays 0800 - 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interest of residential amenity.

Informative

You are referred to the response received to the Council from Southern Water dated 23rd May 2023. As per the contents of the advisory note, you are advised to liaise directly with Southern Water regarding the location of the public sewer prior to the implementation of development. This planning permission does not remove or override any requirement for approval from Southern Water in respect of development over or near a public sewer.

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

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

The application site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

The proposal therefore has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advise that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation and site remediation satisfactory to the EA, the proposal is unlikely to have significant effects on these sites.

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

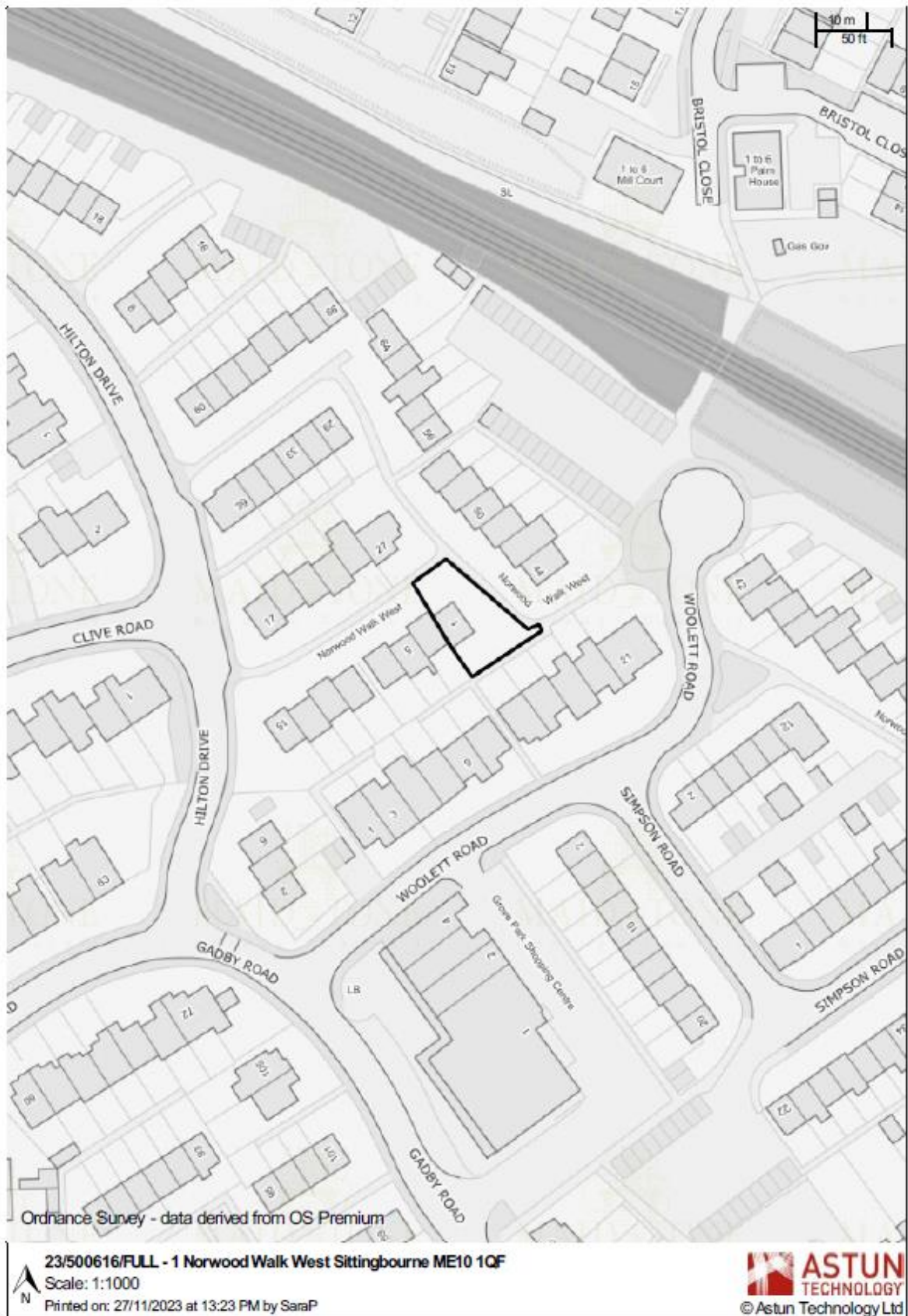
However, the proposed development is of a very small scale and, in itself and in combination with other development, would not have an adverse effect on the integrity of the SPA, subject to the conditions set out within the report.

Notwithstanding the above, NE has stipulated that, when considering any residential development within 6km of the SPA, the Council should secure financial contributions to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG), and that such strategic mitigation must be in place before the dwelling is occupied.

Due to the scale of development there is no scope to provide on site mitigation such as an on-site dog walking area or signage to prevent the primary causes of bird disturbance, which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats.

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

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



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PLANNING COMMITTEE – 11 JANUARY 2024**PART 2**

Report of the Head of Planning

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

2.1 REFERENCE NO: 23/500878/REM		
PROPOSAL Approval of Reserved Matters for erection of 20 no. residential dwellings (Appearance, Landscape, Layout and Scale being sought).		
SITE LOCATION Land South of Dunlin Walk, Iwade, Kent ME9 8TG		
RECOMMENDATION Delegate to the Head of Planning to grant approval of reserved matters subject to appropriate safeguarding conditions as set out in the report, 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.		
APPLICATION TYPE Major - Approval of reserved matters		
REASON FOR REFERRAL TO COMMITTEE Called in to committee by ward councillors.		
Case Officer Simon Greenwood		
WARD Bobbing, Iwade and Lower Halstow	PARISH/TOWN COUNCIL Iwade	APPLICANT Riverdale Developments AGENT John Brindley
DATE REGISTERED 22/02/2023	TARGET DATE 24/05/2023	
BACKGROUND PAPERS AND INFORMATION: https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=RZF44OTY0N800		

SITE LOCATION AND DESCRIPTION

- 1.1. The 0.65ha rectangular shaped application site is located to the south of Dunlin Walk, a shared footway and cycleway, and is a relatively flat piece of open grassed land with some boundary vegetation. The site is accessed via Sanderling Way, which is an adopted public carriageway that abuts the application site between properties numbered 4 and 5 Dunlin Walk.
- 1.2. The application site forms part of a wider scheme of several hundred homes within Iwade, developed predominantly by Ward Homes (now part of Barratt Developments) over a 15-year period. To the south of the application site is Iwade Community Primary School, to the north and west is residential housing and to the east is an area of woodland and scrub and The Woolpack Pub.

- 1.3. The application site is located within an area of Potential Archaeological Importance and is otherwise not the subject of any policy designations or constraints.

PLANNING HISTORY

- 1.4. Outline planning permission was refused on 18 November 2020 under application ref. 18/506328/OUT for the erection of 20 residential dwellings (access being sought all other matters for future consideration) on the following ground:

The proposed development is likely to represent a potential overdevelopment of the site with harm arising from a likely under provision of car parking or suitable parking arrangements; likely inadequate servicing arrangements due to the lack of turning area at the eastern end of the site resulting in lorries and other large vehicles having to reverse along the length of the access road, causing danger and inconvenience to other highway users. The proposed development for 20 dwellings would therefore be contrary to paragraphs 109 and 110 of NPPF and contrary to policies CP2, CP4, DM7, DM14 of Bearing Fruits Local Plan 2031, and the Parking Standards SPD 2020.

APPEAL HISTORY

- 1.5. Application ref. 18/506328/OUT was the subject of a subsequent appeal which was allowed, and outline planning permission was granted on 13 April 2022 (appeal ref. APP/V2255/W/21/3272760).

PROPOSED DEVELOPMENT

- 1.6. The grant of outline planning permission has established that the means of access and the erection of 20 dwellings on the site is acceptable in principle. This application seeks approval of the outstanding reserved matters which comprise details of appearance, landscape, layout and scale.
- 1.7. The site is accessed from Sanderling Way between Nos. 4 to 5 Dunlin Walk towards the western end of the site, consistent with the outline consent. The development involves a cul-de-sac arrangement with a vehicle turning head at the eastern end of the site.
- 1.8. The proposed housing mix is proposed as follows:

Tenure	Two bedroom	Three Bedroom	Four bedroom	Total
Private	2	12	4	18
Affordable	1	1	0	2
Total	3	13	4	20

- 1.9. 10% of the proposed dwellings (2 units) would comprise affordable housing in line with the Section 106 agreement attached to the outline consent.
- 1.10. The proposed development will comprise 4 terraced houses, 12 semi-detached houses and 4 detached houses. 12 of the houses would be two storeys high and 8 of the houses would be two storeys high with accommodation in the roof-space.
- 1.11. The proposed dwellings will feature red and cream/buff brickwork, red and brown hung tiling, cream weatherboarding and pitched roofs with red/brown and dark grey tiling. Architectural features will include front gables, single storey bay windows with hipped roofs, modest sized dormer windows and pitched and flat roof canopies to front doors.

CONSULTATION

2.1. 1 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.

2.2. 12 letters of objections were received in relation to the consultation. Concerns were raised in relation to the following matters:

- Overdevelopment;
- Very close proximity and overlooking of Iwade Primary School giving rise to playing field safeguarding and privacy issues for pupils and teachers;
- Green space is used by the residents and children as a recreation and play area and is one of the main reasons some residents moved in;
- Adjacent houses were purchased on understanding that the green space would not be developed and would ultimately be handed to the school;
- Lack of open space locally / Iwade village has already lost numerous green spaces;
- Loss of trees and shrubs;
- Impact on wildlife;
- There should be planting along the boundary with the school;
- Developer should meet costs of tree planting by school;
- Proposed hedgerows are not tall enough to ensure privacy;
- Dunlin Walk residents will overlook parked cars instead of green space / planting should be carefully considered for Dunlin Walk residents;
- Increased air pollution / noise and pollution from construction activity;
- Increased pressure on already inadequate parking in the locality;
- Increased traffic using surrounding roads including dangerous corner with minimal visibility on the road by 55 and 57 Sanderling Way;
- Pedestrian pavement necessary for the cul-de-sac;
- The access on Dunlin Walk/Sanderling Way crosses a well-used footway;
- Pedestrian safety concerns for school pupils walking home;
- Safe pavement required between 4 and 5 Dunlin Walk;
- Lack of footpath/pavement from parking to houses at 1 - 4 Dunlin Walk;
- Turning head may be used for car parking;
- Visitor parking spaces may be used by residents;
- Construction traffic and parking needs to be properly managed;
- Unsafe and inadequate site access, including for construction traffic;
- Difficult access for emergency services;
- Potentially lower the value of the surrounding properties;
- Increased pressure on already stretched local infrastructure and services;
- Houses could be at risk of subsidence.

2.3. **Iwade Parish Council** objected to the application, reiterating their previous objections as follows:

- Proposal would fail to provide safe vehicular access. Apart from the issues of the junction of The Street and Sanderling Way, access to the site is unacceptably unsafe. Vehicles exiting the proposed development from the western end run the very real risk of collision with vehicles entering and exiting the parking spaces of residents at houses 1-4;

- Kent Police raised issues with the development layout; the perimeter, boundary and divisional treatments include neighbouring boundaries and that of Iwade School, adding that the proximity of the school requires a CSE policy or additional boundary treatments. Parking, including visitor spaces and lighting policy were also of concern;
- Access to the site will be via Sanderling Way, already overpopulated with parked vehicles and pinch points. The proposed junction is on a corner and will struggle to cope with the additional demand of a possible two to four cars per new household. Coupled with the proposed access for potential new development (18/505157/OUT) on a blind corner, it will create a traffic nightmare in an area that already has issues. The junction of Sanderling Way/The Street is also a blind corner;
- Parents expressed views that this creates a significant child safety and child protection concern; they do not feel their children, whilst on their lunch break or in P.E. attire, should be overlooked by houses so close to the playing field;
- This could be classified as an infill development and over intensive development of a small site;
- The school could reach its maximum size of 630 pupils in 2 years' time, with further housing proposed another expansion of the school is very realistic;
- Drainage in this area is not good and any development on this site could result in run-off to the playing field, compounding the problem the school already has with flooding;
- Council members noted Iwade School have planted trees on their boundary and suggest the developer should pay a contribution to the school for alterations they need to make due to the proposed development.

2.4. It should be noted that most of the concerns raised by local residents and the Parish Council relate to the principle of the development and the acceptability of the access arrangement which have been established through the grant of outline planning permission.

REPRESENTATIONS

- 2.5. **SBC Design and Conservation:** - No objections raised. No designated or non-designated heritage assets would be materially impacted by the proposed development.
- 2.6. **Lower Medway Internal Drainage Board:-** The Board supports the comments of KCC as the Lead Local Flood Authority.
- 2.7. **KCC Archaeology:** - No comments.
- 2.8. **KCC Ecology:** - Proposed layout will not result in the loss of any ecological mitigation or ecological enhancement areas previously agreed within the outline application. Due to the size of the proposal, there are limited opportunities for landscaping but the landscaping plan has confirmed that native species planting will be planted along the site boundaries and a number of the shrubs proposed do benefit pollinators. Therefore, we are satisfied that the planting will provide some benefit for biodiversity.
- 2.9. **KCC Drainage:** - No objections raised. It should be further demonstrated that the receiving surface water system has sufficient capacity, and this can be addressed through condition 10 of the outline consent which required the submission of a detailed drainage design.
- 2.10. **National Highways:** - No objections raised.

- 2.11. **KCC Highways:** - No objections raised subject to conditions and informatives.
- 2.12. **KCC Public Rights of Way:** - No objections raised. Informatives are requested (see recommended informatives Nos. 9-12).
- 2.13. **Environment Agency:** - No objections raised.
- 2.14. **Natural England:** - No comments.
- 2.15. **NHS Kent and Medway:** - Proposal will have implications for the delivery of general practice services which will require mitigation through the payment of a financial contribution of £17,280 based upon the proposal generating approx. 48 new patient registrations.
- 2.16. **Southern Water:** - No objections raised. The proposed method of foul disposal is satisfactory. An approval for the connection to the public sewer should be submitted under Section 106 of the Water Industry Act. The consent of the Highway Authority will be required for the proposed discharge to the Highway drain.
- 2.17. **Kent Police:** - No further comments following outline stage response.
- 2.18. **Health and Safety Executive (Explosives):** - No objections raised.
- 2.19. **Environmental Protection Team:** - No objections raised. Relevant conditions were attached to the outline consent. The applicant should be reminded of the requirements relating to the Code of Construction Practice (Informative No. 1).
- 2.20. **Affordable Housing Manager:** - No objections raised.

DEVELOPMENT PLAN POLICIES

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

- ST 1** (Delivering sustainable development in Swale)
- ST 2** (Development targets for homes)
- ST 3** (The Swale settlement strategy)
- ST 4** (Meeting the Local Plan development targets)
- ST 5** (The Sittingbourne settlement strategy)
- CP 3** (Delivering a wide choice of high-quality homes)
- CP 4** (Requiring good design)
- CP 7** (Conserving and enhancing the natural environment)
- DM 7** (Vehicle parking)
- DM 8** (Affordable housing)
- DM 14** (General development criteria)
- DM 17** (Open space, sports and recreation provision)
- DM 19** (Sustainable design and construction)
- DM 21** (Water, flooding and drainage)
- DM 28** (Biodiversity and geological conservation)
- DM 29** (Woodlands, trees and hedges)

Supplementary Planning Guidance:

- Developer Contributions (2009)
- Parking Standards (2020)

Swale's Landscape Character and Biodiversity Appraisal (2011)
Swale Landscape Assessment (2019)

ASSESSMENT

- 4.1. This application is reported to the Committee at the request of Councillors Clark and Chapman.
- 4.2. The main considerations involved in the assessment of the application are the reserved matters of appearance, layout, landscape and scale which are considered under the following sections:
 - Size and Type of Housing
 - Landscape and Visual
 - Character and Appearance
 - Living Conditions.
- 4.3. This report also reviews the following matters which were substantively addressed at outline stage:
 - The Principle of Development
 - Affordable Housing
 - Heritage
 - Archaeology
 - Ecology
 - Transport and Highways
 - Air Quality
 - Community Infrastructure
 - Open Space
 - Flood Risk, Drainage and Surface Water
 - Contamination
 - Sustainability / Energy.

Principle

- 4.4. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with development plan unless material considerations indicate otherwise.
- 4.5. 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.
- 4.6. The principle of the development of the site to provide 20 dwellings has been established by the grant of outline consent under application reference 18/506328/OUT at appeal. The inspector considered that the outline stage proposal was acceptable subject to conditions and the submission of satisfactory details of reserved matters.

Size and Type of Housing

- 4.7. The Local Plan requires the mix of tenures and sizes of homes provided in any particular development to reflect local needs. The Local Plan requires developments to achieve a mix of housing types, which reflect that of the Strategic Housing Market Assessment (SHMA).
- 4.8. The indicative mix at outline stage comprised 4 two-bedroom houses (terraced), 10 three-bedroom (8 terraced and 2 detached) and 6 four-bedroom detached houses. The application proposes 3 two-bedroom houses (semi-detached), 13 three-bedroom houses (4 terraced and 9 semi-detached), and 4 four-bedroom detached houses. This mix includes two affordable units (1 two-bedroom semi-detached house and 1 three-bedroom semi-detached house).
- 4.9. The proposed market housing would comprise 11.1% two-bedroom houses, 66.7% three-bedroom houses and 22.2% four-bedroom houses which represents an under-provision of two-bedroom houses an over-provision of three and four-bedroom houses in relation to the need identified in the SHMA.
- 4.10. The proposed affordable housing would comprise 1 two-bedroom house and 1 three-bedroom house.
- 4.11. Surrounding development is characterised by family housing which would typically be two, three and four bedrooms in size. Three-bedroom houses would appear to predominate in this locality.
- 4.12. It is noted that the proposed housing mix does not fully reflect the housing need identified in the SHMA. However, having regard to the size and location of the development, the indicative mix provided at outline stage and the size and type of housing characteristic of the surrounding area, the proposed mix of housing size and types is considered acceptable. The proposal would provide a suitable mix of dwellings to contribute to the housing needs of the borough in accordance with the Local Plan and the NPPF.

Affordable Housing

- 4.13. The NPPF sets out the requirement for setting appropriate affordable housing levels for new development based on up-to-date evidence. Through policy DM8, the Local Plan requires 10% of affordable housing from development in Sittingbourne. The Section 106 agreement relating to the outline consent secured 10% affordable housing on (2 units) as affordable housing comprising 1 three-bedroom affordable rented house and 1 two-bedroom shared ownership affordable house. The Section 106 agreement included a cascade mechanism which would come into effect in the event that a registered provider could not be secured for the affordable rented unit. The cascade mechanism provided for the affordable rented to be delivered as a shared ownership unit or an alternative site or as an affordable rented unit. Alternatively, the developer could be relieved of the obligation to deliver the unit on-site through a payment in lieu of the affordable dwelling.
- 4.14. The Council's Affordable Housing Manager has been consulted and raises no objections in relation to affordable housing. The delivery of affordable housing is in accordance with Local Plan policy DM 8 and the NPPF.

Landscape and Visual

- 4.15. The NPPF requires decisions to ensure that development is '*sympathetic to... landscape setting*'.
- 4.16. The site presently comprises an open grassed area with some boundary trees and shrubs. An Arboricultural Impact Assessment and Arboricultural Constraints Report was carried out at outline application stage and it was identified that the trees on the site were low quality stock and there were no arboricultural reasons to refuse the outline consent. The outline consent was subject to the following conditions:
- Condition 6 secured an Arboricultural Method Statement;
 - Condition 7 set out the details of landscaping that should accompany the reserved matters submission;
 - Condition 8 requires the replacement of any trees and shrubs which die, are severely damaged or become diseased within five years of planting;
 - Condition 30 required that the reserved matters included details of boundary treatment on the southern boundary of the site with the school.
- 4.17. There are limited opportunities for new landscaping having regard to the development approved under the outline consent, including the car parking requirements of the scheme. The proposed landscaping includes lawn, trees and lower-level vegetation to create buffers and breaks including hedging to provide some screening of parked cars along the northern boundary of the site adjacent to Dunlin Walk. Tree planting is proposed along the southern boundary of the site to provide screening to the school and address condition 30 of the outline consent. A condition (No. 8) is recommended to secure retention of the approved landscaping for a period of 10 years (rather than the standard 5 years).
- 4.18. KCC Ecology note that due to the size of the proposal there are limited opportunities for landscaping but the landscaping proposal includes native species planting and a number of the shrubs which benefit pollinators and will provide some benefit for biodiversity.
- 4.19. It is considered that the proposed soft landscaping will serve to soften the impact and improve the setting of the development, albeit the opportunities for planting are limited having regard to the outline consent and the car parking requirements. The tree screening along the southern boundary should limit views into the school grounds from the proposed houses. The proposed landscaping scheme is considered satisfactory and in accordance with the provisions of the Local Plan and the NPPF.

Heritage

- 4.20. 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.
- 4.21. The Council's Conservation and Design Manager has confirmed that no designated or non-designated heritage assets would be materially impacted by the proposed development, either

directly or indirectly. Furthermore, there is not evidence to suggest that the application site holds any historic interest.

Archaeology

- 4.22. 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.
- 4.23. 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.
- 4.24. The site is located in an area of Potential Archaeological Importance and Iwade is generally archaeologically sensitive with remains of prehistoric, Roman, Saxon and medieval date having been found during development works in and surrounding the village. Condition 13 of the outline consent secured details of a programme of archaeological works.
- 4.25. On this basis, the proposal is considered consistent with the provisions of policy DM 34 of the Local Plan, and the NPPF.

Character and Appearance

- 4.26. 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.
- 4.27. In line with the NPPF, Policies CP 4 and DM 14 of the Local Plan requires design of the development to be of a high quality that conserves and enhances the natural and/or built environments; is well sited and of a scale, design, appearance and detail that is sympathetic and appropriate to the location. New development should create safe, accessible, attractive places that make safe physical and visual connections within the development itself and its surroundings.
- 4.28. At outline stage it was considered that 20 dwellings could reasonably be accommodated on the site without a harmful impact on visual amenity or the character of the wider area. The highways arrangement is consistent with the outline stage indicative layout and involves an access from Sanderling Way between Nos. 4 to 5 Dunlin Walk towards the western end of the site and a cul-de-sac arrangement with a turning head at the eastern end of the site. The inspector considered that there was significant scope to design a scheme at reserved matters stage to provide sufficient on-site parking in line with the Parking Standards SPD whilst avoiding an unacceptably cramped arrangement. The proposal will provide 48 resident car parking spaces and 8 visitor car parking spaces (56 in total) with 4 resident spaces provided within car ports / barns. The range of different parking solutions is intended to create variety in the streetscape and to reinforce the character of the area. The proposed car parking would accord with the SPD whilst providing the opportunity for some soft landscaping and tree planting.
- 4.29. The indicative mix at outline stage comprised 4 two-bedroom houses (terraced), 10 three-bedroom (8 terraced and 2 detached) and 6 four-bedroom detached houses. The proposed development comprises 3 two-bedroom houses (semi-detached), 13 three-bedroom houses

(4 terraced and 9 semi-detached), and 4 four-bedroom detached houses. 12 of the houses would be two storeys high and 8 of the houses would be two storeys high with accommodation in the roof-space.

- 4.30. The layout of the proposed scheme is broadly comparable to the indicative layout approved at outline stage which was considered to complement the form and layout of development in the locality and result in a development which is acceptable in character and visual amenity terms.
- 4.31. The design of the different house types is informed by a local character study and incorporates traditional architectural features which reflect the surrounding context. The architectural design and materiality includes the following:
- Red and cream/buff brickwork, red and brown hung tiling and cream weatherboarding;
 - Pitched roofs featuring red/brown and dark grey tiling and some front gables and dormer windows;
 - Single storey bay windows with hipped roofs and modest sized dormer windows;
 - Pitched and flat roof canopies to front doors.
- 4.32. Condition 14 of the outline consent secured details of external finishing materials.
- 4.33. It is considered that the proposed architectural approach and materiality is an appropriate response to the site's context which would ensure that the development integrates satisfactorily with its surroundings.
- 4.34. It is considered that the overall appearance of the development would provide for a varied street scene and would complement the surrounding context, thereby maintaining local character and making a positive contribution to the quality of the local environment. Accordingly, it is considered that the proposal is in accordance with the NPPF and Local Plan policies CP 4 and DM 14.

Ecology

- 4.35. The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') affords protection to certain species or species groups, commonly known as European Protected Species (EPS), which are also protected by the Wildlife and Countryside Act 1981. This is endorsed by policies CP 7 and DM 28 of the Local Plan, which relates to the protection of sites of international conservation importance including Special Areas of Conservation (SAC), Special Protection Areas (SPA) or Ramsar Sites.
- 4.36. An Appropriate Assessment was carried out at outline stage and adopted by the Planning Inspectorate as the Competent Authority, which concluded that the proposed development will not adversely affect the integrity of the Medway Estuary and Marshes SPA subject to securing appropriate mitigation through a SAMMS payment. Accordingly, a payment of £4,991.20 (index linked) was secured through the Section 106 agreement attached to the outline permission.
- 4.37. Under the Natural Environment and Rural Communities Act (2006), the authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions for the purpose of conserving biodiversity. Furthermore, the National Planning Policy Framework states that 'the planning system should contribute to and enhance the natural environment by minimising impacts on biodiversity and delivering net gains in biodiversity

where possible'. The National Planning Policy Framework states that 'if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or as a last resort, compensated for then planning permission should be refused.'

4.38. 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".

4.39. 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.

4.40. The outline application was accompanied by an Ecological Assessment which identified that the site may form part of a route used by great crested newts between 2 ponds within the school grounds and ponds to the north and east of Iwade village. Mitigation was proposed involving a raised bank within the rear gardens of the proposed dwellings planted with native species hedging along with enhancements for the benefit of great crested newts. KCC Ecology were satisfied with the ecological survey work undertaken and the proposed mitigation measures subject to appropriate conditions. The outline planning permission granted at appeal was subject to the following conditions:

- Condition 15 which secured an Ecological Mitigation and Enhancement Strategy and Management Plan;
- Condition 16 which required that all external lighting shall be installed in accordance with the approved Ecological Assessment;
- Condition 17 which secured measures to allow the movement of hedgehogs;
- Condition 18 which secured a scheme of biodiversity enhancement.

4.41. KCC Ecology raise no objections to the reserved matters application, noting that the proposed layout will not result in the loss of any ecological mitigation or ecological enhancement areas previously agreed within the outline application. They note that, due to the size of the proposal there is limited opportunities for landscaping. However, the landscaping plan has confirmed that native species planting will be planted along the site boundaries and a number of the shrubs proposed do benefit pollinators. Therefore, KCC Ecology are satisfied that the planting will provide some benefit for biodiversity.

4.42. Having regard to the outline consent it is considered that the proposed development is acceptable in terms of ecology and biodiversity in accordance with Local Plan policies CP 7 and DM 28 and the NPPF.

Transport and Highways

4.43. 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.”

4.44. 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.”

4.45. 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.

4.46. The acceptability of the means of access to the site was established through the outline planning permission. The outline stage indicative layout and the currently proposed layout are broadly comparable and indicate the access from Sanderling Way between Nos. 4 to 5 Dunlin Walk towards the western end of the site and a cul-de-sac arrangement with a turning head at the eastern end of the site. The inspector was satisfied that the site could be designed so that the proposed houses could be acceptably and safely accommodated on the site with regard to servicing arrangements.

4.47. Condition 4 of the outline consent secured the approved highways arrangements and condition 5 secured adequate car parking under the reserved matters and removed permitted development rights for development which would result in the loss of car parking. Furthermore, condition 20 secured completion of the highways works prior to occupation of the development.

4.48. The houses would benefit from a combination of car ports and surface parking which is compliant with the Council's Parking Standards Supplementary Planning Document (2020, SPD).

4.49. The inspector's decision considered the merits of car barns/ports which were included within the indicative outline proposals and are now proposed within the reserved matters submission. The inspector acknowledged that such structures could be removed from the parking provision by occupiers moving fences to incorporate them into gardens, for example. The inspector noted that the Council could impose conditions at reserved matters stage to prevent them from, for example, being enclosed and used for other purposes. Accordingly, condition 2 is recommended to require that car ports are retained for the parking of motor vehicles.

4.50. The scheme has been designed in line with the Council's cycle parking policy guidance which requires once covered and secure cycle parking space per bedroom for houses. Secure, covered cycle parking has been provided through the provision of lockable sheds to rear gardens with direct access to street and approached by hard paths.

4.51. The proposals have been reviewed by KCC highways officers following amendments to the car parking layout and no objections are raised in relation to highways matters, subject to conditions and informatives. Accordingly, conditions 2 to 6 and informatives Nos. 1 to 8 are recommended in accordance with KCC Highways recommendations. The proposed reserved matters are considered acceptable in highways terms and are therefore in accordance with the provisions of the Local Plan and the NPPF.

Air Quality

- 4.52. 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.
- 4.53. 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.
- 4.54. 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.....”*.
- 4.55. 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.
- 4.56. The outline stage application did not meet the threshold at which an Air Quality Assessment would be required, and it was noted that the site was not in or near to an Air Quality Management Area. The outline proposal was considered acceptable in terms of air quality and the following conditions were in order to mitigate air quality impacts at the construction and operational stages of the development:
- Condition 19 which secured a Code of Construction Practice including measures to minimise the production of dust on the site;
 - Condition 21 secured a Construction Method Statement to address construction logistics matters including the parking and waiting of vehicles;
 - Condition 23 secured details of measures to mitigate transport related air pollution including electric vehicle charging points.
- 4.57. In view of the measures secured at outline stage it is considered that the proposed development is acceptable in relation to air quality and is therefore in accordance with Local Plan policy DM6 and the NPPF.

Community Infrastructure

- 4.58. The National Planning Policy Framework attaches importance to ensuring that a sufficient choice of school places are available to meet the needs of existing and new communities. This is reflected in policies CP 5 and CP 6 of the Local Plan, which set out that provision shall be made to accommodate local community services, social care and health facilities within new developments.

4.59. As with any planning application, the request for financial contributions needs to be scrutinised in accordance with Regulation 122 of the Community Infrastructure Regulations 2010 (which were amended in 2014). These stipulate that an obligation can only be a reason for granting planning permission if it is:

- Necessary
- Related to the development
- Reasonably related in scale and kind

4.60. The following financial contributions were secured through the Section 106 agreement at outline stage:

- Contribution towards improvement works to the A249 / Grovehurst Road junction of £53,140;
- Libraries facilities contribution of £108.32 per dwelling;
- NHS healthcare contribution of £17,280
- Open space contribution of £8,290
- Primary education contribution of £3,324 per house
- Secondary education contribution of £4,115 per house
- Wheelie bin contribution of £2,066 (index linked).

4.61. NHS Kent and Medway have requested a contribution of £17,280 towards expanding general practice capacity under this reserved matters application. A contribution of £17,280 towards expanding general practice capacity was secured under the outline planning permission granted at appeal (LPA ref. 18/506328/OUT). This reserved matters application is concerned with details of appearance, landscape, layout and scale rather than the principle of the development which was established at outline stage where the impact on local healthcare infrastructure was addressed.

4.62. In view of the above it is considered that the proposed development is acceptable in terms of mitigating the impacts of the additional population on community infrastructure. Accordingly, the proposal is considered to accord with policies CP 5 and CP 6 of the Local Plan and the NPPF.

Open Space

4.63. Policy DM 17 of the Local Plan sets out that new housing development shall make provision for appropriate outdoor recreation and play space, including urban parks, children's play areas, open space for sport, allotments or community gardens proportionate to the likely number of people who will live there. This space should be fully accessible all year round and therefore is generally not appropriate for Sustainable Urban Drainage Systems such as stormwater ditches.

4.64. The outline stage proposal of 20 residential units met the threshold for triggering the provision of open space. No specific open space provision was included in the proposed outline development there are existing facilities and further planned facilities within easy walking distance of the proposal. These include open space, play facilities, sports pitches and allotments and as such it was difficult to justify any requirement to supply what would be in scale, a relatively small additional open space. However, an open space contribution of £8,290 was sought towards enhancing / increasing capacity of the off-site existing play / fitness

provision in the village. Accordingly, the proposal is considered acceptable in relation to open space and therefore in compliance with policy OS 11 of the Local Plan and the NPPF.

Flood Risk, Drainage and Surface Water

- 4.65. 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.
- 4.66. The outline stage proposal was considered acceptable in terms of flood risk, drainage and surface water subject to conditions 9, 10 and 11 which secured details of a surface water drainage scheme and its implementation.
- 4.67. KCC Flood and Water Management as Lead Local Flood Authority have raised no objections to the reserved matters application, noting that further demonstration that the receiving surface water system has sufficient capacity will need to be evidenced, and this can be incorporated into details to be submitted under condition 10 of the outline consent.
- 4.68. No objections have been raised by Lower Medway Internal Drainage Board who support the comments of KCC as the Lead Local Flood Authority.
- 4.69. In view of the above the proposals are considered acceptable in terms of flood risk, drainage and surface water. It is therefore considered that the proposals are in accordance with Policy DM 21 of the Local Plan and the NPPF.

Contamination

- 4.70. 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.
- 4.71. The outline stage proposal was considered acceptable in relation to contamination as the site did not appear to have any previous industrial uses on it and it did not appear that neighbouring developments were subject to a contaminated land condition. Accordingly, the proposals are considered acceptable in relation to contamination and are therefore in accordance with the Local Plan and the NPPF.

Living Conditions

Existing residents

- 4.72. The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers.
- 4.73. The layout of the proposed scheme is broadly comparable to the indicative layout approved at outline stage which was considered to provide sufficient separation to existing neighbouring properties to ensure no unduly harmful impacts upon the amenities of the occupants of these dwellings. Accordingly, it is considered that the proposed development will not give rise to unduly harmful impacts in terms of overlooking / loss of privacy and the visual impact of the development when viewed from neighbouring dwellings. Furthermore, noise and disturbance was not identified as a concern at outline stage and in view of the residential nature of the proposal it should not give rise to undue noise and disturbance.

Future residents

- 4.74. New development is expected to offer future occupiers a sufficient standard of accommodation and to have regard to the Government's minimum internal space standards for new dwellings.
- 4.75. The floor plans indicate that the proposed dwellings would provide functional layouts with adequate space for furnishings within each unit and in this regard are considered to provide a satisfactory standard of accommodation for future occupiers.
- 4.76. The layout of the development is also considered to provide sufficient external amenity space to serve future occupants. It is recommended that permitted development rights be removed by condition (No. 7) to control development in rear gardens and ensure that adequate private amenity space to the dwellings is retained.
- 4.77. Refuse storage would be accommodated out of sight within the rear garden areas. The layout has been designed to allow for direct external access from the rear to the front of each dwelling to enable the refuse to be moved to kerbside collection points on refuse collection days without the need to travel internally through the dwelling.
- 4.78. The proposal would deliver a development which is acceptable in terms of the living conditions of both future occupiers and the occupiers of existing nearby residential properties. The proposal is therefore considered to be in accordance with the Local Plan and the NPPF.

Sustainability / Energy

- 4.79. Policy DM 19 of the Local Plan requires development proposals to include measures to address climate change.
- 4.80. The outline consent was subject to a condition (No. 22) requiring the submission of details of the materials and measures to be used to increase energy efficiency and thermal performance and reduce carbon emissions and construction waste. The Council will therefore be able to secure a scheme which meets Local Plan requirements in terms of delivering sustainable development and addressing climate change. The proposal is therefore considered to be in accordance with Local Plan policy DM 19 and the NPPF.

Other Matters*Outline stage conditions*

- 4.81. It is noted that the following conditions were also attached to the outline consent and cover the following relevant matters:
- Condition 12 secured details of foul water sewerage disposal;
 - Condition 24 secured water consumption at a rate of no more than 110 litres per day;
 - Condition 25 required the reserved matters to incorporate measures to minimise opportunities for crime and anti-social behaviour;
 - Condition 27 restricts construction work to 0800-1800 hours on weekdays and 0800-1300 hours on Saturdays;
 - Condition 28 restricts impact piling to 0900-1700 hours on Mondays to Fridays
 - Condition 29 secures details and installation of high speed fibre optic broadband connection.

Conclusion

- 4.82. The details of reserved matters for 20 residential dwellings are considered to align with the development parameters established by the original outline planning consent. Furthermore, the reserved matters planning application is in accordance with national and local planning guidance in respect of matters associated with access, layout, scale, landscaping and appearance.
- 4.83. As such the proposals are considered acceptable and compliant with NPPF guidance and Local Plan policies. In view of the above it is recommended for that the reserved matters application be approved.

RECOMMENDATION – Approval of reserved matters subject to the following conditions:

CONDITIONS/REASONS

- The development hereby permitted shall not be carried out and maintained in accordance with the following approved plans and documents:

2263 / P / 10.01 Location Plan
 2263 / P / 10.02 Rev. D - Site Layout
 2263 / P / 10.03 Rev. D - Boundary Treatments Plan
 2263 / P / 10.04 Rev. D - Secure by Design Principles
 2263 / P / 10.05 Rev. D - Refuse Strategy
 2263 / P / 10.06 Rev. D - Electric Charging Points Strategy
 2263 / P / 10.07 Rev. D - Cycle Storage Strategy
 2263 / P / 10.08 Rev. D - Materials Plan
 2263 / P / 20.01 Type DW1 – Floor Plans
 2263 / P / 20.02 Type DW1 – Elevations
 2263 / P / 20.11 Type DW2 – Floor Plans
 2263 / P / 20.12 Type DW2 – Elevations 1
 2263 / P / 20.13 Type DW2 – Elevations 2
 2263 / P / 20.21 Type DW3 – Floor Plans
 2263 / P / 20.22 Type DW3 – Elevations 1
 2263 / P / 20.23 Type DW3 – Elevations 2
 2263 / P / 20.31 Type DW4 – Floor Plans
 2263 / P / 20.32 Type DW4 – Elevations
 2263 / P / 20.41 Type DW5 – Floor Plans
 2263 / P / 20.42 Type DW5 – Elevations
 2263 / P / 20.101 Type DWAF1 – Floor Plans
 2263 / P / 20.102 Type DWAF1 – Elevations
 2263 / P / 20.111 Type DWAF2 – Floor Plans
 2263 / P / 20.112 Type DWAF2 – Elevations
 2263 / P / 40.01 Rev. A - Street Scene
 2263 / P / 50.01 Rev. A - Single Carport
 2263 / P / 50.02 Rev. A - Twin Carport
 2709-URB-ZZ-00-DR-L-498150-150-P00g – Detailed Planting Plan
 14892-TDA-XX-XX-DR-C-56001 Rev. D - Vehicle Swept Path Analysis Refuse Vehicle
 14892-TDA-XX-XX-DR-C-56002_A_Vehicle Swept Path Analysis Fire Tender

Reason: For the avoidance of doubt.

2. The area shown on the submitted layout as vehicle parking space, car ports, car barns or garages shall be provided, surfaced and drained to the satisfaction of the Local Planning Authority before the use is commenced or the premises occupied, and shall be retained for the use of the occupiers of, and visitors to, the premises, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to this reserved parking space.

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

3. No dwelling shall be occupied until full details of the electric vehicle charging have been submitted to and approved in writing by the Local Planning Authority. The agreed details shall then be implemented for each house before the dwelling in question is first occupied. All Electric Vehicle chargers provided for homeowners in residential developments must be provided to Mode 3 standard (providing up to 7kw) and SMART (enabling Wifi connection). Approved models are shown on the Office for Low Emission Vehicles Homecharge Scheme approved chargepoint model list:
<https://www.gov.uk/government/publications/electric-vehicle-homecharge-scheme-approved-chargepoint-model-list>

Reason: In the interests of encouraging sustainable modes of transport and minimising the carbon footprint of the development.

4. No dwelling/building shall be occupied until space has been laid out within the site in accordance with the approved plans for cycles to be securely parked.

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

5. Pedestrian visibility splays 2 m x 2 m with no obstruction over 0.6 m above the access footway level shall be provided at each private vehicular access prior to it being brought into use and shall be subsequently maintained.

Reason: In the interests of highway safety.

6. Before the first occupation of a dwelling / premises the following works between that dwelling / premises and the adopted highway shall be completed as follows: (A) Footways and/or footpaths shall be completed, with the exception of the wearing course; (B) Carriageways completed, with the exception of the wearing course, including the provision of a turning facility beyond the dwelling together with related: (1) highway drainage, including off-site works, (2) junction visibility splays, (3) street lighting, street nameplates and highway structures if any.

Reason: In the interests of highway safety.

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

Reason: In the interests of the amenities of occupants of the dwellings and the amenities of the area.

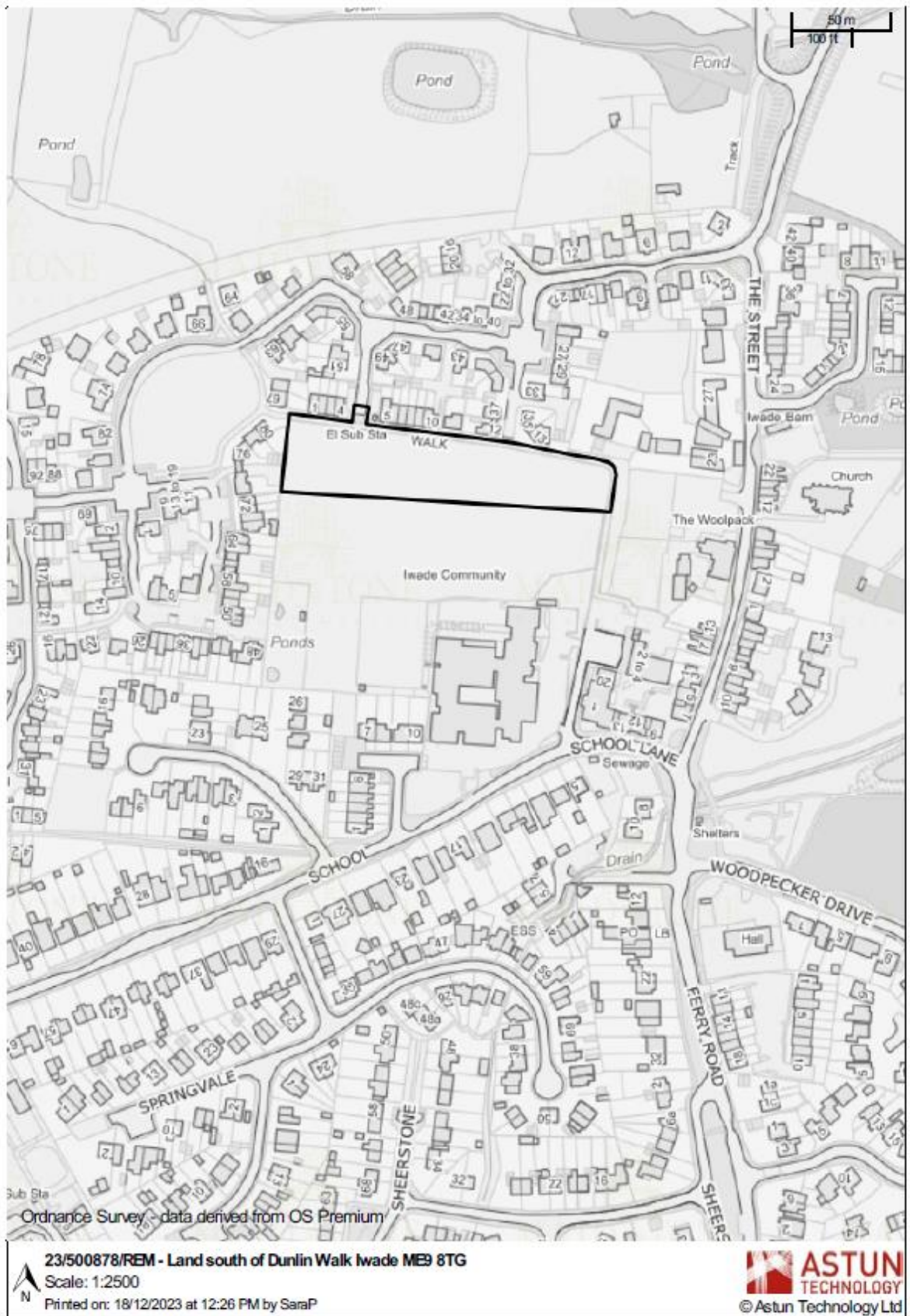
8. Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with trees or shrubs of such size and species as may be agreed in writing with the Local Planning Authority,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

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

INFORMATIVES

1. It is important to note that planning permission does not convey any approval to carry out works on or affecting the public highway.
2. Any changes to or affecting the public highway in Kent require the formal agreement of the Highway Authority, Kent County Council (KCC), and it should not be assumed that this will be a given because planning permission has been granted. For this reason, anyone considering works which may affect the public highway, including any highway-owned street furniture, is advised to engage with KCC Highways and Transportation at an early stage in the design process.
3. Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the public highway. Some of this highway land is owned by Kent County Council whilst some is owned by third party owners. Irrespective of the ownership, this land may have highway rights over the topsoil.
4. Works on private land may also affect the public highway. These include works to cellars, to retaining walls which support the highway or land above the highway, and to balconies, signs or other structures which project over the highway. Such works also require the approval of the Highway Authority.
5. Kent County Council has now introduced a formal technical approval process for new or altered highway assets, with the aim of improving future maintainability. This process applies to all development works affecting the public highway other than applications for vehicle crossings, which are covered by a separate approval process.
6. Should the development be approved by the Planning Authority, it is the responsibility of the applicant to ensure, before the development is commenced, that all necessary highway approvals and consents have been obtained and that the limits of the highway boundary have been clearly established, since failure to do so may result in enforcement action being taken by the Highway Authority. The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under the relevant legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.
7. Guidance for applicants, including information about how to clarify the highway boundary and links to application forms for vehicular crossings and other highway matters, may be found on Kent County Council's website: <https://www.kent.gov.uk/roads-and-travel/highway-permits-and-licences/highways-permissionsand-technical-guidance>. Alternatively, KCC Highways and Transportation may be contacted by telephone: 03000 418181.

8. You are reminded that construction works should not commence until a Code of Construction Practice has been submitted to and approved by the LPA under condition 19 of the outline consent. Your attention is drawn to the Mid Kent Environmental Code of Development Practice. Broad compliance with this document is expected. This can be found at: <https://tunbridgewells.gov.uk/environmental-code-of-development-practice>
9. No furniture may be erected on or across Public Rights of Way without the express consent of the Highway Authority.
10. There must be no disturbance of the surface of the right of way, or obstruction of its use, either during or following any approved development.
11. Planning consent does not confer consent or a right to disturb or unofficially divert any Public Right of Way at any time without the express permission of the Highway Authority.
12. No trees or shrubs should be planted within 1.5 metres of the public right of way.



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2.2 REFERENCE NO - 22/504598/FULL		
PROPOSAL Erection of Class E(a) retail store with associated parking, access, servicing and landscaping.		
SITE LOCATION Land At Queenborough Road Isle of Sheppey Kent ME12 3RJ		
RECOMMENDATION Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions with further delegation to the Head of Planning) to negotiate the precise wording of conditions, including adding or amending such conditions as may be consequently necessary and appropriate.		
APPLICATION TYPE Large Major Retail Distribution/Servicing		
REASON FOR REFERRAL TO COMMITTEE - Sheerness TC Objects		
WARD Queenborough and Halfway.	PARISH/TOWN COUNCIL Queenborough	APPLICANT Lidl Great Britain Ltd AGENT Carney Sweeney
DATE REGISTERED 14/10/2022	TARGET DATE 30/01/2023 (EoT to 31/07/2023)	CASE OFFICER Simon Dunn-Lwin
BACKGROUND PAPERS AND INFORMATION: https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=RIKFCRTYI4800		

1. BACKGROUND

- 1.1 Members may recall that this proposal was presented to the 17th July 2023 Planning Committee meeting. The report recommended approval for the scheme and Members resolved to grant planning permission subject to recommended conditions.
- 1.2 Following the issue of the decision notice the Council received legal representations from Tesco Stores Limited and Aldi Stores pursuant to the Pre-Action Protocol for Judicial Review, challenging the decision of the Council to grant planning permission. The challenge was submitted on 6 grounds by Aldi and 2 grounds by Tesco. The Aldi challenge can be summarised as 1) failed to apply the statutory test on the listed building nearby, 2) failed to take account of traffic counts, 3) took account of immaterial consideration relating to ‘non-existent fallback’ position, 4) took into account immaterial consideration relating to biodiversity net gain, 5) misapplied the Habitats Regulations, and 6) stipulated unlawful planning conditions. The Tesco challenge can be summarised as 1) did not take account of impacts if the Aldi store did not relocate from Sheerness Town Centre, and 2) failed to have regard to Paragraph 122 of the NPPF relating to alternative use.
- 1.3 The Council sought legal advice on the above challenges, and it was concluded that ground 1) of Aldi’s challenge would be difficult to defend. As a result, the Council conceded to Aldi’s challenge on ground 1). On 22nd November 2023 the High Court issued a Consent Order to quash the planning permission. The application is therefore brought back to the Committee with updated text in the report for redetermination.

2. SITE LOCATION AND DESCRIPTION

- 2.1 The application site measures 1.16 hectares and is comprised of undeveloped grassland. It is sandwiched between Queenborough Road and the A249, immediately

to the west of A2500 (Lower Road) roundabout and opposite Cowstead Cottages on Queenborough Road. The site is referred to in the planning history as Cowstead Corner. The site is largely flat and enclosed by a post and wire fence. There are no trees on the site. A ditch skirts the western perimeter fronting the main road.

- 2.2 The site is of an irregular shape, measuring 124m in width by 1120m in depth at its maximum. On the adjoining site is a battery storage facility.
- 2.3 The large Aldi regional distribution centre sits to the southwest along the A249 approach to the Thomsett Way roundabout and Neats Court Retail Park. The application site is set in open landscape south of Furze Hill in the north, with the conglomeration of Halfway and Minster-on-Sea lying on raised land beyond.
- 2.4 The site falls outside of the Queenborough & Rushenden regeneration area. It is located within the eastern edge of the Sheerness built up area confines. The site is currently allocated for a hotel. Neats Court, a Grade 2 Listed Building lies approximately 500m to the north-west of the site on Queenborough Road. Public Right of Way (PRoW ZS11) links Halfway Houses in the north over Furze Hill to Queenborough Road in the south, terminating opposite the site adjacent to 1 Cowstead Cottage.

3. PLANNING HISTORY

Application site

- 3.1 **23/502916/ENVSCR**, Environmental Screening Opinion for 22/504598/FULL, EIA not required
- 3.2 **SW/09/0185**, Trunk road service area, consisting of petrol filling station with petrol and heavy goods vehicle forecourts, carwash and single storey sales building, 44 bedroomed 2 storey hotel with restaurant. Car and heavy goods vehicle parking areas. Refused - Decision Date: 09.06.2009. Appeal dismissed on 29.09.2010.

Neighboring sites

- 3.3 **17/503032/FULL**, Installation of an electricity battery storage facility within a new steel framed portal building and ancillary infrastructure including surface water attenuation, Granted subject to conditions
- 3.4 **19/502969/FULL**, Erection of a new food store with associated parking, servicing, landscaping and new vehicular access (Aldi Store), Granted subject to conditions

4. PROPOSED DEVELOPMENT

- 4.1 This application seeks planning permission for a food store of 1,906sqm (GIA) comprising 1266 sqm sales area with a 423sqm warehouse (including freezers/chillers and storage) and 217sqm ancillary staff facilities including a bakery, entrance lobby and a disabled WC. It is roughly rectangular in shape. At its largest, the sales area of the store will measure 59m in length by 21m width.
- 4.2 The food store will feature both curved and flat roof elements, measuring 8.8m in height to the highest curved point of the roof and 7m to the lower flat part to the rear (north). The materials proposed are a mixture of facing brickwork, glazing and cladding. The food store entrance will be in the southern portion of the site with the car park to the east. In the eastern and southern area of the site landscaped buffer

areas are proposed to address ecological mitigation and provide habitat required to support the proposal.

- 4.3 A single vehicular access is proposed on Queenborough Road opposite Cowstead Cottages to the west of the A2500 (Lower Road) roundabout. The new junction proposed will enable customer and delivery access to the site. The car park will include a total of 119 parking spaces, 6 of which will be disabled spaces, 8 for parents with young children and 11 EV charging parking spaces with 7 motorcycle spaces and stands for 12 cycles. The delivery / service area is proposed to the rear (north) of the store elevation, facing the car park.
- 4.4 Off-site highway works to the shared cycle/footway from Cowstead Cottages up to Neats Court Cottages have been submitted and are to be carried out under a S.278 agreement.
- 4.5 In terms of landscaping and boundary treatment, tree planting and hedges are proposed on Queenborough Road and set within a linear lawn opposite Cowstead cottages with a 3m high acoustic timber fence behind to contain the delivery area. Tree planting is also proposed within the car park and landscaped buffer areas along the A249 main frontage in the south and to the east of the car park with wildflower seed beds in the landscaped buffer areas consisting primarily of wildflower meadow and bulb planting along the eastern and southern boundaries augmented by low level shrub/herbaceous borders. Hedging is also proposed to enclose the car park to the eastern edge and to the front of the store in the south.
- 4.6 Additional tree planting and low-level shrubs are proposed within the car park. A public art feature is also proposed to the front of the store adjacent to the A249 frontage. The proposed landscaping areas will be enclosed by a 1.1m high post and rail perimeter fence around most of the site on the main road frontages which will enable the landscaped areas to be visible from the A249 and Lower Road. A 2m high 'paladin' metal fencing borders the battery plant to the west.
- 4.7 The development will create a total of 40 jobs, which will be a mixture of full and part time roles, equating to approximately 23 full-time equivalent jobs.

5. CONSULTATION

- 5.1 One round of consultation with neighbours has been undertaken in letters were sent to neighboring occupiers. Site notices were displayed twice at the site and the application has been advertised twice in the local press in accordance with statutory requirements. The application was advertised as constituting a departure from the Local Plan.
- 5.2 24 letters/online responses have been received to date. 16 are in support of the application and welcome Lidl providing retail choice. Full details of all comments are available online.
- 5.3 8 objections have been received, raising the following concerns: -
 - Traffic impact and road safety
 - A2500 should be made a dual carriageway
 - Aesthetic/visual impact – design is 'boring'
 - Pedestrian safety with limited footway in Queenborough Road
 - Traffic and collision data inadequate

- Non-car accessibility poor – insufficient footway
- Traffic assessment inadequate
- Retail impact on the town centre
- Conflict with site allocation
- Harm to heritage asset – Neats Court

5.4 **Minster-on-Sea Parish Council** acknowledge the benefits of the scheme and supports the creation of jobs. The full response is attached in Appendix 1. The Parish Council comments that: -

- They are keen to ensure that the proposal meets the strategy criteria laid down by Policy ST4 in terms of the retail impact on the vitality of Sheerness Town Centre and the design and landscaping creates a gateway site.
- The Parish Council insists that off-site improvement works also provide a safe environment for pedestrians and cyclists from nearby housing in Queenborough Road, Rushenden, Thistle Hill/Barton Hill Drive. A footpath on the north side of Queenborough Road from Cowstead Cottages to Neats Court Cottages (120m) should be carried out under a S278 Agreement.

5.5 **Sheerness Town Council** have objected to the application on the following grounds:

- Sheerness will lose out on job opportunities and low paid worker options.
- No benefit to the population with no proposed public transport.
- Contrary to site allocation.
- Traffic congestion and impact on highway safety
- No provision for active travel from Sheerness or Rushenden.
- No mitigation for social and economic impact on Sheerness.

The full response is attached in Appendix 2.

5.6 **Queenborough Parish Council** have been formally consulted but no reply has been received to date.

REPRESENTATIONS

5.7 **SBC Conservation Team**: No objection subject to conditions

5.8 **SBC Tree Officer (Landscaping)**: No objection.

5.9 **SBC Climate Change Officer**: No objection subject to a condition to achieving BREEAM 'very good' accreditation.

5.10 **Mid Kent Environmental Health**: No objection subject to conditions on land contamination, noise mitigation and construction method statement.

5.11 **KCC Ecology**: No objection subject to lighting condition.

5.12 **KCC SUDs**: No objection subject to conditions

5.13 **KCC Archaeology**: No objection subject to condition

5.14 **KCC Highways**: No objection subject to conditions

5.15 **National Highways**: No objection subject to conditions

5.16 **Natural England:** No objection

5.17 **Environment Agency:** No comments to make.

5.18 **Lower Medway Internal Drainage Board:** No objection to principle of discharging of both surface water and treated foul water into the LMIDB drainage district and to consent these discharges subject to further detail including the location of the discharge point. The developer will need to make an application for land drainage consent to the Board after the detailed drainage design has been undertaken and there is a high degree of certainty that the scheme will remain unchanged.

5.19 **Kent Police (Design Advisor):** No objection.

5.20 **Southern Water:** No objection.

6. DEVELOPMENT PLAN POLICIES

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.

NATIONAL PLANNING POLICIES

National Planning Policy Framework (NPPF) and Planning Practice Guidance

- Paragraph 85: Policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.
- Paragraph 89: Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. Such an approach needs to be based on balanced judgements embracing sustainable development principles to avoid unacceptable impacts. The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.
- Paragraph 90: Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation.
- Paragraph 91: Planning authorities should apply a sequential test to planning applications for main town centre uses
- Paragraph 92: Re edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Requirement for flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored
- Paragraph 94: Retail Impact Assessment (provided development is over a locally set threshold requirement) for assessing applications for retail and leisure

development outside town centres, which are not in accordance with an up-to-date plan,

- Paragraph 95: Failure to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph ~~90~~ 94, it should be refused.
- Paragraph 108: Consideration of transport issues
- Paragraph 115: 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.
- Paragraph 116: Sets out highways and transport objectives
- Paragraph 127: Policies and decisions need to reflect changes in the demand for land and be informed by regular reviews of land allocations and availability. If there is no reasonable prospect of an application coming forward for the allocated use, as part of the plan update the land should be reallocated and, in the interim, support applications for alternative uses where the proposed use would contribute to meeting an unmet need for development in the area
- Paragraph 131: Seek high quality design
- Paragraph 136: Take opportunities to incorporate trees in new development
- Paragraph 158: Plans should mitigate and adapt to climate change
- Paragraph 164: Minimising energy consumption and use of decentralised energy supply
- Paragraph 167: Apply sequential test for flooding
- Paragraph 175: Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate
- Paragraph 180: Planning policies and decisions should contribute to and enhance the natural and local environment including valued landscapes and minimise impacts on and providing net gains for biodiversity
- Paragraphs 187 & 188: Protection of Designated Habitat Sites
- Paragraph 200: Local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting
- Paragraph 205: When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be).
- Paragraph 207: Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification
- Paragraph 208: 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 of the proposal including, where appropriate, securing its optimum viable use

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

- ST 1** (Delivering sustainable development);
- ST 2** (Development targets for jobs and homes 2014-2031);
- ST 3** (The Swale settlement strategy)
- ST 4** (Meeting the Local Plan development targets)
- ST 6** (The Isle of Sheppey area strategy);
- A4** (Land At Cowstead Corner, Queensborough)
- CP 1** (Building a strong, competitive economy);
- CP 4** (Requiring good design);
- CP 8** (Conserving and enhancing the historic environment);
- DM 1** (Maintaining and enhancing the vitality and viability of town centres and other areas)
- DM 2** (Proposals for main town centre uses);
- DM 6** (Managing transport demand and impact);
- DM 7** (Vehicle parking);
- DM 14** (General development criteria);
- DM 19** (Sustainable design and construction);
- DM 21** (Water, flooding and drainage);
- DM24** (landscape)
- DM 28** (Biodiversity and geological conservation);
- DM 32** (Development involving listed buildings).
- DM 34** (Scheduled ancient monuments and archaeological sites)

OTHER POLICY DOCUMENTS

Swale Landscape Character and Biodiversity Appraisals SPD (2011)

Parking Standards SPD

7. ASSESSMENT

Principle of Development

- 7.1 The National Planning Policy Framework (NPPF) states that new applications should be considered in the context of the presumption of sustainable development. Section 7 of the NPPF seeks to ensure the vitality of town centres. Paragraphs 91-93 set out the requirements for both a sequential test and impact assessments where a main town centre use (such as food-retail) would be located out of centre and where the floorspace involved exceeds 2500 m² (the Council adopted a local threshold of 500 sqm on 20 March 2019 so this lower threshold is to be applied instead). The NPPF confirms that where an application fails to satisfy the sequential test or would likely have a significant adverse impact on investment or vitality and viability in nearby town centres, permission should be refused.
- 7.2 Paragraph 127 of the NPPF states that planning policies and decisions need to reflect changes in the demand for land and where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan, applications for alternative uses on the land should be supported, where the

proposed use would contribute to meeting an unmet need for development in the area. It is therefore suggested that there is a public benefit in the scheme in terms of unmet retail demand.

- 7.3 The site's location is acceptable in terms of the principle of development because it was accepted for the hotel allocation.

Local Allocation for Hotel Use

- 7.4 The application site lies outside but abuts the eastern boundary of the Queenborough and Rushenden regeneration area on land allocated for a hotel use (by Policy A4). The application has been advertised as a departure from the Local Plan. The main issue to consider is whether the proposed retail store is acceptable in this location. It is acknowledged that the proposed use conflicts with the Local Plan Policy A4 site allocation at Cowstead Corner for a hotel. The application has been advertised as a departure in accordance with statutory procedure.
- 7.5 In support of the application Lidl have submitted a hotel marketing assessment which surveyed 27 hotel operators. None of the major and minor operators expressed any interest for the site as they require town centre/more affluent locations or did not see there being demand for a hotel in this location, particularly given the limited number of bedrooms allowed for in the allocation. In light of the marketing survey of potential hotel operators undertaken, it is evident that there is no demand for a hotel in this location, notwithstanding the site's allocation.

Sequential Assessment and Retail Impact

Sequential Assessment

- 7.6 The NPPF requires the submission of a sequential test. National Planning Practice Guidance (the NPPG) sets out that a sequential test guides main town centre uses (such as retail) towards town centre locations first then, if no town centre locations are available, to edge of centre locations. If neither town centre nor edge of centre locations are available, then to out of centre locations. The NPPG states that it is for the applicant to demonstrate compliance with the sequential test.
- 7.7 When undertaking a sequential test, the applicant, and the Local Planning Authority (LPA) should be realistic and only consider sites 'suitable' for the development proposed. This is recognised by paragraph 92 of the NPPF which states that when considering out-of-centre proposals, applicants and LPAs should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge-of-centre sites are fully explored.
- 7.8 Relevant case law as to the application of the sequential tests includes *Tesco vs Dundee City Council* [2012] UKSC 13 which considered the issue and definition of 'suitability', and the degree to which an application should demonstrate flexibility. The judgment held:
- The natural reading of each policy is that the word suitable, in the first criteria, refers to the suitability of the site for the proposed development – it is the proposed development which will only be acceptable if no suitable site is available more centrally; and
 - The application of the sequential approach requires flexibility and realism from developers and retailers, as well as LPAs.

- 7.9 The case of *Aldergate Properties v Mansfield District Council* [2016] EWHC 1670 (Admin) further clarified the context in which ‘suitability’ and ‘availability’ of sites should be considered:
- ‘Suitable’ and ‘available’ generally mean suitable and available for the broad type of development which is proposed in the application by approximate size, type and range of goods;
 - This incorporates the requirement for flexibility as set out in NPPF and NPPG, and excludes generally, the identity and personal or corporate attitudes of an individual retailer; and
 - Available must generally mean available for the type of retail use for which permission is being sort.
- 7.10 The submitted Planning and Retail Statement refers to a number of appeal decisions and legal judgements which relate the business model of the developer (Lidl) and the approach of sequential assessments and the matter of flexibility.
- 7.11 The application seeks consents for a retail food store which is a class E use under the Use Class Order in an out of centre location. Class E uses are considered a main town centre use through the NPPF and Local Plan. Within the Local Plan policies DM1 and DM2 sets out that such uses would be focused within the designated town, district, and local centres in order to safeguard and enhance the vitality and viability of the commercial centres.
- 7.12 The application has been accompanied by a Planning and Retail Statement prepared by the RPS Group which includes the sequential assessment. This document has been independently reviewed by an external consultant (Lambert Smith Hampton) on behalf of the Council.
- 7.13 The RPS Planning and Retail Assessment at paragraph 4.9 notes that the issue of availability of sites has already been addressed by Aldi as part of its own application at Queensborough Road and its accompanying “Planning, Economic and Retail Statement” dated June 2019 which identified and assessed several sites. Aldi’s sequential assessment was subsequently audited by White Young Green (WYG) for the Council, who concluded that the sequential approach to site selection had been met. This was reported to the planning committee who subsequently granted planning permission for Aldi’s relocation to Queenborough Road.
- 7.14 Paragraph 4.10 of the RPS Planning and Retail Assessment also states that, “While this decision was then challenged by Tesco it was not on the grounds of any failure in the sequential test, and while the decision was quashed by the High Court, again it was not on any failure to satisfactorily address the sequential test. In reappraising Aldi’s application, the Council instructed Lambert Smith Hampton (LSH) to advise on the retail planning merits of the application and in their advice letter of 10th December 2021 LSH concentrated on the issue of impact, saying that “LSH has not addressed the sequential assessment in support of the proposed scheme. No challenge was brought in respect of WYG’s conclusions of the applicant’s sequential assessment, and the Council are satisfied that the test has been passed. No new candidate sites have come forward since the original application was submitted that warrant the need for assessment”.
- 7.15 Ultimately, in the current application before the Committee, the sequential assessment has demonstrated that there are no sites vacant, suitable or available for the proposed development taking into account the development parameters. As a result, and in respect of sequential assessment the provision of a food retail store in an out of centre

location is acceptable in principle and accords with the NPPF and policies DM1 and DM2 of the Local Plan.

- 7.16 This context should include documents that have been submitted to support the application, as well as the consultation response criticising the assessments undertaken.

Retail Impact

- 7.17 Planning Policy requires the submission of a retail impact assessment. The NPPG states that the purpose of an impact test is to consider the impact over time of certain out-of-centre and edge-of-centre proposals on town centre vitality and viability, and investment.

- 7.18 The NPPF and Local Plan 2017 seek to protect the vitality and viability of existing centres. In terms of the process for assessing this, firstly proposals for main town centre uses should follow a sequential test to assess potential town centre or edge of centre sites, and secondly, where the proposed floorspace is above a certain threshold, include a retail impact assessment on the impact of the retail development on the vitality and viability of existing centres. Policy DM 2 requires a retail impact assessment for proposals elsewhere outside of the defined town centres. In the locally set threshold for an RIA is 500 sq.m as adopted by Cabinet in 2019 and set out in the July Tabled Update. The application proposal comprises 1906 sqm (GIA) of floorspace and requires an RIA. Any such assessment should consider:

- The impact of the proposal on existing, committed and planned public and private sector investment in a centre or centres within the catchment area of the proposal; and
- The impact on town centre vitality and viability, including local consumer choice and trade in the centre and wider area.

- 7.19 The application proposes a retail use which would not accord with policy. The supporting text of the Local Plan recognises that recent development has seen the emergence of a retail centre that complements Sheerness Town centre at Neats Court Retail Park. However, it is important to ensure that future retail proposals do not undermine the role and retail function of Sheerness Town centre. This is an important factor in the consideration of this application, and it needs to be carefully considered whether the introduction of a retail use on this site would undermine the vitality and viability of existing retail centres.

- 7.20 A 'Planning and Retail Statement' (the Retail Impact Assessment (RIA)) was submitted in support of the proposal which includes the following: -

- Sequential test
- Retail impact assessment on Sheerness Town Centre, Neats Court Retail Park and wider catchment areas of Minster-on-Sea, Sittingbourne Town Centre, Halfway House and Iwade Local Centres.

- 7.21 The independent retail consultants Lambert Smith Hampton (LSH) were engaged to review the submitted RIA and advise the Council on the validity and robustness of the findings. They considered that the site search parameters in respect of Sheerness and the town centre were in line with the NPPF and Policy DM 2.

- 7.22 LSH conclusions are summarised below with additional updated text since the July committee report.

- 7.22 The application site is sequentially preferable and passes the sequential test in line with para. 91 of the NPPF and Policy DM 2 of the Local Plan.
- 7.23 The impact assessment against the two impact tests set out in NPPF para.94 also passed on: -
- 1) Existing and planned public and private investment in a town centre or centres in the catchment area (para.94 (a)); and
 - 2) Town centre vitality and viability including local consumer choice and trade in the town centre and wider catchment (as applicable to the scale and nature of the scheme) (para. 94(b))
- 7.24 The Lidl RIA, prepared by the RPS Group, considered two scenarios for trade diversion;
1. The new Aldi store at Queenborough Road is refused (The RIA was prepared before the Aldi approval at Queenborough Road in December 2022), and they continued to trade in the existing unit in the town centre;
 2. The new Aldi store at Queenborough Road is given planning permission and the existing town centre store is reoccupied by Home Bargains (Aldi confirmed at the time that terms had been agreed with Home Bargains).
- 7.25 Paragraph 4.32 of the Lidl RIA explained that in the first scenario, there would be a diversion of £7.4m from the Aldi in Sheerness Town Centre to the proposed Lidl store (since Aldi is Lidl's closest competitor). This level of trade diversion results in an impact of -32%, which is a significant amount. However, the household survey shows that the Aldi is currently trading well above its benchmark level (£23.2m compared to its company average of £11.9m), so while the impact on the store would be large it will still be left trading almost £4m above its benchmark level. The continued viability of the store would not be threatened.
- 7.26 In relation to the second scenario, the conclusion of the Lidl RIA at paragraphs 4.37 and 4.38 is as follows;
- “4.37 . . . it is assumed that Aldi will secure permission and relocate to their new store on Queenborough Road. In such a circumstance the cumulative impact on Sheerness Town Centre can be seen to be circa -16%. However, it is evident that the majority of that is a result of Aldi having relocated and not from any expenditure being taken by Lidl – looking at Lidl on its own, the solus impact on the centre as a whole can be seen to be less than 1% and so de minimis. This is because the largest trade diversion (£7.6m) is still being taken from Aldi, only now that is an out-of-centre store. The impact on the Aldi would be -33% however that is not material as it is an out-of-centre store. Notwithstanding that, post-impact the new Aldi would be left with a turnover of £15.3m; since their new store will extend to 1,315sq m net sales, if we assume 80% convenience and Aldi's benchmark convenience sales density then at 2027 the benchmark convenience turnover of the replacement store will be £13.94m. That means that despite the large impact, the Aldi would still be left trading above its benchmark level.
- 7.27 Again, it can be seen that the proposed Lidl would have no significant impact on the town centre (the impact already having happened with the assumed relocation of the Aldi), and so should be acceptable in impact terms.”

- 7.28 In its independent review of the Lidl RIA, LSH noted the two scenarios put forward in the Lidl RIA, but stated that, “Given that Aldi now has planning consent the appraisal only considers Scenario 2.”
- 7.29 LSH accept the trade diversion estimates put forward by Lidl results in a low percentage ‘solus’ (single) impact on Sheerness Town Centre, with a negligible impact on other defined town centres in Swale. However, the cumulative impact remains a concern due to the loss of retail turnover from the town centre associated with the Aldi store.
- 7.30 An updated health check of Sheerness Town Centre confirms that the town is vital and viable although certain indicators point to vulnerabilities. However, we consider the town centre can absorb the ‘solus’ impact associated with the Lidl store which will mainly draw trade from the relocated Aldi store.
- 7.31 For cumulative impact, whilst the impact is significantly adverse on Sheerness Town Centre, the impact principally relates to the Aldi scheme rather than the uplift in cumulative impact associated with the proposed Lidl. Therefore, LSH consider that an exception can be made and that the proposed Lidl passes the impact test in respect to para. 94(b) of the NPPF and Policy DM2 of the Adopted Swale Local Plan.
- 7.32 The Council has received representations from Tesco to the effect that the first scenario remains relevant (even though Aldi has been granted planning permission for its out of centre store) because of the following;
- (i) the Aldi store may not come forward at all,
 - (ii) the Aldi scheme may come forward but after the Lidl scheme and
 - (iii) the Aldi scheme may come forward but without reoccupation of its town centre store by a comparison goods retailer.
- 7.33 For the following reasons, the scenarios raised by Tesco are considered unlikely; (i) the Aldi scheme was granted permission on 22 December 2022 and there is a considerable “head start” in terms of its development going ahead, (ii) Aldi has already submitted seven separate applications to discharge conditions and have done so even after the Lidle store was approved in July 2023 (albeit this approval was subsequently quashed with consent), (iii) Aldi have made representations that due to the inadequacies of the existing store, they intend to close the existing store come what may (iv) Aldi has already agreed terms that its existing town centre location will be occupied by Home Bargains
- 7.34 If the Council are minded granting planning permission LSH strongly advise that appropriate planning conditions are put in place that restricts the occupation of the food store for a LAD (Limited Assortment Discounter), as this is basis of the appraisal of the retail planning merits of the proposal. The store size, including the split between convenience and comparison goods sales area proposed should be conditioned.
- 7.35 It is acknowledged that a retail store would be a departure from the Local Plan allocation for the site and alternative deliverable uses warrant under paragraph 122 of the NPPF. Land at Cowstead Corner to the north and south of the A249 is allocated under Local Plan Policy ST 4 for employment use for up to 5600 sq.m of industrial/office floorspace. Footnote 3 of Policy ST 4 excludes the quantum of floorspace from hotel use (the application site). LP Policy A4 specifically on Land at Cowstead Corner states that ‘permission will be granted for employment uses on sites to the north and south of the A249’ acknowledging that the northern site is allocated

for a hotel while the southern site for B1 (now Class E)/B2 or B8 uses. The policy requires employment uses on both sites. The proposal would provide 40 jobs at the store with associated additional employment generation. e.g., delivery drivers, cleaners, building and grounds maintenance. The proposal as an alternative employment use for the site is considered policy and NPPF compliant.

- 7.36 Officers are satisfied that a robust marketing assessment has been undertaken to demonstrate that there is no demand for a hotel on this site. It is accepted that the prospect of a hotel coming forward in the foreseeable future since the Local Plan allocation in 2017 is virtually nil. Furthermore, following the independent assessment of the Planning and Retail Assessment, it has been successfully demonstrated that the introduction of a retail use in this location will not undermine the vitality and viability of the nearby town centers.
- 7.37 The overall retail assessment demonstrates that the proposal would accord with the tests in the NPPF (paragraphs 7 and 127 in particular) and is compliant with Local Plan Policies DM 1 and DM 2 in relation to trade impact on the vitality and viability of the town centre.
- 7.38 Although the policy does not wholly accord with Policy A 4 of the Local Plan, it has been independently identified that there is no reasonable prospect of the allocated use coming forward. Paragraph 127 of the NPPF states that where there is no reasonable prospect of an allocated use, applications for alternative uses on the land should be supported where the proposed use would contribute to meeting an unmet need for development in the area.
- 7.39 Policy A 4 of the Local Plan allocates the site for hotel development; however it also supports employment generating uses. The proposal before Committee will generate up to 40 new jobs. Furthermore, the lack of demand for the allocated hotel use must be weighed alongside the benefits the proposed alternative retail use will bring to the site. This includes job creation, a substantial net gain in biodiversity, increased choice and competition in discount food retailing at a time when the cost of living is rising. All of these factors indicate that the “unmet needs” test in paragraph 127 of the NPPF is satisfied.
- 7.40 The departure from the Local Plan is acknowledged, however, Officers consider there are public benefits of the proposed development to justify departure from the allocated hotel use. Furthermore, the economic, social and environmental benefits of the proposal as set out in the report outweigh the conflict. On balance the proposal should be supported.

Design

- 7.41 Policy CP 4 and DM 14 of the Local Plan requires that development proposals should be of high- quality design, appropriate to their surroundings, deliver safe attractive places, promote / reinforce local distinctiveness, make safe connections, and provide high standard of planting and trees. Paragraph 131 of the NPPF also states that good design “*is a key aspect of sustainable development,*” also setting out amongst other matters that decisions should ensure that developments add to the quality of the area; are sympathetic to local character and history, including the built environment and landscape setting. Policy A 4 requires the Council to be satisfied that the design and landscape framework for the site and buildings reflect their prominent gateway location and does not include facilities associated with roadside services.
- 7.42 The site is prominent in views from public vantage points and of a scale that will be

visible in the public domain. It was initially considered that the proposal fell short of the overarching aims of policy CP 4 and the NPPF. The concerns related to the architectural detailing, the use of materials, and how the site responded to the local landscape character. It was also considered that in lieu of a bespoke building design for the site, a unique design element could be a public art feature adjacent to the south elevation of the building or in the eastern landscaped area adjacent the roundabout junction.

- 7.43 A series of design discussions took place with the applicant to refine the proposal resulting in the introduction of brick piers in a contrasting engineering brick to provide texture and profile to the elevations, larger window openings to the staff facilities facing the car park to the east, with additional planting within the car park and frontages and appropriate boundary treatment which can be seen in the final design before the committee. In brief, the while the massing and scale remains as described above under paragraphs 3.1 and 3.2, the changes to the elevational treatment and extensive landscape buffers to the east and south have been materially improved and are now considered fully acceptable. A public art feature has also been agreed to the front of the store facing the A249 which should complement the appearance of the store. Details of the public art feature is recommended to be dealt with by means of a planning condition.
- 7.44 Several amendments have also been made to the landscaping proposals and the Swale Tree Officer and KCC Ecology concerns for native planting have been addressed satisfactorily. The soft landscaping details are covered under paragraph 3.3 and 3.4 above. The planting in many parts of the site has been well considered and will provide benefits in respect of both visual amenity and biodiversity.
- 7.45 Overall, it is considered that the design of the building in the final form achieves a sufficiently high standard which is compliant with the requirements of Policies A 4 and DM 14 and Chapter 12 of the NPPF.

Landscape Impact

- 7.46 The application site is not located within or immediately adjacent to any designated landscape of national or local importance. It is, however, within the countryside on the edge of Queenborough and Minster-on -Sea and forms part of the low-lying landscape character area 'LCA Central Sheppey Farmlands,' on the western fringe as defined within the Swale Landscape Character and Biodiversity Appraisal SPD (2011). Due to the proximity of the existing and proposed commercial development it has a closer relationship with the urban LCA with a stronger visual connection.
- 7.47 In terms of the impact of the proposed development, it is a matter of planning judgement that the proposal would have a low to medium impact on the LCA given the setting and commercial context. It is also a planning judgement that would therefore have a neutral impact upon the sensitivities of the LCA, consistent with the provisions of Policy DM24 of the Local Plan 2017.
- 7.48 Paragraph 180 of the National Planning Policy Framework advises that planning policies and decisions should contribute to and enhance the natural and local environment by, inter alia,
- a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);
 - b) recognising the intrinsic character and beauty of the countryside, and the wider

benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;

7.49 It is the planning judgment that these proposals would have a low to medium impact upon the landscape character locally, and a neutral impact upon its sensitivities. The proposal is therefore considered consistent with the provisions of paragraph 180 of the National Planning Policy Framework.

Living conditions

7.50 As set out above, the site sits opposite Cowstead Cottages on the north side of Queenborough Road which are the nearest neighbours located approximately 25m from the site boundary (56m from the nearest point to the rear of the store). Neats Court to the west at approximately 500m away and as such considering the distance of separation would not be negatively impacted by the proposal. While residents of Cowstead Cottages would be impacted on their outlook it is considered that an allocated development for a hotel on the site would also have the same or a greater impact.

7.51 Concern was raised by the Environmental Health Officer (EHO) on potential noise impacts from the Lidl Store, particularly deliveries to the rear servicing yard close to Cowstead Cottages. A noise report has been submitted in support of the proposal and reviewed by the EHO. The proposed mitigation measures include a 3-meter-high wooden acoustic fence along the northern boundary of the site opposite the cottages with a landscaping strip along the road edge.

7.52 The EHO recommends that any permission granted should be subject to conditions. This will enable the noise elements of the development to be regulated. The conditions relate to construction hours and acoustic measures set out in the submission. It is also considered that delivery hours, details of mechanical ventilation and a Delivery Management Plan to include specific measures to ensure deliveries and noise generating plant are strictly controlled.

7.53 The applicant has set the store opening hours as 07:00-22:00 Monday to Saturday and Bank Holidays, and either 10:00-16:00 or 11:00-17:00 on Sundays. The EHO considers that this would be acceptable.

7.54 In view of the above, it is considered that the proposal, would not give rise to significant harm to living conditions of nearby dwellings, by way of noise, and delivery hours, and as such would accord with Policy DM14 and Chapter 12 of the NPPF

Highway Impacts

7.55 Policy DM6 of the Local Plan requires developments that generate significant traffic to include a Transport Assessment with any application. Where impacts from development on traffic generation would be more than the capacity of the highway network, improvements to the network as agreed by the Borough Council and Highway Authority will be expected. If cumulative impacts of development are severe, then the development will be refused.

7.56 Policy DM6 also requires developments to demonstrate that opportunities for sustainable transport modes have been taken up. Developments should include provision for cyclists and pedestrians and include facilities for low emission vehicles. The applicant has submitted a Transport Assessment with a Travel Plan and updated

technical notes for additional clarification to both KCC and National Highways.

- 7.57 The application proposes that vehicular access to the site is provided by a new access to the west of the Lower Road (A2500) roundabout on Queenborough Road. Due to the location of the site, there are potential impacts upon both the local and strategic highway network. As a result, both KCC Highways and National Highways (NH) have been consulted. Both authorities have considered the proposal and additional information submitted by the applicant to KCC and NH to address concerns.
- 7.58 In terms of the local road network, KCC Highways consider that the net effect of the development on the assessed junctions is marginal compared with background growth and committed development. KCC have sought off-site improvements to extend the footway on Queenborough Road from Cowstead Cottages to Neats Court. Approximately 190m in length of new or improved footway on the north side of Queenborough Road is to be secured via a S278 agreement. The applicant has agreed to the off-site works and confirmed with KCC Highways to be delivered before first occupation. This would address the concerns expressed by Minster-on-Sea Town Council as referred above and accessibility concerns raised by Sheerness Town Council, Tesco and Aldi representations.
- 7.59 Aldi are critical of the conflicting traffic data between their own surveys in 2018 and that of Lidl's in 2021 for the current proposal. The Lidl Transport Assessment (TA) included traffic surveys in November 2021 which showed substantially lower flows during all peaks in the post-pandemic era to the pre-pandemic Aldi surveys in 2018 for the Aldi store proposal. The simple explanation is the empirical evidence shows less traffic flows in the post-pandemic era. Lidl have also pointed out that data collected for the same junctions for residential development applications in February 2022 is almost identical to the traffic counts of 2021. KCC Highways have been requested to reconsider the traffic data submitted by Lidl. They have and confirm that the methodology and data gathering used within the Lidl TA is representative of the highway conditions and suitable for the use in the assessment. Furthermore, the data provided is 'robust and appropriate.'
- 7.60 KCC Highways have also confirmed that the additional information submitted by the applicant, including revised plans to demonstrate turning areas and provision of 11 EV charging parking spaces are satisfactory and would not cause an adverse impact on the highway. No objection is raised to the proposal subject to conditions which are set out below.
- 7.61 National Highway (NH) have also considered the transport and highway impact of the proposal wider network. NH assessment of the submissions confirm the following conclusions: -
- *“the A249/A2500 junctions are close to but not quite yet at a state of capacity where we could confidently recommend a refusal per se.*
 - *the likely trip generation/distribution from the proposed Lidl is unlikely to tip the junction into definite over capacity.*
 - *therefore, these proposals of themselves do not warrant the need for a specified form of mitigation, subject to the successful implementation of a C1/22 compliant Travel Plan covering staff, visitors/customers and deliveries.*
 - *given the site's location adjacent to the SRN various other conditions are required to avoid the risk of unacceptable impacts on the safety, reliability and/or operational efficiency of the SRN.”*

- 7.62 NH also considered the Travel Plan and acknowledge the target of 10% modal shift from single occupancy private cars. The TP includes monitoring to be undertaken annually, together with setting targets and identifying the needs for additional measures to be considered. However, there is a need for firm financial commitments to support its objectives and this needs to be provided within the document.
- 7.63 NH have also added an advisory note to the Council that all other applicants in the area that this is likely to be the last set of proposals capable of being accommodated ahead of improvements to the A249/A2500 junction(s) to be promoted via applications and/or the emerging Local Plan. NH confirm that “*we are content to recommend No Objection subject to the imposition of the following conditions on any consent granted.*” The conditions are set out below within the recommendation.
- 7.64 The total parking provision of 119 spaces, including 8 dedicated parent and child spaces, with 6 DDA compliant spaces, 7 motorcycle spaces and 12 bike stands are considered compliant with the parking standards SPD (2020) for mixed convenience(food)/comparison (non-food) store based on the proposed floor space split of 80%/20% respectively of internal sales area. 11 EV charging points are also provided which is considered by the Climate Change Officer to be acceptable.
- 7.65 In view of the above, the proposal is considered acceptable in terms of local and national highway network impacts to accord with Chapter 9 of the NPPF and Local Plan Policies DM6, DM7 and DM14.

Heritage Assets

- 7.66 The Council is required to give effect to several statutory requirements in respect of listed buildings and land in Conservation Areas. Any planning application for development which affects a listed building must be assessed in accordance with section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 7.67 Section 66(1) states the following, “In considering whether to grant planning permission or permission in principle for development which affects a listed building or its setting, the local planning authority . . . shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”
- 7.68 The NPPF gives guidance as to the identification of impacts and how to weigh them in the balance against public benefit. National policy on “conserving and enhancing the historic environment in Chapter 16 of the NPPF is to be interpreted and applied consistently with the statutory duties under the Planning (Listed Building and Conservation Areas) Act 1990.
- 7.69 The most relevant paragraphs of the NPPF in relation to heritage assets are set out as follows:

“205. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

206. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:
- a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional;
 - b) assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional
207. Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:
- a) the nature of the heritage asset prevents all reasonable uses of the site; and
 - b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
 - c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and
 - d) the harm or loss is outweighed by the benefit of bringing the site back into use.
208. 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 of the proposal including, where appropriate, securing its optimum viable use.”

7.70 The Planning Practice Guidance (“PPG”) advises that the degree of harm within “less than substantial harm” should be identified;

“Within each category of harm (which category applies should be explicitly identified), the extent of the harm may vary and should be clearly articulated.”

Listed Building

7.71 The application site is situated approximately 500m from the Grade II Listed Neats Court (also known as Neat Court Manor) which is a combination of a designated heritage asset, and non-designated heritage asset – the former applying to the farmhouse, and the latter referencing the associated farm buildings. The farm buildings may also be required to be treated as curtilage listed buildings/structures in relation to the adjacent grade II listed farmhouse, although the position on this is not entirely clear based on current available information. The Heritage Statement provided in support of the application in accordance with paragraph 194 of the NPPF nevertheless treats the farm buildings as being curtilage listed. The farm buildings are redundant, and it is understood that the farmhouse no longer has a functional link with

the adjacent agricultural land. Referencing the farmhouse and associated farm buildings, as Neats Court Farm, this is actually positioned closer to the approved Aldi store site, which is approximately 900m to the NW from the application site and 400m from Neats Court. The listed building is a two-storey dwelling of red brickwork (browns, reds and touches of cream polychromatic brickwork laid in Flemish bond) on an L-shape plan with a red tiled roof with shallow eaves, having two small rooftop chimneys positioned symmetrically to each gable end. The Council has a statutory duty to preserve the setting of the listed building which is also reflected in local and national policies.

- 7.72 A detailed Heritage Statement has been submitted in support of the application which concludes that *“due to the eroded contribution of the site to the significance of Neats Court, the much altered setting of the listed buildings, and the scale and form of the proposals, the proposed development would have no impact on the significance of the Grade II listed Neats Court. The proposals would therefore preserve the special architectural and historic interest of the listed and curtilage listed buildings.”* The submission has been considered by the Council’s Conservation & Design Manager who broadly concurs with the findings.
- 7.73 Aldi’s legal challenge was particularly critical of the Council’s heritage assessment in relation to Neat’s Court. Members were informed in the Tabled Update to Committee in July that ‘the development would not cause significant harm to the significance of the grade II listed Neats Court. It should be clarified that any harm will therefore amount to the lower level of ‘less than substantial harm’ in the context of the guidance set out in Chapter 16 of the NPPF. Para 202 of the NPPF states ‘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 of the proposal including, where appropriate, securing its optimum viable use.’ In this case the public benefit as referred in paragraphs 7.40 of this report clearly outweigh the less than substantial harm.
- 7.74 The Committee is asked to note in this context, that the site is allocated for development in the Local Plan, and as such, consideration was given to heritage impact at the allocation stage. In light of this allocation, substantial new commercial development has, and continues to take place between the Lidl application site and Neats Court Farm is such that the intervisibility between the two sites (i.e., Neats Ct. Farm and the application site) is virtually nil. This scenario of course takes place in the critically important context of the Aldi regional distribution centre development which was completed in 2018 (Ref: 14/506802/FULL) to the southwest of the Lidl application site, on the opposite (southern) side of the A249 trunk road, on land which also formed part of an employment land allocation carried over from the previous Local Plan. In light of the significant visual impact of the regional distribution centre and the aforementioned development on the northernmost section of the allocated employment land, it is not therefore the case that the setting of Neat Court Farm has already, and will continue to be materially affected, but it is the case that any further material harm arising could not reasonably be attributed to the Lidl store proposal, principally given the proposed store’s significant distance from Neat’s Court, but also taking into account the siting and design of the building on the application site, and the landscaping proposed in association with it.
- 7.75 In considering the impact of the proposal, Officers have also necessarily had regard to the stronger material planning consideration in the form of the statutory duty imposed by s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, namely ‘to have special regard to the desirability of preserving the setting of a

listed building'. In this regard, Officers consider the proposal would preserve the setting of Neats Court, notwithstanding the negative changes to its setting which have already taken place.

7.76 In view of the above, it is considered that the proposal would have a neutral impact on Neats Court. As such the proposed development would not conflict with the requirements set out in Local Plan Policy DM 32, the guidance set out in Chapter 16 of the NPPF (notably paragraphs 205, 207 and 208), nor with the statutory duty set out at s66(1) of the Planning (Listed buildings and Conservation Areas) Act 1990.

Archaeology

7.77 The site is located within an area of archaeological potential wherein Policies CP 8 DM 34 applies. KCC Archaeology were consulted. KCC Archaeology have considered the proposal and comment as follows: -

- The application has not included a supporting assessment of the archaeological potential, but we have provided advice on adjacent sites for the development related to the Neats Court distribution centre, the Aldi development, Medicham and the adjacent generating site.
- As advised previously, the site lies on the former shoreline of Sheppey on the edge of the former marshlands. These have been exploited since prehistoric times and excavations both for the construction of the Queenborough bypass and the business and retail development at Neats Court to the south and southeast have identified a range of important archaeological remains of Bronze Age, Iron Age, Roman, Saxon and medieval date. These included a rare, submerged Bronze Age barrow with Iron Age burials inserted and clusters of Iron Age and Roman cremations on the former shorelines. The present site is close to the focus of the clusters of Iron Age and Roman cremations at Cowstead Corner.
- A staged programme of archaeological investigation is an appropriate response and that can be secured through an appropriate condition. The archaeological programme should commence with a stage of trial trenching which would inform subsequent stages of the programme of mitigation.

7.78 KCC Archaeology recommend a similar condition to that on the approved Aldi development nearby for intrusive field investigation and evaluation which is set out below.

7.79 In view of the above, it is considered that the proposal is acceptable in terms of heritage impacts to accord with Local Plan Policies CP8 and DM 34, and Chapter 16 of the NPPF.

Biodiversity

7.80 As described above, the application site is comprised of undeveloped rough grassland, with ditches passing around the site outside the site perimeter boundary. The applicant's Preliminary Ecological Appraisal (PEA) demonstrates that there is little protected species interest. KCC Ecology have considered the PEA and concur with its findings.

7.81 A BNG assessment and Defra Metric 3 has also been submitted to demonstrate an overall net gain of 10.93% or 0.36 biodiversity units and an estimated net gain of 13.81% habitat gain. The pre-development score for hedgerows is 0. The post development score for hedgerows is a gain of 100% 0.37 units. The PEA also

recommends a Landscape and Ecological Management Plan to cover 25-30 years as well as a recommended external low lighting to mitigate the impact on foraging Bats. Both are secured recommended conditions below.

- 7.82 KCC Ecology questioned the evidence presented within the BNG Metric. However, the KCC Ecologist acknowledge that “in the absence of more evidence, we would be willing to accept that a net-gain is achievable if the landscaping is altered to feature native species-only (as specified in our previous response) and that glyphosate use is omitted from the submitted landscape plan (we cannot support a plan that uses glyphosate herbicide as this actively harms biodiversity and is unnecessary most of the time). The applicant has submitted amended plans and a planting schedule to address KCC Ecology’s concerns for native plans and omission of the use of glyphosate herbicide. KCC also requested a sensitive lighting design and, importantly, ensure that the development is not illuminated throughout the entire night. Lighting details will be secured by condition as above.
- 7.83 KCC Ecology’s final confirmation on inclusion of native planting and omission of the use of glyphosate is awaited at the time of finalising the report. Any adverse comments will be reported verbally.
- 7.84 Regarding a Habitats Regulations Assessment (HRA) Natural England (NE) have considered the proposal and confirm that the proposed development will not have a significant adverse impact on statutorily protected nature conservation sites or landscapes. However, to meet the requirements of the Habitats Regulations NE advise that the LPA record a decision that a likely significant effect can be ruled out.

Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017

- 7.85 The application site is located within the 6km buffer of (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations) and Wetland of International Importance under the Ramsar Convention.
- 7.86 SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, as far as these would be significant having regard to the objectives of this Article.
- 7.87 The HRA carried out by the Council as part of the Local Plan process (at the publication stage in April 2015 and one at the Main Modifications stage in June 2016) considered the imposition of a tariff system to mitigate impacts upon the SPA (£275.88 per dwelling as ultimately agreed by the North Kent Environmental Planning Group and Natural England) – these mitigation measures are ecologically sound.
- 7.88 Residential development within 6km of any access point to the SPAs has the potential for negative impacts upon that protected area by virtue of increased public access and degradation of special features therein from recreational use. However, the proposal here is for a retail store where recreational pressure is absent and does not have the potential to affect said site’s features of interest, although NE advises an Appropriate Assessment to establish the likely impacts of the development.

- 7.89 In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment (HRA).
- 7.90 Given the nature of the proposed development for a retail store which is absent of recreational pressures, a likely significant effect on European sites can be ruled out. Furthermore, NE also confirm that the proposed development will not have likely significant effects on statutorily protected sites and has no objection to the proposed development. Standard guidance is provided on SSSI Impact Risk Zones, but they are not considered material to this proposal.
- 7.91 In view of the above, it is considered that the biodiversity and HRA impacts of the proposal are considered acceptable to accord with LP Policy DM 28 and Chapter 15 of the NPPF.

Drainage

- 7.92 Local Plan as Policy DM21 sets out a raft of criteria aimed at preventing or reducing flood risk. The revised NPPF at chapter 14 sets out government views on how the planning system should consider the risks caused by flooding. The planning practice guidance under the chapter titled 'flood risk and climate change' gives detailed advice on how planning can take account of the risks associated with flooding in the application process. Local Plan Policy CP7 requires new development to be supported by the timely delivery of green infrastructure, including SuDS.
- 7.93 The site is in a low-risk Flood Zone 1. The application is supported by a Flood Risk Assessment and Drainage Strategy. The Environment Agency confirm they have no comments to make on the proposal and delegated the matter to KCC Flood and Water Management as Lead Local Flood Authority (LLFA).
- 7.94 The KCC Flood and Water Management (LLFA) have considered the proposed drainage scheme and raise no objection, subject to the imposition of conditions. The same is true of the Lower Medway Internal Drainage Board (LMIDB), whose comments are set out under paragraph 4.18. The LMIDB has agreed in principle to the discharge of both surface water and treated foul water into the LMIDB drainage district and to consent these discharges subject to further detail including the location of the discharge point. The applicant has applied for the license separately with further details to comply with the LMIDB's requirement.
- 7.95 Southern Water have also not raised an objection. Technical drainage matters are a matter for the applicant to resolve directly with Southern Water's interest and coordinate with the LMIDB.
- 7.96 The imposition of the LLFA requested conditions will ensure that the scheme can meet the requirements of Policies DM21 and CP7 of the Local Plan. On this basis drainage is, considered to be satisfactorily addressed.

Sustainable design and construction

- 7.97 Policy DM 19 of the Local Plan sets out that *"All new non-residential developments over 1,000 sq m gross floor area should aim to achieve the BREEAM "Very Good" standard or equivalent as a minimum."*
- 7.98 The applicant's BREEAM Pre-Assessment Report and Energy Strategy supports the

proposal which set out several ways, including building fabric performance (passive design); air permeability; ventilation; heating; lighting; re-usable energy and efficient refrigeration as to how a BREEAM 'very good' rating can be achieved. A roof top solar array consisting of 303 panels (circa 606 sqm or 121kWp) is integrated into the design for on-site renewable energy generation, together with heat pumps for both heating and cooling. Sustainability measures are projected to provide 177% on-site renewable energy and 133% CO2 emissions reduction.

7.99 The Council's Climate Change Officer supports the sustainability/renewable energy measures subject to a condition on BREEAM 'very good' rating compliance. On this basis it considered that the application is compliant with Policy DM 19 and the NPPF Chapter 14 on Climate Change.

8.0 CONCLUSION

8.1 For the reasons outlined above, the proposal is considered acceptable.

8.2 In view of the relevant material considerations set out above, no significant harm in respect of the impact of the development on the vitality and viability of Sheerness Town Centre is identified.

8.3 However, the proposal is acknowledged to be a departure from the Local Plan allocation for a hotel as set out in Policy A 4. Furthermore, less than substantial harm will arise to the setting of Neat's Court in heritage terms. The economic, social, and environmental benefits of the proposal, including BNG of 10.93%, carbon emissions reduction of 133%, job creation for up to 40 jobs and offsite improvements for active travel with a footway/cycleway extension of 190m along the north side of Queenborough Road to Neats Court are considered to outweigh the policy conflict with the Local Plan 2017 and the less than substantial harm to the designated heritage asset at Neats Court.

8.4 Furthermore, there is not any unacceptable harm to highway safety and access or neighboring living conditions. The proposal does not give rise to conflict with the Local Plan in relation to other technical considerations including drainage, energy, and ecological impacts. On balance when all material considerations are taken into account, it is considered that proposal constitutes sustainable development and as such accords with the Local Plan 2017 and the NPPF.

8.5 It is therefore considered that the development complies with the development plan read for the purposes of section 38(6) of the Planning & Compulsory Purchase Act 2004. None of the matters raised in response to the publicity and consultation processes amount to material considerations of sufficient weight to indicate a determination other than in accordance with the development plan, noting that conditions are recommended where meeting the tests for their imposition.

8.6 Where relevant, regard has been had to the public sector equality duty, as required by section 149 of the Equality Act 2010 and to local finance considerations (as far as it is material), as required by section 70(2) of the Town & Country Planning Act 1990 (as amended).

8.7 It is recommended that planning permission be granted subject to safeguarding conditions.

9 RECOMMENDATION

Delegate to the Head of Planning to **grant planning permission** subject to the conditions set out below with further delegation to the Head of Planning to negotiate the precise wording of conditions, including adding or amending such conditions as may be consequently necessary and appropriate.

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 approved shall be carried out in accordance with the following approved drawings: AD100, AD110 rev G, AD111 rev B, AD112 rev A, AD113 rev H, AD114 rev H, AD115 rev E, AD118 rev G, AD119 rev A, 600 rev C, 601 rev C, 9003-P06 and 9004-P06.

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

- (3) Prior to commencement of the development above ground level, the following stated junction details between the key architectural elements of the building shall first have been submitted to and approved in writing by the Local Planning Authority:

- (i) 1:5 vertical section showing the roof/wall junction detailing;
- (ii) 1:5 vertical section showing cladding/brickwork junction detailing; and
- (iii) 1:5 vertical section showing external reveals to glazed areas and the associated glazing and brickwork or cladding junction detailing

The approved details shall be implemented in strict accordance with the details approved in relation to this planning condition, and thereafter and maintained as such in perpetuity.

Reason: In the interest of visual amenity.

- (4) The building hereby approved shall be constructed to achieve a minimum of BREEAM 'Very Good' rating. Within 6 months of the store first opening to the public, written documentary evidence proving that the development has achieved a minimum 'Very Good' rating against the BREEAM Standard in the form of post construction assessment and certificate as issued by a legitimate BREEAM certification body, shall be submitted to and approved in writing by the Local Planning Authority.

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

- (5) Prior to the commencement of development, a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period for the development hereby approved and shall include:

- (a) Routing of construction and delivery vehicles to / from site
- (b) Parking and turning areas for construction and delivery vehicles and site personnel
- (c) Timing of deliveries
- (d) Measures to prevent the transfer of mud onto the public highway including the provision of wheel washing facilities
- (e) Temporary traffic management / signage

Reason: In the interests of highway safety and residential amenity.

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

Reason: In the interest of residential amenity.

- (7) No works shall commence on the site hereby permitted (including site clearance or preparation) until the details of a Construction Traffic Management Plan have been submitted to and approved in writing by the local planning authority (who shall consult with National Highways). Thereafter the construction of the development shall proceed in strict accordance with the approved Construction Traffic Management Plan unless otherwise agreed in writing by the local planning authority (who shall consult National Highways).

Reason: To ensure that the A249 continues to be an effective part of the national system of routes for through traffic in accordance with section 10 of the Highways Act 1980 and to satisfy the reasonable requirements of road safety and paragraph 111 of the National Planning Policy Framework (2021).

- (8) No works shall commence on the site hereby permitted (including site clearance or preparation) until the details of a scheme to safeguard and maintain the geotechnical stability of, and safety of the travelling public on, the A249 during construction, occupation and maintenance of the site have been submitted to and approved in writing by the local planning authority (who shall consult with National Highways). Thereafter the construction, occupation and maintenance of the development shall be in strict accordance with the approved scheme unless otherwise agreed in writing by the local planning authority (who shall consult National Highways).

Reason: To ensure that the A249 continue to be an effective part of the national system of routes for through traffic in accordance with section 10 of the Highways Act 1980 and to satisfy the reasonable requirements of road safety and paragraph 111 of the National Planning Policy Framework (2021).

- (9) No occupation of the site hereby permitted shall occur until the details of the scheme of external lighting (covering all land and works capable of being seen from the A249) have been submitted to and approved in writing by the local planning authority (who shall consult with National Highways and KCC Ecology). Thereafter the construction, occupation and maintenance of the development shall be in strict accordance with the approved scheme unless otherwise agreed in

writing by the local planning authority (who shall consult National Highways).

Reason: To ensure that the A249 continues to be an effective part of the national system of routes for through traffic in accordance with section 10 of the Highways Act 1980 and to satisfy the reasonable requirements of road safety and paragraph 111 of the National Planning Policy Framework (2021) and in the interest of ecology.

- (10) The site preparation, construction, use and/or maintenance of the development hereby permitted shall be managed in order to ensure that no surface water runs off on to the highway or into any drainage system connected to the Strategic Road Network. No drainage connections from the development hereby permitted shall be made to any Strategic Road Network drainage systems.

Reason: To ensure that the A249 continues to be an effective part of the national system of routes for through traffic in accordance with section 10 of the Highways Act 1980, to satisfy the reasonable requirements of road safety and to prevent environmental damage and paragraph 111 of the National Planning Policy Framework (2021)

- (11) No part of the development hereby permitted shall be occupied until a detailed Travel Plan, has been approved in writing by the local planning authority (who shall consult with National Highways) and implemented. The Travel Plan shall include such details as required by DfT Circular 01/2022, particularly paragraph 44. The Travel Plan shall also include details regarding responsibilities and arrangements for monitoring, review, amendment and effective enforcement in perpetuity.

Reason: To minimize traffic generated by the development and to ensure that the A249 continues to be an effective part of the national system of routes for through traffic in accordance with section 10 of the Highways Act 1980.

- (12) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:

Monday to Friday 0730 - 1800 hours, Saturdays 0830 - 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- (13) No impact pile driving in connection with the construction of the development shall take place on the site on any Saturday, Sunday, or Bank Holiday, nor on any other day except between the following times: -

Monday to Friday 0900 - 1700 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

- (14) The provision for delivery vehicle loading, unloading, and turning within the development hereby permitted shall be provided as shown on drawing SCP/210746/ATR04_1 Rev A and ATR04_2 rev A prior to the first opening of the development to the public and retained and maintained in perpetuity unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of highway safety and residential amenity.

- (15) The provision and permanent retention of the cycle parking facilities shown on the submitted plans (23007_ AD_110 REV G) prior to the use of the site commencing.

Reason: In the interests of promoting active sustainable travel and highway safety.

- (16) Prior to the use hereby permitted commencing, details of electric vehicle charging points, to serve 11 car parking spaces, to include the provision of at least 5no. ultra-rapid charging points with 150-350 kw chargers, 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.

- (17) The Provision of the off-site highway works to construct a footway/cycleway along Queenborough Road as indicated on drawings SCP/210746/D05 in accordance with technical details to be submitted to and approved by the Local Planning Authority.

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

- (18) The landscaping scheme and planting specification shown on drawing nos. JSL4227-RPS-XX-EX-DR-L-9003_P06 and JSL4227-RPS-XX-EX-DR-L-9004_P06 shall be carried out within 12 months of the completion of the development. 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: In the interests of the visual amenities of the area.

- (19) Details of the design, materials and scale of the public art feature shown on drawing no. 230613_23007_AD 110 rev G, including CGIs from long distance views, shall be submitted to and approved in writing by the Local Planning Authority within 12months of the date of this planning permission. The approved scheme shall be implemented prior to the opening of the store.

Reason: To ensure the design of the approved development befits the gateway location in the interest of the visual amenities of the area.

- (20) Details of any mechanical ventilation system that will be installed, including details of the predicted acoustic performance, shall be submitted for approval by the LPA. No building works shall commence on any mechanical ventilation system until approval has been given by the LPA. Upon approval, the system shall be installed, maintained, and operated to prevent the emission of odours, fumes, noise and vibration to neighbouring properties.

Reason: In the interest of residential amenities.

- (21) The proposed mitigation measures detailed in the Noise Impact Assessment

9314/RD revision 6 including the acoustic fencing opposite Cowstead Cottages shown on drawing no, 230613_23007_AD 114 Rev H shall be implemented fully prior to the first use of the development. The mitigation measures shall be maintained and operated in accordance with the approved report unless the Local Planning Authority gives its written consent to any variation.

Reason: In the interest of residential amenity.

- (22) Prior to the use of the site hereby approved commencing, a Delivery Management Plan (DMP) shall be submitted to and approved in writing by the Local Planning Authority. The DMP shall detail all recommended noise mitigation measures to be undertaken during deliveries, as contained in the Environmental Noise Report submitted with this application, and shall include but not limited to, a limit of one delivery at a time and no audible reversing alarms.

Reason: In the interest of residential amenities.

- (23) Development shall not begin until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the Local Planning Authority. The detailed drainage scheme shall be based upon Flood Risk Assessment and Drainage Strategy dated September 2022 prepared by Mayer Brown Ltd. The submission shall also demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100-year storm) can be accommodated and disposed of without increase to flood risk on or off-site.

The drainage scheme shall also demonstrate (with reference to published guidance):

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

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

Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water and to ensure that the development does not exacerbate the risk of on/off site flooding. These details and accompanying calculations are required prior to the commencement of the development as they form an intrinsic part of the proposal, the approval of which cannot be disaggregated from the carrying out of the rest of the development.

- (24) The development hereby permitted shall not be occupied until a Verification Report, pertaining to the surface water drainage system, and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority. The Report shall demonstrate the suitable modelled operation of the drainage system where the system constructed is different to that approved. The Report shall contain information and evidence (including

photographs) of details and locations of inlets, outlets, and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.

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

(25) The development hereby permitted shall not be commenced until the following components of a scheme to deal with the risks associated with contamination of the site have been submitted to and approved, in writing, by the local planning authority:

- 1) A site investigation, based on the Phase 1 site investigation and preliminary risk assessment 892.01.03 to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- 2) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (2). This should give full details of the remediation measures required and how they are to be undertaken. The RMS should also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
- 3) A Closure Report is submitted upon completion of the works. The closure report shall include full verification details as set out in (3). This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean;

Any changes to these components require the express consent of the local planning authority. The scheme shall thereafter be implemented as approved.

Reason: In the interest of public health.

(26) Prior to any development works the applicant (or their agents or successors in title shall secure and have reported a programme of archaeological field evaluation works, in accordance with a specification and written timetable which has been submitted to and approved in writing by the local planning authority.

- 1) Following completion of archaeological evaluation works, no development shall take place until the applicant or their agents or successors in title, has secured the implementation of any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in

accordance with a specification and timetable which has been submitted to and approved by the local planning authority.

- 2) The archaeological safeguarding measures, investigation and recording shall be carried out in accordance with the agreed specification and timetable.
- 3) Within 6 months of the completion of archaeological works a Post-Excavation Assessment Report shall be submitted to and approved in writing by the local planning authority. The Post-Excavation Assessment Report shall be in accordance with Kent County Council's requirements and include
 - a) a description and assessment of the results of all archaeological investigations that have been undertaken in that part (or parts) of the development;
 - b) an Updated Project Design outlining measures to analyse and publish the findings of the archaeological investigations, together with an implementation strategy and timetable for the same;
 - c) a scheme detailing the arrangements for providing and maintaining an archaeological site archive and its deposition following completion.
- 4) The measures outlined in the Post-Excavation Assessment Report shall be implemented in full and in accordance with the agreed timings.

Reason: To ensure that features of archaeological interest are properly examined and recorded in accordance with the Swale Borough Local Plan and the National Planning Policy Framework.

- (27) No deliveries shall take place outside the hours of 0600 - 2300 hours Monday to Saturday, and 07:00 - 23:00 hours on a Sunday, Bank or Public holiday.

Reason: In the interests of residential amenity.

- (28) The food store hereby approved shall only be used as a Class E(a) retail food store and shall be restricted to 'limited product line deep discount retailing' and shall be used for no other purpose falling within Class E of the Town and County Planning (Use Classes) Order 1987 (as amended) (or any order revoking or re-enacting or amending that Order with or without modification). 'Limited product line deep discount retailing' shall be taken to mean the sale of no more than 3,500 individual product lines.

Reason: To prevent unacceptable impacts arising from the development upon the vitality and viability of Sheerness Town Centre.

- (29) The total Class E(a) (retail) floorspace hereby permitted shall not exceed 1,906 sqm gross internal area. The net sales area (defined as all internal areas to which customers have access, including checkouts and lobbies) shall not exceed 1,266 sqm without the consent of the Local Planning Authority.

Reason: To prevent unacceptable impacts arising from the development upon the vitality and viability of Sheerness Town Centre.

- (30) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting or amending that Order with or without modification), the Class E(a) (retail) floorspace hereby permitted shall be used primarily for the sale of convenience goods with a maximum of 253 sqm of the net sales area devoted to comparison goods.

Reason: To control the extent of comparison goods retailing, to prevent unacceptable impacts upon the vitality and viability of Sheerness Town Centre.

- (31) The Class E(a) (retail) unit hereby permitted shall be used as a single unit and shall not be sub-divided into two or more units, and no concessions shall be permitted within the unit.

Reason: To prevent unacceptable impacts arising from the development upon the vitality and viability of Sheerness Town Centre.

- (32) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting or amending that Order with or without modification), no mezzanine floor or other form of internal floor to create additional floorspace other than that hereby permitted shall be constructed in the hereby permitted Class E(a) (retail) unit.

Reason: To prevent unacceptable impacts arising from the development upon the vitality and viability of Sheerness Town Centre.

- (33) The class E(a) retail use hereby permitted shall not be open to customers or any other persons not employed within the business operating from the site outside the following times 0800 - 2200 on Monday-Friday, Saturdays and Bank and Public Holidays and any 6 hours between 1000 - 1800 on Sundays.

Reason: In the interests of residential amenity.

The Council's approach to the application

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), September 2023 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre- application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application. Interested third parties were also provided with an opportunity to speak to the committee at the meeting held on the 20th July 2023.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.



2.3 REFERENCE NO - 23/502056/OUT		
PROPOSAL		
Outline application for erection of 5no. detached and 2no. semi-detached residential dwellings (access and layout sought)		
SITE LOCATION		
Land Adjacent 113 Chaffes Lane Upchurch Sittingbourne ME9 7BB		
RECOMMENDATION Delegate to the Head of Planning to grant planning permission subject to completion of a S106 Agreement to secure off-site biodiversity measures, securing a SAMMS contribution and 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 as may be necessary.		
APPLICATION TYPE Minor residential development		
REASON FOR REFERRAL TO COMMITTEE		
The application has been referred to committee by Cllr S Palmer Upchurch Parish Council raise objection to the application		
CASE OFFICER Rebecca Corrigan		
WARD Hartlip, Newington and Upchurch	PARISH/TOWN COUNCIL Upchurch	APPLICANT C&M Capital Ltd AGENT MSD Architects
DATE REGISTERED 02/05/23	TARGET DATE 16/01/24	
BACKGROUND PAPERS AND INFORMATION: 23/502056/OUT Outline application for erection of 5no. detached and 2no. semi-detached residential dwellings (access and layout sought) (Amended proposal) Land Adjacent 113 Chaffes Lane Upchurch Sittingbourne ME9 7BB (midkent.gov.uk)		

1. SITE LOCATION AND DESCRIPTION

1.1 The site is comprised of an undeveloped parcel of land on the southern side of Chaffes Lane, roughly rectangular in shape. It measures 85m in length east to west with an average width of 42m and a total site area of 0.36ha. Access to the site is via Chaffes Lane which is a narrow country lane that runs along the northern boundary. The site is located on the southern edge of the village of Upchurch which is a Tier 5 settlement under the local plan settlement strategy (ST3). It falls just outside the settlement boundary of the village and is therefore classed as being within the countryside.

1.2 The site is bordered by open countryside to the south. There are residential dwellings to the north situated on the opposite side of Chaffes Lane and to the east of the site along the southern side of the road. All of the neighbouring dwellings have

large front gardens with the majority benefiting from off street parking. The site is bordered by Oak Lane to the west.

2. PLANNING HISTORY

- 2.1 There is no relevant planning history for the site. However the following decisions in the surrounding area are of some relevance regarding the principle of residential development in Upchurch.
- 2.2 19/501773/OUT – Erection of 41 dwellings at Jubilee Fields, Upchurch – Refused and dismissed at appeal.
- 2.3 20/501448/OUT – Erection of 7 dwellings on land at Oak Lane – Refused and dismissed at appeal.
- 2.4 20/505298/FULL - Erection of a dwelling on land rear of 91 and 93 Chaffes Lane – Refused and dismissed at appeal.
- 2.5 19/505938/OUT – Erection of two dwellings on land at Gore Farm, Chaffes Lane – Refused and allowed on appeal.

3. PROPOSED DEVELOPMENT

- 3.1 Outline permission is sought for the erection of 5no. detached and 2no. semi-detached residential dwellings. Matters relating to access and layout are also submitted for approval as part of this outline application. Details relating to appearance, scale and landscaping would be subject to reserved matters.
- 3.2 The application has been revised through the course of the application process. The revisions include changes to the layout and reduction of the number of dwellings from eight to seven.

4. REPRESENTATIONS

- 4.1 Neighbouring occupiers adjoining the site were notified in writing, a site notice was displayed at the application site. Full details of representations are available online.
- 4.2 Three rounds of consultation were undertaken. As a result of the public consultation, a total of 33 letters of representation were received. Of these, 25 were letters of objection and these were received from 12 separate households. A breakdown of each round of consultation is provided below:
- 4.3 15 letters of objection were received from the first round of consultation which took place on 4th May 2023
 - Outside of settlement – in conflict with local plan
 - Unsustainable location – position & accessibility to services & facilities
 - Impact upon existing residents including overlooking issues
 - Visual harm

- The appeal decision at Gore Farm does not set a precedent
- Chaffes Lane is a narrow road and development would give rise to highway safety concerns
- Parking provision
- Layout gives rise to anti-social behavior
- Drainage and sewage issues arising from being on the edge of the village
- Site clearance has taken place resulting in loss of trees and vegetation harmful to the visual appearance of the countryside
- Loss of habitat and wildlife including birds
- Gas main concerns
- Precedent for further development
- Potential for further housing at the rear
- Reduction of green space in a semi-rural area
- Low water pressure and sewerage problems
- No evidence for the need for further housing in Upchurch
- Increased light pollution
- Address is misleading. No connection to 113 Chaffes Lane
- Not consistent with the scale and character of the area
- Concerns as to how the soft landscaping along the site frontage would be maintained
- The primary school is oversubscribed and Upchurch doctors is not taking new patients

4.4 In addition, 8 representations were received in support of the application as follows:

- Much needed development
- Support growth of the local economy
- Logical addition for housing
- Edge of village resulting in limited traffic entering the village
- Sympathetically designed
- Road widening as proposed would be welcome

4.5 Following the submission of amended plans a second round of consultation was carried out on 10th August 2023. In addition to the above, a further 6 letters of objection were received, and the following additional comments were raised:

- Reduction in the number of units provides less cheaper and affordable housing
- Relocation of the footpath results in the loss of biodiversity
- The removal of the access path and relocation of visitors parking spaces increases highway safety concerns
- Issues concerning the road and field gate

4.6 Following receipt of additional Ecological Information and amended plans, a final round of consultation was carried out, dated 16th October 2023, and this resulted in a further 4 objections as follows:

- Inaccuracies within the report, namely the date the clearance occurred.
- Strong possibility that reptiles were harmed during land clearance

- Concerns relating to the base line for loss of biodiversity value

4.7 **Upchurch Parish Council** : Object to the application on the following grounds: -

- The site is not in a sustainable position within the village and so there will be a heavy reliance on private transport.
- This is a rural area where more parking is required
- The access road could be removed if all car parking was provided to the north of the development.
- There is no demonstrable need identified for this housing within the Parish.
- A Section 278 agreement, to be entered into by the developer, is required to ease the movement of high volumes and commercial traffic currently using this section of Chaffes Lane.

5. CONSULTATIONS

5.1 **KCC Ecology:** No objection in principle, subject to planning conditions which require further information relating to, Precautionary Mitigation Measures, Protection of Retained Habitats, Lighting and Biodiversity, Biodiversity Net Gain, Biodiversity and Enhancements

5.2 **KCC Highways:** No objection, subject to conditions which are set out in the relevant 'conditions' section below and subject to approval would be attached to the consent.

5.3 **KCC Flood and Water Management:** The application is for minor development and for this reason falls outside of KCC's remit as statutory consultee

5.4 **Environmental Health:** No objection in principle, subject to conditions as set out within the relevant 'conditions' section below.

5.5 **Natural England:** Since this application will result in a net increase in residential accommodation, impacts to the coastal Special Protection Area(s) and Ramsar Site(s) may result from increased recreational disturbance. The Local Authority is advised to complete an Appropriate Assessment to ensure suitable mitigation can be achieved.

6. DEVELOPMENT PLAN POLICES

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

- ST1** Delivering sustainable development in Swale
- ST3** The Swale settlement strategy
- ST5** The Sittingbourne Area Strategy
- CP2** Promoting sustainable transport
- CP3** Delivering a wide choice of high quality homes
- CP4** Requiring good design
- DM6** Managing transport demand and impact
- DM7** Vehicle parking
- DM14** General development criteria
- DM19** Sustainable design and construction
- DM20** Renewable and low carbon energy
- DM28** Biodiversity and geological conservation

Supplementary Planning Documents

6.2 The Swale Landscape Character and Biodiversity Appraisal SPD 2011. The site falls within character area 32: Upchurch and Lower Halstow which falls within the Fruit Belt Landscape Types. The landscape condition is described as 'moderate' with a 'moderate' sensitivity. The guidelines for this area are to conserve and create.

6.3 Swale Parking Standards SPD 2020

7. **ASSESSMENT**

This application is reported to the Committee because a Parish Council has objected to the proposal on relevant planning grounds. In addition, Cllr Palmer has referred the application to the Committee. 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
- Location of the Development
- Character and Appearance
- Transport and Highways
- Ecology
- Living conditions
- Sustainability

Principle

7.1 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 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 favor of sustainable development and for decision-taking this means approving development that accords with the development plan.

7.3 The site is located within the countryside and outside of the built area boundary of Upchurch. The Council's spatial strategy is set out in Policy ST3 of the Local Plan which identifies a hierarchy of 5 types of settlement. Upchurch is one of a number of settlements identified in Tier 5 that display some sustainable characteristics and services to meet some day to day needs. The policy restricts development in these villages to minor infill and redevelopment within the built-up area boundaries only.

7.4 Policy ST 3, para 4.3.23, of the Local Plan states:

All other settlements and sporadic buildings are considered to sit within the open countryside where the primary objective will be to protect it from isolated and/or large scales of development. Some minor development may though be essential for the social, economic or environmental health of a community, but are not necessary to meet the Local Plan housing target. In doing so, they will be required to protect

and, where required, enhance, the intrinsic value, character, beauty, wildlife value, tranquility and undeveloped nature of the countryside and its communities and buildings.

- 7.5 Policy ST 5 provides further detail of the strategy for the Sittingbourne area, including that housing should be provided within urban and village confines or in accordance with allocations in the Local Plan. The site is located beyond the settlement confines of Upchurch and is not allocated for development, and the proposal would therefore conflict with Policies ST3 and ST 5 of the Local Plan.
- 7.6 However, the Council cannot currently demonstrate a five-year supply of housing land – the latest position being a 4.83 year supply of land. In addition, the current local plan is now more than 5 years old and, in relation to policies for the supply of housing, is “out-of-date”.
- 7.7 For these reasons, paragraph 11 of the NPPF applies. Paragraph 11 d) states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole.

Location of development

- 7.8 The site is situated immediately adjacent to the edge of Upchurch. The village contains facilities including a primary school, village shop, public house, church, playing fields and allotments, and these can be accessed by existing footways from the site within a maximum distance of approximately 1km. Access to more comprehensive shopping facilities, employment and secondary schools would require journeys to Rainham and Sittingbourne. A bus service operates through the village but is limited. As such, it is likely that future occupants would rely on private car journeys to some degree for access to wider services and facilities.
- 7.9 The availability of services and facilities within Upchurch to accommodate new residential development has been subject to consideration in a number of appeal decisions relating to other sites within the village. An appeal for 41 dwellings at Jubilee Fields (Council ref 19/501773/OUT) was dismissed on the grounds that it would not represent sustainable development, taking into account the limited range of services in Upchurch. An appeal in Oak Lane (Council ref 20/501448/OUT) for 7 dwellings was also dismissed, but in this case the Inspector considered there was appropriate access to facilities within the village and some sustainable travel options. Although the Inspector recognised that access to wider services and facilities would likely generate a need for some journeys by private car, such harm was considered to be limited and was not identified by the Inspector as a reason to dismiss the appeal. The Inspector distinguished between this scheme and Jubilee Fields, noting the latter was a significantly larger development with different transport implications.
- 7.10 Two further appeal decisions relate to sites in Chaffes Lane (Council ref 20/505298/FULL and 19/505938/OUT), the former was for a single dwelling and

was dismissed, and the latter was for 2 dwellings and was allowed. The Inspectors reached different conclusions on the suitability of Upchurch to accommodate sustainable residential development. As such it is difficult to draw any clear or helpful parallels from these.

- 7.11 Taking the above referenced appeal decisions into account (which can be viewed in full on Public Access using the application references), a number of similarities can be drawn between the application site and the Oak Lane site, which was for the same number of dwellings as is proposed under this application. Whilst the application site is located further away from the facilities in Upchurch than was the case with the Oak Lane site, these would still be within reasonable walking distance via footways and accessible to residents of the development. On this basis, whilst there would be some conflict with Policy CP2 of the Local Plan and the NPPF due to the likelihood that a degree of reliance on the private car would remain, such harm would be limited by the potential for walking, cycling and use of bus services, and the distance to services and facilities available in the village.

Character and Appearance

- 7.12 Policies ST3, CP3, CP4 and DM14 of the Local Plan seek to ensure that development is steered to the right locations, is of high-quality design appropriate to its context, and strengthens / reinforces local distinctiveness.
- 7.13 The site forms part of the wider countryside to the south of the village and contributes to the undeveloped and verdant character and appearance of the land immediately beyond the village confines. Proposed residential development of the site would result in significant change to the character and appearance of the site and would not protect the intrinsic value, landscape setting, tranquility and beauty of the countryside. The extent of harm would however be limited by the location of the site immediately next to the village confines and the presence of existing residential development to the north and east of the site. The application site represents a small part of the wider countryside setting to the south of the village and the proposal would complete the development of built form on the southern side of Chaffes Lane and round off the village boundary. As such, whilst there would be conflict with policy ST3 of the Local Plan and some harm through the loss of open countryside, this would be a logical extension of the village with limited harm to the wider countryside.
- 7.14 The site does not form part of a designated landscape but the site falls within the Upchurch and Lower Halstow Fruit Belt Character Area in the Swale Landscape Character and Biodiversity Appraisal SPD. The landscape condition is described as 'moderate' with a 'moderate' sensitivity. The guidelines for this area recognise the effects of urbanisation on the landscape at the fringes of settlements and the overall guidelines are to conserve and create aimed at conserving existing landscapes and restoring elements to develop the existing structure. In this instance, landscape harm is considered to be limited given the given the small size and location of the site, bordered by Oak Lane to the west and Chaffes Lane to the east, and directly adjacent to existing residential development within Upchurch, and the proposal to

incorporate a landscaped buffer to the south and west of the development in addition to the landscaping that already exists to the south of the site.

- 7.15 The proposed layout is for 5 detached dwellings and a pair of semi-detached dwellings, which would be similar to existing dwelling types on Chaffes Lane. The layout includes a central access point leading to a car parking area to the rear of the site, and which allows the site frontage to be designed with large areas of soft landscaping. The building line of the dwellings would be similar to the line of the existing dwellings to the east of the site. Existing dwellings on Chaffes Lane vary in form and architectural design resulting in a mixed street scene. The development would achieve a density of 20 dwellings per hectare which is appropriate for this edge of village location.
- 7.16 The indicative elevation plans show a mix of housing type two stories in height, which would accord with existing development in the vicinity of the site. The development reflects the general character of the surrounding area that comprises of two storey detached and semi-detached properties. There is scope to provide a well detailed development which complements the existing built form.
- 7.17 There is no current defined boundary between the site and surrounding open land, but the proposed planting and boundary treatment would ensure that the development is well contained and prevent visual intrusion further into the countryside. Landscaping would also offer potential to screen, at least partly, the development to views from the surrounding area. This is indicated in the site plan that shows landscape buffers on three sides of the site and a biodiversity enhancement area. Further details will form part of a future reserved matters application.
- 7.18 Overall, whilst the development of the site would result in conflict with Policy ST3 of the Local Plan and harm to the character and appearance of the countryside and landscape, such harm is considered to be limited due to the location of the site immediately adjacent to the village boundary and existing housing, and the way in which the development would naturally round off this part of the village settlement. It is considered that seven dwellings can be accommodated on the site as an extension to the village and of appropriate density and layout to the edge of village location, in accordance with policies CP4 and DM14 of the Local Plan 2017.

Transport and Highways

- 7.19 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.”

- 7.20 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

- 7.21 The development has been designed with a single access from Chaffes Lane to serve all dwellings, with parking to the rear of the site. The vehicle access point would have a width of 5m and includes a pedestrian footpath to the side of the access road. A new pedestrian footpath is also proposed along the site frontage with Chaffes Lane.
- 7.22 KCC Highways raise no objection to the additional vehicle movements generated by the development on the local network, and are satisfied with parking, turning and servicing arrangements.
- 7.23 The layout shows 19 available parking spaces with 2 further visitor parking spaces. The scale of the properties are indicative, however based upon the Councils SPD, 3 bedroom properties would require 2 spaces per unit and 4 bedroom properties would require 3 spaces, with a further 0.2 spaces per dwelling required for visitor parking. This amounts to a requirement of 21 spaces which is successfully achieved.
- 7.24 Overall the proposal would not be harmful to highway safety, it would provide appropriate access, vehicle parking and turning areas and pedestrian access, in accordance with policies DM6, DM7 and DM14 of the Local Plan.

Ecology

- 7.25 Paragraph 186 of the NPPF advises that when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity. It also advises that opportunities to incorporate biodiversity in and around developments should be encouraged.
- 7.26 The site was cleared of all vegetation prior to the submission of the application and no supporting biodiversity information was provided with the submission. Subsequently, a number of concerns were raised regarding biodiversity impacts. Further documents in the form of an Ecological Impact Assessment, Biodiversity Assessment and a reptile survey report have subsequently been submitted. The biodiversity report recognises that in order to achieve a gain in biodiversity, off-site enhancements will be required.
- 7.27 KCC Ecology have reviewed the supporting information and raise no objection subject to securing net biodiversity gains, precautionary mitigation, protection of remaining habitats and details of external lighting. Off site mitigation will be secured via a S106 Agreement.
- 7.28 The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') affords protection to certain species or species groups, commonly known as European Protected Species (EPS), which are also protected by the Wildlife and Countryside Act 1981. This is endorsed by policies CP 7 and DM 28 of the Local Plan, which relates to the protection of sites of international conservation importance including Special Areas of Conservation (SAC), Special Protection Areas (SPA) or Ramsar Sites.
- 7.29 Since this application will result in a net increase in residential accommodation on the site, impacts to the SPA and Ramsar sites may occur from increased recreational disturbance. Due to the scale of the development there is no scope to provide on-

site mitigation and therefore off site mitigation is required by means of developer contributions at the rate of £314:05 per dwelling. The applicant has paid the mitigation fee for the development via the SAMMS payment form. In accordance with the Conservation of Habitats and Species Regulations 2017, for completeness an Appropriate Assessment has been completed and is set out within the relevant section below.

Living conditions

- 7.30 Policy DM14 states that any new proposed developments should not cause significant harm to the amenities of surrounding uses or areas and due consideration will be given to the impact of the proposed development upon neighbouring properties. Any new proposed schemes should not result in significant overshadowing through a loss of daylight or sunlight,
- 7.31 Whilst scale and appearance, is a matter for future consideration, the layout of the development maintains sufficient distance and spacing between the proposed dwellings and existing neighbouring properties without causing any undue impacts upon the living conditions of these neighbouring dwellings. A gap of 7.5m would be provided between plot 7 and the nearest dwelling to the east, and distances of 25-30 metres would be maintained between the dwellings and existing properties to the north. As such the development would accord with Policy DM14 of the Local Plan.

Sustainable Design and Construction

- 7.32 The Council has declared a Climate Change and Biodiversity Emergency, and this is a material planning consideration. To ensure that the final development incorporates sustainable measures relevant conditions are recommended to ensure the scheme is designed in a way that takes steps to minimise the environmental impacts.

Conclusion

- 7.33 The site is located outside of the built confines of the village and within the countryside. In the absence of a five-year housing supply, the tilted balance under paragraph 11d) of the NPPF applies. This outlines that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
- 7.34 The adverse impacts of the proposal are the harm that would be caused to the landscape and character and appearance of the countryside. However, the level of harm would be limited based upon the proximity to existing residential development and the natural rounding off of the village settlement edge that would occur. Furthermore, in the absence of a 5-year supply of housing, the settlement strategy within the Local Plan is not meeting housing needs, and a rigid application of Policies ST 1, ST 3, ST 5 and CP 3 insofar as they seek in principle to generally prevent housing development outside of built-up area boundaries would frustrate attempts to address the housing supply deficit.

- 7.35 The development would offer opportunities for access to some services and facilities within the village and some sustainable transport choices, however some reliance on private vehicle trips would also be likely. Nonetheless, such harm and conflict with the Local Plan and NPPF would be limited.
- 7.36 In terms of benefits, the proposal would provide 7 additional dwellings to housing stock within the borough. The contribution would be modest but would still advance the Government's objective outlined within the Framework to boost significantly the supply of homes from a variety of sites as well as helping to meet local needs generally. The Framework also highlights that small and medium sized sites such as this can make an important contribution to meeting housing requirements and are often built out relatively quickly. As a result, and in light of the housing under-supply position moderate weight is given to the benefit of the additional housing.
- 7.37 The development would additionally result in some short-term economic benefits during the construction period, both direct and indirect. Expenditure in the area by future occupiers would offer some ongoing support for the local economy and help to maintain the viability of existing services within the surrounding rural area; matters which are supported by the Framework and which would be a social benefit. Additional weight is given to this.
- 7.38 The adverse impacts of the development would overall be limited, and in the context of paragraph 11(d) of the Framework, these adverse impacts would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development therefore applies and is a material consideration that weighs in favour of the proposal. While the development would result in some conflict with Policies ST 1, ST 3, ST 5 and CP 3 of the Local Plan, there are material considerations which indicate that planning permission should be granted notwithstanding the conflict with the development plan.

RECOMMENDATION

- 7.39 That planning permission is Granted subject to the completion of a S106 Agreement, receipt of a SAMMS payment and subject to the following conditions
- (1) Details of the scale, appearance and landscaping of the development (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development is commenced.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.
 - (2) Application for approval of reserved matters referred to in Condition (1) above must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.
 - (3) The development to which this permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case

of approval on different dates, the final approval of the last such matter to be approved.

Reason: In pursuance of Section 92 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (4) The dwellings hereby approved shall be constructed and tested to achieve the following measure:

At least a 50% reduction in Dwelling Emission Rate compared to the Target Emission Rates as required under Part L1A of the Building Regulations 2013 (as amended);

No development shall take place until details of the measures to be undertaken to secure compliance with this condition have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

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

- (5) The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the dwellings shall not be occupied unless the notice for the dwellings of the potential consumption of water per person per day required by the Building Regulations 2015 (As amended) has been given to the Building Control Inspector (internal or external).

Reason: In the interests of water conservation and sustainability.

- (6) Throughout the site clearance and construction period (as appropriate), precautionary mitigation for reptiles, amphibians, bats, badger, breeding birds and hedgehog shall be implemented strictly in accordance with Table 4 of the Ecological Impact Assessment by Arbtech dated October 2023

Reasons: In the interests of biodiversity.

- (7) No development shall take place until details of protection measures for hedgerows and trees to be retained within the proposed development have been submitted to and approved in writing by the Local Planning Authority. Such details shall be in accordance with BS 5837 (2012) 'Trees in Relation to Design, Demolition and Construction'. The approved details shall be installed on site before any equipment, machinery or materials are brought on to the site and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed, nor fires lit, within any of the area fenced in accordance with this condition and the ground levels within those area shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.

Reason: To safeguard the existing landscaping to be retained and to ensure a satisfactory setting and external appearance to the development, and in the interests of biodiversity.

- (8) Prior to occupation of any dwelling, a lighting plan for biodiversity shall be submitted to, and approved in writing by, the local planning authority. Lighting will be designed in accordance with the Bat Conservation Trust's 'Guidance Note 8: Bats and

Artificial Lighting 08/23'. The Plan will show the type and locations of proposed external lighting, as well as the expected vertical and horizontal light spill in lux levels, to demonstrate that areas to be lit will not adversely impact biodiversity. All lighting will be installed in accordance with the specifications and locations set out in the plan and will be maintained thereafter.

Reasons: In the interests of biodiversity

- (9) No development beyond construction of foundations shall take place until a Biodiversity Enhancement and Management Plan illustrating details of biodiversity enhancement measures for the site and details of ongoing management has been submitted to and approved in writing by the local planning authority. Enhancement measures will include those recommended in Table 4 of the Ecological Impact Assessment, Arbtech, October 2023. The Plan will include a habitat management schedule and details of persons responsible to evidence how enhancement will be achieved and maintained in the long term. The approved measures will be implemented prior to first occupation of the development and retained thereafter.

Reasons: In the interests of biodiversity

- (10) Other than as shown on the approved layout plan, no vehicle accesses, whether permitted by Class B Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order) or not, shall be formed or constructed onto a highway .

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

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

Reason: In the interests of visual amenity.

- (12) No development shall take place, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- (a) Routing of construction and delivery vehicles to / from site
- (b) Parking and turning areas for construction and delivery vehicles and site personnel
- (c) Timing of deliveries
- (d) Provision of wheel washing facilities
- (e) Temporary traffic management / signage

Reason: In the interests of the amenities of the area and highway safety and convenience.

- (13) No dwelling shall be occupied until the site access and the footpath adjacent to Chaffes Lane have been completed in accordance with drawing number 1542 P00E and made available for use. The access and footpath shall thereafter be retained for the life of the development hereby approved.

Reason: To secure a satisfactory form of development, in the interests of highway and pedestrian safety.

- (14) No dwelling shall be occupied until the visibility splays shown on the submitted plans drawing number 1542 P00E with no obstructions over 0.9metres above carriageway level, have been completed in accordance with the approved plans. The splays shall be maintained as such thereafter.

Reason: To secure a satisfactory form of development, in the interests of highway safety.

- (15) No dwelling shall be occupied until the EV charging points as shown on the submitted plans (drawing number: 22_130-PL07) have been installed and available for use. All Electric Vehicle chargers provided for homeowners in residential developments must be provided to Mode 3 standard (providing a 7kw output) and SMART (enabling Wifi connection). Approved models are shown on the Office for Low Emission Vehicles Homecharge Scheme approved chargepoint model list: <https://www.gov.uk/government/publications/electric-vehicle-homecharge-scheme-approved-chargepoint-model-list>

Reason: In the interests of encouraging sustainable modes of transport and minimising the carbon footprint of the development.

- (16) The cycle parking facilities as shown on the submitted plans shall be provided prior to first occupation of the dwellings and shall be continuously available and retained for the life of the development hereby approved.

Reason: To provide adequate bicycle storage in the interests of sustainable transport provision.

- (17) The refuse storage facilities as shown on the submitted plans shall be provided prior to occupation of the dwellings and retained for such purposes thereafter.

Reason: In the interests of highway safety and residential amenity

- (18) The area shown on the submitted plans as car parking space shall be kept available for such use at all times and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order) or not, shall be carried out on the land so shown or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of any of the dwellings hereby permitted.

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

- (19) The access shall be constructed using a bound surface material for the first 5 metres of the access from the edge of the highway, and with drainage measures to prevent the discharge of surface water onto the highway.

Reason: To secure a satisfactory form of development, in the interests of highway safety.

- (20) No impact pile driving in connection with the construction of the development shall take place on the site on any Saturday, Sunday or Bank Holiday, nor on any other day except between the following times:
Monday to Friday 0900 - 1700 hours with appropriate reprieve, unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interest of residential amenity.

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

Reason: In the interest of residential amenity.

- (22) Prior to the commencement of the development a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The document shall be produced in accordance with the Code of Construction Practice and BS5228 Noise Vibration and Control on Construction and Open Sites, the Institute of Air Quality Management (IAQM) Guidance on the Assessment of Dust from Demolition & Construction. The measures approved shall be employed throughout the period of construction unless any variation has been approved by the Local Planning Authority.

Reason: In the interests of residential amenity

- (23) All hard and soft landscape works submitted pursuant to condition (1) above shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme agreed in writing with the Local Planning Authority.

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

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

- (25) No dwelling shall be occupied until a landscape management and maintenance plan for the ongoing management and maintenance of all landscaped areas beyond individual plot boundaries as shown on the site layout plan, has been submitted to and approved in writing by the local planning authority. The landscaped areas shall thereafter be managed and maintained in accordance with the approved details

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

INFORMATIVES

1. Any changes to or affecting the public highway in Kent require the formal agreement of the Highway Authority, Kent County Council (KCC), and it should not be assumed that this will be a given because planning permission has been granted. For this reason, anyone considering works which may affect the public highway, including any highway-owned street furniture, is advised to engage with KCC Highways and Transportation at an early stage in the design process.

Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the public highway. Some of this highway land is owned by Kent County Council whilst some is owned by third party owners. Irrespective of the ownership, this land may have highway rights over the topsoil.

Works on private land may also affect the public highway. These include works to cellars, to retaining walls which support the highway or land above the highway, and to balconies, signs or other structures which project over the highway. Such works also require the approval of the Highway Authority.

Kent County Council has now introduced a formal technical approval process for new or altered highway assets, with the aim of improving future maintainability. This process applies to all development works affecting the public highway other than applications for vehicle crossings, which are covered by a separate approval process.

Should the development be approved by the Planning Authority, it is the responsibility of the applicant to ensure, before the development is commenced, that all necessary highway approvals and consents have been obtained and that the limits of the highway boundary have been clearly established, since failure to do so may result in enforcement action being taken by the Highway Authority. The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under the relevant legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

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

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

2. As the development involves construction, I recommend that the applicant is supplied with the Mid Kent Environmental Code of Development Practice. Broad compliance with this document is expected. This can be found at:
<https://tunbridgewells.gov.uk/environmental-code-of-development-practice>

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

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

The application site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) which is a European designated sites afforded protection under the

Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

The proposal therefore has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment. For similar proposals NE also advise that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation and site remediation satisfactory to the EA, the proposal is unlikely to have significant effects on these sites.

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

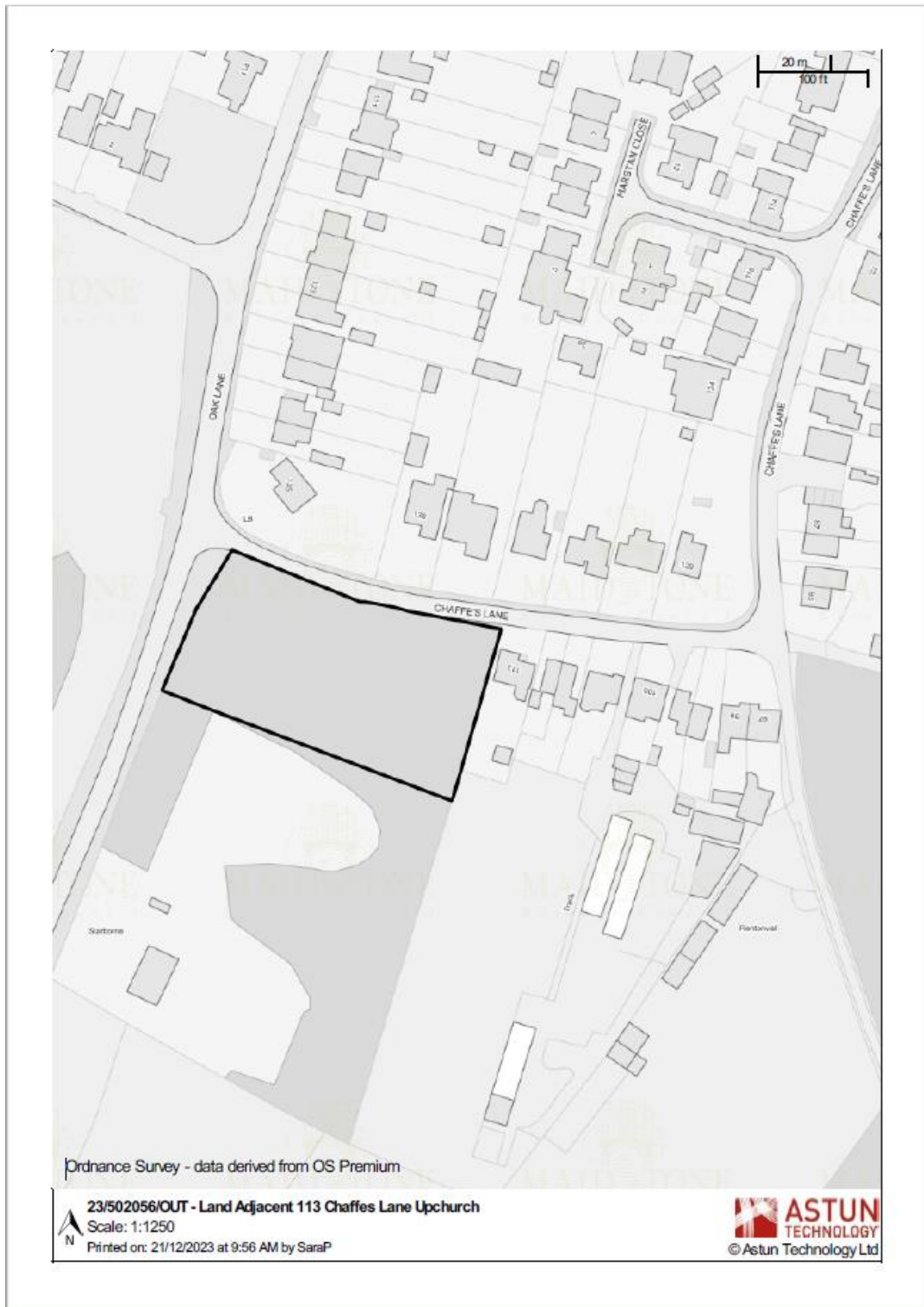
However, the proposed development is of a very small scale and, in itself and in combination with other development, would not have an adverse effect on the integrity of the SPA, subject to the conditions set out within the report.

Notwithstanding the above, NE has stipulated that, when considering any residential development within 6km of the SPA, the Council should secure financial contributions to the Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy in accordance with the recommendations of the North Kent Environmental Planning Group (NKEPG), and that such strategic mitigation must be in place before the dwelling is occupied.

Due to the scale of development there is no scope to provide on-site mitigation such as an on-site dog walking area or signage to prevent the primary causes of bird disturbance, which are recreational disturbance including walking, dog walking (particularly off the lead), and predation of birds by cats.

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

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



PLANNING COMMITTEE – 11 JANUARY 2024

PART 3

Report of the Head of Planning

PART 3

Applications for which **REFUSAL** is recommended

3.1 REFERENCE NO - 23/501174/FULL		
PROPOSAL Demolition of existing outbuildings and erection of new building in mixed use comprising a flower school in association with the existing flower business, educational and community uses together with associated access, parking and landscaping (resubmission of 22/502282/FULL).		
SITE LOCATION Land North Of Horsham Lane Upchurch Kent ME9 7AP		
RECOMMENDATION Delegate to the Head of Planning to refuse planning permission		
APPLICATION TYPE Minor		
REASON FOR REFERRAL TO COMMITTEE Upchurch Parish Council Support on relevant planning considerations that conflict with the recommendation of the Interim Head of Planning.		
Case Officer Megan Harris		
WARD Hartlip, Newington And Upchurch	PARISH/TOWN COUNCIL Upchurch	APPLICANT Mr John Bailey AGENT Refine Architecture Ltd.
DATE REGISTERED 07/03/23	TARGET DATE 02/05/23	
BACKGROUND PAPERS AND INFORMATION: https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=RR5AQRTYJR100		

1. SITE LOCATION AND DESCRIPTION

- 1.1 The application site is comprised of a plot of land measuring approximately 0.21 hectares which forms part of a larger farm unit known as Barnfield Farm. The farm currently comprises a 10 acre hay field. 1.5 acre cherry orchard and a 1.5 acre flower farm. The flowers are sold within the local area for collection or delivery and at local markets. The flowers are grown and maintained on a wider parcel of land to the north of the application site. The site is served by several existing outbuildings. The outbuilding to be demolished under this application is located on the north-eastern side of the site. The site is accessed via an unmade track leading to a large area of hardstanding.
- 1.2 The application site is located to the north of 70-76 Horsham Lane, within the countryside and approx. 500m beyond the built-up area boundary of Upchurch village. Horsham Lane is a designated rural lane and the site lies within an area of potential archaeological importance.

2. RELEVANT PLANNING HISTORY

- 2.1 **22/502282/FULL** – Planning permission refused on 12.07.2022 for ‘Demolition of existing outbuilding and erection of new building with a primary use as a flower school and additional use as a multi-purpose space for hire/the community together with associated access, parking and landscaping.’ The application was refused for five reasons, including the application failing to demonstrate that the flower school is a sustainable form of development in a rural area, harm to the character and appearance of the countryside, the unsustainable location of the development, loss of Best and Most Versatile agricultural land and a lack of ecological information.

3. PROPOSED DEVELOPMENT

- 3.1 The application proposal relates to the demolition of an existing farm building which has a footprint of approximately 58 square metres and the construction of a new outbuilding, which will be single-storey with a pitched roof. The proposed new building will have a footprint of approximately 166 square metres, ridge height of approximately 4.1 metres and an eaves height of 2.5 metres.
- 3.2 The proposed replacement outbuilding will be used predominantly as a flower school providing courses and workshops on flower-related topics, including Floriculture, willow weaving, dried flower workshops, seasonal workshops, bouquet workshops, garlands and large-installation demonstrations. In addition, the supporting statement sets out that the flower school will offer a limited volunteer programme and apprenticeship scheme for one or two apprentices. The supporting statement sets out that the flower school will have on average 10 – 15 students per class, with an average of 25 hours of flower related activities taking place per week. It is intended that when the building is not in use for teaching purposes, it could be used as a multi-purpose space for the community.
- 3.3 Internally the space will be divided into a large studio/teaching space with a kitchen, toilets and store located in the southern end of the building. A decking area will wrap around the north-western corner of the building.
- 3.4 A new access from Plough Lane will be formed on the western side of the at the site, with additional hardstanding proposed within the site to provide a parking area, which following amendments, will provide nineteen parking spaces. The red line edge was amended during the course of the application to ensure the visibility splays for the new access are included in the application site.

4. CONSULTATION

- 4.1 Two round of consultations with neighbours and Upchurch Parish Council has been undertaken. A site notice was also displayed at the site. The full representations are available to view online.

4.2 **Upchurch Parish Council** support the application for the following reasons:

- There are no neighbouring objections.
- The site already has buildings that they wish to demolish and replace, and this will not result in loss of agricultural land and will improve the vista of this area.
- Believe this application will help the local economy.
- Believe the traffic to the site will be minimal and its likely to be less than that visiting The Brown Jug public house on the same stretch of road that is now closed.
- This type of diversification should be encouraged by the Council.

5. REPRESENTATIONS

5.1 **Agricultural Consultant** – The proposal lacks justification with no financial projections or confirmation of existing trading income (for the last 5 years) and without this they cannot comment on the case further. However, they do note that the ‘flower school’ use would fall outside of agriculture/horticulture use classes and it therefore does fall somewhat outside their area of expertise.

5.2 **KCC Ecology** – Request further information is submitted prior to the determination of the application. They note the Preliminary Ecological Appraisal recommends further survey work is undertaken, and the results of any necessary further surveys and a conclusion as to whether the development will achieve a biodiversity net gain, should be submitted within an Ecological Impact Assessment.

5.3 **Health and Safety Executive** – No comment, provided that the building would not be classed as a ‘vulnerable building’.

5.4 **Natural England** – No objection.

5.5 **Mid Kent Environmental Health** – No objection to the proposal but more information on the community use of proposed building and hours of use should be sought.

5.6 **KCC Highways** – No objections following the receipt of amended plans showing additional parking and visibility splays for the new access. Request conditions are imposed relating to the provision and maintenance of the visibility splays, parking spaces, EV chargers and cycle parking.

6. DEVELOPMENT PLAN POLICIES

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

ST 1 Delivering sustainable development in Swale

ST 3 The Swale settlement strategy

ST 5 The Sittingbourne area strategy

CP 1 Building a strong competitive economy

CP 4 Requiring good design

CP 6 Community facilities and services to meet local needs

DM 3 The rural economy

DM 7 Vehicle parking

- DM 14** General development criteria
- DM 19** Sustainable design and construction
- DM 26** Rural lanes
- DM 28** Biodiversity and geological conservation
- DM 31** Agricultural land
- DM 34** Scheduled Monuments and archaeological sites

6.2 **Supplementary Planning Guidance/Documents**

Supplementary Planning Document – ‘Swale Parking Standards’

7. ASSESSMENT

7.1 This application is reported to the planning committee because the Parish Council has supported 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
- Character and Appearance
- Living Conditions
- Highways
- Ecology

Principle

- 7.2 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.
- 7.3 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.
- 7.4 Policy ST 3 of the Local Plan 2017 supports the principle of development within the built-up area boundary of established towns and villages within the Borough. The policy states that development will not be permitted on countryside land which falls outside of the defined built-up area boundaries unless the development proposal is supported by national policy and the development would contribute to protecting and enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings, and the vitality of rural communities.
- 7.5 The application site lies outside of the built-up area boundary of Upchurch in a rural location, where the principle of development is not generally supported. However, Policy DM 3 of the Local Plan 2017 allows for some limited economic development in the countryside where proposed schemes are conducive to the sustainable growth and expansion of business and enterprise in the rural areas, or to enable the diversification of a

farm. The policy states that development proposals should first consider the appropriate re-use of existing buildings or the development of previously developed land, unless such sites are not available or it is demonstrated that a particular location is necessary to support the needs of local communities.

- 7.6 With regards to the current identifiable use of the land, the definition of agriculture includes horticulture. The Council's mapping system shows the agricultural land classification to be grade 1 in this location. The applicant disputes this, but no Agricultural Land Classification Assessment has been provided with the application.
- 7.7 The application sets out that this is a purpose-built facility meeting the specific requirements of the proposed flower school business. Furthermore, it has been designed to be accessible and provide all of the facilities and the necessary environment in which to carry out the educational functions of the business. The size, structure and lack of facilities within the current building on site render it unsuitable for modification to meet the needs of the flower school in their view.
- 7.8 Whilst the applicant is seeking to diversify their business, the primary use of the proposed building would be for teaching and community uses, and these proposed uses do not fall under "agriculture". The supporting information submitted with the application sets out that the flower school is required to ensure the horticultural business at the site is financially viable, however no business case or financial information has been provided as part of the application. Given the size and specification of the building, officers are concerned whether the business and proposed flower school income has the ability to support the proposed development. Officers have sought advice from an agricultural consultant, but in the absence of financial information, they cannot comment on the case.
- 7.9 The statement sets out that the flower school is required on site to allow students to have direct access to the running of the horticultural business and educational benefits associated with first-hand horticultural operations, which the agent notes is not available in Kent. The statement sets out that around 25 hours of flower related activities will take place per week, in class sizes of around 10-15 people. In addition, the applicant envisages that the new building will be used for a further 15 hours during the week for after school tutoring by a long standing tutoring business as well as facilitating other educational classes such as art classes. The statement includes supporting information on classroom sizes from the Department of Education which states that for art rooms a space in the region of 97sqm is required for a class of 30 students. However, the proposed building would be in the region of 160sqm for class sizes of around 15 people. Even discounting floorspace for facilities such as toilets, the size of the building would appear to be significantly greater than the DoE classroom sizes referred to by the applicant.
- 7.10 The application suggests that the building could also be made available for other uses, including community uses. It is unclear from the submitted information what this will entail and where the demand for such a facility would come from given that Upchurch Village Hall is located nearby. The site is poorly located in terms of public transport, and is also poorly located in terms of access as this will be through narrow country lanes therefore any users of such a building would be dependent upon private cars.
- 7.11 In considering the scheme in the context of the rural location of the site, whilst policy DM 3 does allow for sustainable economic development in rural areas, this is dependent on a

number of criteria, including priority for the re-use of buildings, or development when a particular location is necessary to support the needs of rural communities. Taking the above into account, the questions raised in respect of the supporting justification for the development and the lack of a business / financial plan to explain how this would be viable and assist the existing business in terms of farm diversification, or how this would support rural needs, the development is not considered to be appropriate, or in accordance with the Local Plan and NPPF.

Character and Appearance

- 7.12 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. Further to this, in rural areas new buildings should be sympathetic to the rural location and appropriate to its context.
- 7.13 The proposed new building is of a substantial scale, approximately three times larger in footprint than the outbuilding which is to be demolished as part of the application. The associated car parking area is also relatively significant in size and will cover over an area of undeveloped agricultural land which will require the removal of a number of trees. The building, in isolation is well designed and as it would be located to the rear of dwellings fronting Horsham Lane it would not be prominent in this respect. However, given the rural nature of the site and surrounding area, it is considered that a building of this size would have a detrimental impact upon the generally undeveloped and rural character and appearance of the area. The associated development of the western side of the plot through the addition of significant amounts of car parking and hard landscaping will further urbanise the character of the plot. The need for such development in this location and within a predominantly rural area has not been justified and the built form would encroach into the countryside in a manner that would not protect or enhance the intrinsic value, landscape, and beauty of the countryside.
- 7.14 In light of the above, the proposal is not considered to meet the requirements of Policies ST 3, CP 4 and DM 3 of the Swale Local Plan 2017.

Living Conditions

- 7.15 The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers.
- 7.16 Owing to the nature of the development and the rural nature of the site, the proposal is unlikely to result in significant overshadowing through a loss of daylight or sunlight. It is also sufficiently set back from the nearest neighbouring properties to avoid impacting neighbouring privacy or outlook.
- 7.17 The proposal has the potential to result in some noise impacts as community uses could include activities such as weddings, parties and nursery activities, and in this rural location, close to existing dwellings, such uses would have the potential to cause unacceptable noise and disturbance, contrary to Policy DM 14 of the Local Plan. Nevertheless, this could be controlled by conditions relating to hours of operation and the scope of community uses could also be limited by condition, had officers considered the scheme to be acceptable in other respects.

- 7.18 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 and the NPPF.

Transport and Highways

- 7.19 The NPPF promotes sustainable patterns of development and expects land use and transport planning to work in parallel in order to deliver such.
- 7.20 The site is located approximately 500m to the east of the built confines of Upchurch and on a narrow country lane which is largely unlit and with no footpaths. Given the location of the development, lack of footpaths and limited public transport available I consider that trips to the site would be heavily reliant on the private car, and that the site is not sustainable in locational terms, which would conflict with policies ST 3, CP 2, DM 3 and DM 6 of the Local Plan.
- 7.21 The Swale Borough Council Parking Standards SPD 2020 states that the parking provision for any proposed teaching facilities should be determined according to the number of staff members and/or number of students. Class capacity for the flower school is predicted to be approximately 10-15 students, along with one staff member. The proposal includes space for 19 vehicles and this is acceptable to KCC Highways.
- 7.22 The new access would provide appropriate visibility splays and is acceptable to KCC Highways. In terms of the impact on the development on the surrounding highway network, no concerns have been raised by KCC Highways in this respect. Whilst Horsham Lane is a narrow rural lane, given the small scale nature of the proposal is it expected that this will naturally be absorbed without giving rise to any unacceptable harm to the highway network.
- 7.23 On the basis of the above, whilst the access arrangements and parking are considered to be acceptable, the development is not in a sustainable location and as such visitors to the site will be heavily reliant on private vehicles and as such there is conflict with policies ST 3, CP 2, DM 3 and DM 6 of the Local Plan.

Archaeology

- 7.24 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.
- 7.25 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.
- 7.26 The site is located within an area of archaeological potential. Comments have been received from KCC's Archaeology team setting out that as the development involves groundworks for the new building, parking and access in presently undeveloped areas, it could potentially impact on archaeological remains. As such, a condition requiring the submission of a programme of archaeological works is required, which would ensure that

features of archaeological interest are properly examined and recorded. If approval were to be recommended, this condition would be imposed to ensure accordance with policy DM 34 and the NPPF.

Ecology

- 7.27 Under the Natural Environment and Rural Communities Act (2006), the authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions for the purpose of conserving biodiversity. Furthermore, the National Planning Policy Framework states that 'the planning system should contribute to and enhance the natural environment by minimising impacts on biodiversity and delivering net gains in biodiversity where possible'. Paragraph 180 of the National Planning Policy Framework states that 'if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or as a last resort, compensated for then planning permission should be refused.'
- 7.28 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".
- 7.29 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.
- 7.30 This application is accompanied by a Preliminary Ecological Appraisal, which does not make clear what all the potential effects of the proposal are on biodiversity and identifies that further survey work is required at the site. This is noted by KCC Ecology, who have requested that the survey work, including bat surveys and two waterbody surveys, are undertaken prior to the determination of the application. They request the conclusions of these surveys should be incorporated into an Ecological Impact Assessment, including a conclusion of whether the site will achieve a biodiversity net gain.
- 7.31 Taking this into account the application fails to demonstrate that the proposal will not negatively impact upon protected species, nor is it clear whether the proposal can achieve a biodiversity net gain. The proposal therefore conflicts with policy DM 28 of the Local Plan and paragraph 186 the NPPF.

Trees

- 7.32 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.
- 7.33 Some of the existing trees within the proposed parking area and at the front of the site will need to be removed to facilitate the development proposal. The trees are considered to be of limited amenity value and they are not subject to Tree Preservation Orders. Replacement landscaping could be secured by planning condition if approval was to be recommended to ensure accordance with policy DM 29 of the Local Plan 2017 and the NPPF.

Loss of agricultural land

7.34 The site is classed as high-quality agricultural land. Policy DM 31 seeks to protect such land. In this instance, the application site incorporates the existing site access, small areas of hardstanding and existing buildings, as well as a small area of wider land associated with the holding. The proposal would result in further loss of this land, and in the absence of information to justify that a teaching / community building is clearly required on this site, this would be contrary to Policy DM 31 of the Local Plan and the NPPF.

Other Matters

7.35 The Health and Safety Executive have reviewed the application and have no comment to make on the proposal, provided that the development would not be classed as a 'vulnerable building'. Both the new building and buildings to be demolished do not meet the description of a 'vulnerable building' as set out in the response letter, and as such no further consideration is required in this respect.

8. CONCLUSION

8.1 Overall, whilst more information regarding the proposed operation of the proposed business has been provided as part of this application when compared to the refused scheme, it is still considered to be severely lacking in robust justification for the development proposed. On the basis of the above, the scheme is considered to amount to an unsustainable form of development in the countryside which does not meet sustainability objectives and will result in harm to the character and appearance and intrinsic value of the surrounding rural area, contrary to policies ST 3, CP 3, DM 3 and DM 6 of the Local Plan. The development also results in the loss of Best and Most Versatile agricultural land, contrary to policy DM 31 of the Local Plan and fails to provide adequate ecological information, contrary to policy DM 28 of the Local Plan. As such, it is recommended that planning permission is refused.

9. REASONS FOR REFUSAL

(1) The site is located within the open countryside where policies of general restraint apply, and is in a location not well served by services and facilities or sustainable travel options. The application fails to demonstrate that the proposal would represent an appropriate and sustainable form of farm diversification or that the development is necessary to support the needs of rural communities or the active and sustainable management of the countryside. In the absence of this and in the absence of a sufficient business or financial case to underpin the proposal and demonstrate a need for a building of the scale proposed in this location, the proposal would represent an unsustainable form of development, that would result in the harmful encroachment of built form into the rural area, and would fail to protect the character, appearance and intrinsic value of the countryside. This would be contrary to Policies ST 3, CP 2, DM 3 and DM 6 of Bearing Fruits 2031 – The Swale Borough Local Plan 2017.

(2) Insufficient ecological information has been provided to demonstrate the impact of the proposed development upon protected species in the area. As a consequence, the proposal is contrary to Policy DM 28 of Bearing Fruits 2031 - The Swale Borough

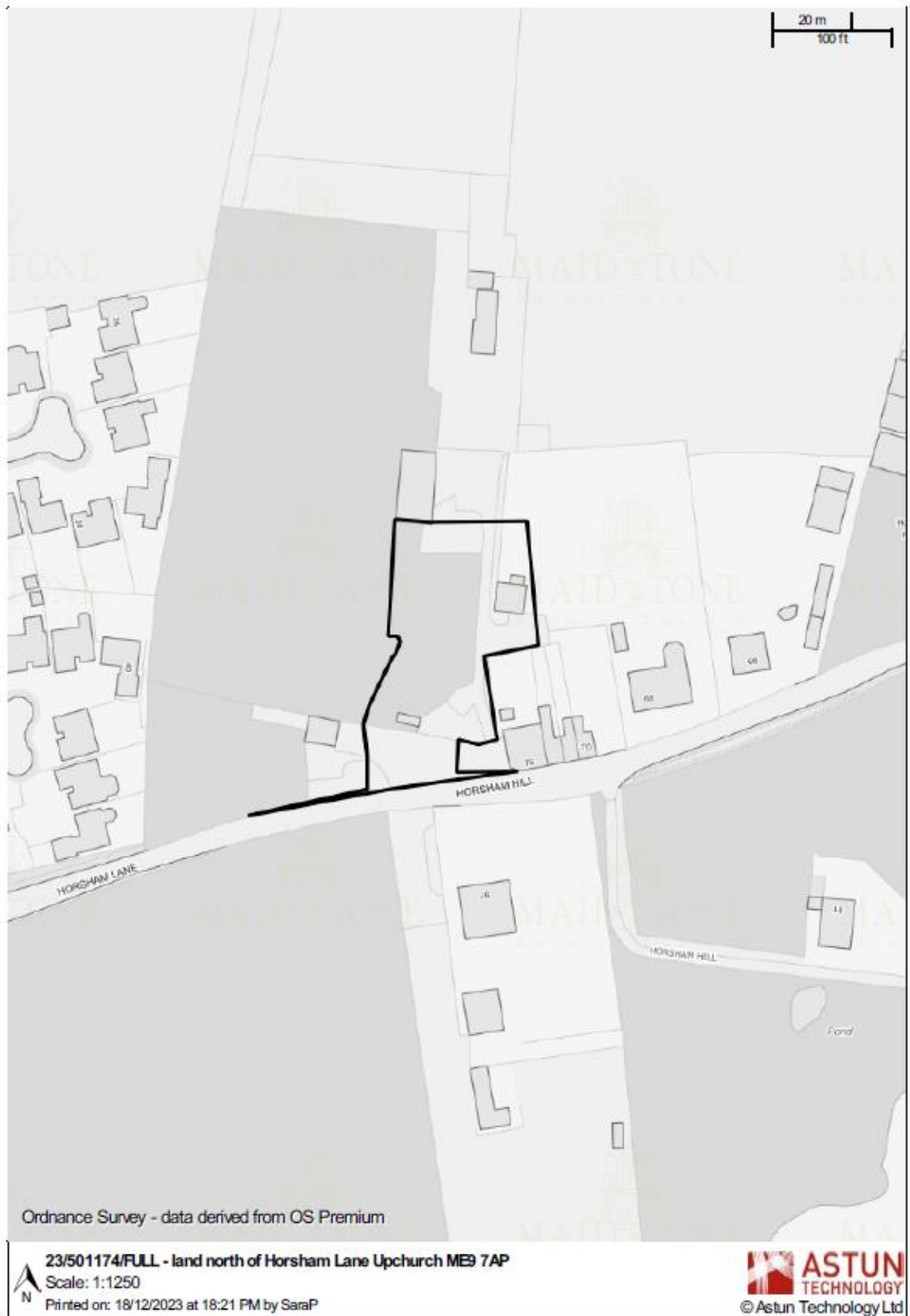
Local Plan 2017.

- (3) The development would result in the loss of Best and Most Versatile agricultural land, In the absence of any justification that a teaching / community building is necessary on this plot, the development would result in the unnecessary loss of such land, contrary to Policy DM 31 of Bearing Fruits 2031 – The Swale Borough Local Plan 2017.

The Council's approach to the application

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), September 2023 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

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



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PLANNING COMMITTEE – 11 JANUARY 2024**PART 5**

Report of the Head of Planning

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

- **Item 5.1 – 2 Cherry Drive, Luddenham, Faversham**

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

The Inspector disagreed with the Council's view that the extensions to this property would give rise to an adverse visual impact on the property itself, its immediate surroundings and to the rural character and appearance of the area. The Inspector took a somewhat unusual approach in assessing this scheme as they considered that as the existing extension blended in well with the property, that the point to assess the impact of the current proposal against was the dwelling as existing, rather than taking into account previous extensions, despite policy DM11 in the Local Plan requiring any previous additions to be taken into account. The Inspector also acknowledged that the proposal was of a greater scale than what is normally allowed for as set out in the Council's SPG. However, the Inspector concluded that the proposal represented good design, was appropriate in mass, scale and appearance to the location and would sit comfortably with the appeal property and its neighbour, its immediate surroundings and the rural character and appearance of the area. The appeal was therefore allowed on this basis.

- **Item 5.2 – Sunnybank Cottage, Deerton Street, Teynham**

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

The Inspector disagreed with the Council's view that the extensions to this property would give rise to an adverse visual impact on the property itself and its immediate surroundings causing harm to the rural character and appearance of the area. The Inspector acknowledged that the scheme would lead to a total floorspace increase of 190% compared to the original floorspace of the property, which is well in excess of the 60% increase recommended in the SPG. However, the Inspector took the view that the appropriately designed two storey side extension would effectively hide both the poorly designed existing rear extension and the proposed ground floor wrap around extension and still allow an appreciation of the original pair of cottages upon this site. In addition, the Inspector concluded that there was additional parking further to the rear of the site which would allow for vehicles to be parked off the highway. The Inspector therefore allowed the appeal for these reasons.

- **Item 5.3 – Ebenezer Chapel, Halstow Lane, Upchurch**

APPEAL DISMISSED

DELEGATED REFUSAL

Observations

The Inspector agreed with the Council that the use of land for open storage/builder's yard would be harmful to the character and appearance of the surrounding countryside, as well as resulting in harmful noise effects to the living conditions of neighbours. The Inspector also shared the Council's view that the proposal would impact the usability of the Public Footpaths that cross the site, and the appeal was dismissed for these reasons.

- **Item 5.4 – Webbenditch Cottage Bobbing**

APPEAL ALLOWED

DELEGATED REFUSAL

Observations

The Inspector disagreed with the Council's view that the siting and scale of the proposed annexe would introduce built form that would erode and harm the undeveloped and rural character of the area. Commenting that the size of the annexe would be significantly smaller than, and subordinate in scale to, the host property. Furthermore the Inspector considered that the siting of the annexe was acceptable and that low density and sporadic clusters of built form are consistent with the wider character of the area.



Appeal Decision

Site visit made on 17 October 2023

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2023.

Appeal Ref: APP/V2255/D/23/3324255

2 Cherry Drive, Luddenham, Faversham, ME13 0TG

- 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 and Mrs D Martin against the decision of Swale Borough Council.
 - The application Ref 23/500709/FULL, dated 9 February 2023, was refused by notice dated 17 April 2023.
 - The development proposed is demolition of the existing rear conservatory and the erection of a two storey rear extension and a single storey side extension and changes to fenestration.
-

Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing rear conservatory and the erection of a two storey rear extension and a single storey side extension and changes to fenestration at 2 Cherry Drive, Luddenham, Faversham, ME13 0TG in accordance with the terms of the application, Ref 23/500709/FULL, dated 9 February 2023, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The external materials used in the development hereby permitted shall match those used in the existing dwelling.

Preliminary matters

2. The application form described the proposed development as "Demolition of the existing rear conservatory and the erection of a two storey rear extension and a single storey side extension". The council changed this to the description used in the heading above, as did the appeal form. I have adopted it as it more clearly identifies the development proposed.

Main Issue

3. The main issue in this case is the effect of the proposed development on the appeal property, its immediate surroundings and the rural character and appearance of the area.

Reasons

4. The appeal site is a semi-detached two storey property with several outbuildings within a triangular shaped plot. The rear garden backs onto open

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

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fields. The property is set back from the highway and the frontage is formed of a garden area and driveway. The application site lies outside any built up area boundary and is therefore within the countryside. It has been previously extended under planning permission SW/91/0693.

5. Policy DM11 of the Swale Borough Local Plan 2017 is the key policy in this appeal. It states "*The Council will permit extensions (taking into account any previous additions undertaken) to existing dwellings in the rural area where they are of an appropriate scale, mass and appearance in relation to the location*". The explanatory text to this policy makes reference to the document 'Designing an Extension – A guide for Householders', which has the status of Supplementary Planning Guidance (SPG), and is therefore a material consideration. At paragraph 3.3 of this SPG it states "*The Council will not normally approve an extension to a dwelling in a rural area if it results in an increase in floor areas more than 60% of the property's original floorspace.*"
6. The officer's report indicates that, taken together with the previous addition, this proposal would result in the floorspace of the property being increased by 79% in comparison to the original dwelling, which is clearly somewhat greater than the guidance normally allows for.
7. I could see at my site visit, the pair of dwellings of which the appeal property is the northern, have both been extended to the side. Due to the fact that they have been similarly extended, they maintain a reasonably symmetrical appearance, although the extension on the neighbour appears to be a little wider, on the assumption that the chimney stack was originally on the centre line.
8. The proposed single storey side extension is set well back from the front elevation, under a hipped roof, with brick work and plain tiles to match the existing. This is the only part of the proposal that would be seen from a public viewpoint. It is subservient to the existing house, and would not upset the symmetry of the semi-detached pair. This part of the proposal is acceptable when viewed against the council's policies.
9. The 2-storey rear extension would extend the existing rear gabled wing that projects towards farmland. I estimate that the nearest point that the rear extension would be seen from a public view to be about half a mile away. Although the additional floorspace would exceed the 60% in the guidance, the particular circumstances of this case lead me to conclude that it is not appropriate to base the calculation on the original dwelling.
10. This is because this is not a case where a side extension has previously been added, in a way that is not sympathetic to the original and is then proposed to be added to, so that the combined effect would be detrimental to the host dwelling and its surrounding. In this case, as I have noted above, the pair of cottages have both had 2-storey side extensions, with the result that they have a near symmetrical appearance. The side extension on the appeal dwelling is the one mentioned in the officer's report and, it would seem, has been part of the dwelling for 30 years or so. It is only on close examination, if one is minded to look that closely, that the extensions to both houses are apparent, as they give the impression as having originally been built in the current form.
11. The pair now have an appearance that is very much complementary to the rural situation, and their presence and appearance is beneficial to the character

Appeal Decision APP/V2255/D/23/3324255

and appearance of this part of the countryside. The explanatory text to Policy D11 makes clear that the Council is concerned that large extensions or replacement dwellings can harm the character of the rural area. For these reasons, and where planning permission is required, Policy DM 11 seeks to control the extensions to, and replacement of, dwellings in the rural areas. In this case, the extensions would not be harmful to the character that the policy, and in turn the SPG, seeks to protect.

12. If the guidance of the SPG is approached on the basis that the existing dwelling is that which is currently present, I am satisfied that the proposed extensions would not exceed the 60% additional floorspace normal limit, although I have not thought it practical or necessary to do the precise calculations. Be that as it may, the visible part of the proposal, the small side extension, would successfully integrate with the existing dwelling as a subservient addition. The rear extension, bearing in mind that the proposed materials are to match the existing, and if done as well as the earlier extension, would not look out of place, and would probably not be seen from any public viewpoint.
13. I conclude that the appeal proposals represent good design, are appropriate in mass, scale and appearance to the location and would sit comfortably with the appeal property and its neighbour, its immediate surroundings and the rural character and appearance of the area. Therefore the requirements of policies CP4, DM11, DM14 and DM16 of the adopted Swale Borough Local Plan would effectively be met.
14. I will therefore allow the appeal.

Conditions

15. The statutory condition that provides a time limit on the start of development must be imposed. In addition, the council has suggested 2 conditions in the event that the appeal is upheld. These relate to controlling the external materials to be used and that the development is built in accordance with the approved plans. I will incorporate these into the permission I give. These conditions are required for certainty and avoidance of doubt as to the development permitted and to ensure that the appearance of the development permitted integrates with the existing in a visually satisfactory manner.

Terrence Kemmann-Lane

INSPECTOR

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Appeal Decision

Site visit made on 17 October 2023

By Terrence Kemmann-Lane JP DipTP FRTPI MCMi

an Inspector appointed by the Secretary of State

Decision date: 31 October 2023.

Appeal Ref: APP/V2255/D/23/3318231

Sunnybank Cottage, Deerton Street, Teynham, ME9 9LJ

- 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 Alex Cooke against the decision of Swale Borough Council.
 - The application Ref 22/505025/FULL, dated 17 October 2022, was refused by notice dated 15 December 2022.
 - The development proposed is the erection of two storey side extension and single storey rear extension.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of two storey side extension and single storey rear extension at Sunnybank Cottage, Deerton Street, Teynham, ME9 9LJ in accordance with the terms of the application, Ref 22/505025/FUILL, dated 17 October 2022, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The materials used on the external surfaces of the development hereby permitted shall be those specified on the application form.
 - 3) Prior to the occupation of the development hereby approved, additional parking space shall be provided in accordance with details that shall have been submitted to and approved by the local planning authority in writing. Thereafter the parking space shall be retained and kept available for that use.

Preliminary matters

2. The application form described the proposed development as "a single storey extension 2.9m from the rear of the dwelling and a two storey side extension 3.8m to the side of the dwelling". The council changed this to the description used in the heading above. I have adopted it as it more clearly identifies the development proposed.

Main Issues

3. The main issues in this case are: i) the effect of the proposed development on the appeal property, its immediate surroundings and the rural character and appearance of the area; ii) effect of the proposal on highway safety and convenience, bearing in mind the size of the proposed parking spaces.

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Reasons

The effect of the proposed development on the appeal property, its immediate surroundings and the rural character and appearance of the area

4. Sunnybank Cottage is a two storey semi-detached property located on a rural lane in the designated countryside. A 2-storey extension at the rear has previously been added. There is a large amenity area to the side and rear. Originally would it have been part of an identical pair with its attached neighbour. The attached cottage has also been quite extensively extended to the side, and to the rear to the same depth as now proposed on the appeal cottage.
5. Starting with the development plan, since the property lies within the countryside, policy DM11 of The Swale Borough Local Plan 2017 is of relevance. Under this policy, the council will permit extensions (taking into account any previous additions untaken) to existing dwellings in the rural area where they are of an appropriate scale, mass and appearance in relation to the location. Policy DM16 is also relevant, supporting alterations and extensions to existing buildings where they reflect the scale and massing of the existing building, preserve features of interest and reinforce local distinctiveness. At the same time, Policy CP4 requires development proposals to be of high-quality design and to be in keeping with the character of the area. It states that particular regard should be paid to the scale, height, materials, detailing, mass, bulk, articulation and site coverage of any future proposals.
6. In more detail the council's Supplementary Planning Guidance (SPG) 'Designing an Extension - A Guide for householders' states: "*The Council will not normally approve an extension to a dwelling in a rural area if it results in an increase in floor areas more than 60% of the property's original floorspace*".
7. The officer's report indicates that the proposed extensions would incorporate a floor space of approximately 72m². This results in a floorspace increase of some 91% of the existing dwelling and approximately a 190% increase on the original property without the 2-storey extension. The officer notes that the adjoining property, Primrose Cottage, has been extended, with additions which are clearly viewable from public vantage points. However, in the officer's opinion the way in which these extensions have been designed and laid out still allows, especially from Deerton Street itself, an appreciation of the original pair of cottages on this site. Although that development would also appear to be over the 60% increase, as set out in the SPG, the officer is of the view that it is more subservient to the dwelling in terms of its layout within the site compared to this proposal.
8. Deerton Street is a narrow lane that, from the south, has just emerged through a bridge carrying the railway line on embankment. The views of the appeal property are strictly limited, certainly much more so than those of the adjoining Primrose Cottage. That cottage has pitched-roof extensions at the side, set back from the front wall, including a 2-storey element. These extensions, which appear to be recent, have been carried out in materials that do not match the finish on the original pair, but clearly identify as being subservient to the original.
9. The existing 2-storey rear addition on the appeal property is a little less evident than those on the neighbour just mentioned, but also built in non-matching

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materials, with a flat roof that does not enhance the appearance and character of the cottage. The proposed pitched-roof 2-storey side extension would be set back from the frontage, would have a lower ridge line, and would be finished in horizontal cladding boards to the first-floor and red buff bricks to the ground floor, whilst the clay tiles would match the existing roof covering. I consider that this would produce a subservient structure that would, like those on the neighbour, be clearly distinguishable from the original. This element would only extend along the side of the original flank wall of the cottage, but would effectively hide the existing unfortunate flat-roofed rear extension.

10. The proposed single-storey addition would wrap around the side and rear of this existing rear extension. It would project no further rearwards than the existing extension at the back of Primrose Cottage. From any public vantage point, which is only on Deerton Street, it would not be seen.
11. In terms of appearance, I consider that the totality of the proposals is acceptable, and complies with Policy CP4 and, bearing in mind that Policies DM11 and DM16 require judgements that relate to appropriateness, rather than being precise criteria, there is little conflict with these 2 policies.
12. In addition to the above, Deerton Street is a 'Rural lane, coming under Policy DM26, which includes the requirement for development proposals on rural lanes to have "*particular regard to their landscape, amenity, biodiversity and historic or archaeological importance*'. Policy DM26 is not referred to in the refusal reasons because the planning officer's report includes the conclusion that "*Although the application site is located along a rural lane, I do not believe that the proposal would, within the curtilage of a residential unit give rise to any significant harm to the character of the rural lane itself.*" I consider that to be a fair and appropriate assessment, with which I agree.
13. Finally, in respect of this issue, I must address the point at its heart: the scale of the proposed extension works and the percentage of additional floorspace increase, which arises from the SPG. The SPG stems from Policy DM16, the explanatory text of which refers to it as a material consideration. Paragraph 3.3 of the SPG states: "*The Council will not normally approve an extension to a dwelling in a rural area if it results in an increase of more than 60% of the property's original floorspace*".
14. The officer, rightly I consider, judges the existing 2 storey rear projection as an extension to the original dwelling. As I have noted in paragraph 6 above, the officer calculates that the appeal proposal would bring the total increase to approximately 190%, well in excess of the percentage recommended in the SPG. It is necessary to take into account, as the officer does, the fact that Primrose Cottage has been extended to an extent that also exceeds the guidance percentage, with extensions that are clearly visible from public vantage points.
15. I have already indicated, in paragraph 9 above, that the proposed pitched roof two story extension would be seen as a subservient structure, due to its setback and lower ridge, and it would effectively hide the existing 2-storey extension and the ground-floor wrap around extension. Thus, in terms of views from the public domain, it is the proposed 2-storey extension that would have an effect on the appearance of the appeal property, its immediate surroundings and the rural character and appearance of the area. Furthermore, the 2-storey

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enlargement would allow an appreciation of the original pair of cottages at this site.

16. Clearly the proposal, taken as a whole, breaches the guidance in the SPG by a wide margin. Paragraph 3.3 of the SPG includes the word 'normally', which is a proper approach in guidance of this sort. It does not carry the weight of policy: in this case I consider that the breach of 60% guidance does not warrant the refusal of planning permission.

The effect of the proposal on highway safety and convenience, bearing in mind the size of the proposed parking spaces

17. The appeal proposal would increase the number of bedrooms in the property from 2 to 4. In accordance with the Parking Standards Supplementary Planning Document (SPD), three parking spaces should be provided for a dwelling of this scale in the countryside. This is a location well away from services and facilities, so that 3 parking spaces is a reasonable number to plan for. The Proposed Site Plan No.3972-10 gives the only indication of the parking provision, with an area marked as 'Driveway' and 'Parking'. This appears to record the situation as I saw it at my site visit. Using the dimensions of the existing driveway/parking area, the officer calculates a minimum length of parking area needed is 16m, whereas the existing space is 13.6m, measured from the plan.
18. For the appellant it is accepted that these standards should apply, and that the plans are lacking in detail. However, it is pointed out that there is plenty of space beyond the 'field gate', as I was able to see. The appellant's appeal statement mentions that an additional plan has been submitted as part of the appeal indicating parking areas. However, such a plan is not included within the appeal documentation in front of me. Nevertheless, I consider that the area that I saw beyond the 'field gate' could be utilised for additional parking space, without affecting the amenities of the occupants of the dwelling. Therefore I consider that I could deal with this matter by way of a condition on a planning permission.

Conclusions

19. For the reasons that I have given above, I will allow the appeal.

Conditions

20. The statutory condition that provides a time limit on the start of development must be imposed. In addition, the council has suggested 2 conditions in the event that the appeal is upheld. The suggested conditions are i) the materials to be used in the construction of the external surfaces of the development shall match those used in the existing building, and ii) the development shall be carried out in accordance with the approved plans.
21. The wording of the first of these conditions is inappropriate because the materials proposed and considered by the council at application stage do not match those of the existing building, other than the roof tiles. Therefore I will impose a condition requiring that the materials shall be those specified on the application form. I can deal with the second condition within the description of the development permitted. The first condition, as I have amended it, is required to ensure a visually satisfactory appearance, and the requirement that the development be in accordance with the plans is for certainty and avoidance

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of doubt as to the development permitted. In addition, as I have mentioned in paragraph 18 above in respect of parking, a condition is required to ensure adequate parking space is available. This is required for highway safety and convenience.

Terrence Kemmann-Lane

INSPECTOR

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Appeal Decision

Site visit made on 3 October 2023

by G Sylvester BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2023

Appeal Ref: APP/V2255/W/22/3307907

**Land to the rear of Former Ebenezer Chapel, Halstow Lane, Upchurch
ME9 7AA**

- 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 Western Undercliff Ltd against the decision of Swale Borough Council.
 - The application Ref 22/501429/FULL, dated 17 March 2022, was refused by notice dated 7 June 2022.
 - The development proposed is the use of land for open storage/builder's yard including the re-siting of a lawful storage container, siting of a storage cabin and the erection of palisade fencing.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. Notwithstanding the description of development in the banner heading above, and the main parties' descriptions of the site as enclosed by post and rail fencing, I observed at my site visit that a green coloured palisade fence was in situ and that its alignment appeared to broadly correspond to that shown on the proposed drawings. I also saw that a storage container, finished in a grey colour, was present on the appeal site in a position broadly equivalent to that shown on the proposed drawings. However, I cannot be sure that the fencing and storage container match the proposed drawings. For the avoidance of doubt, I have therefore determined the appeal based on the submitted drawings.
3. The Council refers to the site being located within the Upchurch & Lower Halstow Fruit Belt character area, as set out by the adopted Swale Landscape Character and Biodiversity Appraisal (2011). However, this appraisal is not before me in this appeal and therefore it has not influenced my assessment of the proposal, which is based upon the evidence before me and my experiences at the site visit.

Main Issues

4. The main issues are the effects of the proposed development on:
 - the character and appearance of the area,
 - the living conditions of nearby occupiers, with particular regard to noise and disturbance to the occupiers of Chapel House and the future occupiers of the former Ebenezer Chapel, and

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- the public footpaths.

Reasons

Character and appearance

5. The appeal site is situated behind Chapel House and the former Ebenezer Chapel (the former Chapel) and is accessed via a stone surfaced track that also serves several nearby residential mobile homes. Together, these buildings and mobile homes form a small group in the countryside that are generally set within a framework of hedgerows and trees, and amongst open fields. Although there are hardstandings and brick walls to the front of several mobile homes, the space around the mobile homes, the existing trees and hedgerows, and the open fields beyond, combine to give the area a spacious and rural character and appearance.
6. Whilst generally well screened in views from the road by the existing buildings and planting, the appeal site is clearly visible from the access track, the public footpaths that cross the site, and from several nearby mobile homes. Were it not for the presence on the appeal site of the green palisade fence and storage container, the appeal site would otherwise be devoid of buildings and structures, and its open state would contribute positively to the character and appearance of the area. Even if the storage container was lawful as asserted, it covers a relatively small part of the site and does not alter this conclusion.
7. The proposed open storage/builder's yard use could potentially include outside storage of building materials, equipment, machinery, plant, and other paraphernalia intrinsic to that use. The precise visual effects of any combination of these elements are largely unknowable, but could include elements like stacked bricks, scaffolding, plant and machinery, and parked vehicles. The combination of these elements could also change over time. Whilst I recognise that the size of the site is relatively modest, the appearance of the proposed open storage/builder's yard would nonetheless represent a significant change to the appearance of the site. In views from the access track, public footpaths and nearby properties, the appearance of the proposed open storage/builder's yard would be visually intrusive and inharmonious with the character and appearance of the area.
8. Whilst the proposed palisade fence could be coloured green, its height and design, with spiked tops for security, would nonetheless have a harsh appearance and an industrial aesthetic. Although its permeable design would allow views through it, those views would likely be of the stored items associated with an open storage/builder's yard use, which I have identified would cause visual harm. The appellant asserts that a fence could be erected as a permitted development, however I have seen nothing to demonstrate that those rights would allow the erection of a fence of a similar or greater visual impact than the fence proposed in this appeal. As such, it is a matter of limited relevance to my considerations.
9. Together, the proposed fence and the industrial appearances of the proposed container and storage cabin, the latter with its external jacking legs, would emphasise the inharmonious appearance of the proposal in the context of the prevailing rural character and appearance of the area.

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10. The evidence suggests the appeal site has been used for vehicle parking associated with the previous industrial use of the former Chapel for the storage and cutting of partitioning materials (described by the Council as carpentry), which was granted permission in the early 1980s. However, use of the former Chapel ceased several years ago, and the photographs submitted indicate a lesser degree of outside storage than that which would be likely to be associated with the proposed use. The past use of the site does not outweigh the identified harm or justify harmful development.
11. Taking all of the above into account, I conclude that the appeal proposal would harm the character and appearance of the area. As such, it would be contrary to Policies ST3, CP4, DM3 and DM14 of The Swale Borough Local Plan – Bearing Fruits 2031 (Adopted July 2017) (the LP), insofar as they seek to ensure that development is of high quality design that is appropriate and sympathetic to its surroundings, and contributes to protecting and, where appropriate, enhancing the intrinsic value, tranquillity and beauty of the countryside.
12. The appeal site is not described as located within a designated landscape. Nonetheless, Paragraph 174.b) of the National Planning Policy Framework (the Framework), is clear that planning policies and decisions should contribute to and enhance the natural environment by recognising the intrinsic character and beauty of the countryside. The aforementioned policies are consistent with the Framework in these respects.

Living conditions

13. At my site visit I noted that there was relatively little background noise in the area, with the occasional and relatively infrequent passing car being the only notable noise source. Whilst my site visit was only a snapshot in time, I have no substantive evidence that the noise conditions I experienced were abnormal.
14. I have very little information regarding the previous planning permissions for commercial uses on the site. Even if I were to accept that the lawful use of the land is light industry and could operate without restriction, the evidence before me does not demonstrate that the appeal proposal could operate under a light industrial use planning permission. Furthermore, even if the appeal proposal was to generate fewer vehicle movements than previous uses, those vehicle movements would nonetheless pass close-by the side wall of the former Chapel, which now has permission for conversion to residential use.
15. A proposed floor plan of the former Chapel, showing 3 residential units, is contained within the appellant's Flood Risk Assessment. Although these units would be separated from the appeal site by the private parking area, the proposed open storage/builder's yard use would nonetheless be carried out within close proximity to the former Chapel, the dwelling at Chapel House, the public footpaths and the nearby mobile homes. The vehicles associated with the proposal would travel along the track near to the former Chapel's side wall, and the evidence indicates that windows which would serve the residential use of the former Chapel would face the appeal site.
16. The appeal was not supported by a technical noise assessment. However, to my mind the nature of the use would primarily involve the transport of materials, plant/machinery and equipment to and from the appeal site, and

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their handling and loading/unloading in the open at the site, including by mechanical lifting equipment.

17. In the absence of evidence to the contrary, I would expect the proposal to involve relatively sharp and sudden noises as items are loaded/unloaded from vehicles, and impact with the handling equipment, the vehicle's loading area and/or other items on the appeal site. These noises would likely be accompanied by the noise of vehicle engines running and vehicles being manoeuvred around the appeal site and driven along the stone surfaced access track close to the former Chapel.
18. Given the nature of a builder's yard use involving construction projects off-site, the activities on the site are likely to be intermittent. However, they could occur at any time within the hours specified by the appellant and at multiple times during a day, including Saturdays when nearby occupiers may be more likely to be enjoying their properties. The pattern of the noise effects could therefore be somewhat random and unpredictable, adding to a sense of disturbance to nearby occupiers and the future occupiers of the former Chapel.
19. Planning conditions could control the hours of use and prevent the use of reversing beepers on vehicles. However, the evidence before me does not clearly demonstrate that planning conditions requiring non-audible forklift trucks, details of the site layout and a complaints process, and the setting of a noise limit would effectively control the noise effects that would be intrinsic to the proposed use. The evidence does not demonstrate that a noise limit would be achievable. A noise limit and/or restrictive operating hours could also nullify the benefit of a planning permission were it to be granted.
20. Although the former Chapel has yet to be converted to flats or occupied, it would not be acceptable to rely on prospective occupiers to satisfy themselves whether the noise effects of the open storage/builder's yard use would be harmful to their living conditions. The evidence does not demonstrate that the relocated storage container would form a more defensible boundary to Chapel House in respect of noise.
21. For these reasons, I conclude that the noise effects generated by the appeal proposal would harm the living conditions of the occupiers of Chapel House and the future occupiers of the former Chapel, contrary to Policies CP4 and DM14 of the LP, which, amongst other requirements, seek to ensure that development is appropriate to its surroundings and would cause no significant harm to amenity.

Public footpaths

22. The evidence before me, including an extract from the Definitive Map of Public Rights of Way, indicates that public footpaths extend through the appeal site. At my site visit I observed an upstanding concrete marker post bearing the inscription 'Public Footpath' as marking the route of one of the footpaths as it extends south eastwards across nearby fields.
23. I note the appellant's contention that the alignment of the proposed fencing would naturally divert the route of the public footpaths around the appeal site and that an alternative diversion route could be secured by the planning condition recommended by the County Council. However, the evidence

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indicates that the alignment of the proposed fencing would have the effect of diverting users of the footpath to land not shown as in the appellant's control.

24. For these reasons, I have serious doubts over whether a condition securing diversion of the public footpaths and ensuring that an unobstructed route remains available for walkers, would be reasonable and enforceable. Had I been minded to allow the appeal, I would have raised this matter with the relevant parties to seek their views.
25. For these reasons, the appeal proposal would harm the usability of the Public Footpaths, contrary to Policy DM6 of the LP, insofar as it seeks to ensure that development proposals demonstrate that existing public rights of way are retained, or exceptionally diverted.

Other Matters

26. The appellant contends that sites for open storage/builder's yards are in short supply and only 1 other suitable site for rent was available within 5 miles of Sittingbourne. However, I have limited evidence of the appellant's search process. I acknowledge that the appeal proposal would make use of previously developed land (PDL) and support a prosperous rural economy, which are objectives of planning policies at national and local levels. However, even taking account of a potential lack of suitable sites for the proposed open storage/builder's yard use, I find that the reuse of PDL and the support provided to the rural economy would not outweigh the harms and policy conflicts that I have identified above.
27. I have very little evidence that the appeal site has been affected by a persistent problem of fly-tipping or is vulnerable to misuse that would harm the area. Therefore, such concerns do not outweigh the harm I have identified above. In any case, I am not persuaded that the appeal proposal would be the only means of dealing with such concerns.

Conclusion

28. For the reasons given above and having considered all matters raised, I conclude that the proposal conflicts with the development plan as a whole. There are no material considerations of sufficient weight, including the provisions of the Framework, to outweigh this finding and indicate a decision should be made other than in accordance with the development plan. Therefore, the appeal should be dismissed.

G Sylvester

INSPECTOR

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Appeal Decision

Site visit made on 12 October 2023

by R Lawrence MRTPI, BSc (Hons), PGDip (TP)

an Inspector appointed by the Secretary of State

Decision date: 6 December 2023

Appeal Ref: APP/V2255/W/23/3321025

Webbenditch Cottage, Cold Harbour Lane, Bobbing, Kent ME9 8NN

- 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 Jake Shaw against the decision of Swale Borough Council.
 - The application Ref 22/505996/FULL, dated 22 December 2022, was refused by notice dated 28 February 2023.
 - The development proposed is the erection of an annexe building within the grounds of Webbenditch Cottage.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of an annexe building within the grounds of Webbenditch Cottage at Webbenditch Cottage, Cold Harbour Lane, Bobbing, Kent ME9 8NN in accordance with the terms of the application Ref 22/505996/FULL, dated 22 December 2022, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 22_147-PL-03 Proposed Floor Plan and Block Plan; 22_147-PL-04 Proposed East and North Elevations; 22_147-PL-05 Proposed West and South Elevations.
 - 3) The materials to be used in the construction of the external surfaces of the annexe hereby permitted shall match those on the existing building in terms of type, colour and texture.

Background and Main Issues

2. The proposal relates to the provision of an annexe building. It would provide two bedrooms for occupation by relatives of occupiers of the main house and their carer(s), but does not contain a kitchen or dining space, with meals proposed to be taken with the occupants of the main house. Its use as an independent dwelling would require separate planning permission.
3. Taking that into account along with the submissions of the parties, the main issues are:
 - whether the annexe would be in a suitable location in respect of access to services and facilities
 - the effect of the development on the character and beauty of the Countryside

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Reasons

Suitability of location

4. The appeal site is situated within an isolated, rural location, outside any built-up area boundary. There are no other buildings adjoining or close to the appeal site.
5. My attention has been drawn to paragraph 80 of the National Planning Policy Framework (the Framework) relating to isolated homes in the countryside as well as paragraphs 7 and 8. Whilst I accept that due to the location of the site, any accommodation on site would be heavily dependent on the car, this is an existing position, and the proposal is not for a new home but for ancillary accommodation. As such, there would be no conflict with the requirements set out in para 80 of the framework.
6. In considering the sustainability of the proposal more generally, it is noted that providing ancillary accommodation to allow an extended family to live on one site, there is the potential for trip-sharing. Furthermore, the proposal would provide a form of accommodation designed for the specific needs of the appellant's family, thereby making a small contribution towards the provision of a home to meet the needs of present and future generations. This aligns with the social objectives of sustainable development.
7. Having regard to the above factors, the proposed annexe would be in a suitable location. The proposal would therefore accord with the requirements of the NPPF in terms of the location and sustainability of development.

Character and appearance

8. The appeal site is a substantial plot within an area of open countryside, remote from other buildings. The plot comprises a detached two storey dwelling together with a garage outbuilding.
9. The annexe building would be fairly large; however, its size would be significantly smaller than, and subordinate in scale to, the host property which is a substantial two storey building. The siting of the annexe within the plot would retain a good separation distance to the site boundaries, and the overall density of built form on the plot would be low. The plans show that the site would remain as a single large plot. As such, the annexe would not appear unduly prominent in its immediate surroundings.
10. The absence of development is stated to be a key characteristic of the sites countryside location. The proposal would introduce additional built form on the site; however, I find that low density and sporadic clusters of built form are consistent with the wider character of the area and within areas of open Countryside more generally.
11. Due to the isolated location of the site, there is a strong sense of tranquillity and background noise levels are very low. As the site is already in residential use, and the existing vehicular access would be utilised, the addition of ancillary accommodation as proposed would have minimal impact on traffic movements or to the number of persons living on site. Therefore, any increase in noise, and in turn any impact upon the tranquillity of the Countryside, would be very low and would not cause material harm.

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12. In conclusion, the development would be acceptable in terms of its effect on the character and beauty of the Countryside. The proposed annexe would therefore accord with Policies DM11, DM14 and ST3 of the LP. These policies, insofar as relevant, seek to ensure that development in the Countryside, outside of built-up area boundaries, protects the intrinsic character and beauty of the Countryside, reflects the characteristics of the locality and is of an appropriate scale, design and appearance.

Other Matters

13. I note the comment from an interested party that the garage recently constructed on site could be utilised for additional ancillary accommodation, as opposed to the proposed purpose-built annexe. However, whilst that may be the case, it is not for me to consider the merits of alternative schemes, instead I have assessed the appeal scheme on its own merits.
14. My attention has been drawn to an existing vehicular access gate along the front of the site and the potential for this to provide a separate access to the proposed annexe. I note that there is no existing hardstanding on site connected to this gate and the plans do not show any. As such, the proposal has been assessed based on the submitted plans.
15. There is potential for a kitchen and dining area to be provided within the proposed building, which may result in the facilities for day-to-day living being provided within the building. However, I have no reason to consider these would be provided. Given that use as a separate dwelling would require planning permission, the Council would have control of its use in the future.

Conditions

16. The Council has suggested a number of conditions and I have considered these in accordance with the National Planning Policy Framework and Planning Practice Guidance. A condition listing plans together with a condition to limit the timeframe for implementation are required in the interests of certainty. A matching materials condition is required in the interests of the visual amenity of the area.
17. A condition to secure the use of the annexe for purposes ancillary to the host dwelling would not be necessary as planning permission would be required to convert the annexe to an independent dwelling. A condition has been suggested to remove permitted development rights for development which would preclude an additional vehicular access. The condition is not sufficiently precise as to the forms of development over which additional control is sought, and furthermore, given the size of the site and areas of hardstanding, the likelihood of access being provided would be low, and as such I am not satisfied that the condition would be reasonable or necessary.

Conclusion

18. For the reasons given above, and having regard to all other matters, I conclude that the appeal scheme would comply with the development plan and that the appeal should be allowed, subject to conditions.

R. Lawrence

INSPECTOR

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