

# Agenda

## Planning Committee Meeting

Date: Thursday, 18 July 2024

Time 7.00 pm

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

Membership:

Councillors Mike Baldock (Chair), Andy Booth, Hayden Brawn, Simon Clark, Kieran Golding, James Hunt, Elliott Jayes (Vice-Chair), Peter Marchington, Claire Martin, Ben J Martin, Richard Palmer, Julien Speed, Paul Stephen, Terry Thompson, Angie Valls, Karen Watson and Tony Winckless.

Quorum = 6

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Pages

### Recording and Privacy Notice

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#### 1. Emergency Evacuation Procedure

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

- (a) The fire alarm is a continuous loud ringing. In the event that a fire drill is planned during the meeting, the Chair will advise of this.
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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 23 May 2024 (Minute Nos. 44 – 59) and [Minutes](#) of the Meeting held on 15 May 2024 (Minute Nos. 29 – 30) as correct records.

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**

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 17 July 2024.

5.	Deferred Item 1 - 23/505541/REM Land between Frogal Lane & Orchard View, Lower Road, Teynham	5 - 74
6.	2.1 - 23/501073/FULL Land rear of The Old Squash Courts, Lower Road, Barrow Green, Teynham	75 - 88
7.	2.2 - 23/504909/REM Land at Lady Dane Farm, Love Lane, Faversham	89 - 116
8.	2.3 - 22/504909/REM Land at Eden Top, Sheppey Way, Bobbing	117 - 130
9.	2.4 - 24/500508/FULL Camwa Ash, Bull Lane, Boughton	131 - 140

10.	2.5 18/504650/FULL Patch of Heaven, Bell Farm Lane, Minster	141 - 154
11.	2.6 23/504808/FULL 20 Leigh Road, Sittingbourne	155 - 164
12.	3.1 - 24/500022/FULL Land adj. to Rides House, Warden Road, Eastchurch	165 - 176
13.	Part 5 applications	177 - 264

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

### **Issued on Tuesday, 9 July 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](mailto:democraticservices@swale.gov.uk). To find out more about the work of this meeting, please visit [www.swale.gov.uk](http://www.swale.gov.uk)

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

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## SWALE BOROUGH COUNCIL

### PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

**18 JULY 2024**

#### Standard Index to Contents

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

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

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

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

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

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

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

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ABBREVIATIONS: commonly used in this Agenda

CDA Crime and Disorder Act 1998

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

HRA Human Rights Act 1998

SBLP Swale Borough Local Plan 2017

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## INDEX OF ITEMS FOR PLANNING COMMITTEE – 18 JULY 2024

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

### DEFERRED ITEMS

DEF ITEM 1	23/505541/REM	TEYNHAM	Land Between Frognal Lane & Orchard View Lower Road
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### PART 2

2.1	23/501073/FULL	TEYNHAM	Land rear of The Old Squash Courts Lower Road Barrow Green
2.2	23/504909/REM	FAVERSHAM	Land At Lady Dane Farm Love Lane
2.3	22/503908/FULL	BOBBING	Land at Eden Top Sheppey Way
2.4	24/500508/FULL	BOUGHTON	Camwa Ash Bull Lane
2.5	18/504650/FULL	MINSTER	Patch of Heaven Bell Farm Lane
2.6	23/504808/FULL	SITTINGBOURNE	20 Leigh Road

### PART 3

3.1	24/500022/FULL	EASTCHURCH	Land adj to Rides House Warden Road
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### PART 5

5.1	23/504056/FULL	IWADE	26 Springvale
5.2	23/500616/FULL	SITTINGBOURNE	1 Norwood Walk
5.3	23/504318/LDCEX	SELLING	Land north of Perry Leigh
5.4	21/500122/ENF	SELLING	Land north of Perry Leigh
5.5	23/504136/FULL	OSPRINGE	The Retreat Elverland Lane
5.6	23/503582/ADV	BORDEN	Land at Wises Lane
5.7	22/505646/OUT	TUNSTALL	Land at Ufton Court Farm
5.8	23/503812/SUB	GRAVENEY	Land at Cleve Hill

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**PLANNING COMMITTEE – 18 JULY 2024****DEFERRED ITEM**

Report of the Head of Planning

**DEFERRED ITEMS**

Reports shown in previous Minutes as being deferred from the 23 May 2024 Meeting.

<b>DEF ITEM 1 REFERENCE NO - 23/505541/REM</b>		
<b>PROPOSAL</b> Approval of Reserved Matters (Appearance, Landscaping, Layout and Scale sought) for erection of 298no. dwellings, a sports ground including pavilion, changing rooms and car park, open space including allotments and community orchard, and associated new infrastructure including access, parking and landscaping pursuant to 16/507689/OUT.		
<b>SITE LOCATION</b> Land Between Frogнал Lane and Orchard View, Lower Road, Teynham		
<b>RECOMMENDATION</b> Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions and a Deed of Variation to the S106 legal agreement 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.		
<b>APPLICATION TYPE</b> Major – Reserved Matters		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Ward Councillors Lloyds Bowen and Julian Speed request the application be determined by the Planning Committee.  Parish Council objection.  Letters of representation from more than three separate addresses received within the specified representation period based upon relevant planning considerations and relevant Ward Member requests that the application should be reported to the Planning Committee.		
<b>Case Officer</b> Matt Duigan		
<b>WARD</b> Teynham and Lynsted	<b>PARISH/TOWN COUNCIL</b> Teynham	<b>APPLICANT</b> C/O Agent  <b>AGENT</b> Chartway
<b>DATE REGISTERED</b> 22/12/2023		<b>TARGET DATE</b> 18/07/2024
<b>BACKGROUND PAPERS AND INFORMATION:</b> <u>23/505541/REM   Approval of Reserved Matters (Appearance, Landscaping, Layout and Scale sought) for erection of 298no. dwellings, a sports ground including pavilion, changing rooms and car park, open space including allotments and community orchard, and associated new</u>		

infrastructure including access, parking and landscaping pursuant to 16/507689/OUT. | Land Between Frognal Lane And Orchard View Lower Road Teynham Kent ME9 9TU (midkent.gov.uk)

## 1. INTRODUCTION

- 1.1 This application was initially reported to Planning Committee on 23 May 2024, with a recommendation that permission be granted. The original Committee report is attached at Appendix A.
- 1.2 The Planning Committee resolved to defer the determination of the application. The draft minutes from the 23 May 2024 Committee meeting are attached at Appendix B of this report, in summary the application was deferred to allow officers to undertake further negotiations in relation to the following:
- Clarifying the air quality impacts and mitigation measures.
  - Improving the capacity of the local sewerage network.
  - Extending the length of the lease for allotments and sports facilities.
  - Provision of health care.

## 2. RESPONSE TO REASONS FOR DEFERRAL

### 2.1 Air Quality

- 2.2 Vehicle emissions arise from the combustion of fossil fuels in vehicle engines and their subsequent release to atmosphere via tailpipe exhausts. The most significant pollutants released by cars and other vehicles are oxides of nitrogen (NO<sub>2</sub>/NO<sub>x</sub>) and fine particulate matter (PM<sub>10</sub> and PM<sub>2.5</sub>).
- 2.3 As it is elevated annual mean concentrations of NO<sub>2</sub> and PM<sub>10</sub> that have resulted in the declaration the AQMAs these are the pollutants of most concern and they have therefore been the focus of the Applicant's air quality assessment submitted with the outline application.
- 2.4 The Council's Air Quality Officer advised that the modelled predictions for NO<sub>2</sub> and PM<sub>10</sub> concentrations at receptors along the A2 London Road indicate that these would be below the Government's air quality objectives as a result of the development. Mitigation measures were suggested in line with an emissions cost calculation for the development.
- 2.5 The Council's Air Quality Officer advised that since monitoring of PM<sub>2.5</sub> in Newington and St Paul's Street show low concentrations, for example, the highest annual mean PM<sub>2.5</sub> monitoring results (µg/m<sup>3</sup>) in 2022 at Newington was 12.4 µg/m<sup>3</sup> (less than the National Air Quality Objective which is 20 µg/m<sup>3</sup>).
- 2.6 Condition 38 imposed on the outline permission requires a scheme of mitigation measures in relation to improving air quality to be approved prior to occupation of any dwellings. The current proposals would not change the findings approved as part of the outline permission, and subject to compliance with condition 38, the application would accord with Local Plan Policy DM6.
- 2.7 The Air Quality Officer has advised that air quality has improved since the air quality assessment was undertaken in association with the outline permission, impacts associated

with the development would be less than originally identified, which in any event were all below the government threshold (objective).

- 2.8 Officers highlight that air quality impacts falls outside of the lawful scope of determination of this reserved matters application as it was fully considered at outline stage along with mitigation being secured. The considerations of this application relate to the appearance, landscaping, layout and scale of the proposal.
- 2.9 Sewerage network
- 2.10 Under the Water Industry Act 1991, Southern Water have a statutory duty to maintain a suitable sewer network and provide the opportunity for all domestic properties to connect to the public sewer system. This represents a 'right to connect' which prevents Southern Water from refusing new connections.
- 2.11 Simultaneously, Southern Water have a statutory duty to ensure that the service it provides to its existing customers (in this case surrounding Teynham residents) does not deteriorate as a result of new homes being built. This is done through a programme of targeted network upgrades and reinforcement, which should align with planned new developments coming forward on allocated sites.
- 2.12 A condition was imposed on the outline permission (33) which required details of foul water drainage to be approved prior to construction. Southern Water advised that there are capacity constraints with the current sewerage system and sewer network enhancements would be required before more than 50 dwellings are occupied on the application site.
- 2.13 While this matter is not one that should be controlled through the planning regime the applicant has agreed to the occupation restriction. Southern Water have confirmed that they are looking to design and implement enhancements to the sewer network so the development can be fully occupied.
- 2.14 Officers highlight that the existing and future sewerage network falls outside of the lawful scope of determination of this reserved matters application. The considerations of this application relate to the appearance, landscaping, layout and scale of the proposal.
- 2.15 Lease length
- 2.16 At present the lease for sports facilities and allotments end after 25-years. Concerns were raised that the 25-year limit could mean future generations do not benefit from the facilities and allotments. The Applicant has agreed to either transfer ownership of the allotments and sports facilities (including the Pavilion) to the Parish Council or to change the length of the leases to reflect it being in place for 100 years at a pepper corn rent.
- 2.17 This is an improvement over the existing S106 provisions, where rent for the allotments is not currently secured at a pepper corn rent.
- 2.18 Provision of health care.
- 2.19 While there is no resistance to altering the wording of the legal agreement to allow Health Care funding to be directed to an available facility in Teynham, the Applicant has not agreed to go above the existing planning obligations relating to health care.

2.20 The Community Infrastructure Levy Regulations 2010 set out three tests for planning obligations, namely:

- (a) necessary to make the development acceptable in planning terms;
- (b) directly related to the development; and
- (c) fairly and reasonably related in scale and kind to the development.

2.21 Planning obligations can't be imposed to correct an existing deficiency (such as the closure of the GP surgery in Teynham). Health care is still being delivered by the NHS, albeit from Sittingbourne. While the concerns are acknowledged, it would not be reasonable to prevent the development from proceeding until the NHS deliver a GP surgery in Teynham.

2.22 Officers highlight that the consideration of healthcare falls outside of the lawful scope of determination of this reserved matters application. The considerations of this application relate to the appearance, landscaping, layout and scale of the proposal.

### 3. CONCLUSION

3.1 It is considered that the proposed revisions address the reasons for deferral and pursue matters relating to air quality, the sewerage network and healthcare would not be reasonable for the reasons set out within this report. It is recommended that the application be approved subject to the Deed of Variation relating reallocation of healthcare funds and the revisions to the lease clauses within the Section 106 being secured.

### CONDITIONS

#### 1. Plans

The development hereby permitted shall take place in accordance with the following plans:

Location Plan 3097-A-1000-PL-B  
 Site Layout 3097-A-1005-PL-S  
 Site Layout 3097-C-1005-PL-S  
 Sports Pitches 3097-A-1150-PL-E  
 Parking Plan 3097-A-1700-PL-G  
 Refuse Strategy Plan 3097-A-1701-PL-G  
 Garden Compliance Plan 3097-A-1702-PL-G  
 Tenure Plan 3097-A-1703-PL-K  
 Materials Plan 3097-A-1704-PL-G  
 Boundary Treatments Plan 3097-A-1705-PL-H  
 Part M Compliance Plan 3097-A-1706-PL-G  
 Dwelling Distribution Plan 3097-A-1707-PL-G  
 PV Plan 3097-A-1708-PL-G  
 Street Elevations 3097-C-1010-PL- F  
 Street Elevations 3097-C-1011-PL- F  
 Pumping Station PT10182 - 001  
 Sub Station EDS 07-3102.01 A  
 Lighting Plan Onsite Lighting Plan  
 Betony - Plans Elevations Semi-Detached 3097-C-3000-PL-A  
 Daisy - Plans & Elevations (Semi-Detached) 3097-C-3005-PL-B  
 Daisy - Plans Elevations 3097-C-3006-PL-A  
 Daisy - Plans & Elevations (Semi-Detached) 3097-C-3007-PL-B  
 Daisy - Plans & Elevations (Semi-Detached) 3097-C-3008-PL-A  
 Daisy + Carport - Plans & Elevations (Semi-Detached) 3097-C-3010-PL-C



Daisy Carport - Plans Elevations Semi-Detached 3097-C-3011-PL-A-  
Daisy & Betony - Plans Elevations Terrace x3: 3097-C-3015-PL-A  
Daisy Betony + Carport - Plans Elevations (Terrace x3) 3097-C-3016-PL-C  
Daisy & Betony + Carport - Plans & Elevations (Terrace x3) 3097-C-3016-PL-B  
Daisy Betony - Plans Elevations Terrace x4: 3097-C-3025-PL-A  
Daisy & Betony (Terrace x4) 3097-C-3026-PL-B  
Daisy Betony - Plans Elevations Semi-Detached 3097-C-3030-PL-E  
Goldcrest M4(2) Floor Plans and Elevations 3097-C-3035-PL-A  
Goldcrest Carport - Plans Elevations Semi-Detached 3097-C-3040-PL-A  
Elder - Plans & Elevations (Semi-Detached) 3097-C-3045-PL-C  
Elder - Plans Elevations Semi-Detached 3097-C-3046-PL-A  
Elder - Plans Elevations Semi-Detached 3097-C-3047-PL-B  
Elder +Carport- Plans & Elevations (Semi-Detached) 3097-C-3050-PL-D  
Elder +Carport- Plans & Elevations (Semi-Detached) 3097-C-3051-PL-D  
Elder +Carport- Plans & Elevations (Semi-Detached) 3097-C-3052-PL-B  
Elder +Carport- Plans & Elevations (Semi-Detached) 3097-C-3053-PL-A  
Elder Betony - Plans Elevations Terrace 3: 3097-C-3055-PL-A  
Elder Betony - Plans Elevations Terrace 3: 3097-C-3056-PL-A  
Betony - Plans Elevations Terrace 4: 3097-C-3060-PL-A-Elder  
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Elder Betony - Plans Elevations Terrace 5: 3097-C-3070-PL-A  
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Lupin + Carport- Plans & Elevations (Detached) 3097-C-3087-PL-B  
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Lupin Plans semi-detached 3097-C-3096-PL-B  
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Lupin Carport- Plans Elevations Semi-detached 3097-C-3101-PL-B  
Lupin Carport- Plans Elevations Semi-detached 3097-C-3102-PL-C  
Lupin Elder Carport- Plans Elevations Semi-detached 3097-C-3105-PL-B  
Osprey - Plans & Elevations (detached) 3097-C-3125-PL-C  
Osprey - Plans & Elevations (detached) 3097-C-3126-PL-B  
Osprey - Plans & Elevations (Semi-detached) 3097-C-3130-PL-E  
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Osprey & Betony- Plans & Elevations (Semi-Detached) 3097-C-3140-PL-D  
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Osprey and Betony and Carport- Plans Semi-Detached 3097-C-3145-PL-D  
Osprey & Elder - Plans & Elevations (Semi-Detached) 3097-C-3150-PL-C  
Osprey & Elder - Plans & Elevations (Semi-Detached) 3097-C-3155-PL-C  
Osprey & Lupin - Plans & Elevations (Semi-Detached) 3097-C-3160-PL-D  
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Block B Affordable Floor Plans 3097-A-3210-PL-D  
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Block C Affordable Elevations 3097-C-3221-PL-B  
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Basin C Levels Sections CON608-3927 P03  
Residential Site Visibility Splays CON608-3865 P03  
Residential Site Swept Paths Sheet 1 of 4: CON608-3866 P03  
Residential Site Swept Paths Sheet 2 of 4: CON608-3867 P03  
Residential Site Swept Paths Sheet 3 of 4: CON608-3868 P03  
Residential Site Swept Paths Sheet 4 of 4: CON608-3869 P03  
Site Wide Earthworks and Proposed Levels S38-278 Sheet 2 of 2: CON608-3879 P04  
Site Wide Earthworks and Proposed Levels S38-278 Sheet 1 of 2: CON608-3878 P04  
Site Wide Earthworks CON608-3877 P03  
Site Wide Earthworks Sheet 2 of 2: CON608-3876 P06  
Site Wide Earthworks Sheet 1 of 2 CON608-3875 P06  
Surface Water Drainage Network 1 Basin C  
Surface Water Drainage Network 2 Basin A and B  
Surface Water Drainage Network 3 Trench Soakaway  
Surface Water Drainage Network 4 Crate Soakaway  
Residential Site Road Construction Details 1 of 3: CON608-3930 P00  
Residential Site Road Construction Details 2 of 3: CON608-3932 P00  
Residential Site Road Construction Details 3 of 3: CON608-3933 P00  
S38/278 Site Access Roundabout General Arrangement Plan CON608-3700 C01  
S38/278 site access roundabout swept path analysis (1 of 2) CON608-3701 C01  
S38/278 site access roundabout swept path analysis (2 of 2) CON608-3702 C01  
S38/278 Site Access Roundabout Entry Path Curvature CON608-3703 C01  
S38-278 Site Access Roundabout Sections Key Plan CON608-3704 C01  
S38-278 Site Access Roundabout Long-sections (1 of 2) CON608-3705 C01  
S38-278 Site Access Roundabout Long-sections (2 of 2) CON608-3706 C01  
S38-278 Site Access Roundabout Cross-sections CON608-3707 C01  
S38-278 Site Access Roundabout Levels Contours Plan CON608-3708 C01  
S38-278 Site Access Roundabout Site Clearance CON608-3709 C01  
S38-278 Site Access Roundabout Pavement Plan CON608-3710 C01  
S38-278 Site Access Roundabout Drainage CON608-3711 C01  
S38-278 Site Access Road General Arrangement CON608-3720 C01

S38-278 Site Access Road General Arrangement CON608-3721 C02  
S38-278 Site Access Road, Swept Paths (1 of 2) CON608-3722 C02  
S38-278 Site Access Road Sections Key Plan CON608-3723 C01  
S38-278 Site Access Road Sections Key Plan P05 CON608-3724 C02  
S38-278 Site Access Road Long-Sections (1 of 3) CON608-3725 C01  
S38-278 Site Access Road Long-Sections (2 of 3) CON608-3726 C01  
S38-278 Site Access Road Long-Sections (3 of 3) CON608-3727 C01  
S38-278 Site Access Cross-sections CON608-3728 C02  
S38-278 Site Access Road & Roundabout Details (1 of 8 Sheets) CON608-3712 C01  
S38-278 Site Access Road & Roundabout Details (2 of 8 Sheets) CON608-3713 C01  
S38-278 Site Access Road & Roundabout Details (3 of 8 Sheets) CON608-3714 C01  
S38-278 Site Access Road & Roundabout Details (4 of 8 Sheets) CON608-3715 C01  
S38-278 Site Access Road & Roundabout Details (5 of 8 Sheets) CON608-3716 C01  
S38-278 Site Access Road & Roundabout Details (6 of 8 Sheets) CON608-3717 C01  
S38-278 Site Access Road & Roundabout Details (7 of 8 Sheets) CON608-3718 C01  
S38-278 Site Access Road & Roundabout Details (8 of 8 Sheets) CON608-3719 C01  
S38-278 Site Access Road Levels Contours Plan (2 Sheets) CON608-3730 C01  
S38-278 Site Access Road Levels Contours Plan (2 Sheets) CON608-3731 C02  
S38-278 Site Access Road Swept Paths (2 of 2) CON608-3732 C02  
S38-278 Site Access Road Site Clearance CON608-3733 C02  
S38-278 Site Access Road Pavement Plan CON608-3734 C01  
S38-278 Site Access Road Pavement Plan CON608-3735 C01  
S278 Site Access off Froggnal Lane Pavement Plan CON608-3774 C01  
S278 Site Access off Froggnal Lane Site Clearance CON608-3775 C02  
S278 Site Access off Froggnal Lane Construction Details (1 of 2) CON608-3776 C01  
S278 Site Access off Froggnal Lane Construction Details (2 of 2) CON608-3777 C01  
S278 Site Access off Froggnal Lane Construction Details (sheet 3) CON608-3778 C01  
S38-278 Roundabout and Site Access Setting Out - Sheet 1: CON608-3795 C01  
S38-278 Roundabout and Site Access Setting Out - Sheet 2: CON608-3796 C01  
S38-278 Roundabout and Site Access Setting Out - Sheet 3: CON608-3797 C02  
S278 London Road Loading Bay and Site Clearance CON608-3810 C01  
S278 London Road Loading Bay Swept Paths CON608-3811 C01  
S278 London Road Loading Bay Levels and Pavement CON608-3812 C01  
S278 London Road Loading Bay Construction Details CON608-3813 C01  
S278 London Road Loading Bay Construction Details Sheet CON608-3814 C01  
S278 London Road PROW General Arrangement CON608-3850 P04  
S38-278 Overall Highway Drainage Contribution Areas CON608-3862 P02  
S38-278 Overall Highway Drainage Contribution Areas P01: CON608-3863 P03  
S38-278 Site Access Roundabout Gully Catchment Plan P01: CON608-3871 P02  
S38-278 Site Access Roundabout Gully Catchment Plan P01: CON608-3872 P02  
S38-278 Site Access Roundabout Drainage Long Sections CON608-3873 P01  
S38-278 Site Access and Roundabout Legal Plan CON608-3874  
S38-278 Site Access Road Gully Catchment Plan (2 Sheets) CON608-3739 P02  
S38-278 Site Access Road Gully Catchment Plan (2 Sheets) CON608-3740 P03  
S38-278 Site Access Road Drainage CON608-3737 C01  
S38-278 Site Access Road Drainage CON608-3738 C02  
Road General Arrangement CON608-3950 P00  
Site Access Roundabout Construction Details CON608-4000 C01  
S278 Site Access off Froggnal Lane GA CON608-3770 C02  
S278 Site Access off Froggnal Lane Swept Paths CON608-3771 C02  
S278 Site Access off Froggnal Lane Sections CON608-3772 C02  
S278 Site Access off Froggnal Lane Levels, Contours and Gully Catchment CON608-3773 C01  
Preliminary Exploratory Hole Logs  
BRE 365 & Falling Head Testing  
Drainage Maintenance Schedule CON608\_001\_002

Boundary Sections 3097 A 1015 PL B  
Maintenance access 3136-APA-ZZ-00-SK-L-0006 P01

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

## 2. Materials

No development beyond the construction of foundations shall take place until further details of boundary treatment, construction details of buildings and the external finishing materials, to be used on the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority.

Details and samples of materials shall be provided for windows, areas of glazing, balconies, soffits building entrances, and any other materials, presented on a materials palette board, accompanied by elevation drawings indicating exactly where the materials are to be used.

Material samples and sample panels shall be placed/ erected on the site before the application to discharge the condition is submitted and made available for inspection.

Thereafter the development shall be built in accordance with the approved details.

Reason: In the interest of visual amenity.

## 3. Substation and pumping station

Prior to work to install the electrical substation and foul water pumping station, full plans, elevations and details of both installations, including any fencing and associated compound shall be submitted to and approved by the Local Planning Authority.

Prior to the first use of the electricity substation or the foul water pumping station an acoustic report for both installations and an odour assessment for the foul water pumping station shall be submitted to and approved in writing by the Local Planning Authority. The reports and assessment shall address the issue of noise (including low frequency noise) and vibration from both installations and odour from the foul water pumping station to ensure that there is no loss of amenity to residential or commercial properties.

The noise and vibration assessment scheme shall ensure that the low frequency noise emitted from the electrical substation is controlled so that it does not exceed the Low Frequency Criterion Curve for the 10 to 160Hz third octave bands inside residential accommodation as described in The DEFRA Procedure for the assessment of low frequency noise complaints 2011 (NANR45).

The electrical substation and foul water pumping station shall be maintained in a condition so that they comply with the levels and mitigation measures specified in the approved acoustic report and odour assessment for the life of the development.

Reason: To protect the amenity of future and existing occupiers.

## 4. Historical interpretation

No occupation of any building shall take place until a scheme of historical (including built heritage assets being Claxfield House and Claxfield Farmhouse) and archaeological interpretation has been submitted to and approved in writing by the Local Planning Authority. Examples of how to relay and interpret the archaeology and history of the site can include, but

are not limited to, the use of materials, landscaping, public art and the provision of historical interpretation boards. The details submitted pursuant to this condition shall include location, design, dimensions and materials of any fixed interpretation.

The interpretation scheme shall be carried out in full accordance with the approved details prior to the first occupation of any new dwelling and shall thereafter be retained and maintained in accordance with the approved details.

Reason: To ensure a satisfactory visual appearance and to ensure the development makes a positive contribution to local character and distinctiveness.

#### 5. External lighting

No external lighting shall be installed until a detailed scheme of lighting has been submitted to and approved in writing by the Local Planning. This scheme shall include the Upward Light Ratio, Assessment of the sports pavilion and any illuminated pitches and Vertical spill at nearest receptors. The scheme of lighting shall take note of and refer to the Institute of ILP Guidance Note 01/21 The Reduction of Obtrusive Light (and any subsequent revisions) and shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles) and an ISO lux plan showing light spill. The scheme of lighting shall be installed, maintained and operated in accordance with the approved scheme.

Reason: To ensure lighting is sufficient and does not adversely impact on residential amenity.

#### 6. Management and maintenance

Prior to occupation, a Management and Maintenance Plan relating to non-private external spaces shall be submitted to and approved by the Local Planning Authority. The Management and Maintenance Plan shall set out:

- The scope of maintenance and management, to include roads, parking, footways, play, open space areas, boundary treatment and landscape buffers (excluding sports facilities and allotments).
- Roles and responsibilities of those carrying out maintenance and management of the site.
- The process for appointing those who will undertake management and maintenance.
- Operational procedures for inspections, repairs and non-planned maintenance such as dealing with graffiti.
- Timing and frequency of maintenance.

Thereafter the site shall be managed and maintained in accordance with the approved Management and Maintenance Plan for the life of the development.

Reason: To ensure the development continues to be accessible, to protect residential amenity and to ensure necessary infrastructure and facilities are available for the use of future residents.

#### 7. Sports Facilities

a) Within 6 months of commencement of development, the following documents shall be submitted to and approved in writing by the Local Planning Authority in consultation with Sport England:

- (i) A programme of implementation of sports pitches and pavilion.

- (ii) Clear details over how the playing field will be inaccessible to vehicles other than those purposed for maintenance activity via gated access.
- (iii) A detailed assessment of ground conditions (including drainage and topography) of the land proposed for the playing field which identifies constraints which could adversely affect playing field quality; and
- (iv) Where the results of the assessment to be carried out pursuant to (ii) above identify constraints which could adversely affect playing field quality, a detailed scheme to address any such constraints. The scheme shall include a written specification of the proposed soils structure, proposed drainage, cultivation and other operations associated with grass and sports turf establishment and a programme of implementation.

b) The approved scheme shall be carried out in full and in accordance with the approved programme of implementation.

Reason: To ensure that the playing field is prepared to an adequate standard and is fit for purpose.

## 8. Community Use

The use of the playing field and pavilion building shall not commence until a community use agreement for the sports pitches and sports pavilion has been submitted to and approved in writing by the Local Planning Authority in consultation with Sport England, and a copy of the completed approved agreement shall be provided to the Local Planning Authority. The agreement shall apply to the sports pitches, pavilion, parking and other ancillary facilities and include details of pricing policy, hours of use, access by non-members, management responsibilities and a mechanism for review.

The playing field and pavilion building shall not operate otherwise than in strict compliance with the approved agreement.

Reason: To secure well managed safe community access to the sport facilities, to ensure sufficient benefit to the development of sport.

## 9. Screening

Within 6 months of commencement of development a Section 278 application shall be made for a scheme for landscaping to the southern side of the A2/London Road at the junction of Claxfield Lane. Thereafter the development shall be implemented in accordance with the outcome of that Section 278 application.

Reason: To reduce impacts arising from highway infrastructure to the setting of heritage assets.

## INFORMATIVES

1. The applicant is reminded that this permission relates to planning permission only and does not constitute approval under any other legislation including Building Regulations. To obtain advice on current Building Regulations the applicant should contact the South Thames Gateway Building Control Partnership at Foord Annex, Eastgate House, High Street, Rochester, Kent ME1 1EW.
2. The applicant is advised to review and comply with the Mid Kent Environmental Code of Development Practice which can be found at: <https://tunbridgewells.gov.uk/environmental-code-of-development-practice>

3. Pavilion design: The English Cricket Board (ECB) has a mandatory requirements which should be met when submitting details pursuant to the requirements of the S106 legal agreement. The applicant is advised to take account of requirements set out in the consultation response from Sport England when finalising the details related to the pavilion.
4. Cricket pitch: The minimum length should be 117m for minimum boundary compliance. A Labosport ball trajectory assessment should be carried out to assess whether any ball-strike risk is presented. This will establish scale and location of protective netting mitigation required as part of the development. \*Labosport is the only provider of ECB recognised ball strike assessments. They can be contacted at info@labosport.co.uk w. labosport.co.uk 0115 968 1998.
5. When submitting details pursuant to the requirements of the S106 legal agreement the size of the proposed storage building next to the pavilion will need to ensure it will be sufficient to house maintenance machinery.
6. Sport England and the Kent FA would like to be consulted around the operator of the site as there are clubs who would be interested and potentially capable of taking the site on.
7. It is important to note that planning permission does not convey any approval to carry out works on or affecting the public highway.
8. 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.
9. 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.
10. 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.
11. 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.
12. Should the development be approved by the Local 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.
13. Guidance for applicants, including information about how to clarify the highway boundary and links to application forms for vehicular crossings and other highway matters, may be found on

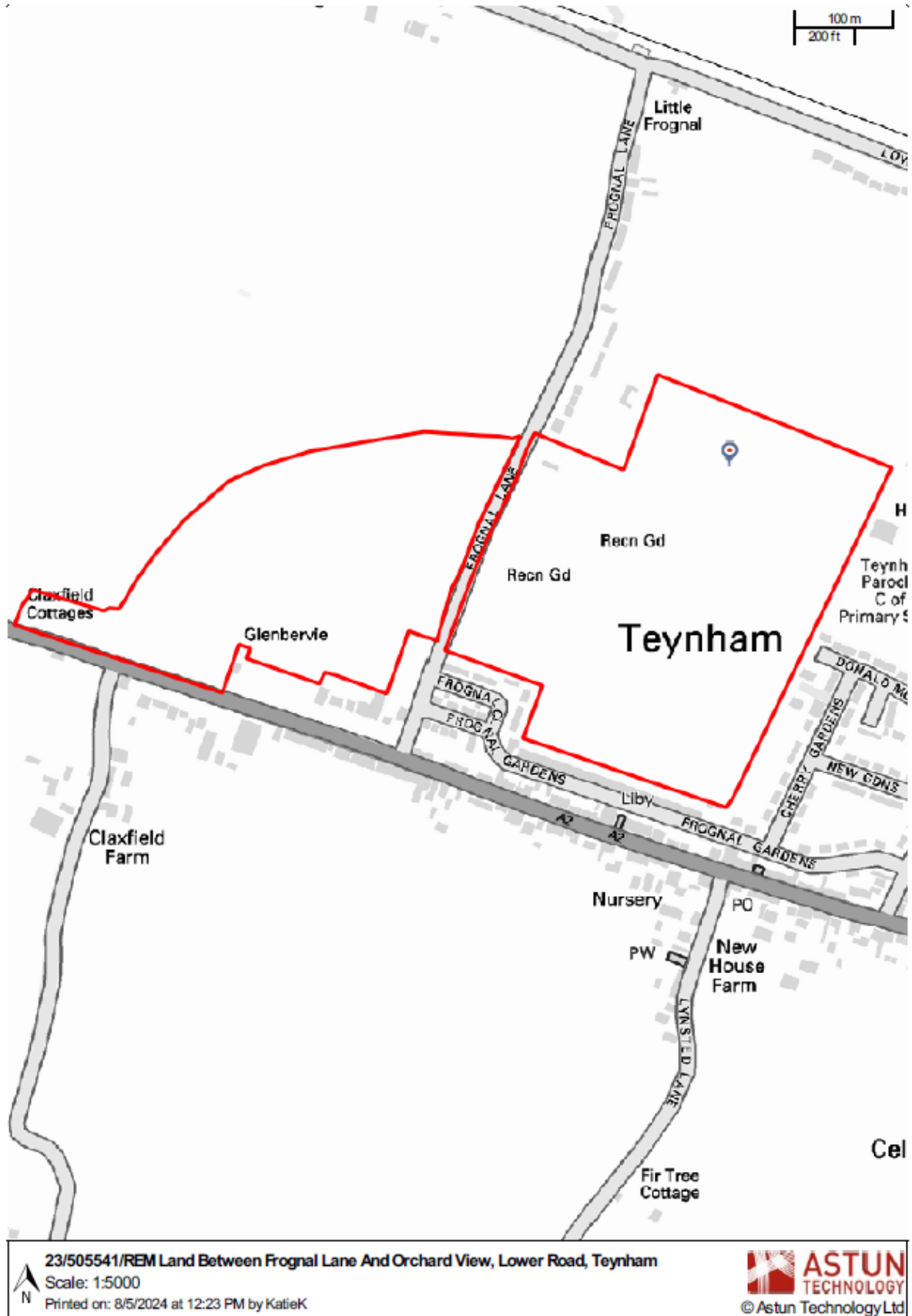


Kent County Council's website: <https://www.kent.gov.uk/roads-and-travel/highway-permits-and-licences/highways-permissionsand-technical-guidance>. Alternatively, KCC Highways and Transportation may be contacted by telephone: 03000 418181.

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

In accordance with paragraph 38 of the National Planning Policy Framework 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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Report to Planning Committee – 23 May 2024

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**PLANNING COMMITTEE – 23 MAY 2024****PART 2**

Report of the Head of Planning

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

<b>2.1 REFERENCE NO 23/505541/REM</b>		
<b>PROPOSAL</b> Approval of Reserved Matters (Appearance, Landscaping, Layout and Scale sought) for erection of 298no. dwellings, a sports ground including pavilion, changing rooms and car park, open space including allotments and community orchard, and associated new infrastructure including access, parking and landscaping pursuant to 16/507689/OUT.		
<b>SITE LOCATION</b> Land Between Frogal Lane and Orchard View, Lower Road, Teynham		
<b>RECOMMENDATION</b> Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions and a Deed of Variation to the S106 legal agreement 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.		
<b>APPLICATION TYPE</b> Major – Reserved Matters		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Ward Councillors Lloyds Bowen and Julian Speed request the application be determined by the Planning Committee.  Parish Council objection.  Letters of representation from more than three separate addresses received within the specified representation period based upon relevant planning considerations and relevant Ward Member requests that the application should be reported to the Planning Committee.		
<b>Case Officer</b> Matt Duigan		
<b>WARD</b> Teynham and Lynsted	<b>PARISH/TOWN COUNCIL</b> Teynham	<b>APPLICANT</b> C/O Agent  <b>AGENT</b> Chartway
<b>DATE REGISTERED</b> 22/12/2023		<b>TARGET DATE</b> 28/05/2024

**APPENDIX A****BACKGROUND PAPERS AND INFORMATION:**

Documents referenced in report are as follows: -

All drawings submitted:

All representations received:

Schedule of accommodation dated 9/11/2024 (uploaded 05/12/2023).

Planning Compliance Statement undated (uploaded 5/12/2023).

Biodiversity Net Gain Assessment: Feasibility Stage dated 19/7/2023 (uploaded 5/12/2023).

Onsite lighting report dated 27/6/2023 (uploaded 5/12/2023)

Built Heritage Statement dated July 2023 (uploaded 5/12/2023)

Heritage Addendum dated 27/2/2024 (uploaded 6/3/2024)

Landscape & Public Realm Strategy Part 1 and 2 dated November 2023 (uploaded 5/12/2023).

Flood Risk Assessment dated October 2016 (uploaded 14/12/2023)

Design and Access Statement (Parts 1 to 5) dated December 2023 (uploaded 14/12/2023).

Documents from 16/507689/OUT:

Landscape And Visual Impact Assessment dated 24/10/2016 (uploaded 1/11/2016)

Flood Risk Assessment dated October 2016 (uploaded 1/11/2016)

Tree Report & Impact Assessment dated 10/11/2016 (uploaded 17/11/2016)

Air Quality Assessment dated 23/09/216 (uploaded 1/11/2016)

S106 Legal Agreement dated 23/06/2021 (uploaded 25/06/2021)

Documents from 23/502591/SUB:

Arboricultural Survey Impact Assessment and Method Statement dated May 2023 (uploaded 1/6/2023)

The full suite of documents submitted pursuant to the above application are available via the link below: -

[23/505541/REM | Approval of Reserved Matters \(Appearance, Landscaping, Layout and Scale sought\) for erection of 298no. dwellings, a sports ground including pavilion, changing rooms and car park, open space including allotments and community orchard, and associated new infrastructure including access, parking and landscaping pursuant to 16/507689/OUT. | Land Between Frognal Lane And Orchard View Lower Road Teynham Kent ME9 9TU \(midkent.gov.uk\)](https://midkent.gov.uk/23/505541/REM)

## 1. SITE LOCATION AND DECRPTION

- 1.1. The application site is located at Teynham, to the north of the village centre (which is located on the A2 London Road) and to the south of Lower Road.

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- 1.2. At its closest point the reserved matters site is approximately 900m from the Teynham railway station. The site has a total area of 20.86ha.
- 1.3. The land to the east of Frogmal Lane adjoins the rear gardens of existing residential properties and is an open field and sports ground, whilst land to the west of Frogmal Lane is an open, agricultural field.
- 1.4. Immediately beyond the eastern boundary of the site is a Primary School, Teynham Village Hall, a grassed area used as a junior football pitch, a children's play area and a small car park. A Public Right of Way (PRoW ZR247) runs along the eastern boundary of the site.
- 1.5. The existing dwellings which are adjacent to the application site are mainly two storey dwellings or bungalows.
- 1.6. The western portion of the site currently comprises open land, which slopes down to the west. The site was formerly worked for Brickearth and restored to a level approximately 1m to 2m below Frogmal Lane. Footpath (PRoW ZR256) runs north – south through the western part of the site between the A2 London Road and Lower Road.
- 1.7. There are historically listed buildings nearby (including Frogmal Farmhouse and outbuilding (Grade II\*), Claxfield House (Grade II), and Claxfield Farm House (Grade II\*)).
- 1.8. Frogmal Lane and Lower Road are designated as Rural Lanes.
- 1.9. The site is near Teynham Air Quality Management Area (AQMA) and areas of the site are of archaeological importance.

## 2. PLANNING HISTORY

- 2.1. Set out below is the history considered relevant to the determination of the current application:

**16/507689/OUT** - Approved 23.06.2021

Outline Application (with all matters reserved other than access into the site) for mixed use development including up to 300 dwellings; employment area (Use Classes B1(a), B1(b) and B1(c) (offices, research and development, and light industrial) (up to 26,840sqm); sports ground (including pavilion/changing rooms); open space (including allotments and community orchard); access, including new link road and roundabout on A2; other vehicular/pedestrian / cycle accesses (including alterations to Frogmal Lane); reserve site for health centre; and associated parking and servicing areas, landscaping, wildlife areas, swales and other drainage / surface water storage areas, and related development

[The Applicant has submitted numerous condition discharge applications relating to conditions imposed on the outline planning permission. Concerns have been raised by the Parish Council that these haven't been subject to formal public consultation. Condition discharge applications are not planning applications (the consultation regime does not require public consultation in relation to condition discharge applications). The sub applications relate to technical matters.]

## 3. PROPOSED DEVELOPMENT

- 3.1. The reserved matters application seeks to take forward an initial phase of the approved outline permission. The current proposal involves approval of reserved matters for 298 dwellings, a

**APPENDIX A**

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sports ground (including pavilion with changing rooms), open space (including allotments and community orchard) and associated new infrastructure (including access, parking, and landscaping etc).

- 3.2. The reserved matters application seeks approval for appearance, landscaping, layout, and scale.
- 3.3. It is recognised that 'Access' was a matter determined at the outline stage, as such 'Access' (the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network) is already approved.
- 3.4. There is an overlap between the conditions imposed on the outline planning permission and this reserved matters application. The detailed wording of conditions imposed on the outline permission often requires certain matters to be addressed in the reserved matters application, and the Applicant has submitted the required information with this application.
- 3.5. The table below shows the proposed housing mix:

<b>Size/type</b>	<b>Quantity</b>	<b>%</b>
1 bed flats	13	4%
2 bed flats	9	3%
2 bed houses	57	19%
3 bed houses	164	55%
4 bed houses	55	18%
Total	298	100%

- 3.6. The western portion of the site would accommodate the main entrance to the site via a roundabout from the A2 London Road. This part of the site would be largely open space accommodating allotments, a community orchard and surface water detention basins.
- 3.7. The area proposed for allotments comprises 20 standard allotments of 250 sqm each. The allotments are proposed to be fenced and provided with a water supply and 10 car parking spaces. A vehicular access way is proposed off Froggnal Lane, leading to the proposed allotments. A community orchard is also proposed.
- 3.8. The section of Froggnal Lane within the site would be closed to vehicular traffic and become a pedestrian and cycle link.
- 3.9. Vehicular access between the A2 and Froggnal Lane would still be afforded via the new roundabout (at the A2) and the internal access road which links to Froggnal Lane, north of the site.
- 3.10. The land to the east of Froggnal Lane is proposed to accommodate residential development accessed via internal residential streets. The residential development area is arranged as a series of interconnected street blocks.
- 3.11. A primary street loops from the main vehicle access point through the central part of the site with secondary streets linking the outer edges of the development to it.
- 3.12. Landscape buffers are proposed to the west, east and south-west of the residential development area. The buffers are described below: -

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- Western boundary – 15m landscape buffer from Frogmal Lane to include new and existing trees and planting;
- Eastern boundary – 10m buffer from the site boundary, to include the enhanced PRow;
- South-west boundary – 5m buffer from site boundary with Frogmal Close

3.13. Refuse storage for houses would be located in rear gardens. Apartment blocks are provided with communal stores located in accessible locations for residents.

3.14. North of the residential area would be playing pitches and a single storey sports pavilion. The sports ground shown would have an overall area of 3.72ha (including a car park (46 spaces) and pavilion). It is proposed that the sports area would accommodate three football pitches during the winter season and a cricket pitch during the summer season. The sports pavilion building accommodates 303 sqm of floor area.

3.15. A mix of parking typologies are proposed throughout the development, parking is proposed in courtyards, on plots (driveway parking and/or tandem parking). Overall, for the residential development, 681 parking spaces are proposed. (including 102 visitor parking spaces).

#### 4. CONSULTATION

4.1. As part of the planning application, all immediate adjacent neighbours have been consulted.

4.2. Two rounds of consultation have been carried out, the first on 11/01/2024 and the second on 5/4/2024. during which 416 letters were sent to neighbouring occupiers; 6 site notices were displayed at the application site and the application was advertised in the local newspaper. Full details of representations are available online.

#### 4.3. **First Round of consultation - neighbours**

4.4. During the first round of consultation 79 letters of representation were received in relation to the consultation. Concerns/ comments were raised in relation to the following matters: -

<b>Comment</b>	<b>Report reference</b>
The development would adversely change the character of the village. The village identity would be lost.	6.2.2, 6.5.8, 6.8.11, 6.8.12, 6.8.15
Traffic congestion would worsen.	6.11.4, 6.11.5
Existing parking pressures would be exacerbated.	6.11.14, 6.11.15
Public transport is limited, meaning there would be a reliance on cars, causing congestion.	6.11.11
The condition of the local roads would worsen with the additional traffic.	6.11.4, 6.11.5
The routes for construction traffic should be controlled.	6.11.16

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The increased traffic would increase highway safety concerns.	6.11.4, 6.11.10
Part of Frogmal Lane would be closed forcing more use of Lower Road which is not suited to increases in traffic.	6.11.4, 6.11.6,
There is insufficient community facilities and infrastructure to cope with the additional population. There is no GP surgery in Teynham. Local schools don't have the capacity to cope. There are not sufficient dentists in the area to cope.	6.13.4 to 6.13.10
The existing playing fields have a sensitive history and this would be lost if they are built on.	6.6.7, 6.14.6
Roman archaeology would be built over.	6.7.2 to 6.7.8
Conditions are required to control construction impacts.	6.11.16, 6.17.2, 6.17.3
The development would reduce the separation between settlements, Teynham would become part of Sittingbourne.	6.8.11
Building works would displace vermin who would then move into neighbour residential properties.	6.19.5
The proposal would worsen air quality.	6.12.5, 6.12.6
Existing sewer network doesn't have the capacity to cope with additional housing and foul water. Existing drains block and the proposals would worsen the situation.	6.19.1, 6.19.2
The supply of electricity in the area is problematic, with power cuts frequent. Additional development and power usage will exacerbate the issue. There is inadequate water supply and the proposal would exacerbate the issue.	6.19.4
The development would displace open space, fields and agricultural land and Green Belt. Brownfield sites should be built on first.	6.2.1, 6.2.2



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The character of the landscape would adversely change and there would impacts to views. The impact on views would impact the setting of the village and heritage assets.	6.5.5, 6.5.8, 6.6.8, 6.6.24
Wildlife habitat would be lost. Biodiversity enhancements are required. Protected species would be harmed.	6.10.3, 6.1.9, 6.10.11, 6.10.12
Places for people to walks and take exercise would be lost, adversely impacting health including mental health.	6.11.8, 6.11.13, 6.14.3, 6.14.13
This proposal doesn't bring forward the employment space, the housing would not be accompanied by jobs. There is concern the employment part of the site might come forward for housing.	6.2.3
The site specific Policy MU4 requires both housing and employment space, as such this proposal is contrary to that policy. The proposal is also contrary to the S106 legal agreement in relation to phasing.	6.2.3
Cumulatively this development and others would result in unacceptable impacts.	6.11.5
Existing flooding issues would be exacerbated.	6.15.3, 6.15.4, 6.15.8,
The development would result in increased pollution.	6.12.6, 6.16.2, 6.16.3
Affordable housing would be for non-locals, not meeting local needs.	6.4.4
The architecture of the proposed buildings doesn't reflect the character of the area.	6.8.12, 6.8.13
Public Rights of Way (PRoW) would be adversely impacted. The development doesn't promote active travel.	6.11.11, 6.11.13
There would be an increase in noise and anti-social behaviour.	6.17.2, to 6.17.13 see also condition 6
The proposals are not sustainable or environmentally friendly and fails to propose adequate conservation of energy and water.	6.18.3, 6.18.5, 6.18.7

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Density is excessive and no allowance has been made for green space or wildlife. The central green space is too small for the future population.	6.8.12
The sports pitches may not be delivered in which case there would be a loss of sports facilities. Other infrastructure such as street lights may not be delivered.	6.14.8
Lighting of the sports pitches would impact on residential amenity. Noise from the use of allotments and potentially fires in the allotments would impact on the amenity of nearby neighbours.	6.17.14, 6.17.15
Nearby houses which have just been built remain unsold. There is not demand for the new housing proposed.	6.2.2
The community facilities including football pitches, pavilion and car parking on a leasehold for 25 years at peppercorn rent. Details are not clear after 25 years. Concern is raised that the facilities would not be available for future generations. Concern is also raised over the lack of long-term ownership and maintenance of open spaces, allotments and drainage infrastructure is required.	6.14.9
The development should be integrated into the existing community with easy access to facilities.	6.8.7
The new population would need mobile phone signal and more mobile phone masts would be required with associated visual and electric and magnetic fields adversely impacting views and health.	Phone masts would require separate permission and are not a material consideration for this application.
The housing should be located near the A2 and open space where the housing is proposed.	6.2.4
The site is a rural location, not suitable for additional housing.	6.2.2

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The proposals don't improve health care facilities in the village contrary to Policy MU4.	6.13.4 to 6.13.10
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**4.5. First Round of consultation – Parish Councils**

4.6. In summary (the full response can be viewed online), Teynham Parish Council raised the following concerns:

<b>Comment</b>	<b>Report reference/ clarification</b>
The employment space and the health facility may not be delivered. A future planning application could be submitted for change of use in order to build additional houses at a later stage.	6.2.3
There are currently no GP facilities in the village. New houses should not be occupied until medical/GP facilities have been built and operational within the village.	6.13.9
Many members of the public have been unaware of the condition discharge application relating to the outline permission, including relating to the Public Rights of Way (PRoW).	6.19.7
Since the outline planning permission was granted there have been a number of significant changes in the local area, including other large developments.	6.11.5
Construction would be disruptive and robust measures are required to protect residents.	6.11.16, 6.17.2, 6.17.3, 6.17.4
The site has limited access and PRoW are impacted.	6.11.13
A wide range of individuals and groups will be impacted by this development. Consideration should be taken to reach these diverse groups of people.	4.2
The construction phase(s) will impact large numbers of people over an extended period of time.	6.11.16, 6.17.2, 6.17.3, 6.17.4
Phasing controls have not been adhered to.	6.2.3
There is a need to set, monitor and enforce rigorous planning constraints. It's essential	6.11.16, 6.17.2, 6.17.3, 6.17.4

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to minimise the impact on day-to-day activities during the construction phase. Hours of work should be restricted.	
A comprehensive travel and parking plan is required, covering construction crew, visitors, materials (loading and unloading), equipment and the removal of waste.	6.11.11
It's essential to ensure all the community components of the project are completed at an early stage.	6.14.9
Significant effort should be placed on protecting and maintaining routes through the site during construction phase or provide near-by alternative routes.	6.11.8
The capacity of the wastewater infrastructure is a major concern. Further concerns existing over the capacity of fresh water and electrical supplies to cope with additional demand.	6.19.1, 6.19.2, 6.19.3,
The foul water pumping station should be relocated and be set 50m away from any habitable room.	6.17.10 to 6.17.13
Actions should be taken to protect against infestations by rodents.	6.19.5
New traffic modelling required to reflect significant changes since the outline permission.	6.11.5
Consideration should be given to a district heating system.	6.18.4
Emergency services may need greater capacity.	6.17.10
Concerns are raised in relation to the design, including: <ul style="list-style-type: none"> <li>○ Context</li> <li>○ Identity</li> <li>○ Public spaces</li> <li>○ Movement</li> <li>○ Uses</li> <li>○ Roads and access</li> <li>○ Homes and buildings</li> </ul>	6.8.5 to 6.8.13, 6.8.15 to 6.8.23, 6.11.6, 6.14.6.

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○ Lifespan.	
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4.7. Lynsted with Kingsdown Parish Council fully endorse the comments submitted by Teynham Parish Council.

4.8. In summary, Tonge Parish Council raised the following concerns.

<b>Comment</b>	<b>Report reference/ clarification</b>
There is a lack of GP facilities in the area. There is not sufficient capacity to cope with the additional population.	6.13.9
Additional traffic from the development would worsen congestion and pose highway safety risks including for cyclists.	6.11.4
Construction activities would be disruptive and construction traffic dangerous.	6.11.16, 6.17.2, 6.17.3, 6.17.4

**4.9. Second round of consultation – neighbours**

4.10. During the second round of consultation a further set of 416 letters were sent to nearby occupiers on 5/04/2024. In response 7 letters were received. The following additional concerns/ comments were raised in relation to the following matters:

<b>Comment</b>	<b>Report reference</b>
Agricultural land would be lost impacting food security and increasing carbon emissions.	6.2.2
Existing houses would be overlooked resulting in a loss of privacy. This would be exacerbated by changes to increase ground levels.	6.17.5, 6.17.7, 6.17.8, 6.17.9
Existing trees would be removed, contrary to advice provided by the developer.	6.9.5

**4.11. Second Round of consultation – Parish Council's**

4.12. In response to the second round of consultation, Tonge Parish Council reiterated earlier concerns and raised the following additional matters:

<b>Comment</b>	<b>Report reference</b>
The changes to Froggnal Lane and Lower Road would pose a danger to cyclists.	6.11.6
Pollution from traffic would increase.	6.12.5, 6.12.6

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**SBC Conservation Officer** - In summary the SBC Conservation Officer provided the following advice:

- Raised concern in relation to the Heritage Assessment addendum which doesn't adequately quantify cumulative change to the setting of Claxfield House and Claxfield Farmhouse. The setting of Claxfield House (Grade II) and Claxfield Farmhouse (Grade II\*) would be impacted by the new junction works, highway signage and lighting (less than substantial harm).
- Claxfield Lane (a rural lane) would be impacted.
- Request landscaping around the junction of Claxfield Lane and the A2 to help screen highway works, lights and signage from the setting of listed buildings.

**SBC Urban Design Officer** - In summary the SBC Urban Design Officer raised no objection and made the following conclusion:

Overall, the development has the potential to become a place that integrates successfully into the context. The principles used for the design are rational and in keeping with the characteristics of well-designed places, although more variety in building form would have been welcomed. Submitted information assesses the design against the Building for a Healthy Life (2020) standards and establishes that good design principles have been applied in practice. Subject to additional detail on materials, construction details and landscaping no objections are raised on urban design grounds.

**SBC Climate Change Officer** – No objection.

**SBC Affordable Housing Manager** – Raised no objection and noted that the Affordable Housing will be allocated through the Council's housing register or to those who have a local connection to the Borough.

**SBC Greenspaces Manager** – In summary the Greenspaces raised no objection to the proposal and advised:

- Sports facilities
  - The changing facilities are adequate. It is unlikely that all pitches would be in use at the same time, junior teams tend not to use changing facilities.
  - Require detailed construction plans, details of mechanical plant, security alarm, fencing of the sports field (secure from vehicles and prevent balls annoying neighbours).
  - The pavilion main entrance, pedestrian access from road and car park requires a level of lighting for security and promotion of community use.
  - Require detailed specification for construction the pitches including pitch drainage.
- A play facilities contribution is already secured and is adequate for funding offsite play facilities.
- Allotments
  - Entrance gate will need to be wide enough to allow vehicular deliveries.
  - A "communal area" allocated within allotments to allow for activities (building etc) and for the site to be provided with services electric and water.

**KCC Archaeology** – No objection.

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**KCC Lead Local Flood Authority (LLFA)** – No objection.

**KCC Minerals and Waste** - No objection.

**KCC Highways** – No objection.

**KCC Ecological Advice Service** – No objection subject to a condition to control lighting.

**National Highways** – No objection.

**UK Power Networks** – In summary UKPN advised that there are electrical cables crossing the site. The Applicant is liaising with UKPN to ensure these are protected or diverted.

**SGN Plant Location Team** – SGN provided a series of informatives for the developer.

**Mid Kent Environmental Health Officer** – Raised no objection subject to a condition to control lighting.

**Environment Agency** - No comments to make.

**Kent Police** - No objection and provided a number of informatives.

**Natural England** - As competent authority, the Council must carry out a HRA /AA and adhere to its conclusions. No objection subject to securing appropriate mitigation for recreational pressure impacts on protected habitat sites.

**Lower Medway Internal Drainage Board** – Advised no comments to make.

**Southern Water** - In summary, Southern Water advised that occupation should be restricted to no more than 50 homes until the capacity of the local sewerage network has been enhanced.

**Kent Fire and Rescue Service** – No objection.

**Historic England** – No objection.

**Sport England** – No objection subject to conditions being imposed on any consent relating to the sports facilities and a community use agreement. Advice was provided in relation to detailed design requirements for the sports facilities.

5. DEVELOPMENT PLAN POLICIES

5.1. The following policies are relevant to the determination of the application.

Bearing Fruits 2031: The Swale Borough Council Local Plan 2017

- ST 1 Delivering sustainable development in Swale.
- ST 3 The Swale settlement strategy.
- CP 1 Building a strong, competitive economy.
- CP 2 Promoting sustainable transport.

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- CP 3 Delivering a wide choice of high-quality homes.
- CP 4 Requiring good design.
- CP 5 Health and wellbeing.
- CP 6 Community facilities and services to meet local needs.
- CP 7 Conserving and enhancing the natural environment.
- CP 8 Conserving and enhancing the historic environment.
- MU 4 Land at Frogmal Lane, Teynham.
- DM 6 Managing transport demand and impact.
- DM 7 Vehicle parking.
- DM 8 Affordable housing.
- DM 14 General development criteria.
- DM 17 Open space, sports and recreation provision
- DM 19 Sustainable design and construction.
- DM 21 Water, flooding and drainage.
- DM 24 Conserving and enhancing valued landscapes.
- DM 26 Rural lanes.
- DM 28 Biodiversity and geological conservation.
- DM 29 Woodlands, trees and hedges.
- DM 32 Development involving listed buildings.
- DM 34 Scheduled Monuments and archaeological sites.

National Planning Policy Framework, 2023Kent Minerals and Waste Local Plan, 2020Supplementary Planning Documents

- KCC Developer Contributions Guide.
- Parking Standards (2020).
- Swale Borough Council's Noise and Vibration Planning Technical Guidance (2020).
- Planting on new development – a guide to developers.
- Kent design – A guide to sustainable development (2000).
- Air Quality Technical Guidance (2021).
- A Heritage Strategy for Swale (2020).

6. ASSESSMENT

6.1. The main considerations involved in the assessment of the application are:

- The Principle of Development
- Size and Type of Housing
- Affordable Housing
- Landscape and Visual
- Heritage
- Archaeology
- Character and Appearance
- Trees



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- Ecology
- Transport and Highways
- Air Quality
- Community Infrastructure
- Open Space
- Flood Risk, Drainage and Surface Water
- Contamination
- Living Conditions
- Sustainability / Energy

**6.2. Principle**

6.2.1. The application site is subject to a specific Local Plan Policy (MU4) which allocates the site for a mixed-use development including residential dwellings, employment space, areas of open space and landscaping.

6.2.2. The site allocation was taken forward through an outline application, that was granted planning permission on 21 June 2021 under reference 16/507689/OUT (see Section 2 of this report for further detail). The principle of the development has been established through the outline application.

6.2.3. Concern has been raised in consultation responses that the current reserved matters application does not include the employment space towards the northern part of the site. However, there is no restriction included on the outline permission to require the employment land to be build out prior to (or at the same time as) the residential and open/sports space coming forward. The current reserved matters application would not prevent employment space coming forward as a separate reserved matters application at a later time.

6.2.4. Various documents were approved at the outline stage including a parameter plan setting out the location of development, sports facilities, and landscaped areas etc. This reserved matters application accords with the approved parameter plan.

6.2.5. The outline permission also approved a number of access and highways drawings. This reserved matters application accords with the approved access and highway plans. In view of the site-specific Policy (MU4) and the outline permission, there is no objection in principle to the current proposal.

**6.3. Size and Type of Housing**

6.3.1. Paragraph 7 of the NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development, including the provision of homes, commercial development, and supporting infrastructure in a sustainable manner.

6.3.2. The NPPF recognises that to create sustainable, inclusive, and diverse communities, a mix of housing types, which is based on demographic trends, market trends and the needs of different groups, should be provided.

6.3.3. The Local Plan Policy CP3 requires the mix of tenures and sizes of homes provided in any development to reflect local needs. The Local Plan requires developments to achieve a mix of

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housing types, which reflect that of the Strategic Housing Market Assessment (SHMA). The proposed mix of housing is set out below:

Tenure	1 Bed	2 Bed	3 Bed	4 Bed	Total
Market		27	130	41	198
Affordable	13	39	34	14	100
Total	13	66	164	55	298

6.3.4. The supporting text to Local Plan Policy CP3 sets out requirements for market and affordable housing by size. The table below shows the requirements and how the proposal compares with this.

Tenure – Local Plan	1 Bed	2 Bed	3 Bed	4 Bed	Total
Market Required	7%	36%	42%	15%	100%
Market Proposed	0%	14%	66%	20%	100%
Affordable Required	8%	20%	36%	36%	100%
Affordable Proposed	13%	39%	24%	14%	100%

6.3.5. The Council has a Housing Market Assessment (HMA) prepared in 2020 (i.e., more recently than the Local Plan) and after the introduction of the standard method for calculating the objectively assessed need. As such officers have considered the proposed housing mix against that set out in the HMA.

Tenure - HMA	1 Bed	2 Bed	3 Bed	4 Bed	Total
Market Required	7%	33%	41%	19%	100%
Market Proposed	0%	14%	66%	20%	100%
Affordable Required	27%	23%	30%	20%	100%
Affordable Proposed	13%	39%	24%	14%	100%

6.3.6. The HMA (2020) broadly echoes the Local Plan requirements in terms of the mix of dwelling sizes. It should be remembered that this reflects the borough wide need.

6.3.7. In terms of the affordable tenure, advice from the Council's Affordable Housing officer is that evidence from the housing register shows that there is considerable demand for 2 bed dwellings. Given this localised knowledge of demand no objection is raised to the size of affordable dwellings.

6.3.8. In terms of the private housing (market tenure), the proposal would deliver a greater proportion of 3 bed dwellings and fewer 1 and 2 bed dwellings than is indicated as being required by the supporting text to Local Plan Policy CP3 or the HMA (2020).

6.3.9. Again, it is noted that the mix of dwellings set out in the HMA and Policy CP3 is borough wide and does not take account of localised differences in market housing need. To account for localised differences, local housing market areas have been established which relate to specific postcode evidence.

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- 6.3.10. For Teynham, the supporting text to Local Plan Policy CP3 states that the greatest local demand is for good quality family housing. The application proposes family housing in both the market and affordable tenures.
- 6.3.11. Given the location of the site within Teynham, along with evidence from the housing register (for demand for family housing), it is considered that the proposed mix would provide an acceptable mix of quality housing types and unit sizes in Teynham (in accordance with parts 1 and 2 of Policy CP3).
- 6.3.12. Officers have taken account of the context in which the site is set, policy requirements, the HMA, the housing register, the local housing market areas and overall analysis shows that the proposal broadly complies with Local Plan Policy CP3.
- 6.3.13. The proposed homes would all provide a functional layout to provide an adequate standard of living accommodation for future occupiers. Overall, the proposal is considered to comply with Local Plan Policy CP3.

**6.4. Affordable Housing**

- 6.4.1. The affordable housing proposed as part of the development equates to 18.5% of dwellings. This reflects the level of affordable housing secured at the outline stage. This was on the basis that a greater proportion of affordable housing would render the scheme unviable. The financial viability of the scheme was therefore rigorously tested at the outline stage by an external consultant, and the result of the independent testing showed that the scheme would not be viable with a greater proportion of affordable housing.
- 6.4.2. In terms of affordable housing, the scheme would deliver 55 homes as affordable dwellings. This meets the requirement (18.5%) set out in the S106 agreement.
- 6.4.3. Of the total affordable homes, the S106 legal agreement requires that 40% of the affordable dwellings be affordable rented homes and 60% of the affordable homes as intermediate housing. This equates to:
- 22 affordable rented homes (40%) and
  - 33 intermediate homes (60%).
- 6.4.4. The proposals accord with the required overall proportion and tenure mix of affordable dwellings. The affordable rented homes are proposed in 3 flatted blocks (Block B, C and D), and the intermediate tenure homes would be in the form of houses spread through the development. Affordable Housing would be allocated through the Council's housing register or to those who have a local connection to the Borough.
- 6.4.5. All of the affordable house types will be compliant with the Nationally Described Space Standards. The S106 legal agreement requires six of the affordable units to meet Part M4(2) of the Building Regulations and six of the units to meet Part M4(3) of the Building Regulations. The application accords with this requirement.
- 6.4.6. In terms of being indistinguishable from market housing, no objection is raised to the proposed affordable homes (they are indistinguishable from the houses proposed in the private tenure). The affordable homes would enjoy good outlook, light and privacy.
- 6.4.7. This application has been brought forward by the Applicant in partnership with a Register Provider of affordable housing. The Register Provider advised that they anticipate receiving

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grant funding which would mean that a greater proportion of affordable housing can be provided.

- 6.4.8. The Applicant has confirmed that the uplift in affordable housing is only facilitated through grant funding. The terms of the grant funding are such that it must be additional to that secured as part of the original S106 legal agreement. This means that the Applicant cannot commit to securing the additional affordable housing in a legal agreement without losing the grant funding.
- 6.4.9. In terms of additional affordable housing, a further 45 affordable dwellings are proposed. Therefore, in total the scheme would deliver 198 dwellings as private sale and 100 dwellings (33.33%) as affordable.
- 6.4.10. Of the 100 affordable homes 50 would be delivered as Affordable Rented with Swale Borough Council having nomination rights to all of these. The other 50 affordable homes being delivered as shared ownership homes.
- 6.4.11. The shared ownership dwellings would allow eligible residents to purchase an initial equity stake in their new homes helping residents into homeownership. There is also a nominations agreement between the Council and the Registered Provider in relation to Shared Ownership dwellings which mean they would be offered to Borough residents (or those with a connection to the Borough) first.
- 6.4.12. A proposed range of property sizes and the balance between rented and shared ownership housing (50%/50%) would address the identified local housing need and has been developed following consultation with the Council's Affordable Housing officer.
- 6.4.13. The rent for Affordable Rented dwellings would be capped at Local Housing Association rates to ensure affordability for local people identified by Swale as being in housing need.
- 6.4.14. The table below sets out the proposed affordable housing provision:

	S106 requirement (55 homes)		Additionality (45 homes)		Total	%
	Affordable Rent	Shared Ownership	Affordable Rent	Shared Ownership		
1 bed flats	7				7	7%
1 bed flat M4(3)	6				6	6%
2 bed flats	9				9	9%
2 bed houses		3	11	16	30	30%
3 bed houses		16	17	1	34	34%
4 bed houses		14			14	14%
<b>Total</b>	<b>22</b>	<b>33</b>	<b>28</b>	<b>17</b>	<b>100</b>	<b>100%</b>

- 6.4.15. The weight given to the provision of the additional affordable housing must be carefully considered due to the fact that the additional affordable housing is being voluntarily provided (funded through grant funding) and is not binding requirement. As such no weight has been afforded to the benefit of the additional affordable housing.

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6.4.16. The proposals for affordable housing accord with Policies MU4, DM8, CP3, CP4, CP5, DM14 of the Local Plan.

**6.5. Landscape and Visual**

6.5.1. The NPPF (paragraph 180) requires that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils, recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services.

6.5.2. Local Plan Policy ST1 relates to delivering sustainable development in Swale and states (Part 11) that the policy seeks to conserve and enhance the natural environment. Local Plan Policy DM24 relates to conserving and enhancing valued landscapes. The site is not a designated valued landscape for the purposes of the NPPF.

6.5.3. The site does not lie within a Special Landscape Area or an Area of High Landscape Value (it is a non-designated landscape). For non-designated landscapes Policy DM24 states that these will be protected and enhanced, and planning permission will be granted subject to the minimisation and mitigation of adverse landscape impacts.

6.5.4. For all landscapes, the scale, layout, build and landscape design of development should take account of the key characteristics, sensitivity, condition and capacity of the landscape, taking opportunities to enhance the landscape where possible.

6.5.5. The outline permission was accompanied by a Landscape Visual Impact Assessment (LVIA) prepared in accordance with the published guidance provided by the Institute of Environmental Management and Assessment and the Landscape Institute (IEMA/LI), the Countryside Agency, the Department of the Environment, Transport and the Regions (DETR).

6.5.6. A Zone of Significant Visibility (ZSV) study was established as part of the LVIA to assess the broad theoretical extents of visibility of the proposed development.

6.5.7. The LVIA included 20 viewpoints taken at locations where it was anticipated potential effects would be greatest. A parameter plan was included at the outline stage which limits buildings heights such that they do not exceed the ZSV. Visual impacts were considered acceptable at the outline stage.

6.5.8. There will be clear changes to the character of the landscape, however the current reserved matters application accords with the parameter plan approved at outline stage (including height limits, setbacks from neighbouring boundaries and landscape buffers between proposed and existing development). The proposals would not encroach into a designated countryside gap or result in the coalescence of settlements.

6.5.9. Condition 8 imposed on the outline permission requires a detailed strategic landscape scheme to be provided, the applicant has submitted a strategic landscape scheme to address the condition requirements, which is mirrored in the reserved matters application. The reserved matters application is also accompanied by a significant amount of landscaping detail.

6.5.10. The landscaping strategy would help to minimise landscape and visual impacts by screening and softening the appearance of the development. The application proposes a series of formal and informal open spaces across the site. It comprises a large area of open space to the west side of the site, with embedded green and blue infrastructure features. Wetland areas forming

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part of the sustainable drainage strategy are proposed within a framework of new meadows, scrub, grassland, tree, hedgerow and wetland planting.

- 6.5.11. In addition, areas for orchard and allotments, with boundary hedgerow are proposed. North of the residential development site would be sports playing fields for recreational purposes. This would be bounded by tree planting, supplementing existing trees beyond the playing field edges.
- 6.5.12. Throughout the scheme existing landscape structure and features including woodland, trees and hedgerows would be retained and augmented by new meadows, woodland, scrub, hedgerows, and wetland planting. The proposals provide an integrated landscape strategy that would achieve a net gain in natural/semi-natural greenspace, integrate the development within the wider landscape. The application accords with Local Plan Policy MU4 in this regard.
- 6.5.13. The current proposals adhere to the maximum parameters and reflect the illustrative master plan, with lower building height towards the site edges. The application accords with Local Plan Policies ST1 and DM24.

**6.6. Heritage**

- 6.6.1. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“PLBCAA”) provides that in considering whether to grant planning permission 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.
- 6.6.2. Local Plan Policy CP8 sets out various requirements proposals must accord with to sustain and enhance the significance of Swale’s designated heritage assets. The policy states that development will sustain and enhance the significance of designated and non-designated heritage assets to sustain the historic environment whilst creating for all areas a sense of place and special identity.
- 6.6.3. Policy DM32 of the Local Plan relates to development involving listed buildings and states that development proposals affecting a listed building, or its setting will be permitted provided that the building’s special architectural or historic interest, and its setting and any features of special architectural or historic interest which it possesses, are preserved.
- 6.6.4. The South Lakeland District Council v Secretary of State for the Environment case and the Barnwell Manor case (East Northamptonshire DC v SSCLG) establish that “preserving” in s.66 means “doing no harm”.
- 6.6.5. In assessing heritage impacts, the first step is for the decision-maker to consider each of the designated heritage assets, which would be affected by the proposed development in turn and assess whether the proposed development would result in any harm to the significance of such an asset.
- 6.6.6. The NPPF makes it clear that the setting of a heritage asset is the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.

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- 6.6.7. The site does not contain any listed buildings, any indirect impacts would be to the setting of designated heritage assets. The application site is not located in a Conservation Area. Concerns have been raised in objection that the loss of existing sports fields would result in harm to the history of the playing fields. However, the existing sport pitches are not identified by the Council's Conservation Officer as having historical significance for planning purposes.
- 6.6.8. The following heritage assets have been identified as being potentially impacted by the proposal:
- Frogna Farmhouse (Grade II\* Listed).
  - Frogna Farm Barn (Grade II Listed).
  - Claxfield House (Grade II Listed).
  - Claxfield Farmhouse (Grade II\* Listed).
- 6.6.9. The significance of Frogna Farmhouse and Barn resides in their respective group value as a historic house and farmstead. Given the location of proposed development (well separated from Frogna Farmhouse) and intervening built form and landscaping, no harm would be caused to Frogna Farmhouse and the associated Barn.
- 6.6.10. Claxfield House is located on the southern side of the A2. That building was constructed by the end of the eighteenth century. The close positioning of the house to the roadway is reflective of its historic setting. The setting is dominated by London Road to the immediate north of the house.
- 6.6.11. The house is currently enveloped by an expansive car park to the rear, consequently, the setting is somewhat compromised and overall, makes only a limited contribution to the building's significance.
- 6.6.12. Claxfield Farmhouse is a timber framed dwelling located on the western side of Claxfield Road. Claxfield Farmhouse displays features from medieval and Tudor times.
- 6.6.13. It is proposed to introduce changes to the geometry of the A2 and Claxfield Road to create a roundabout with associated signage and lighting. The highway works are close to Claxfield House and Claxfield Farmhouse. The Applicant was asked to reconsider the location of highway signage and lights and this work was undertaken in conjunction with KCC Highways.
- 6.6.14. While some changes were made to move signs and lights further from the listed buildings, the signage and lighting are required to meet very specific requirements in order to comply with Highways safety requirements. Evidence has been provided by the applicant, and confirmed by KCC Highways that further changes to the position of necessary highway signage and lights cannot be accommodated without compromising highway safety.
- 6.6.15. In accordance with paragraph 201 of the NPPF, the Council's Conservation officer requested landscaping be provided offsite on the southern side of London Road to soften and minimise the impact of the development in views towards the listed buildings. If approved a condition would be required to secure a scheme of offsite landscaping at the junction of Claxfield Road and the A2/London Road.
- 6.6.16. However, even with the proposed landscaping, the Council's Conservation officer advises that signage and lights would impact the setting of Claxfield House and Claxfield Farmhouse. The impact would be harmful (less than substantial) to the setting of these heritage assets.

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- 6.6.17. At paragraph 208 of the NPPF it states that 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.
- 6.6.18. A public benefit can be anything that delivers economic, social or environmental objectives, which are the three overarching objectives of the planning system as set out in the NPPF.
- 6.6.19. The development would bring forward jobs and spending during the construction phase. Paragraph 85 of the NPPF advises that significant weight should be placed on the benefit a scheme offers in supporting economic growth and productivity. The wider outline permission includes employment space, and while the current application doesn't include the employment land the proposed roundabout and access road from the A2 would facilitate the development of employment space as a later phase.
- 6.6.20. The proposed development would be of a design that would positively respond to its surroundings. Materials are well considered. The proposed soft landscaping would help to soften the appearance of the development and assist in relating it to the surrounding landscaping. Moderate weight can be given to the contribution the development would make to enhancing the appearance of the area, including through landscaping and good design.
- 6.6.21. The proposal would bring a former mineral extraction site back into use for housing (including affordable housing). The proposal would also support remediation of contaminated land. Paragraph 124 of the NPPF states that substantial weight should be given to these benefits.
- 6.6.22. The proposal includes delivering housing including affordable housing in an accessible location on an allocated site. The proposal would contribute to housing supply and significant weight can be afforded to this benefit.
- 6.6.23. The proposed development would bring forward sports pitches and open space, including allotments and a community orchard. The proposals have designed in accordance with sustainability principles, it would achieve more than the minimum Biodiversity Net Gain requirements and include measures to offset carbon. Moderate weight has been afforded to this benefit.
- 6.6.24. Whilst officers have been mindful of the statutory duty and have placed great weight and importance on the fact that less than substantial harm would be caused to the setting of Claxfield House and Claxfield Farmhouse, the benefits are considered to outweigh the harm. The proposals comply with Local Plan Policies CP8 and DM32 and paragraph 208 of the NPPF and Section 66(1) of the PLBCAA.

**6.7. Archaeology**

- 6.7.1. Policy DM34 of the Local Plan sets out that planning applications on sites where there is or the potential for an archaeological heritage asset, there is a preference to preserve important archaeological features in situ.
- 6.7.2. A condition (15) was imposed at the outline stage requiring archaeological investigations to be undertaken. The archaeological excavations were undertaken and were overseen by the KCC Archaeologist and important finds included artefacts from the Roman era.



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- 6.7.3. What is thought to be the remains of a Roman mausoleum were found, as well as various burial sites and a statue of the Roman God, Triton. The remains of the mausoleum are located in the general vicinity of the new roundabout at the A2.
- 6.7.4. While some artefacts of importance have been removed for restoration, the remainder are to be preserved in situ, the proposals for preservation in situ have been agreed by the KCC Archaeologist. Concerns have been raised in objections that the archaeological remains would be built over. For clarity, the new junction with the A2, the roundabout and internal access road and foot ways were approved in 2021.
- 6.7.5. The detailed engineered highway proposals in the vicinity of the archaeological finds were informed by the Applicant's Archaeologist, and the proposed method of preserving the archaeological remains (preservation in situ) beneath the road and roundabout were approved by the Kent County Council archaeologist.
- 6.7.6. The Kent County Council archaeologist advised proceeding with the preservation of the archaeology as proposed is important to ensure these are not degraded by weather.
- 6.7.7. Given the importance of archaeological remains found, it would be appropriate for a scheme of interpretation to be introduced to explain what was found and the significance. A condition is recommended to secure the interpretation.
- 6.7.8. The current application was referred to the KCC Archaeological Officer who advised that in view of the extensive archaeological work undertaken to date, no objection is raised. The proposal would comply with Local Plan Policy DM34.

**6.8. Character and appearance**

- 6.8.1. Paragraph 131 of the NPPF states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.
- 6.8.2. Local Plan Policy CP4 requires good design and states development proposals will enrich the qualities of the existing environment by promoting and reinforcing local distinctiveness and strengthening sense of place. The Policy goes on to highlight that development proposals should be appropriate to the context in respect of materials, scale, height and massing.
- 6.8.3. Policy DM14 of the Local Plan states that development proposals will reflect the positive characteristics and features of the site and locality.
- 6.8.4. The reserved matter for layout requires details of the way in which buildings, routes and open spaces within the development are provided, situated, and orientated in relation to each other and to buildings and spaces outside the development.
- 6.8.5. The residential layout is arranged as a series of interconnected street blocks. A primary street loops from the main vehicle access point through the central part of the site with secondary streets linking the outer edges of the development to it.
- 6.8.6. The proposal includes limited number of shared surface home zones with lower vehicle speeds promoting pedestrian friendly spaces. The street blocks would allow permeability through the site, which is proposed to be supported by north-south and east-west cycle and pedestrian routes that connect with destinations.

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- 6.8.7. Local Plan Policy CP4 requires development to make safe connections physically and visually both to and within developments, particularly through using landscape design and open space to retain and create green corridors for pedestrians, cyclists, and biodiversity. The proposal would provide opportunities for people to make sustainable movement choices by linking with and integrating to the existing village and wider community.
- 6.8.8. The layout shows buildings are positioned to define and reinforce the street which is acceptable. A range of housing types are proposed and arranged to perform specific roles within the layout. By way of example, detached houses and apartment blocks provide prominence at key positions within the layout. Other buildings, such as semi-detached houses are sited on corners to provide dual aspect over adjoining streets. This is acceptable as the arrangement of building typologies would provide a variety of homes throughout the development, with the dwellings addressing the streets and open spaces proposed with active frontages.
- 6.8.9. The layout also proposes to provide a single open space centrally located to the development, rather than smaller open spaces spread around the layout. The open space is larger, and this would make it more successful in the ways in which it could be used by the new community.
- 6.8.10. The reserved matter for appearance requires that the aspects of a building or place within the development which determine the visual impression to be provided.
- 6.8.11. Concerns have been raised in objections that the character of Teynham would change and the identity of the village would be lost. However, in this case the site is allocated for development in the Local Plan and already benefits from outline permission for up to 300 dwellings.
- 6.8.12. The proposed housing arrangement responds to the site's specific constraints and opportunities and has taken into account and is reflective of the densities, design, and materiality of existing housing within Teynham. The proposed density broadly reflects that in the village and has been arranged to respond to the context, this accords with Policy CP3 of the Local Plan (which requires that densities be determined by the context and the defining characteristics of the area).
- 6.8.13. Local Plan Policy DM14 requires development to be both well sited and of a scale, design, appearance and detail that is sympathetic and appropriate to the location. In terms of scale, the buildings would range between 1 to 2.5 storeys in height which accords with the approved outline permission parameter plan. The majority of dwellings would be two storeys, with the apartment blocks rising to 2.5 storeys and the sports pavilion being single storey.
- 6.8.14. The site has been used in the past for mineral extraction (brick earth), with the result that levels across the site vary. Conditions are imposed on the outline permission requiring cross sectional drawings be provided (showing existing and proposed levels). The approved parameter plan requires that site levels not be raised by more than 2m. While the application does involve changes to levels (for example to ensure drainage across the site is functional), an examination of cross-sectional drawings shows the proposals accord with the parameter plan requirements relating to level changes.
- 6.8.15. A range of character areas are proposed to provide different identifies and building typologies to respond to differing site and edge contexts. For instance, a character area named the Rural

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Edge is characterised by lower densities, traditional housing designs and materials in muted colours to reflect the rural edge of the site.

- 6.8.16. The Council's Urban Design officer advised that more modern interpretations of traditional forms could have been explored in less sensitive areas such as the internal streets character area.
- 6.8.17. The proposed front elevations and the principal facades of dwellings face streets and public spaces, and corner buildings would provide dual aspect housing with windows serving habitable rooms providing natural surveillance. Street corners with blank or largely blank sided buildings have been minimised. Building elevations are enlivened by a range of features including, bay windows, soldier courses, cladded panels and porches.
- 6.8.18. The proposed materials would unify the development, being predominantly a mix of different coloured brick, weatherboarding, and a mix of roofing materials. This approach responds to the context and would help integrate the proposal with the established character and appearance of Teynham.
- 6.8.19. In terms of the sports pavilion, this has been designed to be visible from the road network, neighbouring buildings, and open spaces. It has been positioned to screen the sport ground car park from view at the entrance to the housing development. The pavilion would have materials that would be in keeping with the proposed street scene and its form and appearance expresses its proposed function. The design of the sports pavilion is acceptable.
- 6.8.20. Cars related to residential aspect of the proposal would be accommodated in a mix of on street, courtyard and on plot parking. This variety would help to avoid car parking dominating the street scene. Planting and trees are proposed near parking spaces to help screen and soften the appearance of parking.
- 6.8.21. Local Plan Policy CP4 requires development proposals to create safe, accessible, comfortable, varied and attractive places. It is noted that conditions are imposed on the outline permission to ensure development will meet secure by design standards and that overall, the proposals would see the creation a varied and attractive place.
- 6.8.22. The development proposes to achieve safer access and movement by ensuring that primary routes for pedestrians, cyclists and vehicles are direct and lead to where people want to go, with as little segregation as possible. The movement framework removes the need for underused alleyways and short-cuts that can become vulnerable to or facilitate crime.
- 6.8.23. Active frontages are proposed onto defensible space which would be provided by private or communal gardens that can only be accessed from the relevant homes. A clear distinction is proposed between public, semi-private / communal and private spaces. This would be achieved using appropriate demarcation such as fences, walls or hedges.
- 6.8.24. In conclusion, the proposals demonstrate that the proposal would be well laid out and of a scale, design, appearance and detail that is sympathetic and appropriate to the location. The character and appearance of the proposal would accord with Policies CP4 and DM14 and satisfactorily meet the reserved matters requirements for layout, scale and appearance.

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**6.9. Trees**

6.9.1. Paragraph 180 of the NPPF recognises the contribution of trees to the intrinsic character and beauty of the countryside. At the local level, the requirement is recognised through Policy DM29 of the Local Plan.

6.9.2. At the outline application stage, the Council's Tree Officer advised that the indicative development site masterplan showed a sustainable relationship with the retained trees and that providing tree constraints were taken into account as part of the final layout there would be no arboricultural grounds to refuse the application.

6.9.3. A condition imposed on the outline permission required the submission and approval of an Arboricultural Method Statement. An Arboricultural Survey Impact Assessment and Method Statement has been submitted in a separate condition discharge application to address the requirements of the condition. The details are acceptable, and the condition has been discharged.

6.9.4. The Arboricultural Survey Impact Assessment and Method Statement made an assessment of trees on site and recommended 10 trees be removed (one of which was Category U (dead or dying) and 9 were Category C). The trees need to be removed to facilitate the development, including the access way approved as part of the outline permission.

6.9.5. Whilst trees would be removed, it is proposed to introduce:

- 123 new trees and 941m of new hedgerow across residential development area. Additionally, extensive areas of climbers, shrubs, wildflowers and herbaceous plants grassland, flowering lawn, wildflower meadow and wetland meadow are proposed as part of the residential development.
- 240 new trees within and around open space areas (beyond the residential development area) along with 171m of new hedgerows.
- 166 fruit trees as part of a new community orchard.
- 8 fruiting trees near the site entrance.

6.9.6. A total of 537 new trees are proposed, the proposed extent and quality of new trees and planting is considered acceptable. As the proposed new planting establishes it would progressively make a positive contribution to the age and species diversity of trees in the area, the extent of local canopy cover and the amenity of the locality. The development would accord with Policy DM29 of the Local Plan.

**6.10. Ecology**

6.10.1. 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 CP7 and DM28 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.

6.10.2. A Habitat Regulations Assessment (HRA) was carried out by the Council at the outline planning application stage, this noted that the site is located in close proximity to the Swale

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estuary Special Protection Areas (SPA) and as such it was likely that the future occupiers of the site will be using the SPA for recreational purposes in some instances.

- 6.10.3. The recreational impact on the SPA would need to be mitigated through a contribution towards the Strategic Access Management and Monitoring Strategy (SAMMS). The requirement to make the SAMMS contribution was secured as a planning obligation in the S106 legal agreement associated with the outline permission.
- 6.10.4. In July 2022, the Secretary of State clarified that the Habitats Regulations apply to post-permission approvals including reserved matters. Natural England's consultation response confirms the need to carry out an HRA and an Appropriate Assessment as part of the determination of this application.
- 6.10.5. Officers have undertaken an Appropriate Assessment which confirmed there continues to be a need for mitigation through a SAMMS contribution. This is already secured in the S106 legal agreement associated with the outline permission (and the contribution is index linked), in view of the existing situation relating to the SAMMS contribution the proposal would comply with Policies CP7 and DM28 of the Local Plan.
- 6.10.6. Biodiversity
- 6.10.7. Local Plan Policy DM28 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.
- 6.10.8. 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".
- 6.10.9. This application is accompanied by a biodiversity net gain assessment which shows that development proposals (and in particular measures proposed in the landscaping strategy) result in a 22% gain in the biodiversity value of habitats within the site.
- 6.10.10. Protected species
- 6.10.11. A condition (14) was imposed on the outline permission requiring a method statement for ecological mitigation, including reptiles, invertebrates, bats and nesting birds. Further conditions (condition 8 'landscaping', 10 'drainage', 12 'attenuation basins', 21 'green infrastructure and biodiversity plan') were imposed which require the applicant to promote biodiversity. The relevant conditions have been approved and this proposal has been designed taking account of the approved details.
- 6.10.12. A condition is recommended requiring details of external lighting ahead of installation to ensure lighting doesn't impact bats.
- 6.10.13. Subject to the Applicant adhering to the mitigation secured at the outline application stage, the proposal would comply with Policies CP7 and DM28 of the Local Plan.

**6.11. Transport and Highways**

- 6.11.1. 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 at locations which are sustainable.

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6.11.2. The NPPF at paragraph 115 also states that:

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

- 6.11.3. Local Plan Policies CP2 and DM6 promote sustainable transport through utilising good design principles and locating development in sustainable locations. Policy DM6 of the Local Plan sets out that where highway capacity is exceeded and/ or safety standards are compromised proposals will need to mitigate harm.
- 6.11.4. ‘Access’ to the site was approved at the outline application stage. Whilst concerns have been raised in objections that the proposal would result in unacceptable traffic congestion, including cumulative impacts (associated with other development), the condition of roads and highway safety issues, those matters have been previously tested at the outline stage and found to be acceptable.
- 6.11.5. Concerns have been raised that conditions have changed since the outline application was approved and as such traffic modelling should be revisited. The modelling associated with the outline application took into account existing conditions at that time and forecast growth and also factored in committed development. Impacts were found to be acceptable and ‘Access’ was approved in full.
- 6.11.6. The proposal approved at the outline stage includes vehicular, pedestrian and cycle access with alterations to Froggnal Lane and a new emergency vehicular access to the residential development area and highway improvements including a new roundabout on the A2 and closure of a section of Froggnal Lane within the site (to be used for pedestrians and cyclists only). The closure to motorised vehicles starts approximately 25m north of the junction with Froggnal Close and was an integral part of the outline permission.
- 6.11.7. Requests were received in response to the consultation seeking signs at the entry to the site and influence over street naming. Highway signage is strictly controlled for highway safety reasons and street naming and numbering is not a material planning consideration.
- 6.11.8. Other approved improvements include the provision of a lay-by in front of the Co-op in Teynham; an increase to the capacity of the junction of Swanstree Avenue with the A2 and Murston Road / Rectory Road, and provision of a pedestrian link along the alignment of public footpath ZR256, together with improvements to the Public Right of Way. Controls are embedded in the outline permission to ensure these improvements are delivered.
- 6.11.9. Whilst the internal roads within the site would be built to full KCC Highways adoptable standards, the Applicant doesn’t intend for these to be adopted (they would be managed via a management company).
- 6.11.10. Full tracking plans and swept path analysis (for emergency, refuse and servicing vehicles and car parking) have been provided and are considered acceptable. The internal road layout has been examined and the footways, streets and turning facilities etc are acceptable.
- 6.11.11. Parking is provided for the residential development in parking bays, on street and in parking courts. Vehicle and cycle parking is proposed to be provided in accordance with the Council’s adopted Swale Parking Standards (May 2020). Concerns have been raised in objections that the proposals would be located too far away from public transport, that this would mean future

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residents living on site would be reliant on cars. However, the site is within walking distance of the Teynham train station and bus services on the A2. A travel plan was secured at the outline stage, and that includes measures to promote sustainable forms of transport, and in view of the situation no objection is raised.

- 6.11.12. One cycle parking space is proposed per bedroom across the development in accordance with the Council's cycle parking standards. Cycle storage would be provided either within individual cycle stores in rear gardens, or in the case of the apartments, within dedicated cycle storage facilities.
- 6.11.13. The site accommodates PRow (ZR247 (Ash Path); Frogнал Lane and ZR256 (Frogнал Fields). Full details of the PRow upgrades and closures have been agreed with the KCC PRow team, and funding for improvements and upgrades is secured in the S106 legal agreement.
- 6.11.14. Overall, for the residential development, 681 parking spaces are proposed (including 102 visitor parking spaces). Visitor parking spaces are proposed to be provided throughout the development; the ratio of visitor spaces is based on the Council's parking standards. The visitor spaces are evenly distributed throughout the development.
- 6.11.15. For the sports pavilion, 46 parking spaces are proposed. Advice from the KCC Highways Officer and the Council's Green Spaces Manager is that this level of parking is sufficient given the status of the sports pitches (larger spaces for coach parking are not required).
- 6.11.16. A Construction Management Plan was secured as part of the outline permission, which controls construction routes, and is considered acceptable by KCC Highways.
- 6.11.17. In conclusion, access (including matters relating to traffic congestion and highway safety) was approved at the outline stage. Whilst the internal access roads for the residential development area are to be approved at this stage, no objection is raised in terms of the proposed layout, manoeuvring areas, or parking, and as such the proposals accord with Local Plan Policies CP2 and DM6.

**6.12. Air Quality**

- 6.12.1. The importance of improving air quality in areas of the borough has become increasingly apparent over recent years. Legislation has been introduced at a European level and a national level in the past decade with the aim of protecting human health and the environment by avoiding, reducing or preventing harmful concentrations of air pollution.
- 6.12.2. The NPPF states that the planning system should contribute to and enhance the natural and local environment by preventing new/existing development from contributing to or being put at unacceptable risk from, or being adversely affected by, inter alia, unacceptable levels of air pollution. It also requires the effects of air pollution and the potential sensitivity of the area to its effects to be taken into account in planning decisions.
- 6.12.3. The Planning Practice Guidance on Air Quality (paragraph 005 Reference ID 32-005-20191101) 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*

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*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.....”.*

- 6.12.4. The Local Plan at Policy DM6 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.
- 6.12.5. An Air Quality Statement was submitted with the outline application. The report concluded that modelled predictions for NO<sub>2</sub> and PM<sub>10</sub> concentrations at receptors along the A2 London Road indicated that there would be a Negligible to Slight Adverse impact, as a result of traffic generated by the development. Mitigation measures were suggested in line with an emissions cost calculation for the development.
- 6.12.6. Condition 38 imposed on the outline permission requires a scheme of mitigation measures in relation to improving air quality to be approved prior to occupation of any dwellings. The current proposals would not change the findings approved as part of the outline permission, and subject to compliance with condition 38, the application would accord with Local Plan Policy DM6.

**6.13. Community Infrastructure**

- 6.13.1. Local Plan Policies CP5, CP6 and the site-specific Policy MU4 set out that provision shall be made to accommodate local community services, education, social care and health facilities within new developments.
- 6.13.2. As with any planning application, the request for financial contributions and other planning obligations 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 required if it is:
- Necessary.
  - Related to the development.
  - Reasonably related in scale and kind.
- 6.13.3. Planning obligations necessary to mitigate the impact of the development were secured at the outline stage. Concerns have been raised in objections that existing social infrastructure doesn't have the capacity to cope with the additional population that would live in the proposed development. This was a matter considered at the outline stage. Planning obligations secured at the outline stage include:
- Affordable housing,
  - Contributions to fund offsite highways works delivered by the Highway Authority,
  - Offsite highway works delivered by the developer,
  - Adult social care contribution,
  - Delivery of allotments,
  - Refuse and recycling contribution,
  - SAMMS contribution,
  - Play area contribution,



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- Library service contribution,
- Education contributions,
- Youth services contribution,
- Travel plan,
- Employment and training,
- Delivery of sports pitches and pavilion,
- Financial contribution towards enhancements of Public Rights of Way delivered by KCC.
- Delivery of enhancements of Public Rights of Way delivered by the developer.
- Phasing.

6.13.4. The existing legal agreement requires the funding for health facilities to be spent towards increasing the capacity of the GP surgery at London Road, Teynham (to be able to accommodate more patients).

6.13.5. The Teynham GP surgery closed in 2023 and the building's owner, subsequently sold the site. Since the surgery closed, the local GP has relocated to Sittingbourne. Discussions with the NHS and GP indicate the desire for the GP practice to return to Teynham (to a different premises).

6.13.6. The detailed wording of the S106 legal agreement now needs to be varied such that S106 contribution can be directed to a different (available) site, i.e., it should no longer be restricted to be spent on the former (now closed and sold) London Road medical facility.

6.13.7. There is land within the site which is identified as a location for a future medical facility, however this does not sit within the redline site of the current application, nor is it within the ownership of the Applicant. Advice from the NHS is that the land is too small to accommodate a new GP facility to meet the needs of Teynham's residents. The Applicant and officers remain engaged with the NHS to assist in finding a location in the Teynham area where the GP could locate.

6.13.8. A deed of variation to the legal agreement is recommended so that the health care contribution can be directed in a logical and flexible manner in the vicinity of Teynham.

6.13.9. Teynham Parish Council requested a condition be imposed restrict occupation of the new homes until medical/GP facilities have been built and operational within the village. The NHS have not requested such a restriction and a planning condition of this nature would not meet the planning tests for conditions. It is important to highlight that the development will contribute approximately £260,000 in S106 Healthcare contributions for spending on increasing local GP capacity.

6.13.10. Emergency Services were consulted as part of the outline application and did not seek funding for additional capacity at that stage.

6.13.11. Subject to the deed of variation (which the applicant has agreed to) the application would accord with Policies CP5, CP6, MU4, DM8, DM17 and DM28 of the Local Plan.

**6.14. Open Space**

6.14.1. Local Plan Policy CP7 requires developments to promote the expansion of Swale's natural assets and green infrastructure. Policy DM17 of the Local Plan sets out that new housing development should make provision for appropriate outdoor recreation and play space

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proportionate to the likely number of people who will live there. This space should be fully accessible all year round.

6.14.2. All dwellings have an area of private amenity space; private rear gardens for houses and balconies for the apartment blocks. Communal amenity space is also proposed.

6.14.3. Policy DM17 of the Local Plan sets out various open space typologies and the amounts of space that would be required for residential development.

Typology	Policy DM17 requirement (ha per 1,000 person)	Scheme requirement ha	Proposed ha	Short fall ha
Parks and gardens	1.1	0.78	0.8	No
Natural and semi natural greenspace	4.36	3.09	6	No
Formal outdoor sport	1.09	0.77	3.72	No
Amenity Greenspace	0.45	0.32	0.60	No
Provision for children and young people	0.24	0.17	0.25	No
Formal Play facilities				Yes
Allotments	0.2	0.14	0.25	No

6.14.4. As the table above shows, there is a shortfall in formal play facilities, however the open space area central to the residential area (the Green) would include doorstep play and passive recreation. The outline permission secured a contribution of £85,700 towards off site play space, as such no objection is raised in relation to play space.

6.14.5. The central open space, in combination with proposed street trees, would contribute to the green infrastructure of the site and build connection to the existing green buffers surrounding the site. Opportunities for seating and play would be provided in the form of timber benches and small amount of play equipment, supplemented with informal features such as boulders.

6.14.6. Concerns have been received in consultation responses that the central area of open space lacks impact. However, officers are of the view that the open space would perform an important function and that overall, the proposal includes significant over provision of sports space, natural green spaces, amenity green spaces and allotments. It is also noted that the houses would have private gardens. The Council's Open Spaces Manager advised that further details are required in relation to:

- The detailed construction plans for the sports pavilion including an alarm security system and mechanical engineering of systems.
- Details to demonstrate the pavilion would be robust and appropriate for a public use building.
- Fencing the sports field to be secured from vehicle access and to prevent balls from annoying neighbours (including defensible space fronting the car park to the field).
- Lighting of the sports pavilion main entrance, pedestrian access from road and car park.

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- Detailed specification/construction detail for the sports pitches including appropriate pitch drainage.
- 6.14.7. In relation to allotments, the entrance gate would need to be of a size to allow any deliveries, and a communal area within allotments should be provided to allow for activities/building etc and for allotments to be provided with services electric and water.
- 6.14.8. It should be noted that the S106 legal agreement associated with the outline permission includes a requirement for the developer to provide the precise and detailed specification for the sports pitches and pavilion to be submitted to and be approved by the Local Planning Authority. The S106 legal agreements requires the pavilion include:
- Four changing rooms with WC and Shower facilities.
  - Official's changing room with WC and Shower facilities.
  - Small kitchen.
  - Social/communal space.
  - Storage; and
  - Small office.
- 6.14.9. Concerns have been raised that the sports pitches and allotments are to be let at a peppercorn rent for a finite period, after which costs may increase. However, the period for which the pepper corn rent is available is embedded in the existing S106 legal agreement associated with the outline permission and nothing has changed which would justify renegotiation. There is a further clause in the legal agreement requiring that details of the proposed allotments be submitted to and be approved by the Local Planning Authority. The S106 requirement also stipulates when the pavilion, sports pitches and allotments are to be delivered.
- 6.14.10. The S106 legal agreement associated with the outline permission sets out the specification for the sports pavilion, and the proposed pavilion building accords with the specification, which requires:
- 6.14.11. The information provided as part of this application is acceptable in terms of layout, scale appearance and landscaping. In view of the further requirements that must be met (secured in the S106 legal agreement) officers are satisfied that the further information requested by the Council's Open Spaces Manager will be provided in accordance with the requirements secured in the S106 legal agreement.
- 6.14.12. Sport England advised that as a statutory consultee they require involvement agreeing the full detailed specification for the sports pitches and pavilion, when this comes forward in accordance with the terms of the S106 legal agreement.
- 6.14.13. Taking account of the nature and scale on-site open space proposals, no objection is raised to the proposal in relation to Policy DM17 of the Local Plan.
- 6.15. Flood Risk, Drainage and Surface Water**
- 6.15.1. The NPPF states that local planning authorities should ensure that flood risk is not increased elsewhere and that any residual risk can be safely managed. This is reflected in Policy DM21 of the Local Plan.

Flood Risk

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- 6.15.2. The site is allocated for development under Policy MU4 of the Local Plan, and as part of the site allocation process the site's suitability for development in terms of flood risk was sequentially tested and found to be acceptable. Paragraph 170 of the NPPF is clear that where planning applications come forward on sites allocated in the development plan applicants need not apply the sequential test again.
- 6.15.3. The outline application was accompanied by a Flood Risk Assessment (FRA), this identified that the site is in Flood Zone 1; therefore, the risk of the Proposed Development exacerbating flooding to neighbouring properties (through floodplain displacement) is negligible.
- 6.15.4. The FRA also identified that the risk of the proposal exacerbating flood risks from tidal / coastal, groundwater and artificial sources to neighbouring property is negligible to low. This reserved matters application does not change the findings established at the outline stage. No objection is raised to the proposal in relation to flooding from rivers or the sea.

**Surface water drainage**

- 6.15.5. Part 4 of Local Plan Policy DM21 states that development should include where possible, sustainable drainage systems (SuDS) to restrict runoff to an appropriate discharge rate, maintain or improve the quality of the receiving watercourse, to enhance biodiversity and amenity and increase the potential for grey water recycling.
- 6.15.6. To mitigate the risk of the development exacerbating flood risks from pluvial and overland flow flood sources to neighbouring property it is proposed to utilise SuDS for surface water drainage. A series of conditions were imposed on the outline permission to secure the following:
- Full details of the method of disposal of surface waters as part of a detailed drainage strategy (condition 10),
  - Detailed designs for attenuation basins (condition 12).
  - A Drainage Management Plan for the surface water drainage scheme (condition 13).
  - Controls over drainage systems for the infiltration of surface water drainage (condition 18).
- 6.15.7. The Applicant has submitted details to discharge the relevant conditions which are acceptable, and the conditions have been approved. The proposals in this reserved matters application align with the details in the conditions.
- 6.15.8. No objection has been raised by the KCC Flood and Water Management, the Environment Agency, Lower Medway Drainage Board or Southern Water.
- 6.15.9. In conclusion the risk of flooding at the site, as well as how it is proposed to deal with drainage in a sustainable way has been considered. The proposals accord with Local Plan policies CP7, DM21 and DM23.
- 6.16. Contamination**
- 6.16.1. 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.
- 6.16.2. The issue of contamination was examined as part of the outline application, this identified that potential contaminative land uses on-site include agricultural activities that could have resulted in the use of pesticides and fertilisers and the operation of the electrical substation at the southeast boundary of the site. A shed located in the northwest of the sports grounds was

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constructed before 1990s and therefore there would be the potential presence of Asbestos Containing Materials. Historical contaminated land uses onsite include chalk/clay pits, electrical substation and wash mill, and tramway lines.

- 6.16.3. Conditions were imposed on the outline application to secure the following:
- Intrusive investigations to identify contamination.
  - A remediation strategy.
  - Verification that remediation has been carried out.
  - Controls over infiltration of surface water drainage and piling.
  - Measures to deal with any unexpected contamination found during construction.
- 6.16.4. The Applicant has submitted details to discharge the relevant conditions which are acceptable, and the conditions have been approved. The proposals in this reserved matters application align with the details approved pursuant to the conditions.
- 6.16.5. No objection has been raised by the Environmental Health Officer to this reserved matters application or to the details submitted to discharge the conditions in relation to contamination. Given the conditions imposed at the outline stage (and that the Applicant is adhering to these) the application would accord with paragraph 189 of the NPPF, and no objection is raised.

**6.17. Living Conditions**Existing residents

- 6.17.1. The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers. Paragraph 130(f) of the NPPF states that decisions should ensure high standards of amenity for existing and future users. Local Plan Policy DM14 sets out general design criteria and states in part that that all development proposals will be both well sited and of a scale, design, appearance and detail that is sympathetic and appropriate to the location. The policy also requires proposals to cause no significant harm to amenity and other sensitive uses or areas.
- 6.17.2. Construction activities generate noise and disturbance with the potential to harm the living conditions of existing residents. A condition (34) was imposed at the outline stage to secure a Construction and Environmental Method Statement (CEMS) to mitigate impacts during construction. A Construction Environmental Management Statement (CEMS) has been submitted to address condition 34 of the outline permission and approved in permission ref: 23/502581/SUB. This sets out and details how the scheme will be constructed and appropriate measures to reduce the impact on neighbouring properties to safeguard residential amenity.
- 6.17.3. The CEMS confirms that general information regarding the scheme will be provided to all neighbours affected by the work. Regular communication with neighbours, including adjacent residents, traders and businesses regarding programming and site activities would be maintained from pre-start to completion via a nominated point of contact. A site information board would be located at the site entrance displaying general information relating to the development, including name, telephone number and address of the senior manager on site should a member of the public wish make contact.
- 6.17.4. The Applicant has complied with the requirements of the CEMS condition to the satisfaction of the Environmental Health officer and Highway officer. The condition requires the developer to adhere to the CEMS, and as such construction impacts would be mitigated.

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- 6.17.5. Most of the proposed development is set well away from existing residential occupiers, however there are instances where there are adjacencies, specifically to the south and eastern boundaries and to existing residences on Frogmal Lane (including 47 Frogmal Lane).
- 6.17.6. Officers required the Applicant to provide additional evidence to demonstrate that the location of existing dwellings near the site were accurately shown on the plans and drawings, this included additional surveys, measuring and site visits. Officers have validated the position of existing dwellings via site visits and taking measurements. The location of existing neighbouring buildings is accurate.
- 6.17.7. To the southern boundary the site adjoins residential properties in Frogmal Close and Frogmal Gardens. The outline permission required landscape buffers to these boundaries and the application accords with those parameters. Where there would be facing habitable room windows in existing and proposed dwellings the separation distance exceeds 21m.
- 6.17.8. In some instances, the side elevation of a proposed dwelling is located within 21m of a neighbouring dwelling, however there are no windows proposed in the side elevations facing existing neighbours. No objection is raised to the proposals in terms of overlooking or loss of privacy to existing neighbours.
- 6.17.9. Existing landscaping along the boundaries is to be retained and additional landscaping is proposed. Given the limited scale of proposed dwellings and the separation distances, there would be no undue loss of privacy, light or outlook for existing occupiers.
- 6.17.10. It is proposed to locate a foul water pumping station and electrical substation towards Frogmal Lane properties (the nearest being 47 Frogmal Lane).
- 6.17.11. The design of the foul water pumping station is such that the majority of the installation is below ground (the pump and foul water are below ground in engineered chambers). Above ground would be cabinets approximately 2m in height accommodating plant and equipment. The installation would be within a fenced compound.
- 6.17.12. Concerns have been raised in objections in relation to the proximity of the foul water pumping station to residential homes. The concern being that odour from the pumping station could impact residential amenity. Southern Water require there be at least at 15m separation between the pumping station and any habitable rooms for this reason. In this case the pumping station would be at least 45m from any habitable room and 18m from the end of the nearest neighbouring garden (at 47 Frogmal Lane).
- 6.17.13. While the separation distance is considered sufficient to mitigate potential impacts from the pumping station, a condition is recommended to secure noise and odour assessments (along with any necessary mitigation required).
- 6.17.14. Conditions are imposed on the outline permission to ensure lighting and light spill during the construction period does not have an adverse impact on residential amenity. The application is accompanied by a lighting report which examines light spill and demonstrates that the external street lighting would not result in light spill to neighbouring dwellings.
- 6.17.15. Whilst the information is acceptable for this stage of the planning process, the Environmental Health officer has requested a condition be imposed on any permission to secure further assessment and testing (to comply with Institute of ILP Guidance Note 01/21 The Reduction Of Obtrusive Light) to ensure lighting doesn't impact on residential amenity. Condition 5 is recommended to secure this.

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- 6.17.16. Policy DM14 of the Local Plan provides general development criteria and requires that development does not result in significant harm to amenity (including that of future occupiers of development).
- 6.17.17. 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.
- 6.17.18. In terms of noise, the outline permission requires all of the new dwellings to be fitted with thermal double-glazing that will ensure that internal noise levels meet all of the criteria of BS8233:2014.
- 6.17.19. New residential development should generally provide dual-aspect accommodation and overlooking between dwelling on the site (as well as to neighbours) should be avoided. The proposed new dwellings are dual-aspect and the distances between facing habitable room windows in the proposed homes is at least 21m.
- 6.17.20. The flats all benefit from access to communal (external) amenity space. The proposed houses would all have private rear gardens. It is proposed to provide a generous amount communal external amenity space including the sports pitches to the north, orchard and other open spaces to the western end of the site.
- 6.17.21. In relation to the ground floor affordable flats, in the case of Block C, its location at the northeast portion of the residential development area means that any outlook and privacy concerns are adequately mitigated.
- 6.17.22. In relation to Block B, there would be 2 flats at ground floor level, both have multiple aspects (outlook). The landscaping scheme includes landscaped areas to the front of habitable room windows in the ground floor flats of Block B with hedging between the footway and landscaped buffer. The landscaping would help mitigate concerns relating to outlook and overlooking.
- 6.17.23. The position of the cycle store for Block B and access to this and the communal bin store were revised to avoid overlooking of the habitable room windows to the ground floor flats in Block B. The quality of accommodation is considered to be acceptable.
- 6.17.24. In relation to Block D, there are 3 flats at ground floor level, to mitigate against overlooking from the street, landscape planting is proposed externally around the flats which would help create a buffer between the proposed flats and external foot ways and public spaces. Again, the quality of the affordable accommodation is considered to be acceptable.
- 6.17.25. In conclusion, in relation to living conditions of existing and future residents the application complies with Local Plan Policy DM14.

**6.18. Sustainability / Energy**

- 6.18.1. Policy DM19 of the Local Plan requires development proposals to include measures to address climate change. Additionally in 2020 the Council adopted a Climate and Ecological Emergency Action Plan, which requires housing development to reduce carbon emissions by 50% compared to the Building Regulations Part L1 2013.
- 6.18.2. Policy DM19 of the Local Plan also requires new development to limit water usage to less than 110 litres per person per day.

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- 6.18.3. Full details regarding energy efficiency and sustainability are required to be provided under condition 40 of the outline permission. The applicant has submitted requisite information to satisfy the terms of the condition, which is considered acceptable by the Council's Climate Change Officer and the condition has been discharged.
- 6.18.4. The energy strategy involves a high-performance fabric specification which improves upon the maximum allowable values of the building regulations. The specifications adhere to the principles of the Energy Hierarchy by taking a 'Fabric First' approach.
- 6.18.5. The energy strategy calculates the sitewide CO2 emissions target and includes detail on how this would be achieved. The development would achieve well above the requirement for a 50% reduction in carbon emissions compared to the Building Regulations Part L1 2013 (the development would achieve a 56% reduction in carbon compared to the Building Regulations Part L1 2021, which is more rigorous). The Climate Change officer has examined the energy statement and agrees with the conclusions.
- 6.18.6. Part (S) of Building Regulations (as from June 2022) requires all new build homes to have Electric Vehicle charging provision, the Applicant has committed to this which is acceptable.
- 6.18.7. The development is designed to reduce water usage to less than 110 litres per person per day. The proposals comply with Local Plan Policy DM21.

**6.19. Other matters**

- 6.19.1. Concerns have been raised in objections in relation to the capacity of the sewer network to cope with foul drainage associated with the proposed housing. Officers note that Southern Water are the authority with a duty to provide sewerage infrastructure for new and existing development, and that sewerage provision and capacity is also dealt with through legislation separate from the planning regime.
- 6.19.2. A condition was imposed on the outline permission (33) which required details of foul water drainage to be approved prior to construction. Southern Water advised that there are capacity constraints with the current sewerage system and sewer network enhancements would be required before more than 50 dwellings are occupied.
- 6.19.3. While this matter is not one that should be controlled through the planning regime the applicant has agreed to the occupation restriction. Southern Water have confirmed that they are looking to design and implement enhancements to the sewer network so the development can be fully occupied. In view of the situation, no objection is raised.
- 6.19.4. Concerns have also been raised in objections that there is not sufficient capacity in electrical and water supply to cope with the additional development. Officers note that no objections have been received from the electrical or water supply undertakers (who are the organisations with the responsibility for supply).
- 6.19.5. Concerns have been raised in relation to the potential for the construction activities to displace vermin, which may then relocate to existing residential properties. There is no evidence to suggest that the proposals would result in such an impact, and this is not a material planning consideration.
- 6.19.6. The Applicant has confirmed that they have obtained record drawings showing the location of power cables from UKPN. While there are overhead cables across parts of the site, the



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Applicant has entered into a contract with UKPN to divert these cables to facilitate the development. The Applicant has committed to work in accordance with UKPN standard HS(G)47 'Avoiding Danger from Underground Services'.

- 6.19.7. Concerns have been raised that members of the public were not consulted in relation to condition discharge applications; however such application are not subject to the same statutory consultation requirements as planning applications (public consultation is not required).

**6.20. Conclusion**

- 6.20.1. The starting point for determining the application is the Development Plan, Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 are clear that planning applications must be determined in accordance with the Statutory Development Plan unless material considerations indicate otherwise.
- 6.20.2. The proposal would bring forward housing including affordable housing, sports facilities, open space and allotments. The site is allocated in the Local Plan for development and benefits from outline planning permission. Subject to the conditions and deed of variation to the legal agreement recommended, this reserved matters application would comply with the terms of the outline permission and the policies in the Local Plan and NPPF. No objection is raised.

**6.21. Recommendation**

- 6.21.1. Approval subject to conditions and a deed of variation to the S106 legal agreement.

**CONDITIONS****1. Plans**

The development hereby permitted shall take place in accordance with the following plans:

Location Plan 3097-A-1000-PL-B  
 Site Layout 3097-A-1005-PL-S  
 Site Layout 3097-C-1005-PL-S  
 Sports Pitches 3097-A-1150-PL-E  
 Parking Plan 3097-A-1700-PL-G  
 Refuse Strategy Plan 3097-A-1701-PL-G  
 Garden Compliance Plan 3097-A-1702-PL-G  
 Tenure Plan 3097-A-1703-PL-K  
 Materials Plan 3097-A-1704-PL-G  
 Boundary Treatments Plan 3097-A-1705-PL-H  
 Part M Compliance Plan 3097-A-1706-PL-G  
 Dwelling Distribution Plan 3097-A-1707-PL-G  
 PV Plan 3097-A-1708-PL-G  
 Street Elevations 3097-C-1010-PL- D  
 Street Elevations 3097-C-1011-PL- D  
 Pumping Station PT10182 - 001  
 Sub Station EDS 07-3102.01 A

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## Lighting Plan Onsite Lighting Plan

Betony - Plans Elevations Semi-Detached 3097-C-3000-PL-A  
Daisy - Plans & Elevations (Semi-Detached) 3097-C-3005-PL-B  
Daisy - Plans Elevations 3097-C-3006-PL-A  
Daisy - Plans & Elevations (Semi-Detached) 3097-C-3007-PL-B  
Daisy - Plans & Elevations (Semi-Detached) 3097-C-3008-PL-A  
Daisy + Carport - Plans & Elevations (Semi-Detached) 3097-C-3010-PL-C  
Daisy Carport - Plans Elevations Semi-Detached 3097-C-3011-PL-A-  
Daisy & Betony - Plans Elevations Terrace x3: 3097-C-3015-PL-A  
Daisy Betony + Carport - Plans Elevations (Terrace x3) 3097-C-3016-PL-C  
Daisy & Betony + Carport - Plans & Elevations (Terrace x3) 3097-C-3016-PL-B  
Daisy Betony - Plans Elevations Terrace x4: 3097-C-3025-PL-A  
Daisy & Betony (Terrace x4) 3097-C-3026-PL-B  
Daisy Betony - Plans Elevations Semi-Detached 3097-C-3030-PL-E  
Goldcrest M4(2) Floor Plans and Elevations 3097-C-3035-PL-A  
Goldcrest Carport - Plans Elevations Semi-Detached 3097-C-3040-PL-A  
Elder - Plans & Elevations (Semi-Detached) 3097-C-3045-PL-C  
Elder - Plans Elevations Semi-Detached 3097-C-3046-PL-A  
Elder - Plans Elevations Semi-Detached 3097-C-3047-PL-B  
Elder +Carport- Plans & Elevations (Semi-Detached) 3097-C-3050-PL-D  
Elder +Carport- Plans & Elevations (Semi-Detached) 3097-C-3051-PL-D  
Elder +Carport- Plans & Elevations (Semi-Detached) 3097-C-3052-PL-B  
Elder +Carport- Plans & Elevations (Semi-Detached) 3097-C-3053-PL-A  
Elder Betony - Plans Elevations Terrace 3: 3097-C-3055-PL-A  
Elder Betony - Plans Elevations Terrace 3: 3097-C-3056-PL-A  
Betony - Plans Elevations Terrace 4: 3097-C-3060-PL-A-Elder  
Elder Betony Carport - Plans Elevations Terrace 4: 3097-C-3065-PL-A  
Elder Betony - Plans Elevations Terrace 5: 3097-C-3070-PL-A  
Elder Daisy - Plans Elevations Semi-detached 3097-C-3075-PL-A  
Elder, Betony Daisy - Plans Elevations Terrace x3: 3097-C-3080-PL-A  
Lupin - Plans Elevations Detached 3097-C-3085-PL-A  
Lupin + Carport- Plans & Elevations (Detached) 3097-C-3086-PL-B  
Lupin + Carport- Plans & Elevations (Detached) 3097-C-3087-PL-B  
Lupin + Carport- Plans & Elevations (Detached) 3097-C-3088-PL-A  
Lupin + Carport- Plans & Elevations (Detached) 3097-C-3090-PL-C  
Lupin + Carport- Plans & Elevations (Detached) 3097-C-3091-PL-C  
Lupin - Plans Elevations Semi-Detached 3097-C-3095-PL-A  
Lupin Carport- Plans Elevations Semi-detached 3097-C-3100-PL-C  
Lupin Carport- Plans Elevations Semi-detached 3097-C-3101-PL-B  
Lupin Carport- Plans Elevations Semi-detached 3097-C-3102-PL-C  
Lupin Elder Carport- Plans Elevations Semi-detached 3097-C-3105-PL-B  
Osprey - Plans & Elevations (detached) 3097-C-3125-PL-C  
Osprey - Plans & Elevations (detached) 3097-C-3126-PL-B  
Osprey - Plans & Elevations (Semi-detached) 3097-C-3130-PL-E  
Osprey - Plans & Elevations (Semi) 3097-C-3135-PL-B  
Osprey & Betony- Plans & Elevations (Semi-Detached) 3097-C-3140-PL-C  
Osprey Betony- Plans Elevations (Semi-Detached)3097-C-3141-PL-C  
Osprey and Betony and Carport- Plans and Elevations Semi-Detached 3097-C-3145-PL-D  
Osprey & Elder - Plans & Elevations (Semi-Detached) 3097-C-3150-PL-C  
Osprey & Elder - Plans & Elevations (Semi-Detached) 3097-C-3155-PL-C  
Osprey & Lupin - Plans & Elevations (Semi-Detached) 3097-C-3160-PL-D

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Redwing + Carport - Plans & Elevations (Detached) 3097-C-3166-PL-C  
Redwing + Carport - Plans & Elevations (Semi-detached) 3097-C-3170-PL-C  
Redwing + Carport - Plans & Elevations (Semi-detached) 3097-C-3170-PL-A  
Block B Affordable Floor Plans 3097-A-3210-PL-D  
Block C and D Affordable Floor Plans 3097-A-3220-PL-B  
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Block C Affordable Elevations 3097-C-3221-PL-B  
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Car Ports 3097-A 3301-PL-B  
Pavilion 3097-C-3510-PL-C  
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Public Open Space General Arrangements Plans: 3136-APA-ZZ-00-LA-L-1002 P11  
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Residential Area General Arrangements Plans: 3136-APA-ZZ-00-LA-L-1008 P10  
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Residential Area General Arrangements Plans: 3136-APA-ZZ-00-LA-L-1010 P10  
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Open Space Planting Proposal Sheet 1 of 9: 3136-APA-ZZ-00-PP-L-2001 P06  
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Residential Area Planting Plans Sheet 7 of 7: 3136-APA-ZZ-00-PP-L-2016 P08  
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Plant Schedule – Residential Areas 3136-APA-ZZ-00-PS-L4202 P04  
Plant Schedule and Horticultural Notes 3136-APA-ZZ-00-PS-L4202 P06  
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Site Wide Drainage Construction Details (Sheet 6) CON608-3896 P02  
Site Wide Drainage Construction Details (Sheet 7) CON608-3897 P01  
Site Wide Drainage Construction Details (Sheet 8) CON608-3898 P01  
Site Wide Drainage Construction Details (Sheet 9) CON608-3899 P01  
Basin A Levels Sections CON608-3925 P03  
Basin B Levels Sections CON608-3926 P03  
Basin C Levels Sections CON608-3927 P03  
Residential Site Visibility Splays CON608-3865 P03  
Residential Site Swept Paths Sheet 1 of 4: CON608-3866 P03  
Residential Site Swept Paths Sheet 2 of 4: CON608-3867 P03  
Residential Site Swept Paths Sheet 3 of 4: CON608-3868 P03  
Residential Site Swept Paths Sheet 4 of 4: CON608-3869 P03  
Site Wide Earthworks and Proposed Levels S38-278 Sheet 2 of 2: CON608-3879 P04  
Site Wide Earthworks and Proposed Levels S38-278 Sheet 1 of 2: CON608-3878 P04  
Site Wide Earthworks CON608-3877 P03  
Site Wide Earthworks Sheet 2 of 2: CON608-3876 P06  
Site Wide Earthworks Sheet 1 of 2 CON608-3875 P06  
Surface Water Drainage Network 1 Basin C  
Surface Water Drainage Network 2 Basin A and B

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Surface Water Drainage Network 3 Trench Soakaway  
Surface Water Drainage Network 4 Crate Soakaway  
Residential Site Road Construction Details 1 of 3: CON608-3930 P00  
Residential Site Road Construction Details 2 of 3: CON608-3932 P00  
Residential Site Road Construction Details 3 of 3: CON608-3933 P00  
S38/278 Site Access Roundabout General Arrangement Plan CON608-3700 C01  
S38/278 site access roundabout swept path analysis (1 of 2) CON608-3701 C01  
S38/278 site access roundabout swept path analysis (2 of 2) CON608-3702 C01  
S38/278 Site Access Roundabout Entry Path Curvature and Deflection CON608-3703 C01  
S38-278 Site Access Roundabout Sections Key Plan CON608-3704 C01  
S38-278 Site Access Roundabout Long-sections (1 of 2) CON608-3705 C01  
S38-278 Site Access Roundabout Long-sections (2 of 2) CON608-3706 C01  
S38-278 Site Access Roundabout Cross-sections CON608-3707 C01  
S38-278 Site Access Roundabout Levels Contours Plan CON608-3708 C01  
S38-278 Site Access Roundabout Site Clearance CON608-3709 C01  
S38-278 Site Access Roundabout Pavement Plan CON608-3710 C01  
S38-278 Site Access Roundabout Drainage CON608-3711 C01  
S38-278 Site Access Road General Arrangement CON608-3720 C01  
S38-278 Site Access Road General Arrangement CON608-3721 C02  
S38-278 Site Access Road, Swept Paths (1 of 2) CON608-3722 C02  
S38-278 Site Access Road Sections Key Plan CON608-3723 C01  
S38-278 Site Access Road Sections Key Plan P05 CON608-3724 C02  
S38-278 Site Access Road Long-Sections (1 of 3) CON608-3725 C01  
S38-278 Site Access Road Long-Sections (2 of 3) CON608-3726 C01  
S38-278 Site Access Road Long-Sections (3 of 3) CON608-3727 C01  
S38-278 Site Access Cross-sections CON608-3728 C02  
S38-278 Site Access Road & Roundabout Construction Details (1 of 8) CON608-3712 C01  
S38-278 Site Access Road & Roundabout Construction Details (2 of 8) CON608-3713 C01  
S38-278 Site Access Road & Roundabout Construction Details (3 of 8) CON608-3714 C01  
S38-278 Site Access Road & Roundabout Construction Details (4 of 8) CON608-3715 C01  
S38-278 Site Access Road & Roundabout Construction Details (5 of 8) CON608-3716 C01  
S38-278 Site Access Road & Roundabout Construction Details (6 of 8) CON608-3717 C01  
S38-278 Site Access Road & Roundabout Construction Details (7 of 8) CON608-3718 C01  
S38-278 Site Access Road & Roundabout Construction Details (8 of 8) CON608-3719 C01  
S38-278 Site Access Road Levels Contours Plan (2 Sheets) CON608-3730 C01  
S38-278 Site Access Road Levels Contours Plan (2 Sheets) CON608-3731 C02  
S38-278 Site Access Road Swept Paths (2 of 2) CON608-3732 C02  
S38-278 Site Access Road Site Clearance CON608-3733 C02  
S38-278 Site Access Road Pavement Plan CON608-3734 C01  
S38-278 Site Access Road Pavement Plan CON608-3735 C01  
S278 Site Access off Frognal Lane Pavement Plan CON608-3774 C01  
S278 Site Access off Frognal Lane Site Clearance CON608-3775 C02  
S278 Site Access off Frognal Lane Construction Details (1 of 2) CON608-3776 C01  
S278 Site Access off Frognal Lane Construction Details (2 of 2) CON608-3777 C01  
S278 Site Access off Frognal Lane Construction Details (sheet 3) CON608-3778 C01  
S38-278 Roundabout and Site Access Setting Out - Sheet 1: CON608-3795 C01  
S38-278 Roundabout and Site Access Setting Out - Sheet 2: CON608-3796 C01  
S38-278 Roundabout and Site Access Setting Out - Sheet 3: CON608-3797 C02  
S278 London Road Loading Bay and Site Clearance CON608-3810 C01  
S278 London Road Loading Bay Swept Paths CON608-3811 C01  
S278 London Road Loading Bay Levels and Pavement CON608-3812 C01

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S278 London Road Loading Bay Construction Details CON608-3813 C01  
 S278 London Road Loading Bay Construction Details Sheet CON608-3814 C01  
 S278 London Road PROW General Arrangement CON608-3850 P04  
 S38-278 Overall Highway Drainage Contribution Areas CON608-3862 P02  
 S38-278 Overall Highway Drainage Contribution Areas P01: CON608-3863 P03  
 S38-278 Site Access Roundabout Gully Catchment Plan P01: CON608-3871 P02  
 S38-278 Site Access Roundabout Gully Catchment Plan P01: CON608-3872 P02  
 S38-278 Site Access Roundabout Drainage Long Sections CON608-3873 P01  
 S38-278 Site Access and Roundabout Legal Plan CON608-3874  
 S38-278 Site Access Road Gully Catchment Plan (2 Sheets) CON608-3739 P02  
 S38-278 Site Access Road Gully Catchment Plan (2 Sheets) CON608-3740 P03  
 S38-278 Site Access Road Drainage CON608-3737 C01  
 S38-278 Site Access Road Drainage CON608-3738 C02  
 Road General Arrangement CON608-3950 P00  
 Site Access Roundabout Construction Details CON608-4000 C01  
 S278 Site Access off Frogal Lane GA CON608-3770 C02  
 S278 Site Access off Frogal Lane Swept Paths CON608-3771 C02  
 S278 Site Access off Frogal Lane Sections CON608-3772 C02  
 S278 Site Access off Frogal Lane Levels, Contours and Gully Catchment CON608-3773 C01  
 Preliminary Exploratory Hole Logs  
 BRE 365 & Falling Head Testing  
 Drainage Maintenance Schedule CON608\_001\_002  
 Boundary Sections 3097 A 1015 PL B  
 Maintenance access to southern boundary 3136-APA-ZZ-00-SK-L-0006 P01

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

**2. Materials**

No development beyond the construction of foundations shall take place until further details of boundary treatment, construction details of buildings and the external finishing materials, to be used on the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority.

Details and samples of materials shall be provided for windows, areas of glazing, balconies, soffits building entrances, and any other materials, presented on a materials palette board, accompanied by elevation drawings indicating exactly where the materials are to be used.

Material samples and sample panels shall be placed/ erected on the site before the application to discharge the condition is submitted and made available for inspection.

Thereafter the development shall be built in accordance with the approved details.

Reason: In the interest of visual amenity.

**3. Substation and pumping station**

Prior to work to install the electrical substation and foul water pumping station, full plans, elevations and details of both installations, including any fencing and associated compound shall be submitted to and approved by the Local Planning Authority.

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Prior to the first use of the electricity substation or the foul water pumping station an acoustic report for both installations and an odour assessment for the foul water pumping station shall be submitted to and approved in writing by the Local Planning Authority. The reports and assessment shall address the issue of noise (including low frequency noise) and vibration from both installations and odour from the foul water pumping station to ensure that there is no loss of amenity to residential or commercial properties.

The noise and vibration assessment scheme shall ensure that the low frequency noise emitted from the electrical substation is controlled so that it does not exceed the Low Frequency Criterion Curve for the 10 to 160Hz third octave bands inside residential accommodation as described in The DEFRA Procedure for the assessment of low frequency noise complaints 2011 (NANR45).

The electrical substation and foul water pumping station shall be maintained in a condition so that they comply with the levels and mitigation measures specified in the approved acoustic report and odour assessment for the life of the development.

Reason: To protect the amenity of future and existing occupiers.

**4. Historical interpretation**

No occupation of any building shall take place until a scheme of historical (including built heritage assets being Claxfield House and Claxfield Farmhouse) and archaeological interpretation has been submitted to and approved in writing by the Local Planning Authority. Examples of how to relay and interpret the archaeology and history of the site can include, but are not limited to, the use of materials, landscaping, public art and the provision of historical interpretation boards. The details submitted pursuant to this condition shall include location, design, dimensions and materials of any fixed interpretation.

The interpretation scheme shall be carried out in full accordance with the approved details prior to the first occupation of any new dwelling and shall thereafter be retained and maintained in accordance with the approved details.

Reason: To ensure a satisfactory visual appearance and to ensure the development makes a positive contribution to local character and distinctiveness.

**5. External lighting**

No external lighting shall be installed until a detailed scheme of lighting has been submitted to and approved in writing by the Local Planning. This scheme shall include the Upward Light Ratio, Assessment of the sports pavilion and any illuminated pitches and Vertical spill at nearest receptors. The scheme of lighting shall take note of and refer to the Institute of ILP Guidance Note 01/21 The Reduction of Obtrusive Light (and any subsequent revisions) and shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles) and an ISO lux plan showing light spill. The scheme of lighting shall be installed, maintained and operated in accordance with the approved scheme.

Reason: To ensure lighting is sufficient and does not adversely impact on residential amenity.

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**6. Management and maintenance**

Prior to occupation, a Management and Maintenance Plan relating to non-private external spaces shall be submitted to and approved by the Local Planning Authority. The Management and Maintenance Plan shall set out:

- The scope of maintenance and management, to include roads, parking, footways, play, open space areas, boundary treatment and landscape buffers (excluding sports facilities and allotments).
- Roles and responsibilities of those carrying out maintenance and management of the site.
- The process for appointing those who will undertake management and maintenance.
- Operational procedures for inspections, repairs and non-planned maintenance such as dealing with graffiti.
- Timing and frequency of maintenance.

Thereafter the site shall be managed and maintained in accordance with the approved Management and Maintenance Plan for the life of the development.

Reason: To ensure the development continues to be accessible, to protect residential amenity and to ensure necessary infrastructure and facilities are available for the use of future residents.

**7. Sports Facilities**

a) Within 6 months of commencement of development, the following documents shall be submitted to and approved in writing by the Local Planning Authority in consultation with Sport England:

- (i) A programme of implementation of sports pitches and pavilion.
- (ii) Clear details over how the playing field will be inaccessible to vehicles other than those purposed for maintenance activity via gated access.
- (iii) A detailed assessment of ground conditions (including drainage and topography) of the land proposed for the playing field which identifies constraints which could adversely affect playing field quality; and
- (iv) Where the results of the assessment to be carried out pursuant to (ii) above identify constraints which could adversely affect playing field quality, a detailed scheme to address any such constraints. The scheme shall include a written specification of the proposed soils structure, proposed drainage, cultivation and other operations associated with grass and sports turf establishment and a programme of implementation.

b) The approved scheme shall be carried out in full and in accordance with the approved programme of implementation.

Reason: To ensure that the playing field is prepared to an adequate standard and is fit for purpose.

**8. Community Use**

The use of the playing field and pavilion building shall not commence until a community use agreement for the sports pitches and sports pavilion has been submitted to and approved in writing by the Local Planning Authority in consultation with Sport England, and a copy of the completed approved agreement shall be provided to the Local Planning Authority. The agreement shall apply to the sports pitches, pavilion, parking and other ancillary facilities and include details of pricing policy, hours of use, access by non-members, management responsibilities and a mechanism for review.



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The playing field and pavilion building shall not operate otherwise than in strict compliance with the approved agreement.

Reason: To secure well managed safe community access to the sport facilities, to ensure sufficient benefit to the development of sport.

**9. Screening**

Within 6 months of commencement of development a Section 278 application shall be made for a scheme for landscaping to the southern side of the A2/London Road at the junction of Claxfield Lane. Thereafter the development shall be implemented in accordance with the outcome of that Section 278 application.

Reason: To reduce impacts arising from highway infrastructure to the setting of heritage assets.

**INFORMATIVES**

1. The applicant is reminded that this permission relates to planning permission only and does not constitute approval under any other legislation including Building Regulations. To obtain advice on current Building Regulations the applicant should contact the South Thames Gateway Building Control Partnership at Foord Annex, Eastgate House, High Street, Rochester, Kent ME1 1EW.
2. The applicant is advised to review and comply with the Mid Kent Environmental Code of Development Practice which can be found at: <https://tunbridgewells.gov.uk/environmental-code-of-development-practice>
3. Pavilion design: The English Cricket Board (ECB) has a mandatory requirements which should be met when submitting details pursuant to the requirements of the S106 legal agreement. The applicant is advised to take account of requirements set out in the consultation response from Sport England when finalising the details related to the pavilion.
4. Cricket pitch: The minimum length should be 117m for minimum boundary compliance. A Labosport ball trajectory assessment should be carried out to assess whether any ball-strike risk is presented. This will establish scale and location of protective netting mitigation required as part of the development. \*Labosport is the only provider of ECB recognised ball strike assessments. They can be contacted at info@labosport.co.uk w. labosport.co.uk 0115 968 1998.
5. When submitting details pursuant to the requirements of the S106 legal agreement the size of the proposed storage building next to the pavilion will need to ensure it will be sufficient to house maintenance machinery.
6. Sport England and the Kent FA would like to be consulted around the operator of the site as there are clubs who would be interested and potentially capable of taking the site on.
7. It is important to note that planning permission does not convey any approval to carry out works on or affecting the public highway.
8. 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

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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.

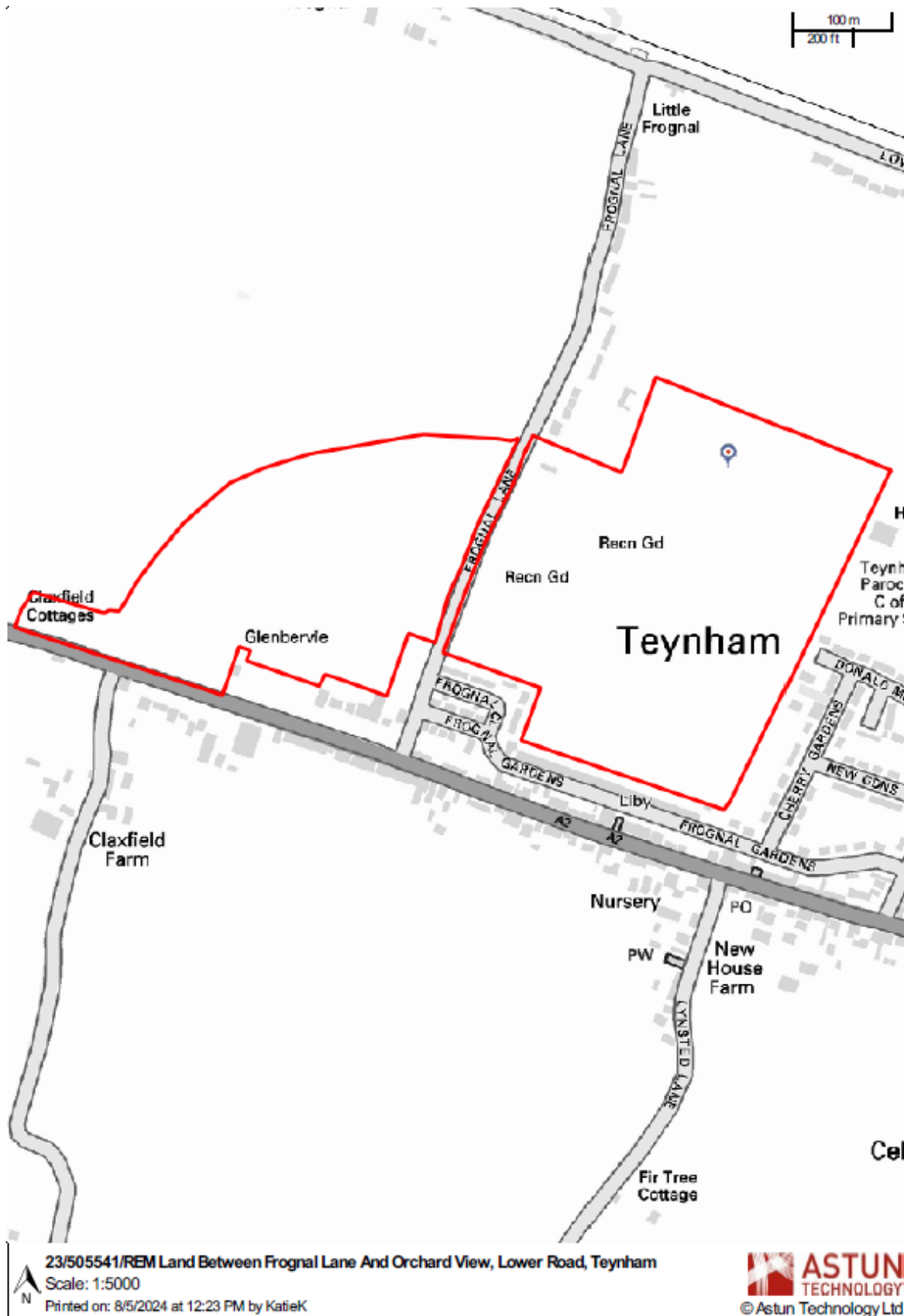
9. Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the public highway. Some of this highway land is owned by Kent County Council whilst some is owned by third party owners. Irrespective of the ownership, this land may have highway rights over the topsoil.
10. 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.
11. 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.
12. Should the development be approved by the Local 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.
13. Guidance for applicants, including information about how to clarify the highway boundary and links to application forms for vehicular crossings and other highway matters, may be found on Kent County Council's website: <https://www.kent.gov.uk/roads-and-travel/highway-permits-and-licences/highways-permissionsand-technical-guidance>. Alternatively, KCC Highways and Transportation may be contacted by telephone: 03000 418181.

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

In accordance with paragraph 38 of the National Planning Policy Framework 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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## APPENDIX B

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**Planning Committee**


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**MINUTES** of the Meeting held in the Council Chamber, Swale House, East Street, Sittingbourne, ME10 3HT on Thursday, 23 May 2024 from 7.00 pm - 10.25 pm.

<b>2.1 REFERENCE NO 23/505541/REM</b>		
<b>APPLICATION PROPOSAL</b>		
Approval of Reserved Matters (Appearance, Landscaping, Layout and Scale sought) for erection of 298no. dwellings, a sports ground including pavilion, changing rooms and car park, open space including allotments and community orchard, and associated new infrastructure including access, parking and landscaping pursuant to 16/507689/OUT.		
<b>ADDRESS</b> Land Between Frognal Lane and Orchard View, Lower Road, Teynham		
<b>WARD</b>	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> c/o Agent

Teynham and Lynsted	Teynham	<b>AGENT</b> Chartway
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The Planning Consultant introduced the application as set out in the report. He drew attention to the tabled update from Teynham Parish Council which had been emailed to Members and added to the website. The Planning Consultant reported that one additional objection had been received raising concerns about foul water drainage.

The Chair moved the officer recommendation to approve the application, and this was seconded by the Vice-Chair.

Julian Moat, the Applicant, spoke in support of the application.

Louise Smith, an objector, spoke against the application.

Parish Councillor Paul Townson, representing Teynham Parish Council, spoke against the application.

The Ward Members spoke against the application and raised points which included:

- Residents felt let down by the application;
- felt the applicants were "cherry-picking" what they wanted to develop;
- this did not comply with paragraph 5 of the National Planning Policy Framework (NPPF);
- contrary to Policy MU4 and the S106 legal agreement in relation to phasing;
- concerned that the employment space and health facility would not be delivered;
- the agent was not interested in providing a GP surgery;
- no housing should be approved until there were "concrete" plans for a GP surgery;

## APPENDIX B

- the proposed mitigation measures in respect of traffic were not adequate;
- this would lead to an additional detrimental impact on current air quality issues;
- this would exacerbate issues with the already poor sewerage system;
- the proposed scale of the application was poor and over intensive for the area;
- this would exacerbate existing on-street parking issues;
- the application was not providing sports facilities just replacing what was already there; and
- the site had been earmarked for development for a long time, but this application added nothing to the village and was not good for existing residents.

The Chair invited Members to make comments and points raised included:

- The provision of the GP surgery was key to sustainable development;
- had a housing needs assessment been carried out?;
- Would not improve air quality in the area and would be 'storing-up' health problems for the future;
- where would the new residents go for health and dentistry care?;
- where would the access to the site be if the employment area was built?;
- the proposed 25 year community asset was not adequate and should be increased;
- the Parish Council should to establish a Neighbourhood Plan as they would benefit from a policy basis to support their views;
- welcomed the 33% affordable housing proposed;
- considered the design proposed was good; and
- if refused the Council would not win at any subsequent appeal.

In response to questions from Members, the Planning Consultant said that if the landowner decided they did not want to provide the employment area and wanted some other form of development they would need to apply for a change of use. There was nothing within the existing legal agreement to say that housing and the employment use had to be provided at the same time, and as such the application complied with the outline planning permission. The Planning Consultant explained that access to the employment area had been agreed at the outline stage and would be off the A2. He explained that the current application agreement did not require provision of a GP surgery and it was not possible to add a condition requiring a GP surgery to be provided.

Councillor Simon Clark moved the following motion: That the application be deferred to allow officers to look further at the road access plan for the employment area and whether the GP surgery would be provided. This was seconded by Councillor Tony Winckless.

Discussion ensued regarding whether the road access was relevant, and the proposer and seconder of the motion agreed to withdraw that from the motion.

The Vice-Chair requested that clarification on what happened to the community facilities at expiry of the S106 defined 25-year peppercorn rent term be included within the reason for deferment. A Ward Member asked that the motion to defer the application included clarity on whether the sewerage capacity would be improved and on air quality impacts. The proposer and seconder agreed to include these in their motion for deferment. On being put to the vote the motion to defer the application was agreed.

***Resolved: That application 23/505541/REM be deferred to enable officers to provide detail on: medical provision; sewerage capacity; community facilities (ie. what happened to these facilities at expiry of the S106 defined 25-year peppercorn rent term); and on air quality impacts.***



**PLANNING COMMITTEE – 18 JULY 2024**

**PART 2**

Report of the Head of Planning

**PART 2**

Applications for which **PERMISSION** is recommended

<b>2.1 REFERENCE NO - 23/501073/FULL</b>		
<p><b>PROPOSAL</b>                  Section 73 - Application for minor material amendment to approved plans listed in condition 2 (to allow change of car parking area from block paving to tarmac, with drainage to an onsite soakaway, alterations to parking space positions and landscaping areas, and relocation of bin store) pursuant to 19/506271/FULL for - Erection of a block of 6 no. flats with associated parking, cycle and refuse storage, as amended by drawings received 05/06/2020 and drawing received 14/08/2020.</p>		
<p><b>SITE LOCATION</b>                  Land Rear of The Old Squash Courts, Lower Road, Teynham, ME9 9EQ</p>		
<p><b>RECOMMENDATION</b> Grant subject to conditions.</p>		
<p><b>APPLICATION TYPE</b> Major – Full Planning</p>		
<p><b>REASON FOR REFERRAL TO COMMITTEE</b>                  Ward councillor Julian Speed requested the application be determined by the Planning Committee.</p>		
<p><b>Case Officer</b> Brett McAllister-Byrne</p>		
<p><b>WARD</b> Teynham and Lynsted</p>	<p><b>PARISH/TOWN COUNCIL</b> Teynham</p>	<p><b>APPLICANT</b> C/O Agent</p> <p><b>AGENT</b> Country House Homes</p>
<p><b>DATE REGISTERED</b> 22/03/2023</p>	<p><b>TARGET DATE</b> 17/05/2023</p>	
<p><b>BACKGROUND PAPERS AND INFORMATION:</b>                  Documents referenced in report are as follows: -</p> <p>Site Layout Plan ref. 500/HDH/003/G</p> <p>The full suite of documents submitted pursuant to the above application are available via the link below: - <a href="#">23/501073/FULL   Section 73 - Application for minor material amendment to approved plans condition 2 (to allow change of car parking area from block paving to tarmac, with drainage to an onsite soakaway, alterations to parking space positions and landscaping areas, and</a></p>		

[relocation of bin store\), variation of conditions 12 \(acoustic fence\) and 13 \(hard and soft landscape works\), and removal of conditions 10 \(parking court with electric vehicle charging points\), 11 \(cycle storage\) pursuant to 19/506271/FULL for - Erection of a block of 6 no. flats with associated parking, cycle and refuse storage, as amended by drawings received 05/06/2020 and drawing received 14/08/2020. | Land Rear Of The Old Squash Courts Lower Road Barrow Green Teynham Sittingbourne Kent ME9 9EQ \(midkent.gov.uk\)](#)

## 1. SITE LOCATION AND DESCRIPTION

- 1.1. Prior to the original planning application ref. 19/506271/FULL being built out, the site was an informal parking area and area of scrubland behind the existing building formerly known as the Old Squash Club. The new two and half storey residential block has now been built and the car parking area has been formalised for residents. The proposal lies just within the Local Plan defined built-up area boundary of Teynham, which cuts across the site in a north-south line at the eastern side of the site.
- 1.2. The site is adjacent to the main London to Dover railway line which runs east-west immediately to the north of the site. To the east of the site are open fields; to the south is the Old Squash Court building, which has now been converted to 8 flats. To the south of this building is the Old School House, which is also now converted to residential use. To the west is Selby Court, a cul-de-sac of nine houses.
- 1.3. The site is approached by an existing access road from Lower Road.

## 2. PLANNING HISTORY

**19/506271/FULL** – Granted subject to conditions 07.10.2020

Erection of a block of 6 no. flats with associated parking, cycle and refuse storage, as amended by drawings received 05/06/2020 and drawing received 14/08/2020.

**22/501389/NMAMD** – Refused 12.04.2022

Non-material amendment to application 19/506271/FULL: Change of parking area surfacing material to tarmac; Minor alterations to the parking space positions and landscaping areas; Bin store area repositioned.

### Neighbouring Development:

#### Old Squash Courts

**20/500320/FULL** – Granted subject to conditions 30.03.2020

Conversion of a commercial unit to form 2 no. flats.

#### Land North of Lower Road

**21/505096/FULL** – Refused 10.06.2024

Erection of 23no. dwellings with associated landscaping, parking, relocation of commercial buildings and provision of a PROW cycleway/footpath.

## 3. PROPOSED DEVELOPMENT

- 3.1. This minor material amendment (S73) application seeks to amend the original full planning permission ref. 19/506271/FULL to regularise multiple planning breaches associated with the construction of the scheme for a block of 6 flats. It also formed part of plans to provide



pedestrian access to a proposed development to the immediate east of the site (planning ref. 21/505096/FULL), however, the application for the adjacent land was refused planning permission in June 2024. The changes proposed under this application seeking a minor material amendment relates to the landscaping and the main car parking at the scheme as set out below:

#### Hard & Soft Landscaping

3.2. Proposed changes to hard and soft landscaping are as follows:

- to fencing to allow for additional residential amenity space for Selby House
- removal of the path around Selby House
- addition of a path along the southern side of Selby House to the eastern boundary
- replacement of amenity areas south of Selby House with hardstanding around bin and cycle stores and bollards to stop vehicles parking in this area
- removal of some hedging in the main car park and around the bin store
- relocation of the cycle store
- relocation of the bike store

#### Car Parking

3.3. The proposed changes to the car parking are as follows:

- The hardstanding material used for the car park area is proposed to be tarmac with drainage to onsite soakaways (as built out) rather than permeable block paving.
- The layout and number of car parking spaces are proposed as an amendment to the original permission. The original permission proposed 20 resident car parking spaces and two visitor car parking spaces, however, this was measured inaccurately on the plans and it was not possible to accommodate this number of car parking spaces. To regularise this, it is proposed to reduce the number of car parking spaces to 17 for residents and 3 visitor spaces.
- Six electric vehicle (EV) charging points would be added in the main car parking area outside of Selby House which would be able to serve 12 vehicles concurrently and would be able to extend to reach all the parking spaces in the main parking area.

#### 4. CONSULTATION

4.1. Three rounds of consultation have been undertaken, during which 37 letters were sent to neighbouring occupiers and a notice was displayed at the application site. Full details of representations are available online.

4.2. During the first round of consultation, two letters were received objecting to the proposal. Concerns/ comments were raised in relation to the following matters: -

<b>Comment</b>	<b>Report Reference</b>
No justification is provided for the proposed amendments	6.7.2
The proposed amendments are cumulatively very significant and result in a great loss of quality and amenity	6.4.3
The 'communal garden' and pedestrian path shown on the amended plan are outside the settlement boundary identified in the Local Plan.	6.4.6 - 6.4.11
The proposed pedestrian route crosses and reduced the amount of communal amenity space.	6.5.10

Proposed pedestrian footpath leads straight into the parking area and ends there. There is no segregation of people and vehicles through the car park to Lower Road. Should it ever be used by future development to the east this arrangement would be unsafe.	6.5.10
Should the route be used by future development to the east this would disrupt residents and result in a loss of privacy of this already very tightly developed site.	6.5.10
Would the pedestrian access gate be controlled in any way or be a through route?	6.5.10
There is no justification or evidence of the adequacy of the proposed replacement of permeable paving with tarmac and an on-site soakaway. Flooding at the bottom of the hill on Lower Rd has been very evident. Cumulative development proposed in this part of Teynham may result in further flooding with a greater impact on Lower Road	6.7.2 6.7.3
Removal of the requirement for an acoustic fence will seriously undermine residential amenity.	6.6.4
Reduction in landscaping impacts residential amenity, wildlife and the appearance of the development.	6.4.3
Loss of trees. The officer's report on the original planning application (19/506271) noted that trees had been cut down on the site prior to the planning application being submitted. The tree loss was considered acceptable given the replacement tree planting and shrubs proposed. It is now proposed not to provide this replacement landscaping which is unacceptable as it and results in a much worse environment than before the development took place.	6.4.2- 6.4.5

- 4.3. During the second round of consultation, two letters were received objecting to the proposal. Additional concerns/ comments were raised in relation to the following matters: -

It appears KCC Ecology's comments are based on the amendment to the S73 application, rather than comparison with the approved application 19/506271. There is in fact significantly less landscaping in this S73 application than in the approved application.	4.6
Large amount of traffic going to and from the car park where the proposed pathway is leading to. Cars and vans go at some speed. Refuse truck has to reverse down from Lower Road to get access.	6.5.10

- 4.4. During the third round of consultation, one letter was received objecting to the proposal. Additional concerns/ comments were raised in relation to the following matters: -

Loss of a hedge behind the waste bins, which would have provided screening.	6.4.3
Areas unmarked for parking are being used unofficially for parking. Proposed footpath would cross this area which would displace these vehicles into other areas in and around the application site causing impact in those areas in terms of parking pressure elsewhere. The proposed parking is insufficient in number to accommodate parking need.	6.5.10
The bin store shown on the plan shows domestic waste bins. The development is actually served by commercial waste bins. These should be correctly shown on the plan to confirm that the proposals can be accommodated on site.	6.5.8

The planting bed currently running along the side of Selby House, would need to be removed to accommodate the footpath, resulting in loss of much needed landscaping on this very hard site.	6.4.4
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4.5. Teynham Parish Council made no comments on the application.

#### 4.6. REPRESENTATIONS

**KCC Highways** – No objections. Initial concerns raised based on a loss of parking spaces potentially falling below SBC Parking Standards, relocated bin storage being located further into the development resulting in extended drag distance for roadside collection and lack of EV charging points. All these points have been addressed.

**KCC Ecology** – No objections. The requested amendments were considered unlikely to result in significantly different impacts, or greater enhancement, when compared to the original design.

#### 5. DEVELOPMENT PLAN POLICIES

5.1. The following polices are relevant to the determination of the application.

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

**ST 1** Delivering sustainable development in Swale.

**ST 3** The Swale settlement strategy.

**CP 2** Promoting sustainable transport.

**CP 3** Delivering a wide choice of high-quality homes.

**CP 4** Requiring good design.

**CP 5** Health and wellbeing.

**CP 7** Conserving and enhancing the natural environment.

**DM 6** Managing transport demand and impact.

**DM 7** Vehicle parking.

**DM 8** Affordable housing.

**DM 14** General development criteria.

**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 Documents:**

KCC Developer Contributions Guide.

Parking Standards (2020).

Swale Borough Council's Noise and Vibration Planning Technical Guidance (2020).

Planting on new development – a guide to developers.

#### 6. ASSESSMENT

6.1. The application is being reported to the planning committee as Cllr Speed considered that the application should be subject to public scrutiny. The original permission (ref. 19/506271/FULL) establishes the principle of the constructed residential block. The following assessment relates to the proposed landscaping and car parking amendments.

6.2. The main considerations involved in the assessment of the application are:

- Principle of Development
- Landscaping & Trees
- Transport & Highways
- Living Conditions
- Flood Risk, Drainage & Surface Water

### 6.3. Principle of Development

6.3.1. As set out in the original permission the site of the proposed residential block is within an established built-up area boundary, in a residential area, and development here is in accordance with Policy ST3 of Bearing Fruits 2031 – The Swale Borough Local Plan 2017. As such, the principle of development here is acceptable.

### 6.4. Landscaping & Trees

6.4.1. The NPPF requires decisions to ensure that development is '*sympathetic to... landscape setting*'. Paragraph 136 of the NPPF recognises the contribution of trees to the character and quality of urban environments. At the local level, the requirement is recognised through Policy DM 29 of the Local Plan. Policy DM 28 seeks conservation and enhancement to biodiversity.

#### Tree and Shrub Planting

6.4.2. To replace trees lost on the site the original application was granted with 20 trees: 5 small trees on the western edge of the main car parking area and the remaining 15 along the northern boundary. Alongside this there were shrubs and hedges proposed around the car park and bin store.

6.4.3. Initially the number of trees proposed for this application was 4 and it was unclear on the plan regarding shrubs and hedge planting. The applicant has agreed to increase this and now proposes 21 trees on the site: 5 small trees on the western edge of the main parking area, 1 small tree in the southeastern corner of the main parking area by the bin store and the remaining 15 along the northern boundary. In addition to this the proposed shrub area around the car park have been clearly labelled. In comparison with the approved scheme there would be a loss of some hedges at the southern end of the car park and around the bin store. A tree is proposed to be located by the bin store in the new layout which is considered acceptable as an alternative form of screening.

6.4.4. As constructed, the development has included planting along the southern elevation which would be removed by the proposed plans. As stated above a detailed Landscaping Plan and Schedule would be secured by condition which would be expected to replace this loss of planting and provide suitable planting at the eastern boundary to aid in the transition to the open countryside.

6.4.5. The reinstatement of the tree planting and soft landscaping within the scheme would represent good design, ensure a high level of residential amenity and protect biodiversity. For the above reasons the development would accord with Policies DM 29 and DM 28 of the Local Plan.

#### Extension of Communal Amenity Area

6.4.6. Changes to the fencing are proposed to allow for additional residential amenity space for Selby House. The expanded area of communal garden would be outside of the Teynham built up area boundary.

- 6.4.7. The original permission (ref. 19/506271/FULL) establishes the principle of residential development at the site within the Teynham built-up area boundary. However, the Local Plan 2017 does recognise that the line between consolidated areas of built development and open countryside may not always be clear cut and judgements on a case-by-case basis may sometimes need to be made. The Teynham built-up area boundary bisects the site. A 1.2 metre rail and post fence was added during the course of the original application, along the built-up area boundary line, with no gate, restricting access for residents to this part of the site. Presumably, although it is not stated explicitly in the delegated report, this was to protect the character of the open countryside outside of the Teynham's built-up area boundary.
- 6.4.8. Following the grant of permission for the application 19/506271/FULL, the fencing was erected in a different location, at a different height and a different style to that approved. Fences were built between the north side elevation of Selby House to the northern boundary in line with the front elevation and from the southern side elevation of Selby House to the southern boundary. This was 1.8m instead of 1.2m in height and close-boarded rather than post and rail and includes a gate in the southern fence giving access to residents to this wider area of the site, outside of the Teynham built-up area boundary.
- 6.4.9. This S73 application proposes to regularise the changes to fencing and allow for the use of this land as a communal garden for the residents of Selby House and provide a path along the side of the block to the eastern boundary of the site.
- 6.4.10. Currently, this land has not been landscaped since construction and still has a very undeveloped countryside character. It may have been left in this state while awaiting this planning decision. Landscaping as communal garden would result in this area of land becoming much more domestic in comparison to its current verdant appearance. To ensure there is an appropriate transition to the countryside a detailed Landscaping Plan and Schedule is recommended to be secured by condition which would be stipulated to provide suitable planting and boundary treatment at the eastern boundary.
- 6.4.11. Taking the above into account the application is considered to be acceptable in terms of its landscape impact and is as such considered to accord with policies ST3, DM 28 and DM29 of the Local Plan 2017 and the NPPF.

## **6.5. Transport & Highways**

- 6.5.1. The NPPF promotes sustainable patterns of development and expects land use and transport planning to work in parallel to deliver this.
- 6.5.2. Local Plan Policies CP 2 and DM 6 promote sustainable transport through utilising good design principles. Policy DM 6 of the Local Plan sets out that where highway capacity is exceeded and/ or safety standards are compromised proposals will need to mitigate harm.
- 6.5.3. The car park proposes tarmac instead of permeable block paving, a change to the layout and number of car parking spaces and the installation of 6 EV charging points to be included in the main parking area outside of Selby House.
- 6.5.4. The car park serves the 8 flats within Old Squash Courts (6 x 2 bed and 2 x 1 bed) to the south in addition to the 6 flats in Selby House (4 x 2 bed and 2 x 1 bed).
- 6.5.5. The original application proposed 20 resident car parking spaces and two visitor car parking spaces however this was measured inaccurately on the plans and it was found that this number of car parking spaces could not be accommodated. To regularise this, it is proposed to reduce the proposed number of car parking spaces to 17 resident and 3 visitor spaces.

- 6.5.6. Appendix A of SBC Parking Standards sets out the residential car parking standards. For 1 & 2 bed flats the minimum requirement is 1 space per unit and 0.2 visitor spaces per unit. The 14 flats of Selby House and the Old Squash Courts would require a minimum of 14 resident and 3 visitor car parking spaces. The proposed 17 resident and 3 visitor spaces proposed would still exceed the policy requirement by 3 resident spaces.
- 6.5.7. Following KCC Highways objections, the applicant has agreed to include 6 EV charge points in the main car parking area which would be able to serve 12 vehicles concurrently and the cables would be able to extend to reach all the spaces in the main car park. KCC Highways are satisfied with the proposed EV charging points.
- 6.5.8. The proposed bin store would be in a similar position and slightly more accessible to the bin store in the original application. The most recent Site Layout Plan ref. 500/HDH/003/G accurately shows the size of the bins in the store.
- 6.5.9. The cycle store would be relocated further east in the space between the southern side elevation of Selby House and the southern boundary and would provide spaces for 12 bicycles with 6 Sheffield stands, the same number as originally approved.
- 6.5.10. The proposed footpath to the eastern boundary of the site was intended to link with a proposed housing development on the neighbouring site. Bollards and a keep clear yellow hatched area was added to the plans during the course of this application to ensure this route was not blocked by parked vehicles. The neighbouring housing development has since been refused permission (planning ref. 21/505096/FULL). One of the refusal reasons for this application was that the proposed pedestrian link leading straight into the parking area with no pedestrian segregation from vehicles through the car park to Lower Road would be “convoluted, poor-quality, inconvenient for wheelchairs, cyclists and prams and be unsafe”. The route has not been removed from the current proposal. However, this proposed path to the eastern boundary in this application would end at the boundary of the application site which is edge of a field. Whilst it is acknowledged the continuation of the path to the boundary serves no real purpose, it would not introduce a new through route and would not result in harm to the appearance of the wider landscape or the highway and therefore no objection is raised in this regard.
- 6.5.11. The proposed changes to the type of hardstanding used for the car park, the layout and number of car parking spaces proposed, the inclusion of 6 EV charging points, relocated cycle store and path are considered acceptable in highways terms in accordance with Local Plan Policies CP 2 and DM 6 and the SBC Parking Standards.

## **6.6. Living Conditions**

- 6.6.1. The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers.

### Residential Block

- 6.6.2. The residential block has been built in accordance with the approved plans. As such the conclusions of the original delegated report remain relevant. This building was designed with an acceptable spacing between both existing and proposed dwellings, no new issues of privacy or overlooking would be engendered by approving this proposal, and any potential impacts to residential amenity would be minor and acceptable.

### Communal Amenity Space

- 6.6.3. The proposed communal outdoor space granted by the original permission was limited to the areas north and south of Selby House with the area to the east of Selby House fenced off. Tree planting would restrict the use of the area to the north and use of the tight area to the south is more functional serving the bin and cycle stores.
- 6.6.4. The proposal would utilise the eastern part of the site for a communal garden for Selby House residents. Even with the proposed pedestrian path using up some of this space, this would represent a significant uplift in green, open amenity space for residents of Selby House representing an appropriate amount for the 6 dwellings.

### Noise

- 6.6.5. An acoustic fence was proposed in the original application along the northern boundary to mitigate for train noise disturbance. This was not erected and when this application was initially submitted it was proposed to remove the condition from the original application that secured this. During the course of the application the applicants have agreed to reinstate a 2-metre high acoustic fence along the northern boundary and a small section of the eastern boundary at the northeastern corner of the site.
- 6.6.6. In conclusion, in relation to living conditions of existing and future residents the application complies with Local Plan Policy DM14.

## **6.7. Flood Risk, Drainage and Surface Water**

- 6.7.1. The NPPF states that local planning authorities should ensure that flood risk is not increased elsewhere and that any residual risk can be safely managed. This is reflected in Policy DM21 of the Local Plan.
- 6.7.2. The original application permitted the car park to be laid in permeable block paving. As stated above it was built out in tarmac with drainage to two onsite soakaways. No justification that this change is acceptable in terms of flooding and surface water drainage was submitted with the application.
- 6.7.3. As such a condition requiring a surface water drainage scheme is recommended to be secured on the permission.
- 6.7.4. Subject to satisfactory drainage details secured by condition, the proposals accord with Local Plan Policies CP7, DM21 and DM23.

## **6.8. Conclusion**

- 6.8.1. The starting point for determining the application is the Development Plan, Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004 are clear that planning applications must be determined in accordance with the Statutory Development Plan unless material considerations indicate otherwise.
- 6.8.2. The proposal would regularise the landscaping and car parking of the proposed scheme which was not built out in accordance with the approved details of planning permission ref. 19/506271/FULL. The use of the wider site, outside of Teynham's built up area boundary, for residential amenity space, is considered acceptable on balance. This would provide a significant area of green amenity space for the residents of Selby House and landscaped appropriately would form a suitable transition to the countryside. The approved tree/shrub planting and acoustic fence secured under planning permission ref. 19/506271/FULL would

be reinstated with some minor changes as shown on the plans. The proposed car parking, electric vehicle charging points and cycle parking would comply with SBC standards. Subject to the recommended conditions this application would comply with the Policies in the Local Plan and NPPF.

## 6.9. Recommendation

### 6.9.1. Grant subject to conditions.

#### CONDITIONS

- (1) The development hereby permitted shall be carried out in complete accordance with the following drawings; 19/797/01A; 500/HDH/003/G; and 19/797/03.

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

- (2) No work in connection with the development herein approved shall take place on any Sunday or Public Holiday, nor on any other day except between the following times: Monday to Friday 0730 - 1900 hours, Saturdays 0730 - 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interests of residential amenity.

Within a month from the date of this decision notice, details demonstrating how the flats have been 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) must be submitted to and approved in writing by the Local Planning Authority .

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

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

- (4) Within a month from the date of this decision notice, details demonstrating how the flats have been constructed and tested to achieve a water consumption rate of no more than 110 litres per person per day, must be submitted to and approved in writing by the Local Planning Authority. The development shall be maintained in accordance with the approved details.

Reason: In the interests of water conservation and sustainability.

- (5) The areas shown on the approved drawing 500/HDH/003/G as car parking spaces 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 (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 the flats hereby permitted.

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

- (6) Within a month of the date of this decision notice, details of the electric vehicle charging points shown on approved drawing 500/HDH/003/G, alongside a timetable for their



installation, must be submitted to and approved in writing by the Local Planning Authority for their approval.

The electric vehicle charging points shall be installed in accordance with the approved details and timetable and shall be maintained thereafter.

Reason: In the interest of promoting sustainable forms of transport.

- (7) The cycle storage built out and shown on approved drawing 500/HDH/003/G must remain on site and available for use in perpetuity.

Reason: In the interests of promoting sustainable modes of transport.

- (8) Within a month of the date of this decision notice, details of the 2-metre high acoustic fence shown on approved drawing 500/HDH/003/G, alongside a timetable for its installation, must be submitted to and approved in writing by the Local Planning Authority.

The acoustic fence shall be installed in accordance with the approved details and timetable and shall be maintained thereafter.

Reason: In the interests of residential amenity.

- (9) Within one month of the date of this decision notice, a detailed Landscaping Plan and Schedule for the hard and soft landscape works as shown on drawing 500/HDH/003/G, alongside a timetable for its implementation, must be submitted to and approved in writing by the Local Planning Authority.

The soft landscaping proposal shall include native planting and boundary treatment to be located along the eastern boundary.

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

Reason: In the interests of the visual amenities of the area and provide a suitable transition to the countryside.

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

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

- (11) Within a month of the date of this decision notice, a Surface Water Drainage Scheme, alongside a timetable for its implementation, must be submitted to and approved in writing by the Local Planning Authority.

and the Surface Water Drainage Scheme shall be installed in accordance with the approved details and timetable and maintained thereafter.

Reason: To mitigate flood risk and provide adequate surface water drainage.

- (12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order with or without modification) no development shall be carried out within Schedule 2, Part 2, Class A of that Order unless planning permission has been granted on an application relating thereto.

Reason: To enable the Local Planning Authority to control such development in the interests of visual and neighbouring amenity.



Ordnance Survey - data derived from OS Premium

23/501073/FULL - Land Rear Of The Old Squash Courts Lower Road Barrow Green Teynham ME9 9EQ

N  
Scale: 1:1000  
Printed on: 8/7/2024 at 12:15 PM by SaraP

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<b>2.2 REFERENCE NO - 23/504909/REM</b>		
<p><b>PROPOSAL</b> - Approval of Reserved Matters of access, appearance, landscaping, layout and scale for the erection of a 67-bed care home, pursuant to hybrid application 23/500857/HYBRID for - Hybrid Planning Application consisting of a: Full planning application for 84no. residential dwellings, 3no. commercial units for Class E uses, access off Love Lane, and site infrastructure. Outline Planning Application (with all matters reserved) for 70no. residential dwellings, enterprise land development (including Class E uses), a Day Nursery and a Care Home, together with open space, sports provision, and associated works.</p>		
<p><b>SITE LOCATION</b> Land At Lady Dane Farm, Love Lane, Faversham, Kent, ME13 8YN</p>		
<p><b>RECOMMENDATION</b> Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions and the completion of a deed of variation to the Section 106 agreement 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 and precise Heads of Terms as may be consequently necessary and appropriate.</p>		
<p><b>APPLICATION TYPE</b> - Reserved Matters</p>		
<p><b>REASON FOR REFERRAL TO COMMITTEE</b> The recommendation conflicts with a written representation received from the Faversham Town Council which is based upon relevant planning considerations.</p>		
<p><b>Case Officer</b> - Ben Oates</p>		
<p><b>WARD</b> Watling</p>	<p><b>PARISH/TOWN COUNCIL</b> Faversham Town</p>	<p><b>APPLICANT</b> Mr Ryan Nicholls <b>AGENT</b> DHA Planning</p>
<p><b>DATE REGISTERED</b> 07/11/2023</p>	<p><b>TARGET DATE</b> 06/02/2024</p>	
<p><b>BACKGROUND PAPERS AND INFORMATION:</b> Documents referenced in report are as follows: -</p> <ul style="list-style-type: none"> <li>- All drawings submitted.</li> <li>- All representations received.</li> <li>- Design and Access Statement dated November 2023 (uploaded on 07/11/2023).</li> <li>- Landscape Proposals - Rev D (uploaded on 19/06/2024).</li> <li>- Cover Letter dated 29/01/2024 (uploaded on 29/01/2024).</li> <li>- Transport Technical Note dated 18/10/2023 (uploaded on 27/10/2023).</li> <li>- Drainage Strategy dated 18/10/2023 (uploaded on 01/11/2023).</li> <li>- Sustainability Statement and Energy Statement dated 19/10/2023 (uploaded on 27/10/2023).</li> </ul>		

- Travel Plan dated September 2023 (uploaded on 27/10/2023.)
- Biodiversity Statement (uploaded on 18/06/2024)

The full suite of documents submitted pursuant to the above application are available via the link below: -

**INCLUDE WEB LINK**

<https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=S37009TYL4500>

**1. SITE LOCATION AND DESCRIPTION**

- 1.1. The application site is located to the eastern side of Faversham Town. It forms part of a wider development site, measuring approximately 14.5 hectares, whereby planning permission was granted for a Hybrid proposal in May 2023 (23/500857/HYBRID) for a mixed-use redevelopment of the site.
- 1.2. The care home site for which this reserved matters (RM) application relates is approximately 0.52 hectares in size and is located on the western boundary of the wider site, fronting Love Lane. The land was previously in use as farmland.
- 1.3. The site is within the built-up area boundary and forms part of the site allocation MU6 (Land at Lady Dane Farm). It is therefore not located within a countryside gap and is not within an area of designated landscape. The application site is not within or adjoining a conservation area and does not contain or adjoin a listed building.
- 1.4. The site is designated as a safeguarded area for Brickearth and within an area of potential archaeological interest. The site is also within a Site of Special Scientific Interest Impact Risk Zone, and within 2km of the Swale Ramsar and Special Protection Area.
- 1.5. The application site is surrounded by land previously used as farmland to the north, east and south, which also forms part of the wider site subject to the Hybrid planning permission. The western boundary is formed by Love Lane with post-war housing at Buttermere/Windermere. To the south is a railway line which forms a main train route from the coastal towns of Kent to London.

**2. PLANNING HISTORY**

**23/500857/HYBRID:** Granted subject to conditions - Decision Date: 26/05/2023

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

reserved) for 70no. residential dwellings, enterprise land development (including Class E uses), a Day Nursery and a Care Home, together with open space, sports provision, and associated works.

**23/504707/HYBRID:** Granted subject to conditions – Decision Date: 28/05/2024

Section 73 Application for minor material amendment to approved plans condition 6 (To improve quality of amenity space, security and safety. To increase in the amount of independently accessible parking spaces. To revise the arrangement and distribution of house sizes and types, and to amend the design of Blocks A and B) pursuant to 23/500857/HYBRID for - Hybrid Planning Application consisting of a: Full planning application for 84no. residential dwellings, 3no. commercial units for Class E uses, access off Love Lane, and site infrastructure. Outline Planning Application (with all matters reserved) for 70no. residential dwellings, enterprise land development (including Class E uses), a Day Nursery and a Care Home, together with open space, sports provision, and associated works.

**23/504754/REM:** Live application

Approval of Reserved Matters (Appearance, Landscaping, Layout and Scale being sought) for Phase Landscape 1 pursuant to application 23/500857/HYBRID for - Hybrid Planning Application consisting of a: Full planning application for 84no. residential dwellings, 3no. commercial units for Class E uses, access off Love Lane, and site infrastructure. Outline Planning Application (with all matters reserved) for 70no. residential dwellings, enterprise land development (including Class E uses), a Day Nursery and a Care Home, together with open space, sports provision, and associated works.

**21/502927/FULL:** Granted subject to conditions– 30/06/2023

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

**18/501048/REM:** Granted subject to conditions – 22/06/2018

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

**SW/14/0045:** Granted subject to conditions – 17/02/2016

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

### 3. PROPOSED DEVELOPMENT

- 3.1. Planning permission is sought for the Approval of Reserved Matters (access, appearance, landscaping, layout and scale) for the erection of a 67-bed care home, pursuant to Hybrid planning permission 23/500857/HYBRID.
- 3.2. The proposed care home is 2-storeys in height and contains a gross internal floor area of approx. 3,643.6 sqm. There will be 32 bedrooms at ground floor level and 35 bedrooms at first floor level, with approx. 380.6 sqm of internal amenity space. A reception area is provided at the ground floor whilst staff and back of house (BOH) facilities are provided at second floor roof level. Two nurses stations are provided on each floor. The ground floor bedrooms and all-day communal space areas have level access to the outdoor amenity space areas. The ground floor amenities include a café, dining areas, communal lounge areas and hair salon.
- 3.3. The ground floor provides the primary entrance for guests, residents, and staff alongside a service entrance on one of the arms of the building. There are independent entrance and exit points surrounding the building that allow for direct access to the communal gardens.
- 3.4. The layout of the proposed building is arranged in an 'H' shape whilst the roof is dual pitched with gable ended sections. The proposed materials include red multi brick together with accents of white timber style horizontal cladding to highlight the key spaces including day-spaces, their corresponding terraces and the entrance.
- 3.5. The site's access is located on the eastern boundary and gained from the new access road that will serve the wider development that was granted under the Hybrid permission. The proposal includes 27 parking spaces, including 3 accessible spaces and an emergency parking bay.
- 3.6. The proposal includes a variety of outdoor amenity space areas, including a central courtyard accessed directly from the main internal amenity area, an area of greenspace with a walking path on the eastern side of the site and a linear open space area along the western side of the site.
- 3.7. The proposal was amended during the course of the application to include the provision of additional Electric Vehicle (EV) charging points and covered cycle parking in response to the Town Council's comments. The proposed open space area to the east of the building has also been amended to accommodate additional bench seating to take advantage of its sunlight access for residents, whilst additional trees will be planted along the southern boundary of the site.
- 3.8. A revised Landscape Plan and Biodiversity Report were also provided in response to matters raised by KCC Ecology and Faversham Town Council and to clarify the position of the on-site Biodiversity Net Gain (BNG). Due to the minor nature of the revisions in the proposed landscaping and the nature of the



Biodiversity Report for clarification purposes it was considered that the information did not require a full round of consultation. However, Faversham Town Council were reconsulted.

#### 4. CONSULTATION

4.1. Two rounds of consultation have 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.

##### **First Round Responses**

4.2. Two letters of representation were received in relation to the consultation. Concerns/ comments were raised in relation to the following matters: -

<b>Comment</b>	<b>Report reference</b>
<u>Transport:</u> Concerns regarding the location of the access to the site.	This is addressed in paragraph 7.7.5
<u>Transport:</u> Concern that the proposal will generate more traffic.	This is addressed in paragraph 7.7.4
<u>Ecology:</u> Care should be taken to avoid impacts to birds nesting in the trees along Love Lane.	This is addressed in paragraph 7.9.6
<u>Flooding:</u> Concerns regarding flooding emanating from foul water sewers.	The wider development achieves an acceptable rate of surface water discharge by incorporating sustainable drainage systems, which were secured in the Hybrid permission. The proposed care home will therefore not exacerbate impacts on combined sewers that experience problems. Flooding and drainage matters are addressed in paragraph 7.10.3
<u>Utilities:</u> Concern that the existing sewer infrastructure needs to be upgraded to handle the significant increase in sewage flows generated by unprecedented housing developments, while preventing internal sewer flooding downstream.	Impacts on sewer infrastructure were considered during the Hybrid application, whereby Southern Water confirmed that foul sewerage disposal can be facilitated.

4.3. Faversham Town Council objected to the application on the following grounds: -

<b>Comment</b>	<b>Report reference/ clarification</b>
<p><u>Design:</u></p> <ul style="list-style-type: none"> <li>• The proposed design of the scheme is generic and a crude heritage parody.</li> <li>• The roof is a very dominant feature which requires very high quality materials to work.</li> <li>• There is a lack of coherence to the design due to the array of features and add-ons in an attempt to hide the scale and massing.</li> </ul>	Design matters are discussed in sections 7.4 and 7.5
<p><u>Transport:</u></p> <ul style="list-style-type: none"> <li>• Concern that there is insufficient EV charging points proposed.</li> <li>• Concern that the cycle storage for visitors is not secure or covered.</li> <li>• Concern that the proposal does not include any provision for parking of mobility scooters, large wheelchairs or adaptive cycles.</li> </ul>	Transport matters are discussed in section 7.7.
<p><u>Ecology:</u></p> <ul style="list-style-type: none"> <li>• Request Biodiversity Net Gain to be secured on site.</li> </ul>	Biodiversity Net Gain is discussed at paragraphs 7.9.7 – 7.9.10

### Second Round Responses

4.4. Two letters of representation were received in relation to the second consultation. The following additional concerns/ comments were raised in relation to the following matters:

<b>Comment</b>	<b>Report reference</b>
<p><u>Transport:</u></p> <p>Concerns that the location of the access to the site will be too close to the railway bridge.</p>	The access to the site is via the new junction from Love Lane, which was granted at the Hybrid application stage and remains unchanged. The location of this junction is further north, closer to Windermere, which is well away from the bridge.
<p><u>Ecology / Landscaping</u></p> <p>Concern that the hedgerow fronting Love Lane has been partly removed.</p>	The hedgerow fronting Love Lane is outside of the application site boundary and therefore is not a consideration in

<p>Clarification sought if the boundary fronting Love Lane is now proposed as open-plan wildflower meadow and spring bulbs.</p>	<p>this application for approval of reserved matters. However, the matter has been passed to the planning enforcement team to investigate.</p> <p>Officers can clarify that the area within the site boundary fronting Love Lane will include wildflower meadow and spring bulbs planting.</p>
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4.5. Faversham Town Council objected to the application on the following additional grounds:

Comment	Report reference / response
<p><u>Transport:</u></p> <ul style="list-style-type: none"> <li>The proposed site plan still does not include any provision for parking of mobility aids (scooters, large wheelchairs etc..) or adaptive cycles. Therefore, the proposed layout should be amended to provide sufficient provision to support residents and visitors who may have limited mobility. Given the proposed use, it is anticipated that this would be secure and covered in a convenient location close to the entrance or within the complex.</li> </ul>	<p>Due to the nature of care intended (high dependency), the applicant advises that it is unlikely that residents would be leaving the facility unaccompanied and therefore extensive mobility scooter / wheelchair storage would not be required. However, each care group has been provided with a hoist store for wheelchairs, as indicated on the submitted floor plans.</p>
<p><u>Ecology:</u></p> <ul style="list-style-type: none"> <li>Concerns of how the proposed development will deliver Biodiversity Net Gain at the levels shown in the Hybrid permission.</li> </ul>	<p>Biodiversity Net Gain is discussed at paragraph 7.9.7 – 7.9.10</p>
<p><u>Landscaping &amp; Open Space:</u></p> <ul style="list-style-type: none"> <li>Concern that the proposed 1.8m close boarded fence on the southern boundary will prevent natural surveillance.</li> <li>Concern that the location of the proposed courtyard space on the northern side of the building will be unpleasant for future occupants.</li> </ul>	<p>These matters are discussed at paragraphs 7.5.8 and 7.4.6 – 7 respectively.</p>

- 4.6. Following the receipt of a revised landscape plan and Biodiversity Statement, Faversham Town Council were reconsulted. The Town Council confirmed that they still object to the application for the reasons previously stated.

5. REPRESENTATIONS

**SBC Urban Design:** - No objection. While, initial concerns were raised regarding inconsistencies between drawings, sunlight access to the courtyard space, useability of other open space areas, and landscaping along the southern boundary.

Following receipt of revised details, the Urban Design officer advised that the applicant has set out the reasoning for the open spaces provided and set out alterations to the landscape proposals. To the east of the building trees have been rearranged to allow to accommodate additional bench seating so that this area of open space is usable for residents. Also, additional tree planting is proposed along the southern boundary of the site and between parking spaces on the southern edge. The suggested alterations would provide more functionality around the spaces and soften the southern edge of the site particularly in views from the south.

**Mid Kent Environmental Health:** - No objection. The plant compound is located on the southern boundary of the site. No details have been submitted regarding plant to be associated with the care home and no condition relating to noise has been imposed in the original Hybrid planning permission. However, the layout plan for the wider site shows business units to be located adjacent to the boundary and therefore noise is unlikely to be an issue.

**KCC Ecology:** - No objection, KCC are satisfied that no ecological surveys are required. Noted that the detailed plans demonstrate that there will be less open space within the site than suggested in the illustrative masterplan. The BNG assessment demonstrated that it was anticipated that the development will achieve a 10.06% net gain across the site. However, it is noted that there is no condition in the parent Hybrid permission that secures the BNG level from the outline stage, and due to the timing of these applications there is no statutory requirement to achieve 10% on site BNG as the statutory requirement for this only came into effect for applications submitted after 12 February 2024.

Due to the reduction in open space the revised BNG assessment has detailed that the proposal will now result in a BNG calculation of 9.94% for habitats. The anticipated BNG is just below the level indicated in the parent Hybrid application for habitat but we highlight that if managed as intended the proposal will benefit biodiversity and maintain connectivity through the site.

No information has been submitted confirming what ecological enhancements will be incorporated into the development site. KCC request that this detail is submitted prior to commencement in line with Condition 45 of the Hybrid permission.

**Lower Medway Drainage Board:** - No objections, the original surface water strategy was to collect water from land parcels and discharge into a series of swales, basins, attenuation tanks and deep bore soakaways. It is now proposed to utilise raingardens, permeable pavement, attenuation tank and catchpits.

It is noted that the use of raingardens as above ground features are easier to maintain and effectiveness improves over time. LPA to consult with any detailed matters raised in conditions relating to drainage.

**KCC SUDs:** - No objection to the determination of Reserved Matters however, would expect for further details to be provided as part of the detailed design of the wider residential development confirming that the 2 l/s from this site can be suitably accommodated within the wider site strategic network.

**KCC Highways:** - No objection, KCC are satisfied that the proposal will not present an increase in vehicle movements to that previously agreed. Vehicular access is shown to be acceptable. Parking is in line with the Council's standards and the layout is also acceptable. EV parking provision is in line with the standards also. Recommend the following are secured by condition or planning obligation:

- Construction management plan
- Parking
- EV changing facilities
- Visibility splays
- Cycle parking

**KCC PROW:** - No objection, public Footpath ZF28 passes through the centre of the overall proposed development of the wider site, to the north of this application site and west towards the centre of Faversham including the railway station. The proposed development will result in an increase in use of the footpath as an active travel route to other areas of Faversham and the wider countryside, as well as existing residents of the town accessing the facilities of care home, etc. proposed as part of this application.

Public Footpath ZF28 to the north is being addressed through application 23/500857/HYBRID to create a high quality, open, attractive, and safe to use route. As part of that application KCC PROW & Access requested developer contributions for wider network improvements which were secured by s106 when planning permission was granted.

KCC PROW & Access have suggested that developer contributions should be secured from this application.

**Kent Police:** - Noted that the applicant is applying secure by design guidance to the proposal.

**Climate Change:** - No objection, this application meets the needs of DM19 and DM21 of the SBC Local Plan and Parking SPD. The care home will be all electric with no use of gas. Solar PV and ASHPs will be used giving an extra 5% Emissions reduction over Building Regs and achieving BREEAM "very good". Water consumption will be in the range 75 - 95 lpppd, lower than the 110 in DM21. 4 live EV charge points will be installed for 27 parking places. The spaces without live points will be future proofed.

## 6. DEVELOPMENT PLAN POLICIES

### 6.1. **Bearing Fruits 2031: The Swale Borough Council Local Plan 2017 (the Local Plan):**

**ST1** Delivering sustainable development in Swale

**ST7** The Faversham Area and Kent Downs strategy

**CP2** Promoting sustainable transport

**CP3** Delivering a wide choice of high-quality homes

**CP4** Requiring good design

**CP5** Health and wellbeing

**CP7** Conserving and enhancing the natural environment – providing for green infrastructure

**DM6** Managing transport demand and impact

**DM7** Vehicle parking

**DM14** General development criteria

**DM19** Sustainable design and construction

**DM21** Water, flooding, and drainage

**DM24** Landscape

**DM28** Biodiversity and geological conservation

**DM29** Woodlands and Trees

**MU6** Land at Lady Dane Farm, east of Love Lane

### **Kent Minerals and Waste Local Plan 2013-30**

#### **Supplementary Planning Guidance/Documents:**

- Parking Standards (2020)

#### **Neighbourhood Plans:**

##### Draft Faversham Neighbourhood Plan

- 6.2. The draft Faversham Neighbourhood Plan was submitted for Examination in November 2023 and the Council received the Examiner's report on 25<sup>th</sup> April 2024. The Examiner's report recommended that the Faversham Neighbourhood Plan 2023 - 2038 has been duly prepared in compliance with the procedural requirements and that the Plan, subject to a number of modifications, meets the Basic Conditions and should proceed to referendum.

- 6.3. Swale Borough Council has considered the contents of the Examiner's Report and have released a 'Decision Statement' under Regulation 18 setting out the actions to be taken in response to the recommendations of the Examiner. The Decision Statement confirms that the Faversham Neighbourhood Plan Review, with modifications, can proceed to referendum.
- 6.4. Paragraph 48 of the NPPF states that local planning authorities may give weight to relevant policies in emerging plans according to:
- the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
  - the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
  - the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).
- 6.5. Given the Examiner's most recent report and largely positive response, and the Decision Statement released by the Council, officers consider that considerable weight can be afforded to the draft Faversham Neighbourhood Plan subject to the list of Examiner's Recommended Modifications and Swale Borough Council Responses.
- 6.6. Relevant Policies
- FAV4:** Mobility and Sustainable Transport  
**FAV5:** Critical Road Junctions  
**FAV6:** Footpaths, Bridleways and Cycleways  
**FAV7:** Natural Environment and Landscape  
**FAV8:** Flooding and Surface Water  
**FAV9:** Air Quality  
**FAV10:** Sustainable Design and Character

## 7. ASSESSMENT

- 7.1. This application is reported to the Committee because the Faversham Town Council has objected to the proposal. Considering these comments, the committee is recommended to carefully consider the following points:
- Design
  - Landscaping
  - Car Parking
  - Ecology
- 7.2. The main considerations involved in the assessment of the application are the Reserved Matters of access, appearance, landscaping, layout and scale which are considered under the following sections:
- Landscape and Visual

- Character and Appearance
- Living Conditions
- Transport and highways

This report also reviews the following matters which were substantively addressed at Hybrid stage:

- The Principle of Development (including Loss of Agricultural Land)
- Open Space, Sports and Recreation Provision
- Ecology / Biodiversity
- Flood Risk, Drainage and Surface Water
- Minerals
- Affordable Housing
- Sustainability / Energy
- Contamination
- Air Quality
- Archaeology
- Community Infrastructure

### **7.3. Principle**

- 7.3.1. 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.
- 7.3.2. 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 favour of sustainable development and for decision-taking this means approving development that accords with the development plan.
- 7.3.3. The principle of the development including the loss of agricultural land and the provision of a care home on the application site has been established by the grant of Hybrid planning permission under application reference 23/500857/HYBRID. The care home was included within the part of the development granted Hybrid planning permission. The Planning Committee considered that the Hybrid stage proposal was acceptable subject to conditions and the submission of satisfactory details of Reserved Matters.

### **7.4. Landscape and Visual**

- 7.4.1. The NPPF requires decisions to ensure that development is '*sympathetic to... landscape setting*'. The application site is part of the wider site allocation MU6, (Land at Lady Dane Farm) and as such the landscape and visual impacts have been considered at both the local plan and outline stage.



- 7.4.2. The land within the boundary and surrounding it was previously used as farmland but is currently vacant awaiting redevelopment. The western boundary of the application site adjoins an existing residential area of Faversham. The site does not contain any significant trees, however there is a line of trees in front of the site running along Love Lane. The land gently slopes downward towards the north-east of the site. To the south is a railway line, which is sunken into the ground and screened by trees.
- 7.4.3. The Hybrid application was supported by a Landscape Visual Impact Assessment, which set out the following principles relevant to this specific part of the site:
- Ensure development is located away from root protection areas, with the taller and larger massing adjacent to Love Lane and the railway corridor rather than at the eastern edge of the site
  - Reinforce existing boundary vegetation with new planting to aid in softening views of the proposed development from close range locations; and
  - Implement new planting across the site to increase the vegetation cover and opportunities for biodiversity, along with reinforcing the existing vegetation patterns across the site where practicable.
- 7.4.4. The proposal aligns with the established principles set out in the Hybrid application and sets the building back from the retained trees alongside Love Lane. The Committee Report for the Hybrid application did not raise any issues in regard to impacts on trees subject to a landscaping details condition, which remains a requirement for approval prior to construction above damp course of any relevant phase.
- 7.4.5. The proposed landscaping approach focusses upon the provision of a central courtyard space that involves a series of raised planted beds and sensory planting, bench seating and other features that increase visual interest. Areas of soft landscape including shrub planting and hedging are arranged around the building to soften the building facades and to also allow for smaller areas of private amenity for the ground floor bedrooms. The wider site includes a wildflower meadow to the northern side of the access into the site and along the western boundary between the building and Love Lane. The boundary treatment around the rest of the site comprises hedgerow and non-thorny native planting.
- 7.4.6. The proposed landscape design was revised during the application to address comments made by the Council's Urban Design officer. This included rearranging the trees to the east of the building to accommodate additional bench seating so that this area of open space is more usable for residents. Also, additional tree planting is proposed along the southern boundary of the site and between parking spaces on the southern edge. These alterations

provide more functionality around the spaces and soften the southern edge of the site particularly in views from the south.

- 7.4.7. The applicant also provided further justification for the layout and location of the central courtyard, citing that the care home operator prefers this layout to avoid risks to residents of skin burn and overheating within this space, which is based on their experience with other care homes around the country. The revised layout also provides more usability of the other open space areas on site for residents to gain sunlight access. The Urban Design officer advises that this is an acceptable approach and is satisfied that the initial concerns raised have been addressed in this regard.
- 7.4.8. It is considered that the proposals would protect the landscape character of the area, and the proposed soft landscaping will serve to soften the impact and improve the setting of the development. Officers consider the proposal accords with the requirements of policies ST7, CP4, CP7, DM24 and DM29 of the Local Plan, policy FAV7 of the draft Faversham Neighbourhood Plan and relevant provisions of the NPPF, in so far as they have regard to matters of landscape visual impact.

## **7.5. Character and appearance**

- 7.5.1. The National Planning Policy Framework attaches great importance to the design of the built environment and that design should contribute positively to making places better for people. The Local Plan reinforces this requirement.
- 7.5.2. The site gains access on its eastern boundary via a new road off Love Lane, which was approved as part of the detailed element of the Hybrid application. The proposed layout of the building also largely reflects that illustrated in the Hybrid permission, being a 'H' shape building. However, the car park has been relocated from the eastern boundary by the main access point to the southern boundary to better facilitate access to the main building entrance, which is centrally located along the southern façade.
- 7.5.3. The Committee report for the Hybrid permission notes that a character study was undertaken in the design of the proposal. This identified several key characteristics of the area, including the use of facing buff and red brickwork, brick banding and arches and weatherboarding. It also identified an emphasis on well-proportioned wide fronted dwellings, a variety of roof forms with low eaves, secondary gables, hipped roofs, and dormer windows. Typical building scales range from 1 to 3 storeys.
- 7.5.4. The Design and Access Statement (DAS) submitted with this application explores the local architecture further to get a sense of the style and understand how the care home design could appear within the local vernacular. This explored the characteristics of red brick buildings with complements of white timber, along with statement chimneys and interesting brick details as a nod to the historic brewery buildings within Faversham.

- 7.5.5. The proposed design incorporates features identified in the character studies, including the use of large, hipped roof forms with gable ends and expressive gable features along elevations that highlight building entrances and day spaces. The proposal establishes a mass which correlates to the floor plans and sits comfortably within the site and surrounding context.
- 7.5.6. The predominant material used is red multi brick with a secondary material of white timber style horizontal cladding, which is used on the main entrance gable and the two gables of the day spaces with terraces. This helps to break up the elevation visually and improve legibility. The detailing of the red multi brick reflects the architecture of old breweries within Faversham, with the horizontal bands of soldier coursing along the elevations to accentuate horizontality and define floor levels. Arched brick details above the windows add subtle elements of visual interest.
- 7.5.7. Condition 15 of the Hybrid permission secures details of external finishing materials, as such no additional conditions are required.
- 7.5.8. Faversham Town Council raised a concern of the close boarded fence along the southern boundary of the site restricting surveillance. However, the car park on site will be overlooked by the windows of the proposed building and the neighbouring site has outline permission for business enterprise as part of the Hybrid permission.
- 7.5.9. The proposed development is considered to be well designed and contains materials and features that reflect the character of the area. The proposal will make a positive contribution to the appearance of the wider development site and is an appropriate response to the site's context, which would ensure that the development integrates well with its surroundings. Accordingly, it is considered that the proposal will enrich the character of the area in accordance with Policies ST7, CP4, and DM14 of the Local Plan, Policy FAV10 of the draft Faversham Neighbourhood Plan and the NPPF, in so far as they have regard to matters of layout, design and character.

## **7.6. Living Conditions**

### *Existing residents*

- 7.6.1. The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers.
- 7.6.2. The layout of the proposed scheme is broadly comparable to the indicative layout approved at Hybrid 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.

- 7.6.3. The Environmental Health officer notes that there is a plant compound proposed adjoining the southern boundary. However, the layout plan for the wider site shows there to be business units located adjacent to the boundary and therefore noise is unlikely to be an issue. Furthermore, noise and disturbance was not identified as a concern at Hybrid stage and in view of the nature of the proposal it should not give rise to undue noise and disturbance.

*Future residents*

- 7.6.4. New development is expected to offer future occupiers a sufficient standard of accommodation.
- 7.6.5. The floor plans indicate that the proposed care home would provide functional layouts with adequate space for furnishings within each unit. The proposal also includes a generous provision of internal communal amenity space on each floor, which are also well laid out. All habitable spaces are also provided with pleasant outlook into the gardens and outdoor communal areas. In this regard the proposal is considered to provide a good standard of accommodation for future occupiers.
- 7.6.6. The layout of the development is also considered to provide sufficient external amenity space to serve future occupants. The proposed open space was revised during the application in response to comments from the Urban Design officer regarding the location of the central courtyard on the northern side of the building. The applicant provided justification for this as set out above. The revised layout also provides more usability of the other open space areas on site for residents to gain sunlight access. The Urban Design officer advises that this is an acceptable approach and raises no further objection in this regard.
- 7.6.7. Refuse storage would be accommodated out of sight within a dedicated bin store adjoining the proposed servicing bay, which will facilitate direct access for collection by servicing vehicles.
- 7.6.8. 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 Policy DM14 of the Local Plan, Policy FAV10 of the draft Faversham Neighbourhood Plan and the NPPF.

**7.7. Transport and Highways**

- 7.7.1. 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.”*

- 7.7.2. The NPPF also states that:  
*“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”*
- 7.7.3. Local Plan policy promotes sustainable transport through utilising good design principles. It sets out that where highway capacity is exceeded and/ or safety standards are compromised proposals will need to mitigate harm.
- 7.7.4. A detailed Transport Assessment was submitted with the Hybrid application to which the trip generation and development impact of the care home were assessed and demonstrated to be appropriate. The care home has been reduced from 80 bedrooms outlined in the Hybrid application to 67 bedrooms. Given the network assessments were based on a care home larger than that presented in this Reserved Matters application, the proposals will not present an increase in vehicle movements to that previously agreed.
- 7.7.5. Access will be achieved via the southern access point from Love Lane, which has been approved in detail as part of the Hybrid planning permission and will be provided in accordance with that permission. Vehicular access to the care home will be achieved via a standard priority junction with the development spine road and it has been demonstrated how visibility splays of 2.4 metres by 43 metres can be provided within land owned by the applicant.
- 7.7.6. A 3.0m wide shared footway / cycleway will be implemented on the southern side of the spine road from the southern access and will link into a 1.2m wide footway to continue to the care home entrance.
- 7.7.7. The applicant has provided swept path drawings demonstrating how the care home will be serviced based on an 11.4m waste freighter and fire tender. The drawings provided show sufficient turning space within the car park to enable service vehicles to turn to egress in a forward gear and a dedicated refuse store is shown to be located on the southern edge of the site, which meets the requirements for refuse drag distancing.
- 7.7.8. A total of 27 parking spaces are to be provided which is in accordance with the Swale Borough Council parking standards. 15 spaces are to be provided for staff at a ratio of 1 per 2 staff, with the remainder of the spaces available for residents and visitors. It is appreciated that the facility will employ a total of 60 full time staff however only 30 members of staff will be on the premises at any one time taking into account shifts. The layout of the car park is in accordance with the parking standards and there are three mobility impaired

parking bays located near to the entrance alongside an emergency vehicle bay.

- 7.7.9. The proposal provides 4 active EV charging points with all remaining bays provided with passive charging infrastructure to enable future provision as demand increases. This accords with SBC's parking standards.
- 7.7.10. In response to comments from the Town Council, the capacity of the covered cycle store was increased from 8no. cycles in the original proposal to 12no. to allow for an increased capacity of bike storage for use by staff and visitors. The cycle stands for guests that were originally located adjacent to the entrance of the building have subsequently been removed so that all cycle parking is safe and secure.
- 7.7.11. The KCC Highways officer advises that no objections are raised in regard to the proposal subject to securing conditions for details to be submitted of a Construction Management Plan (CMP), vehicle parking, electric vehicle charging points, visibility splays and cycle parking provision. However, Conditions 18 (CMP), 22 (Parking), 24 (Highways works including visibility splays) and 23 (Cycle Parking) of the parent Hybrid consent already secure these matters. As such, the recommended conditions have not been included except for the electric vehicle charging points conditions, which has been included accordingly (Condition 2).
- 7.7.12. The proposed Reserved Matters are considered acceptable in highways terms and are therefore in accordance with the provisions of policies DM 6 and DM 7 of the Local Plan, policies FAV4, FAV5 and FAV6 of the draft Faversham Neighbourhood Plan and the NPPF.

## **7.8. Open Space**

- 7.8.1. Policy DM17 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.
- 7.8.2. The development that was granted Hybrid planning permission (ref: 23/500857/HYBRID) met the threshold for triggering the provision of open space, primarily due to the number of residential dwellings proposed. In the committee report relating to the Hybrid application, officers acknowledged that the development formed part of the MU6 allocation set out in the Local Plan and that cumulatively the development of the MU6 site would provide a total of 438 dwellings. Officers identified that on this basis, the public open space

provision across the MU6 site totalled 6ha and that this broadly complied with the Local Plan requirements.

- 7.8.3. The level of open space provided for this site is appropriate for the particular use for a care home. Accordingly, the proposal is considered acceptable in relation to open space and therefore in compliance with Policy DM17 of the Local Plan and the NPPF.

## **7.9. Ecology**

- 7.9.1. 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 CP7 and DM28 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.
- 7.9.2. An Appropriate Assessment was carried out at Hybrid stage and adopted by the Council as the Competent Authority, which concluded that the proposed development will not adversely affect the integrity of the Swale Special Protection Area and Ramsar site subject to securing appropriate mitigation through a SAMMS payment. Accordingly, a payment of £48,363.37 (index linked) was secured through the Section 106 agreement attached to the Hybrid planning permission.
- 7.9.3. 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.'
- 7.9.4. 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".

- 7.9.5. In terms of the Local Plan Policy DM28 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.
- 7.9.6. The Hybrid application was accompanied by an Ecological Assessment, which was reviewed by the KCC Ecology team who raised no objections to the proposal subject to conditions to secure ecological mitigation and enhancement measures, mitigation of impacts from lighting, and a habitat creation, management and monitoring plan. These conditions were secured accordingly (Conditions 45, 46 and 47). Condition 45 in particular requires details of ecological mitigation and enhancement, which will identify measures to prevent nesting birds from potential harm.
- 7.9.7. KCC Ecology have reviewed this application and initially raised concern that there could be less open space within the site than indicated in the illustrative masterplan approved in the Hybrid application and that consequentially the Biodiversity Net Gain (BNG) level could be lower. The BNG assessment approved in the Hybrid application demonstrated that the development could achieve an anticipated 10.06% net gain across the wider site. However, this was based on the outline level of detail for the care home part of the site. Officers note that the main difference of the approved layout to the proposed layout is that the location of the car park is located on the southern side of the site as opposed to the eastern side.
- 7.9.8. In response to the concerns raised by KCC Ecology and Faversham Town Council, the applicant provided a revised Landscape Plan and Biodiversity Report. The more detailed design for the care home resulted in a lower BNG, which the applicant advised was initially calculated at approximately 9.7%. However, following officer's encouragement to improve on that, the applicant then revised the landscaping to bring the BNG up to 9.94%, which is only marginally lower than that for the outline stage.
- 7.9.9. It is important to note that due to the timings of these applications there is no statutory requirement to achieve 10% on site BNG as the statutory requirement for this only came into effect for applications submitted after 12 February 2024. Furthermore, there is no condition in the Hybrid permission that secures the BNG level from the outline stage. KCC Ecology have reviewed the revised documents and note that the anticipated BNG is just under 10%, however they highlight that if managed as intended the proposal



will benefit biodiversity and maintain connectivity through the site. As such, officers consider that the proposal provides an acceptable amount of on-site BNG that will positively contribute to wider development site in accordance with the relevant policies.

- 7.9.10. KCC Ecology also advise the BNG assessment has detailed that the grassland within the care home will be managed as Tussocky Grassland but the landscaping plan details that the grassland will be managed as a wildflower meadow with mown paths through it. The contradiction has been considered in terms of whether it will impact the BNG assessment and it is concluded that it would not significantly affect the conclusion of the BNG assessment.
- 7.9.11. KCC Ecology have suggested that there is a risk that residents may not utilise the mown paths due to the nature of the care home use and the paths may be changed to hard standing in the future. However, the landscaping design (including the mown grass paths) will be secured by this application and is further secured in greater detail by Conditions 31, 45 and 46 of the Hybrid permission. As such, any future changes to the Landscaping design would require permission from the Local Planning Authority.
- 7.9.12. KCC Ecology further advise that, where possible, they would encourage the location of the mown path to be slightly moved each year to enable the majority of grasses within the meadow areas to grow and set seed at least once each 2-3 years as this will benefit the diversity of the grassland. Although, they understand that there are limits as to how much the path can be moved due to the intention to include seats in the grassland area. KCC Ecology advise that that this matter can be addressed within the habitat creation, management and monitoring plan required as part of condition 46 of 23/500857/HYBRID. Officers agree with this approach.
- 7.9.13. KCC Ecology also note that no information has been submitted regarding the ecological enhancements to be incorporated into the development site, however, acknowledge that this detail is required to be submitted prior to commencement in line with Condition 45 of the Hybrid permission.
- 7.9.14. Having regard to the Hybrid permission it is considered that the proposed development is acceptable in terms of ecology and biodiversity in accordance with Local Plan Policies CP7 and DM28 of the Local Plan, Policy FAV7 of the draft Faversham Neighbourhood Plan and the NPPF.

## **7.10. Flood Risk, Drainage and Surface Water**

- 7.10.1. The NPPF states that local planning authorities should ensure that flood risk is not increased elsewhere and that any residual risk can be safely managed. This is reflected in Policy DM21 of the Local Plan.
- 7.10.2. The Hybrid stage proposal was considered acceptable in terms of flood risk, drainage and surface water subject to conditions 34, 35, 36 and 37, which secured details of a surface water drainage scheme and its implementation. A Drainage Strategy has also been provided in support of this application for Reserved Matters regarding the proposed care home.
- 7.10.3. KCC Flood and Water Management as Lead Local Flood Authority (LLFA) have raised no objections to the Reserved Matters application, noting that surface water will be discharged at up to 2 l/s into the wider site strategic network, where it will subsequently infiltrate downstream within this network. Permeable paving, rain gardens and a geocellular tank will provide attenuation and source control pollution mitigation within this site. The LLFA also set out their expectation for the same standard from the wider residential development, which will be secured through the relevant phases as they come forward.
- 7.10.4. The Lower Medway Internal Drainage Board advise that the development does not impact on the Board's interests, and as such has no comment to make in respect of access, appearance, landscaping, layout and scale. They note that there is a change in how surface water is to be drained off site, resulting in a downwards shift in the drainage hierarchy. However, the LLFA have not raised concerns with regard to this matter.
- 7.10.5. 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 DM21 of the Local Plan, Policy FAV8 of the draft Faversham Neighbourhood Plan and the NPPF.

## **7.11. Minerals**

- 7.11.1. The site contains safeguarded deposits of brickearth as identified in the Kent Minerals and Waste Local Plan. A Minerals Safeguarding Assessment was provided as part of the Hybrid application, which concludes that prior extraction of the resource would not be viable or practical when factoring in the required buffer zones.
- 7.11.2. The committee report for the Hybrid application notes that KCC Minerals and Waste were consulted on the application and found no objection to the proposal. KCC Minerals and Waste also advised that they have no objections to this application for approval of Reserved Matters. The proposal would

therefore not compromise safeguarded minerals in accordance with Policy DM8 of the Kent Minerals and Waste Local Plan 2013-30.

### **7.12. Affordable Housing**

- 7.12.1. The NPPF sets out the requirement for setting appropriate affordable housing levels for new development based on up-to-date evidence.
- 7.12.2. The Section 106 agreement relating to the Hybrid permission secured 35% affordable housing, which would equate to 54 units. This application for approval of Reserved Matters only regards the proposed care home and therefore does not affect the provision of affordable housing secured in the Hybrid permission. As such, the delivery of affordable housing remains in accordance with Local Plan Policy DM8 and the NPPF.

### **7.13. Sustainability / Energy**

- 7.13.1. Policy DM19 of the Local Plan requires development proposals to include measures to address climate change.
- 7.13.2. Details of energy efficiency measures were only provided for the detailed part of the application during the Hybrid application. For the approval of Reserved Matters for the proposed care home a Sustainability Statement and Energy Statement have been provided.
- 7.13.3. The details indicate that the proposed care home will be all electric with no use of gas. Solar PV and air source heat pumps (ASHPs) will be used giving an extra 5% emissions reduction over Building Regulations and achieving BREEAM "very good". Water consumption will be in the range 75 - 95 lpppd, lower than the 110 set out in Policy DM21 of the Local Plan. The proposal also provides four electric vehicle (EV) charge points with the remaining spaces provided with passive provision to allow for future EV charging points to be installed. The Council's Climate Change officer has reviewed the proposal and advises that it is acceptable.
- 7.13.4. Condition 9 of the Hybrid permission requires the submission of details of sustainable construction techniques including water conservation and recycling, renewable energy production and energy efficiency for each phase of the development. 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 Policies DM19 and DM21 of the Local Plan, the Parking SPD and the NPPF.

#### **7.14. Contamination**

- 7.14.1. The NPPF states that local planning authorities should ensure that the site is suitable for its new use taking account of various matters, including pollution arising from previous uses.
- 7.14.2. The Hybrid stage proposal was considered acceptable in relation to contamination as there was no obvious contamination issue related to the site other than in connection with the agricultural use. Pre-commencement conditions were considered sufficient to ensure that development would provide safe habitable residential accommodation. These conditions were included accordingly in the Hybrid permission (Conditions 38, 39, 40, 41 and 42).
- 7.14.3. Accordingly, the proposals are considered acceptable in relation to contamination and are therefore in accordance with the NPPF.

#### **7.15. Air Quality**

- 7.15.1. The importance of improving air quality in areas of the borough has become increasingly apparent over recent years. Legislation has been introduced at a European level and a national level in the past decade with the aim of protecting human health and the environment by avoiding, reducing or preventing harmful concentrations of air pollution.
- 7.15.2. The NPPF states that the planning system should contribute to and enhance the natural and local environment by preventing new/existing development from contributing to or being put at unacceptable risk from, or being adversely affected by, inter alia, unacceptable levels of air pollution. It also requires the effects of air pollution and the potential sensitivity of the area to its effects to be taken into account in planning decisions.
- 7.15.3. The Planning Practice Guidance on Air Quality states *“whether or not air quality is relevant to a planning decision will depend on the proposed development and its location. Concerns could arise if the development is likely to generate air quality impact in an area where air quality is known to be poor. They could also arise where the development is likely to adversely impact upon the implementation of air quality strategies and action plans and/or, in particular, lead to a breach of EU legislation...”*
- 7.15.4. The Local Plan at Policy DM6 sets out that development proposals will integrate air quality management and environmental quality into the location and design of, and access to development and in so doing, demonstrate that proposals do not worsen air quality to an unacceptable degree.
- 7.15.5. The committee report for the Hybrid application identified mitigation measures that would be provided through the travel plan by reducing private vehicle trips

and encouraging use of electric vehicles. The application also secured £262,746 of contributions in the s106 legal agreement to be spent on public transport subsidies. A condition was also included in the decision notice to control adverse air quality emissions during the construction phase.

- 7.15.6. This application is supported by a Travel Plan, which sets out more specific mitigation measures for the proposed care home by encouraging use of electric vehicles, reducing the number of private vehicle trips and encouraging cycling, particularly for staff given the nature of the use. The proposed care home's energy strategy also utilises a system of air source heat pumps and PV solar panels, which will not produce adverse emissions.
- 7.15.7. In view of the measures secured in the Hybrid permission and proposed measures set out above for the proposed care home, it is considered that the proposed development is acceptable in relation to air quality and is therefore in accordance with Policy DM6 of the Local Plan, Policy FAV9 of the draft Faversham Neighbourhood Plan and the NPPF.

#### **7.16. Community Infrastructure**

- 7.16.1. 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 CP5 and CP6 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.
- 7.16.2. Relevant and necessary contributions were secured through the s106 agreement as part of the Hybrid planning permission.
- 7.16.3. The KCC PROW officer has requested a contribution towards off-site improvements to the PROW that crosses through the site under this Reserved Matters application. However, a contribution of £10,000 has already been secured under the Hybrid planning permission for improvements to the PROW in the vicinity of the development including signage, surfacing and access improvements. A such, another contribution is not necessary.

#### Deed of Variation

- 7.16.4. Clause 3.2.4 of the S106 provides that *“each and every part of the Land”* (which includes the Care Home Site by definition) is bound by all of the obligations and covenants in the s.106. The legal implication of this is that once the Applicant (Aspire) acquires the Care Home Site, they will become (jointly and severally with Fernham Homes/the owner of the remainder of the development site) liable for all of the obligations in the s.106, including the financial contributions.

7.16.5. Accordingly, Aspire propose a variation of the s.106, the purpose of which is to:

- (i) Distinguish the Care Home Site from the wider development site; and
- (ii) Exclude the Care Home Site from all liability under the s.106 except with respect to the specified notification obligations (relating to relevant commencement and occupation thresholds).

7.16.6. The combined effect of the above variations will be to ‘unbind’ the Care Home Site from the S106 obligations that are not relevant to the care home. Officers agree with the proposed variations, with the exception of the following obligations:

- a) Air Quality Contribution – Officers consider that a relative proportion should remain liable to the care home in line with its vehicle trip generation.
- b) Public Rights of Way – This contribution benefits the whole development under the Hybrid permission and therefore a relative proportion should remain liable to the care home.

7.16.7. The applicant has agreed to a proportioned contribution towards these obligations as follows:

- Air Quality Contribution – total trips identified in the approved Transport Statement for the Hybrid application was 2,780 (table 5-9) and for the care home it was 174 (table 5-7). The care home is therefore responsible for 6.3% of the total trips. Applying this to the total contribution of £262,746 gives a proportionate contribution of £16,553.00.
- PRoW – Given the Hybrid permission is for 180 dwellings, and applying average household occupancy figures of 2.4 persons per dwelling giving 432 residents in the dwellings, the total number of occupants on this site is 512. The care home represents 15.6% of these, and so applying this ratio to the contribution requested of £10,000 gives a proportionate contribution for the care home of £1,560.00.

7.16.8. KCC Highways and the Environmental Health officer have confirmed that the trip numbers and AQ contribution are agreed. The PROW officer has confirmed that the proportioned PROW contribution is agreed. A Deed of Variation is being drafted to reflect the above modifications to the s106 agreement.

7.16.9. 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 CP5 and CP6 of the Local Plan and the NPPF.

## 7.17. Conclusion

7.17.1. The details of Reserved Matters for the proposed care home are considered to align with the development parameters established by the Hybrid planning permission. 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.

7.17.2. 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 completion of a Deed of Variation to the Section 106 agreement as set out in the report, and the following conditions:

### CONDITIONS:

1. The development hereby permitted shall be carried out and maintained in accordance with the following approved plans and documents:
  - Site Location Plan ref: 0101 P4
  - Block Plan ref: 0103 P4
  - Proposed Site Plan ref: 0102 P12
  - Proposed Site Plan Levels ref: 0104 P4
  - Existing Site Plan Levels ref: 0105 P3
  - Proposed Ground Floor Plan ref: 0201 P5
  - Proposed First Floor Plan ref: 0211 P5
  - Proposed Second Floor Plan ref: 0221 P5
  - Proposed Roof Plan ref: 2701 P3
  - Proposed South and West Site Elevations ref: 0301 P6
  - Proposed North and East Site Elevations ref: 0302 P6
  - Proposed South and West Elevations ref: 0303 P8
  - Proposed North and East Elevations ref: 0304 P6
  - Proposed Courtyard Elevations ref: 0305 P6
  - Sub-station ref: 9001 P1
  - External Ancillaries ref: 9002 P2
  - Landscape Proposals ref: 1030-L-01 Rev D
  - Planning Statement RD/DL/31836 (September 2023) DHA Planning
  - Design & Access Statement 3591 P6 (November 2023) Harris Irwin Architects
  - Transport Technical Note PL/TV/31819 (October 2023) DHA Transport
  - Travel Plan PL/TV/31819 (September 2023) DHA Transport
  - Drainage Strategy 5793 DS P03 (October 2023) Considine
  - Energy Statement 2348 – CB (October 2023)
  - Sustainability Statement 2349 – AO (October 2023) Harniss Consultants
  - Cover Letter dated 29/01/2024

Reason: For the avoidance of doubt.

2. Prior to the occupation of the development hereby approved, full details of the electric vehicle charging shall be submitted to and approved in writing by the Local Planning Authority. The agreed details shall then be implemented before the development is first occupied. All Electric Vehicle chargers 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.





<b>2.3 REFERENCE NO 22/503908/FULL</b>		
<b>PROPOSAL</b> Section 73 - Application for Removal of condition 3 (occupancy restriction) and 4 (use of the land) pursuant to application SW/09/0972 (allowed on appeal) for - Change of use of land to use as a residential caravan site for one gypsy family with two caravans (including one static caravan), erection of amenity block and laying of hardstanding		
<b>SITE LOCATION</b> Land At Eden Top Sheppey Way Bobbing Kent ME9 8QP		
<b>RECOMMENDATION</b> Delegate to the Head of Planning to grant planning permission subject to securing 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.		
<b>APPLICATION TYPE</b> Minor Gypsy and Traveler Sites		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Bobbing Parish Council Objection		
<b>Case Officer</b> Rebecca Corrigan		
<b>WARD</b> Bobbing, Iwade And Lower Halstow	<b>PARISH/TOWN COUNCIL</b> Bobbing	<b>APPLICANT</b> Mr Robert Beck  <b>AGENT</b> Green Planning Studio
<b>DATE REGISTERED</b> 17.08.2022	<b>TARGET DATE</b> 23.07.2024	
<b>BACKGROUND PAPERS AND INFORMATION:</b>  Documents referenced in report are as follows: -  Site Location Plan Planning Statement  The full suite of documents submitted pursuant to the above application are available via the link below: - <a href="#">22/503908/FULL   Section 73 - Application for Removal of condition 3 (occupancy restriction) and 4 (use of the land) pursuant to application SW/09/0972 (allowed on appeal) for - Change of use of land to use as a residential caravan site for one gypsy family with two caravans (including one static caravan), erection of amenity block and laying of hardstanding   Land At Eden Top Sheppey Way Bobbing Kent ME9 8QP (midkent.gov.uk)</a>		

1. SITE LOCATION AND DESCRIPTION

- 1.1 The site is located within the countryside, the nearest settlement is Sittingbourne located to the south of the site on the opposite side of the A249. The site lies within an Important Local Countryside Gap. To the east there is a Grade II Listed building 'Upper Toes' and there are various outbuildings associated with Upper Toes which run along the boundary between the two sites. The Garden of England Crematorium and Memorial Gardens is located opposite the site on the northern side of Sheppey Way. The site is surrounded

by open fields to the south and west where residential properties are sited sporadically along with large agricultural/commercial buildings.

- 1.2 The site comprises of a mobile caravan and amenity block, hardstanding area and garden. Land within the wider control of the applicant includes a barn/stable block, menage and horse paddocks. Further to the south, along a track, there is a caravan stationed to the rear of the existing menage. This site is separate to the application site and does not form part of this application. That development is currently being investigated by the Planning Enforcement team.

## 2. PLANNING HISTORY

- 2.1 **17/502577/FULL** Change of use of land for the siting of 1no. caravan for a gypsy family and extension to an existing amenity block with parking, landscaping scheme and hardstanding. Refused 05.10.2017 (this was partially on the application site and partially on adjacent land to the west).
- 2.2 **14/500144/FULL** Change of use of land to use as an extension to existing caravan site to form a total of 6 no. caravan pitches, each containing two caravans of which no more than one will be a static caravan/mobile home, including the laying of hard standing and erection of two amenity buildings. Refused 05.08.2015 (this was partially on the application site and partially on adjacent land).
- 2.3 **SW/09/0972** Change of use of land to use as a residential caravan site for one gypsy family with two caravans (including one static caravan), erection of amenity block and laying of hardstanding. Refused. Appeal Allowed 07.10.2010

## 3. PROPOSED DEVELOPMENT

- 3.1 This application seeks permission for the removal of conditions 3 & 4 of planning permission pursuant to application SW/09/0972 (allowed on appeal) for the change of use of land to use as a residential caravan site for one gypsy family with two caravans (including one static caravan), erection of amenity block and laying of hardstanding.
- 3.2 Conditions 3 and 4 are worded as follows:
- 3.3 Condition 3 - The occupation of the site hereby permitted shall be carried on only by Mr Robert Beck and his resident dependents only.
- 3.4 Condition 4 – When the land ceases to be occupied by Mr Robert Beck and his resident dependants, the use hereby permitted shall cease and all caravans, structures, materials and equipment brought onto the land in connection with the use, including the amenity block hereby approved, shall be removed. Within six months of that time the land shall be restored in accordance with a scheme previously submitted to and approved in writing by the local authority.
- 3.5 In relation to the Inspectors inclusion of these conditions, Para 23 of the appeal decision states, “.....*My personal conditions 3 and 4, go further, indicating that a permanent approval to Mr Beck arises from his strong economic links to horses and that this particular need for a residential presence in the countryside is an overriding reason for granting permission to him*”

#### 4. CONSULTATION

- 4.1 Two rounds of consultation have 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 press. Full details of representations are available online.
- 4.2 As a result of the public consultation 11 letters of representation were received, all of which were letters of objection from a total of 5 different households. Concerns/ comments were raised in relation to the following matters: -

<b>Comment</b>	<b>Report reference</b>
Reasons given for the initial application was so the family could be near their equestrian business and if the business was to close the land should be reinstated.	See para. 7.8-7.10
Unclear whether this is a retrospective application for existing development on the site.	The application is retrospective.
Application seeks to further develop the land to allow occupancy for future residents unrelated to the equestrian business.	See para. 7.10
Removal of the condition could give rise to development in sensitive area.	See para's 7.12 to 7.16
The Council has already met the need for traveller pitches.	See para 7.9
Appeal process – should be referred back to the Inspectorate.	It is a matter for the Local Planning Authority to consider and determine an application in the first instance.
The site has already been developed beyond what was granted permission by the planning inspectors, there is now a permanent building on the site and the mobile unit has been relocated and not as per the site block plan.	See para. 7.15

- 4.3 Bobbing Parish Council object to the proposal for the following reasons:

<b>Comment</b>	<b>Report reference</b>
The site has already been developed beyond what was granted by the planning inspectors, as there is now a permanent building on the site and the mobile unit has been relocated and is not showing as per the site block plan.	See para. 7.15
The removal of occupancy restrictions would lead to a multi-site development, which is contrary to the inspector's permission.	See para 7.10
It will violate the important Countryside Gap status, causing traffic problems and activities which would	See para. 7.12 – 7.16 and 7.25

affect the neighbours, the Garden of England Crematorium and road users in general.	
The removal of these conditions would not be what one would reasonably expect. An appointed government inspector has applied the conditions for good reasons when he allowed the appeal re application SW/09/0972; overturning what was a majority vote for refusal by our elected members of the council.	It is a matter for the Local Planning Authority to assess the application in accordance with current policy and material considerations.

## 5. REPRESENTATIONS

- 5.1 **SBC Conservation and Design Manager:-** Raises no objection to this proposal from a heritage and related design perspective as the site is not altered by the additional/amended information provided in relation to site ownership.
- 5.2 **KCC Archaeology:** - No archaeological measures required in connection with this proposal.
- 5.3 **Mid Kent Environmental Health:** - No comment.
- 5.4 **KCC Ecology:** - Satisfied that an ecological survey is not required as there is limited opportunity for protected/notable species to be present within the site.
- 5.5 **KCC Highways:** - No comment.
- 5.6 **Natural England:** - It is for the local authority to determine whether or not the proposal is consistent with national and local environmental policies.

## 6.0 DEVELOPMENT PLAN POLICIES

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

- ST1** Delivering sustainable development in Swale
- ST3** The Swale settlement strategy
- DM6** Managing transport demand and impact
- DM7** Vehicle parking
- DM10** Gypsy and Traveller sites
- DM14** General development criteria
- DM25** The separation of settlements – Important Local Countryside Gaps
- DM28** Biodiversity and geological conservation

- 6.2 Local Plan policy DM10 is most relevant and is a criteria-based policy for consideration of the acceptability of sites for use as Gypsy / Traveller accommodation. The Local Plan does not contain any site allocations for Gypsy / Traveller sites.

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

- 6.3 The national policy position comprises the National Planning Policy Framework (NPPF) and Planning Policy for Traveller Sites (PPTS). Together they provide national guidance for Local Planning Authorities on plan making and determining planning applications for gypsy and traveller sites. A presumption in favour of sustainable development runs

throughout both documents and this presumption is an important part of both the plan-making process and in determining planning applications. In addition, there is a requirement in both documents that makes clear that Councils should set pitch targets which address the likely need for pitches over the plan period and maintain a rolling five year supply of sites which are in suitable locations and available immediately.

- 6.4 Paragraph 11 of the NPPF sets a presumption in favour of sustainable development. For decision taking, it states that development should be approved if in accordance with an up to date development plan. Where there are no relevant development plan policies or those most important for determining an application are out of date, permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the NPPF as a whole.
- 6.5 Paragraph 63 sets out that to determine the minimum number of homes required, policies should be informed by housing needs assessments, and the size, type and tenure of housing needed for different groups should be assessed and reflected in planning policies – including travellers.

### **Planning Policy for Traveller Sites (PPTS) – Department for Communities and Local Government 2023**

- 6.6 Paragraph 3 states - *“The Government’s overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.”*
- 6.7 Paragraph 4 sets out (inter-alia) that LPA’s should make their own assessment of need for the purposes of planning, that private traveller site provision should be promoted, that the number of traveller sites in appropriate locations should be increased, that travellers should have access to schools, healthcare and employment infrastructure, and that LPA’s should have due regard for the protection of local amenity and the local environment.
- 6.8 Paragraph 10 states that Local Plans should identify and update annually a 5 year supply of Gypsy and Traveller sites against locally set targets.
- 6.9 Paragraph 14 states that *“When assessing the suitability of sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community.”*
- 6.10 Paragraph 25 states that LPA’s should consider the following issues when considering planning applications for traveller sites:
- a) *the existing level of local provision and need for sites*
  - b) *the availability (or lack) of alternative accommodation for the applicants* c) *other personal circumstances of the applicant* d) *that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites* e) *that they should determine applications for sites from any travellers and not just those with local connections”*
  - c) *“Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that*

*sites in rural areas respect the scale of, and do not dominate the nearest settled community, and avoid placing an undue pressure on the local infrastructure.”*

- 6.11 Paragraph 27 states *“If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary permission. The exception to this is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and / or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).”*

### **The Swale Borough Council Gypsy and Traveller Accommodation Assessment 2023 (GTAA)**

- 6.12 The GTAA comprises the latest available evidence to identify the accommodation needs of Gypsies and Travellers across the Borough. The GTAA identifies the forecast pitch requirements for Gypsies and Travellers that meet the definition in the PPTS. The Councils GTAA published December 2023 has identified an overall need for 114 additional Gypsy and Traveller pitches across Swale Borough over the period 2022/23 to 2037/38, with 80 in the five-year period 2022/23 to 2026/27 and 34 in the longer-term 2027/28 to 2037/38).
- 6.13 The report advises that the Council should consider the following to help meet identified residential pitch need. Firstly, regularising of sites that are not permanently authorised. Secondly, additional pitch provision through the use of existing sites.

### **Supplementary Planning Documents (SPD)**

- 6.14 Swale Car Parking Standards

### **Other relevant legislation and Court Judgements**

- 6.15 The Human Rights Act 1998 Article 8: Respect for your private and family life, and home
- 6.16 The Equality Act 2010
- 6.17 In *Smith v Secretary of State for Housing, Levelling Up and Communities [2022]*, the Court of Appeal ruled that the PPTS definition in 2015, which excluded Gypsies and Travellers who had permanently ceased to travel due to old age or illness from the PPTS definition, was unjustified and discriminatory. The Court determined that this discriminated against the ethnic and cultural identity of Gypsies who, as a result of age, illness or disability, are no longer able to travel. The PPTS definition was amended in 2023 as a result of this judgement.

## **7. ASSESSMENT**

- 7.1 This application is reported to the Committee because Bobbing Parish Council has objected to the proposal. Considering these comments and the proposal that has been submitted, the committee is recommended to carefully consider the following main points:
- The Principle of Development including Supply of G&T sites in the Borough
  - The impact of the development on the character and appearance of the area including the Important Local Countryside Gap

- Heritage
- Archaeology
- Transport and Highways
- Living Conditions
- Ecology

### **Principle of Development**

- 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. The PPTS is also a significant material consideration, representing the national policy position on Gypsy and Traveller sites.
- 7.4 The site falls within open countryside and as such development within this location is generally restricted. However, the majority of Gypsy and Traveller sites are invariably found in rural locations. Key issues with such sites generally relate to visual impact and sustainability objectives. Policy DM10 of the Local Plan sets out the circumstances under which Gypsy and Traveller sites will be acceptable, and requires such development to comply with criteria listed in the policy.
- 7.5 The original application, Ref: SW/09/0972 sought permanent planning permission for the change of use of land from agriculture to a residential caravan site for one gypsy family. One static caravan and one mobile caravan was provided within the site including a single storey pitched roof amenity block to provide a toilet, shower room, kitchen and dining room. Access to the site was already in place and it was proposed that additional hardstanding would be provided within the application site.
- 7.6 The application was initially refused by the Council on the grounds that (1) the proposal was found to be harmful to the visual amenities and character and appearance of the countryside and the maintenance of the separation of settlements and (2) having balanced the unmet need for the provision of gypsy/traveller sites, the harm to the character of the area, and the Important Countryside Gap outweighed the need.
- 7.7 The decision was allowed on appeal. In allowing the appeal, the Inspector considered the impact of the development upon the character and appearance of the countryside and on the important countryside gap, and noted that the gap was particularly fragile and narrow in this location. The Inspector gave weight to the circumstances of the occupant of the site, Mr Beck, who bred and traded in horses and kept them on land at the site and in the local area. The Inspector concluded that the equestrian use helped maintain an open tract of land and the countryside gap, and that such use was an acceptable use in this countryside gap and the ability to live on the site was the best method of maintaining the gap and wider open countryside. Mr Beck and his family were granted personal permission to stay for that reason.
- 7.8 The removal of conditions 3 and 4 would essentially allow the site to be occupied as a Gypsy and Traveller site and not just by the current named occupant Mr Beck and his

dependents. In the determination of this case, it must be considered whether conditions (3) and (4) still serve a purpose today.

- 7.9 The GTAA identifies a significant need for 114 Gypsy and Traveller Sites in the Borough, with an immediate need over a 5 year period for 80 sites. The Council can only currently identify a 1.3 year supply of Gypsy sites. The significant need and shortfall in site provision are highly material in the consideration of this application.
- 7.10 The application has been made on the basis that the original occupant (Mr Beck) no longer has a need to reside at the site. Although the planning agent has been unwilling to provide specific details of the current occupant, officers have identified that Mr Beck's adult son currently occupies the site. Removal of the conditions would provide a more unrestricted site for use by the wider Gypsy and Traveller community and in this respect would assist with meeting identified needs. It would still remain as a single pitch site. In sustainability terms, the site is of reasonable credentials for a Gypsy and Traveller site, being on a road with a continuous footway within reasonable distance of Sittingbourne, and with a bus stop next to the site entrance.
- 7.11 On the other hand, consideration needs to be given to the implications of removing the conditions, specifically in relation to the impacts on the Important Local Countryside Gap.

#### Visual Impact and effect on Important Local Countryside Gap

- 7.12 Eden Top is located within an important Countryside Gap which is particularly narrow in this area. The site and surrounding area are rural in character and appearance and the built form in the immediate vicinity of the site is sporadic.
- 7.13 Policy DM25 of the adopted Local Plan states that within such gaps, planning permission will not be granted for development that would undermine one or more of their purposes. The supporting text states that the purposes of such gaps are to maintain the separate identities of settlements, safeguard the open and undeveloped character of the area, prevent encroachment and piecemeal erosion by built development or changes to the rural open character, and to influence decisions on the longer term development of settlements.
- 7.14 The site does have some urbanising impact on this area of land and surrounding countryside, however the appeal Inspector allowed the structures on site on the basis that Mr Beck bred and traded in horses, and the structures were to be used for ancillary equestrian purposes whilst maintaining a degree of openness to protect the rural character of the countryside and environment, and that there were benefits in allowing a residential use to preserve this rural activity and provide security.
- 7.15 Comments have been received that the site has already been developed beyond what was granted permission by the planning inspector, and that there is now a permanent building on the site and the mobile unit has been relocated and is not as per the site block plan. Since the appeal decision there has been limited change within the arrangement of the application site itself. The stationing of the larger mobile home remains within the same position as does the amenity, barn/stable block. It is noted that the second caravan is no longer located on the site, and that a caravan has been stationed in the adjoining field to the south of the site, however this does not form part of the application site and this development is currently under investigation by the Planning Enforcement team. The site has benefitted from planning permission for more than 13 years. Although it is a personal permission, it is not a temporary permission.



To a degree, the site has established into the landscape over this period of time. The site is not especially prominent, being set a significant distance back from the road. Whilst the development causes a degree of harm to the character and appearance of the countryside and conflict with the Important Local Countryside Gap, this is tempered to a degree by the above factors. In addition, the use of adjacent equestrian land and any associated development, to which the previous Inspector gave weight as a factor in keeping the land as attractive and open countryside, would be generally controlled under the planning regime.

- 7.16 Taking the above factors into account, it is considered that there would be some conflict with policies ST3 and DM25 in allowing unrestricted occupation of the site, and which would effectively create a permanent site in this location. However the degree of harm is not considered to be substantial under the above circumstances.

### **Heritage**

- 7.17 The National Planning Policy Framework states that local planning authorities should identify and assess the particular significance of any heritage asset and consider the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits that may arise and this is endorsed by the Local Plan.
- 7.18 The neighbouring dwelling at Upper Toes is Grade II listed, dating back in part to the C16. S66 of the TCP (Listed Buildings and Conservation Areas) Act places a duty on LPA's to have special regard to the desirability of preserving the buildings, its setting, or any features of special historical or architectural interest. Policy DM32 of the Local Plan sets out a similar local requirement for the preservation of such buildings.
- 7.19 The development is located approximately 60 metres away from the listed dwelling. Taking this distance into account and together with the landscaping, the Inspector's conclusions would apply equally to this proposal, and would not harm the setting of this building. The Conservation Officer shares this view and therefore the development would not be in conflict with DM32 or the requirement under S66.

### **Archaeology**

- 7.20 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.
- 7.21 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.
- 7.22 No ground works are proposed. KCC Archaeology have been consulted who are satisfied that no archaeological measures are required in connection with this proposal.

### **Transport and Highways**

- 7.23 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.”*

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.”*

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

- 7.24 In terms of location, the site would lie 1.3km from the petrol filling station, restaurants and pub on the outskirts of Bobbing, 0.9km from Bobbing Primary School, and 1.4km from the doctor’s surgery at Iwade village. This has previously been considered appropriate for this site in the context of a Gypsy site application.
- 7.25 A further issue raised by local representations is that the removal of the conditions will violate the important Countryside Gap status, causing traffic problems and activities which would affect the neighbours, the Garden of England Crematorium and road users in general. The access from Sheppey Way, into the application site was established several years ago with planning permission granted in 1982 (SW/82/0425). There is an existing entrance driveway at the north eastern end of the site frontage and there are wide vehicle frontages either side. It is noted that the Local Planning Authority raised no objection to the use of this access when planning permission was granted on appeal for the gypsy site. On the basis that there would not be an increase in the number of families living at the site, it is unlikely that there would be a material increase in vehicles using the site. Whilst KCC Highways have not commented on this application, they previously raised no objection to the proposal and no concerns are raised on highway safety grounds.
- 7.26 The site provides a large area of hardstanding and no changes are proposed. It would meet the SBC residential parking guidelines which require at least 2 parking spaces in such locations.

#### Living Conditions

- 7.27 The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers.

#### *Existing residents*

- 7.28 The dwelling to the north east is sited some 60 metres from the application site. It is separated by a range of outbuildings within the neighbour’s site, by landscaping, and the existing unit. The removal of conditions 3 & 4 would not result in any unacceptable loss of privacy, light or outlook to this property, as the site would continue to operate as a 1 pitch Gypsy and Traveller site.
- 7.29 There would be no likely increase in vehicle movements on the access tracks given that the intended use is to remain as one gypsy family, and the neighbouring dwelling is well divorced from this track.

### **Ecology**

- 7.30 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.
- 7.31 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.'
- 7.32 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".
- 7.33 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.
- 7.34 This application does not result in the uplift of additional residential units on the site and therefore mitigation is not required in this instance. As there are no physical or site layout changes, there are no impacts relating to ecology or wildlife.

### **Conclusion**

- 7.35 In conclusion, the original purpose of conditions 3 & 4 were to take into account the personal circumstances of the applicant at the time and to offset harm to the countryside and Important Local Countryside Gap. Allowing the removal of the condition would retain the use of the site for the wider Gypsy and Traveller Community, but would perpetuate the above harm. However, officers have assessed that the degree of harm and conflict with the Local Plan is not substantial. In addition, the physical characteristics of the site will remain as they have been for the last 13-15 years.
- 7.36 The GTAA identifies a significant need for 114 Gypsy and Traveller Sites in the Borough, with an immediate need over a 5 year period for 80 sites. The Council can only currently identify a 1.3 year supply of Gypsy sites. On this basis, the site would contribute towards this identified need.
- 7.37 Taking the above factors into account it is considered that the benefits of retaining the site for the wider Gypsy and Traveller community outweigh the harm, and it is recommended that planning permission be granted subject to appropriate conditions.

7.38 As this would result in a new decision notice for the site, the following conditions that were imposed on the 2010 permission remain applicable (as updated / modified).

### Conditions

1. The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.

Reason: In recognition of the terms of the application, and because an uncontrolled use of the land would be unacceptably detrimental to the character and amenities of the area.

2. No more than two caravans (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, as amended) shall be stationed on the site at any time, of which no more than one shall be a static caravan or mobile home.

Reason: In recognition of the terms of the application, and because an uncontrolled use of the land would be unacceptably detrimental to the character and amenities of the area.

3. Any caravans positioned on the site shall be capable of being lawfully moved on the public highway without division into separate parts.

Reason: To accord with the terms of the application and ensure that the site is used for the stationing of caravans as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (as amended).

4. No vehicle over 3.5 tonnes shall be stationed, parked or stored on this site other than one horse box with a gross laden weight not exceeding 7.5 tonnes. All parking of vehicles, commercial or otherwise, shall take place on the proposed gravel hardstanding shown on the 1:500 site layout plan, unless agreed otherwise in writing by the local planning authority.

Reason: In the interest of the rural and residential amenities of the area.

5. No commercial activities shall take place on the land, including the storage of materials, other than the keeping of horses.

Reason: In the interest of the rural and residential amenities of the area.

6. No floodlighting, security lighting, or other external lighting shall be installed or operated at the site, other than in accordance with details that have first been submitted to, and approved in writing by, the local planning authority.

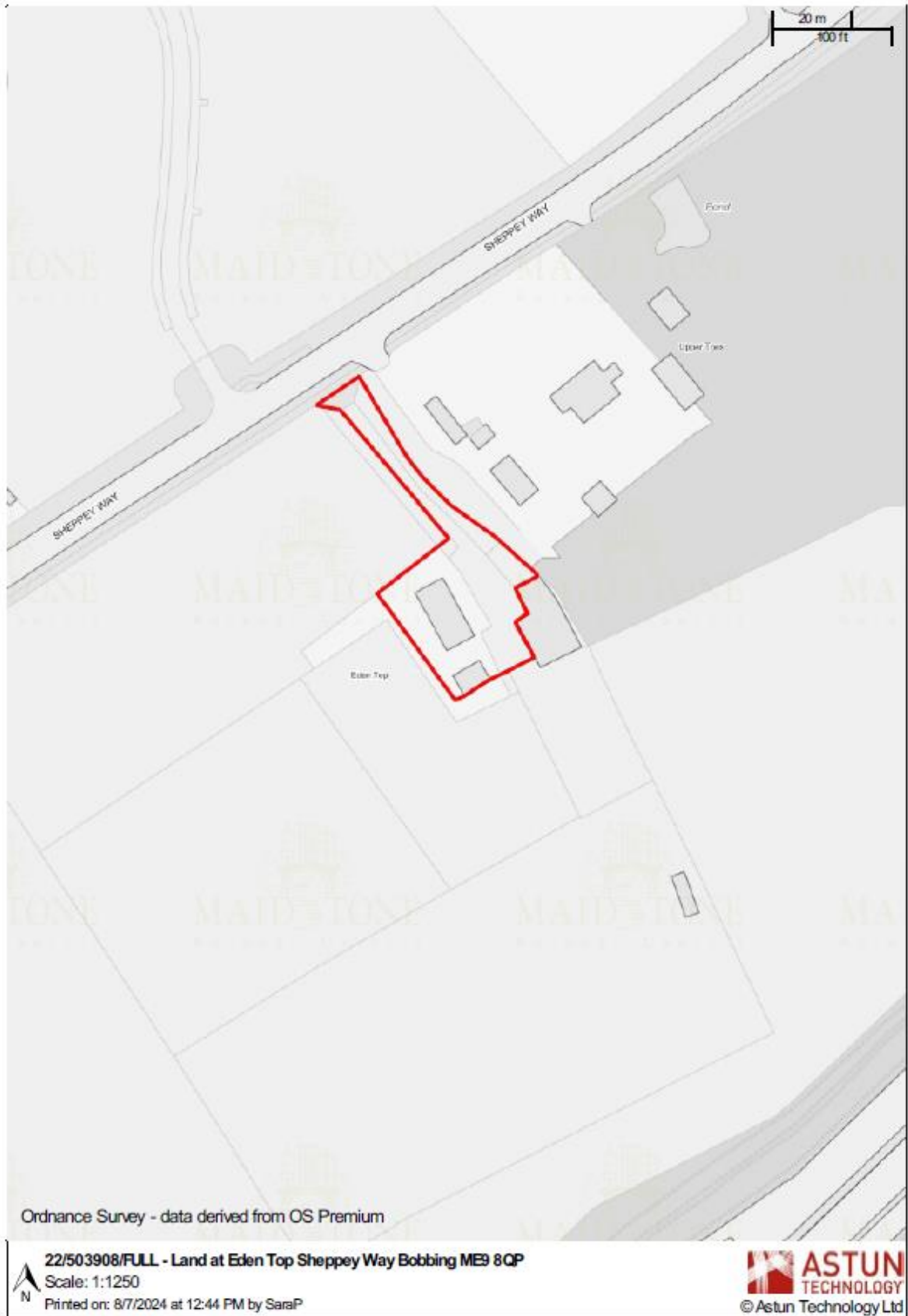
Reason: In the interest of the rural and residential amenities of the area.

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

In accordance with paragraph 38 of the National Planning Policy Framework (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.

In this instance:

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



<b>2.4 REFERENCE NO - 24/500508/FULL</b>		
<b>PROPOSAL</b> Existing garage to be converted to utility room and erection of a side extension to be used as a store.		
<b>SITE LOCATION</b> Camwa Ash Bull Lane Boughton Under Blean Faversham Kent ME13 9AH		
<b>RECOMMENDATION</b> 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.		
<b>APPLICATION TYPE</b> Householder		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Boughton under Blean Parish Council Objection		
<b>CASE OFFICER</b> Mandi Pilcher		
<b>WARD</b> Boughton & Courtenay	<b>PARISH/TOWN COUNCIL</b> Boughton under Blean	<b>APPLICANT</b> Y Veliu <b>AGENT</b> Mr S Wilkins
<b>DECISION REGISTERED</b> 09/02/2024	<b>TARGET DATE</b> 05/04/2024	
<b>BACKGROUND PAPERS AND INFORMATION:</b> <b>Documents referenced in report are as follows: -</b>  All drawings submitted All representations received  The full suite of documents submitted pursuant to the above application are available via the link below: - <a href="https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=S8FTW3TYIM400">https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=S8FTW3TYIM400</a>		

1. SITE LOCATION AND DESCRIPTION

- 1.1 Camwa Ash is a two storey end terraced property within the built up area of Boughton Under Blean and the Boughton Street Conservation Area.
- 1.2 Camwa Ash is situated at the junction of Bull Lane and The Street. There is a private amenity space to the side and rear. The boundary treatment is comprised of a small wall and large hedge. The property has one parking space within its curtilage.

2. PLANNING HISTORY

- 2.1 **SW/92/0886** Planning permission withdrawn on 13.11.92 for a front/side extension to form hobbies workshop.

### 3. PROPOSED DEVELOPMENT

- 3.1 The application seeks planning permission for the existing garage to be converted to a utility room and the erection of a side extension to be used as a store.
- 3.2 The garage conversion will incorporate the removal of the garage door and the insertion of brickwork and a uPVC window to the front elevation.
- 3.3 The proposed side extension would measure approximately 7.3m in depth by 4.2m wide with timber folding doors on the front elevation and a single door and window on the rear elevation. The extension would have a maximum height of 3.3m with a flat roof and a roof light hidden behind a parapet wall, with stone coping.
- 3.4 The external materials will match that of the existing dwelling.
- 3.5 The drawings also show hardstanding being laid to the front of the dwelling. The agent has confirmed that permeable materials will be used. As a result, this element of the proposal does not require planning permission so will not be assessed.

### 4. CONSULTATION

- 4.1 One round of consultation has been undertaken, during which letters were sent to neighbouring occupiers; a site notice was displayed at the site and the application was advertised in the local newspaper. No letters from neighbours were received.
- 4.2 **Boughton under Blean Parish Council** were consulted on two occasions. In response to the first consultation they raised an objection on the following summarised grounds (full representations are available online):

Comment	Report reference
No evidence regarding sufficient turning space within the drive;	Paragraphs 7.24 and 7.25
No evidence that a vehicle would be able to access the garage;	Paragraphs 7.24 and 7.25
Concerns regarding vehicular and pedestrian safety if vehicles were required to reverse onto the highway;	Paragraph 7.25
Alternative access to the garage would not be appropriate as it would be located too close to a junction and would require the loss of the hedge;	Paragraph 7.27
Wish to see comments from the Conservation Officer;	Paragraph 5.1
The flat roofed garage would harm the conservation area.	Paragraph 7.10

- 4.3 The application was subsequently amended to propose a store rather than a garage (although the proposal was unaltered in terms of the siting and design of this element of the proposal). Boughton under Blean Parish Council were re-consulted and continued to raise an objection on the following summarised grounds:

Comment	Report reference
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The original application justified the loss of the existing garage with the newly proposed garage, however, this element of the scheme, which strongly resembles a garage, is now described as a store;	Paragraphs 7.24 and 7.25
The property will lose a car parking space from the current garage leaving only one space, 3 spaces would be required to comply with local policies;	Paragraph 7.26
The flat roofed design is unacceptable;	Paragraph 7.10
The extension would have an unbalancing effect on the terrace, giving rise to harm to the streetscene;	Paragraph 7.10
The extension would represent overdevelopment;	Paragraph 7.10
There has been a similar application on the site which was withdrawn;	Paragraph 7.27
The property already has a small single storey side extension which is not shown on the submitted plans.	Paragraph 7.27

## 5. REPRESENTATIONS

- 5.1 **SBC Conservation Officer:** Raised no objection and commented that although there is a general presumption against prominent flat roofed extensions there are circumstances where the use of a flat-roofed design may be considered more appropriate than a traditional pitched roof design. In this case the flat roofed design with its well-detailed parapet roof design would help to keep the visual bulk of the extension at the end of the terrace of houses to a more acceptable level, and would help to retain a visual sense of greater space around the end of terrace application property, particularly given that it is proposed to retain the tall hedging around the road frontage to the application property. The flat roofed design means that the proposed side extension would barely read in the conservation area street scene, and the wall tile hanging, which is a strong architectural feature of the application property and the adjoining terrace house to the north, would be largely retained and could continue to be read in views from The Street.

## 6. DEVELOPMENT PLAN POLICIES

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

**ST3** The Swale settlement strategy

**CP4** Requiring good design

**DM7** Vehicle Parking

**DM14** General development criteria

**DM16** Alterations and extensions

**DM32** Development involving listed buildings

**DM33** Development affecting a conservation area

## 6.2 Boughton and Dunkirk Neighbourhood Plan (BDNP) – policies:

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

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

**T3** *Future residential and non-residential buildings shall have sufficient dedicated on-site parking spaces to avoid the need for parking on adjacent roads in accordance with the Parking Standards set out in BD4.*

**H8** *Proposals for new residential development in the Plan area shall ensure that adequate on-site car parking provision is made in accordance with the Borough Council's approved Parking Standards SPD (adopted June 2020). Development proposals which involve the loss or conversion of existing on-site car parking spaces, for example the conversion of a garage to living accommodation, will only be supported where adequate on-site parking provision, in accordance with the Parking Standards, remains available to support the completed development.*

## 6.3 Supplementary Planning Guidance/Documents

Supplementary Planning Guidance - Designing an Extension – A Guide for Householders & Conservation Areas

Supplementary Planning Document - Swale Parking Standards

## 7. ASSESSMENT

7.1 This application is reported to the Committee because Boughton under Blean Parish Council object to the proposal. Considering these comments and the scheme that has been submitted, the committee is recommended to consider the following points:

- The Principle of Development
- Character and appearance / Heritage
- Living Conditions
- Highway safety and parking

### **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.
- 7.5 The site lies within the built confines of Boughton Under Blean and therefore the principle of development is considered acceptable subject to the consideration of other material planning considerations as discussed below.

#### **Character and appearance / Heritage**

- 7.6 The National Planning Policy Framework attaches great importance to the design of the built environment and that design should contribute positively to making places better for people. The Local Plan reinforces this requirement.
- 7.7 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.
- 7.8 In addition, the National Planning Policy Framework states that local planning authorities should identify and assess the particular significance of any heritage asset and consider the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits that may arise and this is endorsed by the Local Plan.
- 7.9 Policy DM33 of the Local Plan requires proposals to preserve or enhance the conservation area's special character or appearance.
- 7.10 The site is located in the Boughton Street conservation area and the surrounding area is comprised of dwellings constructed in a variety of styles and designs, a number of which are listed. In terms of the side extension, it is set back from the front elevation by 0.2m and incorporates a parapet wall, hiding the flat roof and will be constructed from external materials matching the existing dwelling. Concern has been raised by the Parish Council that a flat roof design is not appropriate. In this case, as set out in the Conservation Officer's comments (paragraph 5.1), the design of the extension would reduce its visual bulk compared to a pitched roof and would allow it to be largely hidden in the streetscene due to the existing hedge. On this basis it is considered to be of an appropriate scale and design. As such it is considered that this element of the scheme would no detrimental impact upon the streetscene and would preserve the character and appearance of the conservation area.
- 7.11 The other element of the scheme which would be visible on the front elevation includes the removal of the existing garage door and replacement with a uPVC window and brickwork to match the existing dwelling. It is considered that this is a small change that would simply repeat the materials already present on the dwelling and will preserve the character and appearance of the conservation area.

- 7.12 On the basis of the above, the scheme has been appropriately designed and would sit comfortably in the streetscene. It is considered that the proposal would preserve the character and appearance of the conservation area. Therefore the application complies with policies CP4, DM14, DM16 and DM33 of the Local Plan.
- 7.13 Policy DM32 of the Local Plan requires proposals to preserve the setting of listed buildings.
- 7.14 The front elevation of the existing dwelling faces towards No.258 The Street, which is a grade II listed building whilst the side elevation faces towards No.s 209 and 211 The Street, which are also grade II listed buildings.
- 7.15 The existing setting of these listed buildings is already comprised of built form, including the host property. As set out above, it has been concluded that the design and scale of the proposal is acceptable and therefore it is considered that the proposal would in turn preserve the setting of the listed buildings as referred to above. The scheme as a result complies with policy DM32 of the Local Plan.
- 7.16 In considering the impact of this proposal upon designated heritage assets, officers have had regard to the Council's obligations pursuant to the Planning (Listed Building and Conservation Areas Act) 1990.

### **Living conditions**

- 7.17 The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers. Specifically, 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. Policy DM16 also requires that alterations or extensions to existing buildings protect residential amenity.
- 7.18 The proposed side extension is approximately 1.5m off the boundary with the highway and separated by a high hedge. Due to the side extension being on the end of the terrace of properties and adjacent to a highway, the closest property which could be impacted by the proposal is No.250 The Street. However, the proposed extension is separated from the side extension of this property by approximately 6m, sitting only marginally forward of its front elevation. As a result, there would be no significant impact on neighbouring amenities from this element of the proposal in terms of overshadowing or a loss of outlook.
- 7.19 The garage conversion would not increase in footprint, and as a result there would be no additional harm caused in terms of being overbearing or giving rise to any overshadowing. There would be a new window which would replace the existing garage door, however this would look out towards the highway at ground floor level, in a manner no more harmful than existing windows on the property and therefore would not result in any unacceptable loss of privacy between properties.

- 7.20 Taking the above into account the proposal is considered to have an acceptable impact upon on the living conditions of surrounding dwellings in accordance with policies DM14 and DM16 of the Local Plan 2017.

### **Highway safety and parking**

- 7.21 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.”*

- 7.22 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.”*

- 7.23 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. Policies T3 and H8 of the BDNP require proposals to have sufficient on-site parking space and for developments to be in accordance with the Council’s Parking SPD.

- 7.24 When the application was first submitted, the side extension was described as a garage / store. The Parish Council raised concern that it was not clear as to whether a car would be able to access the garage due to the layout of the site. Clarification was received from the agent during the course of the application that is not the intention of the applicant to use the garage / store for parking a vehicle, but for it to be used for cycle, bins and general storage. The application has subsequently been amended to refer to the extension being used as a ‘store’. The agent has also confirmed that the proposal does not include adequate turning for vehicles as on the basis of the above the proposal would not require this.

- 7.25 The points provided by the agent are considered to be a reasonable response. However, even in a scenario where the store was to be used as a parking space, what appears to be a difficult manoeuvre would take place entirely inside the applicant’s curtilage, therefore having no impact upon the highway. Although the point regarding vehicles reversing onto the highway, as raised by the Parish Council is noted, I give significant weight to the fact that this manoeuvre can already take place by virtue of the driveway that currently exists. As such, if a car was to reverse onto the highway then this would be no more harmful in highway safety terms than the existing situation.

- 7.26 I also note that concern has been raised by the Parish Council regarding the loss of the garage as a parking space and that the property would not benefit from the policy required number of parking spaces. The space within the existing garage measures 2.2m in width and 4.2m in depth. This falls significantly below the minimum garage size of 3.6m x 7m, as set out in the Council’s adopted Parking SPD. As a result, the existing garage is undersized and would not be large enough to park a vehicle within. There is,

as existing, only one usable parking space serving the property. The proposed scheme would retain this parking space on the driveway. The drawings also shows that part of the frontage of the site would be hard landscaped, which as has been confirmed by the agent, will be done so using permeable materials and therefore not require planning permission. Notwithstanding this, this area could also potentially be used for parking. As such, this could result in an increase in parking numbers compared to the current situation. On the basis of the above, the proposal does not include any additional bedrooms and the parking provision would be no worse than the current arrangement. Weight is also given to the lack of any restrictive condition related to the existing garage and as a result, it would appear that this element of the scheme could also be carried out without the need for planning permission. On this basis, the proposal would not give rise to any additional harm in respect of highway safety or convenience and as a result complies with policies T3 and H8 of the BDNP and the Council's Parking SPD.

### **Other Matters**

7.27 A number of the comments raised by Boughton under Blean Parish Council have been considered by virtue of the discussion above. Of those that remain I comment as follows. Firstly, although an application was withdrawn in 1992, the details as to why this was the case are not available. It is not therefore considered that this should have any bearing on the current application, submitted some 32 years later which has been assessed against current policies as set out above. The property previously had a small structure close to the side elevation, however, this has now been largely removed and is essentially an open area of domestic storage. Finally, an additional access is not proposed so no further comment is made in respect of this point.

### **8. CONCLUSION**

8.1 On the basis of the above, the scheme is considered to be in compliance with policies ST3, CP4, DM14, DM16, DM32 and DM33 of the Local Plan and the relevant policies in the BDNP. It is recommended that planning permission is granted.

### **CONDITIONS**

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

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

(2) The development hereby permitted shall be carried out in accordance with drawing CA\_002 rev B.

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 development hereby permitted shall match those stated on the Application Form.

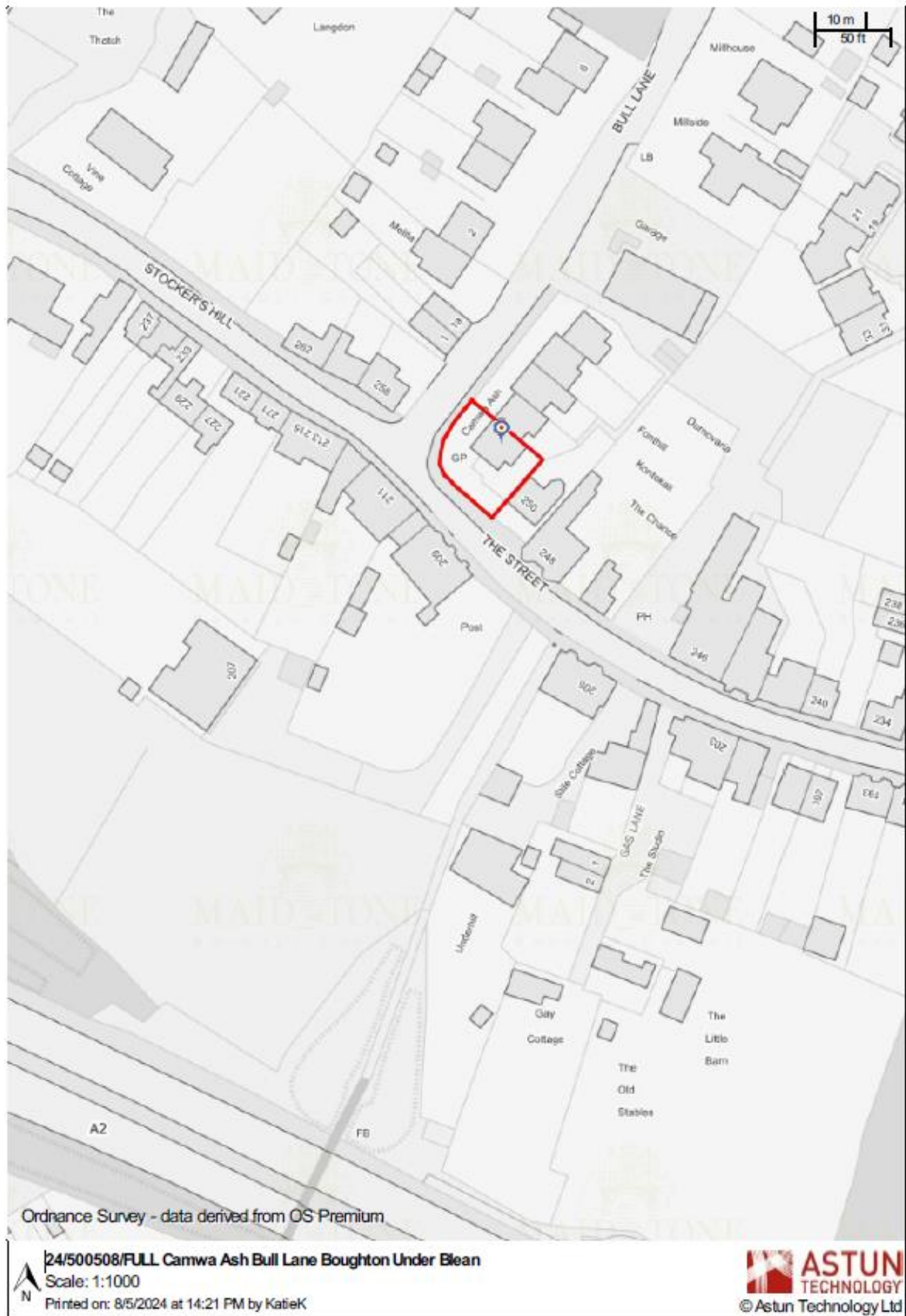
Reason: In the interests of visual amenity.

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

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

In this instance:

The applicant/agent was advised of minor changes required to the application and these were agreed.





<b>2.5 REFERENCE NO - 18/504650/FULL</b>		
<b>PROPOSAL</b> Siting for One Additional Mobile Home		
<b>ADDRESS</b> Patch Of Heaven Bell Farm Lane Minster-on-sea Kent ME12 4JB		
<b>RECOMMENDATION</b> Delegate to the Head of Planning to grant planning permission subject to securing an additional SAMMS payment 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 consequently necessary and appropriate.		
<b>APPLICATION TYPE</b> Minor Gypsy and Traveller Sites		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Minster-on-Sea Parish Council objection		
<b>CASE OFFICER</b> Guy Martin		
<b>WARD</b> Sheppey East	<b>PARISH/TOWN COUNCIL</b> Minster-on-Sea Parish Council	<b>APPLICANT</b> Mr J Clake
<b>DATE REGISTERED</b> 08.10.18	<b>TARGET DATE</b> 03.12.18	
<b>BACKGROUND PAPERS AND INFORMATION:</b>  Documents referenced in report are as follows: -  Planning Statement  All drawings submitted:  Site Location Plan (uploaded 07.12.23)  The full suite of documents submitted pursuant to the above application are available via the link below: -  <a href="https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=PEJ2RQTY0XJ00">https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=PEJ2RQTY0XJ00</a>		

1. SITE LOCATION AND DESCRIPTION

- 1.1 The site is located within the countryside on the southern side of Bell Farm Lane, comprising of an L shaped plot of land. Bell Farm Lane is characterised by a mixture of gypsy sites, holiday chalets and dwellings. The site itself includes 2 previously approved caravans and a mobile home which is the subject of this application.
- 1.2 The site lies adjacent to a public right of way which runs along Bell Farm Lane. The majority of the site is also within a Coastal Change Management Area with the front of the site lying within Erosion Zone 1, and the majority of the remainder of the site lying in Erosion Zone 2 as defined by policy DM23 of the Local Plan. A narrow margin at the site frontage also lies in a Site Of Special Scientific Interest - Sheppey Cliffs & Foreshore.

## 2. PLANNING HISTORY

- 2.1 **SW/05/0149** Planning permission granted on 18/05/2005 for Removal of two caravans and replace with one new caravan for residential occupation by a gypsy family.
- 2.2 **SW/10/1440** Planning permission granted on 04/02/2011 for Variation of condition (5) of planning permission SW/05/0149 to allow second caravan.

## 3.0 PROPOSED DEVELOPMENT

3.1 The application is for the siting for one additional mobile home. The site currently benefits from planning permission for two caravans with the proposal adding an additional mobile home which is currently on site, located to the north of the existing caravans. The principle of the use of the site as a gypsy/traveller site was established through the grant of the permanent planning permission in 2005.

3.2 The occupant of the mobile home, Mr Clark, has lived on the site all of his life and is a member of the family to whom planning permission was granted in 2005.

## 4.0 CONSULTATION

4.1 Two rounds of consultation have been undertaken, during which letters were sent to neighbouring occupiers and a notice was displayed at the application site. Full details of representations are available online.

4.2 No representations were received from neighbours.

4.3 Minster-on-Sea Parish Council have commented on the application on three occasions, the first of these set out that they supported the application and made the following comments:

Comment	Report reference/
Support subject to the following conditions:  (i) for occupation of the site to be restricted to one gypsy family and (ii) for no more than two caravans / mobile homes to be stationed within the site at any one time.	See Conditions
That Swale Borough Council has a five-year supply of sites in the borough and that gypsy and travellers should be directed to sustainable deliverable sites.	See paragraph 7.5

4.4 The second set of comments from Minster-on-Sea Parish Council objected to the application, raising the following points:

Comment	Report reference/
That the information submitted is confusing with the plan showing 6 caravans / mobile homes whereas there are 4	See paragraph 3.1

Over-intensive development of the site not in keeping with the original planning permission.	See paragraph 7.10
--	--------------------

- 4.5 Minster-on-Sea Parish Council responded to the second consultation, maintaining an objection, raising the following points:

Comment	Report reference/
The development is over intensive.	See paragraph 7.10
The site is not a recognised Gypsy and Traveller Site	See paragraph 2.1

## 5. REPRESENTATIONS

- 5.1 **Environment Agency** – The application would have a low environmental risk. An informative is provided regarding drainage options.
- 5.2 **KCC Highways** – The proposal does not meet their criteria to warrant involvement from the Highways Authority.
- 5.3 **KCC Public Rights of Way** - No comment.
- 5.4 **Natural England** - No objection subject to securing appropriate mitigation for recreational pressure impacts on habitat sites (European sites).
- 5.5 **SBC Environmental Health** – No adverse comments.

## 6.0 DEVELOPMENT PLAN POLICIES

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

**ST1** Delivering sustainable development  
**ST3** The Swale Settlement Strategy  
**ST6** The Isle of Sheppey area strategy  
**CP4** Requiring good design  
**DM6** Managing transport demand and impact  
**DM7** Vehicle parking  
**DM10** Gypsy and traveller sites  
**DM14** General development criteria  
**DM22** The coast  
**DM24** Conserving and enhancing valued landscapes  
**DM23** Coastal change management  
**DM28** Biodiversity and geological conservation

- 6.2 Local Plan policy DM10 is most relevant and is a criteria-based policy for consideration of the acceptability of sites for use as Gypsy / Traveller accommodation. The Local Plan does not contain any site allocations for Gypsy / Traveller sites.

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

- 6.3 The national policy position comprises the National Planning Policy Framework (NPPF) and Planning Policy for Traveller Sites (PPTS). Together they provide national guidance for Local Planning Authorities on plan making and determining planning applications for gypsy and traveller sites. A presumption in favour of sustainable development runs throughout both documents and this presumption is an important part of both the plan-making process and in determining planning applications. In addition, there is a requirement in both documents that makes clear that Councils should set pitch targets which address the likely need for pitches over the plan period and maintain a rolling five year supply of sites which are in suitable locations and available immediately.
- 6.4 Paragraph 11 of the NPPF sets a presumption in favour of sustainable development. For decision taking, it states that development should be approved if in accordance with an up to date development plan. Where there are no relevant development plan policies or those most important for determining an application are out of date, permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the NPPF as a whole.
- 6.5 Paragraph 63 sets out that to determine the minimum number of homes required, policies should be informed by housing needs assessments, and the size, type and tenure of housing needed for different groups should be assessed and reflected in planning policies – including travellers.

### **Planning Policy for Traveller Sites (PPTS) – Department for Communities and Local Government 2023**

- 6.6 Paragraph 3 states - *“The Government’s overarching aim is to ensure fair and equal treatment for travellers, in a way that facilitates the traditional and nomadic way of life of travellers while respecting the interests of the settled community.”*
- 6.7 Paragraph 4 sets out (inter-alia) that LPA’s should make their own assessment of need for the purposes of planning, that private traveller site provision should be promoted, that the number of traveller sites in appropriate locations should be increased, that travellers should have access to schools, healthcare and employment infrastructure, and that LPA’s should have due regard for the protection of local amenity and the local environment.
- 6.8 Paragraph 10 states that Local Plans should identify and update annually a 5 year supply of Gypsy and Traveller sites against locally set targets.
- 6.9 Paragraph 14 states that *“When assessing the suitability of sites in rural or semi-rural settings, local planning authorities should ensure that the scale of such sites does not dominate the nearest settled community.”*
- 6.10 Paragraph 25 states that LPA’s should consider the following issues when considering planning applications for traveller sites:
- a) *the existing level of local provision and need for sites*
  - b) *the availability (or lack) of alternative accommodation for the applicants*
  - c) *other personal circumstances of the applicant*
  - d) *that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no*

*identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites e) that they should determine applications for sites from any travellers and not just those with local connections”*

- c) *“Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate the nearest settled community, and avoid placing an undue pressure on the local infrastructure.”*

- 6.11 Paragraph 27 states *“If a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision when considering applications for the grant of temporary permission. The exception to this is where the proposal is on land designated as Green Belt; sites protected under the Birds and Habitats Directives and / or sites designated as Sites of Special Scientific Interest; Local Green Space, an Area of Outstanding Natural Beauty, or within a National Park (or the Broads).”*

### **The Swale Borough Council Gypsy and Traveller Accommodation Assessment 2023 (GTAA)**

- 6.12 The GTAA comprises the latest available evidence to identify the accommodation needs of Gypsies and Travellers across the Borough. The GTAA identifies the forecast pitch requirements for Gypsies and Travellers that meet the definition in the PPTS. The Councils GTAA published December 2023 has identified an overall need for 114 additional Gypsy and Traveller pitches across Swale Borough over the period 2022/23 to 2037/38, with 80 in the five-year period 2022/23 to 2026/27 and 34 in the longer-term 2027/28 to 2037/38).
- 6.13 The report advises that the Council should consider the following to help meet identified residential pitch need. Firstly, regularising of sites that are not permanently authorised. Secondly, additional pitch provision through the use of existing sites.

### **Supplementary Planning Documents (SPD)**

- 6.14 Swale Landscape Character and Biodiversity Appraisal
- 6.15 Swale Car Parking Standards

### **Other relevant legislation and Court Judgements**

- 6.16 The Human Rights Act 1998 Article 8: Respect for your private and family life, and home
- 6.17 The Equality Act 2010
- 6.18 In *Smith v Secretary of State for Housing, Levelling Up and Communities [2022]*, the Court of Appeal ruled that the PPTS definition in 2015, which excluded Gypsies and Travellers who had permanently ceased to travel due to old age or illness from the PPTS definition, was unjustified and discriminatory. The Court determined that this discriminated against the ethnic and cultural identity of Gypsies who, as a result of age, illness or disability, are no longer able to travel. The PPTS definition was amended in 2023 as a result of this judgement.

## 7.0 ASSESSMENT

- 7.1 This application is reported to the Committee because Minster-on-Sea Parish Council has objected to the proposal. Considering these comments and the proposal that has been submitted, the committee is recommended to carefully consider the following main points:

The Principle of Development  
 Impact upon the Landscape  
 Supply of G&T sites in the Borough  
 Residential Amenity  
 Highways and Access  
 Impact upon Special Protection Area (SPA)  
 Impact upon Coastal Change Management Area

### **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. The PPTS is also a significant material consideration, representing the national policy position on Gypsy and Traveller sites.
- 7.4 The site falls within open countryside and as such development within this location is generally restricted. However, Gypsy and Traveller sites are invariably found in rural locations. Key issues with such sites generally relate to visual impact and sustainability objectives. Policy DM10 of the Local Plan sets out the circumstances under which Gypsy and Traveller sites will be acceptable, and requires such development to comply with criteria listed in the policy. The extent to which the application meets the criteria is set out in the sections below.
- 7.5 The GTAA identifies a significant need for 114 Gypsy and Traveller Sites in the Borough, with an immediate need over a 5 year period for 80 sites. The Council can only currently identify a 1.3 year supply of Gypsy sites. The significant need and shortfall in site provision are also highly material in the consideration of this application.

### **Location of development**

- 7.6 Policy DM10 (1) sets out that proposals should accord with the settlement strategy under policy ST3 unless (inter-alia) the proposal is for an extension to or stationing of additional caravans at an existing site. The proposal would station an additional caravan at an existing site and meets this criteria. The existing site was found to be suitably located by the Council in granting permission in 2005.

**Gypsy status**

- 7.7 The principle of the use of the site as a gypsy/traveller site was established through the grant of the permanent planning permission in 2005. John Clarke is the son of the original applicants, and it is considered that the applicant is a Gypsy.

**That the development can achieve an integrated co-existence between all communities**

- 7.8 The site occupants have lived in this location for many years and seek permission to allow a family member to have his own caravan and pitch. The site is in a location with other properties present.

**Scale and impact on character of area**

- 7.9 Criteria 4 of Policy DM10 states that Gypsy and Traveller sites should be of a scale to meet the accommodation need identified and not introduce a scale of development that singularly or cumulatively dominates the nearest settlement or causes significant harm to the character of an area.
- 7.10 The proposal would add an additional caravan to the site ensuring that the site would remain modest and discreet in scale and appearance.

**Landscape Impacts**

- 7.11 The National Planning Policy Framework states amongst other matters that, planning policies and decision should contribute to and enhance the natural and local environment by (inter-alia) protecting and enhancing valued landscapes.
- 7.12 Policy DM24 of the Swale Local Plan states that the value, character, amenity and tranquility of the Borough's landscapes will be protected, enhanced and, where appropriate, managed. The site is not located in a designated landscape, in these instances policy DM24 states:

*“Non-designated landscapes will be protected and enhanced and planning permission will be granted subject to:*

- 1. the minimisation and mitigation of adverse landscape impacts; and*
- 2. when significant adverse impacts remain, that the social and or economic benefits of the proposal significantly and demonstrably outweigh the harm to the landscape character and value of the area.”*

- 7.13 As set out within the Swale Landscape Character and Biodiversity Appraisal the site is located within the Clay Farmland Type and Warden Farmlands Character Area. The key characteristics of this area comprises of London Clay ridges and outcrops elevated above the low lying marshlands to the south with arable farming representing the dominant land use. The landscape comprises of steeply wooded cliffs with sandy beaches below and small to medium-scale fields with narrow enclosed lands and a mixed land use comprising of arable production and urban fringe activities such as horse pasture, playing fields and holiday parks.

- 7.14 The proposal would add a single additional caravan to the existing gypsy site set back from Bell Farm Lane at a distance of approximately 50m. A 2m close boarded

fence surrounds the plot located to the front of the site and whilst the additional caravan is visible from the lane it is not out of character with other sites located along this road, ensuring that the landscape character of the site would be retained meeting the requirements of national and local planning policies.

### **Impact on amenities of occupants and neighbours**

- 7.15 Policy DM14 of the Local Plan requires amongst other matters that development proposals will cause no significant harm to amenity. Criteria 6 of policy DM10 states that the site should cause no significant harm to occupants or others through noise, disturbance, air quality of other circumstances.
- 7.16 The proposal would add an additional caravan to the existing gypsy site. The closest neighbouring properties to the site, Willow Farm and Nore View lie either side of the site however the impact of one additional caravan on the site which is modest in scale is not considered to have any significant additional adverse impact upon the amenities of these neighbours than the existing caravans, ensuring that the proposal would meet the requirements of policies DM10 (6) and DM14 of the Local Plan.

### **Access and parking**

- 7.17 The NPPF 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.”*
- 7.18 Criteria 11 of Policy DM10 states that sites should provide safe parking and access without unacceptable impacts on highways safety.
- 7.19 The proposal would use the existing access onto the site. Whilst the proposal would result in an additional mobile home on the site, this would be to house an existing occupant of the site which would mean that additional traffic movements would be unlikely to occur. There is sufficient parking on site to accommodate the additional pitch ensuring that the requirements of policy DM10 would be met.

### **Biodiversity and Impacts upon the SPA**

- 7.20 The NPPF states amongst other matters that planning decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity.
- 7.21 Policy DM28 states that development proposals will conserve, enhance and extend biodiversity, provide for net gains in biodiversity where possible, minimise any adverse impacts and compensate where impacts cannot be mitigated.
- 7.22 The northern 2m of the access and the land to the north of the site (outside of the application site) comprises of a Site of Special Scientific Interest. Policy DM28 of the Local Plan states that within nationally designated sites (of which a SSSI is one) development will only be permitted where it is not likely to have an adverse impact unless the benefits outweigh any harm. In this case the one mobile home is located approximately 50m from the SSSI within the existing site and would therefore not have an adverse impact upon biodiversity.
- 7.23 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 £328.27 per pitch. A fee equating to £328.27 will be sought prior to the grant of planning permission.

### **Coastal Change Management Area**

- 7.24 The site lies within a Coastal Change Management Area (CCMA) with erosion zone 1 extending across a small section of the front portion of the site, comprising of the access to the site. The majority of the remainder of the site and the mobile home proposed under this application lies within erosion zone 2.
- 7.25 Policy DM23 states that *"Within the Coastal Change Management Area (CCMA), as defined on the Proposals Map, planning permission will be granted for development proposals subject to:*
- 1. It being demonstrated that the proposal will not result in an increased risk to life, nor a significant increase in risk to property."*
- 7.26 Policy DM23 goes onto state that proposals within Erosion Zone 2 may additionally be permitted where they comprise the subdivision of properties, including residential subdivision. In addition to this the policy also states that planning permission will be granted subject to *"Proposals within Erosion Zones 1 and 2, submitting a Coastal Erosion Vulnerability Assessment showing the development will be safe throughout its planned lifetime and will not increase risk to life or property elsewhere without the need for new or improved coastal defences."*
- 7.27 In this case a Coastal Erosion Vulnerability Assessment has not been submitted with the application. However, via condition, the location of the mobile home can be secured to ensure that it is continued to be placed outside of Erosion Zone 1. In addition, mobile homes are by their very nature temporary structures and crucially, the applicant was already residing on the site as a family member prior to the submission of this application. As such, the scheme would not give rise to an increased risk to life in that regard. In addition, the Environment Agency were consulted on the application and commented that it is of low environmental risk. As a result, it is considered that the lack of a Coastal Erosion Vulnerability Assessment does not render the scheme unacceptable in this instance and as the proposal effectively falls under a residential subdivision of the site it is concluded that the application accords with policy DM23 of the Local Plan. It is however recommended that due to the weight that has been given to the applicant already residing on the site in the assessment of the application against the requirement to provide a Coastal Erosion Vulnerability Assessment, and in light of the previous decisions on this site, that the permission is restricted to a personal one for the applicant (and his immediate family). On this basis there is no need for a wider condition restricting the occupation of the unit to a gypsy / traveller (as it has already been accepted that the applicant is a gypsy).

### **Conclusion**

- 7.28 The proposal would represent an increase of one additional pitch within an existing site which would not have an adverse impact upon the streetscene, landscape, local amenities, highway safety, biodiversity or the Coastal Change Management Area.
- 7.29 The Council cannot demonstrate a 5-year supply of Gypsy and Traveller sites. The current supply figure is 1.3 years and as such the shortfall is significant. In addition, the latest GTAA demonstrates a significant need for sites, particularly for 80 pitches

in the next 5 years. The provision of 1 unit would make a modest contribution to the identified need for sites and is given significant weight.

- 7.30 On the basis of the above, it is recommended that planning permission be granted, subject to the conditions below and securing the additional SAMMS payment for the additional pitch.

### CONDITIONS

- (1) The development hereby permitted shall be carried out in accordance with the following approved drawing: Site Location Plan.

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

- (2) The occupation of the caravan/mobile home hereby approved shall be restricted to the applicant and their immediate family.

Reason: In accordance with the historic permissions granted and the location of the site within the Coastal Change Management Area.

- (3) No more than three caravans/mobile homes (as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, as amended) shall be stationed on the site at any one time.

Reason: In recognition of the terms of the application, and because an uncontrolled use of the land would be unacceptably detrimental to the character and amenities of the area.

- (4) The caravans/mobile home shall only be positioned in the location shown on the Site Location Plan.

Reason: In the interest of visual amenity and due to the location of the site within the Coastal Change Management Area.

- (5) The site shall only be used for residential purposes and not for any industrial or commercial use. In this regard no open storage of plant, products or waste may take place on the land and no vehicle over 3.5 tonnes shall be kept on the site.

Reason: In the interest of residential amenity of the area.

- (6) No floodlighting, security lighting or other external lighting shall be installed or operated on the site other than in accordance with details which shall have been previously submitted to and agreed in writing by the Local Planning Authority.

Reason: In the interests of visual amenity and biodiversity

### **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 dwellings are occupied.

Based on the correspondence with Natural England (via the NKEPG), it is concluded 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 will be secured prior to the determination of this application) will ensure that these impacts will not be significant or long-term. I therefore consider that, subject to mitigation, there will be no adverse effect on the integrity of the SPA.

It can be noted that the required mitigation works will be carried out by Bird Wise, the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, which itself is a partnership of local authorities, developers and environmental organisations, including SBC, KCC, Medway Council, Canterbury Council, the RSPB, Kent Wildlife Trust, and others (<https://birdwise.org.uk/>).

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

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), 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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<b>2.6 REFERENCE NO 23/504808/FULL</b>		
<b>PROPOSAL</b> Change of Use from a Residential to a C2 Residential Accommodation Use.		
<b>SITE LOCATION</b> 20 Leigh Road Sittingbourne Kent ME10 3FF		
<b>RECOMMENDATION</b> 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.		
<b>APPLICATION TYPE</b> Change of Use		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Councillor Hall has referred the item to Committee		
<b>CASE OFFICER</b> Guy Martin		
<b>WARD</b> Murston	<b>PARISH/TOWN COUNCIL</b> Not applicable	<b>APPLICANT</b> Mr Ifeanyi Emmanuel Nduka  <b>AGENT</b> None
<b>DATE REGISTERED</b> 24.11.23	<b>TARGET DATE</b> 05.04.24	
<b>BACKGROUND PAPERS AND INFORMATION:</b>  Documents referenced in report are as follows: -  Change of Use Statement (uploaded 09.11.23) Change of Use Statement (uploaded 01.02.24) Planning Statement (uploaded 14.03.24)  All drawings submitted:  Block Plan (uploaded 14.11.23) Site Location Plan (uploaded 23.10.23) Existing Floor Plan (uploaded 24.11.23) Proposed Floor Plan (uploaded 24.11.23)  The full suite of documents submitted pursuant to the above application are available via the link below: -  <a href="https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=S2YZPLTYKC700">https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=S2YZPLTYKC700</a>		

## 1. SITE LOCATION AND DESCRIPTION

- 1.1 The site is an end of terrace, three bedroom, three storey dwelling located on the Great Easthall housing estate, within the built confines of Sittingbourne. The property has a rear garden and a garage situated within a parking court to the rear of the site. The surrounding area is characterised by residential properties.

## 2. PLANNING HISTORY

2.1 None relevant.

## 3. PROPOSED DEVELOPMENT

3.1 This application seeks planning permission for a change of use from a Residential to a C2 Residential Accommodation Use. No changes to the layout or appearance of the house or site are involved. The details of the proposed use as set out in the supporting information is as follows:

- The property will be regulated by the Care Quality Commission.
- The facility will be used for treatment (i.e. detoxification) for alcohol misuse, and not for persons with other drug related issues.
- Persons entering the property are required to have been sober for at least 5 days.
- Persons ordinarily stay at the facility on average for 7 days, the first 3 of these days are confined to the property, after which activities such as physiotherapy and counselling are provided.
- Persons are not able to leave the property unaccompanied.
- The occupants of the property would comprise of 3 clients, along with 2 members of staff during the daytime and 1 member of staff overnight.
- Persons staying at the facility for treatment are not allowed to drive to the premises and are brought there via taxi, driven by a relative or transport is arranged by the provider.
- No persons with a history of abusive behaviour are accepted.

## 4. CONSULTATION

4.1 Three rounds of consultation have been undertaken, during which letters were sent to neighbouring occupiers and a notice was displayed at the application site. Full details of representations are available online.

4.2 During the first round of consultations 41 letters of representation were received from 35 separate address, all objecting to the application. Concerns/comments were raised in relation to the following matters:-

<b>Comment</b>	<b>Report reference (refer to paragraph no.)</b>
Devaluation of property and increase in house and car insurance costs.	7.24
The proposal would give rise to security / safety risks for existing neighbouring residents.	7.14, 7.15, 7.16
This is an inappropriate location for a facility such as this.	7.6-7.8
Loss of privacy.	7.18
Adverse impact from noise and smells.	7.17
Increase in anti-social behaviour / crime and threat to children.	7.14-7.16
Increased feelings of vulnerability for local residents.	7.16
That the property will not be a secure premises.	7.14-7.16



That existing parking problems will be exacerbated and that emergency vehicles would have problems accessing the estate.	7.23
That criminal activities have already occurred at the site when it was used as an Air BnB.	7.24
That the site will be unmanned and unregulated.	7.14-7.15
Increase in traffic from the proposal.	7.23
That incorrect information was provided regarding the applicants home address and that the site is not visible from a public road.	7.24
Risk to local residents from medical waste and drug paraphernalia.	7.24
Adverse impact of the proposal upon local businesses.	7.14-7.15
That there is infrequent public transport in the area and no facilities such as shops in the vicinity.	7.6, 7.15, 7.23

4.3 During the second round of consultations 4 letters of representation objecting to the application were received from a further 4 separate addresses. The concerns raised are covered by the points raised in the table above.

4.4 During the third round of consultation 9 letters of representation objecting to the application were received. 8 of these representations were from addresses who had previously commented. The following additional concerns/ comments that are not already set out above were raised in relation to the following matters:

Comment	Report reference (refer to paragraph no.)
That there is no adequate management or security plan in place.	7.14
Unanswered questions around the vetting process for occupants of the property, whether staff will be medically trained and allowed to administer treatment and whether discussions with the CQC have taken place.	7.14

## 5. REPRESENTATIONS

5.1 **Kent Police** – The proposal falls outside of the scope which the Kent Police would comment however they recommend that extra security measures would be required for those within the property and living nearby to include boundary treatment, CCTV, entrance and parking lighting and external doors and windows.

5.2 **Mid Kent Environmental Health** – Raise no objection.

## 6.0 DEVELOPMENT PLAN POLICIES

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

**ST1** Delivering sustainable development in Swale

**ST3** The Sittingbourne Area Strategy

**CP3** Delivering a wide choice of high-quality homes

**CP5** Health and wellbeing  
**CP6** Community facilities and services to meet local needs  
**DM7** Vehicle Parking  
**DM14** General Development Criteria

## 6.2 Supplementary Planning Documents

Swale Borough Council Parking Standards 2020

## 7.0 ASSESSMENT

7.1 This application has been referred to the Committee by Councillor Hall. Considering the comments received 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  
Transport and Highways

### **Principle of Development**

- 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 Paragraph 96 of the NPPF states, amongst other things, that planning policies and decisions should aim to achieve healthy, inclusive and safe places which promote social interaction including opportunities for meetings between people who might not otherwise come into contact with each other.
- 7.5 Policy ST1 of the Local Plan supports sustainable development on both identified and suitable sites within the Borough. Policy ST3 states that the urban centres will provide the primary focus for growth and Policy CP3 seeks to make provision for a variety of house types and sizes to be provided to meet varying needs and criteria (6) states that development proposals should, *'Meet the housing requirements of specific groups, including families, older persons, or disabled and other vulnerable persons.'* Policy CP5 states amongst other things that the Council, working in conjunction with relevant organisations, communities and developers, will promote, protect and work to improve the health of Swale's population, and reduce health inequalities by bringing forward accessible new community services and facilities and create social interaction and safe environments through mixed uses in the design and layout of development.
- 7.6 In this case, the development proposal relates to an existing residential dwelling located on a residential development within the built confines of Sittingbourne. Sittingbourne is the focal point for development and the main urban area for growth under the development plan.

- 7.7 The property would remain in residential use as an alcohol rehabilitation facility, supported by staff who would attend the property in shifts. Although the change of use would result in the loss of a conventional dwelling, it would continue to provide a residential use for a particular type of accommodation. As a result it would cater for a specific group identified in criteria (6) of policy CP3 as residential accommodation. The proposal would also assist in improving the health of the population and bringing forward accessible new facilities.
- 7.8 The proposal would provide accommodation for vulnerable members of society and would deliver a form of housing facility to give help to people. It would add to the range of housing requirements and is considered to be compliant with both National and Local policies ST1, ST3, CP3 and CP5 of the Local Plan .

### **Character and Appearance**

- 7.9 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.
- 7.10 Policy CP4 of the Local Plan requires development proposals to be of high-quality design and to be in keeping with the character of the area.
- 7.11 No alterations are proposed to the dwelling and in consequence the appearance of the property would remain unchanged ensuring that the proposal would not have any harmful impacts upon the character or appearance of the area or the quality of the streetscene.
- 7.12 As such, the impact upon the character and appearance is consistent with the aims of policies CP4 and DM14 of the Local Plan.

### **Living Conditions**

- 7.13 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, in an unreasonable loss of privacy, in an unreasonable loss of outlook or in excessive noise or odour pollution. It is clear from the objections that the majority of concerns relate to the impact of the use on existing residents and the fear of anti-social behaviour, safety and crime.
- 7.14 The application includes a supporting statement setting out how the premises would operate. The occupants will comprise of three clients. In addition to this, two staff members will be present during the day and one staff member will stay overnight, ensuring that the premises will be staffed and monitored 24-hours a day providing supervision of the three clients. The property will be regulated by the Care Quality Commission who will consider the safety, security and environment of the property to ensure that it is fit for purpose prior to approving the service as a registered premises for its intended use. The supporting information sets out that the premises will be used to treat alcohol abuse.
- 7.15 The applicant sets out that clients would reside at the premises for approximately 7 days. They are searched before entering the property and will be supervised by a trained

member of staff in the property at all times. Clients are not allowed to leave the house for at least the first 3 days, after which they will not be able to leave the premises unattended. No (illegal) drugs or alcohol are admitted and if this rule is not adhered to then the clients will be removed from the property with immediate effect.

- 7.16 In respect of the concerns received from neighbouring occupiers, fear of anti-social behaviour and the fear of crime can be material considerations in the determination of this application. Appeal decisions have confirmed that the fear of crime can be a material consideration if there is some reasonable, cogent evidential basis linking the proposed use or occupants with criminal activity. Kent Police were consulted on the proposal and do not object in principle to the proposed use although suggested a number of safety measures as set out in the consultation section above. The measures that Kent Police have referred to would however be matters which the CQC would need to consider when assessing the acceptability of the premises for the proposed use. The property already has boundary treatments to an approximate height of those suggested by Kent Police, and residents will be accompanied by members of staff. On this basis it is not considered reasonable to require additional security measures, which do not serve a direct planning purpose. A condition has however been recommended which limits the accommodation to be used by persons who require treatment for alcohol abuse only and to limit occupation to three clients.
- 7.17 The property would be occupied by up to five people (including staff) which would not be likely to generate levels of activity, noise or smells dissimilar to a larger family occupying the premises.
- 7.18 The proposal would result in no external changes to the building which will remain in a residential use so the proposal would not give rise to any harmful impacts upon neighbouring properties daylight or sunlight, privacy, or outlook.
- 7.18 The proposal would therefore not have an unacceptable adverse impact upon the living conditions of neighbouring occupiers and would meet the requirements of policy DM14 of the Local Plan.

### **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 Local Plan policy promotes sustainable transport through utilising good design principles. It sets out that where highway capacity is exceeded and/ or safety standards are compromised proposals will need to mitigate harm.
- 7.22 The SBC Vehicle Parking Standards Supplementary Planning Document (SPD) which is pursuant to Policy DM7 of the Local Plan was adopted by the Council in June 2020 and is a material consideration in the determination of planning applications.

- 7.23 The property would comprise of five residents incorporating three clients and two members of staff. The applicant has provided a statement confirming that clients will not be able to drive to the property. Although staff would need to access the property and vehicles would drop clients off, it is not considered that traffic generation or the requirement for car parking would materially differ from the use of the property as a conventional dwelling and as a result is acceptable in this regard.

### **Other Matters**

- 7.24 Although a number of the matters raised by the comments set out above have been addressed in the assessment above, of those that remain they are responded to as follows. Firstly, the impact of a proposal upon property prices and insurance is not a material planning consideration that can be considered in the determination of a planning application. The proposal to change the use would not have any negative impact on the ability of emergency services to be able to gain access and historical incidences of disturbances at the property are not relevant to the proposed use. The applicant has confirmed that facilities will be provided for the disposal of medical waste and the amount of facilities in the local area would be unchanged if the property remained as a conventional dwelling. Comments regarding where the applicant currently lives are not material to the application and finally matters related to the vetting process for occupants and staff would be a matter for the CQC.

## **8 CONCLUSION**

- 8.1 The principle of converting the property to residential accommodation for persons who require treatment for alcohol misuse is considered to be acceptable. Overall, the application is not considered to give rise to unacceptable harm to the living conditions of surrounding occupiers, or to highway safety and convenience and is therefore deemed to be acceptable and in compliance with relevant local policies. It is recommended that planning permission is granted subject to the conditions set out below.

### **Conditions**

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

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

- 2) The development hereby permitted shall be carried out in accordance with the following approved drawings: Block Plan, Proposed Floor Plans.

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

- 3) The property shall be used for the purposes of residential accommodation for persons who require treatment for alcohol abuse only and for not for any other purposes whatsoever, including any other use under Class C2 of the Schedule to the Town and Country Planning (Use Class) Order 1987 (as amended) and any other use whether permitted by the Town and Country Planning (General

Permitted Development) (England) Order 2020 (as amended) (or any order revoking or re-enacting that Order) or not.

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

- 4) The occupation of the premises shall be limited to a maximum of three residents at any one time.

Reason: To ensure that an over-intensified use would not occur, in the interests of the amenities of the area.

- 5) Upon first occupation of the development hereby permitted, the area shown on the submitted plan 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.

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

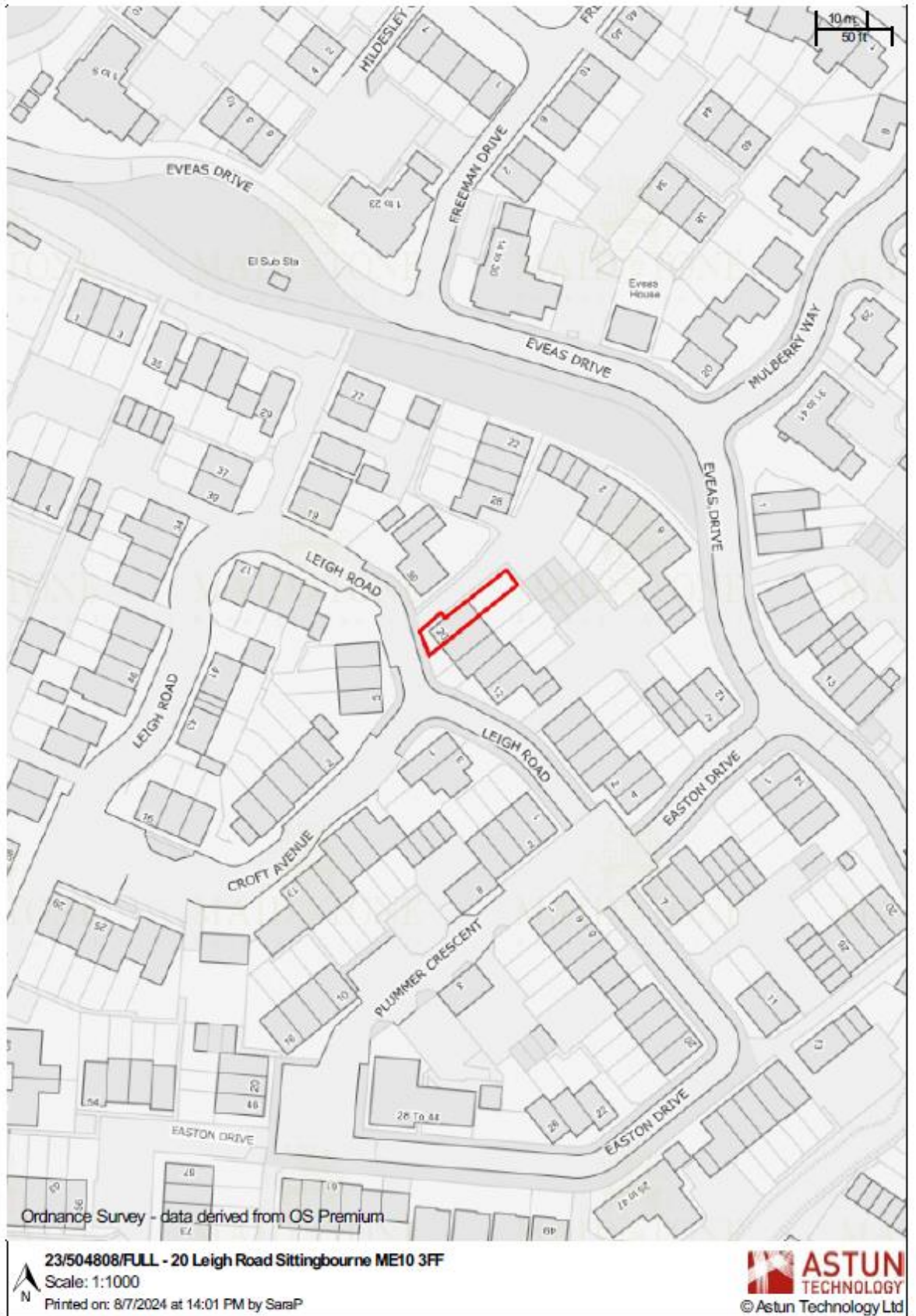
### **The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), 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.

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

The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.



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**PLANNING COMMITTEE – 18 JULY 2024**

**PART 3**

Report of the Head of Planning

**PART 3**

Applications for which **REFUSAL** is recommended

<b>3.1 REFERENCE NO - 24/500022/FULL</b>		
<b>PROPOSAL</b> Erection of 2no. bungalows (Revised scheme to approval 21/501243/FULL).		
<b>SITE LOCATION</b> Land Adj To Rides House, Warden Road, Eastchurch, Kent, ME12 4HA		
<b>RECOMMENDATION</b> Delegate to the Head of Planning to refuse planning permission, with further delegation to the Head of Planning to negotiate the precise wording of reasons of refusal, including adding or amending such reasons as may be consequently necessary and appropriate.		
<b>APPLICATION TYPE</b> Minor		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Eastchurch Parish Council support the application		
<b>Case Officer</b> Rebecca Corrigan		
<b>WARD</b> Sheppey East	<b>PARISH/TOWN COUNCIL</b> Eastchurch	<b>APPLICANT</b> Mark Ball  <b>AGENT</b> Morris Russell Planning
<b>DATE REGISTERED</b> 01.02.2024		<b>TARGET DATE</b> 23.07.2024
<b>BACKGROUND PAPERS AND INFORMATION:</b>  Documents referenced in report are as follows: -  2491-01 Site Location Plan 2491-05 Existing and Proposed Block Plans 2492 10A Proposed Site Plan, Floor Plan and Elevations  The full suite of documents submitted pursuant to the above application are available via the link below: -  <a href="#">24/500022/FULL   Erection of 2no. bungalows (Revised scheme to approval 21/501243/FULL).   Land Adj To Rides House Warden Road Eastchurch Kent ME12 4HA (midkent.gov.uk)</a>		

1. SITE LOCATION AND DESCRIPTION

1.1 The site is located within the countryside, outside of the built-up area confines, situated between the villages of Eastchurch to the southwest and Warden to the southeast.

- 1.2 The site forms part of a larger land area comprised of a collection of farm buildings and residential development and associated open land collectively referred to as Rides Farm.
- 1.3 The application site is an 'L' shaped parcel of land to the north of Warden Road. Access to the site is taken from the northern side of Warden Road between 'Rides Cottage' to the west and two dwellings to the east which are currently under construction (these were allowed on appeal as a replacement for the original 'Rides House' farm dwelling, appeal ref. 3262303) and the site then opens out into a rectangular shape to the rear of Rides Cottage. The site previously contained two agricultural buildings, however these have been demolished and only the concrete base remains. The site is within a cluster of sporadic residential development within otherwise generally rural surroundings.
- 1.4 To the north and east, there are a collection of agricultural buildings and open countryside which form part of the original Rides Farm.
- 1.5 To the south, on the opposite side of Warden Road the land comprises of cultivated open agricultural farm land of Agricultural Land Classification Grade 3.

## 2. PLANNING HISTORY

- 2.1 **21/501243/FULL** – Planning permission granted on 23.07.2023 for the conversion of agricultural buildings to form 2 no. single residential dwellings (as an amendment to the recent prior approval for the change of use of the buildings into residential units under reference 20/501903/PNQCLA).
- 2.2 **20/501903/PNQCLA** – Prior Approval granted on 30.06.2020 in relation to a Prior notification for the change of use of 2no. agricultural buildings to 2no. dwellinghouses and for associated operational development. For its prior approval to: - Transport and Highways impacts of the development. - Contamination risks on the site. - Flooding risks on the site. - Noise impacts of the development. - Whether the location or siting of the building makes it otherwise impractical or undesirable for the use of the building to change as proposed - Design and external appearance impacts on the building.
- 2.3 **19/503515/FULL** Planning permission granted on 16.10.2019 for Proposed cladding of open bays to existing agricultural barns, including insertion of doors to the east and south elevations.

### PLANNING HISTORY OF ADJOINING SITE

- 2.4 The following decisions on the adjacent site are of some relevance specifically where the Inspector dismissed an appeal on sustainability grounds.
- 2.5 **20/503620/FULL** Appeal allowed on 17.05.2021 for Erection of 2no. semi-detached dwellings with associated access and parking.
- 2.6 **21/500005/FULL** Appeal dismissed on 25.02.2021 for Change of use of land for stationing of up to 15 holiday caravans together with access and hardstanding for each pitch.
- 2.7 **21/506332/FULL** – Appeal dismissed on 31.03.2023 for Erection of a dwelling.

### 3. PROPOSED DEVELOPMENT

- 3.1 This application seeks planning permission to erect 2 bungalows on the site. It has been submitted as an alternative to the development permitted under planning permission ref: 21/501243/FULL for the conversion of agricultural buildings to residential use.
- 3.2 The proposed bungalows would have a footprint of 14.3m x 7m and a floor area of 103m<sup>2</sup>. There is a minor difference in ground levels at the site therefore taken on average the new bungalows would have an eaves height of 2.6m and a ridge height of 4.5m. The bungalows would be sited side by side with car parking in the space between the two buildings. Each bungalow would provide 3 bedrooms. The bungalows would be finished with a tiled pitched roof and weatherboarding for the external walls.
- 3.3 The red line of this application site is marginally larger than that of the previously approved scheme (ref: 21/501243/FULL). The increase is towards the northeastern corner which squares off the site and increases the amount of amenity provision to the rear of the proposed eastern bungalow.

### 4. CONSULTATION

- 4.1 Two rounds of neighbour consultations were undertaken, during which letters were sent to neighbouring occupiers and a notice was displayed at the application site. Full details of the representations are available online.
- 4.2 Two letters of representation were received from the same address objecting to the application. Concerns/comments were raised in relation to the following matters:

Comment	Report reference
One of the bungalows runs close to the boundary of property and will cause overshadowing and a blot on the landscape.	See para. 7.24
The layout and density of buildings will feel very cramped.	See paras. 7.10-7.16
No objection to the original layout of the site or if said property was set further to the back of the plot.	Noted.
Concern regarding flood water and drainage.	The application site is Flood Zone 1
Concern with the address listing.	The site address has been amended

- 4.3 Eastchurch Parish Council – Support the application on the following grounds:

Comment	Report reference
The development is suitably designed to avoid an unacceptable impact upon the living conditions of adjoining dwellings as this is a better design than	Paragraphs 7.23-7.25 set out that there would be no unacceptable

the 2021 application.	impacts on the living conditions of neighbours. Paragraphs 7.10-7.16 set out that the visual impact would be harmful. Paragraphs 7.5-7.6 set out that the previous permissions cannot now be implemented.
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## 5. REPRESENTATIONS

- 5.1 **Lower Medway Internal Drainage Board** – Advise that the site is within the drainage district of the Lower Medway Internal Drainage Board; however, the proposal does not impact the Board’s interests.
- 5.2 **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.
- 5.3 **Mid Kent Environmental Health:** Raise no objection, subject to a condition relating to Land Contamination and an informative relating to construction.
- 5.4 **KCC Highways:** No objection raised subject to conditions relating to the retention of vehicle parking spaces, EV charging points, cycle parking and refuse storage facilities.

## 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 CP2** Promoting sustainable transport  
**Policy CP3** Delivering a wide choice of high quality homes  
**Policy CP4** Requiring good design  
**Policy DM7** Vehicle parking  
**Policy DM14** General development criteria  
**Policy DM19** Sustainable design and construction  
**Policy DM28** Biodiversity and geological conservation

### 6.2 **Supplementary Planning Guidance/Documents**

- 6.3 SBC Vehicle Parking Standards Supplementary Planning Document (SPD) which is pursuant to Policy DM7 of the Bearing Fruits Local Plan Adopted 2017 was adopted by the Council in June 2020 and is a material consideration in the determination of planning applications.

## 7. ASSESSMENT

- 7.1 This application is reported to the Committee because Eastchurch Parish Council has supported the proposal on relevant planning grounds. 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
- Landscape and Visual
- Ecology
- Transport and Highways
- Living Conditions
- Other matters

### **Principle of Development**

- 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 application site lies within the countryside and is divorced from any settlement, and as such policies of rural restraint apply. Policy ST3 of the Local Plan states that at locations in the open countryside outside the defined built up area boundaries, development will not be permitted unless supported by national policy and where it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquility and beauty of the countryside, its buildings, and the vitality of rural communities. Policy CP3 states that homes will be steered towards the locations identified in ST3, which are focused on the main urban centres in the borough. Policy CP2 seeks to locate development in areas which minimise the need to travel for employment and services and facilitate sustainable transport.
- 7.5 In this case, it is important to consider the planning history of the site. The site originally contained two agricultural buildings which were granted Prior Approval for conversion into two dwellings in 2020 (ref: 20/501903/PNQCLA) under permitted development rights. Planning permission (21/501243/FULL) was subsequently granted for the conversion of the agricultural buildings to bungalows, and which included some physical alterations to the buildings. The physical alterations took the scheme outside of permitted development limitations, however given that prior approval had been granted, the alterations proposed (mainly to re-clad the walls and roofs of the buildings) was deemed acceptable. It is important to note that such permissions / approvals were granted for the conversion of existing agricultural buildings on the site – and that the conversion of rural buildings to alternative uses is generally permitted / supported both under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) and under national policy. In particular, the prior approval process under the GPDO only allows a narrow range of matters to be considered when assessing such applications. In addition, policy DM3 of the Local Plan supports the conversion of rural buildings, albeit not

for residential purposes. However, in considering the above planning application, the Council accepted that there was a legitimate fallback permission under the prior approval for the buildings to be converted to such use.

- 7.6 The agricultural buildings have now been demolished, and this represents a significant change in site circumstances. This means that it is not possible to carry out the developments referred to above as there are no longer any existing buildings to convert. As such, there is no fallback position now available to assess as a material consideration under this current application. The site is not classed as brownfield land as the buildings that formerly occupied the site were last in agricultural use, and as a result are excluded from the definition of previously developed land in the NPPF.
- 7.7 The application proposes to erect two new dwellings on the site, within an area in the open countryside. Such development would not protect the intrinsic character, value, landscape setting and beauty of the countryside and would conflict with Policy ST3 of the Local Plan.
- 7.8 The site is also in a location distant from services and facilities. In recent appeal decisions for new residential development immediately adjacent to the site, Inspectors have also considered the location to be remote (appeal references 3262303 and 3295953) and unsustainable.
- 7.9 As such, the location of the site within the countryside and distance from services and facilities makes this an unsustainable location not considered suitable for housing and with particular regard to minimising travel and promoting sustainable travel options it is found to be contrary to policies ST1, ST3 and CP2 of the Local Plan which seeks, amongst other matters, to support the aims of sustainable development, and adhere to the Council's settlement strategy.

#### **Landscape and Visual Impact**

- 7.10 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.
- 7.11 The previous consents (20/501903/PNQCLA and 21/501243/FULL) sought to convert the existing barns and therefore related to the conversion of existing buildings that formed part of the landscape. However, this is no longer the case given that the barns have been demolished. In addition, this application seeks a revised location for the development to reposition the footprint of the bungalows side by side sharing the same building line and this differs from the original agricultural buildings which sat at a 90 degree angle to one another. This introduces a degree of uniformity to the site which is not typical of a traditional farm arrangement, highlighted by the more conventional layout of the dwellings, garden and parking arrangements.
- 7.12 Given that the former buildings have been demolished, the starting point is that the site is now devoid of buildings and has a degree of openness. The erection of two dwellings would introduce built form onto the site in a manner harmful to its countryside location. The proposal would represent an urbanising form of backland development and the two dwellings would be set close to one another and of a uniformity that is not in keeping with the loose-knit and sporadic character of the built form in the area.

- 7.13 It is noted that on the adjoining site, permission was allowed on appeal for the construction of a pair of semi-detached dwellings following the demolition of the original farm house (appeal ref. 3262303). In that instance, the site was considered to be brownfield land and the Inspector gave weight to the existence of a previous dwelling on the site and permission to extend that dwelling. An appeal was also dismissed on sustainability grounds for a new dwelling on vacant adjacent land (3295953). In both cases, the Council could not demonstrate a 5 year housing supply at the time, and the Inspector applied the tilted balance under paragraph 11 of the NPPF. In the case of the first appeal referenced above the Inspector concluded that that the harm did not demonstrably or significantly outweigh the benefits of the development. However, in the case of the second appeal on vacant land, even in a scenario where the Council could not demonstrate a 5 year supply of housing land the appeal was dismissed, primarily due to the poor location of the site in respect of access to services and facilities.
- 7.14 Whilst in both the above cases the Inspector did not find significant harm would arise to the character and appearance of the area, the difference with the current application is that the site is not formerly brownfield land in residential use, and the current application is for two dwellings on a much narrower backland plot which differs from the prevailing more spacious and linear development in the local area.
- 7.15 Overall it is considered that the proposed development would represent an unacceptable form of backland development and would have an urbanising impact to the detriment of the rural character and appearance of this countryside setting. Moreover, the more domesticated layout, including associated paraphernalia would further urbanise and change the appearance of Rides Farm and erode this rural setting.
- 7.16 Overall, the proposal would cause significant harm to the intrinsic character, appearance, quality, value and beauty of the surrounding countryside contrary to policy ST3, CP4 and DM14 of the adopted Local Plan.

### **Transport and Highways**

- 7.17 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.”*
- 7.18 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.”*
- 7.19 The section of this report on the principle of development has already concluded that the site is remote from services and facilities and would be reliant on private car trips, and as such is unsustainable.
- 7.20 The development will make use of the existing access road onto the site from Warden Road. KCC Highways have raised no objections to the use of this access road, nor have they raised concern about the impact of the development on highway safety or convenience and it is noted that the use of the existing access was considered acceptable under the previous application. Whilst use of this access road by future occupiers of the development may cause some disturbance to occupiers of the residential units either side of the access road, it is not considered that the disturbance would be significantly harmful when compared to the traffic that could be associated with the former agricultural use of

the buildings.

- 7.21 The Council's Parking Standards SPD sets out that a minimum of two spaces are required for a three bedroom dwelling in a rural area, and as such four spaces would be required here. In this instance acceptably sized tandem parking bays are provided and given the addition of bays to provide sufficient maneuverability the parking provision is acceptable and complies with the SPD. Following comments from KCC Highways they requested details of electric vehicle charging points, cycle storage and drag distances for refuse storage all of which have been provided and subsequently considered to be acceptable by KCC Highways.

### **Living conditions**

- 7.22 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.
- 7.23 The proposed dwellings are single storey and would lie a minimum of 25m from the dwelling to the west of the site. Due to this distance it is unlikely that there will be any significantly harmful impacts to the living conditions of the occupants of these dwellings.
- 7.24 The bungalows would lie roughly 25m from Rides Cottage to the south which is a sufficient distance not to give rise to any serious harm to the living conditions of this property. In addition, a letter of objection has been received from the owner of the site to the east, known as Rides House Farm which raises a concern that due to the revised location of proposed bungalow to the east of the site, it would cause overshadowing. Whilst the bungalow would be located close to the boundary the closest adjacent building is an agricultural building, and the dwellings under construction to the south east would be approximately 35m away. Given the distance between the dwellings it is not envisaged that there would be any harm to these properties with regard to loss of light or outlook.
- 7.25 Considering the amenity of future occupiers of the dwellings, both properties accord with the Nationally described space standards. All habitable rooms are served by windows which will provide adequate outlook and natural light and there is a sufficient amount of amenity provision. While there would be windows within the side elevations of each dwelling facing each other, there would be little mutual overlooking between the buildings given that they are single storey bungalows and a fence is proposed between the two plots.

### **Ecology**

- 7.26 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.
- 7.27 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 £328.27 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.

### **Conclusion**

- 7.28 This application proposes development within the countryside and divorced from any settlement boundary or services and facilities. Although permission / prior approval has previously been granted on the site for the conversion of agricultural buildings to residential, these buildings have now been demolished and as such there is no fallback position that can be taken into account as a material consideration. The development would result in the erection of two new dwellings and would erode the rural qualities of the area, with a resultant significantly harmful and negative impact on the character, appearance and intrinsic value of the countryside, where protecting such rural qualities is a key planning purpose. It would dilute the overall strategy for the pattern of development in the Borough, and there is a risk that this could be easily repeated in the immediate area if permission were to be granted. The site is remote from services and facilities and as such represents unsustainable development and is contrary to policies ST1, ST3, CP4, and DM14 of "Bearing Fruits 2031: The Swale Borough Local Plan (2017)".
- 7.29 The Council has very recently received an appeal decision at Ufton Court Farm in which an Inspector concluded that the Council did not have a 5 year housing supply. The Council is considering its position on this decision. However, even if this application was to be considered using the "tilted balance" under paragraph 11(d) of the NPPF, the harm arising as set out above would significantly and demonstrably outweigh the benefits associated with the erection of two dwellings, and would conflict with the NPPF as a whole.
- 7.30 On this basis, the application is recommended for refusal.

### **Reason for Refusal**

- (1) The proposed development would be in an unsustainable location outside of any defined built-up boundary and remote from services and facilities, with limited non-car options to service the site which will result in a car dependent occupancy. Furthermore the proposed development would have a harmful and urbanising impact upon the prevailing rural character and appearance of the area, and would fail to protect the intrinsic value, tranquillity and beauty of the countryside. The development is therefore contrary to policies ST1, ST3, CP4 and DM14 of "Bearing Fruits 2031: The Swale Borough Local Plan (2017)" and the National Planning Policy Framework.

### **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.

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.

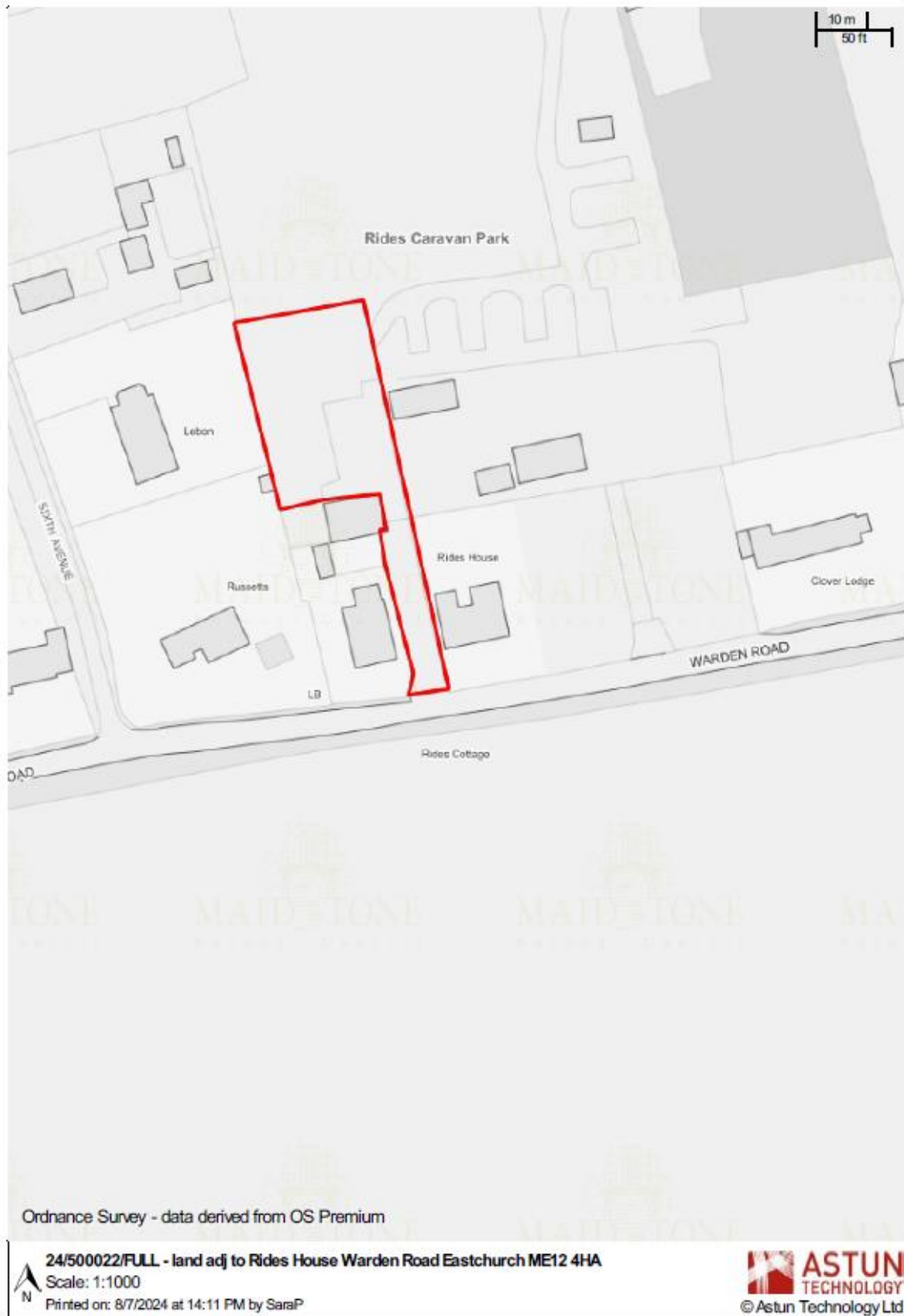
Based on the correspondence with Natural England (via the NKEPG), I conclude that off-site mitigation is required.

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.

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

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), 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 – 18 JULY 2024**

**PART 5**

Report of the Head of Planning

**PART 5**

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

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- **Item 5.1 – 26 Springvale Iwade**

**APPEAL DISMISSED**

**DELEGATED REFUSAL**

**Observations**

The Inspector agreed with the Council that the extension would have an unacceptable impact on the living conditions of the occupants of the neighbouring property.

- **Item 5.2 – 1 Norwood Walk Sittingbourne**

**APPEAL ALLOWED**

**MEMBER OVERTURN**

**Observations**

The Inspector allowed the appeal on the basis that the extension would not appear cramped or out of character with the surrounding area, and would not negatively impact upon the living conditions of neighbours. An award of costs was refused on the basis that the Planning Committee had reasonably evidenced the planning reasons why permission was refused, even though the Inspector ultimately concluded that the development was acceptable.

- **Item 5.3 – Land North of Perry Leigh Grove Road Selling (LDC appeal)**

**APPEAL ALLOWED**

**AGAINST NON-DETERMINATION**

**Observations**

This appeal related to whether planning permission for a storage building had been implemented. As such, the key matter was whether a material operation had taken place within the six month time limit as required by condition. In this case the Inspector concluded that the evidence demonstrated that a hole had been dug to contain foundations which constituted a material operation within the relevant time period and that based upon a site visit, the excavation was in the correct location. On this basis it was concluded that the planning permission had been implemented and the appeal was allowed.

- **Item 5.4 – Land North of Perry Leigh Grove Road Selling (Enforcement appeal)**

**ENFORCEMENT NOTICE QUASHED****ENFORCEMENT APPEAL****Observations**

This appeal related to an Enforcement Notice issued in 2021 on the basis that an unauthorised change of use of the land had taken place to include a storage use, facilitated by storage containers on the site. The Notice required that the storage containers on the land be removed in order to remedy the breach of planning control. The Inspector noted that the plan attached to the Enforcement Notice included only part of the appellant's site and that the Enforcement Notice did not specify with sufficient clarity the alleged breach of planning control. The Inspector considered these matters to be flaws in the Notice and that the necessary corrections would result in injustice to the parties. As a result the Notice was considered to be invalid and was quashed. The Inspector confirmed that it is open to the Council to serve a further notice clearly setting out the nature of the breach and the requirements, if it is considered expedient to do so.

- **Item 5.5 – The Retreat Elverland Lane Ospringe**

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

The Inspector agreed with the Council that the caravans, stores, hardstanding and other residential paraphernalia on the site gave rise to harm to the character and appearance of the area and the scenic beauty of the Area of Outstanding Natural Beauty. The Inspector also agreed with the Council that the site has poor access to services and facilities via sustainable modes of transport although disagreed that the access to the site itself gave rise to harm to highway safety.

Despite the harm identified, the Inspector considered that the lack of available alternative sites and the personal circumstances of the appellant and their family, which included the appellant's grandson's short term educational needs attracted substantial weight in the planning balance. On this basis a three year temporary permission was granted.

- **Item 5.6 – Land at Wises Lane Borden**

**APPEAL ALLOWED****MEMBER OVERTURN****Observations**

The Inspector concluded that the temporary flag poles would not be harmful to the visual amenity of the surrounding area, or detrimental to the living conditions of existing occupiers. On that basis, the appeal was allowed.

- **Item 5.7 – Land at Ufton Court Farm Tunstall**

**APPEAL ALLOWED****Observations**

The appeal proposal was for a residential development of 290 dwellings located adjacent to the Urban Area of Sittingbourne and in the Important Countryside Gap, as identified by policy DM25. The main issues in this appeal were identified as:-

- The extent of the deliverable 5-year housing land supply for Swale Borough;
- The interpretation of policy DM8 and appropriate provision of affordable housing;
- The effect of the appeal development on the character and appearance of the area and whether the appeal location is a valued landscape;

Focusing on the housing land supply position, the Inspector found the Swale Borough to have circa 4.1 years of housing supply. As such, the Inspector concluded that the development plan is not delivering the required number of homes and reasoned that housing policies are out-of-date and that the presumption in favour of sustainable development applies.

With respect to affordable housing requirements, the appeal proposal was concluded to be within the Sittingbourne town, urban extensions and Iwade local housing market area where the affordable housing percentage to be sought is 10% as set out in Policy DM8 of the SBLP. As the proposal delivered 30% affordable housing, the Inspector determined that the scheme would exceed the requirements of the Local Plan and so comply with policy DM8.

Turning to the matters of visual impact and impact upon the coalescence of settlements, the Inspector acknowledged the Important Countryside Gap is a local spatial planning tool addressing settlement, not a landscape designation. He concluded that the appeal proposal would not result in the physical coalescence of Sittingbourne with either Borden or Tunstall, as a sizeable gap would be retained to the rural settlement at Tunstall with no visual intervisibility.

He concluded that the appeal site does not form part of a 'valued landscape', but nonetheless, the proposal would have a moderately adverse impact on the site's landscape character and only a minor impact on the character of the wider Tunstall Farmlands Local Character Area and broader Fruit Belt Area.

In weighing the benefits of the proposal, the Inspector reasoned that the appeal proposal has deployed a landscape-led approach to minimise and mitigate adverse landscape and visual impacts. He identified that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits. Consequently, the Inspector allowed the appeal.

- **Item 5.8 – Land at Cleve Hill Graveney**

**APPEAL ALLOWED AND COSTS AWARDED TO THE APPELLANT****MEMBER OVERTURN****Observations**

The Inspector allowed the appeal on the basis that the battery safety management plan fulfilled Requirement 3 and that the expert consultee advice from Kent Fire and Rescue Service was clear that the details were acceptable. Likewise the Council's own appointed consultant came to the same conclusion. Although the Inspector recognised that the concerns raised by third parties were based on rational fears, they did not provide justification to dismiss the appeal.

The Inspector granted a full award of costs against the Council as no reasoned justification was given as to why the Planning Committee departed from the advice given by consultees, their independently appointed consultant, or their professional officers. In particular, it was clear that Kent Fire and Rescue Service had considered guidance from the National Fire Chiefs Council and then deployed their own site-specific knowledge in providing their responses. The Council failed to explain why it had departed from such advice, and this directly led to the need for an appeal to take place which could have been avoided, and unnecessary expense was incurred by the applicant in having to pursue an appeal.





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## Appeal Decision

Site visit made on 23 April 2024

by **Nicola Davies BA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 08 May 2024

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**Appeal Ref: APP/V2255/D/24/3337252**

**26 Springvale, Iwade, Sittingbourne ME9 8RX**

- 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 C. Eldridge against the decision of Swale borough Council.
  - The application Ref 23/504056/FULL, dated 26 August 2023, was refused by notice dated 23 November 2023.
  - The development proposed is a two storey side extension with pitched roof design.
- 

### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. A revised version of the National Planning Policy Framework (the Framework) has been published since the planning application was determined by the Council. Both main parties have had the opportunity to comment on the relevant implications for the appeal. I have had regard to the revised Framework in reaching my decision.

### Main Issue

3. The main issue raised by this appeal is the effect of the proposed development on the living conditions of the occupiers of No.48B Sheerstone.

### Reasons

4. The rear garden of No.48B Sheerstone is small and that dwelling has windows within its rear elevation. The proposed extension would be sited very close to the rear parts of this neighbouring property and bring built development much closer to this property. Being two storey the extension would be of some size in the outlook from this neighbouring property.
5. The occupiers of neighbouring properties should reasonably expect to enjoy an acceptable outlook as part of their residential lives. The visually overbearing impact of the two storey extension in such close proximity to No.48B Sheerstone would diminish the enjoyment of the residential living environment, particularly that of the outdoor amenity space. Consequently, this would harm the enjoyment the existing occupiers should reasonably expect to enjoy.
6. The Council advises that the larger part of the proposed extension, despite having a pitched roof and being sited to the north east, would not pass the Building Research Establishment (BRE) 25 degree of light test. As such,

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there would be some loss of light to the rear windows of No.48B Sheerstone. This would be a further harm arising from the proposed extension.

7. The proposal would improve the living environment within the appeal property for the occupiers. Furthermore, no objections to the proposal have been received from existing neighbouring occupiers. Whilst this may be so, this does not make an unacceptable development acceptable, nor do the benefits to appellants' living conditions justify the proposed development.
8. For these reasons, I conclude that the proposed development would be harmful to the living conditions of the occupiers of No.48B Sheerstone. The proposal would, therefore, conflict with Policies DM14 and DM16 of the Bearing Fruits 2031 – The Swale Borough Local Plan 2017. These policies seek, amongst other matters, development to be of a scale appropriate for its location and to protect residential amenity.

**Conclusion**

9. Having regard to the above findings, the appeal should be dismissed.

*Nicola Davies*

INSPECTOR



The Planning Inspectorate

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## Appeal Decision

Site visit made on 23 April 2024

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 May 2024.

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**Appeal Ref: APP/V2255/D/24/3337879**

**1 Norwood Walk West, Sittingbourne, Kent ME10 1QF**

- 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 Tatler against the decision of Swale Borough Council.
  - The application Ref 23/500616/FULL, dated 6 February 2023, was refused by notice dated 16 January 2024.
  - The development proposed is a two storey side extension.
- 

### Decision

1. The appeal is allowed and planning permission is granted for a two storey side extension at 1 Norwood Walk West, Sittingbourne, Kent ME10 1QF in accordance with the terms of the application, Ref 23/500616/FULL, dated 6 February 2023, subject to the following conditions: -
  - a) The development hereby permitted shall begin no later than 3 years from the date of this decision.
  - b) The development hereby approved shall be carried out in accordance with drawing title numbers: A103 (received 10th November 2023), A104 (received 6th February 2023), A105 (received 31st March 2023) and A106 (received 6th February 2023).
  - c) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those of the existing building in terms of type, colour and texture.
  - d) Before the development hereby permitted comes into use, 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 internal floor level and thereafter the window shall be retained as such.
  - e) 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.
  - f) 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).

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### **Application for costs**

2. An application for costs has been made by Mr Tatler against Swale Borough Council. That application is the subject of a separate decision.

### **Main Issues**

3. The main issues raised by this appeal are the effect of the proposed development on the character and appearance of the area and the living conditions of neighbouring occupiers at Nos. 44 and 46 Norwood Walk West.

### **Reasons**

#### *Character and appearance*

4. The host property forms an end property of a small terrace. The development would bring built development closer to neighbouring properties at Nos. 44 and 46 Norwood Walk West. There is a wraparound garden to the front, side and rear enclosed by a fence. A separation of approximately 3m would be retained to the side boundary of the property. Therefore, there would be space retained to the front, side and rear at the end of the terrace and within the plot. Whilst the proposal would create new built development this would not be of a scale that would appear cramped within the site. Therefore, I do not consider the proposal would represent an overdevelopment of the plot. Furthermore, there would remain acceptable separation between the extension and the properties of Nos. 44 and 46 Norwood Walk West.
5. The design of the side extension would be consistent with other end of terrace properties in the area. The set back of the proposed extension from the frontage of the host property and step down from the existing ridge height would create an extension of a subservient appearance. The Officer's report to Planning Committee indicates that this accords with the Council's adopted Supplementary Planning Guidance (SPG) "Design an Extension – A Guide for Householders". As such, the proposal would not be out of keeping with the prevailing form of development in the area. Furthermore, the extension would assimilate with the host property in a form advocated by the adopted SPG. Consequently, I find the proposal would not cause visual harm to the host property or the area.
6. For these reasons, I conclude that the proposed development would not harm the character and appearance of the area. As such, the proposed development would comply with Policies CP4, DM14 and DM16 of the Bearing Fruits 2031 – The Swale Borough Local Plan 2017. These policies seek, amongst other matters, development and extensions to be well designed and respond positively to the building and its surroundings.

#### *Living conditions*

7. The Council, in its Officer report to Planning Committee, indicates that a minimum distance of approximately 11m would be maintained between the extension and the front of Nos. 44 and 46 Norwood Walk West. Whilst the flank elevation of the proposed extension would be visible in the outlook from these neighbouring properties, the impact on outlook would not be negatively impacted given the separation distance between developments that would remain. Consequently, the proposal would not result in an overbearing and

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oppressive form of development that would harm the living conditions of the occupiers at Nos. 44 and 46 Norwood Walk West.

8. Furthermore, the Officer report to Planning Committee indicates that the Local Planning Authority have made an assessment of light impacts upon the occupiers of Nos. 44 and 46 Norwood Walk West. The development was found to comply with the Building Research Establishment (BRE) Daylight and Sunlight Good Practice Guidance despite Nos. 44 and 46 being sited at a lower land level to that of the proposed development. The impact on light upon these neighbouring properties would remain acceptable if the proposed development took place.
9. For these reasons, I conclude that the proposed development would not harm the living conditions of neighbouring occupiers at Nos. 44 and 46 Norwood Walk West. As such, the proposed development would comply with Policies CP4, DM14 and DM16 of the Bearing Fruits 2031 – The Swale Borough Local Plan 2017. These policies seek, amongst other matters, development not to result in significant harm to the amenities of surrounding uses or areas.

#### **Other Matters**

10. Bobbing Parish Council and local residents have raised concern in respect of other aspects of the proposed development.
11. The proposed extension would be located to the north of Nos 13-17 (odd). The Local Planning Authority advise that the proposed extension would be sited at a distance of approximately 16m from the rear elevations of these properties. The extension would not project further south than the main house. As such, at this distance the proposal would be unlikely to cause harmful impacts with regard to light or outlook. In terms of overlooking, although visible to these neighbouring occupiers, the extension would have no greater impact than that of the existing situation. Furthermore, the imposition of Condition 4 above would assist in preventing unacceptable overlooking from occurring.
12. Having considered the separation and relationship of other existing properties in the area, I consider no significant harmful impacts would arise to occupiers' living conditions.
13. Local concerns have been raised regarding the foul drainage system in the area. Southern Water have not raised any concerns regarding capacity. Although a condition is requested relating to protection of any public sewers on the site, the Council have indicated that this is a matter that is controlled directly by Southern Water and as such it would not be considered necessary to impose such a planning condition.
14. A number of objectors have raised concerns in relation to the increased demand for parking arising from the proposal. None of the properties on Norwood Walk West have on-site parking due to the estate design with pedestrianised walkways. As a result, parking occurs on local residential roads. The proposal would add one extra bedroom to the property. As such, any additional parking demand from the proposed development would be extremely modest, as would any impact upon highway safety and/or road congestion.
15. Some noise and disturbance would arise during construction period. Whilst some disruption would likely take place this would be over a short period of time and any disturbance to neighbouring occupiers would be limited. The

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- imposition of planning condition 5 above would ensure that the days and times of construction works would be controlled.
16. It has been suggested that the proposal would result in a reduction in security in the area due to loss of visibility when using walkway. However, any impacts in this respect would be very modest and would not result any significant restrictions to visibility.
  17. It has been pointed out that the internal layout was not initially described. Revised drawings provided during the consideration of the planning application by the Council have addressed this to the satisfaction of the Local Planning Authority. In addition, it has been commented that the loft extension is not included in application. However, that has already taken place and is a separate matter to that of the proposal before me.
  18. The Officer's report to its Planning Committee includes an Appropriate Assessment (AA) under the Conservation of Habitats and Species Regulations 2017. The appeal 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.
  19. The proposal therefore has potential to affect said site's features of interest, and I must undertake an AA to establish the likely impacts of the development. In doing so I have had regard to the AA provided by the Local Planning Authority, which the Local Planning Authority indicates includes advice provided by Natural England to the Council.
  20. 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. Natural England advice is 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.
  21. 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. Therefore, off-site mitigation is required. One additional bedroom is proposed here, and the Local Planning Authority indicate that a total fee of £314.05 is required, which it is understood from the Officers report has been paid. I do not have information before me as to how this tariff has been calculated. Nonetheless, this matter has been dealt with to the satisfaction of the Local Planning Authority. On the evidence before I have no substantive reason that would lead me to conclude that this matter has not been satisfactorily resolved.

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Appeal Decision APP/V2255/D/24/3337879

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### Conditions

22. I have considered the planning conditions put forward by the Council in light of paragraph 56 of the Framework and the Planning Practice Guidance. In addition to the standard time limit condition and in the interests of certainty it is appropriate that there is a condition requiring the development be carried out in accordance with the approved plans.
23. In the visual interests of the locality a matching materials condition is necessary. To prevent overlooking of adjoining properties and to safeguard the privacy of neighbouring occupiers a condition requiring the first floor window in the rear elevation to be obscure glazed with opening limitations is necessary. In the interests of the living conditions of neighbour occupiers a construction work condition is necessary.
24. To avoid unacceptable impacts upon Special Protection 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, a condition restricting the number of occupiers is necessary.

### Conclusion

25. For the reasons set out above, and subject to the conditions listed, this appeal should be allowed.

*Nicola Davies*

INSPECTOR



The Planning Inspectorate

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## Costs Decision

Site visit made on 23 April 2024

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 May 2024.

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### Costs application in relation to APP/V2255/D/24/3337879

#### 1 Norwood Walk West, Sittingbourne, Kent ME10 1QF

- The application is made under the Town and Country Planning Act 1990, section 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr Tatler for a full award of costs against Swale Borough Council.
  - The appeal was against the refusal of planning permission for a two storey side extension.
- 

### Decision

1. The application for an award of costs is refused.

#### Reasons

2. Irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant's contention is that he addressed both Bobbing Parish Council and local objections to the planning application, as well as those concerns of the Local Planning Authority officers, meeting the objective of working positively with parties as required by the Planning Practice Guidance. The Officer report to Planning Committee recommended approval as the proposal accorded with the development plan. The applicant also points out that the proposal accorded with the Council's adopted Supplementary Planning Guidance. However, Members of the Planning Committee refused the planning application contrary to officer recommendation and with only 50% of its Members attending the Member site visit.
4. In addition, it is considered that the reasons that have resulted in the refusal have not been articulated satisfactorily or appropriately and the Council has failed to determine the planning application in a consistent manner, citing a planning permission at No.80 Norwood Walk as an example. Further to this, I note that other examples have been provided by the applicant within the drawings submitted in the Design and Access Planning Statement and the appeal statement.
5. For these reasons the applicant considers that the Council have acted unreasonably and the applicant has incurred the unnecessary cost of the appeal process.

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Appeal Decision APP/V2255/D/24/3337879

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6. The Local Planning Authority explains that following debate of the proposal at Planning Committee the application was deferred for a Member site visit meeting to take place. On referral back to Planning Committee the planning application was refused by Members. Despite amendments to the planning application, as requested by officers, there remained Parish Council and public objection to the proposal. A summary of the objections was provided within the Officer report to Planning Committee.
7. I have been provided with the Committee Minutes. These set out the concerns raised by Members to the proposal, which included, amongst others, scale, overdevelopment and amenity concerns. These three concerns went on to form a basis for the Council's reason of refusal. The concerns are reflected and amplified within the Committee Minutes that show that Members took into consideration both the Parish Council and public concerns. The Council is of the view that an objective decision was made by Members.
8. Members are of course entitled to depart from their officer's recommendation for good reasons, but their reasons for doing so need to be capable of articulation, and open to public scrutiny.
9. The Council's reason for refusal is clear and refers to the relevant development plan policies. The refusal reason also reflects the Committee Minutes which provide an overview of Members discussions and concerns at the various Council meetings. The Minutes clearly indicate that Members took on board those concerns of Bobbing Parish Council and those of third parties, which they are required to do.
10. It is of course open to Council Members to come to a different conclusion to that of their officers. I am satisfied that the planning application was considered on its own merit and, having reviewed the Council Minutes leading up to their determination of the planning application, the Council's Committee Members have reached a reasonable conclusion. The fact that I have arrived at a contrary view to the proposed development does not, of itself, show the Council have behaved unreasonably.
11. In terms of consistency of decision making, the Local Planning Authority explains that the siting of No.80 Norwood Walk differs to that of this appeal site in that it is bounded by a highway to the side and the neighbouring residential properties do not form the same relationship as Nos 44 & 46 Norwood Walk West do with this appeal site.
12. I acknowledge that there are other examples of development in the area but each proposal must be considered on its own individual merits. On the evidence before me I am satisfied that Members of the Planning Committee have considered this proposal on its own merits taking into account those Parish Council and public objections raised.
13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

*Nicola Davies*

INSPECTOR

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## Appeal Decision

Site visit made on 11 March 2024

by **R Hitchcock BSc(Hons) DipCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 09<sup>th</sup> May 2024

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**Appeal Ref: APP/V2255/X/24/3336828**

**Land north of Grove Road, Selling, ME13 9RN**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
  - The appeal is made by Mr Brian Macey against Swale Borough Council.
  - The application ref 23/504318/LDCEX is dated 20 September 2023.
  - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
  - The development for which a certificate of lawful use or development is sought is 'the commencement of development (to comply with Condition 1) or a material start of 19/500224'.
- 

### Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful development confirming that works undertaken on the site have led to the implementation of planning permission Ref. 19/500224 prior to its expiry on 30 October 2019.

### Preliminary Matters

2. Planning permission was granted for the 'Erection of a single storey storage building' (ref.19/500224/FULL) on 30 April 2019. The planning permission (PP) was subject to a number of conditions. This included a 6-month time limit for the commencement of the development (Condition 1) and specification of the relevant plans showing the extent of the approved works (Condition 2). Such conditions are standard and there is no dispute between the main parties that they meet the legal tests and the requirements set out in Paragraph 56 of the National Planning Policy Framework in relation to the use of planning conditions.
3. The appeal relates to an application for an LDC that was not determined by the Council within the prescribed period. The Council have subsequently issued a statement for the purposes of this appeal highlighting that whilst it acknowledges that, on the balance of probability, a hole was likely dug within the specified timescale, there is some doubt as to whether it is in a position consistent with the approved plans. I have had regard to this statement in coming to my Decision.

### Main Issue

4. Pursuant to the provisions of s195(2) and (3) of the Act, the main issue is whether or not a refusal of the application by the Council would have been well founded.

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Appeal Ref: APP/V2255/X/24/3336828

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### Reasons

5. Section 56(2) of the Act provides that 'development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out'. Section 56(4) provides the meaning of 'material operations'; sub-paragraph (b) includes 'the digging of a trench which is to contain the foundations, or part of the foundations, of a building'.
6. The Planning Practice Guidance<sup>1</sup> and Procedural Guide<sup>2</sup> reflect prior Court judgments. They set out that an appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.
7. One of a series of photographs of the excavation provided by the appellant is dated by reference to a post on a social media site. This shows the hole to have been dug on, or before, 11 October 2019. As a date prior to the expiry of the PP, I see no reason to dispute the claim of the timing of the works.
8. There is little by way of any detailed measurements to demonstrate the exact location of the hole in relation to any identifiable fixed point on the land. At the time of my site visit, although access to the location of the excavation had been provided, the area of the land about it, and between the hole and the containers to the east and the stable to the south, were covered with high brambles. This limited the ability to see directly from the position of the hole to those features.
9. However, when viewed from closer to the northern boundary of the site, the position of the hole appeared in general alignment with the front elevation of the stable. This is consistent with the position of the principal elevation of the storage building shown on the approved plans. When viewed from the nearest fence line to the west, the position appears short of the full length of the proposed building. However, it would nevertheless be within the linear extent of the approved development.
10. The Council's submitted aerial photograph from 2019 pre-dates the claimed date of excavation. However, in cross-referencing the appellant's photo 2, submitted with the LDC application, and the 2021 aerial photo provided by the Council, it seems to me that the hole is visible in the aerial photo north-east of and close to the 2 white bowzers, crates and matting (seen behind the hole in photo 2). It appears roughly in alignment with the front of the stable, and in alignment with the gap between the 2 northern-most containers.
11. It is unhelpful that the roof of the stable building does not appear square in the aerial photo. However, the hole appears roughly perpendicular to the stable's northern elevation at its north-western corner. Even if it were slightly offset, in the context of isolated development in a rural location, such a discrepancy would not be material if, in fact, it exists.

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<sup>1</sup> Paragraph: 006 Reference ID: 17c-006-20140306

<sup>2</sup> Certificate of lawful use or development appeals: procedural guide 11 January 2024

Appeal Ref: APP/V2255/X/24/3336828

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### Conclusion

12. For the reasons above, I conclude that a material operation comprised in the development has taken place. The evidence before me indicates that this was carried out prior to expiry of the 6-month period specified in the 2019 planning permission. It was also observed to be in a location where the approved development would be carried out. The development therefore shall be taken to have begun. Accordingly, I find that a refusal to grant a certificate of lawfulness in respect of 'commencement of development (to comply with Condition 1) or a material start of 19/500224' would not have been well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

*R Hitchcock*

INSPECTOR

Appeal Ref: APP/V2255/X/24/3336828

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## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 11 October 2023 the operation described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The excavation of a hole to provide a foundation or footing to the storage building approved under planning permission 19/500224/FULL was a material operation comprised in the development and took place prior to the expiry of the 6 month period for the implementation of planning permission ref. 19/500224/FULL.

Signed

*R Hitchcock*

Inspector

Date: 09th May 2024

Reference: APP/V2255/X/24/3336828

### ***First Schedule***

The excavation of a foundation hole as a commencement of development (to comply with Condition 1) or a material start of planning permission 19/500224/FULL.

### ***Second Schedule***

Land at: Land North of Grove Road, Perry Woods, ME13 9RN

IMPORTANT NOTES – SEE OVER

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Appeal Ref: APP/V2255/X/24/3336828

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#### NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).  
It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Appeal Ref: APP/V2255/X/24/3336828

## Plan

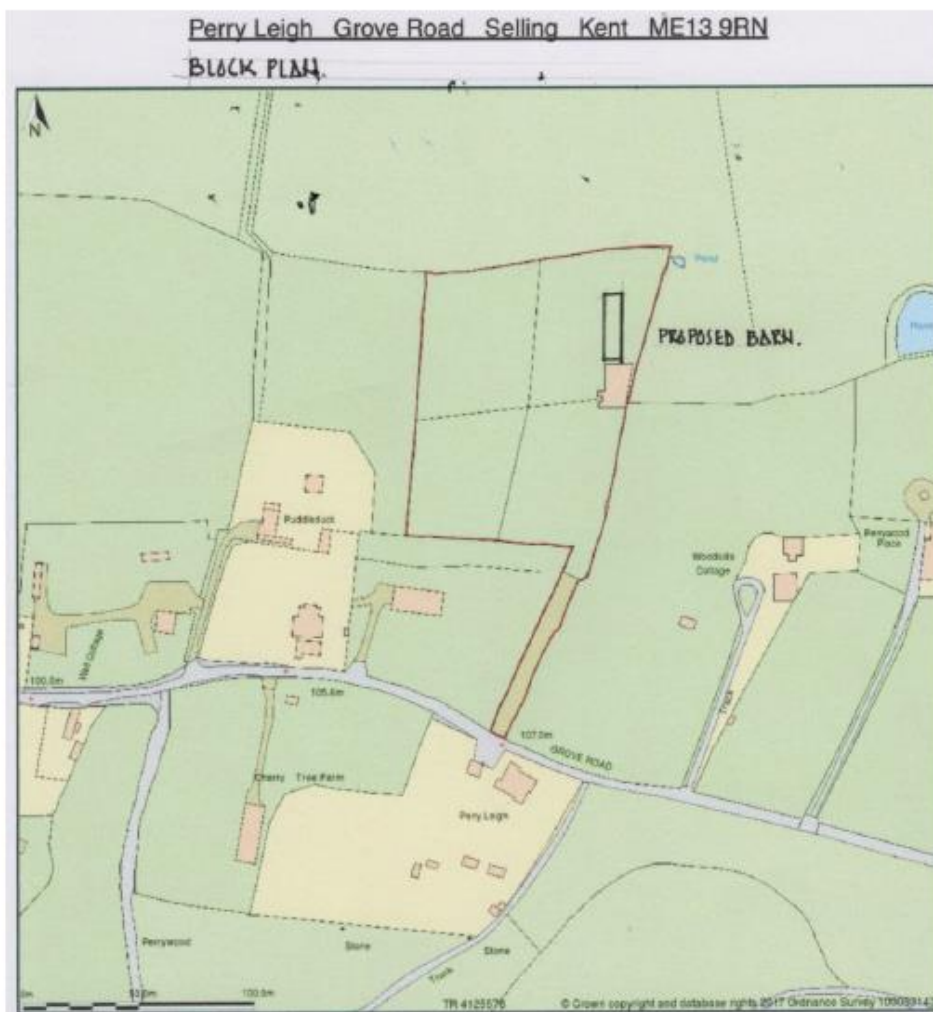
This is the plan referred to in the Lawful Development Certificate dated: 09th May 2024

by R Hitchcock BSc DipCD MRTPI

Land at: north of Grove Road, Perry Woods, ME13 9RN

Reference: APP/V2255/X/24/3336828

Scale: Not to Scale



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The Planning Inspectorate

## Appeal Decision

Inquiry held on 12 and 13 March 2024

Site visit made on 11 March 2024

by **R Hitchcock BSc(Hons) DipCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 09<sup>th</sup> May 2024

**Appeal Ref: APP/V2255/C/21/3287862**

**Land North of Perry Leigh, Grove Road, Selling, Kent ME13 9RN**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act).
- The appeal is made by Mr Brian Macey against an enforcement notice issued by Swale Borough Council.
- The notice was issued on 25 October 2021.
- The breach of planning control as alleged in the notice is 'Without planning permission the material change of use of the Land from the keeping and grazing of horses to a mixed use of the Land for the keeping and grazing of horses and the stationing of storage containers'.
- The requirements of the notice are to:
  - (i) Cease the mixed use of the Land for the keeping and grazing of horses and th [sic] stationing of storage containers on the Land.
  - (ii) Remove all storage and/or shipping containers from the Land.
- The period for compliance with the requirements is: 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

### Decision

1. The enforcement notice is quashed.

### Preliminary Matters

2. Prior to the Inquiry a case management conference (CMC) took place on 6 February 2024. No evidence was heard at that time. At the meeting it was agreed, in the interests of clarity and interpretation, that a pre-Inquiry site visit should take place to view the Land and surrounds, and the content of the various storage containers and a stable building on the site. The visit subsequently took place on the afternoon of 11 March 2024 accompanied by representatives of both main parties. No evidence was heard on site.
3. The same site visit was also used to conduct an assessment of matters relevant to a second appeal, Ref. APP/V2255/X/24/3336828, made by the appellant under the written representations procedure. That appeal relates to the Council's non-determination of an application for a Lawful Development Certificate for an Existing Use or Operation or Activity (LDC). The LDC sought confirmation of the commencement of planning permission Ref. 19/500224 for the erection of a single storey storage building on the Land within the specified time limit. It is part of the appellant's ground (f) argument in this appeal that

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this building can be relied upon in consideration of any alternative requirement to that specified in the Notice in remedying the breach of planning control.

4. Aside from the coincidence of the site visit, the main parties were advised at the CMC that any determination reached in either appeal would be considered on the merits of the respective evidence submitted, without prejudice to the other. I have proceeded accordingly.

#### The Notice

5. Section 176 of the Act requires me to consider the status of the enforcement notice and whether any defect, error or misdescription could be corrected, or its terms varied, without injustice to the appellant or the local planning authority.
6. The allegation in the Notice insofar as it relates to the 'stationing of storage containers' is imprecise. It does not provide sufficient clarity as to the exact nature of the mixed use alleged. On 14 June 2023, the Inspectorate wrote to the Council seeking clarification on this matter. On 15 June 2023, the Council clarified that the various storage containers were used 'for the storage of machinery and materials associated with the paddocks and pallet business.'
7. At the Inquiry, there was no dispute between the main parties that the Notice could be amended by adding the clarification that the Council had suggested without injustice. Subject to substituting 'the paddocks' for 'the keeping and grazing of horses', the parties were happy to proceed in the appeal. In its effect, I heard at the Inquiry that the Notice is intended to attack an alleged storage use that had expanded from an incidental scale to become a primary use in its own right; a use that is facilitated by the containers.
8. At the CMC I had requested that parties review the content of the Notice and the potential for hidden ground (b) or (c) appeals with particular regard to the uses taking place on the site owned by the appellant. This included review of their positions on the relevant planning unit/s, the nature of any uses taking place on the site at the time the Notice was served – whether they were primary or incidental/ancillary uses, and whether the mixed-use allegation in the Notice was then correct. The appellant subsequently only sought to make out a ground (c) in addition to the other submitted grounds of appeal.
9. The Land subject of the Notice forms only a part of the appellant's site. Although it serves all parts of the site, the access track and its fringes leading from Grove Road lie outside of the Land identified in the Notice. The excluded part coincides with an area that benefits from a Certificate of Lawfulness (ref. 16/502524/LDCEX) (the 2016 LDC) for use of land for storage of pallets.
10. In consideration of an alleged material change of use of land, Bridge J in *Burdle*<sup>1</sup> highlighted 3 broad categories of distinction in considering the relevant planning unit. These are:
  - 1) a single PU where the unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary;
  - 2) a single PU that is in a mixed use because the land is put to two or more activities and it is not possible to say that one is incidental to another; and

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<sup>1</sup> *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

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- 3) the unit of occupation comprises two or more physically separate areas that are occupied for different and unrelated purposes.
11. Bridge J went on to state that 'It may be a useful working rule to assume that the unit of occupation is the appropriate planning unit unless and until some smaller unit can be recognised as the site of activities which amount in substance to a separate use both physically and functionally'.
12. I heard at the Inquiry that it was the Council's position that the 2016 LDC had the effect of creating a separate planning unit for the storage of pallets. It considered that the pallet storage use was physically and functionally separate from the alleged uses taking place on the main part of the site at the time that the Notice was served.
13. However, the application for the 2016 LDC was narrowly defined. The storage element of the pallet business is only a part of that land use. It does not account for the primary function and operational element of making or recycling of pallets, nor the associated storage of tools, vehicles, trailers, machinery and materials to realise it.
14. At the appeal the Council contended that the pallet storage was largely confined to the access area at the time the Notice was served. However, their earlier clarification, that the nature of storage within the containers relates to parts of the pallet business, effectively confirms that use's operation on the wider site when the Notice was served. This is consistent with the appellant's evidence at the Inquiry which implied that the pallet business had continuously persisted on the appeal site since 1991.
15. Despite some conflict with the appellant's claims of the site's use made in an unsuccessful application for an LDC confirming lawful equestrian and storage uses in 2019, I find the Council's view that the storage of pallets defines the extent of the pallet business to be misplaced. The 2016 LDC only reflects a lawful status of the described activity at a pinpoint in time.
16. Having regard to the principles set out in *Burdle*, the evidence relevant to the date the Notice was issued, and that there is little physical separation between the pallet business and equine uses, it follows that the entirety of the site should be subject to consideration as a single mixed use planning unit. Furthermore, it is established in caselaw that in those circumstances it is not open to the Council to decouple the uses taking place within it<sup>2</sup>. Accordingly, regardless of its lawfulness or otherwise, I find that the absence of reference to the primary use of a pallet business as an element of the alleged mixed use is a flaw in the Notice, as is the exclusion of the access land.
17. At the Inquiry the main parties approached the correction of the Notice in a very constructive way. Notwithstanding, I am required to consider whether any necessary correction or variation would cause injustice to the main parties in the appeal.
18. The inclusion of an additional use in the allegation could lead to either a degree of under-enforcement or an effective confirmation of lawfulness without the main parties (or others) having fully made their cases in the light of all relevant facts and considerations. Although I heard widened arguments about uses taking place on the site at the Inquiry, this did not necessarily extend to

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<sup>2</sup> *R (oao East Sussex CC) v SSCLG & Robins & Robins* [2009] EWHC 3841 (Admin)



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consideration of such matters as breaks in use (or mixed use/s) or other uses that might cause a change to the mixed use on an extended site, for example.

19. In order to assess whether the character of the use of land has occurred, it is necessary to know what the former use/s is/are, and the extent to which any operations or uses are incidental. Where an enforcement notice omits part of a mixed use, it will inevitably affect both the fact and degree assessment as to the extent to which any storage might be deemed to be incidental (or a primary use) and the detail of the cases made out by the parties in the appeal as to whether a material change of use has actually occurred, or not. As such, it could affect the cases made in relation to claimed fallback position/s. Moreover, a change to the allegation would inevitably impose limits on the ground (a) appeal and the deemed application for planning permission.
20. An extension of the site could lead to the alternative use of the access land with its own planning implications. This would be without opportunity to make representation on effects arising from the combined mixed use or to consider if any means of mitigation in that location are appropriate or effective and could be legitimately secured by planning condition, for instance.
21. A correction of the allegation would require a corresponding correction to the requirements in the Notice. It could make the requirements more onerous to comply with. In the case circumstances, rather than requiring a blanket removal of 'all storage and/or shipping containers' (itself imprecise), as set out above, it would require clear distinction between any incidental elements and those forming an alleged distinct primary use. As those arguments would be affected by reference to the wider pallet business, including the storage on the access, the change in the allegation would potentially cause significant prejudice to the parties' cases.
22. Taking all of the above together, I find that the required corrections to the Notice would be too numerous and wide-ranging. My duty to have regard to potential injustice leads me to the conclusion that the Notice should be quashed.

### Conclusion

23. For the reasons given above, I conclude that the enforcement notice does not address the correct planning unit, nor specify with sufficient clarity the alleged breach of planning control. Furthermore, I am unable to make the numerous necessary corrections to the Notice without them resulting in injustice to any party. The enforcement notice is invalid and will be quashed.
24. It is open to the Council to serve a further notice which clearly sets out the nature of the breach and the requirements, should it consider it expedient to do so, subject to the provisions of s171B(4) of the Act.
25. In the circumstances, the appeals on the grounds (a), (c), (d), (f) and (g) set out in s174(2) of the Act and the application for planning permission deemed to have been made under s177(5) of the Act do not fall to be considered.

*R Hitchcock* INSPECTOR

Appeal Decision APP/V2255/C/21/3287862

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**APPEARANCES**

FOR THE APPELLANT:

Robin Green	Counsel
Brian Macey	Appellant
Victor Hester	Planning Consultant, VLH Associates

FOR THE LOCAL PLANNING AUTHORITY:

Giles Atkinson	Counsel
Paul Gregory	Area Planning Officer, Swale Borough Council

INTERESTED PARTIES:

Robin Gardiner	Resident
Andrew Rodgers	Resident
James Gavin	Resident

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## Appeal Decision

Hearing held on 9 April 2024

Site visit made on 9 April 2024

by **A Owen MA BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17<sup>th</sup> May 2024

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**Appeal Ref: APP/V2255/W/23/3333589**

**The Retreat, Elverland Lane, Ospringe, Faversham ME13 0SP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mrs Annie Gibbs against the decision of Swale Borough Council.
  - The application Ref is 23/504136/FULL.
  - The development is temporary change of use of the land for the stationing of two static mobiles and two touring caravans for Gypsy/Traveller occupation for a single family for a period of 3 years; creation of access track and associated hard and soft landscaping.
- 

### Decision

1. The appeal is allowed and planning permission is granted for a temporary change of use of the land for the stationing of two static mobiles and two touring caravans for Gypsy/Traveller occupation for a single family, and creation of access track and associated hard and soft landscaping for a period of 3 years, at The Retreat, Elverland Lane, Ospringe, Faversham, ME13 0SP in accordance with the terms of the application, Ref 23/504136/FULL, subject to the conditions in the attached schedule.

### Preliminary Matters

2. The appellant and her family have been on the site since 2015. A number of applications have been submitted to regularise the current use since then and an appeal<sup>1</sup> was dismissed in 2018 for a development similar to that before me. At that time it was proposed to re-site the caravans slightly further to the east with access taken from Elverland Lane.
3. It is not disputed by the parties that the appellant and her family meet the definition of gypsies set out in the national Planning Policy for Traveller Sites (PPTS). I have no reason to disagree.

### Main Issues

4. The main issues are:
  - i) the effect of the development on the character and appearance of the area and the landscape and scenic beauty of the Kent Downs National Landscape<sup>2</sup> (NL);
  - ii) whether the site is suitably located in respect of its accessibility to services and facilities;

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<sup>1</sup> Ref APP/V2255/W/17/3172935

<sup>2</sup> Formerly Area of Outstanding Natural Beauty (AONB)

Appeal Decision APP/V2255/W/23/3333589

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- iii) the effect on highway safety;
- iv) whether the development would be likely to affect the integrity of the Swale Special Protection Area (SPA), and if so whether a mechanism to secure suitable mitigation has been secured; and
- v) whether there are other considerations that outweigh any conflict with the development plan.

### Reasons

#### *Character and appearance*

5. The appeal site comprises land at the junction of Faversham Road and Elverland Lane. Across the site there are two static mobiles and two touring caravans, some other smaller storage buildings and some domestic paraphernalia. The appeal site is part of a wider landholding owned by the appellants which includes an orchard, which is primarily located on higher land to the east.
6. The wider area is overwhelmingly rural in character with only a few sparsely located dwellings. The land rises gently either side of Faversham Road and the appeal site is at the bottom of a shallow valley. The site is within the Kent Downs NL. The Council suggest the undeveloped character of the area is a positive characteristic contributing to the scenic beauty of the NL, with which I concur.
7. The caravans, stores, hardstanding and other residential paraphernalia are visible from Faversham Road and Elverland Lane through the roadside vegetation. Though none of them are large structures, the number and spread of the caravans, stores, and other paraphernalia as well as the hardstanding, detract from the open and undeveloped character of the area and hence the scenic beauty of the NL.
8. The Inspector into the previous appeal also found that the caravans, hardstanding and domestic paraphernalia would be very intrusive. I recognise the position of the caravans then was slightly further to the east and therefore on slightly higher land than they are now. Nonetheless, they are closer to the roads now and although it is likely that the roadside vegetation has thickened since 2018, views through this vegetation remain. Moreover, supplementary landscaping could not wholly be relied upon to mitigate the visual impact.
9. I was informed that since the time of the previous Inspector's decision, The Queen's Regimental Riders Association have erected a building on the west side of Faversham Road. Though I noted this, as well as other gypsy sites further along Elverland Lane, the character of the area remains to be strongly rural and undeveloped. Moreover, the other gypsy accommodation along Elverland Lane is set back further from the road and is less prominent than the scheme before me.
10. Although, because a temporary consent is sought, the harm to the character and appearance of the area and the NL is not permanent, it is nonetheless considerable. The development therefore conflicts with Policy DM 24 of the Swale Borough Local Plan (2017) (the 'Local Plan') which aims to ensure that the character of the Kent Downs NL is protected. It also conflicts with Local Plan policies DM 10, which states that gypsy and traveller sites should not cause significant harm to the NL; DM 14 which seeks to ensure all development

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reflects the positive characteristics of the locality; and ST 1, which seeks to conserve the natural environment. However I find little conflict with policy DC 26, which relates to rural lanes, given the limited volume of traffic generated by the development and the limited impact of the development on the character of the roads themselves.

11. The development also fails to accord with policies SD1, SD2, SD3, SD8 and LLC1 of the Kent Downs AONB Management Plan which together seek to conserve and enhance the natural beauty of the NL.
12. I have also had regard to the National Planning Policy Framework (the Framework), which sets out that great weight should be given to conserving the landscape and scenic beauty in AONBs.

#### *Accessibility*

13. The site is around four miles from Faversham town centre. It is closer to the villages of Doddington and Newnham, but these have very few facilities or services to support even day to day living. Moreover, there is no pavement link from the site to any settlement. The site therefore has poor access to these facilities by sustainable modes of transport.
14. I accept that it is not uncommon for gypsy and traveller sites to have poor access to shops or services given many are located in the countryside, as evidenced by the other gypsy sites further along Elverland Lane. Nonetheless, the PPTS advises that new gypsy and traveller sites in open countryside that are away from existing settlements should be very strictly limited.
15. As such I consider that the site does not have acceptable access to services and facilities by sustainable modes of transport. This view is consistent with that of the Inspector of the previous appeal.
16. The development therefore conflicts with policy DM 14 which requires all development to achieve convenient routes for pedestrians and cyclists, and policy ST 3 which sets out that development in the open countryside will not be permitted unless it is supported by national policy.

#### *Highway safety*

17. Access to the site is taken from a point on the corner of Elverland Lane and Faversham Road. The high hedging on both sides of the access means it would be difficult for vehicles emerging from the site to see along Elverland Lane or north along Faversham Road.
18. Elverland Lane is narrow and most likely is rarely used, as evidenced by grass growing along its centre. Also any vehicles travelling along this road towards the site would naturally be slowing down to give way to traffic on Faversham Road. As such it is unlikely the lack of visibility in this direction makes the access unsafe.
19. Faversham Road is the main road between the A2 and the villages of Newnham and Doddington. I saw at my site visit that although it is not a busy road, it had a steady flow of vehicular traffic. Although visibility to the north from the access is poor, it is possible for vehicles to pull forward of the access across Elverland Lane. This would allow better visibility to the north and, in view of the infrequent use of Elverland Lane, would not be likely to obstruct traffic on that

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road. Given the speed limit of Faversham Road would be 50mph here, the visibility from this point may still not meet the required standard. However by using an existing road junction, and in view of the limited number of traffic movements the development likely generates, I do not consider any shortfall in visibility makes the access unsafe.

20. As such I consider the use of the access is unlikely to result in an unacceptable effect on highway safety. Therefore, in this respect, there is no conflict with policy DM 14 which seeks to ensure all development provides a safe vehicular access.

#### SPA

21. The site is within 6km of the Swale SPA and Ramsar site. The qualifying features of the Swale SPA are dark-bellied brent goose, dunlin, and assemblages for breeding birds and waterbirds. The conservation objectives are broadly to maintain and restore the extent, distribution, structure and function of the habitats of the qualifying features; the supporting processes on which the habitats of the qualifying features rely; and the population and distribution of each of the qualifying features within the site.
22. The Conservation of Habitat and Species Regulations 2017 require that the competent authority must ensure that there are no significant adverse effects from development, either alone or in combination with other projects, that would adversely affect the integrity of protected sites.
23. A study by Footprint Ecology in 2012 stated that there has been marked decline in the numbers of birds using the SPA and that declines are particularly apparent at the locations with the highest levels of public access. Recreational disturbance such as dog walking, cycling, jogging, walking and family outings is a potential cause of the declines and so an increase in the volume of people is likely to contribute to additional pressure on the SPA site. The study found that 75% of visitors to the SPA came from within a 6km radius. As such development within 6km of the access points to the SPA is particularly likely to lead to increase in recreational use of the SPA. Therefore, I consider that the development is likely to have an adverse effect on the integrity of the SPA.
24. The North Kent Strategic Access Management and Monitoring Strategy (SAMMS) advises that adverse effects can be mitigated. Such mitigation measures will include awareness raising, on-site wardening, provision of signage and access infrastructure, and provision or enhancement of green space away from the SPA. In the associated Bird Wise North Kent Mitigation Strategy (2018), these measures are detailed, costed and a developer contribution tariff per dwelling is calculated. Allowing for inflation, this tariff stands at £328.27 per residential unit.
25. The appellant has made a direct payment to the Council in line with the tariff. The Council have confirmed they collect such payments and transfer them to Bird Wise, who implement the SAMMS, every quarter. Natural England have been consulted and agree that the payment can avoid an adverse effect on the integrity of the SPA.
26. Given the evidence before me I am satisfied that the mitigation measures have been adequately secured and would be used for their intended purpose. I am satisfied that the measures would sufficiently mitigate any adverse effects of

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the development on the identified site. The contribution would be necessary to make the development acceptable in planning terms; is directly related to the development; and is fairly and reasonably related in scale and kind to the development, in accordance with Regulation 122 of the Community Infrastructure Levy Regulations.

*Other considerations*

27. It is not disputed by the parties that the Council cannot demonstrate a sufficient supply of gypsy and traveller sites and although work has commenced on a new Local Plan, the Council advise that a Regulation 18 consultation on the Plan would not be likely to occur until the end of this year. The PPTS states that the failure of a Council to demonstrate an up-to-date supply of deliverable sites should be a significant material consideration, except where the proposal is on land designated as AONB (among other designations). As such, this issue does not count significantly in favour of the scheme, though it remains a consideration.
28. The latest Gypsy and Traveller Accommodation Assessment (GTAA) identified a need for 80 pitches over the period 2022 – 2027, of which most, though not all, could be met by regularisation of existing sites. To that end, the Council state that they are granting permissions at a rate equivalent to the annualised need. However the GTAA also recognises that these figures are minimums, and that additional need may arise, for example by higher levels of migration than anticipated.
29. The appellant explained that of the 11 sites identified in the GTAA with vacant pitches, 10 are private (with the other identified as being unauthorised) so would not be available to the appellant. In any case, most only have one vacant pitch so would not be suitable for the appellant and her family. The appellant also advised that the waiting list for the Council site at Murston is long, and the GTAA confirms that this site is at capacity. They cannot afford to buy another site and have no other family nearby. The fact that they have no alternative accommodation available to them, which could result in a roadside existence were they to leave the site, carries significant weight in favour of the development.
30. At the hearing it was explained how the appellant and her husband are both patients at a local surgery and are both outpatients at hospitals further afield. Furthermore, the appellant is registered disabled. Most of their medical conditions which require hospital attention have occurred in the last four months. Their daughter takes them to their appointments at these facilities, which occur roughly on a weekly basis.
31. Their grandson is at a school for pupils with special educational needs which is about 2 miles away. He travels to school by car, and it is important for him to be close to the school as a longer journey would cause him anxiety. The nearest other suitable school is around 16 miles away. He is in year 11, will soon be undertaking exams and is hoping to stay at the school into their 6th form with a view to getting a Construction Skills Certification. This is clearly an important year for his education and his commitment to continue into further education when, I understand, many children from gypsy families cease their education before that stage, is to be applauded. I also recognise that he is an outpatient at a local hospital. Their other grandchild is at a local mainstream school which they attend regularly and at which they are thriving.

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32. I have had regard to the appellant's rights under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act. Article 8 affords the right to respect for private and family life, including the traditions and culture associated with the Roma Gypsy way of life. It is a qualified right, and interference may be justified where that is lawful and in the public interest.
33. Dismissing this appeal would be a significant interference with the appellant's rights under Article 8 in that it would necessitate her and her family leaving the site with no other site to go to. However, interference with those rights in this instance would be in accordance with the aims of the PPTS to very strictly limit traveller sites in the open countryside, and the aims of local and national policy with respect to conserving the character of the area and scenic beauty of the NL.
34. However, that balance is subject to the best interests of children and there is no other consideration more important than that. In this case, I give substantial weight to her grandson's best interests, which are for him to remain in close proximity to his current school to finish his further education. This would be in around 2½ years' time which would broadly coincide with the 3 year temporary permission sought.

#### **Planning balance**

35. The development causes harm to the character and appearance of the area and the scenic beauty of the NL, to which I give great weight. The site also has poor access to services and facilities by sustainable modes of transport. Although I find the access does not result in unacceptable harm to highway safety and that the harm to the Swale SPA has been mitigated, the development fails to accord with the development plan as a whole.
36. Weighed against that is the lack of alternative sites available to the appellant and their personal circumstances, including the medical needs of the family and educational needs of the children. These carry significant weight and the best interests of the appellant's grandson's short term educational need is a matter to which I give substantial weight in particular. On this basis, the temporary need outweighs the temporary harms and a three year permission, as sought, would allow time for the appellant's grandson to finish his further education.
37. I recognise personal circumstances were advanced in relation to the previous appeal. However it is apparent that the health and educational needs of the appellant and her family are more acute now than in 2018.

#### **Conditions**

38. I have had regard to the conditions suggested by the Council. I have slightly amended the wording of some to better reflect the advice in the Planning Practice Guidance and the Framework.
39. A condition restricting the development to three years and personal to the appellant to reflect their specific circumstances, is necessary in the interests of limiting the harms to the minimum time period necessary. A condition relating to the approved drawings is necessary in the interests of certainty. The other conditions relating to the number of caravans and mobiles, their position on site, commercial use of the site and external lighting, are necessary to minimise the impact on the character and appearance of the area.

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40. I have not attached the suggested conditions relating to landscaping. It would be unreasonable to require such planting when the permission will lapse in three years upon which time the site will need to be restored to its former condition and any such landscaping, which may yet to become established, removed.

**Conclusion**

41. The development conflicts with the development plan taken as a whole. However the material considerations set out above indicate a decision other than in accordance with the development plan. As such, the appeal is allowed.

*A Owen*

INSPECTOR

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### **Schedule of conditions**

- 1) The use hereby permitted shall be carried on only by the following: Mrs Annie Gibbs, Mr Andrew Gibbs, their resident daughter and her resident dependants, and shall be for a limited period being the period of three years from the date of this decision, or the period during which the premises are occupied by them, whichever is the shorter. After that time, the use hereby permitted shall cease and all caravans, structures, fences, materials and equipment brought on to the site in connection with the use shall be removed from the site within three months and the land shall be restored to its condition before the development took place.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2021-152v1-Location, 2021-152v1-Mobile and 2021-152v1- PropBlock.
- 3) No more than two static mobiles and two touring caravans shall be stationed on the site at any one time.
- 4) The caravans shall only be sited in accordance with plan no. 2021-152v1- PropBlock.
- 5) No commercial activities shall take place on the land, including the storage of plant, products or waste materials, and no vehicle over 3.5 tonnes shall be stationed, parked or stored on the site.
- 6) No floodlighting, security lighting or other external lighting shall be installed or operated on the site other than in accordance with details which shall have been previously submitted to and agreed in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

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**APPEARANCES**

**FOR THE APPELLANT:**

Annie Gibbs	Appellant
Simon McKay	SJM Planning
William Jones	Assistant Headteacher at Infiniti School

**FOR THE LOCAL PLANNING AUTHORITY**

Paul Gregory	Team Leader (Planning Applications)
Guy Martin	Senior Planning Officer

**INTERESTED PARTIES**

Andrew Keel	Chair of Ospringe Parish Council
Colin Jones	Vice Chair of Doddington Parish Council

**DOCUMENTS SUBMITTED AT THE HEARING**

Policy DM 26 of the Swale Borough Local Plan 2017  
Letter of support from The Queen’s Regimental Riders Association  
Letter from East Kent Hospitals University regarding the appellant

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The Planning Inspectorate

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## Appeal Decision

Site visit made on 21<sup>st</sup> June 2024

by **Nicola Davies BA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4<sup>th</sup> July 2024

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**Appeal Ref: APP/V2255/Z/24/3337906**

**Land at Wisen Lane, Borden Kent ME10 1GD**

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) against a refusal to grant express consent.
  - The appeal is made by BDW Kent against the decision of Swale Borough Council.
  - The application Ref is 23/503582/ADV.
  - The advertisement proposed is for 1no. fascia signs, 9no. totem signs, 2no. plaques, 4no. fence panel signs, 1no. development name sign and 5no. flag poles.
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### Decision

1. The appeal is allowed and express consent is granted for the display of the 3no. flag poles (Item G) as shown on drawing 1704 81 Rev B within the 'Sales area plan' at Land at Wisen Lane, Borden Kent ME10 1GD in accordance with the terms of the application, Ref 23/503582/ADV. The consent is for 3 years from the date of this decision and is subject to the 5 standard conditions set out in Schedule 2 of the 2007 Regulations: -
  - 1) No advertisement is to be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission.
  - 2) No advertisement shall be sited or displayed so as to:
    - a. endanger persons using any highway, railway, waterway, dock, harbour or aerodrome (civil or military);
    - b. obscure, or hinder the ready interpretation of, any traffic sign, railway signal or aid to navigation by water or air; or
    - c. hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle.
  - 3) Any advertisement displayed, and any site used for the display of advertisements, shall be maintained in a condition that does not impair the visual amenity of the site.
  - 4) Any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a condition that does not endanger the public.

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- 5) Where an advertisement is required under these Regulations to be removed, the site shall be left in a condition that does not endanger the public or impair visual amenity.

#### **Background and Main Issue**

2. The Council's decision has been a split decision. Advertisement Consent has been given for the majority of the development set out in the banner heading above. However, Advertisement Consent has been refused relating to 3no. flag poles (Item G) as shown on drawing 1704 81 Rev B within the 'Sales area plan'. For the purpose of clarity, I have considered only the 3 flag poles that have been subject to the Council's refusal.
3. Three flag poles advertisement were in place at the site at the time of my site visit. However, it is not clear whether these are in precisely the same position as shown on drawing 1704 81 Rev B. I have therefore considered the appeal as a standalone advertisement development.
4. The main issue raised by this appeal is the effect of the proposed 3 flag poles signs upon the amenity of the area.

#### **Reasons**

5. This appeal relates to temporary signage in relation to a residential housing development that is currently under construction. The site where the 3 flag pole signs are proposed comprises of 2 show homes (Plots 2 and 3) and a sales cabin with a visitor car park. The flags would be positioned alongside the highway frontage within the visitor car park. The 3 flag poles would each consist of a 5.4m high aluminium post and a blue polyester flag with white text.
6. The 3 flag pole signs would sit within the context of other signage which includes: 1 fascia sign to the sales cabin; 6 totem signs around the visitor car park; 2 show home name plaques; 4 fence panel signs; and, 1 development name sign. These are of a different scale and perform different functions, including providing directional information.
7. The majority of the signage would be located within the sales area and car park restricting any impacts on visual amenity to a small area. Due to the size of the site relative to the advertisements that are proposed the signage would not result in an unacceptable level of visual clutter when considered cumulatively. The amount of signage would not result in an over proliferation of signage within this area and would not have an unacceptable detrimental impact upon either visual and residential amenity, nor result in any harm to highway safety, which are the statutory tests here. Consequently, I do not find that the flag poles would be harmful to the visual amenity of the surrounding area. I have also taken into consideration that this signage would be a temporary consent for 3 years and, as such, any impacts would be time limited.
8. The Council's Planning Committee also raised concerns that the 3 flag poles would cause noise in windy conditions. However, this matter does not form part of the Council's reason for refusal as cited upon the decision notice. Based upon the information before me, I cannot conclude that the living environment of existing occupiers would be substantially compromised in respect of noise.

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9. Borden Parish Council objects to the proposal on the basis that the advertisements are already in place and the amount and size of the adverts are detrimental to the local environment. I have dealt with these matters above.
10. For these reasons, I conclude that the proposed 3 flag pole signs would not have a harmful effect on upon the amenity of the area. As such, the proposed development would comply with Policy DM15 of "Bearing Fruits 2031: The Swale Borough Local Plan 2017", The Planning and Development Guidelines No.4 The Design of Shopfronts, Signs and Advertisements and the provisions of the National Planning Policy Framework (the Framework). These policies, guidelines and the Framework seek, amongst other matters, advertisements to be designed in a manner that minimises harm to amenity and public safety.

#### **Conditions**

11. I have considered the planning conditions put forward by the Council in light of paragraph 56 of the Framework and the Planning Practice Guidance. The proposal advertisement should be subject to the 5 standard conditions set out in Schedule 2 of the 2007 Regulations.

#### **Conclusion**

12. For the reasons set out above, and subject to the conditions listed, this appeal should be allowed.

*Nicola Davies*

INSPECTOR

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## Appeal Decision

Inquiry held on 11 – 19 April 2024

Accompanied site visit made on 12 April 2024

**by David Spencer BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5<sup>th</sup> July 2024

**Appeal Ref: APP/V2255/W/23/3333811**

**Land at Ufton Court Farm, Tunstall, Sittingbourne, Kent.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Hallam Land Management Ltd against the decision of Swale Borough Council.
- The application Ref 22/505646/OUT, dated 25 November 2022, was refused by notice dated 13 November 2023.
- The development proposed is construction of up to 290 dwellings, the formation of a new means of access onto Minterne Avenue, new footpaths and cycle routes, the creation of new surface water drainage, new landscaping and habitat creation, ground works and other infrastructure.

### Decision

1. The appeal is allowed, and planning permission is granted for the construction of up to 290 dwellings, the formation of a new means of access onto Minterne Avenue, new footpaths and cycle routes, the creation of new surface water drainage, new landscaping and habitat creation, ground works and other infrastructure at Land at Ufton Court Farm, Tunstall, Sittingbourne, Kent in accordance with the terms of the application ref 22/505646/OUT and the conditions set out in the schedule attached to this decision.

### Procedural Matters

2. The proposal seeks outline planning permission with all matters reserved except for access. Whilst matters of appearance, landscaping, layout and scale would be reserved for future determination, plans to be approved at this outline stage would include a land use parameters plan that would set out the extent of the developable area and a separate green infrastructure plan which would set the broad framework for the 17.33 hectares (ha) of green spaces proposed. The proposal was accompanied by an illustrative masterplan, but this would not form part of any plans to be approved at this stage. The Local Planning Authority (LPA) made its decision on this basis, and so have I.
3. Since the LPA made its decision, the National Planning Policy Framework (NPPF) was updated on 19 December 2023 and various parts of the Planning Practice Guidance (PPG) thereafter. I am satisfied that the main parties have had an appropriate opportunity to consider the relevant updated national planning policy in preparing their evidence for this appeal.
4. An executed agreement pursuant to Section 106 (S106) of the Town and Country Planning Act 1990 (as amended) and dated 7 May 2024 was submitted

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after the Inquiry event. The S106 agreement includes obligations concerning community infrastructure (including education and health), off-site highways works, public rights of way improvements, bins, mitigation under the Habitats Regulations, air quality management and First Homes. A separate Unilateral Undertaking (UU) dated 7 May 2024 was also submitted after the Inquiry event. The UU contains obligations relating to affordable housing provision other than First Homes. I return to the matter of the planning obligations later in this decision.

5. In addition to the lengthy accompanied site visit on 12 April 2024, I also visited the area on my own, including the wider viewpoints, on 10 April 2024. At the request of local residents, I specifically observed highway conditions in Minterne Avenue and its side roads at a time to coincide with local schools on the morning of 17 April 2024.

### **Main Issues**

6. The main issues in this appeal are as follows:

- (1) The extent of the deliverable housing land supply.
- (2) The effect on the character and appearance of the surrounding area including whether the appeal location is a valued landscape.
- (3) What is the appropriate provision of affordable housing; and
- (4) Other matters in the planning balance.

### **Reasons**

#### *The Development Plan and site context*

7. The adopted development plan comprises 'Bearing Fruits 2031: The Swale Borough Local Plan' (the SBLP), adopted in July 2017. The Plan was prepared and examined in the context of the then 2012 NPPF. Whilst there has been some consistency through the revisions of the NPPF, the SBLP nonetheless predates some significant changes in national planning policy including establishing local housing need through the standard method.
8. Policy ST2 of the SBLP, which sets out the housing requirement, includes a requirement for an early plan review<sup>1</sup>. Whilst there have been efforts to prepare a new Local Plan, the latest emerging Local Development Scheme<sup>2</sup> identifies that the Council intend to go back to the drawing board and are at the formative stages of preparing a new Plan, which is pencilled for adoption by early summer 2026.
9. Sittingbourne is identified in the SBLP at the top of the settlement hierarchy and a focus for growth during the plan period. Whilst the appeal site is in the parishes of Borden and Tunstall, the appeal site is at the edge of the built-up area of Sittingbourne. The appeal site is not allocated in the SBLP. For the purposes of the development plan, the appeal site is countryside, outside of the built-up area boundary for Sittingbourne. It is not identified as an Area of High Landscape Value (AHLV), but it is within a designated 'Important Countryside

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<sup>1</sup> With a new Plan to be adopted by April 2022

<sup>2</sup> March 2024, Appendix 1 to Mr Watson's PoE and at CD12.7 (page 21)

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Local Gap' (ICLG). The ICLG is a local spatial planning tool addressing settlement identity, and is not a landscape designation.

**Main Issue 1 - Housing requirement and deliverable land supply**

10. Policy ST2 of the SBLP sets out the housing requirement for the period 2014-31. The figure is 776 dwellings per annum (dpa) and is based on the outmoded method of objectively assessed need. The LPA has not reviewed Policy ST2 to determine whether it remains up to date<sup>3</sup>. Consequently, in accordance with NPPF paragraph 77, the assessment of the deliverable supply of housing land should be measured against a housing requirement based on local housing need (LHN) using the standard method.
11. Whilst the LPA has been preparing a review of the SBLP, at various stages, for some time, there is no dispute that the provisions at paragraph 226 of the NPPF do not apply. Accordingly, the supply of deliverable housing land in the Borough should be measured against a benchmark of at least five years' worth of the local housing need requirement.
12. The Council's latest Housing Land Supply Position Statement covers the period 1<sup>st</sup> April 2023 to 31<sup>st</sup> March 2028<sup>4</sup>. This is the period on which the five year deliverable supply of housing land should be assessed. The statement utilises a LHN figure of 1,086 dpa as at 1 April 2023. On 25 March 2024, revised affordability ratios were published<sup>5</sup>. This would derive a LHN figure of 1,048 dpa for Swale which the LPA submit would give them a 5.13 years deliverable supply, on their assessment. The problem with this approach is that it is only updates one factor in the overall assessment of housing land supply. Without any parallel updating of completions and supply there is not the complete picture. This would result in a skewed outcome that is likely to include the prospect of double counting<sup>6</sup>. As such I do not consider it appropriate, or consistent with NPPF paragraph 77<sup>7</sup>, to partially update the housing land supply position outside of a comprehensive annual assessment process.
13. Planning Practice Guidance (PPG) at paragraph 2a-004-20201216 says under Step 2 when calculating housing need. "The most recent median workplace-based affordability ratios.....should be used." For the purposes of calculating housing need, for example when preparing a Local Plan or, where required, when methodically updating the annual housing land supply position statement, that is logical. But I remain of the view, that when assessing deliverable housing land supply, a partial update to only look at the housing need component would not provide a robust picture of the overall situation. The updated ratios are published annually in March at a time that coincides with the end of the typical monitoring period (31st March). This sequencing would allow for LPAs to expediently update annual position statements, particularly where the circumstances are beneficial to them.
14. Given recent Housing Delivery Test performances the 20% buffer does not apply. Consequently, for the purposes of the assessment of deliverable supply, the housing requirement should be 1,086 dpa. This amounts to 5,430 homes

<sup>3</sup> Paragraph 1.4, SoCG on Housing Land Supply [CD5.5]

<sup>4</sup> Originally published in November 2023 [CD7.11] and a January 2024 summary update to reflect 2023 NPPF and removal of the 5% buffer [CD7.10]

<sup>5</sup> Reducing the house price to workplace based earnings ratio from 10.95 to 9.6 in Swale

<sup>6</sup> Completions informing the affordability ratio may also still be counted within the supply

<sup>7</sup> Which refers to "identify and update annually a supply of specific deliverable sites..." (my emphasis)

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over the five year period. On its figures, the LPA asserts it can demonstrate a 4.95 years deliverable supply against this requirement.

15. The Housing Land Supply Statement of Common Ground (SoCG) [CD5.5] identifies that there is an uncontested deliverable supply of 4,077 homes within the relevant five year period, including an appropriate allowance for additional windfalls in years 4 and 5. As such the disputed supply relates to 17 sites, amounting to the delivery of 1,302 homes. Taking the definition of “deliverable” at the Annex 2 Glossary of the NPPF, the disputed sites fall into the two categories at parts a) and b). I deal with them in that order.
16. As part of the inquiry the LPA has submitted updates in relation to the contested sites and the appellant has had the opportunity to rebut this. The LPAs updates are not introducing new sites or increasing the capacity of sites. The evidence mainly seeks to demonstrate that matters have not stood still since the publication of the LPAs position statement in November 2023. The supply side of the equation for the LPA remains the same. Given the significance of deliverable supply, I consider the LPA should be permitted to present updates to support what they have identified as deliverable as of 1 April 2023. This would be consistent with recent Secretary of State decisions<sup>8</sup>. I accept that introducing new planning permissions approved since 1 April 2023 would skew the data, as set out in the terms expressed in the Woolpit decision<sup>9</sup>. However, looking at the Scott Schedule [CD5.5a], the only site where the LPA has referenced a post April 2023 planning consent is the appeal decision on disputed Site 8. I set out below my reasons for discounting that site in any event.
17. In terms of those contested sites that have detailed planning permission (category a)) the NPPF is clear that these should be considered deliverable unless there is clear evidence that homes will not be delivered within five years. With regards to Land at Otterham Quay (Site 11) progress is being made on discharging various conditions on the November 2020 permission, as set out in the LPAs March 2024 update. As such, the 34 dwellings should remain in the deliverable supply as cautiously profiled by the LPA. Whilst land to the rear of 45-55 High Street (Site 12) has a long planning history, the site benefits from detailed planning consent for 32 units granted in November 2021. It may be the case that there have been no applications to discharge conditions, but there is still time left on the permission (approximately 7 months at the time of the Inquiry event). There is some dispute over whether Listed Building Consent would be separately required, but the LPA advised that this was an informative on the decision rather than a certainty. Overall, I have maintained 32 dwellings on this site within the deliverable supply.
18. Turning to the BMM Weston site on Brent Road (Site 13), this was granted planning permission over 24 years ago. There is no dispute the site has an extant planning consent. The site has subsequently been allocated in the SBLP and more recently through the Neighbourhood Plan process. Whilst the permission is very old, there is very little before me that it cannot be practicably implemented within the five year period and along the prudent delivery projection set out by the LPA. On this basis I have counted the 28 dwellings within the deliverable supply.

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<sup>8</sup> CD9.21 – Woburn Sands and CD9.20 - Winsford  
<sup>9</sup> CD9.19, paragraph 67, appeal decision 3194926



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19. The Conyer Brickworks (Site 14) benefits from an aged extant permission from 2011. The site has transferred ownership and a revised application submitted 4 years ago remains undetermined. The LPA now advise that the site owner intends to submit a Section73 application to amend the 2011 scheme on a smaller part of the site (currently at the pre-application advice stage). I consider this is clear evidence that the current site owner does not seek to implement the 2011 consent. Given there is no alternative detailed permission for the site I have discounted 24 dwellings from the deliverable supply.
20. Land off Sheppey Way (Site 15) was granted full planning consent for 14 units as of November 2020. It is contested that the consent has lapsed but I do not have the clear evidence for this. That would be a matter for the next assessment period and so I still include 14 units in the deliverable supply.
21. With regards to the category b) sites, the issue is largely whether the threshold of "clear evidence" has been met. The PPG at paragraph 68-007-20190722 provides advice on what might constitute "clear evidence". This includes, amongst other things, for large scale sites with outline or hybrid permission, the degree of progress being made towards approving reserved matters. For other sites, it references firm progress being made towards the submission of an application; firm progress with site assessment work; or clear relevant information about site viability, ownership constraints or infrastructure provision.
22. The LPA forecast delivery of some 300 dwellings on Land between Frogal Lane and Lower Road, Teynham (Site 1). The site is allocated in the SBLP and is being brought forward by a volume house builder. A reserved matters permission is pending a decision and all but one of the pre-commencement conditions have been discharged. Whilst both parties agreed that it was not necessary that I visit any of the disputed sites, this is one that I have nonetheless observed. Construction work is currently under way on the access from the A2 into the site. Firm progress is being made to bring the site forward as per the LPAs March 2024 update. The proposed delivery rates align with the Council's average build out rates from their robust monitoring processes. As such 300 dwellings should be counted as deliverable supply from this major site within the assessment period.
23. There are various sites (generally SBLP allocations) where an implementable consent remains subject to either a mechanism for securing planning obligations or a reserved matters application. On the whole, including having regard to the LPAs updates as of March 2024, I find the threshold of clear evidence has not been met to provide confidence of delivery on these sites (Sites 2, 3 and 4) within the identified five year period. Whilst there appears to be some progress being made, and the sites are being brought forward by national housebuilders, it remains that there are no records, statements of common ground or proformas from the developers in terms of their timeframe to bring the sites forward, that are before me. Nor is there is evidence in terms of copies or extracts of Planning Performance Agreements where relevant. Whilst Appendix E of the Housing Supply Position Statement is a schedule of site promoter responses, the evidence is perfunctory, often no more than one sentence confirming the Council's forecast delivery, rather than the sort of evidence identified at PPG paragraph 68-007. Consequently, I have discounted the cumulative deliverable supply of 573 dwellings from these sites.

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24. Various sites that form part of the wider regeneration area at Queenborough and Rushenden at Policy Regen 2 ST4 of the SBLP are disputed (Sites 5, 6 and 7). Whilst the LPA have taken a very cautious outlook and only profiled delivery in year 5 on each of the sites, and notwithstanding the involvement of Homes England as master developer, there is not the clear evidence before me that delivery would occur on these sites within the required period. There are no planning applications and little to demonstrate that beyond any site preparatory works there is a clear timeframe to market the sites, nor any positive outcome from any site disposal process. Consequently, I have discounted the 216 units forecast by the LPA to be delivered across these sites.
25. Land at North East Sittingbourne (Site 8) has been allowed on appeal after the base date for the assessment period. The appeal has established outline consent for up to 380 dwellings and the LPA assessing 45 units being delivered in the period. Various stages remain before any implementation could take place including reserved matters and the discharge of conditions. There is not the clear evidence of delivery required in terms of how and when the developer intends to move forward from the outline permission and so I have discounted 45 dwellings from the supply. Along similar lines, I have discounted 10 units of supply from Nil Desperandum (Site 17) where outline planning permission remains to be determined, with access remaining an outstanding issue to be resolved. Similarly, I have also discounted 9 dwellings at Land at Green Barrow Farm (Site 19) where a decision on an outline planning application is still pending after 3 years, with scant evidence that the issues could be satisfactorily resolved within a deliverable timeframe.
26. The planning history and situation at The Lion, Milton Regis appears complex, with an extant outline permission, and an application for full permission pending determination and which is now described by the LPA as "retrospective". The outline consent appears to have lapsed before the relevant period and the full application has not been determined. Matters may have been resolved by the next assessment period, but this is a situation where there is not the clear evidence of delivery, including any certainty that what has occurred at the site would be granted planning permission retrospectively. I have therefore discounted the 10 units.
27. Finally, at Ordnance Wharf, Flood Lane (Site 20), this is a site that has a chequered planning history but does not appear to benefit from an extant planning permission at the time of this Inquiry. Whilst the site is allocated in the Neighbourhood Plan the succession of withdrawn planning applications does not instil confidence on delivery and until such time that there is clear evidence, the asserted deliverable supply of 7 units should be discounted.

*Conclusion on Housing Land Supply*

28. Bringing this all together, against the housing requirement over the five year period of 01 April 2023 to 31 March 2028 of 5,430 dwellings, I have found there to be a deliverable supply that would equate to circa 4.1 years' worth. As such, the development plan is not delivering the required number of homes needed by some margin. The degree of shortfall goes to the weight to be ascribed to the benefit of the new homes from the appeal proposal. It also means the most important policies for determining the application are out of date, as set out at footnote 8 to NPPF paragraph 11d).

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### **Main Issue 2 - Character and Appearance**

29. The appeal site is a commercial orchard predominantly laid out in regimented rows of young perpendicular apple trees planted along tall post and wire supports. In the north-western part of the site is a block of older pear trees (circa 50 years old), grown in structured rows. The evidence points to these pear trees being at the end of their commercial life. Whilst they are recognised in the arboricultural survey as Category B trees, and so of an age offering some landscape significance, they are nonetheless largely subsumed within the arrangement of young apple trees. The apple trees are replaced on a regular cyclical basis<sup>10</sup>. As such the prevailing character of the appeal site is one of a highly managed, intensive form of food production with a quasi-manicured appearance, including the neat grass strips between the rows of trees.

#### *Whether a Valued Landscape?*

30. The NPPF at paragraph 180(a) references "valued landscapes", which are to be protected and enhanced. The NPPF indicates that this should be in a manner commensurate with their statutory status or identified quality in the development plan. The appeal site has no statutory landscape status. It is some distance from the Kent Downs National Landscape (KDNL), which is to the south of the M2. Nor does it form part of the setting to this landscape<sup>11</sup>.

31. In terms of the development plan, Policy DM24 addresses conserving and enhancing valued landscapes. Designated landscapes are identified as the Area of Outstanding Natural Beauty (now the KDNL) and Areas of High Landscape Value (AHLV) at the Kent and Swale level. The appeal site is not located within an AHLV as identified in the SBLP. This is important because the SBLP specifically addresses "valued landscapes", including by reference to key landscape characteristics in the Borough. In this context the SBLP cites the 'Northern Horticultural Belt' which is primarily defined by horticultural activity with a predominance of orchards. Having taken this into account, the SBLP nonetheless does not formally designate the appeal location in landscape terms. Moreover, recent evidence base intended to inform a review of the SBLP has not recommended that the appeal site be included within an AHLV<sup>12</sup>.

32. Part A of Policy DM24 is the obvious starting point for an "identified quality" in the development plan that would connote a valued landscape as per the text in the brackets at NPPF paragraph 180a. I accept, however, that a valued landscape could exist outside of those areas identified in part A of Policy DM24 of the SBLP. It is conceivable that a valued landscape could apply at a relatively small-scale. That said, the landscape value should be identified in the development plan and bear characteristics that elevate the landscape beyond the ordinary. Moreover, the Landscape Institute's guidelines caution against the over-use of identifying valued landscapes<sup>13</sup>.

33. The title of the SBLP is "Bearing Fruits" and the Plan regularly references orchards, reflecting that the area has been "the cradle of cultivated fruits since the 16<sup>th</sup> Century"<sup>14</sup>. I am under no doubt that fruit growing, particularly within

<sup>10</sup> "The majority of the existing apple trees were planted in 2020." Paragraph 2.2 - Rebuttal Proof of Mrs Kirk

<sup>11</sup> As agreed in the Landscape Statement of Common Ground [CD5.6] at paragraph 1.7.

<sup>12</sup> Swale Local Landscape Designations, Review and Recommendations 2018 [CD10.11, pages 62 & 65] The appeal site is in search area 05. There was no recommendation to amend the local landscape designations (i.e. extend the existing AHLV to the east to incorporate the appeal location).

<sup>13</sup> CD10.5, Appendix 4, paragraph 4.2.12

<sup>14</sup> Paragraph 2.1.26 of the SBLP



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the narrow band of the northern horticultural belt, which wraps around the south of Sittingbourne including at the appeal location, is emblematic of this part of Kent. To take these references on their own, however, as a basis that there is an identified quality in the Plan that supports any such area of commercial orchard being assigned as a valued landscape would be too broad brush an approach. It would potentially envelop appreciable areas of what could reasonably be described as ordinary landscape for this part of North Kent, beyond those extensive parts of the Borough that have already been specifically assessed and identified as AHLV, including parts of the Fruit Belt.

34. Drilling down further into the SBLP, Policy CP4 on design refers to conserving and enhancing landscape by reference to retaining "old orchards and fruit trees". Policy DM29 on Woodlands, trees and hedges seeks to ensure the protection, enhancement and sustainable management of "orchards" in its first sentence. This is reasonably a catchall term to cover at criterion 1 the sustainable management of old orchards and at criterion 2 the provision of new orchards within development proposals.
35. Paragraph 7.7.88 in support of Policy DM29 says the policy seeks to safeguard specifically, amongst other things, "old orchard trees". But I note the wording of the policy separates old orchards from fruit trees (contrary to the wording in Policy CP4). That said, the final element of sub-part 3 in criterion 4 when applied to "fruit trees" says that they should make an important contribution either to the amenity, historic, landscape, townscape or biodiversity value of the site and/or surrounding area.
36. Overall, when looking at the SBLP there is a clear focus on traditional or old orchards. Whilst Policy DM29 refers to "fruit trees", this on its own, as a singular reference, does not lead me to arrive at a conclusion that a commercial orchard falls squarely within an identified quality in the development plan that prompts a valued landscape status. The smaller block of pear trees on the site are not evocative of a traditional orchard<sup>15</sup>.
37. The matter of valued landscape outside of designated landscapes is also addressed in technical guidance from the Landscape Institute (TGN 02/21). In terms of whether there are qualities that give the landscape a significant value, above the ordinary, the evidence here is not persuasive. Whilst there is a gentle undulation across the appeal site typical of this part of the Kent Downs dip slope, the topography is not a distinct or particularly conspicuous dry valley. There is a relative tranquillity and reasonable public access, but these are arguably common characteristics for large tracts of the countryside.
38. The commercial orchard is well-managed and has various qualities, including particular seasonal attributes (spring blossom and autumnal fruits). This is clearly valued by local residents and those using the public footpaths around the site. However, these qualities apply to any commercial orchard, of which there remain others in this part of Kent despite the evidence of their declining extent. Moreover, similar seasonal qualities could be said of other types of farming and horticulture, again leading to a too liberal approach to identifying what might constitute a valued landscape.
39. The modern commercial orchard on the appeal site adjoins the remnants of a traditional orchard immediately to the south. It is submitted that this presents

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<sup>15</sup> Having regard to the 2010 Natural England Technical Information Note TIN012 [CD10.2]

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a time depth, revealing the evolution of orchard land use in the 'Fruit Belt'. This can only be experienced from relatively few perspectives due to intervening boundary vegetation. Moreover, the concept of the time depth, in terms of the changes in orchard character, can be more widely experienced across the Fruit Belt landscape, such that I do not consider there to be a significant value in experiencing them side by side.

40. Reference is made to Kent's identity as the 'Garden of England' and fruit growing comprising part of the "DNA" of this part of Kent and Swale in relation to the "North Kent Plain" (National Character Area 113). Again, encompassing any area of commercial orchard into valued landscape on this basis would be too broad. There is very little that specifically ties the site to a particular historical or cultural association, with fruit growing on the site being a relatively recent enterprise.
41. For the reasons set out above, I conclude that the appeal site is not valued landscape in the terms set out at NPPF paragraph 180a). I note the nearby Swanstree Avenue appeal site was determined to comprise a valued landscape. In clear contrast to the site and location before me, the Swanstree Avenue site is in an AHLV as identified in the SBLP. As such there are material differences.

#### *Landscape Impact*

42. Whilst I have found the appeal site is not a "valued landscape", the site has attributes of landscape value<sup>16</sup>. At the broad level the Landscape Assessment of Kent 2004 (the Kent LCA) addresses the character areas of the county, including the Fruit Belt. More fine-grained assessment is provided in the Swale Landscape Character and Biodiversity Appraisal Supplementary Planning Document (the SPD). The appeal site is within Landscape Character Area 42 'Tunstall Farmlands' in the SPD. The latest Borough level evidence is to be found in the Landscape Sensitivity Assessment 2019 (the LSA), to which the appeal site is within parcel SE04 (South-west Sittingbourne).
43. The Fruit Belt area is clearly a mixed, complex, richly varied and changing landscape, with the Kent LCA identifying that "notably to the south-west of Sittingbourne" the land use is now more typically open arable farmland. The local level of landscape assessment, for the Tunstall Farmlands, also identifies a combination of arable fields and areas of commercial orchards and horticulture. The local level evidence also refers to spatial variations, clearly recognising that even within these small areas of assessment, there are varying degrees of rurality and higher areas of landscape sensitivity.
44. In looking at the characteristic features of the host landscape at the more local level (Tunstall Farmlands) I find the appeal site shares only some of them, in large part the land use, the gentle topography and strong boundary features. On the whole, these are not particularly remarkable at the appeal site, save for the quality of the hedges and trees along the south and west edges of the site.
45. Across the wider host landscape area there is a strong rural character but that recedes at those parts that are at the edge of Sittingbourne, reflecting the visible and perceptible urban influences such as housing, streetlights, garden boundaries and traffic. Accordingly, the 2019 LSA considers that there are small areas of lower sensitivity within the wider SE04 parcel assessed. The

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<sup>16</sup> As per Mr Lovell's PoE, paragraph 2.15 "ordinary landscapes have value".

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LSA does not define where this applies. As the Council submit it may well include the allotments on Riddles Road but that would be a very narrow application. Given the presence of the adjacent housing, I find the appeal site would be a small area of lower sensitivity as per the LSA.

46. The appeal site is also located in Study Area 11 (South-west Sittingbourne) of the Swale Urban Extension Landscape Capacity Study (the SUELCS). This covers the northern part of the Tunstall Farmlands LCA, including the appeal site. Whilst the Study concludes that the wider area has a low capacity to accommodate change, it nonetheless identifies that minor expansion of residential development could be accommodated in small areas that relate well to, or are currently influenced by, the existing urban edge. Specifically, it says that minor residential expansion could potentially be located east of Starveacre Lane and immediately adjacent to the existing urban edge, where orchards are currently managed. The area described is plainly the appeal site. Whilst it would be difficult to describe the appeal proposal as minor, it does nonetheless, confine the built development to approximately a third of the site, and to those parts of the site where adjacent housing exerts a clear urbanising influence.
47. Overall, my assessment is that the site has no more than a medium landscape value with moderate sensitivity to change from residential development.
48. One of the key characteristics of the Tunstall Farmlands area is the loss of traditional orchard to agricultural intensification. Whilst the site does not comprise a traditional orchard, it nonetheless has a functioning, productive horticultural character, which is part of the characteristic mix of land cover in the host landscape. The appeal proposal would result in the loss of orchard trees, including some of modest landscape significance (the older pear trees). This harm would be offset to a small degree by a small area of traditional orchard proposed within the green space.
49. As set out above, a sense of a dry valley at the appeal site is weak. The landform is faintly perceptible on site, revealing little more than a very shallow, broadly scooped depression rather than a distinct valley form<sup>17</sup>. As such there would be negligible harm to this aspect of landscape value. Furthermore, the landscape evidence in the latest 2019 LSA places particular sensitivity on the dry valley to the east (part of the AHLV between Sittingbourne and Rodmersham) and land in the south of the SE04 parcel closer to the KDNL. The appeal proposal would not affect either of these more sensitive parts of the local landscape character<sup>18</sup>.
50. Development would result in on-site attenuation of surface water in accordance with the principles of sustainable urban drainage systems (SUDS). The precise form and position of any SUDS features would be determined at a later stage. Whilst they may not be characteristic of the dry landscape, there are likely to be various parts of the year when they are not holding water. Accordingly, I do not find their presence would be especially harmful to the landscape.
51. The appeal proposal would adhere to the local level landscape guidelines, including conserving the rural setting around the Tunstall Conservation Area, maintaining a landscape gap between the edge of Sittingbourne and Borden and softening the urban edge with native planting. It would also accord with

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<sup>17</sup> As shown in Figure HDA4 in Mrs Kirk's PoE

<sup>18</sup> As per paragraphs 4.1 and 4.2 of the Landscape Statement of Common Ground [CD5.6]



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landscape actions in the Kent LCA for the Fruit Belt which include enhancing the definition in changes of land use with woodland blocks and enhancing the cultural heritage including the creation of traditional orchards.

52. The proposed green space is assessed by the Council as having harmful "suburban park style of open space planting". Landscaping would be a detail for the reserved matters. But the evidence to this appeal indicates that most of the 17.33ha of green space would be given to semi-natural land cover, including structural planting, new and reinforced hedging, meadow grassland and traditional orchard. Observing the character of the remnant orchard to the south and the parkland qualities closer to Tunstall church, I consider the proposed approach to the green space would relate well to these components of the host landscape. Consequently, the proposed green space would not harm the wider landscape character at this edge of Sittingbourne.
53. Whilst I find the landscape at the appeal site to have few remarkable features, the proposal would, nonetheless, result in nearly 9ha of what is currently productive, horticultural land being developed with housing, highway works and urbanising features such as lighting and play areas. This change in character would be harmful to the landscape. The degree of harm would be moderated by the presence and influence of existing development, to which the proposed built development would be well-related. The proposals would retain landscape elements of higher value including the strong vegetated boundaries along Starveacre Lane and footpath ZR140. The appeal scheme has also sought to follow various landscape guidelines in the Kent LCA for the Fruit Belt and for the Tunstall Farmlands LCA.
54. In conclusion, I consider the proposal would have a moderately adverse impact on the landscape character of the site and only a minor impact on the character of the wider Tunstall Farmlands LCA and broader Fruit Belt area. I note the recent Swanstree Avenue appeal identified the orchards there as positively contributing to the character of the area such that the housing proposed would result in a "high adverse effect on the site and surroundings". I have relatively few details on the character and nature of those orchards at Swanstree Avenue compared to highly regimented, uniform and quasi-manicured commercial orchards which dominate this appeal site. As such I have arrived at a different conclusion on landscape harm based on site specific circumstances.

#### *Visual Impacts*

55. In terms of visual impacts, the immediate impacts during and immediately after the construction phase would be raw, including the proposed access into the site from Minterne Avenue. These impacts would significantly reduce over time such that by the year 15 post completion point, the combination of the existing and proposed landscape framework would appreciably soften the impact. This would include the proposed structural planting along the southern and western boundaries, including the infilling of the small existing gaps in the otherwise strong boundary hedge to Starveacre Lane. Any residual views of the appeal development from within Starveacre Lane, including that part which forms the footpath across to Borden<sup>19</sup>, would be limited and transitory, including across the appreciable area of proposed green space. The existing urban edge of Sittingbourne is already visible from viewpoints to the west and south-west. Whilst the appeal proposal would bring development moderately

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<sup>19</sup> Viewpoints 4, 5 and 6

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closer, any residual glimpsed views of the proposed dwellings would consolidate against the built backdrop, rather than starkly introducing development into an unfettered rural panorama.

56. There would be a negligible visual impact from viewpoints to the south including long-distance views from Hearts Delight Road and footpaths extending west from Tunstall village. It may be possible that the development would be glimpsed from within footpath ZR140 but any such views would be fleeting, even to slow moving walkers, and seen in the context of the existing adjacent housing on Sterling Road. To the east, the existing hedgerow boundary to footpath ZR136 would extensively screen the development from users of this path, with any visual impact limited to the proposed points of pedestrian connection into the appeal site. I acknowledge there would be a sensory change in this path, arising from a perception of development beyond, but this footpath already has a prevailing suburban character due to the proximity of housing on Sterling Road and Woodside Gardens, including domestic boundary treatments to this path.
57. I observed the site from within Riddles Road and Borden Lane to the west. These views are over distance and to some extent framed by existing development. Additionally, existing and proposed vegetation would significantly filter these long-distance views such that the appeal proposal would not be harmfully conspicuous.
58. The greatest visual impact would be from within Minterne Avenue at the junction of Riddles Road and College Road and along footpath ZU51 which connects behind dwellings on Minterne Avenue and into Woodside Gardens. With time, landscaping around the proposed road junction and in the north-west corner of the appeal site would appreciably mitigate the visual impact. This would occur at a point where the existing character is already influenced by the existing suburban road layout at the edge of Sittingbourne. The rear boundary of dwellings on Minterne Avenue already provides a strong urban influence on Footpath ZU51. Wider open views across the appeal site would be lost but the impact would be partly mitigated by the proposed green space in this corner of the appeal site. Consequently, the path would not be hemmed in. A sense of wider openness to the west across to the Riddles Road allotments would be retained. Any adverse visual impact resulting from the loss of wider openness to the south would be over a relatively short distance. As such, I find the visual harm from the viewpoints to the north of the appeal site to be limited.
59. The Council advocate that any assessment of visual impact should also include private views from the adjacent dwellings. I accept that these views would fundamentally change, however, I have conventionally dealt with this under 'living conditions' later in this decision, in terms of residential amenity (outlook)<sup>20</sup>. For this main issue, I have focused on the wider public interest, in terms of the viewpoints identified in the agreed zone of visual influence.
60. In conclusion, I find the initial visual impacts would significantly reduce over time, such that by year 15 any residual visual harm would be only minor.

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<sup>20</sup> See also paragraphs 2.3 and 2.4 of Landscape Statement of Common Ground



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*Conclusion on Character and Appearance*

61. SBLP Policy DM24 seeks to protect the Borough's landscapes. Whilst it is out-of-date due to the housing land supply situation, it is consistent with the NPPF and therefore attracts significant weight.
62. Part A of the Policy is not applicable as the site is not a designated landscape. In accordance with Part B, sub-part 1 of the policy, the appeal proposal has deployed a landscape-led approach to minimise and mitigate adverse landscape and visual impacts. For this and other reasons, the residual harms would not be of threshold to engage sub-part 2 of Policy DM24 in terms of generating a significant adverse impact. Whilst a residual degree of harm is identified, the proposal would nonetheless comply with Policy DM24.
63. Policies ST1, ST3 and ST5 as strategic policies dealing with the spatial strategy refer to landscape and landscape setting, amongst other things. The harm identified would conflict with the landscape aspects of these policies. However, I give only limited weight to this conflict given the proposal would comply with Policy DM24, which is, in my view, the most important policy dealing with landscape. Nonetheless, the moderate harm to the landscape and the minor visual impacts must be weighed in any overall balance in the conclusion.
64. The appeal proposal would result in the loss of a large number of fruit trees, including the older pear trees, which are a characteristic feature of the Tunstall Farmlands LCA and the wider Fruit Belt. Ultimately, Policy DM29 of the SBLP engages a balance at criterion 4(3) when dealing with the loss of trees. As set out above under the first main issue, there is a need for the appeal proposal. As set out later, the benefits of the appeal proposal as identified, would clearly outweigh any adverse impact from the loss of the fruit trees. Overall, there would be no conflict with Policy DM29.

***Main Issue 3 - Affordable Housing***

65. Policy DM8 of the SBLP sets out the approach to securing affordable housing on development proposals of eleven or more dwellings. The policy is underpinned by viability evidence which has informed a zonal approach such that for Sittingbourne town, urban extensions and Iwade the affordable housing percentage to be sought is 10%. Percentages are set out for other locations including "all other rural areas" where the percentage to be sought is 40%. The areas in Policy DM8 are not defined on the Policies Map.
66. The supporting text to Policy DM8 is at paragraph 7.3.7 states that the affordable housing percentages will be sought on proposals by reference to "different market areas". The paragraph then goes on to say that viability is most affected in housing market areas including Sittingbourne and ".....hence a lower percentage of affordable housing will be sought in these areas".
67. In spatial terms the appeal proposal would comprise an urban extension to Sittingbourne. The evidence that informed the housing market areas referred to in Policy DM8 includes the Local Plan Viability Assessment [CD7.12]. Figure 4.4 of this document shows lower property values in the Sittingbourne postcode areas (ME10) compared to adjoining rural postcodes (ME9). Whilst the scale of Figure 4.4 is challenging, it is nonetheless discernible to identify the appeal site as being predominantly within the ME10 postcode area. In addition, the sales heat map by postcode area in the Addendum Local Plan

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Viability Assessment [CD7.13] at Figure 2.1 clearly shows the appeal site within the lower values associated with Sittingbourne rather than the higher ME9 postcode for Borden. Accordingly, the appeal proposal would be within the Sittingbourne town, urban extensions and Iwade local housing market area where the affordable housing percentage to be sought is 10% as set out in Policy DM8 of the SBLP.

68. This conclusion on Policy DM8 is similar to the recent appeal decision at nearby Swanstree Avenue<sup>21</sup>, which also occupies a comparable edge of Sittingbourne location. My attention has been drawn to the Secretary of State decision at Wises Lane, a short distance to the west of the appeal location, which made a distinction at paragraph 11.43 between parts of the site within the proposed allocation and beyond it, in terms of a blended application of 10% and 40%. Policy DM8 does not define "other rural areas" or local housing market areas by reference to parish boundaries. Nor by reference to built-up area boundaries. Paragraph 7.3.6 of the SBLP states that it is the Local Plan viability testing which is reflected in Policy DM8. That viability work was undertaken, amongst other things, on postcode area data analysis. Furthermore, it is not clear whether the Local Plan viability evidence for Policy DM8 was available to the Wises Lane appeal. As such, I have arrived at a different conclusion to the approach taken at Wises Lane for the reasons given.
69. Whilst the percentages in Policy DM8 are not expressed as minima, paragraph 7.3.7 of the SBLP states that where there is a positive change in the overall viability of development, the Council will seek a proportion of affordable housing closer to the assessed level of need, or at higher levels when evidence indicates that this would not compromise the viability of development. This is then set out at criterion 6 of Policy DM8.
70. There is clearly a substantial need for affordable housing in the Borough<sup>22</sup>. The latest 2020 Housing Market Assessment (HMA) identifies an annual requirement for 287 affordable homes in Swale Borough<sup>23</sup>. In the last 3 years there has been a cumulative shortfall of 229 affordable homes against this need. Looking ahead, whether I apply the Council's or appellant's forecasts of affordable housing delivery over the next five years, the situation does not recover, and the cumulative shortfalls are projected to significantly worsen. Allied to this, I note that the Borough Council has very recently declared an affordable housing emergency<sup>24</sup>, reflecting the very real and challenging circumstances for local households finding affordable accommodation in Swale.
71. The appeal proposal intends to deliver 30% of the dwellings as affordable, which would amount to up to 87 affordable homes. The 30% figure was supported by the Council's housing officer and would significantly exceed the relevant 10% figure sought by Policy DM8. There is no evidence before me from the Council that economic conditions have changed and that the 10% figure for Sittingbourne is now inappropriate. Whilst the appellant may be offering a higher percentage than the policy requirement, there is nothing in the policy itself to require an applicant to demonstrate what the maximum theoretically viable affordable housing provision could be. Such an approach

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<sup>21</sup> Paragraph 42 [CD9.11]

<sup>22</sup> Agreed as an "acute" need, at paragraph 10.9, Affordable Housing SOCG [CD5.7]

<sup>23</sup> Compared to an annual need for 190 affordable homes in the 2015 Strategic Housing Market Assessment prepared for the SBLP.

<sup>24</sup> ID9

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would be inimical to the plan-led certainty sought by NPPF paragraph 58 on what contributions should be assumed to be viable, thus avoiding the need for frequent and onerous viability negotiations delaying housing delivery and burdening local authority resources.

72. The 30% affordable housing would be in excess of the 25% overall affordable housing target expressed in the Strategic Housing Market Assessment underpinning the SBLP to help meet the then need for 190 affordable dwellings per annum. As such the appeal proposal is seeking to viably deliver a level of affordable housing closer to the assessed level of need compared to 10% requirement for the location in Policy DM8. As such there would be no conflict with criterion 6 of Policy DM8.
73. Overall, I conclude that the appropriate policy requirement in accordance with Policy DM8 would be 10%. The appeal proposal would comply with Policy DM8. It would also accord with NPPF paragraphs 60 and 63 to boost the supply of homes including addressing the needs of groups with specific housing requirements, such as those requiring affordable housing, and to meet as much of an area's identified housing need as possible, including an appropriate mix of housing types.

#### **Main Issue 4 – Other Matters in the Planning Balance**

##### *Spatial Strategy*

74. The Swale settlement strategy at Policy ST3 seeks to focus new development at Sittingbourne. It is at the top of the settlement hierarchy and intended to be the primary urban focus for growth. Policy ST5 subsequently sets out the Sittingbourne area strategy and provides the framework for individual development proposals in the area, including subsequent allocations in the SBLP. The appeal site is not allocated. Nor is it within the built-up area boundary for Sittingbourne as defined on the Policies Map. Consequently, the site is in countryside where Policy ST3(5) seeks to carefully manage development. The appeal proposal would conflict with Policy ST3(5) and by virtue of not being allocated it would conflict with Policy ST5(4). It therefore also follows that there would be conflict with Policy ST1(4) which states that proposals should accord with the settlement strategy.
75. However, the weight to be given to this conflict with the spatial strategy should be reduced due to various factors. Firstly, the built-up area boundaries are not delivering the required housing need. This is in part a consequence of the SBLP being more than five years old, the review in Policy ST2 not being completed and the housing requirement derived from the LHN now being significantly higher (an uplift of c.40%). The built-up area boundaries are out of date such that some flexibility will need to be applied.
76. Secondly, planning for growth around Sittingbourne, the top-tier settlement, is affected by various constraints. This includes, amongst other things, flood risk to the north, areas of sensitive landscape (including designated AHLVs) and BMV agricultural land. There are also the local level ICLGs. None of this has yet been resolved through an emerging Local Plan (including any alternative spatial strategy) to which any weight can be given. On a simple sieve analysis, having regard to the agreed main issues in this appeal (and the absence of statutory consultee objections to the planning application), the appeal site is not a particularly constrained location in the Sittingbourne context. Whilst the



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process of assessing and identifying development sites should be plan-led, for whatever reason, that process has not progressed in Swale, and remains around two years away, at the earliest, from adoption.

77. Thirdly, to the extent that there are constraints, such as ICLG and BMV, the issues are not unique to the appeal site and any reasonable option for edge of settlement growth at Sittingbourne will rub up against them. Since the SBLP has been adopted, housing development has been permitted at the edge of Sittingbourne at Wises Lane<sup>25</sup> (beyond the SBLP allocation) and Swanstree Avenue (a site also within AHLV), reflecting that options exist adjacent to, but beyond, the built-up area boundary in the SBLP for sustainable development (when considered in the round).
78. Fourthly, whilst there are currently no bus services in this part of Sittingbourne, there are facilities within walking distance including various shops and services on Chaucer Road as well as local junior and primary schools. Facilities elsewhere in Sittingbourne would be within walking distance for some residents and within a comfortable cycling distance more generally. This includes the town centre, railway station and secondary schools<sup>26</sup>. Overall, the appeal proposal would be sustainably located.
79. Drawing all this together, I conclude that the proposal would conflict with Policies ST1, ST3 and ST5, because the site is not within the built-up area boundary which seeks to confine development. Encompassed within this harm, as identified by local residents, is the conflict with the certainty to be provided in a plan-led system. That said, LPAs are required to identify a minimum of five years' worth of deliverable housing land. Because Swale cannot demonstrate this, these policies are out of date. The policies should still be given significant weight due to their degree of consistency with national planning policy in terms of securing sustainable patterns of development. Nonetheless, I attach only limited weight to the conflict for the reasons given above. Subject to the consideration of other matters discussed below, I conclude that the appeal site would be an appropriate location for the scale of housing proposed notwithstanding that it is outside the built-up area boundary for Sittingbourne.

#### Agricultural Land Quality

80. The site comprises Best and Most Versatile (BMV) agricultural land, including 42.65% at Grade 1, 25.5% at Grade 2, 21.1% at Grade 3a and 9.3% at Grade 3b. SBLP Policy DM31 sets out the approach to be taken to BMV. The first part of the policy is satisfied because at present the housing need cannot be met on land within the built-up area boundaries. Therefore, in respect of unallocated sites criteria 2 and 3 of the policy apply. It is agreed that there is no lower quality land around Sittingbourne that could be developed in preference<sup>27</sup>. Development on the appeal site would not render the wider agricultural holding unviable, accounting for about only 3% of operations.
81. The Council have referred to two locations in the Borough on previously developed land, Rushenden South on the Isle of Sheppey and a group of Sittingbourne town centre sites as alternative sites. I note the recent

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<sup>25</sup> That part of the site that was not within the SBLP allocation (paragraph 5.39 of CD9.12)

<sup>26</sup> Figures 37 & 38 in Design and Access Statement [CD1.16] and pages 19-25 & Appendix 3 in Transport Assessment [CD1.21]

<sup>27</sup> Planning SoCG [CD5.4] paragraph 11.1

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Swanstree Avenue decision in May 2023 considered these locations to be both suitable and sustainable, notwithstanding the myriad of issues at Rushenden South, such that it was concluded there was a potential to deliver 1,700 homes. These locations were considered in that decision by reference to the housing land supply shortfall. I see no reason to arrive at a different conclusion to the Swanstree Avenue decision on this issue, based on the limited evidence before me.

82. It is agreed that the appeal proposal would constitute only 0.17% of the BMV land total in Swale. Approximately two-thirds of the site would be retained as green space and so the BMV land resource here would not be wholly lost. Nonetheless, the development of nearly 9 hectares of the highest grade agricultural land would be a material loss of this valuable resource, which would be harmful.
83. In conclusion, there would be a conflict with Policy DM31 of the SBLP and with it, Policy ST1(11g) and ST5(11) which provide the strategic overview. The NPPF does not preclude the loss of BMV land but does require at paragraph 180b) that the environmental, economic and other benefits of BMV are recognised. Given the very small proportion of the overall BMV resource within the Borough that would be affected, I ascribe only limited weight to the environmental and economic harm arising from the loss of highest quality agricultural land.

*Important Local Countryside Gap (ILCG)*

84. The appeal site is located within an ILCG that separates the urban edge of Sittingbourne, the settlement at Borden and the rural nucleus of settlement around the church at Tunstall. Policy ST5 of the SBLP sets out the area strategy for Sittingbourne and at criterion 6 seeks to maintain the individual character and separation of important local countryside gaps around Sittingbourne in accordance with Policy DM25. The purposes of the ILCGs are set out at paragraph 7.7.34 of the SBLP. Policy DM25 of the SBLP emphasises that ILCGs have been defined on the Policies Map to retain the individual character and setting of settlements and says that planning permission will not be granted for development that would undermine one or more of their purposes.
85. Due to a combination of the substantial area of green space proposed within the appeal site and the intervening agricultural land outside of the appeal site, the appeal proposal would not result in the physical coalescence of Sittingbourne with either Borden or Tunstall. A sizeable gap would be retained to the rural settlement at Tunstall with no visual intervisibility.
86. With regards to Borden the extent of the gap would be narrowed. But it would be slightly bigger than the gap to be retained between the Wises Lane housing development and Borden<sup>28</sup>. The concern that there would only be one field left between the edge of Sittingbourne and Borden, and an asserted erosion of a critical part of the gap, pessimistically discounts the scale of green space proposed within the appeal site. Moreover, the intervening large arable field to the west of the appeal site, would be unaffected. This field occupies a shallow crest in the landform, further limiting visual intervisibility and maintaining a tangible sense of separation between Sittingbourne and Borden.

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<sup>28</sup> Figure HDA2 (April 2024)

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87. Furthermore, existing vegetation along the western boundary of the appeal site would be retained and strengthened, further maintaining verdant and visual separation between the proposed houses on the appeal site and Borden. This strong boundary would correspond with the existing tall evergreen vegetation at Ferndale Stables, which already significantly limits any intervisibility with the nearest parts of Borden to the appeal site.
88. Overall, in terms of the first purpose of the gap, the separate identities and characters of Borden and Tunstall would be maintained. There would be no merging or actual coalescence. Nor, for the reasons set out above would there be a perception of coalescence, including from within Starveacre Lane, Riddles Road or the footpath from Starveacre Lane across to Borden.
89. The significant majority of the appeal site would remain open and undeveloped. The SBLP at paragraph 7.7.35 states that not all forms of development are discouraged within the ILCGs and includes, amongst other things, public open space, community woodland and recreation. These uses would be acceptable provided the purpose of the gap would not be undermined or the need to protect the countryside compromised.
90. The LPA submit that any assessment of the impact of such uses in paragraph 7.7.35 must be considered on an individual land use basis, and not as part of a mixed-used development with the <290 houses. In this case, there would be a clear disaggregation between that part of the development which would be residential in character and that which would be principally green space. This would be set through the parameter plans for approval at this stage. As such I consider it would be appropriate to consider separately the impact of the area of proposed green space within the ICLG as part of a mixed use development, given its strategic scale (17.33ha).
91. Whilst the details of how the green space would be laid out are a reserved matter, the Green Infrastructure plan for approval at this stage shows a combination of structural woodland and scrub planting and significant areas of amenity grassland including meadow grassland and a modest area of traditional orchard for community use. The area is shown to be criss-crossed by pedestrian and cycle paths. What is proposed at this stage for the green spaces within the appeal site is entirely compatible with the character of the gap at this location. The proposed structural planting would tie-in with the lines of trees and small bands of woodland elsewhere within and adjoining the gap. Overall, the extent and form of the proposed green space would provide for a more varied environment with enhanced public access in a way which would not undermine the purpose of the gap.
92. The proposed 8.87ha of built development and the presence of the access arrangements from Minterne Avenue would conflict with the second and third purposes of safeguarding the open and undeveloped character of the area and preventing encroachment and piecemeal erosion by built development. However, the extent of the conflict and resultant harm would be moderated by the scale of the green space proposed and the positioning of the built development in locations that would be well-related and in part contained by the adjacent residential development at the edge of Sittingbourne.
93. Overall, the proposal would conflict with Policies ST3(5) and DM25 of the SBLP, in that there would be encroachment into an area to be safeguarded for its open and undeveloped character, contrary to the purposes of the ILCG.



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However, due to the housing land supply, Policy DM25 is out of date. The objective of the policy is generally consistent with the NPPF in terms of optimising the use of land, particularly within urban areas, and, by avoiding coalescence of settlements, maintaining a strong sense of place. As such the policy should be given significant weight.

94. Overall, the harm and degree of conflict with the second and third purposes would be modest, for the reasons given. The proposal would also pre-empt any decision on this ILCG through strategic plan-making (the fourth purpose). But as set out above, given a new Local Plan remains some way off and the spatial strategy of the SBLP is not delivering against the scale of housing needed I find the conflict with this purpose to be significantly diminished. Therefore, the cumulative extent of the conflict with Policies ST3(5) and DM25 would be limited.

#### *Highways*

95. Vehicular access to the site would be secured at point where Minterne Avenue, College Road and Riddles Road currently converge around a sharp sweeping bend close to the Beauty of Bath public house. The detailed layout plans show this being reconfigured to form a roundabout with a new arm providing direct access into the appeal site. I find the proposed roundabout arrangement would represent an improvement on the current highway layout, including for safer pedestrian movements. I also attach appreciable weight to the fact that the Local Highways Authority have not objected to the proposed access arrangements having had regard to the comprehensive Transport Assessment submitted with the proposal [CD1.21].
96. Concern is raised regarding the proposed closure of Riddles Road to through traffic. Riddles Road is a narrow highway, largely without footways and generally functions as a local connector from Borden Lane through to Minterne Avenue. The proposed closure would not be seriously detrimental to wider traffic movements given the alternative routes would not represent a significant detour. Vehicular access would still be maintained to the allotments from Borden Lane. By removing through traffic, Riddles Road would be enhanced as a route for pedestrians and cyclists.
97. Vehicular traffic from the development would utilise either College Road or Minterne Avenue to gain access to the wider road network. Both roads are constructed to a generous width with footways and street lighting. I find little to demonstrate that these roads, more generally, could not safely or appropriately accommodate the likely number of vehicular trips generated by the appeal proposal.
98. On Minterne Avenue, I observed that the local schools cause extensive on-street parking and that this spreads into the nearest side roads, notably Woodside Gardens and Roseleigh Road. I observed that the degree of parking associated with the schools interrupts the free flow of vehicular traffic along Minterne Avenue, albeit without significant delays. Whilst my site visit can only represent a snapshot in time, I generally observed that the on-street parking is an intense but a relatively short-lived phenomenon. There is little evidence that it has generated particular highway safety problems, including any arising from the contraflow traffic movements. Whilst the appeal proposal would add to the volumes of traffic on Minterne Avenue at school times, from everything I have

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read and witnessed, it would not have an unacceptable impact on highway safety or result in severe residual impacts on the overall highway capacity.

99. Overall, I find the appeal proposal in relation to transport and highways would accord with Policy DM6 of the SBLP. There is no reason to refuse the appeal on highway grounds as set out at paragraph 115 of the NPPF.

*Living Conditions*

100. The outlook from those properties on Woodside Gardens and Sterling Road which directly back onto the appeal site would fundamentally change from the commercial orchard to a housing development with its associated open space and landscaping. The sense of wider openness at the rear of these properties, many of which have low boundaries to the appeal site, would be significantly affected. The parameter plans show bungalows corresponding to the rear of properties on Woodside Gardens which would be an appropriate design response and to some extent lessen the impact of development dominating the outlook from these properties and maintaining an acceptable (but significantly reduced) degree of openness.
101. In respect of that part of Sterling Road where existing dwellings directly back onto what is shown to be built development (at a maximum 2 storeys) there is not a similar design response in the parameter plans. However, the precise layout, scale and landscaping of the development, including boundary treatments, is not part of this proposal. As such a final layout would be able to appropriately respond to the varying depths of rear gardens on this part of Sterling Road to protect the living conditions of existing residents in respect of outlook and privacy. The LPA would have control of this through the approval reserved matters. This part of the appeal proposal gives me the greatest concern regarding the living conditions of existing residents given the relatively shallow depths of some of the rear gardens on this part of Sterling Road. This would require a very careful design response in any detailed scheme, which can flex given what has been applied for is up to 290 homes (my emphasis). However, I cannot conclude at this outline stage that the impact would be so significantly harmful as to warrant refusing the development at this outline stage, when such matters of detail are not before me.
102. Elsewhere, there are a small number of properties on Minterne Avenue which back onto the site. An area of green space is proposed within that part of the appeal site closest to these properties further maintaining a reasonably open outlook. Similar applies in respect of those properties on Sterling Road that directly back onto footpath ZR136. These properties also have reasonably long rear gardens. The footpath boundary to the appeal site at this location is a tall hedge beyond which the proposed parameter plans show green open space buffering the proposed built development. When taking all this together, I am satisfied that those dwellings on Sterling Road bordering footpath ZR136 would retain reasonable levels of outlook and privacy. In respect of adjoining properties on Hales Road, the outlook would remain largely unchanged due to the extensive area of green space proposed in this part of the appeal site.
103. A number of properties have gates on their rear boundaries that provide access to the appeal site and in particular a generous grass strip around the perimeter of the commercial orchard. I have no compelling evidence that this arrangement has been formalised or would need to be preserved. As set out elsewhere, detailed matters of layout and landscaping would be reserved for



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future determination. As such I do not consider whatever access is occurring on the site to prohibit the principle of development.

104. Overall, the outlook for many of those properties that directly back onto the appeal site would fundamentally change and a sense of wider openness be reduced, in some cases significantly. However, through the parameter plans at this stage and the ability to consider the issues of outlook, light levels and privacy through detailed matters of layout, scale, appearance and landscaping, I conclude there would be no significant harm to the living conditions of occupiers of existing dwellings that adjoin the site. As such there would be no conflict with Policy CP4 of the SBLP which requires good design. Achieving well-designed places includes ensuring that there is a high standard of amenity for existing and future users. There is scope and flexibility within the parameters at this outline stage to achieve that on a scheme of up to 290 dwellings on the area shown for built development, such that I am able to conclude that the appeal proposal would accord with NPPF paragraph 135 f).

#### *Biodiversity*

105. The site has no statutory biodiversity designations, but it is bounded along its western and southern boundaries by established native hedgerows, which provide connections to the wider countryside. Survey work reveals that the site is used by commuting and foraging bats and a very small number of trees have moderate roosting potential. Subject to measures to retain and buffer these trees and the hedgerows, together with the careful management of external lighting, all of which could be secured by condition, I am satisfied there would be no harm to protected bat species.
106. In addition, there are badger setts<sup>29</sup>, the location of which was clearly evident on the accompanied site visit. Given its location there would be no direct disturbance. There would be potential to envelop it within the 17.33ha of green space proposed with sufficient buffering from the nearest proposed homes. The appeal proposal would not inhibit the ability of the badgers to forage in adjoining countryside. Careful protection would be required during the construction phase, including updated survey work and any necessary licences from Natural England, and this could be secured by condition. Additionally, the details of the green infrastructure, which, again, could be secured by condition, should provide for foraging opportunities as well as strategic planting that would minimise recreational disturbance close to the setts. Badgers are protected by bespoke legislation<sup>30</sup> but with the appropriate mitigation identified I am satisfied that there would be no harm to the existing populations at the appeal site.
107. The application preceded the statutory requirement to secure biodiversity net gain (BNG). Nonetheless, given the scale of green infrastructure proposed it has been calculated that a degree of BNG would be secured<sup>31</sup>. The baseline of the site reasonably records it as having limited botanical diversity and moderate fauna activity. Overall, I find the BNG calculations to have been reasonably calculated. Conditions could be imposed to ensure delivery. As such the BNG gain, which is not a statutory requirement for the scheme, would be a modest environmental benefit weighing in favour of the appeal proposal.

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<sup>29</sup> Survey work has identified a main sett and a subsidiary sett

<sup>30</sup> Protection of Badgers Act 1992

<sup>31</sup> Set out at paragraph 4.12 of the Planning SoCG [CD5.4]

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108. The site is proximate to internationally designated sites, notably the Swale and Medway Estuary and Marshes Special Protection Areas (SPAs) and Ramsar sites. The planning application was accompanied by a shadow Habitats Regulation Assessment (HRA). This confirmed a likely significant effect on the qualifying features of these habitats arising from recreational pressure could not be ruled out. An appropriate assessment under the Regulations is therefore required to consider whether adverse impacts could be suitably mitigated.
109. A mitigation mechanism in the form of a payment to contribute towards the North Kent Strategic Access Management and Monitoring Strategy (SAMMS) has been established. This is reflected at criterion 5 of Policy CP7 of the SBLP. The submitted S106 contains a planning obligation reflecting the required per dwelling contribution (index-linked) for SAMMS, which would be payable prior to any occupation of the proposed dwellings. Additionally, the appeal proposal would provide a substantial and meaningful area of green space (17.33ha) which would be attractive to meet some of the demands for informal recreational activity arising from the appeal proposal, including dog-walking. Accordingly, I am able to conclude that effective mitigation would be secured such there would be no adverse impact on the qualifying features of the Swale and Medway Estuary and Marshes SPAs and Ramsar sites.
110. Overall, in respect of biodiversity, the appeal proposal would accord with Policies ST5(9), CP7 and DM28 of the SBLP.

#### *Planning Obligations*

111. A final, signed S106 and a separate UU were provided on 7 May 2024. As set out above the obligation for the SAMMS financial contribution would be necessary to enable a positive conclusion for the HRA. I have therefore taken it into account. I have also found that the proposed 30% affordable provision would be consistent with development plan policy. As such, the obligation to provide 40% affordable housing would not be necessary to make the development acceptable in planning terms. I have therefore not taken the obligation into account. In respect of the obligations in so far as they would provide 30% affordable housing, including First Homes provision, these would meet the necessary tests and ensure the proposal would accord with Policy DM8 of the SBLP and NPPF paragraph 66.
112. A significant concern for the local community is the impact of the appeal proposal on local health and education infrastructure. In respect of health, The Council's CIL Compliance Statement sets out how the obligation for a financial contribution of £360 per person would meet the relevant tests, when applying formula from the NHS Clinical Commissioning Group. Specific projects are identified for nearby medical centres in Sittingbourne which are reasonably related to the appeal site. I find the obligation would meet the relevant tests and so I have taken it into account.
113. Kent County Council (KCC) have sought financial contributions towards both primary and secondary education provision, including towards land acquisition costs for a new secondary school. The justification for the sums sought (on a per dwelling basis) for education is comprehensively set out in their correspondence collated on 6 February 2024. It reflects the justified need to create additional capacity to accommodate likely pupil numbers generated by the appeal proposal. The primary education contribution would be towards new provision within the Sittingbourne Planning Groups, most likely at a

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consented site at Wises Lane, a short distance from the appeal site. Secondary provision would be at North-West Sittingbourne, a strategic allocation in the SBLP but within an appropriate catchment area. The obligations for education would meet the necessary tests and so I have taken them into account.

114. KCC have also identified various off-site highways works including at the A2/Swanstree Avenue junction, Key Street and Dover Street/St Michaels Road junction. The justification for the £174,432 sought is set out in a detailed statement [CD5.38] and reflects modelling work undertaken for the appeal proposal and where relevant aligned to Local Transport Plan 4. The obligation and the sum sought would meet the necessary tests in mitigating impacts arising from the development and so I have taken it into account. A separate sum is identified for public rights of way (PROW) improvements<sup>32</sup> in the vicinity of the appeal site. This sets out in some detail the schedule of works and costs for each component element. I find these to meet the relevant tests. To my mind, the improvements that would be secured to the local PROW network would go beyond immediately mitigating user demand generated by the appeal proposal and would secure a benefit to the wider community in terms of better access, including for less able persons. I consider the obligation in relation to PROW would give rise to a small, wider social and environment benefit.

115. Elsewhere, obligations to KCC would provide for adult social care, community learning, youth services, libraries and household waste facilities. KCC have submitted a comprehensive CIL compliance statement, together with additional information such I have assessed the obligations to have met the relevant tests and so I have taken them into account. An obligation to the Borough Council would cover the capital cost of the provision of bins, as set out in the context for Policy CP6 of the SBLP and would meet the relevant tests. Finally, air quality is a notable issue in Sittingbourne and so an obligation making financial contributions towards assessing and mitigating impacts from emissions directly related to the development would be justified in accordance with Policy DM 6 of the SBLP. The financial contribution identified has been developed in line with SBCs Air Quality and Planning Technical Guidance 2021. Accordingly, I find the obligation meets the tests and I have taken it into account.

116. Overall, I find various obligations, as set out above, would meet the tests at CIL Regulation 122<sup>33</sup>, in terms of necessity, and being fairly and reasonably related in scale and kind. I have therefore taken these obligations into account. Most of the obligations are necessary to mitigate the impacts of the development and so neutral in any planning balance. Where positive benefits would arise from the obligations these have been identified and would need to be inputted into the overall planning balance. Because of the proposed obligations there would be no harm in relation to infrastructure capacity and so the appeal proposal would comply with Policies CP6, CP7 and DM6 of the SBLP.

*Social, Economic and Environmental Benefits of the proposal*

117. The appeal proposal would deliver up to 290 homes, of which up to 87 would be affordable homes. There is not a five year supply of deliverable housing land and the shortfall against the local housing need as identified in this appeal is notable. In terms of addressing the shortfall, there is no short-term prospect of a new Local Plan resolving the shortfall in housing land supply. As such I

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<sup>32</sup> Breakdown of costs dated 21 September 2023

<sup>33</sup> Community Infrastructure Levy Regulations 2010 – Regulation 122(2) – repeated at NPPF paragraph 57



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give the social benefit of the additional market housing significant weight. The 30% affordable housing, as secured through the planning obligations, would make a meaningful contribution towards addressing the acute needs in the Borough and would irrefutably amount to a substantial social benefit weighing in favour of the appeal proposal.

118. The appeal would give rise to modest economic benefits. This would mainly comprise employment during the construction phase. I give moderate weight to this economic benefit.

119. The appeal proposal would deliver 17.33ha of green space. There is no formalised public access to the current orchard site, which is a highly managed and somewhat one-dimensional environment. The proposed green space would offer a variety of habitats and experiences for the wider community. As such I give limited weight to the social and environmental benefit of the scale and nature of open space proposed. Improvements would be secured to the local public rights of way network to the social and environmental benefit of the wider local community. I give this limited weight.

120. The proposal would also result in a net gain in biodiversity, as sought by various policies in the SBLP. No figure is identified in the SBLP and the minimum 10% statutory requirement does not apply. As such, the scale of gain calculated would be a modest environmental benefit.

#### Interested Parties

121. Borden Parish Council, Borough Councillors, including the Council Leader and the Chair of the Planning Committee, and local residents all spoke against the appeal at the Inquiry. There were a significant number of written objections to both the planning application and in response to consultation on the appeal. The various planning issues raised in these representations have been discussed above.

#### Conclusion

122. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF makes clear that the planning system should be genuinely plan-led.

123. I have concluded that the proposal would conflict with SBLP Policies ST1, ST3 and ST5 which seek to confine housing development to within the built-up area boundaries. The proposal would also conflict with SBLP Policy DM25 which seeks to protect important local countryside gaps and Policy DM31 regarding BMV land.

124. On the other hand, it would not conflict with Policies DM24 and DM29 in respect of landscape and trees. It would also accord with Policy DM6 which seeks to manage traffic demand and impact (including in relation to air quality), Policy CP4 on good design, Policy CP6 on infrastructure required to serve the development, and Policies CP7 and DM28 which seek to avoid harm to protected sites and to secure BNG where possible. It would also accord with Policy DM8 regarding the provision of affordable housing.

125. Nonetheless, I find that the conflict with those policies that seek to provide a clear spatial strategy for the Sittingbourne area, including avoiding piecemeal

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expansion and encroachment into important local countryside gaps, means that the proposal would conflict with the development plan as a whole.

126. I am therefore required to consider whether there are other considerations that indicate a decision other than in accordance with the development plan. In this case the approach to decision making set out in paragraph 11(d)(ii) of the NPPF is engaged. There is no conflict with policies of the NPPF that protect areas or assets of particular importance. It follows that 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 NPPF taken as a whole.
127. The appeal proposal would accord with the policies of the NPPF relating to boosting the supply of housing (including an appropriate mix of housing types for the local community), transport and securing sustainable patterns of development, biodiversity, habitats and air quality. The proposal would therefore accord with the policies of the NPPF taken as a whole.
128. For the reasons given above, I attach limited weight to the conflict with Policies ST1, ST3 and ST5 in relation to built-up area boundaries, limited weight to the conflict with Policy DM25 on ICLGs, moderate weight to the landscape harms identified, limited weight to the visual harms identified, and limited weight to the conflict with Policy DM31 on BMV.
129. On the other hand, I attach significant weight to benefit of delivering market housing, substantial weight to the benefit of the 30% affordable housing proposed, moderate weight to the economic benefits, limited weight to the environmental benefits of the open space and enhanced recreational routes and limited weight to the benefit of the biodiversity net gain that would be secured.
130. My overall assessment is that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits. This finding outweighs the conflict with the development plan. The appeal should therefore be allowed, and planning permission granted.

### Conditions

131. A schedule of suggested planning conditions was submitted prior to the inquiry event<sup>34</sup>. There was then some subsequent updating of the schedule as the event progressed<sup>35</sup>. These updates were discussed at the round table sessions. I have considered the suggested conditions having regard to the PPG and paragraphs 55 and 56 of the NPPF. Some conditions require matters to be approved before development commences. This is necessary either to control impacts that would arise during construction or because the details to be approved could affect the design in a way that would need to be resolved at an early stage. The appellant has provided written agreement to the pre-commencement conditions.
132. In addition to the standard time limit conditions (2 & 3) for the submission of reserved matters and commencement of the development, a condition (1) defining the remaining reserved matters to be approved and a condition (4) requiring the development is carried out in accordance with the approved plans are both needed in the interests of proper planning and for the avoidance of

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<sup>34</sup> CD5.9

<sup>35</sup> IDs 11 & 12

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doubt. Despite the description of what has been applied for and the plans approved at this outline stage, a condition (5) controlling the quantum of housing development and a condition (7) requiring details of the levels and gradients are also necessary for similar reasons.

133. A condition (8) requiring details of how 'secure by design' would be achieved is necessary for public safety. Various conditions (9, 10, 11) are all necessary to ensure that biodiversity at the site is protected, that survey work remains up to date and that from the latest survey work appropriate mitigation is secured, including where necessary through the provision of new habitat. A further condition (12) would necessarily secure ongoing arrangements for the management, maintenance and monitoring of agreed plans for landscape and ecological enhancements. The condition enables management arrangements to be secured through appropriate planning obligations under Section 106 of the Town and Country Planning Act 1990. The condition is negatively constructed such that it would require the obligations to be completed prior to the LPA issuing any written approval for the management scheme. As such I find the condition would meet the tests at PPG paragraph 21a-005-20190723. Finally, a condition (14) is necessary to secure the biodiversity net gain (BNG) in accordance with the assessment work accompanying the planning application. Whilst a level of BNG is not mandatory for the scheme, the delivery of the gain would be consistent with Policies ST1, ST5(10) and CP7 of the SBLP.
134. A separate condition (13) is necessary requiring details such as landscaping, play areas, SUDS layout and footpath and cycle path provision within the proposed green space to be submitted and approved as part of the landscape reserved matters. This condition is necessary in the interests of proper planning and to achieve a well-designed place. Given the presence of tree specimens along the site boundary, a condition (15) requiring an arboricultural method statement and tree protection plan is necessary. Given the history of settlement and human activity in this part of Kent, a condition (16) requiring a precautionary approach to archaeology is also necessary.
135. Given the adjoining residential areas, conditions (17, 18 and 23) limiting hours of construction work and requiring a Construction Method Statement are all necessary to protect residential amenity. A separate condition (19) to carefully manage those construction techniques that have the potential to impact groundwater resources is also necessary to safeguard this important environmental resource. Similarly, given the presence of an agricultural building on the site and other potential sources, conditions (20 and 21) requiring a precautionary approach to potential contamination is necessary to protect the environment and human health.
136. Construction traffic to the site would need to negotiate access via a residential area, therefore a condition (22) requiring a Construction Management Plan is necessary in order to protect residential amenity and ensure highway safety. Various conditions (24, 25, 26, 27, 28, 29 and 30) are all necessary to ensure highway safety and that the development would be accessed in accordance with the plans approved at this stage. The conditions would also allow for subsequent details to be approved on matters of layout such as parking spaces, footpaths, verges and visibility splays and to be implemented prior to occupation. These conditions are all necessary in the interests of highway safety. Whilst the site is sustainably located, a condition (31) requiring a travel plan is also necessary to ensure appropriate modal shift



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can be secured in the interests of well-being, air quality and the wider benefits of reducing dependency on the private car.

137. Conditions (32 and 33) requiring surface water drainage details and confirmation of the effectiveness of the detailed design are both necessary to reduce the risk of flooding at the appeal site and elsewhere. The conditions do not need to cover the surface water drainage in relation to access arrangements from the public highway which would be separately covered by a S278 mechanism. Conditions (6 & 34) requiring various sustainability measures are justified in order to meet development plan policy requirements and the required transition to a low carbon and reduced water consumption future. A condition (35) requiring a soil resource plan is necessary to ensure the high-quality soil at the site is protected and where appropriate retained at the site. Finally, a condition (36) requiring details of an affordable housing scheme is required to ensure delivery in accordance with Policy DM8 of the SBLP, recognising that this detail remains to be agreed, given the mechanism for provision (other than First Homes) is set out in a UU rather than an bilateral agreement.
138. There is one suggested condition that I have not imposed. This relates to high-speed fibre optic installation (up to 1000mb). There is little before me to demonstrate that such a condition would be necessary or to explain why developers would not seek to deliver new homes without the benefit or selling point of optimum internet provision in any event.

*David Spencer*

Inspector.

#### APPEARANCES

##### FOR THE LOCAL PLANNING AUTHORITY:

Emmaline Lambert, Of Counsel	Instructed by Head of Mid Kent
And	Legal Services
Rowan Clapp, Of Counsel	

##### They Called:

Martin Carpenter BA(Hons) MRTPI	Director, Enplan
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##### For the round table discussions:

Landscape Rupert Lovell BSc (Hons) MA CMLI	Senior Consultant for Landscape Architecture, Jacobs
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Housing Land Supply Stuart Watson BA MA MRTPI	Interim Planning Policy Manager, Swale Borough Council
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Planning Conditions and Planning Obligations

Cathy Fishenden	Enplan
Simon Greenwood	Planning Consultant – Majors Team, Swale Borough Council
Matthew Martin	Solicitor, Mid Kent Legal Services

FOR THE APPELLANT:

Zack Simons, Of Counsel	Instructed by Owen Jones of LRM Planning
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Assisted by  
Isabella Buono, of Counsel

He Called:

Annie Gingell BSC(Hons) MSc MRTPI	Associate Director, Tetlow King
Owen Jones BA(Hons) MSc MRTPI PIEMA	Director, LRM Planning
Ian Dimbylow <sup>36</sup>	Director, RPS

For the Round Table Discussions:

Landscape Tanya Kirk BSc (Hons), PGDip, CMLI	Director, Hankinson Duckett Associates
Housing Land Supply Ben Pycroft BA(Hons), DipTP, MRTPI	Director, Emery Planning

Planning Conditions and Planning Obligations

Kate Coventry MRTPI	Principal Planner, LRM Planning
Oliver Martin	Director, Bickley-Martin

INTERESTED PARTIES:

Nicola Butlin	Parish Councillor, Borden Parish Council
Sarah Booker	Local Resident
Cllr Mike Baldock	Borough Councillor
Cllr Simon Clark	Borough Councillor
Cllr Tim Gibson	Borough Councillor
Mr Hodges	Local Resident

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<sup>36</sup> To respond to Interested Parties' representations on Highway and Transport matters



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#### **Inquiry Documents (IDs) submitted at the event:**

- 1 Opening Statement for the Local Planning Authority
- 2 Opening Statement for the Appellant
- 3 Statement of Nicola Butlin, Borden Parish Council
- 4 Statement of Sarah Booker
- 5 Figures from Borough Councillor Simon Clark
- 6 Inspector's Report into the Examination of the Swale Borough Local Plan 2017
- 7 Updated Supplementary Proof of Evidence of Mr Carpenter on Affordable Housing.
- 8 Kent Habitat Survey 2012
- 9 Meeting of Swale Borough Council – Affordable Housing Emergency
- 10 Note on the planning background regarding Healthcare Provision at Bell House, prepared by Ceri Williams MRTPI, Swale Borough Council
- 11 Amended Condition 4 and a further 2 proposed conditions
- 12 Appellant suggested revisions to Conditions 11-15
- 13 Revised final draft S106 Agreement, including new Schedule 6
- 14 Revised final draft Unilateral Undertaking
- 15 Appellant's written agreement to the terms of the proposed pre-commencement conditions
- 16 Closing Submissions for the Local Planning Authority
- 17 Mead Realisations Ltd v SSLUHC & North Somerset Council [2024] EWHC 279 (Admin)
- 18 Monkhill Ltd v SSLUHC & Waverley Borough Council [2019] EWHC 1993 (Admin)
- 19 Wavendon Properties Ltd v SSHCLG & Milton Keynes Council [2019] EWHC 1524 (Admin)
- 20 St Modwen Developments Ltd v SSCLG, East Riding of Yorkshire Council & Save our Ferriby Action Group [2017] EWCA Civ 1643
- 21 Closing Submissions for the Appellant

#### **Documents submitted after the Inquiry event**

- 22 Engrossed S106 Agreement dated 7 May 2024
- 23 Unilateral Undertaking dated 7 May 2024

#### **Schedule of Conditions**

1. Details relating to the landscaping, layout, scale, and appearance of the development hereby approved (hereinafter called the 'reserved matters') shall be submitted to and approved by the Local Planning Authority before any development is commenced and the development shall be carried out as approved.
2. Application for approval of reserved matters referred to in Condition (1) above must be made to the local planning authority no later than the expiration of three years beginning with the date of the grant of outline planning permission.

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3. The development to which this permission relates must be begun not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
4. The development hereby approved shall be carried out in accordance with the following approved drawings:
  - Land Use Parameters Plan 244-UW-P-003 Rev H
  - Green Infrastructure Parameter Plan 244-UW-P-004 Rev H
  - Proposed Site Access Plan JNY11458-RPS-0100-001D
  - Emergency Access Plan JNY11458-RPS-0100-008 B
  - Site Location Plan 244-UW-P-001 Rev F
5. The quantum of residential units to be constructed for the development hereby approved shall be limited to a maximum of 290 units.
6. The reserved matters application submitted pursuant to Condition 1 above, shall be accompanied by a fully detailed energy and sustainability scheme. This scheme shall be based upon the strategy set out in the Sustainability and Energy Statement prepared by Brookbanks.

No development shall take place until approval of the above scheme of energy generation on site has been granted in writing by the Local Planning Authority.

Thereafter the development shall be implemented in full accordance with the approved details.
7. The details submitted pursuant to condition (1) (the reserved matters) shall include plans and sections, indicating as appropriate, the levels, gradients, and method of construction.
8. The details submitted pursuant to condition (1) (the reserved matters) shall include details demonstrating how the development meets the principles of 'secure by design'.
9. The details pursuant to condition (1) (the reserved matters) shall include a lighting design plan for biodiversity. The lighting design plan will:
  1. Identify those areas/features on site that are particularly sensitive for wildlife;

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2. Show how and where external lighting will be installed in accordance with the specifications outlined in Appendix E of the Ecological Impact Assessment prepared by FPCR (dated October 2022).

All external lighting will be installed in accordance with the specifications and locations set out in the strategy and will be maintained thereafter in accordance with the strategy.

10. No development will take place (including any ground works, site or vegetation clearance), until a detailed ecological mitigation strategy is submitted to the LPA for written approval. It must be based on the Ecological Impact Assessment (FPCR; October 2022) submitted as part of the application and include the following information:
  - a) Updated ecological walk over survey
  - b) Recommended specific species surveys
  - c) Overview of ecological mitigation
  - d) Detailed methodology to achieve mitigation.
  - e) Maps demonstrating the proposed mitigation is achievable.
  - f) Timetable for the proposed works.
  - g) Details of who will carry out the works.
11. Prior to works commencing within the site a detailed landscape and ecological mitigation strategy shall be submitted to the LPA for written approval. As appropriate it shall be based on the Green Blue Infrastructure Strategies, Figure 33 on page 93 of the Design and Access Strategy (Urban Wilderness 2023) and the Ecological Impact Assessment (FPCR: October 2022) submitted as part of the application and include the following information:
  - a) Overview of the landscaping planting and habitat creation/enhancement works
  - b) Detailed methodology to achieve the landscape planting and habitat creation / enhancement works.
  - c) Information demonstrating the works are in alignment with the landscape and ecological mitigation strategy approved pursuant to condition 10.
  - d) Plans demonstrating the proposed landscape planting and habitat creation / enhancement areas.
  - e) Timings of the proposed works.
  - f) Details of who will be carrying out the works.
  - g) Interim management plan for the habitat creation / enhancement areas.

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

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12. Prior to occupation of the development a detailed Landscape and Ecological Management, Maintenance and Monitoring Scheme for the Landscape and Ecological Establishment and Enhancement Plan approved pursuant to condition 11 shall be submitted to the LPA for written approval. It shall include the following:
- a) Overview of landscape and habitats areas to be managed and the associated management and maintenance aims and objectives.
  - b) Appropriate management options for achieving the aims and objectives.
  - c) A specification for the management and maintenance of the approved areas of landscape and habitat
  - d) A timetable for management and maintenance activities necessary for the prescribed specification (capable of being a 5 year rolling management plan).
  - e) A statement demonstrating that the specification and timetable prescribed by criterion d) of this condition is in accordance with the ecological mitigation strategy approved pursuant to condition 10.
  - f) Details of the proposed monitoring.
  - g) Details of management plan reviews.

Such a scheme may be supported by appropriate planning obligations under Section 106 of the Town and Country Planning Act 1990 as may be necessary to ensure the management and/or maintenance (and related funding) proposals included in the scheme, with any such legal documents to be completed prior to the written approval of the scheme. As appropriate such a planning obligation shall prescribe the details of who will carry out the management, maintenance and monitoring scheme and the mechanisms to fund this.

The Landscape and Ecological Management and Maintenance and Monitoring Scheme shall be implemented as approved.

13. Pursuant to Condition 1, applications for the approval and landscape reserved matters shall include the following details: hard and soft landscaping comprising semi-improved meadow grassland, damp grassland and wetland, traditional community orchard, structural woodland and scrub, and informal play and equipped playspace, sustainable drainage basins and swales, pedestrian and cycles routes. Such details shall be in accordance with the Landscape and Ecological Establishment and Enhancement Plan pursuant to Condition 11.
14. The details submitted pursuant to condition (1) (the reserved matters) shall incorporate details of how the development will achieve a net biodiversity gain, based upon Figure 5 "BNG Proposed Habitats" of the Ecological Impact Assessment prepared by FPCR (dated October 2022). This will include a native species-only landscape scheme, integrated bird bricks and details of the degree of Biodiversity Net Gain. The approved details will be implemented and thereafter retained for a period of 30 years.

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15. Prior to the commencement of the development hereby approved an arboriculture method statement and tree protection plan in accordance with the BS5837:2012 shall be submitted to and approved in writing by the Local Planning Authority. The approved arboriculture method statement and tree protection plan shall be adhered to throughout the construction phase of the development.
16. Prior to any Reserved Matters application, 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 by the local planning authority.

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.

The archaeological safeguarding measures, investigation and recording shall be carried out in accordance with the agreed specification and timetable.

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.

The measures outlined in the Post-Excavation Assessment Report shall be implemented in full and in accordance with the agreed timings.

17. No construction work (excluding impact pile driving dealt with by condition 18), in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times: -



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

18. 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.
19. Piling or any other foundation designs using penetrative methods shall not be undertaken other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated by a piling risk assessment that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details submitted to and approved in writing by the Local Planning Authority.
20. No development shall commence until a strategy to deal with any potential risks associated with contamination of the site has been submitted to, and approved in writing by, the Local Planning Authority. The development will be implemented in accordance with the approved strategy. This strategy will include the following components:
  - i) A preliminary risk assessment which has identified:
    - all previous uses;
    - potential contaminants associated with those uses;
    - a conceptual model of the site indicating sources, pathways, and receptors; and
    - potentially unacceptable risks arising from contamination at the site.
  - ii) A site investigation scheme, based on (i) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
  - iii) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (ii). This should give full details of the remediation measures required and how they are to be undertaken. The RMS should also include a verification plan to detail the data that will be collected to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance, and arrangements for contingency action. Any changes to these components require the express consent of the Local Planning Authority. The scheme shall thereafter be implemented as approved.

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- iv) A Verification Report shall be submitted upon completion of the works and shall include full verification details as set out in the verification plan. This should include details of any post remediation sampling and analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site.

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

- 21. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved.
- 22. Prior to the commencement of the development, a Construction Management Plan (CMP) shall be 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 CMP unless otherwise agreed in writing by the local planning authority (who shall consult National Highways). The CMP shall include the following information:
  - (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
- 23. 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.
- 24. The details submitted pursuant to condition (1) above shall provide details of:

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- a) the provision of residential vehicle parking and turning space in accordance with the Swale Borough Council Parking Standards (May 2020),
- b) the provision for one secure and sheltered bicycle store for each dwelling within the site.

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

25. The access details shown on the approved Site Access Arrangements Plan (JNY11458-RPS-0100-001 D) shall be completed prior to the occupation of any buildings hereby approved, and the access shall thereafter be maintained.
26. No occupation of any dwelling shall take place until the highways works to provide a footway and 5.5m wide carriageway along the site frontage, as indicated on drawing JNY11458-RPS-0100-001 D, have been completed in accordance with a Section 278 agreement with the Highway Authority, unless otherwise agreed in writing by the Highway Authority.
27. An application shall be made to progress a Traffic Regulation Order for a road closure on Riddles Road between Starveacre Lane and Borden Lane as indicated on drawing JNY11458-RPS-0100-019, and the scheme implemented in accordance with the outcome of the application prior to the occupation of any dwellings hereby approved.
28. The proposed roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, driveway gradients, car parking and street furniture to be laid out and constructed in accordance with details to be submitted to and approved by the Local Planning Authority.
29. Completion of the following works between a dwelling and the adopted highway prior to first occupation of the dwelling:
  - (a) Footways and/or footpaths, with the exception of the wearing course;
  - (b) Carriageways, with the exception of the wearing course but including a turning facility, highway drainage, visibility splays, street lighting, street nameplates and highway structures (if any).
30. The development hereby permitted shall not be occupied until the visibility splays shown on the approved Site Access Arrangements Plan (JNY11458-RPS-0100-001 D) have been provided with no obstruction to visibility at or above a height of 0.9 metres above the nearside carriageway level. The visibility splays shall thereafter be maintained free of obstruction at all times.



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31. The development hereby permitted shall not be occupied until a Travel Plan, to reduce dependency on the private car, has been submitted to and approved in writing by the Local Planning Authority (who shall consult with National Highways). The Travel Plan shall include such details as required by DfT Circular 01/2022, particularly paragraph 44, objectives and modal-split targets, a programme of implementation and provision for monitoring, review and improvement. Thereafter, the Travel Plan shall be implemented and adhered to throughout the life of the development, or that of the duration of the Travel Plan, whichever is the shorter.
32. Development shall not begin in any phase, aside from access arrangements, until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme shall demonstrate that due consideration has first been given to the possibility of utilising infiltration techniques and that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of within the curtilage of the site without increase to flood risk on or off-site. Should the use of infiltration prove to be beyond being reasonably practical then any surface water leaving site shall not exceed a discharge rate of 3.32 litres a second for all rainfall events as set out in the Flood Risk Assessment at Table 9.3. The drainage scheme shall also demonstrate that silt and pollutants resulting from the site use and construction can be adequately managed to ensure there is no pollution risk to receiving waters.

The drainage scheme shall be implemented in accordance with the approved details prior to first occupation of the development.

33. No building on any phase, aside from site access arrangements, (or within an agreed implementation schedule) of the development hereby permitted shall be occupied until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority. The Report shall demonstrate that the drainage system constructed is consistent with that which was approved. The Report shall contain information and evidence (including photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.
34. The development hereby permitted shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and no residential unit(s) shall be occupied until details of the measures used to

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achieve the rate for that unit(s) 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.

35. No development shall commence until a Soil Resource Plan has been submitted to and approved in writing by the local planning authority. This shall set out how soils on the site are to be protected during construction and then recycled/reused in the new development layout. The soil protection/mitigation measures shall be implemented as per the Soils Resource Plan and then permanently adhered to throughout the construction and development of the site.

36. No development shall take place until a scheme for the provision of affordable housing (including First Homes) has been submitted to and approved in writing by the local planning authority. The scheme shall include: the numbers, type, size, tenure mix and location (by reference to a plan) on the site of the affordable housing and First Homes provision relating to the development.

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

**Schedule ends.**




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## Appeal Decision

Site visit made on 30 May 2024

**by Mr Cullum Parker BA(Hons) PGCert MA FRGS MRTPI IHBC**

An appointed person by the Secretary of State for Energy Security and Net Zero

Decision date: Friday 5<sup>th</sup> July 2024

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**Appeal Ref: APP/V2255/3343902**

**SI 2020 No 0000 - REQUIREMENT 3 - Cleve Hill Solar Park**

- The appeal is made under Schedule 1, Part 3 of Statutory Instrument 2020 No. 0000 'The Cleve Hill Solar Park Order 2020' (made 28 May 2020, in force 19 June 2020) against a refusal to discharge Requirement 3 (set out in Schedule 1, Part 2 Requirements of the Order).
  - The appeal is made by Pinsents Masons LLP and Envams Ltd on behalf of Cleve Hill Solar Park Limited against the decision of the discharging authority: Swale Borough Council.
  - The application Ref 23/503812/SUB, was refused by notice dated 1 March 2024.
  - The application sought to discharge Requirement 3 which states:  
*'Battery safety management*  
*3.—(1) Work No. 2(a) must not commence until a Battery Safety Management Plan ("BSMP") has been submitted to and approved by the relevant planning authority.*  
*(2) The BSMP must prescribe measures to facilitate safety during the construction, operation and decommissioning of Work No.2(a) including the transportation of new, used and replacement battery cells both to and from the authorised development.*  
*(3) The BSMP must accord with the outline battery safety management plan.*  
*(4) The relevant planning authority must consult with the Health and Safety Executive and Kent Fire and Rescue Service before determining an application for approval of the BSMP.*  
*(5) The BSMP must be implemented as approved.'*
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### Decision

1. The appeal is allowed and Requirement 3 (Battery safety management) under Schedule 1, Part 2 of the Order of Statutory Instrument 2020 No. 0000 'The Cleve Hill Solar Park Order 2020' is approved and discharged for the *Battery Safety Management Plan (Phase 2), December 2023 Revision B*, in accordance with the application Ref 23/503812/SUB.

### Informative

2. The Appellant is reminded that any other Requirements must still be discharged and/or approved. This decision only relates to Requirement 3 as set out above. Furthermore, the Battery Safety Management Plan (BSMP) must still be implemented as approved, as required by Requirement 3.

### Costs

3. An application for the costs of the appeal was submitted in the Appellant's appeal covering letter dated 10 April 2024. This is the subject of a separate Costs Decision.

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

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### Procedural Matters

4. The Secretary of State for Energy Security and Net Zero has appointed me in accordance with Schedule 1, Part 3 Procedure for discharge of Requirements, Article 24 of the Order to determine the appeal and make a decision.
5. The appeal relates to the discharge of Requirement 3 of *The Cleve Hill Solar Park Order 2020* (herein the Order). Whilst within the scope of the procedure set out in the Order to consider wider matters<sup>1</sup>, I have principally contained my focus to this matter.
6. A document titled *Battery Safety Management Plan (Phase 2) August 2023, Revision A* was originally submitted with the application. The document titled *Battery Safety Management Plan (Phase 2), December 2023 Revision B* is the most recent Battery Safety Management Plan, and the one which the original discharging authority and consultees commented upon before permission was refused. I have therefore based my considerations on this latter document.
7. I undertook an unaccompanied site inspection on Thursday 30 May 2024 to view the appeal site and its wider context from the public realm. Whilst not necessarily required in terms of the discharge of Requirement 3 (as this relates to whether or not it satisfies the requirements therein), I am content that this inspection from the public realm allows me to understand the relationship between the site and nearby buildings and their occupiers.

### Background

8. As this was a project which met the necessary threshold, it was a Nationally Significant Infrastructure Project (NSIP). This meant that an examination was held by an Examining Authority and a report submitted to the Secretary of State. The Secretary of State considered the report, and in 2020, *The Cleve Hill Solar Park Order 2020* (Statutory Instrument 2020 No. 0000) was made. This takes the form of a Development Consent Order (DCO), which put simply, is a Statutory Instrument which has the force of law. The Order sets out various Requirements<sup>2</sup> and processes which are specific to the Order and to the development which consent has been given.
9. In this case, the Appellant submitted information to discharge Requirement 3 of the proposal, under Schedule 1, Part 2 of the Order. This Requirement requires a Battery Safety Management Plan (BSMP) to be submitted and approved by the relevant planning authority. It also requires that the discharging authority must consult with the Health and Safety Executive and Kent Fire and Rescue Service. They are, in effect, mandatory consultees in respect of discharging Requirement 3.
10. An Extraordinary Planning Committee meeting was held on 28 February 2024. A comprehensive and detailed Officer's Report was submitted assessing the information before the discharging authority. This detailed, with links, the various consultation responses from Kent Fire and Rescue Services and the Health and Safety Executive among others. It also details representations made by Parish Councils in the local area, individual local residents, local amenity groups including GREAT (Graveney Rural Environmental Action Team)

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<sup>1</sup> See Schd. 1, Part 3, Article 24 (6)(b)

<sup>2</sup> Requirements are similar to planning conditions imposed when planning permission is granted. They can set out a number of criteria or actions that need to be fulfilled before a development, or parts thereof, can take place.



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and The Faversham Society, and the Campaign to Protect Rural England (CPRE). The Officer's Report recommended that the submitted BSMP was acceptable and that detail pursuant to Requirement 3 of the DCO is 'approved'.

11. On 1 March 2024, following a Planning Committee resolution, the discharging authority, Swale Borough Council, refused the details for the following reason:

*The Battery Safety Management Plan fails to demonstrate that risks to public safety have been adequately assessed by virtue of a lack of on-site water storage capacity; insufficient access to the battery storage enclosure in the event of a fire and the lack of a detailed emergency evacuation plan and risk assessment, and as such the proposal would be contrary to Bearing Fruits 2031 - The Swale Borough Local Plan 2017 and the National Planning Policy Framework.*

12. The Order sets out, in Schedule 1, Part 3, the process for the discharge of requirements. This includes Article 21 Interpretation, Article 22 Applications made under requirements, Article 23 Further Information regarding requirements, and Article 24 Appeals. More specifically, Article 24 sets out the process at any appeal stage where the discharging authority refuses to discharge the Requirement.
13. Article 24, section (2) of the Order sets out the timescales for the process, in summary: an appeal must be made within 42 days, there are ten business days from the 'start' date specified by the appointed person for the discharging authority and any consultee (if applicable)<sup>3</sup>, there are ten business days for any counter-submissions from the Applicant of receipt of the written representations, and thereafter the appointed person must make a decision with reasons as soon as reasonably practicable after the end of the ten day period for counter-submissions. This is the process I have followed in making this decision as the Appointed Person.
14. Furthermore, for the avoidance of doubt and to provide clarity, I have determined this appeal on the basis of the appeal documents and those provided in the original application for the discharge of the Requirement. These documents can be found on the internet at Swale Borough Council's Planning Public Access page using the Council's application reference: 23/503812/SUB. This includes all the consultation and representations made during the various stages of the consideration of this case.

#### **Main Issue**

15. Whether the submitted Battery Safety Management Plan meets the criteria set out in Requirement 3, and if so whether it should be discharged.

#### **Reasons**

16. Requirement 3 sets out criteria, which I consider individually below.

*Work No. 2(a) must not commence until a Battery Safety Management Plan (BSMP) has been submitted to and approved by the relevant planning authority.*

17. I undertook a site inspection to view the site and its surrounding area on Thursday 30 May 2024. I saw that whilst works had taken place in relation to

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<sup>3</sup> In this case the Health and Safety Executive and Kent Fire and Rescue Service as they are specifically referred to in the Requirement.

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the solar aspects of the Order, the works relating to the Battery Storage elements do not appear to have commenced. Accordingly, on the basis of the information before me, I find that this criterion is met.

*The BSMP must prescribe measures to facilitate safety during the construction, operation and decommissioning of Work No.2(a) including the transportation of new, used and replacement battery cells both to and from the authorised development.*

18. The submitted BSMP is divided into eight chapters. This includes Chapter 3 Design Response to Risk, Chapter 4 Emergency Response Protocols (during construction), Chapter 5 Standard Operation Procedures (relevant to safety), Chapter 6 Emergency Response Protocols (during operation), Chapter 7 Battery Transportation Plan and Chapter 8 Environmental Risk Assessment.
19. On its face, this would suggest that the requirements of this criterion have been met. Upon closer inspection of the detail within the chapters cited above, and the BSMP considered as a whole, it is clear that these aspects have been considered by the Appellant within the BSMP.
20. I am reinforced in this view by the fact that the Council's independently appointed battery storage and safety expert (BST&T)<sup>4</sup> together, with Kent Fire and Rescue and the Health and Safety Executive (H&SE) have raised no substantive objection that this has not been adequately addressed within the submitted BSMP. As such, I find that the submitted BSMP fulfils this criterion.

*The BSMP must accord with the outline battery safety management plan.*

21. On pages 2 and 3 of the BSMP, the detailed design information requirements within the Outline BSMP have been set out in Table 1. This would suggest that the Outline BSMP has been complied with.
22. KFRS state in their letter dated 16 January 2024:
 

*'KFRS makes safety issues associated with lithium-ion batteries, including BESS, a high priority. We have spent significant time understanding these issues and, in this case, applying that understanding to the Cleve Hill BESS site. We remain satisfied with the proposals detailed in the Cleve Hill BSMP (December 2023, revision B). Additionally, the review of the BSMP by BST+T provides additional independent scrutiny. I hope this letter provides you with the assurance you need.'*
23. The independent review undertaken by the Council's appointed BST&T Consultancy Services expert concluded that *'The BSMP accords with the outline BSMP and incorporates the latest safety standards and best practice guideline'*.
24. Lastly, no objection has been received from the H&SE which indicates that the submitted BSMP fails to achieve this accordancy. As such, the submitted BSMP fulfils this criterion.

*The relevant planning authority must consult with the Health and Safety Executive and Kent Fire and Rescue Service before determining an application for approval of the BSMP.*

25. The Local Planning Authority, as the relevant planning authority, consulted the H&SE and Kent Fire and Rescue Service (KFRS) before determining the refusal of the BSMP. Changes were made to the August 2023 version of the BSMP,

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<sup>4</sup> As detailed within the Officer's Report, Paragraphs 6.3 and 6.4

and these bodies were re-consulted on the December 2023 version of the BSMP. At the point of submitting their appeal, the Appellant provided copies of appeal documentation to these bodies (as well as some other bodies who made representations). Once the appeal was valid and started, DESNZ consulted the H&SE, KFRS, and the original planning authority, Swale Borough Council, in accordance with the Order. The first part of this criteria has clearly been fulfilled at all stages of this application.

26. In terms of the responses, it is clear that KFRS have had at the forefront of their minds their duty to protect the communities they serve in Kent. This is especially so in this case, where it is evident from the Examining Authority's 460+ page Report that concerns over any battery energy storage systems and the risk of fire were raised by the local community and considered both by the Examining Authority and the Secretary of State. This forms one of the reasons for the imposition of Requirement 3.
27. Pragmatically, KFRS have looked specifically at this site, and this proposal in order to understand and address the risks and/or issues that could arise. They provided comments on 6 October 2023, on 19 December 2023, and on 16 January 2024 which were reported to the Planning Committee. Their most recent comments were that *'We remain satisfied with the proposals detailed in the Cleve Hill BSMP (December 2023, revision B).'*
28. The H&SE provided a fairly generic response to the Council's consultation. However, this did detail *'The fundamental principle of health and safety law is that those who create risks are best placed to control them. Designers, installers, and operators all have a duty to ensure this is the case. HSE expects the dutyholder to assess the specific situation and implement necessary control measures, to manage the risks identified.'* I have considered the comments from the H&SE to be neutral. But nonetheless, they re-iterate the principle of those who create risks are best placed to control them. That is what the submitted BSMP seeks to address in this instance.
29. I am satisfied that both bodies who have been specifically identified to be consulted in the Order in relation to this matter have been notified and provided with ample opportunity to raise concerns, objections or any other commentary. As such, I find that this criterion is fulfilled were Requirement 3 approved.

*The BSMP must be implemented as approved.*

30. There is nothing before me to suggest that the submitted BSMP, which the two named consultees did not raise an objection to and the Council's own independent experts found accords with the Outline BSMP and incorporates the latest safety standards and best practice guidance, would not be implemented as approved. In the absence of such doubt, I can only conclude that this criterion is met.

#### **Other Matters**

31. I note that a number of objections were received from other parties. These raise a number of concerns over the proposed BESS, including examples of where there have been battery fires in a site near Liverpool and at other sites around the world. Concerns have also been raised in terms of the lack of on-site water storage capacity (including references to the National Fire Chiefs



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Council's Guidance), access to the battery storage enclosure and the lack of a detailed emergency evacuation plan and risk assessment. Clearly, these concerns are important. Many of them appear to have been raised at the examination stage in broad terms and informed the imposition of Requirement 3 to the Order.

32. In the unlikely, but still remotely possible event of a battery fire, it will be local residents, and children at the nearby school and employees who will be at the most immediate risk from smoke and/or toxic fumes and/or fluids escaping into the local environment. As such, the concerns raised are a result of an entirely rationale fear of what might occur in the extremely unlikely event that a fire or other catastrophic event occurs at the BESS site. It is these individuals, and not various experts potentially miles away, that would be directly affected by such an event. In this respect, I have been fully cognisant with the concerns raised by other parties in determining this appeal.
33. Nevertheless, whilst I note these, they do not provide justification, whether individually or cumulatively, for the dismissal of the appeal. This is because, when considered as a whole and against the Requirement, I find that the submitted details comply with the conditions of the Requirement as set out above.

#### **Conclusion**

34. Having taken into account the totality of the evidence before me, including at both the application and the appeal stages, I find that the submitted details would fulfil the requirements of Requirement 3. Furthermore, I find that the detailed evidence presented with the application would accord with the intent of the Requirement and the reasons for its imposition. As such, the logical and rationale assessment of it leads me to the conclusion that it should be discharged and the details approved.
35. For the reasons given above, I conclude that the appeal should succeed.

*C Parker*

INSPECTOR





The Planning Inspectorate

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## Costs Decision

Site visit made on 30 May 2024

by Mr Cullum Parker BA(Hons) PGCert MA FRGS MRTPI IHBC

an Inspector appointed by the Secretary of State for Energy Security and Net Zero

Decision date: Friday 5<sup>th</sup> July 2024

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### Costs application in relation to Appeal Ref: APP/V2255/3343902 SI 2020 No 0000 - REQUIREMENT 3 - Cleve Hill Solar Park

- The application is made under the Schedule 1, Part 3 of Statutory Instrument 2020 No. 0000 'The Cleve Hill Solar Park Order 2020' (made 28 May 2020, in force 19 June 2020), and having regard to the national Planning Practice Guidance.
  - The application is made by Cleve Hill Solar Park Limited for a full award of costs against Swale Borough Council (as the original Discharging Authority).
  - The appeal was in connection with an appeal against the refusal discharge Requirement 3 relating to the submission and approval of a Battery Safety Management Plan (BSMP).
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### Decision

1. The application for an award of full costs is allowed in the terms set out below.

### Background

2. *The Cleve Hill Solar Park Order 2020* (Order) sets out on page 40, in Schedule 1, Part 3 that in relation to costs:
  - (11) *Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the appointed person to be paid by the discharging authority, the reasonable costs of the appointed person are to be met by the applicant.*
  - (12) *On application by the discharging authority or the applicant, the appointed person may give directions as to the costs of the appeal and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to relevant guidance on the Planning Practice Guidance website or any official circular or guidance which may from time to time replace it.*
3. The Department for Energy Security and Net Zero decided not to seek the reasonable costs of the appointed person in this instance from the Applicant. Accordingly, the application for costs relates only to the costs of the appeal in this case.
4. The Planning Practice Guidance (the Guidance) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
5. The Guidance also states that the aim of the costs regime is to:

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- *encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and in the presentation of full and detailed evidence to support their case*
- *encourage local planning authorities to properly exercise their development management responsibilities, to rely only on reasons for refusal which stand up to scrutiny on the planning merits of the case, not to add to development costs through avoidable delay,...<sup>1</sup>*

*The case of the Applicant*

6. The Applicant (Cleve Hill Solar Park Limited) applied for costs in their letter dated 10 April 2024. Put simply, the Applicant considers given the evidence in support of approving the submitted Battery Safety Management Plan (BSMP) the appeal should not have been necessary. In such circumstances, they consider that it is appropriate and proportionate for the Council to pay the Appellant's costs of the appeal.

*The case for the discharging authority*

7. Swale Borough Council, as the original discharging authority, were provided an opportunity to respond to the application. Put simply, their response was that a Planning Committee is not bound to reach the same decision as their professional officers. They also refer to a s78 TCPA planning appeal in Devon and the 'advice' of the National Fire Chiefs Council. In light of these, the Council considers that it did have reasonable grounds to refuse the application and that a decision maker can reasonably depart from conclusions reached by an expert consultee or consultant.

**Reasons**

8. The implementation of the DCO had a clear provision for BESS to be provided on the site; as such the principle of a BESS element for the site and in the location shown was established when the DCO was made in 2020. The appeal revolved around whether the details satisfied the conditions of Requirement 3.
9. Requirement 3 of the Order sets out clearly that the discharging authority must consult two bodies before approving details submitted pursuant to the Requirement. These are Kent Fire and Rescue Services (KFRS) and the Health and Safety Executive (H&SE). Both bodies were consulted and neither objected nor commented adversely against the details submitted.
10. The Council appointed an 'independent' consultant (BST&T) who concluded that *'the BSMP accords with the outline BSMP...'*. This was not a condition of the Requirement, but the Council felt that it was appropriate to do so in order to inform the decision-maker. To summarise, their view was that the submitted details accorded with the outline BSMP.
11. A detailed Officer's Report (of around 62 pages) was prepared and provided to the Planning Committee to assist their decision-making. This recommended approval of the submitted details.
12. Before the Planning Committee was also a number of reports and documents submitted by the Applicant in support of their application. There was also a

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<sup>1</sup> Paragraph: 028 Reference ID: 16-028-20140306 Revision date: 06 03 2014

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number of representations from third parties who were consulted - although this was not itself a condition of the Requirement.

13. The Minutes of the Extraordinary Planning Committee meeting of the 28<sup>th</sup> February 2024<sup>2</sup> details that points raised by Members during discussion included (amongst others):
- *this was a very complex application with a lot of very technical information;*
  - *Members were being asked to use their planning judgement, but they had no experience of this type of application;*
  - *it would be difficult to give sound planning reasons for any refusal;*
  - *considered this was outside of the Planning Committee's remit;*
  - *this was an enormous decision the Committee was being asked to make;*
  - *the application was evidence based and Members should delegate to officers; and,*
  - *happy with the experts' advice.*
14. Clearly, the above points are snippets of information from the Planning Committee meeting and not a verbatim record of the meeting. Nonetheless, there is nothing in the Minutes where it is explained as to why the Committee, acting on behalf of the Council as a whole as the discharging authority set out in the Order, departed from the advice provided by KFRS, H&SE, their independently appointed expert, or indeed their professional officers.
15. Whilst it is a well-established maxim that a decision-maker can depart from the professional advice provided, it is also true that any such departure requires a reasoned justification. Such justification assists the applicant, and others, as to what further information may be required to make the details acceptable or ways in which the concerns have to be addressed in future applications.
16. In this case, there is very little evidence as to why the advice of these various bodies and the Council's own appointed experts was disregarded beyond there being other matters which the Committee felt required further information. For example, it is unclear as to why the consultee response from KFRS, who were a mandatory consultee identified by the Examining Authority in the Requirement and therefore the DCO itself, were disregarded when they indicated in their letter of 16 January 2024:

*'KFRS makes safety issues associated with lithium-ion batteries, including BESS, a high priority. We have spent significant time understanding these issues and, in this case, applying that understanding to the Cleve Hill BESS site. **We remain satisfied with the proposals detailed in the Cleve Hill BSMP (December 2023, revision B).** Additionally, the review of the BSMP by BST+T provides additional independent scrutiny. I hope this letter provides you with the assurance you need.'*<sup>3</sup>

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<sup>2</sup> These can be found here: <https://services.swale.gov.uk/meetings/mqAi.aspx?ID=18030>

<sup>3</sup> Emphasis mine.

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17. In this case, I see little support within the Minutes, or indeed the rest of the Council's case, which justified a departure from the professional advice of their Planning Officers, their appointed consultant, KFRS or the H&SE.
18. I note the points made about the National Fire Chiefs Council (NFCC) Guidance; however it is KFRS who is the mandatory consultee in this case and not the NFCC. Moreover, it is guidance from the NFCC and it is clear that KFRS took this into account and then deployed their site specific and local area knowledge in providing their responses.
19. The task at hand for the discharging the Requirement was simple – did the information submitted satisfy the conditions of Requirement 3 or not. If it did, then the details should have been approved. If it did not then the details should have been refused; with clear and cogent reasons given for the refusal and an explanation as to why the decision deviated from the specialist advice provided by the local fire service.
20. In failing to explain why the advice of the mandatory consultees was departed from in this case I find that the Council did act unreasonably. In failing to explain why the advice of the Council's own independently appointed 'expert' and their Planning Officers was also departed from, I find that the Council acted unreasonably.
21. Whilst it is open to the discharging authority to refuse to approve the details submitted pursuant to Requirement 3, little justification has been provided as to why the advice of the mandatory consultees was departed from. Indeed, the unreasonable behaviour I have identified above has directly led to the need for the appeal to take place. This could have been avoided. The unreasonable behaviour has led to unnecessary and wasted expense for the Applicant in having to pursue the appeal process for a scheme where the mandatory consultees set out in the Requirement did not object.

### **Conclusion**

22. Taking into account all of the above, I find that the discharging authority, Swale Borough Council, has behaved unreasonably and that this behaviour has resulted in unnecessary and wasted expense for the applicant. I therefore find that the application should succeed and the application for a full award of costs for the appeal is allowed.

### **Costs Order**

23. In exercise of the powers under Schedule 1, Part 3 of Statutory Instrument 2020 No. 0000 The Cleve Hill Solar Park Order 2020, IT IS HEREBY ORDERED that Swale Borough Council shall pay to Cleve Hill Solar Park Limited, the costs of the appeal proceedings described in the heading of this decision and such costs to be assessed in the Senior Courts Costs Office if not agreed.
24. The applicant is now invited to submit to Swale Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

*C Parker*

INSPECTOR

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