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Agenda

Planning Committee Meeting

- Date: Thursday, 22 May 2025
- Time 7.00 pm

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

Membership: To be confirmed following Annual Council on 14 May 2025.

Quorum = 6

Pages

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- (d) Anyone unable to use the stairs should make themselves known

during this agenda item.

- 2. Apologies for Absence
- 3. Minutes

To approve the <u>Minutes</u> of the Meeting held on 3 April 2025 (Minute Nos. 789 - 796) as a correct record.

4. Declarations of Interest

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

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

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

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

The Comm taken f Demod	a reports for the Planning Committee to decide ouncil operates a scheme of public speaking at meetings of the Planning nittee. All applications on which the public has registered to speak will be first. Requests to speak at the meeting must be registered with cratic Services (democraticservices@swale.gov.uk or call 01795 417328) on on Wednesday 21 May 2025.	5 - 8
5.	1.1 23/502210/FULL Land On Both Sides of Vigo Lane and Wrens Road, Sittingbourne, Kent, ME9 8LA	9 - 78
6.	2.1 - 23/504375/FULL Former Travelodge Canterbury West, London Road, Dunkirk, Faversham, Kent, ME13 9LL	79 - 106
7.	2.2 - 23/505365/OUT Land To The Rear of Eden Meadow, Newington, Kent, ME9 7JH	107 - 140
8.	2.3 - 25/500154/ADV Land outside Kemsley Village Hall, The Square, Sittingbourne, Kent, ME10 2SL	141 - 146
9.	Part 5 applications	147 -
	Decisions by County Council and Secretary of State, reported for information.	200

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 <u>democraticservices@swale.gov.uk</u>. To find out more about the work of this meeting, please visit www.swale.gov.uk

Chief Executive, Swale Borough Council, Swale House, East Street, Sittingbourne, Kent, ME10 3HT This page is intentionally left blank

Agenda Annex

SWALE BOROUGH COUNCIL

PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

22nd May 2025

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 6Reports containing "Exempt Information" during the consideration
of which it is anticipated that the press and public will be excluded
- <u>ABBREVIATIONS</u>: 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 - 22nd May 2025

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

<u>PART 1</u>

1.1	23/502210/FULL	SITTINGBOURNE	Land On Either Side Of Vigo Lane ME9 8LA
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<u>PART 2</u>

2.1	23/504375/FULL	DUNKIRK	Former Travelodge Canterbury. ME13 9LL
2.2	23/505365/OUT	NEWINGTON	Land rear of Eden Meadows. ME9 7JH
2.3	25/500154/ADV	SITTINGBOURNE	Land Outside Kemsley Village Hall. ME10 2SL

<u>PART 5</u>

5.1 23/505204/FULL	FAVERSHAM	Cherry Tree Farm, Grove Road. ME13 9RN
5.2 24/500654/OUT	FAVERSHAM	1 Broomhill Cottages, Ospringe. ME13 0RS
5.3 24/504027/FULL	SITTINGBOURNE	8 Anatase Close, Sittingbourne. ME10 5AN
5.4 24/500383/FULL	BORDEN	Woodgate Oast, Woodgate Lane. ME9 8JX
5.5 24/500547/FULL	SITTINGBOURNE	Land to the rear of 21 Middletune Avenue
5.6 24/503825/ADV	LEYSDOWN	Playtime, The Promenade. ME12 4QB
5.7 24/501367/FULL	IWADE	School Lane Farm, School Lane. ME9 8SG
5.8 24/500334/FULL	SITTINGBOURNE	38a High Street, Sittingbourne. ME10 4PB
5.9 24/504437/FULL	SITTINGBOURNE	60 Shortlands Road, Sittingbourne. ME10 3JT
5.10 24/502295/FULL	NEWINGTON	4 Church View Cottages. ME9 7LD
5.11 23/500569/OPDEV	SITTINGBOURNE	Land at A2 Food Stores. ME10 4SG

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1.1 APPEAL REFERENCE NO - APP/V2255/W/25/3360089 SWALE REFERENCE - 23/502210/FULL

PROPOSAL

Construction of a solar farm together with control building, switch room, substations and compound, point of connection equipment, store room, access track, security measures, associated infrastructure and works, landscaping and biodiversity enhancements.

Agenda Item 5

ITEM 1.1

SITE LOCATION

Land On Either Side Of Vigo Lane And Wrens Road, Sittingbourne, Kent, ME9 8LA

REQUIRED RESOLUTION

REASON FOR REFERRAL TO COMMITTEE

To obtain the position of the Planning Committee in respect of amendments to the development that have been submitted within an appeal which has followed the refusal to grant planning permission.

Case Officer Ian Harrison

WARD	PARISH/TOWN COUNCIL	APPELLANT
Borden and Grove Park	Borden	Industria Solar Vigo Ltd.
		AGENT
		Wardell Armstrong LLP

PUBLIC INQUIRY DATES

5th – 8th August 2025

BACKGROUND PAPERS AND INFORMATION:

Documents referenced in report are as follows: -

- Appendix A Report to Planning Committee on 6 August 2024
- Appendix B Minutes from the 6 August 2024 Committee meeting
- Appendix C Landscape Strategy Plan for refused proposal
- Appendix D Landscape Strategy Plan for amended proposal

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

https://pa.midkent.gov.uk/onlineapplications/applicationDetails.do?activeTab=documents&keyVal=RUDWQ7TY0XI00

1. INTRODUCTION

- 1.1 This application was initially reported to Planning Committee on 6 August 2024, with a recommendation that permission be granted. The original Committee report is attached at Appendix A.
- 1.2 The Planning Committee resolved to refuse the application for the reasons set out below. The minutes from the 6 August 2024 Committee meeting are attached at Appendix B of this report.

- 1. The cumulative harm caused by the proposal is not outweighed by the public benefits of the scheme for the following reasons:
- *i)* Owing to the location, extent and density of solar array and the presence and height of the lighting towers, the proposal would result in the industrialisation of the site and the magnitude of change would result in moderate adverse effects (at best) on landscape and visual character, both on site and the surrounding quintessential rural agricultural character and within the setting of the Kent Downs Area of Outstanding Natural Beauty (AONB). The proposed mitigation measures in the form of screening through planting contributes to the harm by reducing the openness of the landscape and therefore do not overcome the harmful landscape and visual effects and would not further the purpose of conserving and enhancing the natural beauty of the AONB. The proposal is contrary to Policies ST1 and DM24 of the Bearing Fruits 2031: The Swale Borough Local Plan 2017 and paragraphs 180 and 182 of the National Planning Policy Framework.
- ii) Due to the resultant width of the Public Right of Way routes (PRoW) through the site with the proposed screening to the sides, the proposal would result in a feeling of enclosure to those routes and due to the location of the substation adjacent to PRoW ZR138, there would be a change in character and appearance from rural to industrial along this particular route. In addition, given the location of the construction compound and therefore the site access for construction across PRoW route ZR137, there are safety concerns for the users of this route due to potential conflict with construction traffic. These impacts on the PRoW network are likely to deter people, both local and tourists, from using the network which in turn has a harmful impact on amenity and wellbeing of PRoW users and the local economy. The proposal is contrary to Policies ST1, CP2, CP4, CP5, DM3, DM6, DM14 and DM24 of the Bearing Fruits 2031: The Swale Borough Local Plan 2017 and paragraphs 89, 96, 104 and 116 of the National Planning Policy Framework.
- iii) The proposal would result in the loss of best and most versatile agricultural land which, albeit temporary, would render the site unavailable for farming for food production. The proposal is contrary to Policies ST1, DM31 and DM20(4) of Bearing Fruits 2031: The Swale Borough Local Plan 2017 and paragraph 180 of the National Planning Policy Framework.
- 1.3 The applicant subsequently lodged an appeal (reference APP/V2255/W/25/3360089). The appellant requested that the procedure for the appeal be in the form of a Public Inquiry. Officers responded to this requesting that it be dealt with by written representations or hearing, however the Planning Inspectorate have decided that public inquiry is the appropriate procedure for this appeal. The appeal is currently scheduled to last 4 days and will begin on 5th August 2025.
- 1.4 The documents that have accompanied the appeal include amendments to the plans that were the basis of the Council's decision. The details of the amendments are set out in the next section of this report.
- 1.5 The Landscape Strategy Plan, which shows the layout of the proposed development when it was presented to committee in 2024 is provided in Appendix C and the amended Landscape Strategy Plan is provided at Appendix D.
- 1.6 Consistent with the reason for the refusal of the application, the Planning Inspector has identified three main issues to be addressed during the appeal:

- 1. the landscape and visual impact of the proposal,
- 2. the implications for the use of public rights of way next to and through the site,
- 3. the effect on the supply of agricultural land.
- 1.7 For reasons that will be set out below, planning officers have not carried out any further consultation ahead of this committee meeting.

2. PROPOSED DEVELOPMENT AND AMENDMENTS

- 2.1 The description of the original development was set out in section 3 of the Report to Planning Committee (06 August 2024).
- 2.2 In summary, the amendments to the proposed development include the following:
 - Removal of development within areas 5 & 6 in the east of the site
 - Moving the panels away from the internal and external boundaries
 - Widening the space around the public rights of way through the site
 - Additional landscaping across the site
 - Fencing and development moved away from Wren's Cottage
 - Straightening of a limited part of the northern boundary
- 2.3 The appellant's Statement of Case sets out that they seek to address the concerns raised during the application process by slightly off setting the panels from the boundaries and at the same time amend the internal layout slightly to allow for widening of the public rights of way.
- 2.4 The Statement of Case also states that fencing has been moved further away from Wren's Cottage and the northern edge of the panels is set a little further away from properties off Oad Street.
- 2.5 The Statement of Case further states that panels have also been reorientated across parts of the site to address concerns raised by National Highways in terms of potential impact from glint and glare, particularly on the M2 corridor adjacent to the site. A solution was agreed during the application for the use of temporary mesh screening. However, the appellant states that they now have agreement with National Highways that the development may proceed without the need for interim screening in the revised orientation.
- 2.6 The appellant advises that the amendments are made possible by the advancements in viable and available technology, which allows for a similar level of energy generation from fewer panels.

3. <u>PROCEDURAL MATTERS</u>

- 3.1 Planning Inspectorate guidance section 16 advises that where amendments are made to development proposals during appeal proceedings the Planning Inspectorate will consider whether, exceptionally, to accept them. As per the judgement in Holborn Studios Ltd v The Council of the London Borough of Hackney (2018), which refined the "Wheatcroft principles" set out in Bernard Wheatcroft v Secretary of State for the Environment (1982), two tests will be considered.
 - Substantive whether the proposed amendment(s) involves a "substantial difference" or a "fundamental change" to the application. If the Planning Inspectorate's judgement is that the amendment(s) would result in a "different application", then it is unlikely that the amendment could be considered as part of

the appeal. It is also possible that a series of small incremental amendments to a scheme could result in a "substantial difference" or a "fundamental change"

- Procedural whether, if accepted, the proposed amendment(s) would cause unlawful procedural unfairness to anyone involved in the appeal (i.e. since consultation is a statutory requirement at the application stage, if the scheme is amended at appeal, it may be unfair on interested parties and consultees whose views and comments were about the original proposals, not the amended proposals). The change need not be 'substantial' or 'fundamental' to require reconsultation. Even potentially beneficial changes may need to be subject to reconsultation, so that interested parties can consider whether that would be the case. The decision on whether to accept the amendment without re-consultation will be taken in the context that consultation is an important part of the planning system, the nature and extent of the changes and the potential significance to those who might be consulted.
- 3.2 The Planning Inspectorate have been asked to provide guidance as to whether the amended plans should be acted upon but it has been stated that the Inspector will not advise the parties whether the amended plans will be considered within the appeal until the first day of the Inquiry. It has however been suggested at a Case Management Conference that the Inspector will find that the substantive test is met. No comment has been made in respect of the procedural test.
- 3.3 The view of Officers has been that the degree of changes to the proposal would not meet the substantive test. Moreover, Officers advised the appellant that the Council would not undertake a public consultation exercise in respect of the amended plans since it would be illogical to do so in the scenario where it is not agreed that the amended plans should be considered within this appeal.
- 3.4 To address this, the procedural test, the applicant has undertaken their own public consultation exercise, involving correspondence being sent to all nearby properties, stakeholders and consultees. A website has also been created and can be found online at https://app.placechangers.co.uk/campaign/476/overview. The principles set out by the High Court in *Bramley Solar Power Residents Group v SSLUHC* [2023] 2842 (Admin) indicates that public consultation does not have to be undertaken by the Local Planning Authority and that consultation by an applicant can be adequate.
- 3.5 As a result of the above, the Council will have to prepare for the appeal in the context that either set of plans will be considered by the Planning Inspector.

4. EFFECT OF AMENDMENTS TO THE PROPOSED DEVELOPMENT

- 4.1 The proposed amendments reduce the scale of the development and its coverage of the application site by removing development from the land within the site boundary on the eastern side of Wrens Road. The amendments also increase the space around the retained public rights of way through and adjoining the site. The proposed amendments therefore reduce the landscape and visual impact of the proposal, reduce the impacts on usage of public rights of way next to and through the site, and reduce the effect on the supply of agricultural land.
- 4.2 The applicant's case is that the amended scheme would be able to achieve the same renewable energy generation output as the earlier iteration, given that technology has advanced and become increasingly viable since the application was initially submitted.

The energy generation benefits of the proposal were previously set out at paragraph 7.17.6 of the Committee Report.

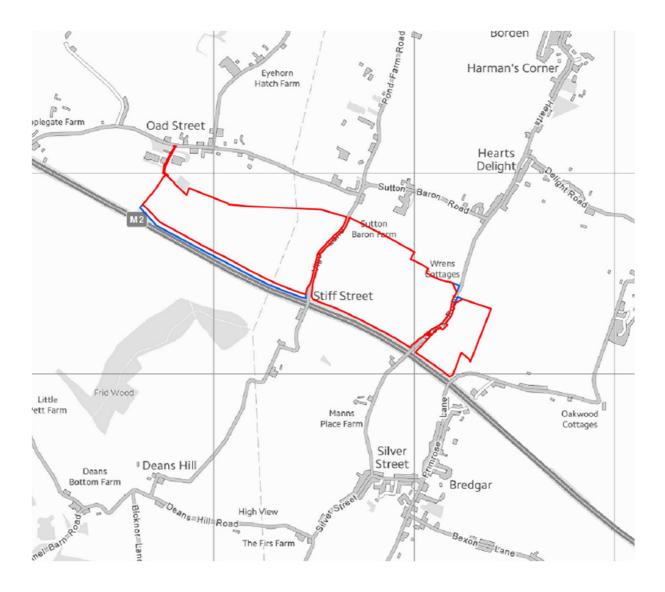
- 4.3 Since the determination of the application, the December 2023 version of the NPPF has been replaced by the December 2024 version. As a result, Paragraph 157, which was referred to in the Committee Report, has become paragraph 161. Other than referring to a transition to "net zero by 2050" rather than "a low carbon future" and a few other minor alterations, the content of these paragraphs is generally similar.
- 4.4 Similarly, paragraph 163 of the earlier version of the NPPF has been replaced by paragraphs 168 and 169. The most recent NPPF states that the Local Planning Authority should "give significant weight to the benefits associated with renewable and low carbon energy generation and the proposal's contribution to a net zero future." This is gives clearer steer than the earlier version as to how weight should be afforded. Officers previously advised giving the benefit substantial weight.
- 4.5 As set out above, the previous recommendation of Officers was to grant planning permission. This remains the case with respect to the amended plans as the harms that were identified have been reduced in the ways that have been stated and the benefits are considered to remain comparable. The extent to which the differing balancing exercise and conclusion of the Planning Committee to Officers may have shifted as a result of the amended plans will be a useful consideration for the appeal, should the Planning Inspector agree to make their decision based on the amended plans. Whilst the Council is no longer the decision maker, it is requested therefore that the Planning Committee advises how it would have proceeded if the amended plans were before it to make a decision. This will strengthen the Officer position in preparing for and representing the Council at appeal.

5. <u>CONCLUSION</u>

- 5.1 To assist with the response to the appeal, Members are requested to make a resolution to advise how the proposed amendments and any associated alterations to the benefits and disbenefits of the proposals would affect their consideration of the proposals. It is recommended that the Committee advises how it would have proceeded if the amended plans were before it to make a decision based on the following two options:
 - a) It can be concluded that the amendments to the proposal are sufficient to make the proposal acceptable. If the Planning Committee choose this option then this would form the basis of the Council's position at the appeal in relation to the amended proposals. The conditions recommended in the original Committee Report (Appendix A) would be provided to the Planning Inspectorate with minor updates where necessary to reflect the relevant updated drawings and documents.

OR

b) It can be concluded that the amendments do not address the previous concerns to an extent that the proposal should be found acceptable. If the Planning Committee choose this option, it is requested that the Committee advises how they have weighed the benefits and disbenefits of the proposals.



Report to Planning Committee – 6 August 2024

ITEM 2.3

2.3 **REFERENCE NO - 23/502210/FULL**

PROPOSAL Construction of a solar farm together with control building, switch room, substations and compound, point of connection equipment, store room, access track, security measures, associated infrastructure and works, landscaping and biodiversity enhancements.

SITE LOCATION Land on Either Side of Vigo Lane And Wrens Road, Sittingbourne, Kent, ME9 8LA

RECOMMENDATION Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions as set out in the report, with further delegation to the Head of Planning / Head of Legal Services (as appropriate) to negotiate the precise wording of conditions, including adding or amending such conditions as may be consequently necessary and appropriate.

APPLICATION TYPE Major

REASON

Bredgar Parish Council and Borden Parish Council object to the proposal.

The main concerns of the Parish Councils are:

- Loss of agricultural land
- Impact on the National Landscape •
- Impact on dormouse due to hedgerow removal

Case Officer Carly Stoddart					
WARD Borden and Grove Park	PARISH/TOWN COUNCIL Borden		APPLICANT Vigo Ltd. AGENT Ward		Solar
DATE REGISTERED		TARGET DAT			5
05/05/2023		14/08/2024			

05/05/2023

BACKGROUND PAPERS AND INFORMATION:

Documents referenced in report are as follows: -

All drawings submitted.

All representations received.

Agricultural Land Classification Report, dated April 2023 (uploaded 03 May 2023)

Alternative Site Assessment, dated April 2023 (uploaded 03 May 2023)

Landscape and Visual Assessment and associated viewpoints, dated April 2023 (uploaded 03 May 2023)

Landscape and Visual Assessment Technical Note and associated viewpoints, dated 19/02/2024 (uploaded 26 February 2024)

Landscape and Visual Appraisal - Landscape Strategy Plan NT16093-LVA 116 Rev B, dated 08/03/2023 (uploaded 26 February 2024

Agent Response to Consultee Comments, dated 19 April 2024 (uploaded 19 April 2024)

Agent Response to National Highways, dated 18 April 2024 (uploaded 18 April 2024)

Letter to KCC PROW, dated 29 September 2023 (uploaded 29 September 2023)

Noise Assessment Report, dated April 2023 (uploaded 03 May 2023) Transport Statement, dated April 2023 (uploaded 03 May 2023) Glint Assessment, dated April 2023 (uploaded 03 May 2023) Letter to KCC Highways, dated 29 September 2023 (uploaded 29 September 2023) Transport Technical Note, dated 11/01/2024 (uploaded 23 January 2024) Letter from Wardell Armstrong, dated 9 February 2024 (uploaded 09 February 2024) Agent Response to National Highways dated, 18 April 2024 (uploaded 18 April 2024) Breeding Bird Survey, dated April 2023 (uploaded 03 May 2023) Biodiversity Offsetting Assessment, dated April 2023 (uploaded 03 May 2023) Wintering Bird Survey, dated April 2023 (uploaded 03 May 2023) Ecological Appraisal, dated April 2023 (uploaded 03 May 2023) Biodiversity Matrix, undated (uploaded 19 September 2023) Response to KCC Ecology Comments, dated 19 September 2023 (uploaded 19 September 2023) Archaeological and Heritage Statement, dated April 2023 (uploaded 03 May 2023) Flood Risk Assessment, dated 2023 (uploaded 03 May 2023) Land Contamination Assessment, date 03 April 2023 (uploaded 03 May 2023) Outline Decommissioning Plan, dated May 2023 (uploaded 12 May 2023)

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

23/502210/FULL | Construction of a solar farm together with control building, switch room, substations and compound, point of connection equipment, store room, access track, security measures, associated infrastructure and works, landscaping and biodiversity enhancements. | Land On Either Side Of Vigo Lane And Wrens Road Sittingbourne Kent ME9 8LA (midkent.gov.uk)

1. SITE LOCATION AND DECRIPTION

- 1.1. The application site comprises agricultural fields with a combined area of approx. 61.44ha and is located south of Oad Street and Borden with the M2 motorway located to the south. The site is intersected by two roads, Vigo Lane and Wrens Road. There are also public rights of way (PRoWs) and bridleway adjacent to and running through the site.
- 1.2. The land is within the open countryside and comprises agricultural land. The site is not subject to any landscape designations but is identified in the Swale Landscape Character and Biodiversity Appraisal SPD (SLC&BA) as being within the Tunstall Farmlands character area (no.42). The land on the opposite side of the M2 motorway is designated as a national landscape (formerly known as AONB).

- 1.3. The topography of the site is such that the site rises gradually towards the south, with the highest point being towards the west of the western field. The eastern fields are slightly undulating.
- 1.4. The site is not within a conservation area and there no listed buildings on the site nor are there any trees subject to a TPO. There are however listed buildings to the north of the site.
- 1.5. The site is wholly within flood zone 1.
- 1.6. There is a scattering of residential properties along the country lanes mainly to the north and some to the east. There are also residential properties to the southern side of the M2 motorway.

2. PLANNING HISTORY

2.1. 22/500693/ENVSCR - EIA Screening opinion for Proposed Solar Farm.

Environmental Impact Assessment not required, 25/02/2022

3. <u>PROPOSED DEVELOPMENT</u>

3.1. Planning permission is sought for the construction of a solar farm together with control building, switch room, substations and compound, point of connection equipment, store-room, access track, security measures, associated infrastructure and works, landscaping and biodiversity enhancements.

Solar Panels

- 3.2. The solar panels would be arranged in rows on an east-west alignment and facing south to maximise sunlight exposure.
- 3.3. Each panel would be two in portrait and measure approx. 2.2m (I) x 1.1m (w) x 0.3m (d). There would be a 20mm rain gap between the two level of panels to aid drainage.
- 3.4. The panels would be angled at 25 degrees for optimum solar gain, with the rear being a maximum of 3m from ground level and 0.8m from ground level at the front.
- 3.5. The pitch of each row of panels would be 8.5m apart with approximately 4.4m clearance distance to reduce overshadowing and allow access for any required maintenance.

Invertors

3.6. Inverters would be positioned on the rear of the panels. Inverters convert the Direct Current (DC) electricity generated by the panels into Alternating Current (AC) before it is exported to the local distribution network. They would be placed at regular intervals along the rows of panels.

Substation Compound

- 3.7. A substation compound would be located in the southern area of the site. It would comprise a transformer, the switchgear, isolation and metering equipment.
- 3.8. The customer substation building would be approx. 6m (I) x 4m (w) x 2.75m (h) and located to the immediate south of the compound area. The building would comprise the switchgear, isolation and metering equipment. The building would be constructed of galvanised steel and coloured olive green (RAL 6003).
- 3.9. The compound area would be divided into two elements: the DNO (Distributer Network Operator) and customer substation. The DNO substation is high voltage and directly connects to the DNO's grid infrastructure, whereas the customer substation is the area where the developer has full access to their equipment and is the hub where the power from the solar farm is filtered across to the DNO substation and then out on to the local distribution network. There would be two separate access gates via the internal access track.
- 3.10. The substation compound would be approximately 20m x 43m in surface area. The height of the tallest piece of equipment within the compound would be both the highand low-level disconnectors at approx. 5.25m. Flood lighting towers at a height of approx. 5m would also be within the compound.
- 3.11. All equipment would be contained within a 2.4m high galvanised security palisade fence and covered by the site-wide CCTV cameras.
- 3.12. A storage cabin would also be located near to the compound for the safe storage of spare equipment. The cabin would be approx. 6.2m (I) x 2.5m (w) x 3m (h). The cabin would also be constructed of galvanised steel and coloured olive green (RAL 6003).

Point of Connection

3.13. The point of connection would be located within the site boundary at an existing 132kV transmission tower, approximately 340m north of the substation compound. A cable route would run from the compound area to a low-level disconnector and surge arrestors which would then connect to the tower by downleads and anchor blocks. The disconnector and arrestors would both be approximately 4m in height.

Access and Internal Tracks

- 3.14. The site would be accessed from an existing farm track via Oad Street to the west of the site. The access track would reach from the access road along the southern boundary of the site, connecting the parcels of land by a crossing at both Vigo Lane and Wrens Road. This route uses existing field accesses used by agricultural vehicles.
- 3.15. Where new or upgraded tracks are required, these would take the appearance of vernacular farm tracks with a gravel surface. The gravel would be placed over a subsurface which itself would be constructed on a geotextile membrane. The access tracks would reflect the appearance of typical access tracks.

Fencing and Security

3.16. A 1.9m high galvanised steel wire deer control fencing with woodland fence posts would be erected around all equipment, including solar panels to ensure the protection of infrastructure from damage. The fencing would include mammal gates to allow for the movement of local ecology through the site. Adjacent to the fencing would also be 117 infrared CCTV cameras atop a galvanised steel pole, measuring a total height of 3m. The cameras themselves would be coloured white. All cameras would be inward facing towards the site and equipment to ensure the security of the site without intruding on any private views.

Landscaping

- 3.17. The majority of existing hedgerows and trees would be retained, with new planting proposed where hedgerows have gaps or are of poorer quality. Overall, approximately 6km (3.7 miles) of native species hedgerows are proposed to be planted within the site.
- 3.18. Extensive new tree planting would occur along some sections of the site which border the M2 motorway and where the presence of trees is currently scant and two areas of tree planting are proposed on both sides of Wren Road.
- 3.19. Each field would be seeded with a locally appropriate wildflower mix to the benefit of pollinators, insects, and various bird species. A 10m buffer zone of wildflower grassland is being proposed between the site's fences and the solar equipment. A pond is also proposed amongst the meadow grassland near to Vigo Lane.

4. <u>CONSULTATION</u>

- 4.1. One round of consultation has been undertaken, during which letters were sent to neighbouring occupiers; a notice was displayed at the application site and the application was advertised in the local newspaper. Full details of representations are available online.
- 4.2. One letter of representation was received in relation to the consultation. Concerns were raised in relation to the following matters: -

Comment	Report reference
Visual impact	Section 7.4
Increased traffic and disruption	7.6.5 – 7.6.7, 7.6.10
Impact of Lighting	7.15.2
Loss of countryside, land, hedgerows and	7.8.27 – 7.8.32
planting	
Loss of nesting opportunities for birds	7.8.7 – 7.8.21
Impact of short term use and disposal of	7.16.1
panels at the end of life	
Increased flooding	7.11.3 – 7.11.6

4.3. Bredgar and Borden Parish Councils objected to the application on the following grounds: -

Comment	Report reference/ clarification
Bredgar and Borden Parish Councils	7.3.13 – 7.3.34
Loss of grade 2, 3a and 3b agricultural land.	
Building development on grades 2 and 3a	
land is inconsistent with Swale planning	
policies, and is not welcome in this time of	
reduced food security	
Bredgar and Borden Parish Councils	Section 7.4, 7.5.10, 7.14.2 – 7.14.5, 7.15.2
The proposed farm will impact negatively on	
the setting of the AONB, in terms of visual	
impact, noise and light pollution and also the	
countryside gap.	
Borden Parish Council	7.8.24 – 7.8.26
Concerned hedge removal would destroy	
dormouse corridors.	
Borden Parish Council	7.6.10
If granted, construction traffic should enter	
the site by Vigo Farm and no traffic should	
enter the thoroughfare of the Oad Street	
settlement	

- 4.4. In addition to the objection above, Bredgar and Borden Parish Council made further comments in recognition that due to the climate change crisis and need for urgent action, Swale Borough Council may take the view that this application merits an exception, and decide on approval. In such a situation Bredgar and Borden Parish Councils would raise no objection, provided that conditions are imposed to reduce the negative impact.
- 4.5. Further depth to the environmental improvements outlined could be the landowner/applicant investigating new ways of providing environmental benefits from the project such as the Government's Environmental Land Management Scheme (ELMS), by association with a carbon offset scheme or the Kent County Councils Tree Establishment Strategy "Plan Tree". This might enable the planting of woodland on the southern side opposite the solar farm to provide additional benefits for the environment, wildlife, a natural sound barrier against traffic noise from the M2, offset harm to the setting of the AONB and enhance the tranquillity of the AONB. The Parish Council would like to engage with and support any such initiatives if contacted.
- 4.6. Members are asked to consider the above potential conditions fully, with a view to enabling a boost to the 'green energy' provision in Kent, while minimising damage and creating a positive impact on the environment.

5. <u>REPRESENTATIONS</u>

5.1. Set out below is a summary of matters raised in representations, with the comments reflecting the final position of the consultee. There has been one rounds of consultation for most consultees. For those individual consultees that have been consulted more than once, it is stated under their heading below.

5.2. **National Highways: -** There have been five rounds of consultation.

National Highways initially issued a holding objection requesting further details regarding collision data related to the Oad Street and A249 junction concerns raised regarding the impact of glint and glare on the users of the M2 motorway. Conditions were recommended regarding other aspects of the proposal.

Following the submission of further information, National Highways are now content that the proposal would not have an unacceptable impact on highway safety, reliability and/or operation efficiency of the strategic road network. Further conditions have been recommended.

- 5.3. **Environment Agency**: No objection subject to suggested planning conditions being included.
- 5.4. **Natural England**: Advise officers to use Impact Risk Zones to determine whether proposals impact statutory nature conservation sites and to use Natural England's standing advice.
- 5.5. **Historic England**: Not offering advice on these proposals
- 5.6. **Southern Water**: -Provide extract of their records showing approximate position of water trunk mains within the site and give advice on the proximity of development and/or natural features. Advice is provided regarding any sewers fond to be crossing the site and in relation to Sustainable Urban Drainage Systems (SUDs).
- 5.7. Lower Medway Internal Drainage Board: -The site is outside the drainage district of the Lower Medway Internal Drainage Board and the application proposal is beyond our remit.
- 5.8. **Swale Footpaths Groups**: The proposed site plan shows the PRoWs (ZRs 138, 134, 169 and141) across the site as remaining unobstructed. If permission is granted, they could be waymarked across the site.
- 5.9. Kent Downs National Landscape Unit (Formerly AONB Unit): There have been three rounds of consultation.

Initially requested further viewpoints from the National Landscape be undertaken and expressed concern with limited planting proposals along the southern boundary, the siting of the substation and compound and other associated infrastructure to the southern end of the site as well as the colour of the structures being proposed as olive green. Stated the need for a condition to ensure agricultural management of the land for return to agricultural use at the end of the temporary permission.

Other than the colour of the infrastructure, the concern with regard to the impact on the National Landscape as a result of the aspects described in the paragraph above remain. Request for more structural planting along the southern boundary.

5.10. **KCC Ecology**: - There have been four rounds of consultation.

The initial response requested further ecological information in relation to the mitigation strategy for farmland birds, badger mitigation strategy, additional survey information for hazel dormouse and the BNG Defra metric calculation spreadsheet and condition assessment sheets.

In response to further information, KCC Ecology are satisfied that sufficient information has been submitted and no objection is raised subject to a number of conditions.

- 5.11. **KCC Flood and Water Management**: No objection in principle subject to suggested conditions. Advice given is in terms of the modelling to be used for further calculations to address the suggested conditions.
- 5.12. **KCC PRoW**: There have been six rounds of consultation (this in part due to consultations not having been received by the relevant officer on two occasions)

The Public Rights of Way affected by the site are listed. Initially a holding objection was issued. Throughout the consultation responses concerns expressed around the omission of reference to some of the above PRoW routes, safety aspects of the site access during construction, the location of the construction compound, the CCTV coverage, width of footpaths, location of the substation, lighting towers, inadequate signage and the extent and density of the solar array. A request for a financial contribution was made with the view to compensate harm arising from the proposal.

The most recent response indicates there is still concern with regard to the safe use of the access during construction, the location of the construction compound, the CCTV coverage, widths of the PRoW, location of the substation and lighting towers and lack of agreement to the requested financial contribution.

5.13. KCC Highways: - There have been three rounds of consultation.

The initial response raised no objection to the use of the access and the trio generation subject to relevant conditions. Further details were requested with regard to the number of passing places along the internal access road.

Following receipt of the requested information, KCC Highways is satisfied with the proposal subject to recommended conditions.

- 5.14. **KCC Archaeology**: Agree that the present baseline has not found any heritage assets that would preclude development and that the development impacts in terms of ground disturbance are limited and can be managed. Satisfied potential impacts can be addressed through further assessment, evaluation and design that can be secured by condition.
- 5.15. Kent Police: There have been two rounds of consultation.

Provision of advice from a general crime reduction and safety aspect. Recommend a 2m or higher metal security fence. Deer fencing offers little security value from a determined attack. However, appreciate the rural nature of this large site and acknowledge that the installation of a full high spec security fence would probably not be Appropriate, Realistic and Cost effective (ARC) or in keeping with rural environment. Regular fence patrols are recommended to ensure that any fencing has not been attacked or compromised.

5.16. Mid Kent Environmental Health: - There have been two rounds of consultation.

The Contaminated Land Assessment is satisfactory and concludes a low risk. Conditions are suggested.

- 5.17. **SBC Heritage**: No objection in principle to the proposed development provided there is effective landscape mitigation to block or limit intervisibility between the Grade II listed Sutton Baron House and Sutton Baron Hall, located to the north of the site and other affected heritage assets and the proposed solar farm. Conditions are recommended.
- 5.18. **SBC Tree Officer**: The main impact of the development will result in the removal of five short sections of hedgerow to accommodate new access points. This would not be detrimental and can be easily mitigated through compensatory planting. A condition is recommended to secure this.

6. <u>DEVELOPMENT PLAN POLICIES</u>

Bearing Fruits 2031: The Swale Borough Council Local Plan 2017

- ST1 Delivering Sustainable Development in Swale
- CP4 Requiring Good Design
- **CP7** Conserving and Enhancing the Natural Environment Providing for Green Infrastructure
- **CP8** Conserving and Enhancing the Historic Environment
- DM6 Managing Transport Demand and Impact
- **DM7** Vehicle parking
- DM14 General Development Criteria
- DM19 Sustainable Design and Construction
- DM20 Renewable and Low Carbon Energy
- **DM21** Drainage and Flood Risk
- **DM24** Conserving and Enhancing Valued Landscapes
- **DM28** Biodiversity and Geological Conservation
- DM31 Agricultural Land
- **DM32** Development Involving Listed Buildings
- **DM33** Development Affecting a Conservation Area
- DM34 Scheduled Ancient Monuments and Archaeological Sites

Supplementary Planning Guidance/Documents

• Landscape Character and Biodiversity Appraisal, 2011

- Renewable Energy Planning Guidance Note 1: The Development of Domestic and Medium Scale Solar PV Arrays up to 50kW and Solar Thermal, 2014
- Kent Downs AONB Management Plan 2021-2026
- Renewable Energy Position Statement (2011) By Kent Downs AONB Unit
- Guidance on the Selection and Use of Colour in Development by Kent Downs AONB
 Unit

The National Planning Policy Framework

7. <u>ASSESSMENT</u>

- 7.1. This application is reported to the Committee because two Parish Councils have objected to the proposal. Considering these comments, the committee is recommended to carefully consider the following points: -
 - Loss of agricultural land
 - Impact on the National Landscape
 - Impact on dormouse due to hedgerow removal
- 7.2. The main considerations involved in the assessment of the application are:
 - The Principle of Development
 - Landscape and Visual Impact
 - Public Right of Ways
 - Transport and Highways
 - Glint
 - Ecology
 - Heritage
 - Archaeology
 - Flood Risk, Drainage and Surface Water
 - Contamination
 - Air Quality
 - Living Conditions
 - Designing out Crime
 - Decommissioning

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. <u>Need</u>

- 7.3.4. The Climate Change Act 2008 (as amended) sets out the legal obligation of the UK to achieve a 100% reduction in greenhouse gas emissions from 1990 levels (net zero) by 2050. Planning has an important role in the delivery of new renewable and low carbon energy infrastructure in locations where the local environmental impact is acceptable.
- 7.3.5. Locally, Swale Borough Council declared a climate and ecological emergency on 26 June 2019 and through its Climate and Ecological Emergency Action Plan, 2020 (CEEAP) has made a firm commitment to the borough becoming a carbon neutral Council by 2030. The CEEAP identifies renewable energy generation within the borough as a key component of how Swale will achieve zero net carbon emissions by 2030.
- 7.3.6. More recently, the British Energy Security Strategy (2022) strengthened policy support for ground-based solar on non-protected land, showcasing the increasing importance of photovoltaic technology. This Strategy states that the ambition is to achieve 70GW of solar capacity by 2035. Solar farms can be constructed quickly on land under just one or a few ownership titles, significantly boosting the renewable energy generated in the UK in the short term rather than relying on a large number of owners to be in a position to consider roof-mounted panels, particularly in times of economic hardship. The temporary nature of large-scale solar farms speeds up the transition of domestic renewable energy sources whilst other sources are enhanced or developed.
- 7.3.7. Chapter 14 of the NPPF specifically relates to meeting the challenge of climate change stating that the planning system should support the transition to a low carbon future. At paragraph 163(b), the NPPF says that when determining planning applications for renewable and low carbon development, Local Planning Authorities should approve the application if its impacts are (or can be made) acceptable. This is supported locally at Policies ST1(10b) and DM20 of the Local Plan.
- 7.3.8. The submitted documentation states that, 'the proposed development would significantly support the goals of and contribute to both local and national Climate Change targets'. The solar farm would generate 40MW of electricity every year which is enough to power 11,550 homes annually and is the equivalent of offsetting 8,152 tonnes of CO2 emissions per year.
- 7.3.9. In addition, solar farms are an opportunity to address other concerns, such as the Ecological Emergency which is widely acknowledged nationally and jointly declared alongside the Climate Emergency by SBC and Kent County Council. The BNG result for the project is 190.54% in linear units and 299.32% in hedgerow units which is a very significant net gain in biodiversity.
- 7.3.10. Recent appeal decisions indicate that substantial weight and significant weight is being attached to the benefits of renewable energy generation and BNG improvements respectively.

- 7.3.11. Given the strong policy support for the proposal, the principle of the development is acceptable. However, the consideration of more detailed matters, including the environmental impact is required.
- 7.3.12. Subject to the assessment of the detailed matters, the principle of the proposal for renewable and low carbon energy development in the form of solar panels is supported by the Government at national level at paragraphs 163 of the NPPF and at a local level by Local Plan Policies ST1 and DM20. The assessment of more detailed matters is set out below.
- 7.3.13. Agricultural Land and Alternative Sites
- 7.3.14. The application site is located within the countryside and comprises agricultural land.
- 7.3.15. Paragraph 88 of the NPPF supports development for a prosperous rural economy stating at subsection (b) that planning policies and decisions should enable:
 b) the development and diversification of agricultural and other land-based rural businesses.
- 7.3.16. Paragraph 180(b) of the NPPF says that planning decisions should contribute to and enhance the natural and local environment by:
 b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland.
- 7.3.17. Policy DM31 of the Local Plan states that development on agricultural land will only be permitted where there is an overriding need that cannot be met within the built-up area boundaries and Policy DM20(4) of the Local Plan requires schemes on agricultural land to demonstrate that poorer quality land has been used in preference to higher quality and in exceptional cases, where schemes are demonstrated as necessary on agricultural land, that they fully explore options for continued agricultural use.
- 7.3.18. Best and most versatile agricultural land (BMV) is defined in the NPPF as land in grades 1, 2 and 3a of the Agricultural Land Classification. At footnote 62 of the NPPF, there is a preference for the development of areas of poorer quality land over higher quality where significant development of agricultural land is demonstrated to be necessary and the availability of agricultural land used for food production should be considered, alongside the other policies in the framework when deciding what sites are most appropriate for development.
- 7.3.19. For planning applications, specific consultations with Natural England are required under the Development Management Procedure Order in relation to best and most versatile agricultural land. These are for non-agricultural development proposals that are not consistent with an adopted local plan and involve the loss of twenty hectares or more of the best and most versatile land. Natural England (NE) has been consulted on this application but did not comment on the proposal.
- 7.3.20. An Agricultural Land Classification report has been submitted with the application. The report concludes that the site is predominantly Subgrade 3a – good quality

(approx. 32.07 ha, 53%) and Grade 2 – very good quality (approx. 22.55 ha, 37.3%) with smaller areas of Subgrade 3b – moderate quality (approx. 5.73ha, 9.4%) and some areas in non-agricultural use (approx. 11 ha, 0.2ha).

- 7.3.21. The proposal would therefore predominantly sit on BMV agricultural land.
- 7.3.22. As stated above, the proposed development is supported by Policy DM20 of the Local Plan, which states that standalone renewable installations, amongst other criteria, shall demonstrate:
 4. For schemes on agricultural land, it has been demonstrated that poorer quality land

As been used in preference to higher quality. In exceptional cases, where schemes are demonstrated as necessary on agricultural land, that they fully explore options for continued agricultural use;

7.3.23. <u>Alternative Sites</u>

7.3.24. The application has also been supported by an Alternative Site Assessment to identify other potential suitable sites for the proposed development within 3km of the point of connection (beyond this, a solar farm connecting to this point of connection would not be deemed viable). The consideration of alternative sites is undertaken within certain parameters. These are that:

the site must realistically be able to host a facility of the same size, with similar associated construction and grid connection costs which means it needs to be in close proximity to a grid connection point.

the parcel of land needs to be of a sufficient size to accommodate the equipment for a 40MW solar farm and therefore approx. 60 ha is required.

the equipment needs to be located outside of areas at risk of flooding, to avoid damage to electrical equipment in times of flood.

the site needs to avoid designated landscape, heritage and ecological assets and any other known environmental constraints.

- 7.3.25. Ideally, alternative sites would be sought on lower quality agricultural land (grades 3b, 4 and 5), or previously developed land.
- 7.3.26. After taking into consideration of the above parameters only a small number of sites (5) for this scale of solar farm were identified. Within 3km of the point of connection provisional data suggests that the surrounding agricultural land is also mostly Grade 2, with Grade 1 'Excellent' to the north and Grade 3 to south (it is not specified whether this is Grade 3a or 3b). This is consistent with the Council's own GIS mapping system. Other constraints that have been taken into account when considering alternative sites include (but are not limited to): the area designated as the Kent Downs National Landscape, listed buildings, conservation areas, protected military remains, flood zones 2 and 3, minerals safeguarding areas, areas of high landscape value, local designated sites of biodiversity, ancient woodland and the M2 motorway.
- 7.3.27. The potential alternative sites have been carefully considered taking account of the parameters and the constraints of each site and it is considered that it has been a sufficiently demonstrated that there is no alternative site.

- 7.3.28. Neither the NPPF, nor the Local Plan policy prevent the use of BMV agricultural land but requires that the benefits need to justify the loss. The proposal would change the use of the land for a period of 40 years, which accords with the life expectancy of new panels. Whilst this is a significant period of time it is not permanent.
- 7.3.29. Given the height and angle of the proposed panels, grass will be able to grow under the panels satisfactorily as well as between the rows of panels, effectively leaving the site fallow, allowing the fields to be brought back into agricultural use in the future including for food production ensuring food security is not compromised.

Continued Agricultural Use

- 7.3.30. The land could still be put to agricultural uses such as livestock grazing and that the solar farm will create an alternative income for the farming business.
- 7.3.31. It is recognised that the land can still play an important part in both agricultural and environmental purposes. Grazing can take place across the land below the proposed panels and also the land can be rested and left to develop as wildlife meadow.
- 7.3.32. It is considered that the proposal would not result in a harmful loss of agricultural land and that alternative sites have sufficiently been considered. The proposal would not conflict with Local Plan policy.
- 7.3.33. The temporary loss of BMV agricultural land is not contrary to the policies as set out within the development plan and the NPPF and the benefits through the provision of a solar farm generating renewable energy in this location are considered to outweigh the temporary loss of this agricultural land. As such, the effect on and temporary loss of agricultural land affords limited weight in the planning balance.
- 7.3.34. Having taken account of the need, the siting on agricultural land and the consideration of alternative sites, the proposal is in accordance with the Local Plan and NPPF.

7.4. Landscape and Visual Impact

- 7.4.1. National and Local renewable energy policies adopt a supportive approach towards renewable energy and provide that development will be approved where any harm would be outweighed by the benefits.
- 7.4.2. The NPPF 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 including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland.
- 7.4.3. The NPPF also attaches great weight to conserving and enhancing landscape and scenic beauty in National Landscapes (formerly AONBs), stating that 'the scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid and minimise adverse impact on the designated areas'.

- 7.4.4. The proposal is for a solar farm on an agricultural lane outside the built-up boundary. The application site itself is a non-designated landscape. The land on the opposite of the M2 motorway, which is designated as the Kent Downs National Landscape.
- 7.4.5. Local Plan Policies ST1 and DM14 of the Local Plan both contain parts that seek to conserve and enhance the natural environment.
- 7.4.6. Policy DM24 of the Local Plan specifically relates to conserving and enhancing valued landscapes. Part A of this Policy refers to designated landscapes including their setting. Part B relates to non-designated landscapes.
- 7.4.7. Part A of Policy DM24 of the Local Plan states that *'major development within AONBs* should be refused unless exceptional circumstances prevail as defined by national policy'. Part A of Policy DM24 then goes on to provide specific criteria for granting planning permission for development within a national landscape. The criteria is as follows:

1. conserving and enhancing the special qualities and distinctive character of the AONB in accordance with national planning policy;

2. furthering the delivery of the AONB's Management Plan, having regard to its supporting guidance documents;

3. minimising the impact of individual proposals and their cumulative effect on the AONB and its setting, mitigating any detrimental effects, including, where appropriate, improving any damaged landscapes relating to the proposal; and

4. being appropriate to the economic, social and environmental wellbeing of the area or being desirable for the understanding and enjoyment of the area.

- 7.4.8. At the local level the proposed development is located wholly within the Tunstall Farmlands local character area (LCA) within the Swale Landscape Character and Biodiversity Appraisal (2011).
- 7.4.9. The description of the LCA states that around the historic villages of Bredgar and Tunstall orchards still exist, but elsewhere fields have been opened up to make way for large-scale agricultural intensification. This has led to the creation of a diverse rural landscape, which includes small patchworks of enclosed orchards and open large-scale fields where hedgerows have been lost.
- 7.4.10. Many mature hedgerows are still maintained in good order with some fragmentation and loss along lanes. Orchards tend to be mature or remnant with some grazed by sheep. In places fruit trees have been removed entirely and mature shelterbelts surround empty fields.
- 7.4.11. The application is accompanied a Landscape Visual Assessment (LVA) which assesses landscape visual impacts and has been reviewed by and independent Landscape Consultant on behalf of the Council. The LVA report contains an appendix (1) setting out the methodology and the criteria for the assessment. A number of viewpoints have also been assessed to represent typical views from publicly accessible locations. This includes additional viewpoints as agreed by the National Landscape Unit, the PRoW Officer and the Council's Independent Consultant.

7.4.12. To establish the impact of the proposal, assessments have been undertaken to ascertain the landscape value, visual effects, landscape effects and with regard to cumulative landscape effects.

7.4.13. Landscape Baseline

- 7.4.14. The site falls within open farmland north of the M2, outside the Kent Downs National Landscape. The site itself is not subject to any landscape designations (national or local). The Kent Downs National Landscape lies to the south of the M2, and the Rodmersham, Milstead and Highsted dry valleys Area of High Landscape Value Kent level, lies to the east. The landscape of the site is in a good condition and although it is undesignated it has some scenic value and forms part of the wider setting of the Kent Downs National Landscape area.
- 7.4.15. Landscape sensitivity to the proposed development combines judgments on the site's susceptibility to the proposed development and landscape value attached to the site. Susceptibility defines the ability of the site to accommodate the proposed development without undue consequences for the baseline conditions.
- 7.4.16. A range of factors that influence susceptibility have been assessed to conclude the overall susceptibility of the landscape on the application site to the proposed development is 'medium'.
- 7.4.17. Combined 'medium susceptibility' with 'medium value' results in a 'medium sensitivity' as most of the landscape characteristics are of a 'medium resilience' to the proposed development.
- 7.4.18. The LVA assessment of sensitivity of the surrounding area is as follow:
 - Tunstall Farmlands LCA: Medium to high (from medium to high value and medium susceptibility the increase in value applies to those parts of the LCA lying within the National Landscape);
 - The National Landscape setting: Medium (from medium value and susceptibility); and
 - The National Landscape: Medium to high (from high value and medium susceptibility).
- 7.4.19. The baseline of the site has been considered by the Council's Landscape Consultant who considers that given that as sensitivity is influenced by the presence of the National Landscape, which must be regarded as high value, then its combination with medium susceptibility would indicate high sensitivity overall. Using this as a benchmark suggests that the surrounding Tunstall Farmlands could be of medium to high sensitivity where they form part of its setting, falling to medium sensitivity where they do not.
- 7.4.20. As the application site forms part of the setting the sensitivity of the site should probably be considered to range between medium to medium/high, rather than just medium as concluded by the LVA, particularly given the degree of public access, its inter-visibility with the National Landscape and by the predominance of arable land, which maintains openness and is highly susceptible to the type of development proposed. However, it is also noted that the sensitivity is influenced by the presence of the M2 motorway and the power lines, which also must be taken into account.

7.4.21. Visual Baseline

- 7.4.22. Visual receptors include the public or community at large, including residents, visitors and travellers through the landscape. The LVA identifies the following three categories of visual receptors (with their assumed sensitivity): users of PRoWs (high), residents (high) and road users (medium). The Council's Landscape Consultant considers these levels of sensitivity to be reasonable.
- 7.4.23. Representative viewpoints from the PRoW network within the site and the wider study area of the LVA form the basis of the assessment of the potential effects of the proposed development on views and visual amenity. These include additional viewpoints as requested by National Landscape Unit.

7.4.24. Potential Landscape Effect and Impact on Character - Construction

- 7.4.25. The LVA considers effects at Year 1 (completion of construction, but before mitigation has begun to take effect) and Year 15 (allowing for landscaping to become established), which is consistent with best practice.
- 7.4.26. As a result of the nature of the proposal, the construction period is short (approx. 5 months). Construction activities will affect both the site's physical characteristics such as the land use and landscape character and the perceptual characteristics of the local area such as tranquillity.
- 7.4.27. In terms of the impact on landscape character, the construction process would introduce temporary and intermittent construction activity, movement of personnel and machinery onto the site. Overall, the LVA describes the magnitude of change as medium as construction activities will be perceptible predominantly within 500m from the site. The duration of the effect will be brief and reversible. Overall medium sensitivity combined with medium magnitude of change result in moderate adverse landscape effect.

7.4.28. Potential Landscape Effect and Impact on Character - Operation

- 7.4.29. The effect and residual effect on the landscape character of the site and the abovementioned Kent Downs National Landscape and the Tunstall LCA, is set out in the LVA.
- 7.4.30. The Site
- 7.4.31. The site is currently in arable use. The proposed development will change the land use and introduce solar panels and new buildings/structure on the site. Whilst arable land use will cease on-site, the land underneath solar panels can be used potentially for some agricultural and/or biodiversity enhancements resulting in partial alteration to the key characteristic of the site.
- 7.4.32. The LVA concludes that the likely effects during operation in year 1 will result moderate adverse overall effects. The review by the Council's Landscape Consultant considers this to be an understatement of the effect as the character of the site would experience a fundamental change from a parcel of farmland to a commercial solar farm, including loss of its characteristic arable use and openness. This suggests that

the magnitude of change at a site level should probably be high (albeit substantially reversible). As a result, the year 1 effects on the site could be substantial, and the effect on AONB setting could be elevated to at least moderate.

- 7.4.33. At year 15, the addition of biodiversity enhancements on site and the proposed mitigation planting reaching maturity would potentially reduce the magnitude of effects from medium to low as the proposed development will be better integrated into the existing landscape. A combined low magnitude and medium sensitivity would then result in a slight adverse level of effect.
- 7.4.34. This is again questioned by the Council's Landscape Consultant who acknowledges that whilst the proposed landscaping would essentially reduce the visual influence of the development over time, as well as introducing potentially beneficial features such as hedgerows, it would not reduce the physical impact of the change in use.
- 7.4.35. In terms of landscape features the magnitude of change at year 1 and 15 will be negligible, and this combined with medium sensitivity, will result in slight adverse effects as the structural landscape on the site will be enhanced.
- 7.4.36. In term of lighting, there is no requirement to light the development overnight for security as all security cameras will be fitted with sensor-activated infra-red lighting. The lighting is only required for occasions where there may be a requirement for maintenance. Therefore, the magnitude of impacts will be negligible, and this combined with medium sensitivity will result in an imperceptible effect at year 1 and 15 of operation.

7.4.37. Tunstall Farmlands LCA

- 7.4.38. The LVA indicates high sensitivity for Tunstall Farmlands LCA. The LVA notes that a typical large-scale agricultural landscape is a feature of this LCA, with locally deteriorated tranquillity by pylons and power lines and the M2. The visibility across the LCA has been assessed as moderate. The Tunstall Farmlands LCA contains more varied landscape elements of higher sensitivity than the site itself.
- 7.4.39. The overall potential effects on the landscape character of the LCA is concluded as being moderate adverse at year 1 of operation due to the value being medium and high, medium susceptibility to proposed change and medium to high sensitivity combined with low magnitude of change.
- 7.4.40. The overall potential effects on the landscape character of the LCA is concluded as being slight adverse at year 15 of operation due to the value being medium and high, medium susceptibility to proposed change and medium to high sensitivity combined with low to negligible magnitude of change.

7.4.41. Kent Downs National Landscape

7.4.42. The Levelling-Up and Regeneration Act 2023, which came into force on 26 December 2023 amends the Countryside and Rights of Way Act, which is the primary legislation relating to National Landscapes. It places a duty on the Local Planning Authority (as a relevant authority) to ensure that their actions and decisions seek to conserve and enhance National Landscapes.

- 7.4.43. The key attributes of the setting were derived from the Kent Downs AONB Management Plan 2021 and Kent Downs Area of Outstanding Natural Beauty Setting Position Statement.
- 7.4.44. The proposed development is located outside of the National Landscape area. As such there would be no direct/physical impact on the designated area; the effects would be indirect, restricted to how the National Landscape is perceived from/in relation to its setting.
- 7.4.45. The LVA (without the additional viewpoints) concludes the overall potential effects on the landscape character of the National Landscape as being slight to moderate adverse at year 1 of operation and as slight to moderate adverse at year 15 of operation.
- 7.4.46. However, in views across the site from the north and from the PRoWs within it, there is the potential for the solar arrays to obstruct/intrude into views towards the (more elevated) landscape of the National Landscape, where gaps in tree cover (notably along the M2) permit.
- 7.4.47. In northward views from the National Landscape, the site contributes to a degree of perceived continuity between the designated area and its farmland setting beyond the motorway (both areas fall within the Tunstall Farmlands). The development therefore has the potential to interrupt this continuity.
- 7.4.48. In conclusion it is considered that the moderate adverse effects on the Kent Downs National Landscape designation may be understated.
- 7.4.49. Assessment from additional viewpoints were undertaken at the request of the National Landscape Unit. It is again considered that the impact may be underestimated and that more screening would be required along the southern boundary on land within the applicant's control.
- 7.4.50. Landscaping is proposed to the southern boundary which will also infill gaps to the existing vegetation on land within the applicant's control. Additional planting is also proposed in the form of mature or fast-growing planting to help reduce the effect of glint on motorway users, which in turn will assist in screening the solar farm from the National Landscape. The proposed landscaping is to be secured by condition.
- 7.4.51. Whilst the concern with regard to the screening along the southern boundary is acknowledged, this also needs to be considered against the presence of the M2 motorway and that the effect of the solar farm is reversible due to the temporary nature of the proposal.
- 7.4.52. The Council recognises it would not be practical, or reasonable, to completely screen every part of the proposed solar farm and therefore a degree of adverse harm will remain. However, it is considered the proposed planting to be sufficient to reduce the impact on the setting of the National Landscape to an acceptable level.
- 7.4.53. Subject to conditions relating to the landscape proposals and a requirement for the infrastructure on site to be of a colour sensitive to the location adjacent to the National Landscape, utilising the 'Guidance on the Selection and Use of Colour in the Kent

Downs', it is considered the landscape effects can be suitably mitigated, and that the proposal conserves the setting of the Kent Downs National Landscape on the whole. Where it doesn't, this primarily relates to some points of intervisibility from the National Landscape and by the inclusion of additional landscaping having an effect on the open character and the perception of continuity with the Tunstall Farmlands LCA as stated above.

- 7.4.54. Visual Effects
- 7.4.55. The visual effects of the proposal during the operational period have also been assessed.

Dwellings:

- 7.4.56. The effects on residential properties within 500m of the site may be summarized as follows:
 - Potentially substantial effects at Y1, becoming moderate by Y15, are predicted for properties at Oad Street, Sutton Baron House and Vigo Lane/Wrens Farm; and
 - No effects are predicted for properties at Hengist Field and Woodgate Farm/Bowl Reed.
- 7.4.57. Of residential properties within 500-1000m of the site, only those at Vigo Farm/Stiff Street/Stiff Street Farm/Manns Place/Chantry Farm are predicted to experience material (slight) effects.

Recreational Receptors:

- 7.4.58. The effects on each PRoW have also been assessed. The views of recreational receptors are generally of high sensitivity. In summary the significance of the effect following mitigation planting was considered to be:
 - Moderate Adverse along routes: ZR128, ZR141, ZR169 and ZR148
 - Substantial Adverse along routes: ZR137, ZR138 and ZR134
- 7.4.59. With mitigation in place, the impact on receptors using the PRoW network would be reduced. However, there are still areas where the effect on the receptor remains adverse and therefore significant and where openness contributes to the amenity of these PRoWs, this screening would remain harmful, effectively becoming permanent where hedgerows may be retained following decommissioning. The Decommissioning Plan will address this and should it be deemed necessary by relevant consultees to remove or reduce the height/thin certain hedgerows to allow for reversion back to the visual character of the area, this can be carried out.

Transport Receptors:

- 7.4.60. Views from the roads are restricted due to the presence of hedgerows along the road corridors. The proposed development will be most visible from Vigo Lane and Wrens Road. Although the proposed landscape buffer planting will screen the views of solar panels, the magnitude of visual impacts will be medium. However, the overall visual impacts will be slight adverse as the change will affect a small number of visual receptors of low sensitivity.
- 7.4.61. Mitigation

- 7.4.62. Mitigation measures are required to address any adverse effects of the proposed development. Mitigation is provided through screening to be provided predominantly by landscaping proposals and a Landscape Strategy has been provided.
- 7.4.63. Following concerns raised by the National Landscape Unit regarding the reliance on the existing highway verge vegetation along the M2 for screening views of the development, the Landscape Strategy has been revised during the course of the application. The Landscape Strategy was revised to include hedgerow planting to supplement the proposed tree planting along the southern site boundary to create a more intact additional screen.
- 7.4.64. The Landscape Strategy also provides for the majority of existing hedgerows and vegetation to be retained, with hedgerows gapped up and managed to grow to approximately 3m high to increase their screening function. Landscape buffer planting is proposed along the eastern, western and northern site boundaries, and along Wrens Road, Vigo Lane and a tall hedgerow along the PRoW that run through the site. A condition would be included with any forthcoming planning permission to secure the implementation of a Landscape Scheme.
- 7.4.65. The LVA also suggests that some elements of the proposed infrastructure including inverters can be painted in colours (e.g., dark green) which will help to integrate them into the surrounding landscape. As stated above a colour sensitive to the National Landscape will be sought through a conditioned.
- 7.4.66. It needs to be the size proposed in order to deliver its substantial energy benefits. It is acknowledged by the applicant and the Council that there will be some landscape harm but this does not mean that the scheme should automatically be refused. The landscape harm needs to be weighed against the benefits of the scheme. This is set out in the relevant section below.

7.4.67. Summary of Landscape Impact

- 7.4.68. There would be an inevitable adverse change in the existing land cover of the site. Aside from the presence the overhead lines and pylons the proposal would reduce the existing sense of openness and cause some landscape harm – although this would be reversed on decommissioning. The PRoWs would be retained although some change would be brought about through the proposed planting in which some cases would alter the experience of the user by the removal of the open character that is currently experienced.
- 7.4.69. Overall, there would be a beneficial effect on landscape elements within the site, and the effect on openness would be reversed after 40 years.
- 7.4.70. The site itself is not a valued landscape in NPPF terms and that it is not designated for its landscape beauty. The Kent Downs National Landscape itself (beyond the site) would be unchanged with the proposed solar farm in place. However, there would be some adverse impact to the setting of the National Landscape which is likely to remain or at best drop to a moderate adverse effect despite the proposed mitigation.
- 7.4.71. That being said, presence of the M2 motorway, the existing power lines and pylons as detracting factors need to be taken into account along with the fact that the

proposal is temporary, albeit for 40 years, and the site would be restored (with the exception of the DNO substation) in accordance with a decommissioning plan which is to be conditioned.

7.5. Public Rights of Way

- 7.5.1. The site is crossed by a number of PRoWs. Footpath ZR137 is aligned north east south west and is located along the site access; Footpath ZR138 is aligned north-south between Oad Street and the southern site boundary and forms the boundary of two fields. It then connects with Vigo Lane to the east, running along the southern site boundary. Footpath ZR169 also forms the boundary between two fields and provides a connection between Wrens Road, and Primrose Lane to the east of the site.
- 7.5.2. There is also a bridleway, ZR134, which is aligned north-south through the site between Sutton Baron Road and the southern site boundary. It forms the boundary between two fields. It then connects to Wrens Road to the east along the southern site boundary.
- 7.5.3. It is proposed to retain all footpaths and bridleways that cross the site allowing continued access throughout the operation of the solar farm.
- 7.5.4. It is also proposed to manage the construction to minimise impacts on footpaths to allow continued public access.
- 7.5.5. The KCC Public Rights of Way has reviewed the application. Following initial concerns raised, the applicant prepared a response to the points with a plan showing the Proposed Construction Phase Site Access Arrangements Strategy.
- 7.5.6. One of the main concerns was around the use of the site access which crosses footpath ZR137 during the construction period. Clear signage is proposed for users of PRoW routes affected and clear signage for construction traffic, along with a banksman which would be conditioned.
- 7.5.7. Another concern raised relates to the location of the construction compound adjacent to the footpath and the impact on users of the PRoW in terms of the experience. It has been highlighted in the applicant's responses that the impact is temporary as it is only required for the construction period and that the compound requires a location near to the site access to deposit materials.
- 7.5.8. Concern has also been expressed with regard to the location of the substation by footpath ZR138, the CCTV and the lighting columns. The CCTV is required for security purposes and to provide adequate coverage of the site. It is not to be directed over PRoWs. During operation of the solar farm, lighting is only proposed to be used if necessary during maintenance. A condition is proposed to control this.
- 7.5.9. The location of the substation has been given significant consideration. It was felt that in the proposed location it would be screened from the PRoW by fencing and hedgerow planting. Fast-growing planting or temporary measures are proposed for the initial years of operation. Again, this would form part of a suite of conditions.

- 7.5.10. In relation to any adverse impact from noise, a noise assessment has been submitted as part of the application and the proposal has been reviewed by the Environmental Protection Officer who has raised no objection to the proposal in this regard.
- 7.5.11. Questions over the width of PRoWs have been raised. The PRoW has requested the PRoW routes to be a 10m corridor with 2m either side of a PRoW route or at least a minimum of 7m.
- 7.5.12. The applicant has confirmed that the PRoW routes meet, and in some cases exceed the minimum width requirement that the current landowners/tenants should avoid cultivating to keep the PROW accessible. The increased width of the PROW network would be improved along parts of ZR138 and ZR134 through the establishment of hedgerows to a width of 7m (12m wide with hedgerows either side managed to be 2.5m wide), which has been considered in response to such comments wanting to see a wider network.
- 7.5.13. The applicant has advised they are not in a position to offer wider networks than is proposed, as the expansion of PROWs further would consume land for that is proposed to be occupied by solar panels and the further reduction would reduce the output of the solar farm.
- 7.5.14. It is considered that as the proposal provides a compromise and meets the minimum width suggested, it is acceptable.
- 7.5.15. The PRoW Officer considers that the additional planting and/or mesh fencing proposed to provide screening along the M2 motorway (set out below in the Glint section) gives weight to the request for wider PRoW routes stating that the user experience will be one of being channelled between the motorway fencing and solar panels resulting in a loss of amenity.
- 7.5.16. This point is taken onboard, in the consideration of this application (Landscape and Visual Impact section) and it is agreed that there will be a degree of loss of amenity for the users of this route. The effect on the PRoW network will be considered in the balance against the benefits of the proposal.
- 7.5.17. Having reviewed the current proposals in relation to PRoWs, the KCC PRoW Officer responses, it is considered that whilst there is degree of negative impact on the PRoW in terms of the experience of the user, such as the loss of feeling of openness and channelling to part of the PRoW network along the M2 motorway, the proposal is temporary, albeit for 40 years, and offers significant benefits which are considered in the planning balance as set out below.
- 7.5.18. It should be noted a request was made for a financial contribution as it was viewed that the proposal provides an opportunity to improve the PROW network and develop new links and to provide safe alternatives to existing on-road routes. It is stated within the request that the public benefits would help compensate for any disruption caused by the construction and the negative effects on the PROW network.
- 7.5.19. The applicant has not agreed to the contribution for improvement to the surrounding network of PRoWs as they are not directly affected by the proposal and a PRoW

Management Plan will form part of the Landscape Environmental Management Plan (LEMP).

- 7.5.20. As with any planning application, the request for financial contributions needs to be scrutinised in accordance with Regulation 122 of the Community Infrastructure Regulations 2010 (which were amended in 2014). These stipulate that an obligation can only be a reason for granting planning permission if it is:
 - Necessary
 - Related to the development
 - Reasonably related in scale and kind
- 7.5.21. No figure has been provided with the request for contribution and as such it cannot be assessed as to whether it is reasonably related in scale. The reason behind the request for a contribution is given as the project providing an opportunity to improve the PRoW network and develop new links for connectivity across the network and that provide alternatives to existing on-road routes.
- 7.5.22. However, in consideration of all the tests, given the nature of the proposal, the development itself will not give rise to an increase in users and as stated above a PRoW Management Plan will form part of the LEMP which will address those PRoWs route directly affected. It is therefore agreed that the request for improvement of the surrounding network is not related to the development and is also not necessary to make in acceptable in planning terms.

7.6. Transport and Highways

- 7.6.1. 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."*
- 7.6.2. 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."
- 7.6.3. 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.
- 7.6.4. The application is supported by a Transport Statement which has been reviewed by KCC Highways and National Highways. Further details were requested by KCC Highways, particularly regarding management and timing of deliveries and the passing points available within the internal access road.
- 7.6.5. KCC Highways noted that the anticipated 76 (two way) vehicle trips to be made daily during the construction phase (5 months) for on-site staff and HGV movements and that that the day-to-day traffic movements associated with the solar farm once construction is complete is likely to be infrequent trips for servicing.

- 7.6.6. KCC Highways is satisfied that the construction access is sufficient to accommodate an articulated vehicle to turn into and out of the site and now, following the submission of the requested further information, they are able to confirm that the service road leading to the proposed solar farm shows widening to allow HGV's to pass mitigating the need for stationary traffic on Oad Street should a vehicle be exiting the site at the same time as one arriving.
- 7.6.7. As noted by the vehicle trips, the main impact is during construction. The applicant has provided some details regarding the management of deliveries to ensure that these movements do not conflict with the network peak hours, however, further details regarding how this will be managed will need to be submitted in a Construction Management Plan. Oad Street is narrow in nature with little passing places, it may not be wide enough for HGVs to pass in opposing directions. Timing of deliveries and a strategy to manage this will need to be considered.
- 7.6.8. National Highways initially issued a holding objection expressing concern with regard to the collision analysis not covering the junction of Oad Street with the A249 and in relation to Glint and Glare (covered in the Glint section).
- 7.6.9. The Applicant submitted a Technical Note to address the comments raised by National Highways. In relation to collision analysis, the Technical Note provides data covering the period time as requested by National Highways. The improvements around the M2 junction 5 includes the improvement of the junction of Oad Street with the A249 by way of a roundabout arrangement which is considered to improve safety.
- 7.6.10. KCC Highways are of the view that providing a construction phase strategy is in place to manage deliveries, the development will not generate a severe impact on the highway network. Consideration will need to be had regarding routing to the development to ensure this is carried out via A249. A condition is recommended to secure a Construction Transport Management Plan to incorporates these details.
- 7.6.11. National Highways are also satisfied sufficient information has been provided to address the concern with regard to collision analysis.
- 7.6.12. Subject to the recommended conditions, the proposal would not result in a harmful impact on highway safety, nor would the residual cumulative impacts on the local road network would be severe. The proposal is considered acceptable in terms of the impact on the local highway and in accordance with Policy DM6 of the Local Plan and the NPPF.
- 7.6.13. The impact of glint on users of the strategic network is considered in the Glint section below.

7.7. Glint

7.7.1. A separate document has been submitted to show the potential effects from glint. Glint, glare and dazzle are often used interchangeably but are defined in the submitted report is as follows:

- Glint Also known as a specular reflection is produced as a direct reflection of the sun on the surface of the solar panel. It occurs with the reflection of light from smooth surfaces such as glass, steel, and calm water.
- Glare A scattered reflection of light. Glare is significantly less intense than glint and is produced from rougher surfaces such as concrete, tarmac, and vegetation.
- Dazzle An effect caused by intense glint and glare, which can cause distraction, and if strong enough reduce the ability of the receptor (pilot or otherwise) to distinguish details and objects.
- 7.7.2. The submitted report focusses on assessing glint due to the intensity being much higher that glare.
- 7.7.3. The Glint Assessment primarily assessed the potential effects on roads, dwellings, national trails and PRoWs but also included a high-level assessment of the effect on aviation and the cumulative effect.

<u>Roads</u>

- 7.7.4. The site is situated immediately to the north of the M2. A large proportion of the site is screened by existing foliage located on the verge of the motorway. However, the existing screening does have some gaps where there is some visibility to areas where panels would be located.
- 7.7.5. The applicant's analysis indicated a driver may witness yellow glint (yellow glint is medium intensity glint that has some potential to cause a temporary after image) which could cause a brief disruption to their view of the road.
- 7.7.6. Mitigation is proposed in the form of planting to be provided within the application site ownership boundary, adjacent to the highway verge to infill these gaps.
- 7.7.7. Following their review of the initial document, National Highways raised concerns regarding the impact from glint on users of the M2 motorway and sought to obtain the advice from a Specialist. Following a review of the application from their Specialist, National Highways requested further information in the form of more evidence to support the findings set out in the submitted Glint Assessment, to clarify inconsistencies of the route receptors on the software used and to provide clarification regarding the temporary screening.
- 7.7.8. In light of the concerns raised and following meetings between National Highways, the applicant team and the Case Officer, further information was submitted in the form of a Technical Note which set out details of the proposed screening, the result of the methodology check used for analysis and potential impact prior to mitigation.
- 7.7.9. Additional temporary measures are suggested to further mitigate concerns until the planting has sufficiently matured. The temporary measures proposed are the installation of a mesh fence to obscure and break up any potential glint from the panels with areas of fast-growing or mature planting. The dimensions of the screening are set out in the Technical Note and have been derived using a methodology set out in the Technical Note. It is recommended that a mix of fenced screening and fast-growing planting be used.

- 7.7.10. An assessment of the impact of glint was re-run using a different methodology as requested by National Highways. The Technical Note sets out the results of this. It also explains the difference between the two models used and the issues of the modelling requested to be used by National Highways. For example, that the model assumes a driver having a 360-degree field of vision, that there is no vegetation in place at all, thus providing absolutely no screening and that the sun is always shining.
- 7.7.11. Following on from the modelling, the potential impacts of the proposal prior to mitigation is also set out in the Technical Note. Again, it should also be noted that the results are based not only on there being no mitigation planting, but also the absence of any existing planting.
- 7.7.12. National Highways, along with their Specialist, have reviewed the Technical Note and are satisfied with the modelling results and impact set out and that the proposed mitigation in relation to glint is appropriate.
- 7.7.13. National Highways have removed their objection to the proposal subject to the imposition of a condition to ensure the implementation of the glint mitigation, for a Construction Environment Management Plan to be secured and for a Decommissioning Traffic Management Plan to be secured.

Residential

- 7.7.14. The assessment takes the worst-case scenario in terms of the potential for an effect on residential properties as it doesn't take account of existing screening features such as trees, hedgerows, buildings, intervening topography, and other obstacles which will reduce the dates, times, and durations of when glint is predicted to occur.
- 7.7.15. Nine properties have the potential to be impacted by glint. The glint that would potentially be experienced at five of these properties is low intensity (green) glint which doesn't have the potential to form an after image. The remaining four properties have the potential to experience some green glint and some medium intensity (yellow) glint, which can form a temporary after image.
- 7.7.16. Given that the potential for glint is likely to already be reduced by existing screening features on the ground and that mitigation is proposed in the form of further landscape screening which is to be secured by condition as part of an overall Landscape Scheme, it is considered there would be no adverse impact on the residents of the surrounding properties from glint.

National Trails and PRoWs

- 7.7.17. The nearest National Trail to the site is the North Downs Way which lies approx. 6km from the site at its nearest point. At this distance, glint from the application site will not have an impact.
- 7.7.18. There are a number of PRoWs within and in close proximity to the application site. These include footpaths and bridleways that cross the site and as well as some running adjacent to the site boundary.
- 7.7.19. The perimeter planting proposed around the arrays will provide effective screening for almost all of these PRoWs and prevent direct visibility to glint producing solar panels. If effects of glint are visible, the effect will be similar to walking besides a

body of water with the sun glistening on it. In addition, the proposed solar panels have no moving parts that would potentially startle horses.

7.7.20. Glint is not expected to have a material impact on horse riders or other users of the PRoWs who travel along these routes.

Aviation

- 7.7.21. The closest aerodrome to the site is Frinsted which is 5.34km south of the site. The other aerodromes identified within 15km of the site were Barhams Mill Farm Airstrip which is approx. 14.5km southwards; Farthing Corner and Rochester Airport which are 5.72km and 12.38km northwest respectively. No air traffic control towers are present for any of the aerodromes.
- 7.7.22. Glint effects were modelled for critical flight times (2-mile final approach paths) at each runway of the aerodromes. Of the flight paths analysed, none of the aerodromes were predicted to receive glint. Glint is therefore not expected to have a material impact on light aircraft at this airfield.

Cumulative Effects

7.7.23. There are several other sources of reflection in the vicinity of the proposed site so there is a potential for cumulative glint effects to be received by receptors surrounding the site. This proposed solar development was modelled and analysed in conjunction with the proposed fixed panels at Bobbing Solar Farm, Orchard Farm, and Iwade Solar Farm. There were no cumulative effects for any of the following receptors: local properties, national trails of PROW, railways, roads or aerial receptors.

<u>Summary</u>

7.7.24. Given the mitigation proposal, the development of the solar farm would not result in harm as a result of glint. Subject to conditions securing the mitigation measures, the proposal is considered to be in accordance with Policies ST1, CP4, DM6, DM14 and DM24 of the Local Plan and the NPPF.

7.8. Ecology

- 7.8.1. 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.
- 7.8.2. 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 NPPF 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.'

- 7.8.3. National planning policy aims to conserve and enhance biodiversity and encourages opportunities to incorporate biodiversity in and around developments. Under the Natural Environment and Rural Communities Act (2006), "every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of these function, to the purpose of conserving biodiversity".
- 7.8.4. 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.
- 7.8.5. The application is supported by a Preliminary Ecological Appraisal Report, Biodiversity Offsetting Assessment, Breeding Bird Survey and a Wintering Bird Survey has been submitted.
- 7.8.6. Without mitigation, the proposed development has the potential to impact ecology. The initial consultation response from KCC Ecology, requested further information be submitted in relation to mitigation strategies, additional survey work and the BNG Defra Metric. Following receipt of further information, KCC Ecology are satisfied that sufficient information has been submitted to adequately assess the impact on ecology.
- 7.8.7. Farmland Birds
- 7.8.8. The result of the Breeding Bird Survey indicates a total of 33 species were recorded within the site which included species of Principal Importance, and Red and Amber List species.
- 7.8.9. Skylark:
- 7.8.10. The proposals will result in coverage of most of the site with the solar array, with the exception of limited areas of species-rich grassland, hedgerow and woodland/tree planting at the boundaries. Relative to the existing open arable fields, grassland areas will be enclosed by the solar array and hedgerows/trees and are therefore unlikely to provide suitable nesting habitat for skylark, resulting in a net loss of territories. This species has been shown to feed and sing within solar arrays, but evidence of breeding has only been recorded on one occasion within field margin habitat.
- 7.8.11. Whilst there will be a net loss, it is acknowledged that the number of territories is relatively low, and that the proposed habitat creation has potential to increase the food resources for a range of breeding and wintering birds including skylark and linnet. Suggestions that the increased food supply will increase the number of skylark territories that adjacent fields can support requires further investigation, as does the possibility that skylark currently nesting within the site will adapt to nest within / adjacent to the solar array. The applicant has responded positively to a request to undertake long term monitoring to gain further evidence on this aspect. This will be secured by condition.
- 7.8.12. On this basis, KCC Ecology advise that, as compensation for the loss of habitat for breeding birds, a long-term breeding bird monitoring programme is implemented as part of a Landscape and Ecological Management Plan (LEMP). This will include periodic submission of monitoring reports to the local planning authority under a separate condition. As with the original surveys, fields adjacent to the development site will be included within monitoring surveys where access is available.

- 7.8.13. Linnet and Yellowhammer:
- 7.8.14. Mitigation is to be provided to ensure continued provision of arable seed resources within the site. For example, the provision of 20m strips of arable weed / crop planting within boundary areas. Proposals for the location, size and management of these areas should be included within the LEMP which should be secured by condition. Suitable nesting habitat for these species has already been proposed within the field margins.
- 7.8.15. Schedule 1 species:
- 7.8.16. A pair of peregrine falcons and Fieldfare were observed and recorded. It is therefore advised that a Biodiversity Method Statement (to inform the CEMP (Biodiversity)) be secured by condition and that it includes an updated site walkover during the breeding bird season and to outline mitigation measures should this species be recorded nesting within the site.
- 7.8.17. <u>Wintering Birds</u>
- 7.8.18. Surveys were undertaken which were designed to focus on identifying any qualifying species of the designated sites, and to identify whether the site qualified as functionally linked land (FLL) with regards wintering birds.
- 7.8.19. The report concludes that the application site is of at least Local value for wintering birds, predominantly by farmland passerine birds and gull species, and concludes "*no evidence of the regular presence, or presence of flocks of species associated with the coastal conservation sites was recorded, and hence no impacts to the coastal conservation sites will result from the development proposals*".
- 7.8.20. KCC Ecology agree with this conclusion and no further information is required regarding wintering birds or functionally linked land.
- 7.8.21. Precautionary mitigation measures will need to be implemented and it is recommended that this be secured by the condition securing the submission of a Biodiversity Method Statement.
- 7.8.22. Badgers
- 7.8.23. Two active badger setts have been identified on the site and suitable mitigation has been outlined. Given that there is a possibility of works being required within the buffer zone and the potential need for temporary sett closure it is advised that a Badger Mitigation Strategy is submitted with details of how any need for sett closure, licensing and associated mitigation will be achieved. This information should be submitted for approval as part of the Biodiversity Method Statement condition.
- 7.8.24. Hazel Dormouse
- 7.8.25. Five sections of hedgerow totalling approx. 40m will be removed. The Dormouse Conservation Handbook details that a maximum of 100m of hedgerow can be removed using displacement/persuasion, and as such KCC Ecology agree that this work can potentially be completed under a non-licensed method statement, to be secured by condition.

7.8.26. It is agreed that precautionary mitigation measures will need to be implemented in relation to hazel dormouse and that this should be secured as part of the Biodiversity Method Statement condition.

7.8.27. Biodiversity Net Gain

- 7.8.28. Defra Metric calculations and a Biodiversity Offsetting Assessment has been provided.
- 7.8.29. The proposal is expected to result in a net habitat unit change of 236.60 habitat units, which represents a 190.54% net gain, and a net linear unit change of 50.53 hedgerow units, or 299.32% net gain.
- 7.8.30. The BNG assessment demonstrates the potential to achieve a significant positive outcome for habitats. It is expected that this habitat creation and enhancement will be achievable given the proposed use as a solar farm.
- 7.8.31. As part of the management review detailed within the LEMP, BNG monitoring should also be secured by condition, to monitor actual net gain resulting from the development.
- 7.8.32. Subject to the suggested conditions, the proposal is in accordance with Policies CP7 and DM28 of the Local Plan and the NPPF.

7.9. Heritage

- 7.9.1. Any planning application for development which will affect a listed building or its setting must be assessed in accordance with the requirements of section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. This requires a local planning authority to have special regard to the desirability of preserving the building or its setting or any feature of special architectural or historic interest which is possesses.
- 7.9.2. A similar duty exists where the proposed development will be within a conservation area where section 72 of the same Act requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
- 7.9.3. The NPPF 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 at Policies CP8 and DM32.
- 7.9.4. There are no listed buildings within the application site, nor is the site within a conservation area. However, there are both listed buildings and conservation areas nearby as described above.
- 7.9.5. A detailed Archaeological and Heritage Statement has been provided in support of the application. The Heritage Statement concludes that in relation to the built

heritage, the potential adverse impacts are restricted to change within the setting of the Grade II listed to Sutton Baron House and Sutton Baron Hall, located to the north of the site. This would be limited to changes to the wider setting of the asset as a result of changing the use of historically associated agricultural land. The assessment has, however, concluded that the potential adverse impact to this asset would equate to 'less than substantial harm' to its significance.

- 7.9.6. 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.
- 7.9.7. The Council's Heritage Officer has reviewed the Archaeological and Heritage Statement and agrees with the conclusion.
- 7.9.8. The Grade II listed Sutton Baron House and Sutton Baron Hall are part of group of historically and functionally associated buildings. Sutton Baron House and Sutton Baron Hall are the principal buildings of the group.
- 7.9.9. The immediate setting of the House comprises its ancillary, associated buildings. This immediate setting contributes to the assets significance. The wider setting also makes some contribution to the significance of the assets, this is particularly associated with the land to the south of the asset which is historically owned and farmed by Sutton Baron.
- 7.9.10. The Heritage Officer raises no objection to the proposal subject to effective landscape mitigation which is to be secured by condition. Appropriate management of the landscape mitigation is also required and can be secured by condition.
- 7.9.11. On this basis and in consideration of the NPPF, harm to significance should be balanced with due regard to the public benefits of the proposals, the need for renewable energy sources and supply and the ability of the site to contribute towards this delivery.
- 7.9.12. The public benefits offered by the proposed scheme include the following:
 - Creating employment including construction jobs, as well as solar farm maintenance jobs.
 - Paragraph 85 of the NPPF advises that **significant weight** should be placed on the benefit a scheme offers in supporting economic growth and productivity.
 - Helping to fight against climate change by decreasing the proportion of grid energy that is produced from fossil fuels, potentially offsetting the average annual UK electricity consumption of approximately 11,550 houses per annum.
 - Paragraphs 157 and 163 of the NPPF advises the planning system should support renewable and low carbon energy and associated infrastructure.
 Substantial weight is attached.
 - Renewable energy using modern technology (which use less area to produce higher amounts of electricity.

- Paragraphs 157 and 163 of the NPPF advises the planning system should support renewable and low carbon energy and associated infrastructure.
 Substantial weight is attached.
- Energy Security Will contribute towards an independent, secure energy supply in the UK (which is particularly necessary in the current geopolitical climate).
 - Paragraphs 157 and 163 of the NPPF advises the planning system should support renewable and low carbon energy and associated infrastructure.
 Substantial weight is attached.
- Diversification of Farm Business The proposal would allow for effective utilisation of agricultural land and ensure the landowner has a secure supply of income to reinvest in their agricultural business.
 - Paragraph 89 of the NPPF supports sustainable growth and expansion of all types of business in rural areas as well as the development and diversification of agricultural and other land-based rural businesses. Moderate weight is attached.
- The resting of agricultural land which will potentially improve soil health to the benefit of future cultivation activities.
 - Paragraph 180 of the NPPF recognises the benefits of best and most versatile land (BMV). The site does not comprise BMV. Leaving it fallow may improve the soil quality. Limited weight is attached.
- Biodiversity Net Gain Provision of biodiversity net gains within the site of 190.54% for habitats and 299.32% for hedgerow units.
 - Paragraphs 180 and 185 support the provision of net gains for biodiversity. Given the level of gain proposed, **significant weight** is attached.
- Landscape Enhancements The planting of new native hedgerows and trees, alongside gapping up existing hedgerows. These improvements will endure beyond the operational phase of the solar farm.
 - The proposed landscape improvements are primarily provided to mitigate the appearance of the solar farm. **Limited weight** is attached.
- 7.9.13. 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 having placed great weight and importance on the fact that less than substantial harm would potentially be caused to the setting of Grade II listed to Sutton Baron House and Sutton Baron Hall. However, in this case the benefits are considerable and clearly outweigh the harm. Officers are of the view that the proposals comply with Local Plan Policies CP8 and DM32 and the provisions of the NPPF.

7.10. Archaeology

- 7.10.1. The NPPF sets out that where development has the potential to affect heritage assets with archaeological interest, LPAs should require developers to submit an appropriate desk-based assessment, and where necessary, a field evaluation.
- 7.10.2. Policy DM34 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.

- 7.10.3. An Archaeological and Heritage Statement (AHS) has been submitted with the application which has been reviewed by KCC Archaeology who advises that the archaeological potential for remains of prehistoric and Roman date within the site is high and the geophysical survey suggests particular concentrations may be identified though individual features and interpretation remains tentative.
- 7.10.4. The AHS sets out the potential development impacts based on general assumptions on potential significance. KCC Archaeology have performed their own analysis of the development impacts and conclude that overall the ground disturbance from the development proposal is not substantial and can be readily adjusted to reduce impact where necessary.
- 7.10.5. KCC Archaeology are satisfied that the potential impacts of the scheme can be appropriately addressed through further assessment, evaluation and design that can be secured through a condition.
- 7.10.6. A condition for a staged programme of archaeological assessment, evaluation and mitigation is included is recommend for any forthcoming planning permission and with such a condition in place, the proposal is in accordance with Policy DM34 of the Local Plan and the NPPF.

7.11. Flood Risk, Drainage and Surface Water

- 7.11.1. The NPPF states that local planning authorities should ensure that flood risk is not increased elsewhere and that any residual risk can be safely managed. This is reflected in Policy DM21 of the Local Plan.
- 7.11.2. The site is located within Zone 2 Groundwater Source Protection Zone, therefore the Environment Agency (EA) has been consulted. The EA confirm that the development can be granted planning permission subject to conditions. The conditions required by the EA relate to infiltration and are included below.
- 7.11.3. KCC Flood and Water Management have reviewed the submitted Flood Risk Assessment and raise no objection. KCC state that they would expect the swales to be built to accommodate the worst-case scenario as presented within the Surface Water Storage Calculations (Appendix 2) which would result in 35m3 of storage provided for substation areas and 228 m3 for the access track. However, it is noted that this would be likely to change following infiltration testing and therefore a condition is suggested to confirm final arrangements.
- 7.11.4. KCC Flood and Water Management also request a condition to ensure ground investigations are carried out with soakage tests compliant with BRE 365, notably the requirement to fill the test pit three times and should be at the location/depth of proposed infiltration features. Detailed design required by condition should utilise a modified infiltrate rate and demonstrate appropriate half drain times.
- 7.11.5. It is also expected that the drainage system be modelled using FeH 2013 rainfall data in any appropriate modelling or simulation software. Where FeH data is not available,

26.25mm should be manually input for the M5-60 value, as per the requirements of our latest drainage and planning policy statement (November 2019). This will also be captured by the conditions.

7.11.6. Subject to the recommended conditions being attached to any forthcoming planning permission, the proposal is considered acceptable and in accordance with Policy DM21 and the NPPF.

7.12. Contamination

- 7.12.1. 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.
- 7.12.2. A Phase 1 Land Contamination Assessment has been submitted with the application which has been reviewed by the Environmental Protection (EP) Officer who states that the Assessment is satisfactory and concludes a low risk.
- 7.12.3. As a precautionary approach, the EP Officer recommends radon protection measures are provided which should form part of any structure. This is to be secured by condition. Any previously unidentified contamination found during construction can also be dealt with by condition.
- 7.12.4. Subject to the imposition of the suggested condition, the proposal is in accordance with the NPPF.

7.13. Air Quality

- 7.13.1. 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.
- 7.13.2. The NPPF and Policy DM6 of the Local Plan seek to ensure that the effects of air pollution and the potential sensitivity of the area to its effects are taken into account in planning decisions.
- 7.13.3. The application has been reviewed by the Council's Environmental Protection Officers in relation to any potential impact in relation to air quality. No objection is raised in this regard.
- 7.13.4. The proposal is considered to be in accordance with Policy DM6 of the Local Plan and the NPPF.

7.14. Living Conditions

7.14.1. The NPPF and Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers.

- 7.14.2. The visual impact and the impact of glint has been considered above. Given the distance of residential properties from the compounds on the site where small structures/buildings would be located, it is considered there would be no harm to living conditions in terms of loss of light, outlook and overshadowing. This section therefore relates to the potential effect on living conditions from noise, dust and vibration.
- 7.14.3. The application is supported by a Noise Assessment. The Council's Environmental Protection Officer has reviewed the application in terms of lighting, dust and noise. Further information was requested with regard to the dust management proposals and reporting of complaints as well a request for a plan showing location of compound and equipment.
- 7.14.4. Following receipt of the requested plan and an explanation that a detailed Construction Environmental Management Plan (CEMP) to be secured by condition will cover dust management and the reporting of complaints and, the EP Officer raises no objection.
- 7.14.5. With the inclusion of the recommended conditions requiring the submission of a detailed CEMP covering dust management, construction hours and the reporting of complaints; and details of lighting, the proposal would not result in any adverse impact to nearby residents and the development is in accordance with Policy DM14 of the Local Plan and the NPPF.

7.15. Designing Out Crime

- 7.15.1. The proposed layout includes a gated access point and fencing along all boundaries at a height of 1.9m. Fencing will comprise wire deer control fencing with woodland fence posts. The fencing will include mammal gates to allow for movement of ecology through the site. CCTV and infrared illuminators will be fixed onto a galvanised steel pole at a total height of 3m at intervals to ensure effective coverage. All cameras would be inward facing towards the site and equipment to ensure the security of the site without intruding on any private views.
- 7.15.2. Other than the lighting towers within the substation tower, which would only be used occasionally if required during maintenance no other operational lighting is proposed. The use of lighting can be controlled by condition.
- 7.15.3. Subject to the imposition of such a condition, the proposal is in accordance with Policy DM14 of the Local Plan and the NPPF.

7.16. Decommissioning

- 7.16.1. The development would have a lifespan of 40 years. At the end of the useful life of the facility, it will be decommissioned, and all the associated equipment will be removed and recycled where possible. The land can then be quickly reverted to agricultural use.
- 7.16.2. A decommissioning plan will be required. An Outline Decommissioning Plan has been submitted with the application.

7.16.3. A detailed Decommissioning Plan will be secured by condition.

7.17. Planning Balance – Benefits and Harm

- 7.17.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.17.2. The installation of large-scale solar farms can have a negative impact on the rural environment. As described in the appraisal above, there are some conflicts with Local Plan policy in terms of the significant effects of the development on the Kent Downs National Landscape and the local landscape, the Tunstall Farmlands LCA.
- 7.17.3. However, the visual impact of a well-planned and well screened solar farm can be properly addressed within the landscape if planned sensitively. There are a number of material considerations in this case, several of which should be given significant weight, and which when considered cumulatively are likely to indicate that the benefits of the proposal significantly and demonstrably outweigh harm and that permission should be granted.
- 7.17.4. These benefits need to be weighed against the impacts.
- 7.17.5. Benefits
- 7.17.6. The applicant has advised that it is estimated that the proposed development would generate approximately 40MW of renewable energy, which could provide enough clean renewable energy to meet the equivalent needs of approximately 11,550 homes. It is also estimated that the proposed development would save approx. 8,152 tonnes of CO2 over its 40-year operational period. In accordance with paragraphs 157 and 163 of the NPPF, Local Plan policies and recent appeal decisions, **substantial weight** is attached.
- 7.17.7. Renewable energy using modern technology which use less area to produce higher amounts of electricity. In accordance with paragraphs 157 and 163 of the NPPF and Local Plan policies, **substantial weight** is attached.
- 7.17.8. Energy Security Will contribute towards an independent, secure energy supply in the UK (which is particularly necessary in the current geopolitical climate). In accordance with paragraphs 157 and 163 of the NPPF and Local Plan policies, substantial weight is attached.
- 7.17.9. Biodiversity Net Gains within the site would be 190.54% for habitats and 299.32% for hedgerow unit., In accordance with the NPPF, Local Plan policies and recent appeal decisions, **significant weight** is attached.
- 7.17.10. The creation of employment including construction jobs as well as solar farm maintenance jobs. Paragraph 85 of the NPPF advises that **significant weight** should be placed on the benefit a scheme offers in supporting economic growth and productivity.

- 7.17.11. Diversification of Farm Business The proposal would allow for more effective utilisation of agricultural land and ensure the landowner has a secure supply of income to reinvest in their agricultural business. In accordance with recent appeal decisions, **moderate weight** is attached.
- 7.17.12. The resting of agricultural land which will potentially improve soil health to the benefit of future cultivation activities. Paragraph 180 of the NPPF recognises the benefits of best and most versatile land (BMV). Leaving it fallow may improve the soil quality. **Limited weight** is attached.
- 7.17.13. Landscape Enhancements The planting of new native hedgerows and trees, alongside gapping up existing hedgerows. These improvements will endure beyond the operational phase of the solar farm. The proposed landscape improvements are primarily to provide mitigation for the solar farm. **Limited weight** is attached.

7.17.14. <u>Harm</u>

- 7.17.15. In accordance with recent appeal decisions, the temporary loss of BMV from productive arable farming is of **limited weight**.
- 7.17.16. The adverse impact on landscape character and appearance, particularly in terms of the setting of the Kent Downs National Landscape is significant, perhaps substantial when viewed at certain places within the National Landscape itself. However, this would predominantly be limited as mitigation planting would reduce the impact over time to more acceptable levels, moderate at best as some adverse impacts may remain throughout the operational phase. Given the status of the designation **significant weight** is attached.
- 7.17.17. The visual impact on receptors of the PRoW network is reduced through signage and construction management during the construction phase which is also temporary for a period of approx. 5 months. The mitigation proposals reduce the effect on users of the PRoW during operation phase, but some adverse effects remain, such as loss of openness and therefore **moderate weight** is attached.
- 7.17.18. The moderate adverse impact on dwellings will also be addressed through landscape screening which forms part of the mitigation proposals, as such **limited weight** is attached.
- 7.17.19. The potential for glint upon the users of the M2 motorway is limited and further reduced by the mitigation proposed. **Limited weight** is attached.
- 7.17.20. The impact on protected species on site is addressed through mitigation proposals and therefore **limited weight** is attached.

7.18. Conclusion

7.18.1. In considering the application, account has been taken of the environmental information included with the application submission, the National Planning Policy Framework and the Development Plan, and all other material considerations including representations made including the views of statutory and non-statutory consultees and members of the public.

- 7.18.2. In addition to the benefits and harm set out above, the proposal would not result in harm to the local highway, even during the construction phase given the limited number of vehicular movements; it would result in less than substantial harm in terms of any potential impact on listed buildings but the benefits are considered to outweigh any harm as set out above; the proposal would not result in increased flooding.
- 7.18.3. Both national and development plan policy recognise that large scale solar farms may result in some landscape and visual impact harm. However, both adopt a positive approach indicating that development can be approved where the harm is outweighed by the benefits. This is a matter of planning judgement.
- 7.18.4. In my judgement the impacts of the proposed development can be made acceptable through a combination of topography, existing and proposed screening and landscape and ecological mitigation. The adverse effect on landscape character and visual impact would be limited and localised, even around the Kent Downs National Landscape.
- 7.18.5. In these circumstances the substantial weight attached to the provision of renewable energy on its own would be sufficient to outweigh the limited adverse impacts identified. The other benefits identified add to the balance of positive matters in this case.
- 7.18.6. As the existing and proposed planting matures, any adverse effects, would be progressively mitigated and once decommissioned the scheme would leave an enhanced landscape consistent with the objectives of development plan policy. In these circumstances, whilst there would be some localised harm to landscape character and some visual harm in conflict with some of the relevant development plan policies, the imperative to tackle climate change, as recognised in legislation and energy policy, and the very significant benefits of the scheme clearly and decisively outweigh the limited harm. As such the proposal would accord with Local Plan Policies ST1, DM14 and DM24.

CONDITIONS

<u>Time Limit</u>

1. The development hereby permitted shall be commenced before the expiration of five years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town & Country Planning Act 1990 (as amended).

Drawings

2. The development hereby permitted shall be carried out in accordance with the approved plans listed below.

Drawing Numbers

NT16093/001 Rev A – Site Location Plan NT16093-003 Rev P01 – Proposed Site Plan NT16093-502 Rev P01 – Location Plan NT16093-701 Rev B – Proposed Site Access Arrangements NT16093-LVA 116 Rev B – Landscape Strategy Plan NT16093-001 Rev A – Screening Plan NT16093-126 – Temporary Screening Extent S3843-8312-0002 Rev R1.0 – Typical Fencing Detail S3843-8312-0003 Rev R1.0 – Access Track Detail S3843-8312-0004 Rev R1.0 – Cable Trench Detail S3843-8312-0005 Rev R1.0 – Client Substation Elevations S3843-8312-0006 Rev R3.0 – PV Panels and Elevations S3843-8312-0007 Rev R2.0 – Storage Cabin Elevations S3843-8312-0008 Rev R5.0 – CCTV Layout S3843-8312-0011 Rev R4.0 – 132kV – Substation Layout

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

Temporary Permission

3. The planning permission hereby granted shall be for a temporary period only, to expire 40 years and 6 months after the first export date of the development except for the substation and its ancillary infrastructure, which will remain on the site in perpetuity. Written confirmation of the first export date shall be provided to the Local Planning Authority within 14 days after the event.

Reason: In the interests of the rural character and appearance of the area in accordance with the National Planning Policy Framework, to ensure that the 40-year period is complied with.

Decommissioning

4. Within 6 months of the cessation of the export of electrical power from the site, or within a period of 39 years and 6 months following the first export date, a Scheme for the Decommissioning of the solar farm (with the exception of the substation and its ancillary infrastructure which will be retained), and how the land is to be restored, to include a programme for the completion of the decommissioning and restoration works, shall be submitted to and approved in writing by the Local Planning Authority. The solar farm shall be dismantled and removed from the site and the land restored in accordance with the approved scheme and timescales. The scheme shall also include the management and timing of any works and a Traffic Management Plan to address likely traffic impact issues during the decommissioning period, an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats, and details of site restoration measures.

Reason: In the interests of the rural character and appearance of the area and to ensure no adverse impact on the local or strategic road network in accordance with the National Planning Policy Framework.

Pre-commencement Conditions

Archaeology

5. A) No development shall take place until the applicant (or their agents or successors in title) have secured 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.

B) 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.

C) The archaeological safeguarding measures, investigation and recording shall be carried out in accordance with the agreed specification and timetable.

D) 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.
- E) The measures outlined in the Post-Excavation Assessment Report shall be implemented in full and in accordance with the agreed timings.

Reason: Required prior to commencement to ensure that features of archaeological interest are properly examined and recorded. The objectives and purposes of this condition are such that it is required to be complied with before commencement in accordance with the National Planning Policy Framework.

<u>CTMP</u>

- 6. No development shall take place (including any ground works, site or vegetation clearance) until a Construction Transport Management Plan (CTMP) has been submitted to and approved in writing by the Local Planning Authority. The CTMP shall include the following:
 - 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
 - Provision of measures to prevent the discharge of surface water onto the highway.
 - Use of a bound surface for the first 5 metres of the access from the edge of the highway.
 - Completion and maintenance of the access shown on the submitted plans prior to the use of the site commencing.

- Provision and maintenance of the visibility splays shown on the submitted plans with no obstructions over 0.6metres above carriageway level within the splays, prior to the use of the site commencing.
- (f) Details of safety measures in respect of interaction with Public Rights of Way (PRoW).
 - Signage
 - Details of the approach to repair or reinstatement of any PRoW should this be directly affected.

The works shall be carried out in accordance with the approved details and shall be retained in that manner thereafter for the duration of the construction phase.

Reason: Required prior to commencement of development to ensure no adverse impacts on the local and strategic highway network during construction in accordance with Policies DM6 and DM14 of Bearing Fruits 2031: The Swale Borough Local Plan 2017.

Construction Management Plan (CMS)

- 7. No development shall take place (including any ground works, site or vegetation clearance) until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority. The CMS shall include the following:
 - Construction hours
 - Reporting of complaints
 - Temporary lighting
 - Dust management

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 thereafter be carried out in accordance with the approved CMS.

Reason: Required prior to commencement of development to ensure no adverse impacts on the residential amenity during construction in accordance with Policy DM14 of Bearing Fruits 2031: The Swale Borough Local Plan 2017.

Biodiversity Method Statement

8. No development shall take place (including any ground works, site or vegetation clearance) until a Biodiversity Method Statement which details all precautionary mitigation methods to be implemented for the protection of protected and priority species, including, potential bat tree roosts, badger, hazel dormouse, reptiles, badger, breeding birds (including ground-nesting species) and wintering birds has been submitted to and approved in writing by the Local Planning Authority. The approved Biodiversity Method Statement will inform the Construction Environment Management (Biodiversity) Plan to be submitted under condition 9 and will be based on the information within the Preliminary Ecological Appraisal, Wardell-Armstrong, April 2023, Breeding and Wintering Bird Surveys, Wardell-Armstrong April/June

2023, and the Hedgerow Assessment for Dormouse, Wardell-Armstrong, May 2023. The Biodiversity Method Statement shall include the following:

- A schedule detailing seasonal timing for precautionary works and surveys.
- An update site walk-over within 3 months of commencement to: confirm that the condition/management of the onsite habitats is consistent with that recorded during the ecological assessment, such that the potential for protected species to occur has not changed.
- identify any additional badger setts. Should new setts be identified during the preworks walk over and/or monitoring during the construction period, all required surveys and mitigation/licensing will be implemented prior to further works being undertaken in the vicinity of the sett/s.
- A Non-Licensed Method Statement for hazel dormouse, to include an update nut search survey during the period mid-August December. If dormouse are confirmed prior to or during clearance, all mitigation and licensing will be approved by Natural England prior to the relevant works being undertaken.
- Protection measures to avoid lighting impacts and damage of the Root Protection Area of tree T1 with moderate suitability features for roosting bats.
- Preliminary assessment followed by close-inspection, presence/likely absence surveys and mitigation (as required) of any trees on the fence-line which require removal or pruning for access purposes. Where roosting bats are confirmed, all mitigation and licensing will be approved by Natural England prior to the relevant tree works being undertaken.
- Precautionary methods for reptiles during vegetation clearance.
- Precautionary methods to avoid capture of animals within open trenches and use of temporarily stored materials as refugia.
- Precautionary measures for badger and their setts.
- Procedure to be followed should a protected species be found within the construction area.

The works shall be carried out in accordance with the approved details and shall be retained in that manner thereafter for the duration of the construction phase.

Reason: Required prior to commencement of development to protect habitats and species identified in the ecological surveys from adverse impacts during construction in accordance with Policies CP7 and DM28 of Bearing Fruits 2031: The Swale Borough Local Plan 2017.

CEMP (Biodiversity)

- 9. No development shall take place (including any ground works, site or vegetation clearance) until a Construction Environment Management Plan for Biodiversity (CEMP (Biodiversity)) has been submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall include the following:
 - a) Purpose and objectives for the proposed works;
 - b) Reference to the Biodiversity Method Statement submitted and approved under condition 8;
 - c) The identification of biodiversity protection zones and the use of protective fences, exclusion barriers and warning signs;
 - d) Detailed design(s) and/or working method(s) necessary to achieve stated objectives;
 - e) Sensitive lighting proposal with reference to the Bat conservation Trust's 'Guidance Note 8: Bats and Artificial Lighting 08/23';

- f) Extent and location of proposed works shown on appropriate scale maps and plans for all relevant species and habitats;
- g) Reference to any environmental permits required and any relevant mitigation measures;
- h) Reference to the arboricultural method statement to protect retained trees and hedgerows;
- i) Timetable for implementation, demonstrating that mitigation works are aligned with the proposed phasing of construction;
- i) Persons responsible for implementing the mitigation works, including times during construction when specialist ecologists need to be present on site to undertake / oversee works;
- j) Initial aftercare and reference to a long-term maintenance plan (where relevant);
- k) Disposal of any wastes for implementing work.

The works shall be carried out in accordance with the approved details and shall be retained in that manner thereafter for the duration of the construction phase.

Reason: Required prior to commencement of development to protect habitats and species identified in the ecological surveys from adverse impacts during construction in accordance with Policies CP7 and DM28 of Bearing Fruits 2031: The Swale Borough Local Plan 2017.

<u>LEMP</u>

- 10. No development shall take place (including any ground works, site or vegetation clearance) until a Landscape and Ecological Management (and Monitoring) Plan (LEMP) has been submitted to and be approved in writing by the Local Planning Authority. The content of the LEMP will be based on the information submitted within the Biodiversity Offsetting Assessment, Wardell-Armstrong. The Plan will include the following:
 - Description and evaluation of features to be managed.
 - Constraints on site that might influence management.
 - Aims and objectives of management, in alignment with the Biodiversity Net Gain habitat and condition targets.
 - Details of additional biodiversity enhancements to be provided for priority and red/amber list bird species, bats, hazel dormouse, reptiles and invertebrates.
 - Measures to be implemented to ensure habitat connectivity for protected and priority species (such as badger gates).
 - Appropriate management prescriptions for achieving aims and objectives (including detailed grazing proposals where relevant).
 - Information regarding remedial measures.
 - Precautionary measures for protected species to be followed during operation (E.g. during replacement of damages panels or fencing).
 - Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period, for the 40-year duration of the development.
 - Details of the body or organisation responsible for implementation of the plan.
 - Details of a long-term monitoring program for all habitats (in accordance with the BNG targets) and for breeding birds. The methodology for breeding bird surveys will align with that of the original surveys as documented within the Breeding Bird Survey, Wardell-Armstrong, April 2023 to enable meaningful comparison with the baseline. Locations will be detailed for fixed point photographs to evidence habitat creation/enhancement. A timetable for monitoring surveys will be included. Habitat/BNG and species monitoring including breeding bird surveys will be

undertaken in years 3, 5, 10 and 15. Copies of all monitoring reports, including details of any proposed remedial measures and a timetable for their implementation, shall be submitted to and approved in writing by the Local Planning Authority.

• The LEMP will include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer, with details of the management body(ies) responsible for its delivery.

The LEMP shall thereafter be implemented in accordance with the approved details.

Reason: Required prior to commencement of development to safeguard biodiversity and prevent adverse impacts during and post construction in accordance with Policies DM24 and DM28 of Bearing Fruits 2031: The Swale Borough Local Plan 2017.

Glint and Glare - Temporary Screening

11. No development shall take place (including any ground works, site or vegetation clearance) until the temporary screening areas as per drawing reference NT16093-126 'Temporary Screening Extent' and supporting document '23 502210 FULL-Agent_Response_to_National_Highways-6187272' have been fully installed at the designated sections of the site boundary. The temporary screening shall comprise a mesh fence installed to a minimum height of 7.5m. Once the permanent vegetation screening adjacent to the fence reaches a height of 7.5 metres an assessment which determines whether the vegetation would prevent any glint and glare from the solar farm from affecting users of the M2 motorway should be submitted to and approved in writing by the Local Planning Authority and National Highways. If the results of the assessment find that the vegetation would prevent glint and glare onto the M2 motorway, then the temporary fencing should be removed. Alternatively, if the results find that there would be glint and glare, the assessment must include a timeframe for a further reassessment. The temporary fencing should remain in place until an assessment demonstrates that it is no longer required and then it should be removed.

Reason: Required prior to commencement of development to ensure adequate protection and mitigation for users of the strategic road network and satisfy the reasonable requirements of road safety in accordance with Policy DM6 of Bearing Fruits 2031: The Swale Borough Local Plan 2017.

Landscaping

12. No development shall take place (including any ground works, site or vegetation clearance) until a scheme for hard and soft landscaping of the site in accordance with drawing number NT16093-LVA 116 Rev B – Landscape Strategy Plan (incorporating existing flora and using native species) and including locations adjacent to the M2, A249 and PRoW network and a timetable for implementation has been submitted to and approved by the Local Planning Authority. Hard landscaping details shall include existing and proposed finished ground levels; vehicle and pedestrian access and circulation areas; means of enclosure and all paving and external hard surfacing. Soft landscape works shall include details of planting plans, written specifications (including cultivation and other operations associated with grass and plant establishment, aftercare and maintenance); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate.

The hard and soft landscaping of the site shall be implemented in accordance with the approved details and shall be maintained and managed for the lifetime of the development hereby permitted.

Any trees or plants which within a period of ten years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: To ensure the proposed landscaping and biodiversity enhancements on-site are secured in accordance with Policies DM14 and DM28 of Bearing Fruits 2031: The Swale Borough Local Plan 2017.

<u>SUDs</u>

- 13. No development shall take place (including any ground works, site or vegetation clearance) until a detailed sustainable surface water drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The detailed drainage scheme shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100-year storm) can be accommodated and disposed of without increase to flood risk on or off-site. The drainage scheme shall also demonstrate (with reference to published guidance):
 - That silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters.
 - Appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

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

Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water and to ensure that the development does not exacerbate the risk of on/off site flooding in accordance with Policy DM21 of Bearing Fruits 2031: The Swale Borough Local Plan 2017. These details and accompanying calculations are required prior to the commencement of the development as they form an intrinsic part of the proposal, the approval of which cannot be disaggregated from the carrying out of the rest of the development.

Prior to First Export

<u>Materials</u>

14. Prior to their erection on site details of the proposed materials and finish including colour of all solar panels, frames, ancillary buildings, equipment, and enclosures shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details and be maintained as such for the lifetime of the development hereby permitted.

Reason: To assimilate the apparatus into its surroundings, in the interests of amenity in accordance with Policies DM14 and DM24 of Bearing Fruits 2031: The Swale Borough Local Plan 2017.

Radon Protection Measures

15. Prior to the first export of or storage of energy from the site details of radon protection measures to be incorporated into the infrastructure on site shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details which shall be maintained for the duration of the development.

Reason: To ensure that the development does not present any adverse risk from radon in accordance with Policy DM14 of Bearing Fruits 2031: The Swale Borough Local Plan 2017.

SUDs Verification Report

16. Prior to the first export of or storage of energy from the site a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, shall be submitted to and approved in writing 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.

Reason: To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those risks to controlled waters, property and ecological systems, and to ensure that the development as constructed is compliant with and subsequently maintained pursuant to the requirements of Policy DM21 of Bearing Fruits 2031: The Swale Borough Local Plan 2017.

Infiltration

17. No drainage systems infiltration of surface water drainage into the ground is permitted other than with the written consent of the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution caused by mobilised contaminants in line with the National Planning Policy Framework.

Unexpected Contamination

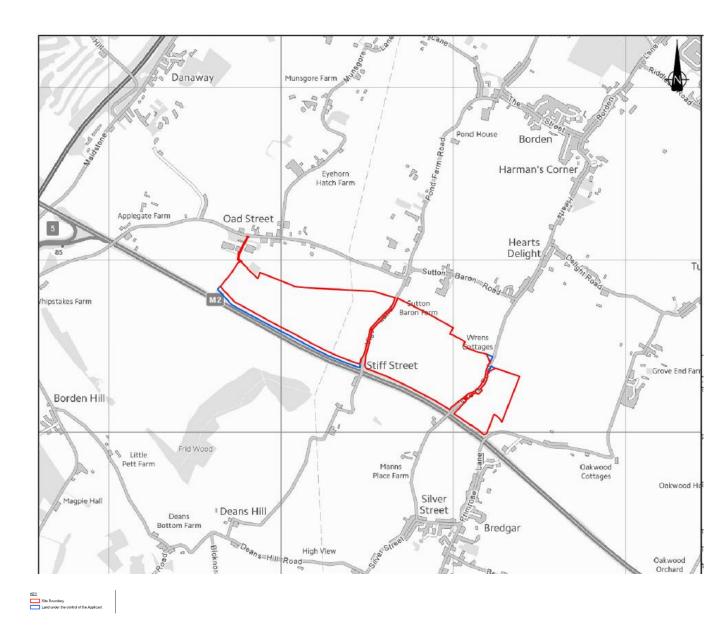
18. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with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

Reason: To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution from previously unidentified contamination sources at the development site in line with paragraph 174 of the National Planning Policy Framework.

External Lighting

19. No external lighting shall be used at the site unless for a temporary period. Should lighting be required, a Lighting Plan detailing the timeframe for which the lighting is required and how any impacts on areas likely to be used by breeding and wintering birds and foraging/roosting bats will be avoided shall be submitted to and approved in writing by the Local Planning Authority. The temporary lighting shall be implemented in accordance with the approved details.

Reason: In the interests of minimising the landscape and ecological impact of the development and the amenity of neighbouring residents in accordance with Policies DM14 and DM24 of Bearing Fruits 2031: The Swale Borough Local Plan 2017.



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Extraordinary Planning Committee

MINUTES of the Meeting held in the Council Chamber, Swale House, East Street, Sittingbourne, ME10 3HT on Tuesday, 6 August 2024 from 7.00 pm - 11.00 pm.

PRESENT: Councillors Mike Baldock (Chair), Andy Booth, Lloyd Bowen (Substitute for Councillor James Hunt), Hayden Brawn, Ann Cavanagh (Substitute for Councillor Kieran Golding), Simon Clark, Elliott Jayes (Vice-Chair), Claire Martin, Ben J Martin, Richard Palmer, Paul Stephen, Terry Thompson, Angie Valls, Karen Watson and Tony Winckless.

OFFICERS PRESENT: Billy Attaway, Paul Gregory, Megan Harris, Joanne Johnson, Guy Martin, Luke Simpson, Carly Stoddart and Ceri Williams.

OFFICER PRESENT (VIRTUALLY): Surinder Atkar.

ALSO IN ATTENDANCE: Councillor Tara Noe.

ALSO IN ATTENDANCE (VIRTUALLY): Councillor Carole Jackson.

APOLOGIES: Councillors Kieran Golding, James Hunt and Julien Speed.

154 Emergency Evacuation Procedure

The Chair outlined the emergency evacuation procedure.

155 **Declarations of Interest**

Councillor Ann Cavanagh declared a Non-Pecuniary Interest in respect of Items 2.1, 2.2 and 2.3, as she was a Ward Member. Councillor Cavanagh said she was not predetermined and took part in the debate for these items.

Councillor Mike Baldock declared a Non-Pecuniary Interest in respect of Items 2.1, 2.2 and 2.3 as he sat on Borden Parish Council. Councillor Baldock said he had not taken part in the Parish Council's discussion on the applications and stayed for the debate of these items.

156 2.1 - 23/505420/REM Land at Wises Lane, Borden

2.1 REFERENCE NO 23/505420/REM

APPLICATION PROPOSAL

Approval of Reserved Matters (Appearance, Landscaping, Layout and Scale sought) for creation of the eastern spine road (Phase 2D), pursuant to 17/505711/HYBRID.

ADDRESS Land At Wises Lane Borden Kent ME10 1GD			
WARD	PARISH/TOWN COUNCIL	APPLICANT Karen Dunn AGENT DHA Planning	
Borden and Grove Park	Borden		

The Planning Consultant introduced the application as set out in the report.

The Chair moved the officer recommendation to approve the application, and this was

seconded by Councillor Andy Booth.

Oonagh Kerrigan, the Agent, spoke in support of the application.

Lee Small, an Objector, spoke against the application.

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

- The officer's report stated that a recommendation was made, following a badger survey carried out recently, but could not see the survey in the officer's report;
- concerned that other organisations and Members did not have sufficient time to read the late survey;
- sought clarity on the location of the roundabout on Borden Lane;
- sought clarity on the path the construction traffic would take to get to the site;
- concerned that the pre-allocated small residential roads of the spine road would predetermine Members at future committees if this application was approved;
- the development was approved three years ago by the planning inspector and it was Members responsibility to make sure the development was suitable for the local area;
- the possible dead-end created by the spine road posed anti-social behaviour issues;
- when did the developer plan to complete the junction improvements?; and
- were there any wildlife crossings within the road networks to allow for suitable migration of the different species on the site?

The Planning Consultant responded to Member's points and said there were no wildlife underpasses on the proposed road networks and the badger survey contained confidential information, which had been shared to all relevant parties, including the Borden Wildlife Group on 31 May 2024 for comments.

The Planning Consultant showed the location of the roundabout proposed for Borden Lane. Councillor Tony Winckless moved the following motion: That an extra condition be included which required the construction traffic to use the new link road at Chestnut Street, Sittingbourne, to access the site rather than using Wises Lane, Sittingbourne. The motion was seconded by Councillor Simon Clark. On being put to the vote, the motion was carried. Councillor Simon Clark requested that haulage firms be told the route they were required to take before any works commenced on the site.

With regards to the residential roads coming off the spine road, the Planning Consultant said the developer would have looked at the location of the roads before submitting the application to ensure that it would take into account the layout for future residential phases. She added that if changes to the location of those roads were to be required when the details were fully worked up, then it was likely it could be dealt with as a non-material or minor material amendment at that time, when the reserved matter application came forward.

The Team Leader (Planning Applications) responded to the points raised about the completion of the junction works and read out condition (26) from the outline consent. The condition read that: No more than 421 dwellings shall be occupied within the development until the spine road between Wises Land and Borden Lane and the roundabout connection to Borden Lane had been constructed to an adoptable standard and made available for public use.

Councillor Tony Winckless moved the following motion: That an extra condition be included which required construction traffic to use the new link road at Chestnut Street, Sittingbourne, to access the site rather than using Wises Lane, Sittingbourne, and that haulage firms be told the route they were required to take before any works started on the site. This was seconded by Councillor Simon Clark. On being put to the vote, the motion was carried.

The Chair was concerned that Members did not have all the information they required to make a decision on the impact the site would have on the badger setts and proposed a site visit should be undertaken for Members to understand the extent of the impact the road would have to wildlife. This was seconded by Councillor Richard Palmer. On being put to the vote, the motion was lost.

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

- Referring to paragraph 5.3 of the officers report, could the Council provide an extra condition that required any changes to the Public Rights Of Way (PROW) order be made available to the public before any changes were made?;
- sought clarity on how the dead-end to Cryalls Lane would be managed;
- the spine road could cause serious problems for the migration of species given that four green spaces would be separated; and
- the applicant should have worked with the local resident groups to conduct the badger survey together to ensure all parties had the necessary expert opinions.

The Planning Consultant responded to the points raised and said that Members could not add such a condition to the PROW diversions, as these were covered by different legislation. However, she advised that an informative could be included.

With regards to the dead-end, she said that the developer had told officers they planned do provide secure fencing before the dead-end, to stop any use of the dead-end until the full connection to Borden Lane, Sittingbourne, was completed.

Resolved: That application 23/505420/REM be approved as per the recommendation in the report with the additional condition as minuted.

157 2.2 - 24/500856/REM Land at Wises Lane, Borden

2.2 REFERENCE NO 24/500856/REM

APPLICATION PROPOSAL

Approval of reserved matters (Access, Appearance, Landscaping, Layout, and Scale sought) for levels and earthworks changes for Phase 2F and the Primary School Land pursuant to 17/505711/HYBRID

ADDRESS Land At Wises Lane Borden Kent ME10 1GD			
VARD PARISH/TOWN COUNCIL APPLICANT Karer		APPLICANT Karen Dunn	
Borden and Grove Park	Borden	AGENT DHA Planning	

The Planning Consultant introduced the application as set out in the report.

Oonagh Kerrigan, the Agent, spoke in support of the application.

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The Chair moved the officer recommendation to approve the application, and this was seconded by Councillor Andy Booth.

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

- Concerned that the works could damage the hedgerows;
- sought assurance from the officer that the land levels would be completed as proposed, as there had been previous applications in the past when the developer had not delivered on what was promised;
- did not understand why the developer needed to level the landscaping in the open space area of the site;
- concerned that changing the levels of the land in the open space area would harm the visual amenity of the site;
- the 'levelling' of the site was not needed for people to walk along the open space as people already walked across those fields;
- could Members agree the change of levels for the school development and not the open space part of the site?;
- the least disruption to the wildlife and natural habitat, the better;
- could a condition be added for the wildlife buffer to be created first, before any 'levelling' of soil took place?;
- thought it was sensible to move soil from one location on the site to another location on the site rather than remove from the site to maintain consistency; and
- had real concerns with the disturbance to wildlife.

The Planning Consultant responded to points raised and explained to Members that condition (44) of the report, referred to the Tree Protection measures that would be put in place to ensure protection of the hedgerows. She added that the applicants' intentions were to provide a more gentle sloping of the open space to make it more accessible for people to use the space and that there was no provision for a sports field to be made.

The Planning Consultant explained that the developer wanted to provide a more gentle slope allowing increased accessibility. It was for the Committee to decide whether the proposal was acceptable in planning terms and whether there was any harm.

The Planning Consultant advised that the application could not be approved in part and refused in part.

With regards to the wildlife buffer, the Planning Consultant explained to Members that this was not something that would normally be added prior to works as it would be difficult for the applicant to protect the new wildlife buffer, whilst the works were being carried out, as the trees and bushes would not have time to mature in their setting. This would usually be something that the applicant would carry out once the disturbance to the ground works had completed.

Councillor Terry Thompson moved the following motion: That an additional condition be added for the wildlife buffer to be created, before the earthwork's construction was started to minimise the impact to the wildlife. This was seconded by the Chair. On being put to the vote, the motion was carried.

Councillor Tony Winckless moved the following motion: That an additional condition be included which required the construction traffic to use the new link road at Chestnut Street, Sittingbourne, to access the site rather than using Wises Lane, Sittingbourne,

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and that haulage firms be told the route they were required to take before any works commenced on the site. This was seconded by Councillor Simon Clark. On being put to the vote, the motion was carried.

The Vice-Chair moved the following motion: That the application be deferred to allow officers to negotiate with the applicant to explore the possibility of re-levelling the land needed for the school site, rather than the open space area of the site. This was seconded by Councillor Richard Palmer. On being put to the vote, the motion was agreed.

Resolved: That application 24/500856/REM be deferred to allow officers to negotiate with the applicant to explore the possibility of re-levelling the land needed for the school site, rather than the open space area of the site.

158 2.3 - 23/502210/FULL Land On Either Side of Vigo Lane & Wrens Road, Sittingbourne

2.3 REFERENCE NO 23/502210/FULL

APPLICATION PROPOSAL

Construction of a solar farm together with control building, switch room, substations and compound, point of connection equipment, store room, access track, security measures, associated infrastructure and works, landscaping and biodiversity enhancements.

ADDRESS Land on Either Side of Vigo Lane and Wrens Road, Sittingbourne, Kent, ME9 8LA			
WARD	APPLICANT Industria Solar		
Borden and Grove Park	Borden	Vigo Ltd.	
		AGENT Wardwell Armstrong	
		LLP	

The Planning Officer introduced the application as set out in the report.

William Mulvany, the Agent, spoke in support of the application.

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

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

- The principle of the application was very good as the Borough needed to create its own renewable energy;
- Concerned that the land lost would be Grade 1 agricultural land;
- there was a real need to think about the future of agricultural farming in the Borough as there was a shortage of it across the country;
- solar farms should only be placed on land that was of lower grade quality, rather than high quality;
- solar farms were a good example of providing clean, greener energy to the residents of Swale;
- concerned with the glares onto the motorway but happy with the mitigations that the applicant had proposed;

- it would take 15 years for the screening to grow and this was too long for solar panels which would be on the site for 40 years;
- this was the wrong location to place solar panels;
- disappointed that the Kent County Council (KCC) Highways and Transportation team had not considered the impact the solar panel glares would have on the Oad Street road, Sittingbourne, as well as the motorway.
- understood that there was a real need for renewable energy, but had concerns with the PROW officer's opinion that the right-of-way could be too narrow for users;
- was not convinced that there was a social and economic value to the site;
- solar panels should be placed on homes, car parks and other buildings in the borough, not on agricultural farmland; and
- 60% of our food was imported and the Council needed to stop the industrialisation of farmland to grow our own organic food in the Borough.

The Planning Consultant advised that the glint was not an issue for Oad Street as the panels were south facing and tilted away from Oad Street.

The Planning Consultant confirmed that the PROW officer's comments in terms of the widths of the PROW were not entirely addressed.

On being put to the vote, the motion to approve the application was lost.

The Chair moved the following motion: That the application be refused and delegated authority be given to officers to agree the wording of the reason(s) for refusal with the Chair and Vice-Chair. This was seconded by Councillor Richard Palmer. On being put to the vote, the motion for refusal was carried.

Resolved: That application 23/502210/FULL be refused as per the reason(s) to be agreed with the Chair and Vice-Chair.

159 2.4 - 24/501424/FULL Flat 3 231-235 High Street, Sheerness

This item was withdrawn from the agenda and it was agreed that officers dealt with the application under delegated powers.

160 2.5 - 24/501489/ADV Parcel G Harps Farm, Thistle Hill Way, Minster

2.5 REFERENCE NO 24/501489/ADV

APPLICATION PROPOSAL

Advertisement Consent for 2no. totem signs, 4no. flags and flag poles, and 2no, fascia signs

ADDRESS Parcel G Harps Farm, Thistle Hill Way, Minster-on-sea, Kent			
WARD	PARISH/TOWN COUNCIL	APPLICANT Jones Homes	
Sheppey Central	Minster-on-sea	(Southern) Ltd	
		AGENT Rosie Dennis (DHA	
		Planning)	

The Senior Planning Officer introduced the application as set out in the report.

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Rosie Dennis, the Agent, spoke in support of the application.

Parish Councillor Tom Nundy, representing Minster-on-Sea Parish Council, spoke against the application.

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

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

- Were the flag poles fixed or operated by a pulley system?;
- developments across the country had signs and flagpoles similar to this proposal so this was something residents started to expect when a new development was being constructed;
- Members needed to be mindful that the Council had lost a recent appeal for advertisements relating to a housing development; and
- could the Council request that the developer offered the used flagpoles to local community groups once they were no longer required so the flagpoles could be repurposed.

The Senior Planning Officer responded to the points raised and said that the flags were in a fixed position. The Team Leader (Planning Applications) stated that a condition could be added, however it would need to be worded in such a way that allowed local groups to be asked as to whether they wanted the flagpoles but did not insist that the flagpoles were re-used, as this would be outside the control of the applicant.

Resolved: That application 24/501489/ADV be approved as per the recommendation and conditions in the report with an additional condition relating to the re-use of the flagpoles.

161 **2.6 - 24/500823/FULL Jimmy G's Amusements, The Promenade, Leysdown**

2.6 REFERENCE NO 24/500823/FULL

APPLICATION PROPOSAL

Continued use of the rear external area for the siting of children's fairground rides and associated attractions, for a temporary period of two years (retrospective).

ADDRESS Jimmy G's Amusements The Promenade Leysdown Sheerness Kent ME12 4QB			
WARD	PARISH/TOWN COUNCIL	APPLICANT Mr Godden	
Sheppey East	Leysdown	AGENT N/A	

The Senior Planning Officer introduced the application as set out in the report.

Councillor Tara Noe, spoke as a Ward Member against the application.

Jeremy Godden, the Applicant, spoke in support of the application.

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

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

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- Two years ago, the Committee had given permission for a temporary permission based on previous complaints from local residents, but yet these complaints were still being made;
- sound barriers had continually been suggested but not installed at the site, could a condition be placed to have sound barriers installed on the site?;
- Leysdown was an area of the Borough that was always vibrant and loud during this time of the year;
- amusement parks in this area provided key income for the local area;
- the applicant needed to work with the planning enforcement officers to better understand the mitigations that could be carried out to the site to limit the noise complaints from local residents;
- the houses that backed onto the amusement park had been there for 10+ years and the business had been operating since the 1950s so the sound levels had always been apparent;
- concerned that local businesses were constantly being controlled by new housing;
- thought that the enclosing of the park would help with the sound issues, but understood an application had recently been refused;
- there were other amusement and arcade parks near the surrounding houses so closing this one down would not affect the noise levels; and
- understood that the amusement park had operating hours of 10 am until 7 pm which was reasonable and that the noise probably came from the surrounding buildings after those hours.

Resolved: That application 24/500823/FULL be approved as per the recommendation and conditions in the report.

162 2.7 - 23/504718/FULL The Vicarage, 101 The Street, Boughton under Blean

2.7 REFERENCE NO 23/504718/FULL

APPLICATION PROPOSAL

Erection of two detached dwellings with solar panels, associated access, parking, landscaping, bin and shed/cycle stores.

ADDRESS The Vicarage 101 The Street Boughton Under Blean Kent ME13 9BG			
WARD	PARISH/TOWN COUNCIL	APPLICANT	Diocesan
Boughton and Courtenay	Boughton under Blean	Enterprises Ltd	
		AGENT Bishops Planning	

The Senior Planning Officer introduced the application as set out in the report.

Parish Councillor Sarah Moakes, representing Boughton-under-Blean Parish Council, spoke against the application.

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

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

• The dwellings should be a similar design to those in the area, rather than the biggest building the developer could fit onto the land;

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- there was a need for more bungalows in the area;
- the proposal was overdevelopment of the area; and
- could the officer clarify whether Strategic Access Management Monitoring strategy (SAMMs) payment had been made.

The Senior Planner confirmed that the SAMMs payment had been made.

In response to a question, the Team Leader (Planning Applications) set out the national and Local Plan policy position upon development within residential gardens and how the scheme had been assessed in relation to the character and appearance of the area.

Resolved: That application 23/504718/FULL be approved as per the recommendation and conditions in the report.

163 **3.1 - 23/505783/FULL Dickens Inn, Fourth Avenue, Eastchurch**

3.1 REFERENCE NO 23/505783/FULL

APPLICATION PROPOSAL

Subdivision of existing first floor flat to create 2no. flats, including erection of a first floor side extension with 2no. dormers and rear roof extension with associated external staircase. Demolition of existing lean-to and pergola, and erection of a single storey side extension to provide public house snack bar.

ADDRESS Dickens Inn, Fourth Avenue, Eastchurch, Kent, ME12 4EW				
WARD	PARISH/TOWN COUNCIL	APPLICANT Mr & Mrs B		
Sheppey East	Eastchurch	Trask		
		AGENT Refine Architecture		

The Senior Planning Officer introduced the application as set out in the report.

Bernard Trask, the Applicant, spoke in support of the application.

The Chair moved the officer recommendation to approve the application, and this was seconded by Councillor Andy Booth.

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

- What was the situation with the recent approval of four holiday cottages that were on the site?;
- the proposal was for a permanent residency, not temporary which was the standard policy required for the designated holiday park area;
- the development met the policy requirements of a public house extension;
- thought that this was a sustainable approach to providing a service to a holiday park;
- made more sense for the flats to home the workers of the public house, rather than the workers travelling to the site;
- could a condition be placed that tied the occupants of the flats to the business use of the public house?
- this was a sensible proposal made by a local business to improve their custom; and
- sometimes the policy did not always apply to every application, and it was the Committee's responsibility to know when it was suitable to go against policy.

The Senior Planning Officer responded and informed Members that the four holiday cottages had been approved in a different application as they were for temporary accommodation rather than permanent residency.

On being put to the vote, the motion to refuse the application was lost.

The Team Leader (Planning Applications) suggested that if Members were putting 'weight' on the benefits of the occupants of the residential unit working at the associated business, then a condition could be imposed requiring there to be a link between the occupant and the business.

The Vice-Chair moved the following motion: That a condition be placed on the application that tied the occupants of the flats to the business use of the public house. This was seconded by the Chair. On being put to the vote, the motion was lost.

The Chair moved the following motion: That the application be approved as it was a legitimate sustainable extension of a public house and it was in line with policies ST6 & DM3, that SAMMs payment be made and delegated authority be given to officers to issue a decision notice with the standard worded conditions. This was seconded by the Vice-Chair. On being put to the vote, the motion was carried.

Resolved: That application 23/505783/FULL be approved subject to SAMMs payment and that delegated authority be given to officers to issue a decision notice with the standard worded conditions.

164 Adjournment of Meeting

The meeting was adjourned at 9.11 pm until 9.27 pm.

165 Extension of Standing Orders

At 10 pm, 10.30 pm and 11 pm Members agreed to the suspension of Standing Orders in order that the Committee could complete its business.

<u>Chair</u>

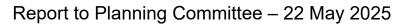
Copies of this document are available on the Council website http://www.swale.gov.uk/dso/. If you would like hard copies or alternative versions (i.e. large print, audio, different language) we will do our best to accommodate your request please contact Swale Borough Council at Swale House, East Street, Sittingbourne, Kent, ME10 3HT or telephone the Customer Service Centre 01795 417850.

All minutes are draft until agreed at the next meeting of the Committee/Panel



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APPENDIX D



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PLANNING COMMITTEE – 22nd May 2025

PART 2

Report of the Head of Planning

PART 2

Applications for which **PERMISSION** is recommended

2.1 REFERENCE NO: 23/504375/FULL

PROPOSAL:

Demolition of vacant hotel and the erection of a freestanding restaurant with drive thru facility, car parking, landscaping and associated works, including customer order display (COD)

SITE LOCATION:

Former Travelodge Canterbury West, London Road, Dunkirk, Faversham, Kent, ME13 9LL

RECOMMENDATION: Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions and the completion of a 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.

APPLICATION TYPE: Minor

REASON FOR REFERRAL TO COMMITTEE: The recommendation is contrary to Dunkirk Parish Council's objection to the application, and the Parish Council has requested that the application is presented to the planning committee.

Case Officer: Luke Simpson				
WARD: Boughton and Courtenay	PARISH/TOWN COUNCIL: Dunkirk		APPLICANT: McDonald's Restaurants Limited AGENT: Planware Ltd	
DATE REGISTERED: 22/09/2023		TARGET DATE : 15/03/2024		
BACKGROUND PAPERS AND INFORMATION: Documents referenced in report are as follows: - • Acoustic Assessment • Biodiversity Enhancement Plan V6 (A6100.011)				

- Biodiversity Enhancement Plan V6 (A6100.01J)
- Odour Control Assessment
- Drainage Maintenance Plan (4230167/CR/003)
- Drainage Statement (MD4230167/HG/001)
- Lighting Impact Assessment Report
- LiAS Design Notes & Luminaire Schedule

- Ecological Lighting Review Letter (dated 24.05.24)
- Sequential Test
- Dormouse Survey Report V2
- Bat Survey Letter (dated 24.05.24)
- Arial Tree Inspection Report (dated 09.09.24)
- Landscape Management Plan Rev E
- Construction Ecological Management Plan V 1:2
- Tree Survey, Arboricultural Impact Assessment, Preliminary Arboricultural Method Statement & Tree Protection Plan in Accordance with BS 5837:2012 (10191)
- Travel Plan (ADL/CC/5648/31A)
- All representations received.

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

https://pa.midkent.gov.uk/onlineapplications/simpleSearchResults.do?action=firstPage

1. SITE LOCATION AND DESCRIPTION

- 1.1 The application site comprises the former Travelodge hotel building and surrounding land, including an open hard surfaced area that in the past has been used as a lorry park and as parking for the Travelodge. The site is located to the rear (south side) of the petrol filling station at the Gate Service Area, Dunkirk; adjacent to the A2 (westbound side), between Faversham and Canterbury. It is situated in the defined countryside, within the Blean Woods South Local Wildlife Site (LWS) and the surrounding woodland is protected ancient woodland and covered by Tree Preservation Orders.
- 1.2 The service area also includes the former Gate Inn, which is a Grade II listed building previously used as a diner, and now in use as a café (Costa Coffee). This property fronts onto the A2 slip road to the east of the petrol filling station forecourt.
- 1.3 The petrol filling station has a shop and is clearly signed from the A2. Access and egress to the A2 is provided by a dedicated slip road extending off the westbound carriageway. This slip road also provides access to a pair of semidetached dwellings situated to the east of the filling station site, and to Brotherhood Woodyard, which lies to the west of the filling station. There is no access to the site from the eastbound carriageway, nor from any other roads.
- 1.4 The site is currently screened from the filling station by fencing and oak trees to the north. Screening is provided along the remaining boundaries by overgrown, mostly non-native vegetation. The large hardstanding of the former parking area for the hotel is overgrown with unmanaged vegetation.

2. <u>PLANNING HISTORY</u>

- 2.1 24/500452/SUB
 Submission of details to discharge condition 3 Details of Site Restoration, Subject to 23/504251/DEMREQ.
 Approved Decision Date: 18.03.2024
- 2.2 23/504251/DEMREQ
 Prior notification for the proposed demolition of existing hotel (Ex-travellodge) building.
 Prior Approval Granted
 Decision Date: 17.10.2023
- 2.3 22/504735/FULL

Reinstatement of car park to rear of Gate Service Station, including new footpath to hotel with associated lighting, fencing and works. Approved Decision Date: 14.04.2023

2.4 20/501601/FULL

Full planning permission for the erection of a new coffee shop (Use Class A1/A3) including drive-thru facility with associated car parking, cycle parking, motorcycle parking, landscaping and associated works. As amended by drawings received on 14th September 2020. Approved Decision Date: 13.11.2020

proved Decision Date: 13.11.2

- 3. <u>PROPOSED DEVELOPMENT</u>
- 3.1 This application seeks planning permission for the construction of a new restaurant (Class E Use) with takeaway drive-thru facility, associated landscaping and parking, following the demolition of the existing hotel building.
- 3.2 The new restaurant would be located on the existing area of hardstanding to the south of the petrol station, with the location of the former hotel building being utilised for parking and landscaping. It would be accessed through the existing service area by the creation of a new access road that would lead to the new parking area, and the drive-thru facility. The new access road is arranged to circulate around the filling station with vehicles entering the site on its eastern side and existing on its western side. Overall, 37 car parking spaces would be provided in addition to 2 disability bays and 4 motorcycle spaces. 4 of these spaces would provide EV charging facilities.
- 3.3 The scheme also includes a small outside seating area to the eastern side of the building, and an enclosed storage and delivery area projecting from the side (southern) elevation of the restaurant building.
- 3.4 The building is of a contemporary flat roofed design and measures approx. 33.02m in width by approx. 14.17m in depth and approx. 5.83m in height. It would be finished with grp roofing and grey and yellow fibre and timber cladding, with the yellow elements arranged in the shape of the applicant's (McDonalds) logo.

- 3.5 An extensive landscaping scheme is proposed, which includes the planting of a significant number of native species along the southern and western edges of the site. A landscaped strip is proposed along the northern boundary to retain a vegetated screen with the filling station. A large area of scrub is also proposed along the eastern boundary of the site. This landscaping scheme forms part of a biodiversity enhancement plan that when combined with the purchasing of 1.63 habitat units for off-site habitat contributions would provide a 10% biodiversity net gain overall.
- 3.6 An electricity kiosk is proposed within the south-eastern corner of the site that measures 2.0m in width by 1.0m in depth and 2.26m in height, and an electric vehicle charging point feeder pillar is proposed towards the north-western corner of the site, measuring 1.75m wide by 0.85m deep and 2.32m high. Both of these structures would comprise green enclosed boxes.
- 3.7 The scheme would result in the loss of 11 category C trees and 1 category B tree from the site. A landscaping scheme has been provided that shows replacement trees and vegetation along the northern, southern and western boundaries of the site.

4. <u>CONSULTATION</u>

- 4.1 One round of public consultation has been undertaken, during which letters were sent to neighbouring occupiers; a notice was displayed at the application site and the application was advertised in the local newspaper. Full details of representations are available online.
- 4.2 2 letters of representation were received in objection to the proposal. Comments were raised in relation to the following summarised matters (full comments are available online):

Comment	Report reference	
The proposal will result in additional	Paragraph 7.6.1 – 7.6.12	
noise, lighting, odour and nuisance that		
will have a detrimental impact on		
neighbouring residential amenity.		
The proposal will encourage littering,	Paragraph 7.6.10 7.6.11	
vermin and antisocial behaviour.		
The proposed use of the site for 24 hours	Paragraph 7.6.5	
will disturb neighbouring occupiers.		
The proposal will exacerbate vehicular	Paragraph 7.5.1 – 7.5.10	
congestion and highway safety		
concerns.		
The proposal will lower property prices.	Paragraph 7.13.1	

4.3 Dunkirk Parish Council objected to the proposed development on the following grounds:

Comment	Report reference
The proposal will result in highway safety issues related to additional traffic in the surrounding area and traffic flow around the service area.	Paragraph 7.5.1 – 7.5.10
The proposal would have an adverse impact on the environment, nature conservation interests and biodiversity.	Paragraph 7.7.1 – 7.7.9
There is no cycle parking provision.	Paragraph 7.13.1
Proposal would give rise to possibility of pedestrians attempting to cross the dual carriageway.	Paragraph 7.13.1
The proposal would damage protected trees and an area of ancient woodland.	Paragraph 7.8.1 – 7.8.6
A full noise / lighting assessment should be carried out.	Paragraph 7.6.3
The proposal would have a detrimental impact upon air quality within this part of the Parish.	Paragraph 7.6.9
The proposal would lead to littering within and around the site, as well as on the A2.	Paragraph 7.6.11
The proposed landscaping plan, in particular the parking area fails to comply with Policy E10 of the Boughton & Dunkirk Neighbourhood Plan.	Paragraph 7.3.6 – 7.3.7
If permission is granted conditions requiring: 1) A Traffic Regulation Order regarding speed and parking along the slip road and consideration given to a restriction to traffic from Brotherhood Woodyard entering the site in conflict with traffic leaving the site; 2) All packaging from the drive through to be printed with a car registration to enable Parish / Borough Council's to identify culprits of littering; 3) Requirement for a discussion with the Parish Council and Officers regarding a S.106 to include benefits to the community.	Paragraph 7.6.11 and 7.13.1

5. <u>REPRESENTATIONS</u>

- 5.1 **KCC Biodiversity Officer** No objection subject to conditions to secure the implementation of recommendations set out within the Preliminary Ecological Appraisal, a habitat management and monitoring plan (offsite) and a landscape management plan (on site).
- 5.2 **SBC Environmental Protection** No objections subject to conditions to secure a remediation plan if any contamination is found during construction.

- 5.3 **KCC Highways** No objection subject to conditions to secure a construction management plan, the provision and permanent retention of vehicular parking, the installation of electric vehicle charging, and the provision and retention of vehicle loading/unloading and turning facilities.
- 5.4 **SBC Heritage** No objections raised on heritage grounds.
- 5.5 **Tree Officer** The current scheme makes best use of the site whilst providing habitat gains and improved woodland buffers. No objections subject to suitable conditions requiring compliance with the arboricultural report and landscape details.
- 5.6 **Forestry Commission** Referred to Standing advice, advising of National Policy Guidance that should be followed.
- 5.7 **Natural England** No objection. Natural England considers that the proposed development will not have a significant adverse impact on statutorily protected nature conservation sites or landscapes.
- 5.8 **National Highways** No objection subject to conditions to secure a traffic management plan.
- 5.9 **KCC Archaeology** No objection subject to a condition to secure a programme of archaeological works.
- 5.10 **SBC Planning Policy** No objection. Whilst it is acknowledged that proposal relates to a town centre use, restaurants with drive-through's are also common and appropriate uses for roadside service locations such as this.

6. <u>DEVELOPMENT PLAN POLICIES</u>

- 6.1 Bearing Fruits 2031: The Swale Borough Council Local Plan 2017 (the Local Plan)
 - ST1 Delivering sustainable development in Swale
 - ST3 The Swale settlement strategy
 - CP1 Building a strong, competitive economy
 - CP2 Promoting sustainable transport
 - CP4 Requiring good design
 - CP8 Conserving and enhancing the historic environment
 - DM2 Proposals for main town centre uses
 - DM3 The rural economy
 - DM6 Managing transport demand and impact
 - DM7 Vehicle parking
 - DM14 General development criteria
 - DM19 Sustainable design and construction
 - DM21 Water, flooding and drainage
 - DM28 Biodiversity and geological conservation
 - DM29 Woodlands, trees and hedges
 - DM32 Development involving listed buildings

• DM34 Scheduled Monuments and archaeological sites

6.2 Boughton and Dunkirk Neighbourhood Plan

- Traffic and Transport Policies T1, T2 & T3
- Business and Employment Policies BE1, BE2, BE3
- Environment, Landscape Character and Design Policies E1, E2, E4, E5, E6, E8, E9, E10
- Blean Woods West Policy AS5

7. ASSESSMENT

- 7.1 This application is reported to the Committee because Dunkirk Parish Council have objected to the proposal and requested it be reported to Committee. The main considerations involved in the assessment are:
 - Principle of development
 - Character and appearance
 - Heritage
 - Transport and Highways
 - Living conditions
 - Ecology
 - Trees
 - Flood Risk, Drainage and Surface Water
 - Sustainable design and construction
 - Contamination
 - Archaeology

7.2 **Principle of development**

- 7.2.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 sets out that the starting point for decision making is the development plan unless material considerations indicate otherwise.
- 7.2.2 The National Planning Policy Framework provides the national policy context for the proposed development and is a material consideration of considerable weight in the determination of the application. The NPPF states that any proposed development that accords with an up-to-date local plan should be approved without delay. At the heart of the NPPF is a presumption in favour of sustainable development and for decision-taking this means approving development that accords with the development plan.
- 7.2.3 The site lies outside of the Borough's built-up areas and within the countryside as designated by Policy ST3 of the Local Plan, which sets out that in such locations development will not be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.
- 7.2.4 Notwithstanding the countryside location, it must be recognised that the site has been part of a roadside service area since 1976 and has for many years provided

parking and services for the former Travelodge Hotel, petrol filling station and a restaurant / cafe. It has also previously been granted planning permission in 2020 for the construction of a new coffee shop with drive-thru (under application 20/501601/FULL), so has been used for commercial purposes for some time.

- 7.2.5 Taking the proposed demolition of the hotel first, policy CP1(9) of the Local Plan sets out that development proposals should safeguard or enhance Swale's 'Principal Tourist Assets', which include hotel accommodation; however, the hotel has not been in operation since early 2023, and a prior approval application for demolition has been granted under application 23/504251/DEMREQ. Subsequently, demolition of the hotel has commenced, and whilst requiring the removal of the former hotel in its entirety, the proposal would not result in the loss of an active or functional tourist asset. The proposal would therefore not be contrary to the aims of Policy CP1.
- 7.2.6 Further to the above, Policy DM3 of the Local Plan sets out that planning permission will be granted for the sustainable growth and expansion of business and enterprise in the rural area, particularly where it would result in the appropriate development of previously developed land. This is subject to the proposals being of a design and scale that is sympathetic to the rural location, not resulting in harm to the historical, architectural, biodiversity, landscape, or rural character of the area, and avoiding scales of traffic generation that are incompatible with the area. These matters are discussed in detail in the following sections.
- 7.2.7 Policy BE1 of the Boughton and Dunkirk Neighbourhood Plan also sets out that support will be given for proposals for the redevelopment of previously developed sites and also those that provide opportunities for local employment and training, provided they reflect the overall development strategy of the plan and conform with relevant policies concerning location, building design and environmental impacts.
- 7.2.8 The NPPF at paragraph 85 states that "decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development." In terms of the rural economy, the NPPF at paragraph 88 a) states that planning decisions "should enable the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed, new buildings." In addition, paragraph 89 states "Planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist."

- 7.2.9 The supporting information sets out that the proposal would create 30 full time jobs and 90 part time jobs (62 full time equivalent). As set out by the above paragraphs, the expansion of business and economic growth should be given significant weight. There is also specific support for economic growth in the rural areas subject to matters such as the impact on the surroundings of the development and the highway which are considered further below.
- 7.2.10 In addition to the above, consideration needs to be given to policy DM2 of the Local Plan, which seeks to ensure that main town centre uses (such as restaurants) should be provided within existing centres, and only elsewhere if they can satisfy a sequential test to demonstrate that alternative locations within such areas are not available. In this instance, whilst fast food restaurants / takeaways would ordinarily be provided within town centres of built-up areas, the applicant has provided a sequential test which sets out that roadside service locations form an important part of their business as they provide a service and reach a customer base that town centre locations do not. An assessment of alternative town centre and roadside sites within the borough has been carried out and is has been concluded that the Gate service area site is the most viable and appropriate for this particular development. The Council's Planning Policy Officer has reviewed the sequential test and raises no objection in this regard. The proposal complies with the requirements of policy DM2 of the Local Plan.
- 7.2.11 Mindful of the above, and that the policy position has not changed significantly since 2020 (when planning permission was granted for a new coffee shop), it is considered that the principle of providing a café / restaurant on the site has been established and that in land use terms the proposal is acceptable, subject to satisfying all other material considerations, which are discussed in the following sections.

7.3 Character and appearance

- 7.3.1 The National Planning Policy Framework attaches great importance to the design of the built environment and states that design should contribute positively to making places better for people. The Local Plan reinforces this requirement through policy CP4, which requires development proposals to be of high-quality design and to be in keeping with the character of the area. Further to this, policy DM14 of the Local Plan sets out that development proposals should be both well sited and of a scale, design, appearance and detail that is sympathetic and appropriate to the location.
- 7.3.2 Policies E1 and E2 of the Boughton and Dunkirk Neighbourhood Plan mirrors the principles set out within policies CP4 and DM14 of the Local Plan, but more specifically emphasises that development proposals should respect and enhance the tranquility, local landscape, character, environmental quality and amenity value of the Parish.
- 7.3.3 The proposal seeks a comprehensive redevelopment of the site by removing the existing hotel building, large areas of hardstanding, and constructing a new restaurant towards the western side of the site with associated storage / delivery area, parking and installations, including electricity meter boxes, EV charger

units and illuminated display boxes, in addition to a detailed landscaping scheme.

- 7.3.4 The proposed restaurant building would be single storey and measure approx. 33.02m in width by approx. 14.17m in depth and approx. 5.83m in height (covering an overall floor area of approx. 442m2). It is of a contemporary design with a dual-level flat roof and facing materials of grey and yellow vertical weatherboarding, with large, glazed openings. Despite being somewhat utilitarian, in that it is clearly designed for its function, it is characteristic of what would be expected for a roadside services location and provides more visual interest than the filling station which occupies the space in front of the proposal when it is viewed from the A2 slip road. There are no objections to the design strategy that has been employed or the overall character and appearance of the building.
- 7.3.5 In terms of scale and massing, the building is orientated in such a way that its narrowest elevations are facing northeast and southwest, resulting in less frontage facing the service area and A2 slip road. This orientation of a single storey building coupled with its flat roof design would help to ensure that its massing would be reduced as far as possible when viewed from the most populated parts of the surrounding public realm. Further to this, a landscaped strip is to be implemented along the northern edge of the site, which will provide screening. With the landscaping in place and the petrol filling station being located to the front of the building, the proposed development would be well screened and would not present a particularly prominent feature within the local landscape. Further to this, it is recognised that by removing the former hotel building, the scheme would result in a reduction in the overall developed area within the site.
- 7.3.6 With regards to landscaping, the applicant has provided a landscaping scheme that allocates large areas of the site around its eastern, southern, and western boundaries as a buffer strip to the surrounding woodland, which will incorporate a range of native species planting to help preserve the ancient woodland and improve the landscape character of the site. The scheme will result in the removal of 12 established trees from the site, many of which are located along the northern boundary; however, many of these are diseased, and supplemental planting will be incorporated within the landscape buffer to mitigate their loss.
- 7.3.7 The new planting proposed throughout the site will assist in softening the scheme somewhat and ensure a balance between built development and natural features. Overall, it is considered that the proposed landscaping scheme would provide an enhancement on what was previously approved under application 20/501601/FULL (for a coffee shop) and enable the scheme to sit comfortably within its setting.
- 7.3.8 Overall, it is therefore considered that the proposed development would not have a detrimental impact upon the overall character and appearance of the site, or that of the surrounding area, and as such, is in accordance with policies CP4 and DM14 of the Local Plan; policies E1 and E2 of the Boughton and Dunkirk Neighbourhood Plan and the NPPF.

7.4 Heritage

- 7.4.1 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on a local planning authority, in considering development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting, or any features of architectural or historic interest it possesses.
- 7.4.2 The NPPF states that local planning authorities should identify and assess the particular significance of any heritage asset and consider the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits that may arise and this is endorsed by the Local Plan.
- 7.4.3 Policy DM32 of the Local Plan sets out that proposals that affect a listed building or its setting, will be permitted only where special architectural or historic interests are preserved.
- 7.4.4 On a neighbourhood level, policy E2 of the Boughton and Dunkirk Neighbourhood Plan sets out that development proposals should protect and enhance heritage assets.
- 7.4.5 The site does not contain any listed buildings and does not lie within a conservation area. However, it is within close proximity of the building formerly known as the Gate Inn, a former coaching inn, which is a Grade II listed building situated 45m to the north-east at the front of the Gate Services.
- 7.4.6 The former Gate Inn is currently in use as a cafe, but has previously operated as a diner, and as such has a history of serving a purpose as a roadside convenience. Its original setting has been altered dramatically as a result of the construction of the A2 Boughton bypass, the introduction of the petrol filling station, the former hotel building and the large areas of associated hard surfacing, which now surround the heritage asset.
- 7.4.7 The Council's Heritage Advisor has been consulted and has stated that whilst the building's 'relatively' isolated setting reinforces its intrinsic character as a coaching inn, much of its significance primarily derives from its age, architectural interest and its historical association with Sir William Courtenay, the Courtenay Riots, and the Battle of Bossenden Wood. Little emphasis has been placed on the building's surrounding environment or setting as being a significant contributor to the building's heritage status. As such, it is not considered that the proposed development would result in any additional harm to the listed building beyond what has already occurred. This is particularly the case given that the scheme would facilitate the reduction of overall built-form from the service area, through the removal of the existing hotel building, which sits closer to the heritage asset than the proposed restaurant. Further to this, it must be recognised that when viewed from the approach road to the service area, the proposed development would be situated behind the petrol filling station, which sits directly

alongside the listed building, and as such, its prominence and status within the setting of the listed building would be subservient to existing development. The tree line along the northern boundary of the site will be retained and reinforced, which would ensure that the proposal will be largely screened when viewed from the listed building and therefore a sense of visual separation between the two sites will be preserved.

7.4.8 Overall, it is considered that the proposal would not result in additional harm to the significance or setting of the neighbouring listed building, and that there are no objections on heritage grounds. As such, the scheme complies with the requirements of Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, policies DM8 and DM32 of the Local Plan, policy E2 of the Boughton and Dunkirk Neighbourhood Plan and the NPPF.

7.5 Transport and highways

- 7.5.1 The NPPF promotes sustainable patterns of development and expects land use and transport planning to work in parallel in order to deliver such. 7.5.2 The NPPF at paragraph 116 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, following mitigation, would be severe, taking into account all reasonable future scenarios."
- 7.5.2 Policies DM6, DM7 and DM14 of the Local Plan establish that development proposals must provide appropriate levels of parking and safe vehicular access. Policies T1, T2 and T3 in the Boughton and Dunkirk Neighbourhood Plan set out that development proposals will be restricted by the capacity of the road network being able to accommodate them, increased negative impacts on the current highway network by development in the countryside will be resisted and development will incorporate sufficient levels of parking.
- 7.5.3 The application site forms part of Gate Services, which lies to the south of and is accessed by the west bound carriageway of the A2 Boughton Bypass. The service area currently accommodates a petrol filling station, a café and a now vacant hotel which is partially demolished. Access to the service area is provided by a designated slip road from the A2, and internally it is laid out with a circulatory road that runs around the petrol filling station and provides an access and egress to the site.
- 7.5.4 The proposed scheme seeks to retain and utilise the existing openings to the site and to create a new parking area with 37 car parking spaces (including 2 disability bays and 4 EV charging bays) and 4 motorcycle bays. The internal road layout is arranged to provide access to the site from the existing entrance at its eastern side, circulation around the parking area and the new restaurant building in the case of the drive thru facility and an exit through the opening located at the western side of the northern boundary. This will enable vehicles to enter the site through the shared route between the petrol filling station and the cafe and leave the service area to the rear / west of the petrol filling station.

- 7.5.5 Concerns have been raised from local residents and the Parish Council with regards to traffic generation associated with the proposal, and particularly in respect of attracting heavy goods vehicles, which can park up on the northern side of the slip road. The submitted Transport Assessment indicates that the scheme would result in +70 and +77 vehicles during am and pm peak times respectively, and +121 vehicles during Saturday peak hours when compared to the existing situation (based on the permitted use of the site as a hotel). The report goes on to state that this increase will equate to approximately 1-2 additional vehicles per minute. National Highways and KCC Highways have agreed that the construction of a free-standing restaurant of this size with a 'drive thru' facility would not have an unacceptable impact on the safety, reliability and /or operational efficiency of the highway, particularly given that it is anticipated that the majority of trips and visitors to the restaurant would be generated from existing trips / traffic along the A2 Boughton Bypass.
- 7.5.6 KCC Highways have also stated that the layout of the site is acceptable with swept path drawings for service vehicles demonstrating that access for larger vehicles will be possible, and that the proposed parking provision is sufficient for such a use in a rural roadside service location.
- 7.5.7 It is also noted that through the provision of new EV charging facilities, the proposal would help to encourage the use of electric vehicles which is a more sustainable mode of transport, and therefore would contribute towards the implementation of the aims of policy CP2 of the Local Plan as well as paragraph 117 of the NPPF which sets out that development should help to improve the transport network and be designed to enable charging of plug in and other ultralow emission vehicles in sustainable ways.
- 7.5.8 With regards to the layout of the proposed parking, each space measures approx. 5m in length by 2.5m in width, which is compliant with the size standards for parallel parking spaces set out within the Council's Parking SPD. Further to this, the two rows of bays are positioned a minimum of approx. 6m apart, meaning sufficient space is provided for vehicles to comfortably manoeuvre into and out of each bay, in accordance with the SPD.
- 7.5.9 Notwithstanding the above, both KCC Highways and National Highways have recommended that any approval should be subject to a condition that secures a Construction Management Plan, prior to the commencement of works. Such a condition is deemed appropriate and reasonable and forms part of this recommendation.
- 7.5.10 It is considered that the proposal would not create a situation that would result in significant risks to highway safety or the efficient functioning of the local highway network. Accordingly, it is compliant with policies CP2, DM6, DM7 and DM14 of the Local Plan, policies T1, T2 and T3 of the Boughton and Dunkirk Neighbourhood Plan as well as the Council's Parking SPD and the NPPF.

7.6 Living Conditions

- 7.6.1 The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers. Specifically, policy DM14 of the Local Plan states that any new proposed developments should not cause significant harm to the amenities of surrounding uses or areas and due consideration will be given to the impact of the proposed development upon neighbouring properties. Any new proposed schemes should not result in significant overshadowing through a loss of daylight or sunlight or give rise to unacceptable levels of noise or odours.
- 7.6.2 The application site is enclosed around its eastern, southern and western boundaries by ancient woodland, and to the north by the petrol filling station, café and the A2 Boughton Bypass beyond. The nearest permanent self-contained residential properties (Forge House, Goudhurst Cottage, Gordon Cottage and Irvington Cottage) lie approximately 140m away from the site, to the north-west on the opposite side of the A2. To the east, in excess of 220m there are two properties (at Hillside and 1 Hillside), whilst the Brotherhood Woodyard gypsy and traveller site lies approximately 80m to the south-west. 2 objections have been received from residents with specific concerns raised over noise, lighting, odour, littering, antisocial behaviour and associated traffic (as set out in the consultation section above).
- 7.6.3 A Noise Impact Assessment, a Lighting Assessment, an Odour Assessment and a Transport Assessment have been submitted to demonstrate that the proposed scheme would not have a significant impact in terms of local noise, traffic or lighting levels.
- 7.6.4 Firstly, due to the contained nature of the site, and taking account of the separation distance between the proposal and nearby residential properties and that it is not highly visible from these properties, any potential impacts of the scheme on neighbouring living conditions would be indirect. There would be no harm arising from the proposed building in terms of any impact on the privacy, outlook or levels of sunlight / daylight that are enjoyed by the occupiers of the nearest dwellings. Notwithstanding this, it is acknowledged that the proposal could generate additional levels of noise, odour, traffic and general activity, which could have an indirect impact upon the living conditions of the properties identified above.
- 7.6.5 The noise impact assessment details the findings of a 3-day, 24-hour monitoring exercise, which found that when taking into account all of its combined activities, the proposed development would be expected to generate noise levels that would be 11dB below representative background daytime levels and only 2dB above background night-time levels, and as such it is not anticipated that the scheme would result in adverse acoustic impacts as the scheme would comply with National Standards related to acoustic environments. Further to this, it is not anticipated that the relatively small increase in traffic generation would result in a significant increase in noise from the road, as experienced from the nearest residential properties.

- 7.6.6 The submitted odour assessment concludes that whilst the proposed restaurant would normally dictate a high level of odour control, in this instance, due to the distance of the site from the nearest residential properties, a pragmatic approach to odour control can be adopted. However, notwithstanding this, the development will incorporate unrestricted high velocity vertical discharge termination to ensure that cooking fumes are suppressed and dispersed high into the atmosphere, to ensure that they do not have a significant impact upon nearby residential properties.
- 7.6.7 In relation to lighting, the lighting impact assessment states that the lighting scheme will use directional lighting to ensure that lamps and illuminations are directed downwards and in towards the centre of the site to preserve the darkness of the night sky above and around the site. As such, any illumination and glare will not extend to the nearest residential properties.
- 7.6.8 SBC Environmental Protection have reviewed the noise, lighting and odour assessments and confirmed that the methodology and findings of all reports are accurate. As such, there are no concerns with the proposed development with regards to noise, lighting or odour impacts subject to the implementation of the respective recommendations set out within them which can be secured by conditions.
- 7.6.9 SBC Environmental Protection have also confirmed that due to the relatively small increase in traffic that would be associated with the development, it is not anticipated that it would have a significantly detrimental impact upon air quality and therefore an air quality assessment has not been requested.
- 7.6.10 It is also noted that objections have been received from local residents that raise concerns over antisocial behaviour, littering and additional noise and nuisance during extended opening hours, and associated with an outside seating area. It should be noted that opening hours and the potential for anti-social behaviour have been factored into the noise impact assessment and that even with these taken into account, it is projected that the scheme will not exceed background noise levels as experienced from the nearest residential properties.
- 7.6.11 With regards to littering, although the comments from the Parish Council regarding car registration details being printed on packaging are noted, as this is primarily a behavioural issue, it is not considered reasonable to place this requirement upon the applicant. It is also not within the scope of the permission or the local planning authority to secure waste collection beyond the site. Instead, a condition has been attached to this recommendation that requires the applicant to submit a waste management plan to ensure that waste and litter is collected from the site on a regular basis.
- 7.6.12 It is considered that the proposal would not create a situation that would result in significant harm to the living conditions of the occupiers of any neighbouring properties. It is therefore deemed that the scheme is compliant with policy DM14 of the Local Plan and the NPPF.

7.7 Ecology

- 7.7.1 Section 40 of the NERC Act (2006), as well as paragraphs 187 and 193 of the NPPF, establish that biodiversity should be maintained and enhanced through the planning system, and that the implementation of measurable net gains for biodiversity (integrated as part of design) should be encouraged. These principles are reinforced at a local level by policies CP7 and DM28 of the Local Plan which establish that development proposals will apply national planning policy in respect of the preservation, restoration and re-creation of habitats and species, and will be required to provide, where possible a net gain of overall biodiversity. Policies E2, E4 and E6 of the Boughton and Dunkirk Neighbourhood Plan also require development proposals to seek opportunities for ecological gain and the protection of sensitive wildlife sites.
- 7.7.2 The Governments BNG legislation goes a step further than the above referenced policy requirements as it requires development proposals to have no adverse impact upon important habitats and that they must create an overall net gain in biodiversity of 10%. Whilst this legislation cannot be applied to the proposal as the application was submitted prior to the date on which it came into effect, policy E8 of the Boughton and Dunkirk Neighbourhood Plan is consistent with this requirement in respect of biodiversity net gain (BNG), as it also identifies that development proposals must create an overall net gain of 10% when measured against a baseline habitat value of the site.
- 7.7.3 The applicant has submitted a Preliminary Ecological Appraisal and additional Bat and Dormouse Surveys in support of their application. These reports state that the site itself has negligible habitat value in its own right, but the surrounding woodland, provides habitat opportunities for a range of wildlife, including Great Crested Newts, Bats, Birds, Hazel Dormice, Badgers and Reptiles. As such, a precautionary approach should be applied when removing vegetation, and it is recommended that further tree planting of broad-leaved native species or fruit trees is incorporated within the scheme and carried out in a manner that provides an ecological buffer to the proposed development.
- 7.7.4 In consultation with the KCC Biodiversity Officer, the applicant has provided a detailed Biodiversity Enhancement Plan, a Construction Environment Management Plan, and a Landscape Management Plan. These seek to provide new habitat opportunities for bats, birds, dormice and other species, in addition to wider landscape opportunities within and around the borders of the site, and to ensure that they are carefully managed and protected from potential damaging behaviour from customers. The Biodiversity Officer has reviewed the application and confirmed that sufficient information has been provided to determine the application. It has also been confirmed that the submitted lighting details would ensure that habitats along the southern, eastern and western boundaries of the sites will not be disturbed by illuminations due to the incorporation of low level and directed lighting.
- 7.7.5 It is however recommended that conditions should be attached to any permission to secure the implementation of precautionary mitigation measures detailed within the Ecological Impact Assessment and a biodiversity enhancement plan.

Biodiversity Net Gain

- 7.7.6 In respect of biodiversity net gain, the application includes a biodiversity report and BNG metric which assesses the site as having a baseline biodiversity value of 2.85% habitat units, with a mixture of non-priority woodland, hazel scrub, modified grassland, individual urban trees and introduced shrub.
- 7.7.7 The proposed scheme has been designed to incorporate as much habitat creation as possible through tree and hedge planting, but due to a required loss of individual trees, discrete areas of hazel scrub and modified grassland, the post development score for the site would amount to a reduction of 1.34 habitat units (to-1.51 units), despite a 214% increase in hedgerows habitats throughout the site. It therefore the intention of the applicant to purchase 1.63 offsite habitat units. Full details will need to be demonstrated as part of the Biodiversity Gain Plan, the submission of which is secured by condition. KCC's Biodiversity Officer has reviewed the submitted biodiversity metric and report and has confirmed that site has been valued correctly and that the proposed biodiversity enhancements within the site coupled with the purchasing of habitat units to facilitate the establishment of habitats outside of the site, would provide an overall net gain of 10%.
- 7.7.8 It is considered that the proposal would have a net positive impact on biodiversity, however, it is necessary for the applicant to enter into a Section 106 agreement with the Council to ensure the purchase of off-site habitat units.
- 7.7.9 Overall, it is deemed that subject to compliance with conditions and the completion of a legal agreement, the proposed development would deliver habitat enhancements and would not result in harm to local wildlife. The proposal is in accordance with Section 40 of the NERC Act (2006), policies CP7 and DM28 of the Local Plan, policies E2, E4, E6 and E8 of the Boughton & Dunkirk Neighbourhood Plan and the NPPF.

7.8 Trees

- 7.8.1 Policy DM29 of the Local Plan sets out that the Borough Council will seek to ensure the protection, enhancement and sustainable management of woodlands and individual trees.
- 7.8.2 As mentioned, the site is enclosed by ancient woodland at its eastern, southern and western sides, and whilst the site itself is largely developed, there are a number of trees within it that would have the potential to be affected by the proposed development. Accordingly, the applicant has submitted an Arboricultural Impact Assessment, which concludes that the scheme will require the loss of 12 individual trees, most of which are situated along the northern boundary of the site. 6 of these trees have been assessed as being diseased and functionally dead, whilst 3 others are diseased and dying. They were also identified for removal under the previous permission for a coffee shop on the site.

- 7.8.3 A Biodiversity Enhancement Plan has been submitted showing replacement trees of native species would be planted within the site to compensate the loss of the existing specimens, and buffer strips have been incorporated around the eastern, southern and western borders of the site to provide a buffer to the wider ancient woodland. The net result would be an increase in trees on the site.
- 7.8.4 The NPPF at paragraph 193 states that "development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists." Standing Advice from Natural England and the Forestry Commission states that development proposals should provide a 15m buffer to ancient woodlands in order to protected them and the habitats that they provide. In this instance, whilst the proposed car park will fall closer to the edge of the ancient woodland in places, it is recognised that the site is currently laid with hardstanding, and that the scheme as proposed will not result in the encroachment of development towards the woodland, but will instead pull development further away. In particular, the situation to the south and west of the site would be improved as a large part of the existing hardstanding that currently adjoins the boundary to the ancient woodland would be removed and replaced with soft landscaping and the planting of more native trees. As a result, there is not a 15m buffer all around the site, but where it does come within 15m, the development would either still be further away than the existing situation or very similar to it. As a result, it is concluded that the proposal would not result in the loss or deterioration of irreplaceable habitats.
- 7.8.5 The Council's Tree Officer has reviewed the proposals and has confirmed that the proposed scheme is acceptable as it would not result in the loss of any good quality trees and would provide enhanced protections to the woodland when compared to the previous permission. It is however recommended that a condition be attached to any permission that require the recommendations set out within the Arboricultural Impact Assessment to be complied with.
- 7.8.6 Subject to compliance with conditions, it is considered that the proposals would comply with policy DM29 of the Local Plan and the NPPF.

7.9 Flood risk, drainage, and surface water

- 7.9.1 Policy DM21 of the Local Plan establishes that development proposals should avoid inappropriate development in areas at risk of flooding, and include, where possible, sustainable drainage systems to restrict runoff to an appropriate discharge rate to ensure that surface water is disposed of on site.
- 7.9.2 The site lies entirely within Flood Zone 1 and is therefore at the lowest risk of flooding from rivers and seas. In terms of the requirement for a sequential test for flooding, since the submission of the application the NPPF has been updated to refer to any form of flooding, this includes surface water flooding. A very small area in the west of the site is subject to a high risk (1 in 30 annual likelihood) of surface water flooding. Paragraph 175 of the NPPF sets out that *"The sequential test should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific flood risk assessment*

demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future (having regard to potential changes in flood risk)."

- 7.9.3 When the application was submitted there would have been no requirement for a Flood Risk Assessment. Therefore, although not shown by a FRA, the submitted site plan demonstrates that this scheme proposes no built development or any of the other matters listed in paragraph 175 as above in any areas at risk from flooding. Therefore, taking a pragmatic approach it is considered that due to the above factors a sequential test is not necessary. Separately, the Flood Risk Vulnerability and flood zone 'incompatibility' table in the Planning Practice Guidance also shows that a restaurant, which is classed as 'less vulnerable' does not require an exception test and is compatible in this flood zone. Further to this, the site upon which the proposed restaurant is located, is entirely laid with concrete, and the scheme will result in the removal of large areas of hard surfacing, therefore reducing surface water accumulation within the site itself.
- 7.9.4 The submitted drainage report concludes that it is unlikely that surface water can be discharged into the ground due to poor filtration conditions, although an existing surface water drain that runs through the site, will be utilised to deal with this issue. Cellular storage will however be utilised to reduce flow rates to the drain. Foul sewage would also be discharged via a sewage pipe that runs through the service area.
- 7.9.5 Overall, it is considered that the proposed development will not increase the risk of flooding within or outside of the site and as such, it complies with Policy DM21 of the Local Plan, E6 of the Boughton and Dunkirk Neighbourhood Plan and the NPPF.

7.10 Sustainable Design and Construction

7.10.1 Policy DM19 of the Local Plan requires non-residential development under 1,000sqm to achieve BREEAM 'good' standard as a minimum. A BREEAM Design Stage Pre Assessment Summary has been submitted which sets out that a 'good' standard is anticipated to be achieved. To ensure this is the case a condition has been recommended below. On this basis the scheme complies with policy DM19 of the Local Plan.

7.11 Contamination

7.11.1 SBC Environmental Protection have confirmed that as the site is not a known area of contamination no information on this subject is required prior to the determination of the application. It is however recommended that any permission should be subject to a watching brief condition that requires details and mitigation to be submitted to and approved by the local planning authority in the event of contaminants being found during construction works. Subject to the suggested condition, the proposal is in accordance with the NPPF.

7.12 Archaeology

- 7.12.1 Policy DM34 of the Local Plan sets out that development will not be permitted that would adversely affect an archaeological site, and that whether they are currently known or yet to be discovered, there will be a preference to preserve important archaeological sites in-situ and to protect their setting, unless it is justifiable to excavate and record any artifacts that are found.
- 7.12.2 The site lies within an area of archaeological potential, being located on the A2, which is on the route of the main Roman road between London and the coast. KCC's Archaeology Officer has confirmed that Iron Age and Roman remains have been found in the surrounding area, and that it is possible that archaeological remains may be encountered during the proposed groundworks. Notwithstanding this, it is acknowledged that the site is likely to have been heavily disturbed already due to previous development, and as such it is recommended that a watching brief condition can be attached to this recommendation that requires the applicant to secure the implementation of a watching brief prior to works being carried out. This condition has been included below.
- 7.12.3 The proposal would be in accordance with Policy DM34 of the Local Plan, E2 of the Boughton and Dunkirk Neighbourhood Plan and the NPPF.

7.13 Other matters

- 7.13.1 The majority of the issues made within the public and Parish Council representations that have been received, have been addressed in the sections above. Of those that remain the following comments are made. Firstly, the impact on property prices is not a material planning consideration. In terms of pedestrian attempting to cross the highway, National Highways who are responsible for this section of the strategic highway network have raised no concern in this regard. In respect of potential conditions requested by the Parish Council, it would not appear reasonable to request a TRO in relation to highway matters affecting the slip road or in relation to access for a separate site on the basis that neither highway authority has requested this. A condition relating to cycle parking has been requested, however, the site is only accessed via the strategic road network, therefore this condition would appear unnecessary. A condition has also been requested requiring a discussion with the Parish Council and Officers regarding a S.106 to include benefits to the community. In respect of this matter, planning obligations are controlled by the statutory tests set out in regulation 122 and as policy tests in the National Planning Policy Framework. They must be:
 - necessary to make the development acceptable in planning terms;
 - directly related to the development; and
 - fairly and reasonably related in scale and kind to the development.

As such, they must only be used to mitigate an identified impact of a development. In this case, no impact has been identified which would need to be mitigated via a planning obligation, aside from the habitat credits as identified above. As such, a condition of this nature is considered unnecessary.

7.13.2 Although this application is for a restaurant, there is clearly the ability to take hot food off the premises, not least due to the 'drive thru' facility. In this respect, paragraph 97 of the NPPF states:

"Local planning authorities should refuse applications for hot food takeaways and fast food outlets:

a) within walking distance of schools and other places where children and young people congregate, unless the location is within a designated town centre; or

b) in locations where there is evidence that a concentration of such uses is having an adverse impact on local health, pollution or anti-social-behaviour."

As discussed above, the site is located adjacent to a dual carriageway, providing roadside facilities. As a result, the site is not within walking distance of schools and other places where young people may congregate. In addition, there is not a concentration of similar uses in this area and as such no evidence that the use is having an adverse impact on the matters set out in b) above. As a result, the scheme does not conflict with policy 97 of the NPPF.

7.14 Conclusion

7.14.1 The proposed development is acceptable in principle and is of an acceptable scale and design that would not have a detrimental impact upon the visual amenities of the site or wider area, the setting of the nearby listed building, living conditions of neighbouring occupiers, ecology or highway safety. There are also no contamination, drainage or archaeology issues that cannot be addressed through the use of appropriately worded conditions. Accordingly, it is recommended that planning permission should be granted for the proposed development.

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 approved plans:

Block Plan (8516-SA-2139-P002 D), Site Layout Plan as Proposed (8516-SA-2139-P004 C), Biodiversity Enhancement Plan V6 (A6100.01J), Landscaping Scheme (A6100 01 J), Proposed Elevations and Section (8516-SA-2139-P005), Ground Floor and Roof Plans (8516-SA-2139-P006), Proposed Lighting Layout (DWG 01), LiAS Design Notes & Luminaire Schedule (DWG 00)

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

3) The development hereby approved shall not commence above slab level until details of the materials to be used in the construction of the external surfaces of the building(s) hereby permitted have been submitted to and approved in writing by the Local Planning Authority and the development shall be constructed using the approved materials.

Reason: To ensure a satisfactory appearance to the development.

4) The approved details of the parking/turning, loading and unloading areas as detailed on drawing 8516-SA-2139-P004 C shall be completed before the commencement of the use of the land or buildings hereby permitted and shall thereafter be kept available for such use.

Reason: Development without adequate parking/turning provision is likely to lead to parking inconvenient to other road users and in the interests of road safety.

5) No external lighting other than that approved by this permission shall be installed on the site without the prior written consent of the Local Planning Authority.

Reason: In the interests of visual amenity.

6) No construction activities shall take place, other than between 0700 to 1900 hours (Monday to Friday) and 0700 to 1300 hours (Saturday) with no working activities on Sundays or Public Holidays.

Reason: In the interests of residential amenity.

7) The development hereby approved shall be carried out in accordance with the recommendations set out within Section 6.0 of the Tree Survey, Arboricultural Impact Assessment, Preliminary Arboricultural Method Statement and Tree Protection Plan, produced by Hayden's Arboricultural Consultants (dated 10.05.32023).

Reason: In the interest of landscape, visual impact and the amenity of the area.

8) Within three months of the first use of the building hereby approved, the landscape scheme shall be implemented as per the Landscape Scheme, 01 Rev J, Encon Nov 2023 and Biodiversity Enhancement Plan V6, Practical Ecology, Nov 2024. The landscaping shall thereafter be managed in accordance with the Landscape Management Plan reference number A6100 Revision E, dated 12 November 2024.

Reason: In the interests of enhancing biodiversity.

9) Any tree planted in accordance with the conditions attached to this permission, or in replacement for such a tree, which within a period of five years from the date of the planting is removed, uprooted, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, shall, in the same location, be replaced during the next planting season (October to February) by another tree of the same species and size as that originally planted, except where an alternative proposal has been submitted to and approved in writing by the local planning authority prior to that planting season.

Reason: To safeguard the amenity and nature conservation value of the tree/s that has/have been removed and to maintain and enhance the character and appearance of the local area

10) From commencement of development (including site clearance) and for the duration of works through to the first use, to avoid impacts to protected and priority species, the precautionary working measures detailed in the Enhancements and recommendations section of the Bat Survey Letter and the recommendations section of the Dormouse Survey Report (both carried out by Practical Ecology), associated with the planning application shall be adhered to.

Reason: In order to protect protected species.

11) Within three months of the commencement of development, biodiversity enhancement shall be implemented as per the Biodiversity Enhancement Plan V6, Practical Ecology, Nov 24 or later versions, approved by submission pursuant to this condition to the Local Planning Authority. The approved measures shall be implemented and retained thereafter.

Reason: In the interests of enhancing biodiversity.

12) The development hereby approved shall not commence until a biodiversity gain plan (which demonstrates a biodiversity net gain of a minimum 10% against the baseline) has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the development delivers a biodiversity net gain.

- 13) The development shall not commence until a Habitat Management and Monitoring Plan (HMMP), prepared in accordance with the approved on-site biodiversity gain plan and including:
 - a) a non-technical summary;
 - b) the roles and responsibilities of the people or organisation(s) delivering the HMMP;
 - c) the planned habitat creation and enhancement works to create or improve habitat to achieve the biodiversity net gain in accordance with the approved Biodiversity Gain Plan;
 - d) the management measures to maintain habitat in accordance with the approved Biodiversity Gain Plan for a period of 30 years from the completion of development; and
 - e) the monitoring methodology and frequency in respect of the created or enhanced habitat to be submitted to the Local Planning Authority, has been submitted to, and approved in writing by, the Local Planning Authority.

Reason: To ensure the development delivers a biodiversity net gain.

14) Monitoring reports shall be submitted to Local Planning Authority in writing in accordance with the methodology and frequency specified in the approved HMMP.

Reason: To ensure the development delivers a biodiversity net gain.

- 15) If during construction/demolition works evidence of potential contamination is encountered, works shall cease and the site fully assessed to enable an appropriate remediation plan to be developed. Works shall not re-commence until an appropriate remediation scheme has been submitted to, and approved in writing by, the Local Planning Authority and the remediation has been completed.
 - Upon completion of the building works, this condition shall not be discharged until a closure report has been submitted to and approved in writing by the Local Planning Authority. The closure report shall include details of;
 - Details of any sampling and remediation works conducted and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology.
 - Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.

If no contamination has been discovered during the construction phase then evidence (e.g. photos or letters from site manager) to show that no contamination was discovered should be included.

Reason: To reduce risk to controlled waters.

16) The development hereby approved shall not commence above slab level until, details of hard landscape works (including materials) have been submitted to and approved in writing by the Local Planning Authority and the development shall be carried out in accordance with the approved details before the first use of the building(s) or land. The new areas of hard surfacing shall be constructed from either permeable materials or incorporate drainage channels to prevent surface water runoff onto the highway.

Reason: To ensure a satisfactory appearance to the development, in the interests of highways convenience and to prevent surface water runoff.

- 17) Prior to the commencement of the development hereby permitted a Construction Traffic Management Plan shall be submitted to and approved in writing by the Local Planning Authority (in consultation with the Highway Authority for the A2, including the Boughton Bypass). The plan shall include as a minimum:
 - Construction phasing;
 - Construction routing plans;
 - Permitted construction traffic arrival and departure times.

Thereafter all construction activity in respect of the development shall be undertaken in full accordance with such approved details.

Reason: To mitigate any adverse impact from the development on the A2 (including the Boughton Bypass) in accordance with the Department for Transport (DfT) Circular 01/2022. This is required prior to the commencement of development to ensure that a programme and method of works are agreed that will not cause an obstruction to the safe functioning of the highway network.

18) The development hereby approved shall not be brought into use until a management plan for the collection of litter within the site has been submitted to and approved in writing by the Local Planning Authority. Once approved the management plan shall be adhered to throughout the lifetime of the development.

Reason: In the interest of public health and the visual amenities of the area.

19) No development shall take place until the applicant, or their agents, or successor in title, has secured the implementation of a programme of archaeological works

in accordance with a written specification and timetable which has been submitted to and approved by the Local Planning Authority.

Reason: To ensure that features of archaeological interest are properly examined and recorded.

20) The building hereby approved shall be constructed to achieve a minimum of BREEAM 'Good' rating and prior to the use of the building commencing the relevant certification shall be submitted to the Local Planning Authority confirming that the required standard has been achieved.

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

21) The development hereby approved shall not be brought into use until 4 electric vehicle charging points have been provided. All Electric Vehicle chargers must be provided to Mode 3 standard (providing a minimum of 7kw) and SMART (enabling Wifi connection).

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

22) The recommendations contained in the document entitled Odour Control Assessment shall be adhered to throughout the use of the premises hereby approved.

Reason: In the interest of residential amenities.



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2.2 REFERENCE NO - 2					
APPLICATION PROPOS					
	tion for up to 25no. resident	iai dweilings (all matters			
reserved except for acces	Rear Of Eden Meadow Newing	iton Kent ME9.7 IH			
RECOMMENDATION Delegate to the Head of Planning to grant planning permission subject to a S106 legal agreement and appropriate planning conditions with further delegation to the Head of Planning /Head of Legal Services (as appropriate) to negotiate the precise wording of the S106 agreement and planning conditions, including adding or amending such planning conditions as may be necessary and appropriate. APPLICATION TYPE Large Major Dwellings					
REASON FOR REFERR	AL TO COMMITTEE: This ap	plication is reported to the			
	t of Councillor Richard Palmer				
	highways and parking. More				
-	ne recommendation of Newing	ton Parish Council.			
Case Officer Joanna Rus					
WARD Hartlip,		APPLICANT Miss L			
Newington And Upchurch	Newington	Needham			
		AGENT N/A			
DECISION DUE DATE	PUBLICITY E				
31.3.25	24.1.25				
BACKGROUND PAPERS					
Documents referenced i	n report are as follows: -				
Transport statement dated	d Nov 2023				
Drainage strategy report of					
0, 1	pact assessment dated Nov 20	23			
	d assessment dated Nov 2023				
Planning statement dated					
Land contamination asses	5				
Built heritage statement d					
Flood risk assessment da Design and access staten					
0	ocal Flood Authority dated Jar	2024			
Transport technical note dated					
LVIA review by Jon Etchells Consulting dated Nov 2024					
Phase 2 air quality assessment dated Oct 2023					
Ecological impact assessment issued Nov 2023					
Habitat condition assessment issued Nov 2023 Biodiversity net gain design stage report issued Nov 2023					
All drawings submitted					
All representations received					
The full suite of documents submitted pursuant to the above application are available via the link below: -					

https://pa.midkent.gov.uk/onlineapplications/applicationDetails.do?activeTab=documents&keyVal=S4L3GLTYGVZ00

1. SITE LOCATION AND DESCRIPTION

- 1.1 The application site is situated to the south of the A2, and to the south of a residential development of 9 dwellings at 1-9 Eden Meadow. The site is located to the east of Newington, outside the built up area boundary. At its closest point the application site is situated approximately 120m from the built up boundary edge.
- 1.2 The majority of the site comprises an open field and has most recently been used as a paddock. There are mature trees along some of the boundaries, but none within the site. It is accessed via a gate from the Eden Meadow development and access runs past these houses towards the A2. The highway within Eden Meadow is also included within the site as it provides the access to the wider site from the A2 and needs to be included as it is a private road and not part of the public highway.
- 1.3 To the north of the main part of the site sits residential dwellings including 4 and 5 Eden Meadow and 5-6 Ellens Place on Boyces Hill, which are Grade II listed buildings. To the north western corner of the site and along Boyces Hill is a car dealership and vehicle repair business
- 1.4 The site borders open land to the south, east and west.
- 1.5 There are existing public rights of way within the local area, including PROW ZR65 to the south of the site; ZR66a to the east; ZR61 to the west and ZR59 to the north. The site is within an area of potential archaeological importance.

2. PLANNING HISTORY

- 2.1 20/501475/FULL Erection of 20No. residential dwellings and associated car parking, hardstanding, landscaping and open spaces, infrastructure including SuDs and earthworks accessed from the existing junction serving Eden Meadow from the A2 High Street. Withdrawn
- 2.2 16/505861/OUT (Site to the north (1-9 Eden Meadow, ME9 7JH) Outline Application with access being sought for erection of 9 dwellings with access, garaging, parking provision and other associated works. Non-Determination Appeal Allowed.
- 2.3 17/503155/REM (Site to the north (1-9 Eden Meadow, ME9 7JH) Approval of reserved matters (appearance, landscaping, layout and scale) pursuant to permission 16/505861/OUT for Outline Application with access being sought for erection of 9 dwellings with access, garaging, parking provision and other associated works Permitted

3. PROPOSED DEVELOPMENT

- 3.1 The application seeks outline consent for the provision of up to 25no. residential dwellings with all matters reserved except for access into the site.
- 3.2 The matters of layout, scale, appearance and landscaping, as well as access within the site, are reserved for future consideration. The submitted plans and supporting submissions indicate that two storey dwellings would be arranged primarily in two groups on the site. They would be accessed from the main estate road that would fork at the northern part of the site and extend around the east and west perimeters of the site. A separate single dwelling is shown to the west of the estate road at the north part of the site.

4. CONSULTATION

- 4.1 One round of consultation has been undertaken, during which letters were sent to neighbouring occupiers; a notice was displayed at the application site and the application was advertised in the local newspaper. Full details of representations are available online.
- 4.2 Fourteen letters of objection from separate addresses were received. Concerns/comments were raised in relation to the following matters: -

Comment	Report reference
There is not infrastructure to cope with	7.93-7.95
growth e.g. doctors.	
Poor road width in the High Street	7.76-7.81
cannot accommodate growth without	
unacceptable additional congestion.	
Lack of continuous footpaths in the High Street.	7.10
Air pollution caused by traffic.	7.82-7.90
There are always roadworks in the	Not a material planning
village.	consideration.
Access is insufficient to deal with additional dwellings.	7.78-7.79
Cars might park on the kerb of the existing road.	The provision and arrangement of sufficient parking would be addressed within a subsequent reserved matters application. However, the submitted plans indicate there is scope to provide adequate parking within the site.
Detrimental impact on outlook from existing dwellings.	7.114
Loss of sunlight and privacy to existing dwellings.	7.114
Memorial signs have been placed	Not a material planning
along the main walking route. The	consideration.

views from these will be ruined.	
Loss of green space and impact on	7.47 – 7.49 and 7.56-7.60
biodiversity.	
The site is outside of the village	7.8
boundary.	
Homeowners in Eden Meadow	Not a material planning
purchased their houses on the	consideration.
understanding that they were a small /	
exclusive development.	
Loss of view of fields from rear of	Not a material planning
garden.	consideration.
Disruption from construction.	This would be addressed by
	Condition 18.
Damage to the existing road will be	Not a material planning
payable by existing residents.	consideration.
Negative visual impact on landscape.	7.47-7.51

4.3 One notification of support from separate addresses were received. Comments were raised in relation to the following matters:

Comment	Report reference
Newington is a sustainable location for residential growth.	7.9
The site is not within a designated landscape or the green belt.	7.46
The site located near public transport links.	7.10
The site is within walking distance of facilities and services.	7.9

4.4 **Newington Parish Council** have advised that they object to the proposal for the following reasons:

Comment	Report reference
Above the minimum parking standard should be applied (4 spaces per 3 and 4 bed house) owing to the rural setting of the village.	7.79
Harm through urbanisation of the countryside and over development.	7.47-7.49
Access – residents in the existing development will be impacted.	7.114
Development outside the built-up urban area.	7.8
Proximity to listed building – the proposal will cause harm to 5 and 6 Ellens Place, Boyces Hill.	7.31-7.36

5. **REPRESENTATIONS**

- 5.1 **KCC Highways** No objection subject to the imposition of conditions.
- 5.2 **Natural England** As competent Authority, Swale must carry out an Appropriate Assessment. Providing that the appropriate assessment concludes that the measures can be secured [with sufficient certainty] as planning conditions or obligations, and providing that there are no other likely significant effects identified (on this or other protected sites) which require consideration by way of appropriate assessments will be able to ascertain with sufficient certainty that there will be no adverse effect on the integrity of the European Site from recreational pressure in view of the site's conservation objectives. In this scenario, Natural England is unlikely to have further comment regarding the Appropriate Assessment, in relation to recreational disturbance.
- 5.3 **KCC Flood and Water Management** No objection subject to the imposition of conditions.
- 5.4 Lower Medway internal Drainage Board No comment.
- 5.5 **SBS Heritage** Agrees with the conclusion of the submitted heritage statement that the proposal will result in a very low level of less than substantial harm to the significance of Ellen's Place. This harm has been minimised through the retention of a large area of the site as informal open space, a considered landscaping scheme and the retention of the best views of the building from within the site and the land beyond. Any harm therefore remains low and at the bottom end of the scale of less than substantial harm.
- 5.6 **KCC Ecology** No objection subject to the imposition of conditions.
- 5.7 **KCC Economic Development** Request developer contributions towards Kent infrastructure provision.
- 5.8 **Southern Water** Provides guidance on layout requirements in relation to Southern Water infrastructure.
- 5.9 **Environment Agency** Provided comments on surface water flooding as set out at Para 7.100.
- 5.10 **Kent Police** Recommends that Secured by Design principles be incorporated into the proposal.
- 5.11 **NHS** Requests contributions towards the healthcare implications of the development.
- 5.12 **SBC Environmental Health** No objection subject to the imposition of conditions.

- 5.13 **SBC Greenspaces Officer** No objection subject to conditions and securing formal sport contribution via a Section 106 agreement.
- 5.14 **SBC Affordable Housing Manager** supportive of the indicative housing mix and tenure split. 40% of homes should be offered as affordable with 2 as First Homes.
- 5.15 **Kent County Archaeology** there is potential for significant archaeological remains to occur on this site and to be affected by proposed development. I am satisfied that this can be addressed through a condition

6. DEVELOPMENT PLAN POLICIES

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

- ST1 Delivering sustainable development
- ST2 Development targets for jobs and homes
- ST3 The Swale settlement strategy
- ST4 Meeting the Local Plan development targets
- CP2 Promoting sustainable transport
- CP3 Delivering a wide choice of high-quality homes
- CP4 Requiring good design
- CP6 Community facilities and services to meet local needs
- CP7 Conserving and enhancing the natural environment
- CP8 Conserving and enhancing the historic environment
- DM6 Managing transport demand and impact
- DM7 Vehicle parking
- DM8 Affordable housing
- DM14 General development criteria
- DM19 Sustainable design and construction
- DM20 Renewable and low carbon energy
- DM21 Water, flooding and drainage
- DM24 Conserving and enhancing valued landscapes
- DM28 Biodiversity and geological conservation
- DM29 Woodlands, trees and hedges
- DM31 Agricultural land
- DM32 Development involving listed buildings
- DM34 Scheduled Monuments and archaeological sites

6.2 Supplementary Planning Guidance/Documents

Swale Landscape Character and Biodiversity Appraisal (Jacobs, 2011)

- KCC Developer Contributions Guide.
- Swale Parking Standards (2020).
- Swale Borough Council's Noise and Vibration Planning Technical Guidance (2020).
- Planting on new development a guide to developers.
- Air Quality Technical Guidance (2021)
- A Heritage Strategy for Swale (2020)
- The Setting of Heritage Assets Historic Environment Good Practice Advice in

Planning Note 3 (Second Edition), Historic England (2017)

6.3 The National Planning Policy Framework (NPPF) National Planning Practice Guidance (NPPG)

7. ASSESSMENT

- 7.1 The main considerations involved in the assessment of the application are:
 - The Principle of Development
 - Loss of Agricultural Land
 - Size and Type of Housing
 - Affordable Housing
 - Heritage
 - Archaeology
 - Landscape and Visual Impact
 - Ecology
 - Transport and Highways
 - Air Quality
 - Community Infrastructure
 - Open Space
 - Flood Risk, Drainage and Surface Water
 - Contamination
 - Living Conditions
 - Sustainability / Energy

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 NPPF states that any proposed development that accords with an up-todate local plan should be approved without delay. At the heart of the NPPF is a presumption in favour of sustainable development. Paragraph 11 sets out that for decision making this means approving development proposals that accord with an up-to-date development plan without delay.
- 7.4 Paragraph 11 states that where there are no relevant development plan policies, or the policies which are most important for determining the application are outof-date, permission should be granted unless:
 - i. the application of policies in the Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of

land, securing well-designed places and providing affordable homes, individually or in combination .

- 7.5 Swale Council are unable to provide a 5 year supply of housing and therefore paragraph 11 of the NPPF is engaged.
- 7.6 Policy ST1 of the Swale Borough Local Plan 2017 (the Local Plan) seeks to deliver sustainable development that accords with the settlement strategy for the Borough.
- 7.7 Policy ST3 sets out the settlement strategy and directs development to existing defined settlements and allocated sites. It seeks to restrict development in the countryside unless it is supported by national planning policy and able to demonstrate that it would contribute to protecting the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.
- 7.8 The site is unallocated and, for the purposes of the Local Plan, located within the countryside, outside of any built area boundary. As will be assessed in further detail below, the visual impact of the proposal would not contribute to protecting the intrinsic value, landscape setting, tranquillity and beauty of the countryside or its buildings. Consequently, the proposal would not accord with policy ST3.
- 7.9 However as detailed above, the site is located in close proximity to the built area boundary of Newington. Newington is identified as a Rural Local Service Centre (Tier 4) within the Swale settlement strategy and is considered to be a relatively sustainable settlement with regard to its range of shops and services.
- 7.10 There is a continuous lit footpath from Eden Meadow along the A2 to the settlement of Newington. There are a number of services and facilities within walking distance of the site in Newington including the train station. Given the proximity and accessibility of the site to Newington, it is a sustainable location for the proposed scale of residential development.
- 7.11 A material consideration is the appeal decision for the immediately adjacent existing 9 dwellings at Eden Meadow (which the current proposal would be accessed through). In consideration of the appeal that related to application 16/505861/OUT at that site, the Inspector agreed with the Council's assessment that the site is '*reasonably well located*.' In reaching this view, the Inspector noted that it was not a challenging or excessive walk to reach the village centre, where there are shops, community facilities and connections to bus and rail services.
- 7.12 On the basis that Swale are unable to demonstrate a 5 year supply of housing, the local plan housing target cannot be met. Paragraph 11 is therefore engaged and the presumption in favour of sustainable development applies.
- 7.13 The harm caused by the proposal, the benefits of the proposal and the associated conflict and accordance with the Local Plan and the content of the NPPF, as a material consideration of significant weight, will be considered fully

in a balancing exercise below, once other material considerations have also been considered.

Agricultural Land

- 7.14 Local Plan policy DM31 states that development on agricultural land will only be permitted when there is an overriding need that cannot be met on land within the built-up area boundaries. Development on best and most versatile agricultural land (BMV) will only be permitted where there is no alternative site on land of a lower grade than 3a or that use of land of a lower grade would significantly and demonstrably work against the achievement of sustainable development; and there is an overriding need that cannot be met on land within the built-up area boundaries.
- 7.15 The appeal site comprises Grade 1 agricultural land and is therefore BMV. The proposal would result in the loss of BMV which is contrary to Local Plan policy DM31.
- 7.16 For the reasons that will be set out elsewhere, it will be relevant to weigh the harm that arises from this and the associated with policy against the benefits of the proposal. In doing so, it is considered that it would be appropriate to have regard to the approach taken by the Inspector when the same issue was assessed in the consideration of the adjacent Eden Meadows site. In that case the Inspector stated that *'the most compelling argument here is that the land is not currently in agricultural use and therefore there would be no loss of BMV. The view expressed by some that the site could potentially be used for arable farming, is not a good one in principle as it could be applied to a wide range of sites to the further detriment of housing supply. Even if the land was in agricultural use, the loss of 0.49 hectares would be relatively small and could not reasonably be described as significant in the terms set out in the Framework. Based on the foregoing, I conclude that the loss of BMV land would not be significant when assessed against national planning policy and does not weigh against the scheme'.*
- 7.17 As per the adjacent site, the application land is in use for grazing rather than active agricultural use. Whilst the area of land subject of this application is larger than the adjacent Eden Meadows site, it is considered that the harm arising to agricultural activity would be limited and it would therefore be reasonable to take a similar view as that which was taken by the Inspector of the site to north.

Size and Type of Housing

- 7.18 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.
- 7.19 The Local Plan requires the mix of tenures and sizes of homes provided in any particular development to reflect local needs. The Local Plan requires developments to achieve a mix of housing types, which reflect that of the Strategic Housing Market Assessment

- 7.20 The Council's Housing Market Assessment (HMA) was 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.
- 7.21 An indicative housing mix has been set out above and includes the provision of a mix of 1 bed flats to 4 bed houses. Given that all detail (other than access) is reserved, this matter would be dealt with at detailed reserved matters stage to ensure that the mix continues to accord with Local Plan policy.
- 7.22 In view of the above, the proposals would be in accordance with policy CP3 of the Local Plan.

Affordable Housing

- 7.23 The NPPF sets out the requirement for appropriate affordable housing levels for new development based on up-to-date evidence.
- 7.24 As an 'other rural location' policy DM8 of the local plan requires 40% affordable housing to be provided. This would equate to 10 houses and would be secured through the signing of a 106 agreement. The applicant has agreed to this.
- 7.25 An indicative accommodation schedule has been provided setting out that 10 affordable homes would be provided. Two low-cost home ownership dwellings will need to be First Homes and the remaining eight affordable homes will need to be provided as Affordable Rent Tenure (ART) and/or Social Rented (SR) housing.
- 7.26 The Councils affordable housing manager has advised that the mix of affordable homes and the proposed tenure split is acceptable and that the affordable homes should be well integrated within the development site. This can be secured at reserved matters stage when the housing layout is agreed.
- 7.27 As supported by policies DM8 and CP3, the affordable homes should be designed for use by disabled occupiers and made available for a variety of groups including families, vulnerable and older persons. As such they should include accessible and wheelchair adapted homes with at least 10% of the social/affordable rented housing provided to Part M4(3) standard (wheelchair user dwellings) and the remaining affordable homes provided to Part M4(2) standard (accessible and adaptable dwellings). The applicant has confirmed that they are happy for this to be secured through the Section 106 legal agreement.
- 7.28 On this basis the proposal would accord with Local plan policy DM8.

Heritage

7.29 Any planning application for development which will affect a listed building or its setting must be assessed in accordance with the requirements of section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. This requires a local planning authority to have special regard to the desirability of preserving

the building or its setting or any feature of special architectural or historic interest which is possesses.

- 7.30 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 it, to avoid or minimise conflict between the heritage assets 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.
- 7.31 The main part of the application site is located to the south of the grade II listed building known as Ellen's Place (comprising nos. 5 and 6 Boyces Hill). The application is accompanied by a heritage assessment which considers the relationship between the heritage asset and the indicative layout plans submitted with the application. It states that:

'...the proposed development will not affect the setting, or significance, of the majority of built heritage assets within the surroundings. However, it will result in changes within the setting of Ellen's Place, a Grade II listed building. This will include the alteration of views to and from the listed building and an alteration to the character of part of its wider setting. As demonstrated in this report, this will result in a very low level of less than substantial harm to the significance of Ellen's Place, engaging paragraph 202 of the NPPF [note – the NPPF para has now been updated to 215].

This harm has been minimised through the retention of a large area of the Site as informal open space, a considered landscaping scheme and the retention of the best views of the building from within the Site and the land beyond. Any harm therefore remains low and at the bottom end of the scale of less than substantial harm.

As demonstrated by this report and the Planning Statement submitted as part of this application, the public benefits of the proposed development, which include the provision of market and affordable housing, biodiversity net gain and the provision of public open space, will outweigh the limited, less than substantial harm to the significance of this Grade II listed building.'

- 7.32 The Council Heritage Officer agrees with this conclusion. Although the submitted plans are indicative with all matters reserved for later consideration, they demonstrate that the proposed quantum of development can be accommodated while maintaining a large landscaped amenity space to the eastern edge of the application site as a buffer which can be secured at reserved matters stage.
- 7.33 The level of harm to the setting of Ellen's Place would be largely mitigated by the provision of the amenity space this would need to be provided on the plans at Reserved Matters stage. There was historically orchard use of the land and so seeking to reintroduce this type of landscape character as shown on the indicative plans would be appropriate. The management of this land can be secured through use of a condition.

- 7.34 In accordance with paragraph 212 of the NPPF, great weight has been given to the conservation of the heritage asset. As detailed above, the proposal would cause less than substantial harm, at the lower end of the scale, to the setting of Ellens Place. This would largely be mitigated through the provision of public open space as shown on the indicative plans and as would be required to be provided at reserved matters stage.
- 7.35 Taking account of paragraph 215 of the NPPF, which states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, the mitigated harm is weighed against the public benefits of the provision of housing set against a current lack of 5 years supply in a sustainable location. On this basis, the public benefits of the proposal outweigh the harm, and the heritage impact of the proposal is concluded to be acceptable.
- 7.36 The proposed development would therefore accord with the provisions of Section 66 of the 1990 Planning (Listed Buildings and Conservation Areas) Act, national and local policy.

Archaeology

- 7.37 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.
- 7.38 Policy DM34 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.
- 7.39 The application site is within an Area of High Archaeological Potential. An Archaeological Desk Based Assessment has been submitted with the application which details that it has high potential for the Iron Age and Roman periods and low potential for all other periods. The overall potential for surviving archaeology is considered high and the impact on any potential surviving archaeology should it exist.
- 7.40 The County archaeologist has concluded that there is potential for significant archaeological remains to occur on the site and to be affected by proposed development. They are satisfied that this can be addressed through a condition for archaeological evaluation with subsequent mitigation that may include preservation in situ of archaeology where appropriate.
- 7.41 Subject to the imposition of a condition securing the above, the proposal would accord with Local Plan Policy DM34 and the NPPF.

Landscape and Visual Impact

- 7.42 Although the proposal is for outline permission with all matters reserved, the landscape and visual impact of the introduction of built form onto the site, and the indicative plans which illustrate how this can be achieved are relevant to consideration of the proposal as they indicate how the site can accommodate the proposed development.
- 7.43 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. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.'
- 7.44 Local Plan policies ST1 and ST3, CP4 and DM14 seek to protect, and where possible, enhance, the intrinsic character, beauty and tranquillity of the countryside, promote and reinforce local distinctiveness, and conserve and enhance landscape character.
- 7.45 Local Plan policy DM24 states that the value, character, amenity and tranquillity of the Borough's landscapes will be protected, enhanced, and, where appropriate, managed. Moreover, Part B of this policy makes it clear that when a development results in having significant adverse impacts on the borough's landscape, the social and or economic benefits of the proposal will need to significantly and demonstrably outweigh the harm to the landscape character, and value of the area.
- 7.46 The site is not within a protected landscape. It is within the Newington Arable Farmlands character area as outlined within the adopted Swale Landscape Character and Biodiversity Appraisal 2011 SPD. This describes the condition of the land as 'poor' with a 'low sensitivity', and the guidelines for this area are to 'create'.
- 7.47 The application is accompanied by a Landscape and Visual Impact Assessment (LVIA) which concludes that the proposed development can be successfully absorbed into the existing landscape framework with limited adverse effects on landscape features, landscape character, views, and visual amenity. It states that although the proposal will result in the loss of openness within the site itself, the indicative layout and open space provision will create a sympathetic settlement edge to Newington and achieve an appropriate transition between the urban area and the rural hinterland beyond, reinforcing that distinction between Newington and Keycol.
- 7.48 This document has been reviewed by an independent landscape specialist on behalf of the Council. The review concludes that while the submitted LVIA overstates the beneficial aspects of the development, and should have identified some low level and localised landscape and visual harm, it is generally consistent and comprehensive in its methodology and content. Crucially, it states:

'The adverse effects on the local landscape would result in some conflict with Local Plan policies which seek to protect the landscape and avoid harm to landscape character, and that conflict will need to be taken into account in the overall planning balance and judged against the benefits of the proposed development, and in the judgement of this review should be taken into account at a relatively low level, noting that the landscape harm would be limited to a very restricted area around the site, and would further decline with time.'

...this site has no landscape designations and the adverse effects in this case would be limited and contained within a small area, tightly drawn around the site.'

- 7.49 Although the proposal would result in the loss of open land, the site is a nondesignated landscape and the level of harm that the proposal would cause would be at a low level and within a contained area. The indicative plans demonstrate that the proposals could be laid out at reserved matters in such a way as to minimise the visual impacts arising. The resultant harm to landscape character would be apparent but limited.
- 7.50 In light of Local Plan policy DM24 Part B which requires significant adverse impacts on the borough's landscape to be significantly and demonstrably outweighed by its social and or economic benefits, the low level of harm identified will be considered in the balancing exercise at the end of this report when weighed against other material planning considerations.
- 7.51 Of additional consideration on this matter is a recent and local appeal decision for application reference 21/504028/FULL ((land to the west of Newington Primary School) in which the Inspector assessed the provision of 25 dwellings and a school car park. The proposal was considered to have a limited adverse impact on the character and appearance of a non-designated landscape, and was also informed by a landscape and visual impact assessment The Inspector concluded that the very limited adverse impact of the proposal was insufficient to significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies in the Framework, taken as a whole and that paragraph 11 d ii of the Framework was of sufficient weight, as a material consideration, to justify setting aside the provisions of the development plan and allow the appeal. Whilst this appeal decision above is not determinative, with each case considered on its own merits and the manner in which weight is applied is for the judgement of the decision maker, it is considered that the comparable appeal provides a useful guide as to how weight can reasonably by applied to this matter in the planning balance exercise below.

Ecology

7.52 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.

- 7.53 Under the Natural Environment and Rural Communities (NERC) 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 and enhancing biodiversity. Furthermore, the National Planning Policy Framework states that 'Planning policies and decisions should contribute to and enhance the natural and local environment'. The NPPF also states that 'if significant harm to biodiversity 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.'
- 7.54 National planning policy aims to conserve and enhance biodiversity and encourages opportunities to incorporate biodiversity in and around developments.
- 7.55 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.
- 7.56 The application is accompanied by an Ecological Impact Assessment, a preliminary ecological appraisal and reptile survey work.
- 7.57 The site supports a breeding population of slow worm and has potential to support foraging/commuting bats, badgers, hedgehogs and breeding birds. Kent Ecology have advised that the measures proposed in the submission are sufficient to mitigate the impact on the protected species present or likely to be present within the site.
- 7.58 There is a reptile receptor site is in the south east corner of the site and this area must not be impacted by the construction works. Once construction has been completed the reptile population will be able to expand into the wider site where suitable habitat will be present. This can be managed by way of a condition.
- 7.59 The application is not subject to the statutory Biodiversity Net Gain requirement as it was submitted prior to the relevant provision coming into force. However under NERC as detailed above and the NPPF, development should provide for a biodiversity enhancement on site. Kent Ecology have recommended a condition to secure this.
- 7.60 On this basis the ecological impact of the proposal would be acceptable and in accordance with Local Plan policies CP7 and DM28 and the NPPF.

The Swale Special Protection Area

7.61 As the application site is within 6km of the North Kent Marshes SPA/Ramsar Sites, the proposed development is likely to have a significant effect, either alone or in-combination, on the coastal Swale Special Protection Areas (SPAs)/Ramsar sites from recreational disturbance on the over-wintering bird interest.

- 7.62 Natural England has advised that an appropriate tariff of £337.49 per dwelling (excluding any legal and monitoring officer's costs) should be collected to fund strategic measures across the Thames, Medway and Swale Estuaries.
- 7.63 These strategic SAMMS mitigation measures are being delivered through Bird Wise North Kent, which is the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, and the mitigation measures have been informed by the Category A measures identified in the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMM) produced by Footprint Ecology in July 2014.
- 7.64 The applicant has agreed to make the required financial contribution that is set out above and this can be secured by a Section 106 agreement.
- 7.65 A decision from the Court of Justice of the European Union (*People Over Wind v Coillte Teoranta*, ref. C-323/17) detailed that mitigation measures cannot be taken into account when carrying out a screening assessment to decide whether a full 'appropriate assessment' is needed under the Habitats Directive. Given the need for the application to contribute to the North Kent SAMMS, there is a need for an appropriate assessment to be carried out as part of this application.
- 7.66 An Appropriate Assessment has been carried out as per below and has been adopted by the Council as the Competent Authority, which concludes that the proposed development will not adversely affect the integrity of the Thames Estuary & Marshes SPA and Ramsar Site and the Swale SPA and Ramsar Site.

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

7.67 The project being assessed would result in a net increase of up to 25 dwellings within 6km of the North Kent SPAs and Ramsar Sites. In line with Policy CP7 'Conserving and enhancing the natural environment – providing for green infrastructure' and Policy DM28 'Biodiversity and geological conservation' and based upon the best available evidence, a permanent likely significant effect on the SPAs and Ramsar Sites due to increase in recreational disturbance as a result of the new development, is likely to occur. As such, in order to avoid and mitigate for an adverse effect on the integrity of the SPAs and Ramsar Site(s), the development will need to include a package of avoidance and mitigation measures.

- 7.68 The North Kent Strategic Access Management and Monitoring Strategy (SAMMS) sets out a strategy to resolve disturbance issues to wintering birds on the North Kent Marshes, focusing on the European Protected Sites and Ramsar Sites and their internationally important bird interest features. Elements within the strategy are:
 - Rangers to provide wardening and visitor engagement
 - A North Kent Coast dog project to promote responsible dog ownership and encourage walking on lead in sensitive areas

- Codes of conduct developed in partnership with local groups and clubs to raise awareness of recreational disturbance in a variety of activities both on and off of the water
- Interpretation and signage
- New and/or enhanced infrastructure
- Enforcement and Monitoring
- 7.69 The report also considered alternative measures, such as legal covenants relating to pet ownership in new developments, and capping visitor numbers at recreational sites. Due to the complexities in enforcing legal covenants and in reducing visitor numbers to the North Kent marshes, it is difficult to have confidence that such measures would be effective in the long term.
- 7.70 The suite of strategic mitigation measures are being delivered through the Bird Wise project, a partnership of local authorities and conservation organisations in North Kent, to ensure that development, considered in-combination, does not have an adverse effect on the integrity of the European sites. A per-dwelling tariff of £337.49 is required as a contribution towards the SAMMS.
- 7.71 Natural England has worked with the north Kent Local Planning Authorities to support them in preparing the SAMMS and the underpinning evidence base. Natural England agree that the mitigation measures to ensure additional impacts from recreational disturbance to the SPAs and Ramsar Sites are ecologically sound. As such, the Applicant does not need to provide their own evidence base on these aspects. Evidence should however be submitted showing that a mitigation contribution payment has either:
 - Been made to the Bird Wise scheme through a Unilateral Undertaking; or
 - Be made through a s106 agreement where Heads of Terms have been agreed and the agreement will be signed prior to any permission being granted.
- 7.72 Having considered the proposed mitigation and avoidance measures to be provided in-perpetuity through the secured contribution to the Bird Wise scheme, Swale Council conclude that with mitigation, the plan or project will have no adverse effect on the integrity of the European protected site(s).
- 7.73 The applicant has agreed to make the required financial payments under SAMMS through a S106 agreement or an alternative appropriate mechanism. This will be required prior to occupation of the development.
- 7.74 Natural England have advised that providing that the appropriate assessment concludes that the measures can be secured [with sufficient certainty] as planning conditions or obligations by the authority, and providing that there are no other likely significant effects identified (on this or other protected sites) which require consideration by way of appropriate assessment, they are likely to be satisfied that the appropriate assessments will be able to ascertain with sufficient certainty that there will be no adverse effect on the integrity of the European Site from recreational pressure in view of the site's conservation objectives. In this scenario, Natural England is unlikely to have further comment regarding the Appropriate Assessment, in relation to recreational disturbance.

7.75 Having made this appropriate assessment of the implications of the plan or project for the site(s) in view of that site's conservation objectives, and having consulted Natural England and fully considered any representation received, the authority may now agree to the plan or project under regulation 63 of the Conservation of Habitats and Species Regulations 2017.

Transport and Highways

7.76 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, following mitigation, would be severe, taking into account all reasonable future scenarios.'

- 7.77 Policy DM6 of the Local Plan seeks to secure an acceptable layout and provision in relation to the travel requirements of a site, whilst policy DM7 seeks to ensure sufficient parking is available to future residents.
- 7.78 Access to the site will be via the Eden Meadows development to the north. The spine road has an initial carriageway width of 5.5m on entry to the site, narrowing to 4.8m within the confines of the site.
- 7.79 In accordance with the Kent Design Guide, a 4.8m wide minor access road is suitable to serve up to 50 dwellings. The current proposal, in combination with the nine previously developed dwellings, provides a total of 34 dwellings, thereby meeting this requirement. Kent Highways have raised no objection to this arrangement. There is also sufficient room to accommodate the parking requirements of the development within the site, which together with the layout and internal access routes, would be determined at reserved matters stage.
- 7.80 Further to the submission of additional information submitted in support of the proposal, Kent Highways have advised that approximately 36 per cent of vehicle movements from the application site will assign to the A2 (west) in the direction of the Medway Towns and that 64 per cent will assign to the A2 (east) in the direction of the A249 and Sittingbourne. This will generate traffic movements on the A2 through Key Street roundabout, and therefore a Section 106 contribution if £36,489.60 is requested towards highway capacity improvements at the roundabout. The applicant has agreed to this. KCC Highways have raised no objection to the proposals.
- 7.81 On the basis of the above, and subject to the imposition of conditions, and a Section 106 agreement to secure highways improvements, the transport and highways impact of the proposal accord with Local Plan policies DM6, DM7 and DM14, and national planning policy.

Air Quality

- 7.82 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.
- 7.83 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.
- 7.84 The Planning Practice Guidance on Air Quality states that 'whether or not air quality is relevant to a planning decision will depend on the proposed development and its location. Concerns could arise if the development is likely to generate air quality impact in an area where air quality is known to be poor. They could also arise where the development is likely to adversely impact upon the implementation of air quality strategies and action plans and/or, in particular, lead to a breach of EU legislation".
- 7.85 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.
- 7.86 The proposed development would utilise the existing vehicular access from Eden Meadow onto High Street (A2). Approximately 17m to the west of the existing access is the start of the Newington Air Quality Management Area (AQMA) and approximately 1km to the east of the existing access is the start of the Keycol Hill Air Quality Management Area (AQMA).
- 7.87 The application is accompanied by an Air Quality Assessment. The Council's Environmental Health Officers have reviewed this and, further to some clarification being provided, have advised that they are satisfied with its methodology and conclusions.
- 7.88 A damage/emission cost has been calculated at £8,109. This can be required through a condition requiring a scheme of air quality improvement measures to be submitted. Monitoring and reporting on usage can be provided in a travel plan also required by condition.
- 7.89 Conditions are also required to control and suppress dust throughout construction phase of development.
- 7.90 In light of the above, subject to the imposition of conditions, the air quality impact of the proposal is acceptable and in accordance with Local Plan policy DM6 and the NPPF.

- 7.91 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.
- 7.92 As with any planning application, the request for financial contributions needs to be scrutinised in accordance with Regulation 122 of the Community Infrastructure Regulations 2010 (which were amended in 2014). These stipulate that an obligation can only be a reason for granting planning permission if it is:
 - Necessary
 - Related to the development
 - Reasonably related in scale and kind
- 7.93 The following financial contributions have been sought by KCC Economic development, then NHS and Swale Borough Council to mitigate the impact of the development upon services.

Primary Education	£7081.20 per house		
Secondary Education	£5587.19 per house		
SEND	£559.83 per house		
Integrated children's services	£74.05 per house		
Libraries	£62.63 per house		
Adult Social Care	£180.88 per house		
Community learning	£34.21 per house		
Refuse	£194.13 per house		
NHS contribution	£360 per occupancy		
Swale Bin provision	£120.30 per house		
SAMMs	£337.49 per dwelling		
Formal sport provision	£713.17 per house		
Highways Improvements at Key	£36,489.60		
Street roundabout			
Open Space	£713.17 per dwelling		

- 7.94 Officers are satisfied that the planning obligations would be necessary to mitigate the impact of the development and make it acceptable in planning terms. The obligations have been identified and assessed by Officers to comply with the CIL Regulations (as amended).
- 7.95 Subject to a S106 legal agreement to deliver these mitigating contributions, the proposal will not have an unacceptable impact in terms of infrastructure provision and, as such, would accord with the abovementioned national and local planning policies.

Open Space

- 7.96 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.
- 7.97 The indicative plans submitted with the application show open space and planting as a buffer for the new development enhancing the existing space to the west and with a larger space to the east helping to reduce the impact on the listed property to the north.
- 7.98 The landscape strategy is appropriate, using native species and traditional orchard planting in keeping with its rural setting. Full detailed plans of play provision and landscape design would be required when layout and landscaping reserved matters are provided.
- 7.99 Given the size of the development the Council would seek off-site contributions toward existing facilities for formal sport. This will contribute toward enhancing capacity of the existing facilities at nearby locations in the village. Contributions will be sought at a level identified in the Open Spaces and Play Strategy of £713.17 per dwelling and this will be required through the 106 agreement.
- 7.100 The Council will not transfer or adopt open space facilities within the development and as such an alternative way of management and maintenance must be identified such as via a management company. This can be managed by condition.
- 7.101 At reserved matters stage it would be expected for the scheme to meet the open space requirements identified in the Local Plan and detailed by the Open Space Manager in their consultation response.
- 7.102 Subject to the above, the proposal would accord with Policy DM17 of the Local Plan and the NPPF.

Flood Risk, Drainage and Surface Water

- 7.103 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.
- 7.104 In terms of tidal and fluvial flooding, the application site is within Flood Zone 1. A Flood Risk Assessment has been submitted which demonstrates that the site is unlikely to be at risk of flooding.
- 7.105 The existing vehicular access to the site within the Eden Meadow development is identified on the Environment Agency (EA) maps which were updated in

January 2025 as at a high risk of surface water flooding. A supplementary technical note has been submitted with the application which advises that the EA maps are based on LiDAR (level) information that does not reflect the actual ground levels which are demonstrated to have been constructed during the Eden Meadow development as 0.3m above existing ground levels.

- 7.106 Kent as Lead Local Flood Authority have been consulted on this matter and have confirmed that the EA maps show the access road to be within an area of "high risk" to a depth of 20cm (lower probability and higher depths also indicated). And that the levels were taken from their LiDAR height model of March September 2019. The applicant confirms that the development was completed in October 2019 and that this would explain the discrepancy.
- 7.107 The NPPF states that the flood risk sequential test should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific flood risk assessment demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future. Whilst the Environment Agency mapping indicates that a small area of the access road might be at risk of surface water flooding, a site-specific Flood Risk Assessment has demonstrated that, even before any mitigation works are considered and contrary to the content of the mapping evidence, development is required to pass the flood risk sequential test. The submissions of the applicant in this respect have not been contradicted by consultees and, as such, it is not considered that the sequential test can be a ground to find the proposal unacceptable.
- 7.108 Additional drainage information has been submitted with the application to supplement the Flood Risk Assessment. Kent as Lead Local Flood Authority have assessed this and advised they have no objection to the proposals subject to the imposition of conditions requiring approval and implementation of a surface water drainage scheme.
- 7.109 On this basis the flood impact of the proposal and the drainage of the site accords with national and Local Plan policy DM21 and subject to the imposition of conditions is acceptable.

Contamination

- 7.110 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.
- 7.111 Environmental Health have considered the proposal and advise that there is no contaminated land history at the site or close to the boundary of the site and it is therefore not necessary to impose any condition in this regard.

7.112 On this basis, there is no objection to this element of the proposal as it is in accordance with Local Plan policy ST1 (11h) and the NPPF.

Living Conditions

Existing residents

- 7.113 The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers.
- 7.114 The nearest neighbouring residential dwellings are predominantly to the North of the site in Eden Meadow and along the High Street. The application seeks outline planning permission and accordingly the masterplan layout is indicative only and subject to change at reserved matters stage. However, the indicative masterplan layout indicates that the proposed quantum of development could be accommodated within the site without any undue harm to the residential amenities of the occupants of nearby dwellings by reason of overlooking, loss of daylight and/or sunlight, visual impact, impacts on outlook and noise and disturbance.
- 7.115 Given that access to the site runs past existing dwellings on Eden Meadow, it would be appropriate and reasonable to impose a condition to manage construction impact in light of the potential impacts during construction on neighbouring property.

Future residents

- 7.116 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. This should be illustrated at reserved matters stage.
- 7.117 As noted above, the masterplan layout is indicative only and subject to revision. However, the layout demonstrates that 25 residential dwellings could be satisfactorily accommodated on the site whilst providing adequate separation between dwellings to ensure sufficient outlook and privacy for occupants of the dwellings.
- 7.118 Approval of the detailed internal layouts of the proposed accommodation is not sought at this stage. However, the indicative masterplan is considered to demonstrate adequate space to accommodate dwellings which would provide an appropriate standard of internal accommodation subject to details to be submitted at reserved matters stage.
- 7.119 The indicative masterplan layout demonstrates scope to provide adequate private amenity space in the form of rear gardens for the proposed houses.
- 7.120 Environmental Health have advised that, due to the development site being set back from the road, noise is not deemed to be an issue that would affect occupiers of the development. There are no other noise sources or sensitive areas are identified.

7.121 The indicative masterplan shows that the site could accommodate 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 Local Plan policy DM14 and the NPPF.

Sustainability / Energy

- 7.122 Policy DM19 of the Local Plan requires development proposals to include measures to address climate change.
- 7.123 A condition should be imposed on any planning permission to control excessive water consumption and to require the future development to include details of energy efficiency and/or renewable energy generation. Subject to the conditions, the application would comply with Policy DM19 of the Local Plan and the NPPF.

Planning Balance and Conclusion

- 7.124 The application site is located within the countryside for the purposes of local plan policy and the proposals would cause landscape harm at a local level. Consequently, the proposal conflicts with the Swale settlement strategy that is set out within Policy ST3, and the visual impact of the proposal would conflict with elements of Policies ST1 and ST3, CP4 and DM14. However, as the visual harm would be within a contained area and restricted to a non designated landscape, the harm would be limited. Moreover, although the land is not actively in agricultural use, it is identified as Grade 1 agricultural land and its loss would be contrary to Local Plan policy DM31.
- 7.125 Subject to the imposition of conditions, details to be addressed at reserved matters stage as identified in this report, and a signed 106 agreement, there are no other objections to the proposal. In this regard it is noted that, the heritage balancing exercise has found that the public benefits arising from the proposal, mostly arising from the delivery of housing, outweigh the less than substantial harm that would be caused by the development having a low level impact on the setting of nearby heritage assets.
- 7.126 Weighing in favour of the proposal, the development would represent a boost to housing supply in an accessible location where the occupiers of the dwellings would be able to access day to day facilities and services using sustainable means of travel.
- 7.127 As Swale is unable to demonstrate a deliverable 5 year supply of housing, the NPPF indicates that the policies of the local plan that relate to the delivery of housing should not be considered up-to-date and, as a result, planning permission should be granted unless the any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

- 7.128 In this instance, the adverse impacts of the proposal would be at a low level and would not significantly and demonstrably outweigh the benefits of the provision of housing in a sustainable location.
- 7.129 The NPPF therefore indicates that the planning permission should be granted and this is considered to be a material consideration of sufficient weight to indicate that planning permission should be granted despite the elements of harm that have been identified and the associated conflict with the development plan. Accordingly, it is recommended that, subject to the imposition of conditions and the completion of a S106 agreement, planning permission is granted for the proposal.

8. CONDITIONS

RESERVED MATTERS

1. Details relating to the appearance, landscaping, layout, and scale of the proposed dwelling(s) and access within the site (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.

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

TIME LIMIT – RESERVED MATTERS

2. The first application for approval of reserved matters referred to in Condition (1) 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.

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

3. The first phase of development to which this permission relates must be begun not later than the expiration of two years from the final approval of the relevant reserved matters.

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

PLANS

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

Site location plan 23254D_10B

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

SUSTAINABILITY

5. No residential unit shall be occupied until details of measures to achieve a water consumption rate of no more than 110 litres per person per day, the rate for that unit(s) have been implemented in accordance with details submitted to and approved in writing by the Local Planning Authority. The measures shall be retained thereafter.

Reason: In the interests of water conservation and sustainability.

6. No development beyond the construction of foundations shall take place until details have been submitted to the Local Planning Authority and approved in writing, which set out what measures have been taken to ensure that the development incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the inclusion of solar thermal or solar photo voltaic installations, and energy efficiency. Upon approval, the details shall be incorporated into the development in accordance with the approved details prior to the first use of any dwelling.

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

SECURED BY DESIGN

7. Submission of reserved matters in accordance with condition 1 shall demonstrate that the proposal incorporates measures to minimise the risk of crime that accord with the principles and physical security requirements of Crime Prevention through Environmental Design (CPTED) following the guidance set out in the Secured by Design. The measures shall be thereafter retained.

Reason: In the interest of security, crime prevention and community safety

8. Development shall not begin until a detailed sustainable surface water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The detailed drainage scheme shall be based upon the principles contained within the Drainage Strategy Report (Revision P02-05/01/2024) prepared by and Infrastructure Design Limited. The submission will further demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of within the curtilage of the site without increase to flood risk on or off-site.

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

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

proposed arrangements for future adoption by any public body or statutory undertaker.

The drainage scheme shall be implemented in accordance with the approved details prior to first use of the development.

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

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

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

ECOLOGICAL MITIGATION

10. Prior to first occupation of any dwelling, the ecological mitigation within Ecological Impact Assessment (Native Ecology; November 2023) must be implemented as detailed.

Reason: In the interests of biodiversity mitigation.

BIODIVERSITY ENHANCEMENT

11. Prior to first occupation of any dwelling, measures for enhancement of biodiversity shall be implemented in accordance with a scheme that of biodiversity enhancement that shall have first been submitted to and approved in writing by the local planning authority. This will include integrated bird and/or bat boxes within all buildings and bat, bird and insect boxes within the wider site. Any boxes for birds will be targeted at red or amber listed species

(as per the latest British Trust for Ornithology Birds of Conservation Concern list).

The approved measures will be retained thereafter.

Reason: To enhance biodiversity value on site.

RETENTION OF TREES

12 Any application to address the reserved matters of layout or landscaping (submitted under the terms of condition 1) shall include details of existing trees

and hedges that are to be retained and details of protection in accordance with the current edition of BS 5837. All trees to be retained must be protected by barriers and/or ground protection. No equipment, plant, machinery or materials shall be brought onto the site prior to the erection of approved barriers and/or ground protection except to carry out pre commencement operations approved in writing by the local planning authority. Nothing shall be stored or placed, nor fires lit, within any of the protected areas. No alterations shall be made to the siting of barriers and/or ground protection, nor ground levels changed, nor excavations made within these areas without the written consent of the local planning authority. These measures shall be maintained until all equipment, machinery and surplus materials have been removed from the site.

Reason: In the interests of landscape, visual impact and amenity of the area and to ensure a satisfactory appearance to the development

LIGHTING DESIGN STRATEGY

- 13. No development shall take place above foundation level until a lighting design strategy for biodiversity has been submitted to and approved in writing by the Local Planning Authority. The lighting strategy shall demonstrate the following:
 - Lighting is designed following best practice guidance within Bat Conservation Trust/Institute of Lighting Professional's '*Guidance Note 08/23 Bats and Artificial Lighting at Night*'.
 - Lighting will be downward facing and on motion sensors
 - Lighting will follow the KCC street lighting requirements. Residential roads typically are on a minus 40/60% dimming regime so dim by 40% between the hours of 20:00 22:00 and then dim by minus 60% between the hours of 22:00 to 05:00.

The strategy will show how and where external lighting will be installed, as well as the expected light spill in lux levels, so that it can be clearly demonstrated that areas to be lit will not impact biodiversity. All external lighting shall be installed in accordance with the approved specifications and locations set out in the strategy and be maintained thereafter.

Reason: In the interests of biodiversity.

MANAGEMENT OF OPEN SPACE

14. Prior to first occupation of any part of the development herein approved, a plan for the management and maintenance of the on site open space shall be submitted to and approved in writing by the Local Planning Authority. This shall detail the ongoing management of the site including identified roles, responsibilities and financial accountability. The management and maintenance of the open space shall thereafter be undertaken in accordance with the approved details.

Reason: To ensure the management and maintenance of the site.

ARCHAEOLOGY

15. To assess and mitigate the impacts of development on significant archaeological remains:

A) 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.

B) 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.

C) The archaeological safeguarding measures, investigation and recording shall be carried out in accordance with the agreed specification and timetable.

D) 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.

E) The measures outlined in the Post-Excavation Assessment Report shall be implemented in full and in accordance with the agreed timings.

The evaluation works outlined Part A of the above condition should involve an initial stage of geophysical survey followed by a programme of archaeological trial trenching and geoarchaeological test pitting taking account of the results of the geophysical survey work.

Reason: Required before commencement of development to avoid any irreversible detrimental impact on any archaeological interest and in the interests of the preservation of archaeological remains.

AIR QUALITY

16. No development shall take place until the developer has submitted a scheme detailing and where possible quantifying/costing what measures or offsetting schemes are to be included in the development which will reduce the transport related air pollution of the development during construction and when in occupation. The scheme should reference the sums calculated in the Emissions Mitigation Statement undertaken and detailed in the Air Quality Assessment undertaken by SLR Consulting dated 30.10.2023.

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

Reason: Required prior to commencement of development to ensure adequate mitigation measures can be implemented against air quality impacts.

UNEXPECTED CONTAMINATION

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

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

a) Details of any sampling and remediation works conducted and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology.

b) Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.

c) If no contamination has been discovered during the build then evidence (e.g. photos or letters from site manager) to show that no contamination was discovered should be included.

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

CONSTRUCTION MANAGEMENT PLAN

18. No development, site clearance or preparation shall take place until a Construction Management Plan has been submitted to and approved by the Local Planning Authority.

The plan shall include details (text, maps and drawings as appropriate) of the scale, timing and mitigation of all construction related aspects of the development. It will include, but is not limited to:

- An indicative programme for carrying out the works.
- Site hours of operation.
- Routing of construction and delivery vehicles.
- Parking and turning areas for construction and delivery vehicles and site personnel, which may require supporting vehicle tracking/swept paths.
- Timing of deliveries, avoiding network and school peaks where possible.
- Sheeting of loose loads and wheel washing and other facilities to prevent dust, dirt, detritus etc from entering the public highway (and means to remove if it occurs).
- Measures to prevent the discharge of surface water onto the highway.

- Temporary traffic management / signage.
- Provision of construction vehicle loading/unloading and turning facilities prior to commencement of work on site and for the duration of construction.

Thereafter the construction of the development shall proceed in strict accordance with the approved Construction Management Plan.

Reason: To prevent detrimental impact on surrounding roads and to protect the amenity of nearby users.

PARKING

19. The application submitted for the approval of layout as a Reserved Matter shall include details of areas for the parking of cycles and the parking and manoeuvring of vehicles in the development in accordance with the Council's adopted parking standards. The parking areas shall be provided in accordance with such details as approved prior to the occupation of each dwelling to which they relate and retained thereafter.

Reason: To ensure satisfactory provision and retention of car and cycle parking.

ELECTRIC VEHICLE CHARGING

20. No dwelling shall be occupied until full details of the electric vehicle charging have been submitted to and approved in writing by the Local Planning Authority. The agreed details shall then be implemented for each house before the dwelling in question is first occupied, and retained thereafter. All Electric Vehicle chargers must be provided to Mode 3 standard (providing up to 7kw). Approved models are shown on the Office for Low Emission Vehicles Homecharge Scheme approved chargepoint model list: schemeapproved-chargepoint-model-list

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

HIGHWAY INFRASTRUCTURE

21. No development shall take place above foundation level until details of 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 has been submitted to an approved by the Local Planning Authority. The works shall thereafter be laid out and constructed in accordance with approved details.

Reason: To ensure the provision of satisfactory highways infrastructure.

22. Prior to first occupation of any dwelling, the following works between that dwelling and the adopted highway shall be completed:

(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).

Reason: To ensure the provision of appropriate highway works.

TRAVEL PLAN

23. Prior to occupation of the development, a Travel Plan, to reduce dependency on the private car shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include objectives and modal-split targets, a programme of implementation and provision for monitoring, review and improvement. Thereafter, the Travel Plan shall be put into action and adhered to throughout the life of the development, or that of the Travel Plan itself, whichever is the shorter.

Reason: To promote sustainable travel options

INFORMATIVES

1. The following other documents were taken into account in determination of the application:

Transport statement dated Nov 2023 Drainage strategy report dated Nov 2023 Landscape and visual impact assessment dated Nov 2023 Archaeological desk based assessment dated Nov 2023 Planning statement dated Nov 2023 Land contamination assessment dated May 2019 Built heritage statement dated Nov 2023 Flood risk assessment dated Nov 2023 Design and access statement dated Nov 2023 Response letter to Lead Local Flood Authority dated Jan 2024 Transport technical note dated LVIA review by Jon Etchells Consulting dated Nov 2024 Phase 2 air quality assessment dated Oct 2023 Ecological impact assessment issued Nov 2023 Habitat condition assessment issued Nov 2023 Biodiversity net gain design stage report issued Nov 2023 Surface water technical note dated 4.3.25

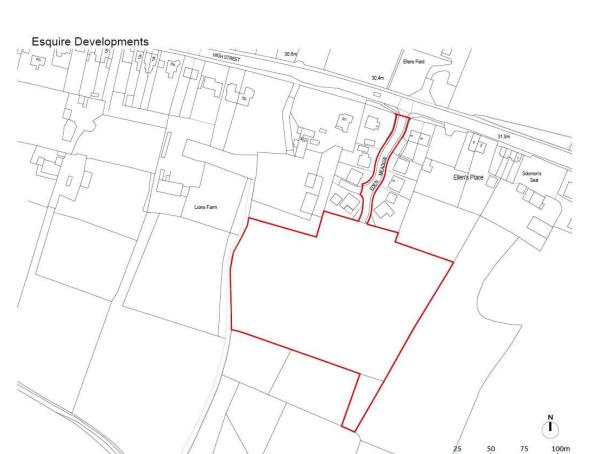
23254D 150 Parameter plan 23254D_100K Illustrative site layout plan LN-LP-06 Rev A Landscape strategy plan

The Councils approach to the application:

In accordance with paragraph 39 of the National Planning Policy Framework (2024), 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.



Scale 1:1250

Proposed Residential Development

2.3 REFERENCE NO - 25/500154/ADV

PROPOSAL

Advertisement Consent for erection of sign post for the Kemsley Community.

SITE LOCATION Land outside Kemsley Village Hall, The Square, Sittingbourne, Kent. ME10 2SL

RECOMMENDATION Delegate to the Head of Planning to grant advertisement consent subject to appropriate safeguarding conditions as set out in the report, with further delegation to the Head of Planning to negotiate the precise wording of conditions, including adding or amending such conditions as may be consequently necessary and appropriate.

APPLICATION TYPE Advertisement Consent

REASON FOR REFERRAL TO COMMITTEE

The sign will be positioned on Swale Borough Council owned land.

CASE OFFICER Kelly Sharp

WARD Kemsley	PARISH/TOWN COUNCIL N/A		APPLICANT Mr David		
			Gawler		
			AGENT Mr Morgan Iyamu		
			– 3D Planning Design		
			(South London)		
DECISION REGISTERED	I	TARGET DATE			
13.01.2025		25.03.2025			
BACKGROUND PAPERS AND INFORMATION:					
Documents referenced in report are as follows: -					
All drawings submitted					
All representations received					
The full suite of documents sub	mitted pursuar	nt to the above ap	plication are available via the		
link below [.] -					

25/500154/ADV | Advertisement Consent for erection of sign post for the Kemsley Community. | Land Outside Kemsley Village Hall The Square Sittingbourne Kent ME10 2SL

1. <u>SITE LOCATION AND DESCRIPTION</u>

- 1.1 The application site is a piece of land to the front of Kemsley Village Hall and north east of 'The Square' which is located within the built area boundary of Sittingbourne. The surrounding the site includes a mix of buildings and uses including the village hall, convenience store, the former Kemsley Arms Public House, which is adjacent to the application site to the north west, and residential dwellings.
- 1.2 The proposed village sign will be sited on land which is in the ownership of Swale Borough Council.
- 2. PLANNING HISTORY
- 2.1 None

3. <u>PROPOSED DEVELOPMENT</u>

- 3.1 This application seeks advertisement consent for the erection of a town post sign for the Kemsley Community. The applicant suggests that the intention of the proposal is to promote the areas Heritage assets.
- 3.2 The sign will be located on a small grassed area to the front of Kemsley village hall and will be non-illuminated.
- 3.3 It will have an overall height of 4.55m, measuring 3m from the ground to the bottom of the sign. The sign itself will measure a height of 1.55m. The sign would measure 1.22m at its widest and have a slim profile.
- 3.4 The sign will be constructed of steel which will be powder coated in black with gold lettering. The post will be constructed of steel.

4. <u>CONSULTATION</u>

4.1 One round of consultation has been undertaken, during which a site notice was displayed at the site. No letters from neighbours were received.

5. <u>REPRESENTATIONS</u>

- 5.1 Cllr Ashley Wise has provided support for the proposal.
- 5.2 Cllr Derek Carnell has provided support for the proposal.
- 5.3 **KCC Highways and Transportation** raise no objections to the proposal provided a condition is imposed to ensure the proposed sign will have a minimum clearance of 2.6m above the footway/cycleway and not project within 0.6m of the carriageway edge.
- 5.4 **Swale Borough Council Estates and Property Services** raise no objection to the proposal.
- 5.5 **Swale Borough Council Greenspaces** raise no objection to the sign subject to the submission of details regarding the fixing of the sign in the verge to ensure it is secure to protect it from damage.
- 6. <u>DEVELOPMENT PLAN POLICIES</u>

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

CP4 Requiring good designDM14 General development criteriaDM15 New Shopfronts, signs and advertisements

6.2 Supplementary Planning Guidance SPG

The Design of Shopfronts, Signs & Advertisements

7. ASSESSMENT

7.1 This application is reported to the Committee as the piece of land where the village signpost will be sited is owned by Swale Borough Council. As this is an application for

advertisement consent, as set out in the Advertisement Regulations the only matters for consideration are as follows:

- Impact on amenity
- Impact on public safety

Impact on Amenity

- 7.2 Policy DM15 of the Swale Borough Local Plan and the Design of Shopfronts, Signs and Advertisements SPG seek to ensure that advertisements respond positively to the character of a locality and minimise harm to amenity. Policy DM15 and the SPG advises that such development should respect the character of the surrounding area and should not be excessive in quantity.
- 7.3 The proposed sign will be a village signpost depicting the name of Kemsley and has been designed with appropriate materials with images relating to the historic identity of the area. It is considered to be of a high quality design of an appropriate scale that will enhance the area.
- 7.4 The sign will be positioned on a grassed area to the front of Kemsley Village Hall which is considered to be an appropriate position for such a sign.
- 7.5 Consequently, the proposal is considered to have an acceptable impact on the streetscene. As a result, it would not have a harmful impact on the visual amenity of the area meeting the objectives of the policies DM14 and DM15 of the Swale Local Plan 2017, the Design of Shopfronts, Signs and Advertisements SPG and the NPPF.
- 7.6 In terms of other amenity considerations, the Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers. Specifically, Local Plan 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.
- 7.7 The proposed sign will not be illuminated or be located immediately adjacent to any neighbouring residential properties where the closest residential property to the east (known as 27 Ridham Avenue) will be approximately 39m from the proposed sign. Given the separation from residential premises, the proposed sign would have an acceptable impact on living conditions of neighbouring occupiers and comply with policy DM14 of the Swale Local Plan 2017 and the NPPF.

Public Safety

- 7.8 When considering public safety, the impact of new proposed signage on the safe use and operation of any form of traffic or transport including the safety of pedestrians, must be taken into account.
- 7.9 The village sign would be non-illuminated and would be set back from the carriageway edge by approximately 3.2m with an overall height of 4.55m (3m from the ground to the base of the sign). The condition that has been suggested by the Highway Authority is noted but that condition is considered to be unnecessary as the application submissions, which are required to be complied with under the terms of other conditions, demonstrate compliance with that condition and, as such, the condition would serve no purpose. As such it is considered that there would not be serious concerns in terms of Highway safety and convenience.

7.10 The comments made by consultees in relation to the sign being secure and protected from damage are noted. It is considered that this matter generally falls outside the scope of assessment for an application for Advertisement Consent. In any case, a standard condition that is imposed on all applications for advertising consent is considered to adequately address this matter as it requires that the sign is kept in a manner that does not endanger the safety of the public.

Conclusion

7.11 The proposed development would have an acceptable impact on amenity and public safety which are the only two matters that can be considered in the case of an application for advertisement consent. Consequently, it would comply with the requirements of policies DM14 and DM15 of the Swale Borough Local Plan 2017 and the Design of Shopfronts, Signs and Advertisements SPG. It is therefore recommended that advertisement consent be granted.

CONDITIONS

- (1) No advertisement is to be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission.
- (2) No advertisement shall be sited or displayed so as to:

a. endanger persons using any highway, railway, waterway, dock, harbour or aerodrome (civil or military);

b. obscure, or hinder the ready interpretation of, any traffic sign, railway signal or aid to navigation by water or air; or

c. hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle.

- (3) Any advertisement displayed, and any site used for the display of advertisements, shall be maintained in a condition that does not impair the visual amenity of the site.
- (4) Any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a condition that does not endanger the public.
- (5) Where an advertisement is required under these Regulations to be removed, the site shall be left in a condition that does not endanger the public or impair visual amenity.

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

(6) The advertisements hereby permitted shall be installed in accordance with the following approved drawings titled: Kemsley Village Sign Dimensions, Kemsley Village Sign, Drawing PE01 (Proposed Elevations) and Sign Details.

Reasons: For the avoidance of doubt.

- (7) The development hereby permitted shall be carried in accordance with the following approved plans:
 - Proposed Block Plan
 - Drawing no. PE01 Proposed Elevations

- Kemsley Village Sign
- Kemsley Village Sign Dimensions. Received 13 May 2025.

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

The Council's approach to the application

In accordance with paragraph 39 of the National Planning Policy Framework (NPPF), 2024 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.





PLANNING COMMITTEE – 22nd May 2025

PART 5

Report of the Head of Planning

PART 5

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

• Item 5.1 - Cherry Tree Farm, Grove Road, Selling, Kent ME13 9RN

PINS Decision: Appeal Allowed. Costs application refused.

Committee or Officer Decision: Delegated Decision

Observations

Planning permission was sought for the change of use of agricultural land and a poultry shed to a dwelling with an associated plot. The main issues were the effect of the conversion on the provision of employment and community facilities, the effect on the character and appearance of the area, including the Kent Downs National Landscape (KDNL), the suitability of the location for residential development and the effect on best and most versatile agricultural land.

The Inspector had regard to a report which identified the shortcomings of the building and the inappropriateness or unattractiveness of using the building for many commercial or community purposes. From this basis, and noting that there was no policy requirement to try and identify a tourism use for the building, it was found that the applicant's marketing exercise was adequate and demonstrates that the use of the building for other purposes than residential would not be viable. The proposal was therefore found to accord with Policy DM3 of the local plan.

Having regard to the landscaping proposals of the applicant and the existing landscape features of the site, it was found that the proposal would *"enhance the landscape and natural scenic beauty, visual qualities and essential characteristics of the KDNL, and the character and appearance of the surrounding countryside."* Moreover, whilst the relatively remote location of the site and the inevitably dependence on cars was noted, by representing a change of use of a building in a manner that accords with national and local planning policies and as a result of it being found to be visually enhancing, it was considered that the development could be found to be policy compliant in terms of its location. In addition, it was found that the need for housing and the shortfall of supply in the Swale Borough meant that the 'overriding need' aspect of the Council's agricultural Land policy (Policy DM31) had been met and the proposal would not undermine the viability of an agricultural holding as it had not been farmed and did not form part of a wider holding.

The Inspector also considered matters such as the presence of a neighbouring listed building, the impact on highway safety, the ecology impacts of the proposal, the visual impact of the dwelling, the potential future use of the site and the impact of the development on the living conditions of existing residents. However, no harms were identified that led the Inspector to conclude that the appeal should not be allowed.

In relation to the application for an award of costs, the commentary of the Inspector indicates that, although they reached a different view in the respects that are set out

above, it was not unreasonable for the Council to have reached the conclusion that it did and, as such, the application was refused.

• Item 5.2 - 1 Broomhill Cottages, Hansletts Lane, Ospringe, Kent ME13 0RS

PINS Decision: Appeal Dismissed.

Committee or Officer Decision: Delegated Decision

Observations

Outline planning permission was sought for a three bedroom dwelling with a detached garage. The application followed a previous refusal and dismissed appeal for a similar proposal at the site.

The site is within the Kent Downs National Landscape (NL) and the Inspector found that "the proposal would introduce built development that would be outside the built confines of any village and unrelated to the pattern of existing traditional buildings along the lane, creating harmful sporadic development. The Inspector identified that the illustrative plans indicate that a significant and noticeable amount of built form would be created, comprising a large bungalow and double garage, where currently there is none, as well as a large hardstanding area. Thus, similar to the previous proposal, the appeal scheme would have an urbanising effect on open, undeveloped land, harming the rural character and failing to further the purpose of conserving and enhancing the natural beauty of the NL." Consequently the proposal was found to be contrary to the local plan and the NPPF.

The Inspector identified that the lack of a noise assessment and the lack of an assessment of the ecological value of the site meant that it had not been demonstrated that the occupiers would have suitable living conditions or that the proposal would not have a harmful impact on protected species.

It was found that the harm to the NL was a strong reason to refuse the application and, therefore, the approach set out at paragraph 11(d) of the NPPF indicated that planning permission should be refused. Consequently, the appeal was dismissed.

• Item 5.3 - 8 Anatase Close, Sittingbourne, KENT ME10 5AN

PINS Decision: Appeal Allowed

Committee or Officer Decision: Delegated Decision

Observations

A retrospective application for an extension to the side of a detached garage was refused by the Council on the grounds of the impact on neighbouring residents, particularly in terms of the impact on light and outlook. The Inspector found that the low eaves height of the extension and the manner in which the roof rakes away from the neighbouring property means that the impact on outlook was acceptable. The impact on light was also found to be acceptable as, although the Inspector identified that there would be some loss of light on a patio area, this was not considered to be unacceptably harmful. The appeal was, therefore, allowed and planning permission was granted.

• Item 5.4 - Woodgate Oast, Woodgate Lane, Borden, Kent ME9 8JX

PINS Decision: Appeal Dismissed

Committee or Officer Decision: Delegated Decision

Observations

The application that was the subject of the appeal sought permission to not comply with a condition of an earlier permission which restricted the use of the building to a combination or residential, bed and breakfast and office use. Within an extensive commentary, the Inspector concluded that the applicant's intention was to use the building for any of the uses, solely, rather than as a combination of the uses. It was found that other conditions of the original permission would also have required amendment to achieve this and that the terms of the amendment would outside the scope of an application made under Section 73 of the Act.

Notwithstanding this, the Inspector went on to consider the case for the proposals and found that it had not been demonstrated that there was not demand for the site, or that it is undesirable or unsuitable in its current form. It was concluded that varying or removing conditions could lead to a reduction of tourist and employment floorspace which would undermine the sites contribution to the rural economy, contrary to local plan policies ST1, ST3, DM3 and CP1.

For both reasons, the appeal was dismissed.

• Item 5.5 - Land to the rear of 21 Middletune Avenue, Sittingbourne, ME10 2HX

PINS Decision: Appeal Dismissed

Committee or Officer Decision: Delegated Decision

Observations

Planning permission was sought for the erection of a dwelling in a position to the rear of 21 Middletune Avenue. The Inspector disagreed with the Council's position that the development would cause a loss of light within that neighbouring property and would not provide occupants with suitable living conditions, but found that the impact on the outlook from the abovementioned existing dwelling would be unacceptable.

The Inspector had regard to the Council's housing supply position but highlighted that the benefit arising from the proposal would be modest in this respect as it related to a single dwelling. Similarly, the economic benefit of the construction of the dwelling and its subsequent occupation and the potential ecological and landscape enhancement was also found to be limited. The harm caused to the living conditions of existing neighbouring residents was found to significantly and demonstrably outweigh the benefits of the proposal and, therefore, the appeal was dismissed.

• Item 5.6 - Playtime, The Promenade, Leysdown-On-Sea, KENT ME12 4QB

PINS Decision: Appeal Allowed

Committee or Officer Decision: Delegated Decision

Observations

Advertisement consent was sought for a larger fascia sign at the site. Following an assessment of the features of other buildings within a similar use in the surrounding area, the Inspector found that the signage is not overly prominent or uncharacteristic in comparison to other premises within the vicinity of the appeal site. The Inspector went on to state that *"The overall design of the fascia sign, having regard to its scale, height, width and location, would not result in harm to the character of the property or the wider area. The increased prominence of the fascia sign is not so substantial when taking into account the context of The Promenade's existing street scene frontages. Consequently, I do not find that the proposal would cause significant visual harm to the character and appearance of the area." The Inspector was satisfied that potentially harmful impacts arising from the illumination of the signage could be controlled by conditions. Therefore, advertisement consent was granted.*

• Item 5.7 - School Lane Farm, School Lane, Iwade, Kent ME9 8SG

PINS Decision: Appeal Allowed – Costs Awarded Against SBC

Committee or Officer Decision: Delegated Decision

Observations

The appeal was against a condition imposed upon a planning permission which required that, prior to the commencement of development, details of how the development would achieve a 50% emission rate reduction must be submitted to and agreed in writing by the Local Planning Authority. The approved details would then have had to be implemented and retained.

The Inspector had regard to the aims of the NPPF, Policy DM19 and the Climate and Ecological Emergency Action Plan but found that there is no policy basis within the Local Plan that supports a condition in the stated terms. The Inspector identified that such a condition was not imposed by the Secretary of State in the case of the Wises Lane decision and that, whilst it had been imposed in a case at Minster, the Inspector in that case also found that there was not a policy basis for the condition. Consequently, the condition was not found to be necessary and reasonable and, as such, the appeal was allowed and the condition was deleted from the planning permission.

An award of costs was made to the applicant on the grounds that the need to submit the appeal to remove the condition had caused the applicant unnecessary or wasted expense and was a result of the condition being imposed unreasonably.

• Item 5.8 - 38A High Street, ME10 4PB

PINS Decision: Appeal Dismissed

Committee or Officer Decision : Delegated Decision

Observations

Planning permission was sought for the demolition of the existing bakery at the rear of the shop at the site and the erection of a block of four flats. The Inspector identified that the main issues were the impact on the Sittingbourne Conservation Area and the provision of adequate living conditions for future occupiers.

Having assessed the character and appearance of the conservation area and its value as a heritage asset, the Inspector found that the building would be of considerable scale and bulk, with the height of the proposed development meaning that it would tower over neighbouring structures. It was also found that the proposal would lack architectural detailing, include large expanses of brick and block walls on the same plane to the east and west, have little visual interest to the gable walls and a plain, sizeable, hipped roof. Furthermore, the large flat roof terrace would be at odds with the surrounding roofscape. For these reasons it was found that the proposal would not preserve or enhance the character or appearance of the conservation area and, as a result, conflict with the local plan and the NPPF.

In relation to living conditions, it was found that an adjacent wall and parked cars would dominate the outlook from the ground floor flat and have an unacceptable sense of enclosure. An adjacent wall and commercial waste area would also cause odour and have an unacceptable impact on the light received within a bedroom of that flat. Noise from the bakery was also identified and, in this regard, the objection from the Environmental Health team on the grounds of the lack of a noise assessment accompanying the application was supported. For these reasons, the living conditions of future occupiers were found to be inadequate.

For these reasons, the appeal was dismissed.

• Item 5.9 - 60 Shortlands Road, ME10 3JT

PINS Decision: Appeal Dismissed

Committee or Officer Decision: Delegated Decision

Observations

The appeal followed a retrospective planning application for roof alterations including a rear dormer. The application was refused on the grounds of the visual impact of the development and the Inspector reached a similar conclusion noting that due to the size and bulk of the dormer, it fails to respect the original form and architecture of the host building. The Inspector found the dormer, which spanned the full height and width of the main part of the roof and above the rear outrigger, to be very bulky and a disproportionate addition. The use of materials to match those of the host dwelling and the limited visibility from the public domain were not found to be reasons to find the development acceptable.

The appeal was, therefore, dismissed with conflict with the local plan and the Council's design guidance being identified and not outweighed by other material considerations.

• Item 5.10 - 4 Church View Cottages, Boxted Lane, Newington, KENT ME9 7LD

PINS Decision: Appeal Dismissed. Costs Application Refused.

Committee or Officer Decision: Delegated Decision

Observations

Permission was sought for a building to be used for the storage of forestry and agricultural equipment and animal feed. However, the Inspector identified that no substantive information had been provided to demonstrate how the building would be used in conjunction with a farming operation or that any equine related use would have benefited rural employment. It was also found that domestic storage would not fall within the scope of Policy DM3. The Inspector also noted that a building of the size proposed would represent an encroachment into the countryside and have a visually detrimental impact upon the character and appearance of the rural landscape. For these reasons, it was considered that the proposal *"would not represent sustainable growth and expansion of business and enterprise in the rural area with the need for such a building not having been demonstrated. Furthermore, the proposal would have a harmful effect on the character and appearance of the countryside."* The loss of high value agricultural land was also not supported. The proposal was, therefore, found to be contrary to local and national policies and the appeal was dismissed.

In relation to the application for an award of costs, the Inspector found that no detail had been provided of how the reasons for refusal could have been overcome and recognised the Council's case that the grounds of complaint did not align with the reasons for the refusal of the application. As such, an appeal would not have been avoidable and the incurring of unnecessary or wasted expense had not been demonstrated.

Item 5.11 - Land at A2 Food Stores, 25 Canterbury Road, Sittingbourne, Kent, ME10 4SG

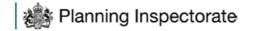
PINS Decision: DISMISSED

Enforcement Notice Appeal

Observations

An extension was built to the front of the commercial property at the abovementioned address and a retrospective application was refused. An enforcement notice was subsequently served and the applicant contested the compliance period, stating that 3 months was too short a period and that they should be allowed 9 months to comply. The Inspector noted that 7 months had elapsed between the appellant submitting the appeal and the Inspector determining the appeal and, as a result, they had effectively created a 10 month compliance period through the use of the appeal procedure. No reason was found to elongate the compliance period any further and, as such, the appeal was dismissed.

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Appeal Decision

Site visit made on 6 February 2025

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 March 2025

Appeal Ref: APP/V2255/W/24/3349633

- Cherry Tree Farm, Grove Road, Selling, Kent ME13 9RN
- 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 Mr Greg Wallis against the decision of Swale Borough Council.
- The application Ref is 23/505204/FULL.
- The development proposed is Change of use of agricultural land and conversion of a former poultry shed to form a single residential dwelling, to include associated external alterations, landscape, parking and ecological enhancements.

Decision

 The appeal is allowed and planning permission is granted for change of use of agricultural land and conversion of a former poultry shed to form a single residential dwelling, to include associated external alterations, landscape, parking and ecological enhancements at Cherry Tree Farm, Grove Road, Selling, Kent ME13 9RN in accordance with the terms of the application Ref: 23/505204/FULL subject to the conditions set out in the schedule below.

Application for costs

 An application for costs was submitted by Mr Greg Wallis against Swale Borough Council. This application is the subject of a separate decision.

Preliminary Matters

- In the banner heading above I have used the description of development taken from the Council's decision notice and the appeal form, as opposed to the application form, as it more accurately describes that for which permission is sought.
- 4. The National Planning Policy Framework (the Framework) was updated on 12 December 2024. However, the sections pertinent to this appeal have not changed to such an extent as to affect the matters raised by the main parties. It has not therefore been necessary to seek their views and the revised version has been referenced in this decision.
- 5. Following the submission of the appellant's Statement of Case, the Council advise that the appeal site does not lie within the 6km buffer zone that surrounds the Thames and Medway Estuary Special Protection Areas. As a result, they no longer wish to defend the reason for refusal in relation to this matter. I therefore do not address this matter in the reasoning below.
- An Updated Marketing Analysis Report, produced by George Webb Finn (July 2024) was submitted with the appeal. It is important that what is considered by the

Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

7. In this case, the updated marketing information provides additional detail in relation to the Council's reason for refusal, rather than any amendments to the proposal. The Council and interested parties had the opportunity to comment on this evidence as part of the appeal process. Prejudice would not arise in taking it into account and so that is what I have done.

Main Issues

8. The main issues in this appeal are:

- The effect of the proposal on employment provision and community facilities within the area;
- The effect of the proposal on the character and appearance of the landscape character of the Perrywood Hills and Dry Valleys character area and the Kent Downs National Landscape (KDNL);
- Whether or not the site would be suitable for a residential development given its location outside a built-up area; and
- The effect of the proposal on the best and most versatile agricultural land.

Reasons

Employment provision and community facilities

- 9. Policy DM3 of Bearing Fruits 2031: The Swale Borough Local Plan (2017) (LP) states that planning permission will not be permitted where it would reduce the potential for rural employment and/or community facilities unless the site/building is demonstrated as having no demand for such purposes or its use would be undesirable or unsuitable. The policy's supporting text states that evidence of demand should include the results of efforts made to market the building as available for employment use, normally with a planning permission.
- 10. The submitted evidence includes a Viability Appraisal Report by Lambert and Foster, and the author is a RICS Registered Valuer and Fellow of the Central Association of Agricultural Valuers. The report outlines that due to its low eaves and the limited height and width of the door openings the appeal building is not suitable for the storage of agricultural machinery due to the size of modern tractors and equipment. Furthermore, the building has been vacant for thirty years, is in a poor state of repair and requires removal of asbestos prior to any future use. At least one insurer has confirmed that due to the building's condition, they would not provide a quote to insure it. It therefore has very limited use for agricultural purposes.
- 11. The report also considers the likely demand and viability of different uses, including office, storage and light industrial use. As a result of the significant expenditure required to repair and convert the building to each of the uses, and based on the estimated market rental values, the report concludes that these alternative uses are not financially viable. I acknowledge the comments from the Council and interested parties, including in relation to the identification of issues such as the asbestos through surveys prior to the purchase of the property.

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However, there is no substantive evidence before me to dispute the financial viability conclusions.

- 12. Furthermore, the appeal site is accessed via narrow country lanes, with no footways or cycle paths and is some distance from the nearest settlement. Its relatively isolated location and poor accessibility would likely result in future occupiers driving to the site. At present, there is very limited car parking provided particularly given the number of workers who could be associated with the alternative uses. Equally, an alternative use for community purposes would be likely to require a significant quantum of car parking, which is not available on site. For this reason, I share the concerns that the unit is likely to be unviable for alternative rural employment and community uses.
- 13. The appellant's updated Marketing Analysis outlines the marketing campaign undertaken during the period from 1 April 2023 to 9 July 2024 during which time there was a single viewing and no offers made for renting the property. The evidence includes a photograph of a 'to let' board installed at the site. A property brochure was also prepared and the property was advertised online and its particulars circulated to prospective tenants.
- 14. An initial guide price of £12,000 (£5.14 per square foot) per annum was advertised for four months. The price was subsequently reduced to £9,000 (£3.86 per square foot) per annum on 10 August 2023 and marketed for a further twelve months. The Marketing Analysis includes comparative evidence of agreed lets and rent sought for properties on the local market. Whilst the property is in poor condition, the evidence indicates that the guide price was at the lower end of the local market value. Consequently, the evidence indicates that the property was marketed at a price that reflected its condition. Although the property was not marketed as a community use, the submitted evidence indicates the presence of two alternative community halls within close proximity, and I have found that the property is unlikely to be viable for such a use.
- 15. I note that the supporting text to Policy DM3 outlines a preference for the property to have a relevant planning permission for any potential employment use it is marketed for. However, this is not an absolute requirement of the policy. The submitted evidence indicates that in the case of the recent Frognall Barn planning application (Ref:21/501737/FULL), which was assessed against Policy DM 3, planning permission was not in place for alternative uses prior to the marketing exercise. This is not disputed by the Council.
- 16. The property was not marketed for tourism purposes. However, my attention has not been drawn to any words within Policy DM3 which would require this. Whilst I note the evidence within the Swale Employment Land Review 2023 Update, the submitted marketing evidence demonstrates that there is no realistic current demand for employment floorspace on this site.
- 17. Therefore, I am satisfied based on the information submitted by the appellant from local agents that the property has been adequately marketed and it has been demonstrated that other uses for the building would not be viable. Therefore, there would be no conflict with Policy DM3 of the LP. As Policy DM14 of the LP requires that development should accord with the policies and proposals of the adopted Development Plan unless material considerations indicate otherwise, it follows that there would also be no conflict with this policy.

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Character and appearance

- 18. The appeal site is within the KDNL and is identified within The Swale Landscape Character and Biodiversity Appraisal SPD (2011) as falling within the "Dry Valleys and Downs Landscape Types" category and the Perrywood Hills and Dry Valleys character area. The Council identify the area as having a moderately sensitive landscape which is in good condition. Mixed woodlands and mature hedgerows are identified as features of the landscape contributing to ecological interest.
- Since the appeal site is within the KDNL, great weight should be given to conserving and enhancing landscape and scenic beauty, as set out in paragraph 189 of the Framework.
- 20. I acknowledge concerns raised in respect of domestic paraphernalia associated with the residential use of the building. However, as a result of its dense front boundary hedgerow and the surrounding woodland, the site is relatively concealed in respect of longer views. Short range views from the highway into the site are only possible from directly in front of the site access. At present the appeal site predominantly consists of mown grassland. The submitted drawings indicate the planting of orchards, a wildflower meadow, the reinforcement of a site boundary with native hedgerow and additional silver birch tree planting. This could be secured with a planning condition. Whilst this planting will take a number of years to mature, I consider that the proposal would enhance the landscape and natural scenic beauty, visual qualities and essential characteristics of the KDNL, and the character and appearance of the surrounding countryside.
- 21. As a result, I conclude that the proposal would be acceptable in terms of the effect on the character and appearance of the area, including the KDNL. The proposal would therefore comply with Policies ST1, ST3 and DM24 of the LP insofar as they require development to conserve and enhance the special qualities and distinctive character of the KDNL and the intrinsic character, beauty and tranquillity of the countryside.

Suitable location

- 22. The appeal site is divorced from the nearest settlement identified in the LP and is, therefore, located in the countryside for planning purposes. The Braintree judgement advised that the word isolated in the Framework's phrase 'isolated homes in the countryside' simply connotes a dwelling that is physically separate or remote from a settlement¹. There are several other dwellings in the immediate area. However, these dwellings form sporadic rural housing along this stretch of Grove Road, rather than a settlement. On the evidence that is before me, the appeal site does not fall within a rural settlement.
- 23. As the appeal site is located outside any settlement, is not in the vicinity of the boundary of any settlement, and is located within the open countryside it is isolated in the context of Paragraph 84 of the Framework. This states that decisions should avoid the development of isolated homes in the countryside unless any identified exceptions apply. One such exception is development re-using a redundant or disused building where enhancing its immediate setting.

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¹ Braintree DC v Secretary of State for Communities and Local Government, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610

- 24. The proposal would re-use a building which has been vacant for thirty years. As set out above, I have found that the proposal, as a result of the additional landscaping and planting, would enhance its setting.
- 25. The dwelling would be relatively remote from the nearest services and facilities and large urban areas, so its occupation by residents would not contribute to a sustainable pattern of development. The occupiers would be likely to rely to a large extent on use of the private car. However, national policy allows the reuse of existing buildings in the countryside for residential purposes and the proposal falls within this category. Equally, I have found that the proposal complies with Policy DM3 of the LP which permits the conversion of rural employment buildings to residential use where evidence is provided that shows that there is no demand for them to be used for employment, or if they are wholly unsuitable for any employment use.
- 26. Policy ST3 of the LP is clear in setting out the Swale Settlement Strategy that development will not be permitted outside the built-up boundaries unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting tranquility and beauty of the countryside, its buildings and the vitality of rural areas. For the reasons given above, therefore, I conclude that the development would accord with this policy. Nor therefore would it conflict with the requirements of Policies ST1 and CP3 of the LP which, in order to deliver sustainable development in Swale, require that development accords with the Swale Settlement Strategy.

Agricultural land

- 27. The Council indicate that the appeal site would result in the loss of Grade 2 agricultural land, and this is not disputed by the appellant. In accordance with the Framework, this is considered 'best and most versatile agricultural land'.
- 28. Policy DM31 of the LP states that development on agricultural land will only be permitted when there is an overriding need that cannot be met within the built-up area boundaries. However, the main parties agree that the Council is unable to demonstrate a 5-year supply of deliverable housing sites. Consequently, it appears that requirements for housing supply cannot currently be met within the Council's defined built-up area boundaries. Accordingly, and bearing in mind the Framework's objective to significantly boost the supply of housing, the requirement for housing in this case is an overriding need, justifying development on agricultural land.
- 29. The appeal site does not form part of a wider holding, and therefore its loss would not render a remaining agricultural holding unviable. The appellant outlines that whilst the grass has been regularly mown for thirty years, the appeal site has not been farmed for a considerable amount of time. In addition, the existing barn is in a poor state of repair and has design limitations which mean that, without modifications, it is unlikely to be suitable for agricultural use.
- 30. Consequently, for the above reasons, in this instance I do not find that the loss of best and most versatile agricultural land would conflict with Policy DM31 of the LP, the aims of which are outlined above.

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Other Matters

- 31. The neighbouring property, Well House, is a Grade II Listed Building (LB), located approximately 75 metres from the appeal property. From my observations on the site visit and the evidence before me, the significance of the LB is derived mostly from its age and architectural quality.
- 32. The statutory duty under Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses when dealing with planning applications.
- 33. As detailed within the appellant's Heritage Impact Assessment, the appeal property is separated from the LB by a significant distance and a mature boundary hedge. Furthermore, the proposal would retain the existing form of the appeal building. As such, while resulting in a change on the site, given the separation and relatively limited intervisibility, the proposal would preserve the significance of the designated heritage asset. These findings are consistent with the Council's own heritage advisor.
- 34. A significant number of neighbours have raised other concerns in relation to the development. Interested parties state that the proposed development would harm highway safety, with concerns raised about an increase in traffic and sight lines from the site access. The appeal proposal provides a single dwelling which would result in a very limited increase in local traffic, which would not be harmful. The appeal site would have a parking area of sufficient size for the vehicles associated with the dwelling and a turning area which would enable vehicles to enter and leave the site in a forward gear.
- 35. Interested parties suggest that protected species may be present within the local area. The planning application included an Ecological Appraisal and I note that Kent County Council's Biodiversity Officer was consulted and raised no objection subject to the imposition of planning conditions related to ecological mitigation during construction, lighting and ecological enhancement. I have been provided with no substantive evidence which would prompt me to disagree with the Biodiversity Officer's conclusions, and I have imposed the aforementioned planning conditions.
- 36. As I have found that the proposal would cause no harm to character and appearance, and complies with the relevant policies related to the change of use of rural employment buildings and loss of agricultural land, it would not create a precedent for other developments that would cause harmful effects in these regards.
- 37. In relation to concerns about the visual effect of the conversion of the building, the proposal would retain the buildings' existing form and general appearance of a former agricultural building. The proposed shiplap weatherboarding would reflect the rural vernacular and would not harmfully erode the buildings' original character.
- 38. As future residential subdivision of the appeal site would require a new planning permission it would not be necessary or relevant to impose a planning condition which would restrict this.

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- 39. Concerns in relation to construction traffic and noise have also been raised. I have sympathy for existing occupiers as development of this nature would inevitably give rise to some disruption. However, the works would be time limited and it would not be reasonable to withhold consent on this basis alone.
- 40. It has been suggested that there is not evidence that residential development is needed locally. However, the submitted evidence indicates that the Council is unable to demonstrate a 5-year supply of deliverable housing sites. Consequently, it appears that requirements for housing supply cannot currently be met within the Council's defined built-up area boundaries, indicating that there is significant local housing need. Interested parties suggest that previous alterations to the barn have removed much historical interest from it. However, there is no evidence before me to suggest that these alterations could not have taken place. I have determined the appeal on its own merits and based on the appearance of the site during my visit.
- 41. A number of other matters have been raised by interested parties and I have taken them all into account. Those related to planning include the proposal not being beneficial to the community and the impacts on local infrastructure. However, whilst I take these representations seriously, I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects. Consequently, they do not lead me to a different overall conclusion other than that the appeal should be allowed.

Conditions

- 42. I have had regard to the various planning conditions that have been suggested. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance (PPG). I have made such amendments as necessary to comply with those documents and for clarity and consistency.
- 43. In addition to the standard time limit, I have imposed an approved plans condition in the interests of certainty. In the interests of character and appearance I have imposed the suggested condition related to the use of external materials.
- I have imposed the Council's suggested condition relating to sustainable construction in the interests of promoting energy efficiency and sustainable development.
- 45. Conditions related to mitigation measures for protected species and biodiversity management measures are necessary to enhance biodiversity. In the interest of character and appearance I have imposed a condition related to hard and soft landscaping. However, In the interests of brevity I have combined the Council's three suggested landscaping conditions into a single condition.
- 46. I have imposed the suggested condition related to contamination to ensure that any contaminated land is adequately dealt with. A condition to restrict construction hours is necessary to protect the living conditions of neighbouring occupiers. A condition requiring the retention of off-street car parking is necessary for highway safety.
- 47. Whilst the existing building was previously an army barracks used during the Second World War there is no evidence that it is of specific historic interest. Consequently, I do not consider that a condition requiring a programme of building recording would be reasonable or relevant, and I have not imposed it. However, as

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the appeal site lies near the Iron Age earthwork enclosure at Perry Wood, I have imposed the Council's suggested condition related to an archaeological watching brief, to ensure that any features of archaeological interest are properly examined and recorded.

48. I have not imposed the suggested conditions requiring the restriction of water usage and the installation of an electric vehicle charger as the PPG sets out that compliance with other regulatory requirements, such as the Building Regulations, will not meet the test of necessity and may not be relevant to planning.

Conclusion

49. For the reasons above, and having regard to all other matters raised, I conclude that the proposal would accord with the development plan and the Framework. The appeal is therefore allowed.

B Pattison

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- The development shall be carried out in accordance with the following approved plans: P06 Rev B, P07 Rev A, P08 Rev B, P09 Rev B and P10 Rev B.
- 3) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be in accordance with a written programme and specification which has been submitted to and approved in writing by the Local Planning Authority. The works undertaken thereafter shall be in strict accordance with the details approved.
- 4) No development shall take place until details of 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, and works shall be implemented in accordance with the approved details.
- 5) From two weeks prior to the commencement of any works (including site clearance), all mitigation for protected/notable species and habitats will be carried out in accordance with the details contained in section 11 of the Native Ecology Updated Ecological Appraisal (dated June 2023), unless otherwise varied by a Natural England licence following updated survey(s) for badgers. The approved strategy will be implemented from two weeks prior to the commencement of works until completion.
- 6) Within 3 months of works commencing, a detailed plan(s) (including planting schedules) showing how the development will enhance biodiversity shall be submitted to, and approved in writing by, the Local Planning Authority. This will

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include a detailed landscaping plan, basic management measures to achieve the proposed habitat target conditions, native and wildlife-friendly planting, a wildlife pond, and durable bat and bird boxes aimed at species of conservation concern. The approved measures will be implemented and retained thereafter.

- 7) The development shall not be occupied until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure, hard surfacing materials, and an implementation programme. The landscaping works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority. 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.
- 8) The dwelling shall not be occupied until details have been submitted to the Local Planning Authority and approved in writing, which set out what measures have been taken to ensure that the development incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the inclusion of solar thermal or solar photo voltaic installations, and energy efficiency. The dwelling shall not be occupied until the approved sustainable construction techniques have been incorporated into the development in accordance with the approved details.
- 9) The dwelling shall not be occupied until a lighting design plan for biodiversity has been submitted to, and approved in writing by, the Local Planning Authority. The plan will show the type and locations of external lighting to demonstrate that areas to be lit will not adversely impact biodiversity. All external lighting will be installed in accordance with the specifications and locations set out in the plan and will be maintained thereafter.
- 10)No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times: Monday to Friday 0730 – 1800 hours, Saturdays 0800 – 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.
- 11)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; such land and access thereto shall be provided prior to the occupation of the dwellings hereby permitted.

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

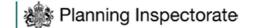
Upon completion of the building works, this condition shall not be discharged until a closure report has been submitted to and approved in writing by the Local Planning Authority. The closure report shall include;

a) Details of any sampling and remediation works conducted and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology.

b) Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what which materials have been removed from the site.

c) If no contamination has been discovered during the build then evidence (e.g. photos or letters from site manager) to show that no contamination was discovered should be included.

END OF SCHEDULE



Appeal Decision

Site visit made on 18 March 2025

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2025

Appeal Ref: APP/V2255/W/24/3350751

- 1 Broomhill Cottages, Hansletts Lane, Ospringe, Faversham, Kent ME13 0RS
- The appeal is made under section 78 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 outline
 planning permission.
- The appeal is made by Mr Roger Bishenden against Swale Borough Council.
- The application Ref is 24/500654/OUT.
- The development proposed is described as 'outline planning for 3 bedroom bungalow and double garage'.

Decision

 The appeal is dismissed and outline planning permission for a 3 bedroom bungalow and double garage is refused.

Preliminary Matters

- Outline planning permission is sought, with all matters reserved. This includes
 matters relating to appearance, scale and layout. Nevertheless, plans have been
 submitted with the application which show a site layout. I have determined the
 appeal on the basis that the site layout plans are for illustrative purposes only.
- 3. The National Planning Policy Framework (the Framework) was revised, and the 2023 Housing Delivery Test results were published in December 2024. As these could affect the issues and matters in this case, the parties were invited to make further comments. Only the Council responded. My decision reflects the latest versions of these documents, and the response received on them.
- 4. The appeal is against the non-determination of a planning application. The Council's appeal statement indicates that it would have refused planning permission for reasons relating to: character and appearance, including impact on the National Landscape; future living conditions; effect on protected species; and impact on the Swale Special Protection Area (SPA). The main issues below are taken from the Council's appeal statement, with the SPA issue addressed under other matters.

Main Issues

- 5. The main issues in this appeal are:
 - the effect of the proposed development on the character and appearance of the area, including whether the proposal would conserve and enhance the landscape and scenic beauty of the Kent Downs National Landscape (formerly Area of Outstanding Natural Beauty);

- whether the proposed development would provide acceptable living conditions for future occupiers, with particular regard to traffic noise; and
- · the effect of the proposal on protected species and their habitats.

Reasons

Character and appearance

- 6. The appeal site comprises land fronting Hansletts Lane in the open countryside. It is largely open and overgrown with some trees and hedges in and around the site. It lies within the Kent Downs National Landscape (NL) where great weight should be given to conserving and enhancing landscape and scenic beauty in accordance with the Framework. The site is separated from the grounds and buildings of a semi-detached pair of houses at 1 and 2 Broomhill Cottages by a field, and a landscape strip separates it from the M2 motorway to the north.
- 7. The site is within an area of fruit belt, characterised by its gently undulating landscape and open field system. The Council's Landscape Character and Biodiversity Appraisal SPD 2011 considers that the landscape structure is strong and intact, and it includes a guideline to conserve and enhance the NL. The Landscape Assessment for the NL seeks to protect the remote, rural quality of this landscape, including by ensuring that the location of new development fits with landscape character and existing settlement patterns. The natural, undeveloped appearance of the site contributes positively to the rural character of the area.
- 8. In an appeal for a previous similar proposal for this site¹, the Inspector found that notwithstanding the presence of the motorway, the vicinity of the site has good visual and landscape quality. This was derived from its openness, the presence of mature trees and hedgerows along Hansletts Lane, and the rural buildings, including the traditionally-styled Broomhill Cottages and a former Oast House, dispersed along the lane. This remains the case.
- 9. The proposal would introduce built development that would be outside the built confines of any village and unrelated to the pattern of existing traditional buildings along the lane, creating harmful sporadic development. The illustrative plans indicate that a significant and noticeable amount of built form would be created, comprising a large bungalow and double garage, where currently there is none, as well as a large hardstanding area. Thus, similar to the previous proposal, the appeal scheme would have an urbanising effect on open, undeveloped land, harming the rural character and failing to further the purpose of conserving and enhancing the natural beauty of the NL.
- 10. Therefore, I conclude that the proposed development would harm the character and appearance of the area and would not conserve and enhance the landscape and scenic beauty of the NL. This would be contrary to Policy DM24 of the Bearing Fruits 2031: The Swale Borough Local Plan 2017 (LP) where it requires proposals in the NL to conserve and enhance the special qualities and distinctive character of the NL. The proposal would also conflict with the Framework's policies for NLs.

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Appeal Ref: APP/V2255/W/17/3181426 'the previous scheme/proposal'

Living conditions

- 11. The M2 motorway lies close to the northern boundary of the site. At the time of my site visit, although only a snapshot in time, constant noise from motorway traffic could be heard at the site.
- 12. No acoustic appraisal has been submitted to consider the effects of traffic noise on future occupiers of the appeal scheme. In the absence of this, it is not possible to determine whether satisfactory living conditions could be achieved for future residents of the proposed house and any associated garden space.
- 13. Consequently, I conclude that there has been a failure to demonstrate that the proposed development would provide acceptable living conditions for future occupiers, with particular regard to traffic noise. This would be contrary to Policy DM14 of the LP where it requires proposals to not significantly harm amenity.

Protected species

- The appeal site is located within the countryside. It is overgrown and part of it contains some well-established trees.
- 15. The proposal would result in new development on a site in a rural area containing trees and vegetation where protected species and their habitats may be present. The absence of any ecological assessment means that the impact of the proposed development on biodiversity cannot be determined.
- 16. Therefore, I conclude that it has not been demonstrated that the proposal would not have any adverse impacts on protected species and their habitats. This would conflict with Policy DM28 of the LP which seeks to conserve biodiversity, including by requiring appropriate surveys where it is likely that development sites are used by legally protected species, amongst other things.

Other Matters

17. The proposed development would be likely to have a significant effect, either alone or in combination, on The Swale Special Protection Area due to its location within 6km of the protected site. However, given my conclusion below, there is no need to consider the implications of the proposal on the protected site because the scheme is unacceptable for other reasons.

Planning Balance and Conclusion

18. Paragraph 11(d) of the Framework is engaged as the Council can only demonstrate a housing land supply of 3.98 years against the required five years. In such circumstances, this states that development should be approved unless the application of policies in the Framework that protect areas of particular importance provides a strong reason for refusing the development. In this appeal, the application of the Framework's NL policies provides a strong reason to refuse the development. The proposal would also be contrary to Policies DM14, DM24 and DM28 of the LP.

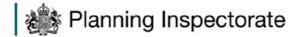
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19. Consequently, the proposal would conflict with the development plan and the material considerations, including the Framework, do not indicate that the appeal should be decided other than in accordance with it. The appeal is therefore dismissed, and outline planning permission is refused.

A Wright

INSPECTOR

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Appeal Decision

Site visit made on 31 March 2025

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 April 2025

Appeal Ref: APP/V2255/D/24/3357419

8 Anatase Close, Sittingbourne, KENT ME10 5AN

- 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 Melissa Doak-Dunelly against the decision of Swale Borough Council.
- The application Ref is 24/504027/FULL.
- The development proposed is an extension to the side of the existing detached garage.

Decision

- The appeal is allowed and planning permission is granted for an extension to the side of the existing detached garage at 8 Anatase Close, Sittingbourne, Kent ME10 5AN in accordance with the terms of the application, Ref 24/504027/FULL, subject to the condition set out below:
 - a) The development hereby permitted shall be carried out and/or maintained in accordance with the following approved plans: drawings nos. 2024-113-01 and 2024-113-03.

Preliminary Matters

- 2. The planning application form indicates that the development has already taken place and I was able to view the side extension to the garage at the time of my visit.
- A revised version of the National Planning Policy Framework (the Framework) has been published since the planning application was determined by the Council. I have had regard to the revised Framework in reaching my decision.

Main Issue

 The main issue raised by this appeal is the effect of the proposed development on the living conditions of the occupiers of No.1 Senora Way, particularly in regard of outlook and light.

Reasons

5. The existing garage with its recent side extension runs alongside the side boundary of No.1. The proposal brings built development closer to the dwelling at No.1 and along the side boundary of the rear garden. I accept that the side extension will be visible in outlook from No.1. However, the eaves of the extension are low in height and match the eaves of the existing garage. Furthermore, the roof slopes away from No.1. Given its overall modest height and size of the extension with its roof pitching away from No.1, the garage extension is not an overly dominant or

enclosing feature in the outlook from the rear habitable living space within the property of No.1 or that of the outdoor living space at the rear.

- 6. The garage extension is positioned east of the dwelling and to the north east of the rear garden. As noted above the extension has a limited eaves height and roof that pitches away from No.1. Taking into account the orientation of the sun, the extension would not cast any significant overshadowing over the dwelling or the rear garden.
- 7. The gable end of the garage extension also abuts the side patio of No.1. Some overshadowing of the patio area will take place but this would only be for a relatively short period of the day. I do not consider any such loss of light resulting from overshadowing would be so substantial as to cause significant harm to the living conditions of existing neighbouring occupiers.
- Consequently. I do not find that the side extension to the existing garage would diminish the enjoyment of the residential living environment for the neighbouring occupiers at No.1 and, as such, would not harm the enjoyment the existing occupiers should reasonably expect to enjoy.
- 9. For these reasons, I conclude that the proposed development would not harm the living conditions of the occupiers of No.1 Senora Way, particularly in regard of outlook and light. As such, the proposed development would comply with Policies DM14 and DM16 of the Bearing Fruits 2031: The Swale Borough Local Plan 2017. These policies seek, amongst other matters, development to protect residential amenity and to cause no significant harm to amenities.

Other Matters

10. Concerns are raised to potential noise and disturbance arising if the extended garage were to be used to build cars. However, the proposal has been put forward as a householder planning application seeking planning permission for works or extension to a dwelling. Therefore, the proposal should be assessed on the basis that it is a residential garage and any associated activities relate to those of a residential property. Whilst concern is also raised to fire risk, from the evidence before me there is no clear indication that there would be a significant risk of fire as result of the development.

Conditions

11. I have considered what planning conditions if any should be imposed in light of paragraph 56 of the Framework and the Planning Practice Guidance. As the development has already commenced there is no requirement to impose the timeframe for commencement of development condition. In order to avoid doubt an approved plan list should be made a condition of this permission.

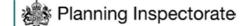
Conclusion

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

Nicola Davies

INSPECTOR

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Appeal Decision

Site visit made on 4 February 2025

by Mark Philpott BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 March 2025

Appeal Ref: APP/V2255/W/24/3347790

Woodgate Oast, Woodgate Lane, Borden, Kent ME9 8JX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended)
 against a refusal to grant planning permission under section 73 of the Town and Country Planning
 Act 1990 (as amended) for the development of land without complying with conditions subject to
 which a previous planning permission was granted.
- The appeal is made by Mr Neil Jones-Barlow (Mr N & Mrs S Jones-Barlow Partnership) against the decision of Swale Borough Council.
- The application Ref is 24/500383/FULL.
- The application sought planning permission for: 'Change of use from agricultural to bed and breakfast, office and residential' without complying with a condition attached to planning permission Ref SW/11/1491, dated 24 February 2012.
- The condition in dispute is No 10 which states: 'The area identified for use as a residential dwelling
 on the approved plans hereby permitted shall cease, and the residential accommodation vacated
 within 12 months of the cessation of trading of the bed and breakfast use or the office use hereby
 permitted'.
- The reason given for the condition is: 'In recognition of the functional need between the residential
 accommodation and bed and breakfast accommodation which has allowed an exception to be made
 to the rural restraint policies that usually prevent new residential accommodation in the countryside,
 in pursuance of policies E1, E6 and RC6 of the Swale Borough Local Plan 2008'.

Decision

1. The appeal is dismissed.

Background and Procedural Matters

- The site relates to a converted oast and surrounding land used for bed and breakfast, office and residential purposes following planning permission being granted under SW/11/1491 (the 'original permission'). The residential use takes the form of a single dwelling.
- 3. The scope of the proposal in the heading is based on details on the planning application form, but an alternative to condition No 10 has not been proposed. Instead, the application sets out that the appellant's aim is to gain a permission that enables the site to be used for 'residential and/or bed and breakfast/guest accommodation, office and residential' purposes or, in other words, provides flexibility so it could be wholly residential. The Council approached the application in this manner. It would also provide for guest accommodation at the site, albeit it is unclear how this would operate differently to bed and breakfast accommodation. In any case, in response to a query to the appellant and the Council in part regarding the Finney judgement¹, it has been clarified that the appellant actually aims to gain

¹ Finney v Welsh Ministers & Others [2019] EWCA Civ 1868

flexibility so any use or combination of uses quoted above could be (and therefore some potentially may not be) carried on at any given time.

- 4. The original permission is subject to several other conditions that are pertinent to what is sought by the appellant. Condition No 7 intends to restrict specific parts of the site to uses falling within Class B1² of the Town and Country Planning (Use Classes) Order 1987 ('the Order'), which once related to business uses including offices, research and development and light industrial uses. However, amendments to the Order have merged Class B1 into Class E3, which covers a broad range of commercial, business and service uses. In contrast, condition No 8 intends to restrict parts of the site to bed and breakfast and associated purposes specifically. Additionally, the objective of condition No 9 is to require the residential element to be occupied by persons involved in the management of the bed and breakfast accommodation, whereas condition No 11 aims to prevent its long term occupation.
- 5. Varying or omitting condition No 10 would not enable the site to be used as intended unless some action is also taken in respect of condition Nos 7, 8, 9 and 11. However, Section 73 of the Town and Country Planning Act 1990 ('the Act') provides the power for not only condition No 10 to be considered, but also enables new conditions to be imposed and conditions imposed on the original permission to be modified or omitted. Accordingly, I have considered the proposal based on what the appellant seeks to achieve, rather than limit my decision to consideration of condition No 10 only.
- The Finney judgement established that an application under Section 73 of the Act may not be used to obtain a permission that would require a variation to the terms of the 'operative' part of the permission to which it would relate. An implication of this is that the proposal, including any conditions that may need to be imposed, cannot be inconsistent with the description of the development for which the original permission was granted. I sought the views of the main parties regarding this matter, as indicated above, and have taken the responses into account in making my decision. This is considered in the first main issue below, whereas the second main issue encapsulates the Council's reason for refusing the application.
- It is important to note that the original permission was modified by a non-material amendment (NMA) granted under Section 96A of the Act and given reference SW/11/1491/NMA2. At my request details of this were submitted, which include drawings altering the approved layout of the oast⁴. However, these do not reflect the existing layout, which appears to align with the existing first floor plan and drawings in various sales particulars submitted to support the proposal⁵.
- 8. I gave the main parties an opportunity to provide views as to the approved layout of the oast and whether they consider the site includes a single planning unit or multiple disparate units. In the absence of any other potentially relevant permissions or justified alternatives, I will make a decision based on the NMA drawings showing the approved layout. However, the appellant's contention that the site constitutes a single planning unit is compelling, as the NMA drawings clearly show the bed and breakfast, office and residential elements of the oast

² Class B of Part B of the Schedule to the Order at the time the decision was made ³ Class E of Part A, Schedule 2 of the latest revision to the Order ⁴ Drawing references: WF/06A and WF/07A

⁶ Drawing reference: WF/30; document references: GH2615 and 8846249

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internally connected. The officer's report for the original permission supports this stance. I have also proceeded on that basis.

- 9. Additionally, the appellant has submitted drawings showing proposed alterations at first floor level which would result in a different balance of bed and breakfast and residential accommodation to what is shown on the NMA drawings. However, I do not consider these any further given that securing a specific layout would plainly be contrary to the appellant's aim to use the site flexibly.
- 10. In an attempt to overcome the Council's objections to the scheme, updated marketing and associated evidence has been submitted with the appeal. The Council had an opportunity to comment on this during the appeal process and so I have taken it into account in making my decision.
- 11. The revised National Planning Policy Framework came into force on 12 December 2024. The 2023 Housing Delivery Test results were also published on the same date. However, the changes to national policy are not directly relevant to the key issues for this appeal and there are no implications arising from the test results. As such, I have not sought further views from the main parties about these matters.

Main Issues

12. The main issues are:

- whether the proposal is within the scope of Section 73 of the Act; and
- the effect of the proposal on the development plan's settlement strategy, employment and tourism.

Reasons

Scope of proposal

- 13. The original permission clearly relates to bed and breakfast, office and residential uses at the site. There is nothing in the description of the development which suggests that just one of those uses may be carried out at the site exclusively. This is reinforced by the conditions, which intend to secure that specific parts of the building are used for prescribed purposes. Consequently, it would not be possible to vary condition Nos 7 to 11 to enable the site to be used in the manner quoted in paragraph 3 above, or otherwise enable just one or some of the proposed uses to be carried on, as this would conflict with the operative part of the permission.
- 14. I have also considered the Reid judgement⁶, which establishes that 'when a condition is removed, the operative part of the permission remains intact, albeit in an unconditioned way'. However, even if condition Nos 7 to 11 were removed, the appellant's aims would seemingly still not be achieved given that to align with the operative part of the permission the site would need to include bed and breakfast, office and residential uses. Moreover, even if the site comprised multiple planning units, the site would still be restricted to other uses within the same use classes⁷ or those permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015, which in many cases require prior approval as to various considerations that I could not pre-empt.

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⁶ Freddie Reid v Secretary of State for Levelling Up, Housing and Communities [2022] EWHC 3116 (Admin) ⁷ A change of use to another purpose in the same use class is not development due to the operation of Section 55(2)(f) of the Act

- 15. Additionally, the Planning Practice Guidance states that Section 73 of the Act 'cannot be used if there is no relevant condition in the permission listing the originally approved plans'⁸, but there is nothing in legislation that prevents an application being made and determined without such a condition. Furthermore, the NMA decision letter makes clear that the development should be carried out in accordance with the uses specified on the associated drawings, which are those principally relevant to the conditions pertinent to the appellant's aims. In this respect there is no issue with the scope of the proposal.
- 16. However, as neither the variation nor removal of the conditions could achieve the appellant's aims, the proposal is beyond the scope of Section 73 of the Act. That being said, the removal of condition Nos 7 to 11 would give latitude for the site to be used more flexibly. For this reason, and in the interests of completeness, I go on to consider the acceptability of the potential impacts of this below in the context of the Council's concerns.

Settlement strategy, employment and tourism

- 17. The site is in open countryside and outside built up area boundaries as designated by the Council's Local Plan⁹ (LP). Policy ST3 of the LP sets out the settlement strategy for the borough. It states that development will not be permitted unless it is supported by national policy and demonstrated that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities. While the Council does not include this policy in the refusal reason, it is clear from the evidence that it is relevant. Indeed, it is informed by LP Policy ST1, which explains that to deliver sustainable development, proposals should accord with the settlement strategy and support a prosperous rural economy, including tourism.
- 18. Similarly, LP Policy DM3 specifies that permission will be granted for the sustainable growth and expansion of business and enterprise in the rural area. However, it also states that permission for residential development will not be permitted where this would reduce the potential for rural employment and/or community facilities unless a site is demonstrated as having no demand for such purposes or its use would be undesirable or unsuitable. Furthermore, the supporting text to the policy suggests that evidence such as marketing of the property should be undertaken 'for a reasonable period in a manner and at a price that reflects its use' to show that it is neither viable nor likely to become so, and that alternative employment uses should be considered.
- 19. Furthermore, LP Policy CP1 sets out that development should safeguard or enhance Swale's 'Principal Tourism Assets' which include guest houses and bed and breakfast establishments as set out in LP Statement 4. It also indicates that proposals that would result in the diminishing of existing employment sites should be avoided where these are appropriately located and suitable and viable for users under normally functioning economic conditions.
- 20. This policy context suggests that bed and breakfast and similar forms of accommodation constitute a tourism asset that supports a prosperous rural economy and thus the vitality of rural communities. Additionally, Class E uses can reasonably be interpreted as including employment or at the very least employment

⁸ Reference ID: 17a-018-20230726 ⁹ Bearing Fruits 2031: The Swale Borough Local Plan 2017

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generating uses that broadly align with the aforementioned policies insofar as providing amenities to support rural areas. Consequently, the most significant and obvious potential impacts of removing the conditions would be that the amount of non-residential floorspace could be reduced. In this respect, condition Nos 7 to 11 serve useful purposes in securing the retention of the non-residential floorspace and restricting the residential use.

- 21. A large amount of marketing, financial and other evidence has been submitted in an attempt to demonstrate that loosening the restrictions on the site is appropriate to facilitate its sale. The property was first advertised for sale in 2022. Since then, various companies have marketed the site and the asking price has changed. The sales particulars do not fully reflect the precise terms of the permission. However, I appreciate that these need to present the site in a positive light in order to garner interest, and statements such as 'the property can be used purely for commercial purposes'¹⁰ go some way to demonstrating that the site has been marketed for alternate employment purposes. Moreover, it is clear from the evidence that the site has been marketed widely for a significant length of time.
- 22. Despite this, there is no substantive evidence that the non-residential elements at the site are, or alternative uses aligning with the terms of the original permission would be, unviable. Furthermore, though there are unlikely to be any directly comparable properties for sale, both because a converted oast is not a commonplace building and as there are precise restrictions on how it should be used, there is little in the way of robust objective analysis justifying the asking prices adopted. Indeed, correspondence¹¹ has been provided discouraging a valuation. Summaries of other properties and sales prices have been submitted, but analysis has not been submitted to show how the locations, sizes, facilities and qualities of these compare to the particular attributes of the site and thereby justify the asking price.
- 23. Importantly, offers to purchase the site have been made, which indicates demand in and desirability for the combination of uses at the site, even though purported decline in the tourism industry in recent years is reflected in some of the appellant's income evidence. None of the offers have been at the asking price but, in the absence of a robust objective assessment of the site's value, there is nothing firm before me which demonstrates that the asking prices were realistic when the offers were made. In that context, the shortfall between the offers and the asking prices were not so obviously significant so as to substantiate a conclusion that the offers were clearly unreasonable.
- 24. Consequently, the submitted evidence does not demonstrate that there is no demand for the site, or that it is undesirable or unsuitable in its current form. Accordingly, the conditions should not be varied or omitted, as doing so could lead to a reduction in the quantity of tourist and employment floorspace at the site. In these ways, the site's contribution to the rural economy and thereby the vitality of rural communities would be reduced. I therefore consider the proposal to be contrary to LP policies ST3, ST1, DM3 and CP1.

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¹⁰ Rightmove website marketing by Nationwide Business Sales
¹¹ Email dated 21 September 2023 from Neil Barlow to Nationwide Business Sales

Other Matter

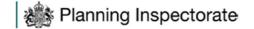
25. The appellant contends that the Council's approach to the application was inconsistent with the pre-application advice given prior to its submission. The advice does not set out that the proposal would be permitted. Moreover, irrespective of what the Council may or may not have said, pre-application advice is not binding, and this is made clear in the response. In any event, I have found the proposal to be unacceptable for the reasons identified.

Conclusion

26. For the above reasons, the appeal is dismissed.

Mark Philpott

INSPECTOR



Appeal Decision

Site visit made on 18 March 2025

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 March 2025

Appeal Ref: APP/V2255/W/24/3350747

- Land to the rear of 21 Middletune Avenue, Sittingbourne, Kent ME10 2HX
- 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 Mr Robert Sted-Smith against the decision of Swale Borough Council.
- The application Ref is 24/500547/FULL.
- The development proposed is described as 'proposed single aspect 2 bedroom dwelling with parking spaces'.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was revised, and the 2023 Housing Delivery Test (HDT) results were published in December 2024. As these could affect the issues and matters in this case, the Council and the appellant were invited to make further comments. Only the appellant responded. My decision reflects the latest versions of these documents, and the response received on them.

Main Issues

- 3. The main issues in this appeal are:
 - the effect of the proposal on the living conditions of the occupiers of 21 Middletune Avenue, with particular regard to outlook and light; and
 - whether the proposed development would provide acceptable living conditions for future occupiers, with particular regard to the provision of amenity space.

Reasons

Living conditions - neighbouring occupiers

- 4. The appeal site comprises vacant land in a residential area largely characterised by two storey dwellings in various sized plots. It lies behind 21 Middletune Avenue (No 21) and is enclosed by close boarded fences. The house at No 21 lies close to the appeal boundary, with a rear conservatory and other rear glazed openings on its ground and first floors. Its private outdoor space wraps around the side and rear of the building.
- The proposed dwelling would have a partly hipped roof sloping away from No 21 and a low eaves height. Nevertheless, it would be sited only a short distance from

the garden and rear face of the dwelling at No 21, project higher than the eaves of the adjacent house and extend across much of the neighbouring rear boundary. Due to its proximity to the neighbouring property, its significant overall height and substantial depth, the proposed building would dominate the outlook from the rear outdoor space and rooms at No 21, creating an unacceptable sense of enclosure.

- 6. Information showing existing shading and overshadowing from the proposed house at different times of the day in March, June, September and December has been submitted. Existing buildings and boundary fences already cause some overshadowing of the garden at No 21, particularly in the late afternoons throughout the year. The proposal would cause loss of sunlight to a large portion of the neighbouring outdoor space in early afternoons in winter. However, at other times of the year when the garden is more likely to be used, large parts of it would retain sunlight during the mornings and early afternoons. As such, the proposal would not cause harmful overshadowing or loss of light to the garden at No 21.
- 7. The Council previously approved the conversion of a garage on the site to an ancillary annexe (planning permission ref 19/502196/FULL). Although this did not create unacceptable overlooking or overshadowing of neighbouring properties, that building was considerably smaller and further from No 21 than the proposed house. As such, it is not comparable to the proposed development.
- 8. Therefore, whilst the proposal would not cause a harmful loss of light to No 21, it would result in a harmful loss of outlook. This would be contrary to Policies CP4 and DM14 of the Bearing Fruits 2031: The Swale Borough Local Plan 2017 (LP) where they require developments to be appropriate to their surroundings and to cause no significant harm to amenity.

Living conditions – future occupiers

- 9. The proposed private outdoor space would be located between properties on Middletune Avenue and Newbridge Avenue. The Council does not raise concerns about the size of the proposed garden. However, it is concerned that overlooking from some neighbouring first floor windows would result in no meaningful private space being provided for future occupiers.
- The external amenity area would be visible from rear upper floor windows at No 21. There would also be some oblique views into it from rear first floor openings in houses to the south.
- 11. Nevertheless, the L-shape of the proposed building would provide privacy to the part of the outdoor space outside the living/dining room in upper floor views from No 21, and the boundary fences would provide further privacy to the proposed garden. Further, a degree of overlooking from rear facing first floor rooms is not unusual in a residential area. As such, the garden would be sufficiently private and of acceptable quality to meet the needs of future residents.
- 12. Consequently, I conclude that the proposed development would provide acceptable living conditions for future occupiers, with particular regard to the provision of amenity space. In this respect, it would comply with Policies CP4 and DM14 where they require developments to provide comfortable places and cause no significant harm to amenity.

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Other Matters

- 13. The Council did not find harm or development plan conflict in relation to several other matters, including the principle of development, flood risk, heritage assets, character and appearance, overlooking of existing occupiers, internal space provision, noise, parking and highways, nor did any consultees object. However, even if I were to agree with the Council on these points, the absence of harm would be a neutral matter which would not carry weight in favour of the proposal.
- It is stated that an electric vehicle charging point would be provided, but as this is a requirement for all new houses, it does not weigh in favour of the scheme.
- 15. The proposed development would be likely to have a significant effect, either alone or in combination, on the Thames, Medway and Swale Special Protection Areas. However, notwithstanding the SAMMS¹ Mitigation Contribution Agreement and fee payment, given my conclusion below there is no need to consider the implications of the proposal on the protected sites because the scheme is unacceptable for other reasons.

Planning Balance and Conclusion

- 16. The appellant states that Swale continues to experience a significant disparity between the number of homes delivered against the required housing supply number and that a large proportion of delivery arises from allowed appeals. It is indicated that currently the Council can demonstrate a 3.98 year housing land supply. This represents a significant shortfall and therefore paragraph 11(d) of the Framework is engaged.
- 17. Paragraph 11(d)(ii) of the Framework confirms that in such circumstances, permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies including directing development to sustainable locations, making effective use of land and securing well-designed places.
- 18. The Framework seeks to boost housing supply and highlights the important contribution small and medium sized sites can make. The scheme would make a modest contribution of one home to the supply of housing, making better use of an underutilised site in the tier 1 urban centre of Sittingbourne with access to a range of services and public transport. It would contribute towards Swale's housing supply, making a modest difference to addressing the shortfall, and therefore I attribute moderate weight to this benefit.
- 19. There would also be some economic benefits during the construction phase when the development would contribute to the local economy and employment, and once occupied when future residents would support local services. There is also reference to ecological and landscape enhancements. Nonetheless, given the small scale of the proposal, these benefits would be limited.
- 20. The appellant considers that the site is previously developed land. However, as it was previously part of the residential garden for No 21 and is within a built-up area, it is not clear that it meets the Framework's definition of previously developed land which limits the weight I can attribute to this.

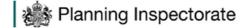
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¹ Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy July 2014

- 21. In contrast, the proposal would result in a harmful loss of outlook to No 21. I have concluded that the proposed development would conflict with Policies CP4 and DM14 of the LP. This matter carries significant weight against the scheme.
- 22. Consequently, the adverse impact I have identified would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. It therefore follows that the proposal does not benefit from the presumption in favour of sustainable development.
- 23. For the reasons above, the proposal would conflict with the development plan and the material considerations, including the Framework, do not indicate that the appeal should be decided other than in accordance with it. The appeal is therefore dismissed.

A Wright

INSPECTOR



Site visit made on 31 March 2025

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 April 2025

Appeal Ref: APP/V2255/Z/25/3358304

Playtime, The Promenade, Leysdown-On-Sea, KENT ME12 4QB

- 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 Cain's Amusements Ltd against the decision of Swale Borough Council.
- The application Ref is 24/503825/ADV.
- The advertisement proposed is a fascia sign.

Decision

 The appeal is allowed and express consent is granted for the display of the fascia sign at Playtime, The Promenade, Leysdown-On-Sea, Kent ME12 4QB in accordance with the terms of the application, Ref 24/503825/ADV. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in Schedule 2 of the 2007 Regulations and additional conditions as set out in the schedule at the end of this decision letter.

Preliminary Matters

- 2. The advertisement consent form indicates that the fascia signage has already been put in place and I was able to view the advertisement at the time of my visit
- A revised version of the National Planning Policy Framework (the Framework) has been published since the planning application was determined by the Council. I have had regard to the revised Framework in reaching my decision.

Background and Main Issue

- 4. The provisions under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) require the local planning authority to assess the proposed development solely on the basis of amenity and public safety, taking into account the provisions of the development plan, so far as they are material, and any other relevant factors.
- The main issue is the effect of the siting of the proposed advertisement on amenity, that being the character and appearance of the area.

Reasons

6. The amusement arcade forms part of the leisure/entertainment frontages bordering both sides of The Promenade. Illuminated signage forms an integral part of the established entertainment character of The Promenade. The other premises host

signage that incorporates various types of illumination. On the opposite side of The Promenade is an amusement premises that also hosts a long frontage with fascia advertisement above incorporating illumination.

- 7. Large, coloured signs are a common feature along The Promenade. Whilst the fascia sign that has been removed would have been lower in height than its replacement, that signage extended across the frontage to a similar extent as that of the replacement fascia sign. The fascia sign would not extend to a height that would be significantly taller than neighbouring buildings and/or their signage.
- 8. During daylight hours the sign would host moving light sequences and changing colours. Nonetheless, the combination of the switching off of the white outline of the 'Playtime' text alongside the application of the Perspex filters would reduce the levels of light at the premises. Whilst the lighting will still have an impact at night time, restricting of the duration of the lighting, will prevent the impact extending late into the night.
- 9. Taking these matters collectively, I do not consider that the signage is overly prominent or uncharacteristic in comparison to other premises within the vicinity of the appeal site. The overall design of the fascia sign, having regard to its scale, height, width and location, would not result in harm to the character of the property or the wider area. The increased prominence of the fascia sign is not so substantial when taking into account the context of The Promenade's existing street scene frontages. Consequently, I do not find that the proposal would cause significant visual harm to the character and appearance of the area.
- 10. For these reasons, I conclude that the siting of the advertisement would not have a harmful effect on amenity, that being the character and appearance of the area. I have taken into account Policy DM15 of the Bearing Fruits 2031 The Swale Local Plan that seeks development involving advertisements to be designed in a manner that minimises harm to amenity and so is material in this case. Given that I have concluded that the proposal would not harm amenity, the proposal does not conflict with this policy.
- 11. One letter of representation has been received to the advertisement consent application. Whilst it has been suggested that the advertisement consent application was not valid as the proposal referred to existing signage, as noted above, the existing signage has been replaced by what is currently being displayed. Concern has also been expressed to the size of the fascia sign, the nature of illumination incorporating flashing lights, moving light sequences, colour changes and illumination in the evenings. These matters have been discussed above. Furthermore, mitigation can be put in place to control illumination and duration at the site. Having regard to the interested party's concerns, I considered that the mitigation as set out within the schedule of conditions at the end of this decision letter would be sufficient to reduce any impact to an acceptable level. The Council's Environmental Health Officer has removed previous objection to the illumination on the basis that this mitigation would be sufficient to prevent the advertisement from causing a nuisance.

Conditions

12. Schedule 2 of the 2007 Regulations sets out five standard conditions to be imposed in the event that express consent is granted. The Council's questionnaire indicates

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that the Council would seek those conditions to be imposed if advertisement consent were forthcoming. These are relevant to this case and should be imposed. I have included sections b), d) and e) within condition 2 as these conform with those five standard conditions as set out within the Regulations. I note these were omitted from the appellant's suggested list of conditions.

13. Other conditions have been suggested by the local planning authority and supported by the appellant in the interest of the amenity of the area and/or highway safety. A condition ensuring that the white outline to the Playtime lettering be permanently turned off is necessary. I have amended the wording of this condition in the interests of clarity. A condition requiring the illuminated signage be turned off when the premises are closed or be illuminated no later than 23:00 is necessary. A condition requiring the tinted Perspex be inspected for damage every 6 months following installation is necessary. A ctondition setting out the maximum illumination of the advertisement is necessary. Although the appellant has put forward a higher level of illumination of the advertisement, the parties' submissions indicate an agreed illumination limited of a maximum of 164.5cd/m2. These conditions, in addition to those five standard conditions, are requested by the Council's Environmental Health Officer to ensure acceptable mitigation is achieved.

Conclusion

 For the reasons set out above, and subject to the conditions set out in the schedule of conditions, the appeal should be allowed.

Nicola Davies

INSPECTOR

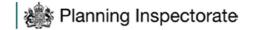
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SCHEDULE OF CONDITIONS

- 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:
 - 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
 - hinder the operation of any device used for the purpose of security or surveillance or for measuring the speed of any vehicle.
- 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.
- Any structure or hoarding erected or used principally for the purpose of displaying advertisements shall be maintained in a condition that does not endanger the public.
- 5) Where an advertisement is required under these Regulations to be removed, the site shall be left in a condition that does not endanger the public or impair visual amenity.
- The white illuminated outline to the 'Playtime' lettering shall be removed from the 'Playtime' part of the advertisement or be permanently turned off/nonilluminated.
- The illuminated signage is to be turned off when the premises are closed or by 23:00 each day, whichever is the earlier.
- 8) Within 1 month of the date of this decision the tinted Perspex, as set out within the application hereby approved, shall be applied to the illuminated parts of the sign and shall be physically inspected for damage every 6 months following installation. If any damage has occurred, then the tinted Perspex shall be repaired/replaced to ensure it is operating as intended.
- The levels of illumination of the advertisement hereby approved shall be limited to164.5cd/m2.

End of schedule

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Site visit made on 18 March 2025

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 April 2025

Appeal Ref: APP/V2255/W/24/3351745

- School Lane Farm, School Lane, Iwade, Kent ME9 8SG
- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
- The appeal is made by Mr Dean Gibbard against the decision of Swale Borough Council.
- The application Ref 24/501367/FULL was approved on 5 September 2024 and planning permission was granted subject to conditions.
- The development permitted is demolition of agricultural building and erection of one self-build dwelling with associated landscaping.
- The condition in dispute is No 4 which states that: The dwelling(s) hereby approved shall be constructed and test to achieve the following measure: At least a 50% reduction in Dwelling Emission Rate compared to the Target Emission Rates as required under Part L1A of the Building Regulations 2013 (as amended); No development shall take place until details of the measures to be undertaken to secure compliance with this condition have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained thereafter.
- The reason given for the condition is: In the interest of promoting energy efficiency and sustainable development.

Decision

 The appeal is allowed and the planning permission Ref 24/501367/FULL for the demolition of the agricultural building and the erection of one self-build dwelling with associated landscaping at School Lane Farm, School Lane, Iwade, Kent ME9 8SG granted on 5 September 2024 by Swale Borough Council is varied by deleting condition 4.

Application for costs

2. An application for costs was made by Mr Dean Gibbard against the decision of Swale Borough Council. This is the subject of a separate decision.

Background and Main Issue

- Planning permission was granted for the demolition of an agricultural building and the erection of one self-build dwelling with associated landscaping. The appellant is seeking the removal of condition 4 set out in the banner heading above. The condition was imposed 'in the interest of promoting energy efficiency and sustainable development'.
- Therefore, the main issue in this appeal is whether condition 4 is necessary and reasonable with regard to promoting energy efficiency and sustainable development.

Reasons

- The National Planning Policy Framework December 2024 states that the planning system should support the transition to net zero by 2050 and indicates that plans should take a proactive approach to mitigating and adapting to climate change.
- 6. Policy DM19 of the Bearing Fruits 2031 The Swale Borough Local Plan 2017 (LP) requires proposals to include measures to address and adapt to climate change. This includes using materials and construction techniques which increase energy efficiency and designing buildings with features which enable energy efficient ways of living. It does not set out any specific carbon reduction requirements.
- 7. The Council declared a Climate and Ecological emergency in June 2019, committing it to several actions to reduce carbon emissions. This includes engaging with stakeholders to facilitate the action required to make the borough carbon neutral by 2030. The declaration was found to be a material consideration by an Inspector considering an appeal at Minster-on-sea in March 2020¹.
- 8. The Council's subsequent Climate and Ecological Emergency Action Plan April 2020 recognises that improving the energy efficiency of homes in the borough poses a major challenge. It states that as soon as possible, all new buildings in Swale should be built and tested to a zero carbon specification. In this respect, it includes an action that prior to the adoption of a new Local Plan, the Council can use a planning condition based on a 50% improvement over current building regulations, increasing in later years, as a basis for negotiation with developers through planning application negotiations.
- 9. The LP is currently being reviewed. In the interim, the Council has been imposing a planning condition based on the above action on all new build dwellings in the borough since 2019. The Council published guidance for complying with this climate change planning condition in June 2020. However, in a decision for a site in South West Sittingbourne in April 2021², the Secretary of State found that this guidance amounts to guidance only, which has not gone through a public examination process, rather than planning policy sufficient to justify the imposition of such a condition.
- 10. The Council considers that removal of the condition would mean that the proposal would fail to comply with Policy DM19 of the LP. Although Swale has an ambitious local target for achieving carbon neutrality, by setting a minimum reduction in the dwelling emission rate, condition 4 goes beyond the requirements of Policy DM19. Therefore, similar to the findings in the South West Sittingbourne case, there is no LP policy basis for this condition.
- 11. Even though a condition was imposed to address carbon emissions in the Minsteron-sea case, the Inspector found that the condition suggested by the Council was not supported by local policies. This is also the case for condition 4.

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¹ Appeal Ref. APP/V2255/W/19/3238171 'the Minster-on-sea case' ² Ref: APP/V2255/W/19/3233606 'the South West Sittingbourne case'

12. Consequently, I conclude that condition 4 is not necessary and reasonable with regard to promoting energy efficiency and sustainable development.

Conclusion

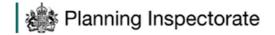
 For the reasons given above, I conclude that the appeal should be allowed and I shall vary the planning permission by deleting the disputed condition.

A Wright

INSPECTOR

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Site visit made on 3 April 2025

by A Wright BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th April 2025

Appeal Ref: APP/V2255/W/24/3350370

- 38a High Street, Sittingbourne, Kent, ME10 4PB
- 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 Mr Simon Reynolds of A E Barrow & Sons Ltd against the decision of Swale
 Borough Council.
- The application Ref is 24/500334/FULL.
- The development proposed is described as 'demolition of existing bakery at rear of shop and construction of a 4 storey block of flats'.

Decision

1. The appeal is dismissed.

Preliminary Matter

 The National Planning Policy Framework (the Framework) was revised in December 2024. As this could affect the issues and matters in this case, the Council and the appellant were invited to make further comments, but only the appellant responded. My decision reflects the latest version of this document, and the response received on it.

Main Issues

- 3. The main issues in this appeal are whether the proposal would:
 - preserve or enhance the character or appearance of the Sittingbourne Conservation Area; and
 - provide acceptable living conditions for future occupiers, with particular regard to odour, outlook, light, disturbance and noise.

Reasons

Character and appearance

- 4. The appeal site comprises a part single and part two storey building which forms a rear addition to an existing bakery within Sittingbourne town centre in the Sittingbourne Conservation Area (CA), a designated heritage asset. Close by, there is a row of two storey early 19th century buildings with pitched roofs behind front parapets at 34-38a High Street (nos 34-38a), next to which is a dominant 19th century three storey building with a mansard roof.
- Having regard to the Sittingbourne Conservation Area Character Appraisal & Management Plan 2021 (the Appraisal), the historic significance of the CA derives in part from its linear High Street which follows a Roman road and early important

medieval route. It was an important 18th century coaching stop between London and Canterbury and the coast, and historic alleyways survive from coaching inn days on both sides of the High Street. Predominantly 18th and early 19th century development remains with some earlier buildings on narrow burgage plots. The Appraisal outlines that the varied property heights and different details in roof forms provide an interesting roofscape, with pitched roofs dominating, some hipped roofs and others set behind brick parapets.

- 6. There are various rear extensions to buildings on the High Street, and the Appraisal notes that back end areas remain subservient in character. However, it states that modern development, highway interventions and vacant or underused sites detract from the setting of the CA. The nearby structures in the High Street are identified in the Appraisal as development of contextual design and interest or unlisted buildings that characterise the historic development of the High Street. Further, several historic alleys lie close by to the east.
- 7. The proposal is to replace the rear extensions with a three and four storey block of flats. It would be a relatively narrow, tall building comprising two sections, a four storey element around 13m in height with a hipped roof and a flat roof three storey section approximately 9.2m high. Due to its height, substantial length and rectangular shape, the proposed building would be of considerable scale and bulk, towering above the nearby structures at nos 34-38a and visible from the High Street and nearby alleyways.
- 8. The proposed scheme would lack architectural detailing, including large expanses of brick and block walls on the same plane to the east and west, little visual interest to the gable walls and a plain, sizeable, hipped roof. Further, the large flat roof terrace would be at odds with the surrounding roofscape.
- 9. There are references to four and five storey developments in the area approved by the Council. However, as the St Michael's Road development would be further from buildings on the High Street behind taller buildings, it is not comparable to the appeal scheme. In addition, I have limited information on the proposed extension to 69 High Street so am unable to compare it with the current proposal.
- 10. The heritage statement provides little information on how the proposed development would impact on the significance of the CA. Nevertheless, whilst the front fascia of no 38a would remain unaltered, for the reasons set out the proposal would neither preserve nor enhance the character or appearance of the CA, although the harm would be less than substantial. Policies CP8 and DM33 of the Bearing Fruits 2031: The Swale Borough Local Plan 2017 (LP) state that development within conservation areas will preserve or enhance all features that contribute positively to the area's special character and appearance and accord with national planning policy in respect of heritage matters.
- 11. The Framework states that less than substantial harm to the significance of a designated heritage asset should be weighed against the public benefits of the proposed development. The proposal would provide an additional six flats, creating more efficient use of a site in a town centre location with good access to services and public transport, and providing natural surveillance to the rear and side of the site. However, the public benefits of the development would not outweigh the great weight to be given to the harm to the CA caused by the

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proposed scheme. Therefore, the proposal would be contrary to Policies CP8 and DM33 of the LP and the Framework.

12. Consequently, I conclude that the proposal would not preserve or enhance the character or appearance of the CA. It would conflict with Policies CP4, CP8, DM14 and DM33 of the LP. Together, these require developments to be sympathetic and appropriate to the location, including in relation to scale, height, design and appearance, amongst other things. They also seek to sustain and enhance the significance of designated heritage assets.

Living conditions

- 13. The existing building lies between a high boundary wall to the west and a hardstanding area used for car parking to the east. Whilst dual aspect, the proposed ground floor flat would have windows only around 1.5m from the boundary on one side and openings facing the parking area on the other side, separated by a narrow footpath and handrail. Thus, the wall and parked cars would dominate the outlook from the ground floor flat, causing a harmful sense of enclosure to the future occupiers of this dwelling.
- 14. In addition, the proximity of the openings in bedroom 1 of the ground floor unit to the boundary wall and the proposed commercial waste area would limit light to this room and give rise to odour concerns, exacerbated due to the small space available for ventilation. Further, some habitable room windows to this flat would abut an external pedestrian access to the bakery which due to the comings and goings of the bakery's employees, would give rise to concerns of disturbance to future occupiers of this property. As such, the proposed scheme would not create acceptable living conditions for the future residents of the ground floor flat.
- 15. The proposed development would back onto a commercial bakery and at my site visit, although only a snapshot in time, there was a humming noise emanating from equipment associated with the bakery in the area beside the existing building. The Council's Environmental Health Officer objects as no noise assessment under BS8233¹ has been carried out to demonstrate that future residents would not be adversely affected by noise from commercial premises. This should consider whether there would be adequate insulation to avoid harmful noise transmission between commercial units and the proposed flats. In the absence of a noise assessment, I cannot be satisfied that the proposed scheme would provide a satisfactory living environment for future occupants in terms of noise.
- 16. The appellant refers to other approvals of flats in the area but there is no information on their relationship with commercial premises or how they addressed any noise issues, so I am unable to compare them to the appeal scheme.
- 17. Therefore, I conclude that the proposal would provide unacceptable living conditions for future occupiers with particular regard to outlook, light, odour and disturbance. Further, it has not been demonstrated that it would provide acceptable living conditions for future occupants in respect of noise. This would be contrary to Policies DM14 and CP4 of the LP where they require proposals to create comfortable places and cause no significant harm to amenity and other sensitive uses.

¹ BS8233:2014 Guidance on sound insulation and noise reduction for buildings

Other Matters

- 18. The bakery within the defined primary retail frontage would be retained to maintain the retail function of the area but this does not form part of the proposed scheme.
- 19. The Council did not find harm or development plan conflict in relation to several other matters, including the parking, proposed bin and cycle storage for the flats, and carbon emissions. However, even if I were to agree with the Council on these points, the absence of harm would be a neutral matter which would not carry weight in favour of the proposal.
- 20. The proposed development would be likely to have a significant effect, either alone or in combination with other projects, on The Swale Special Protection Area due to its location within 6km of the protected site. However, given my conclusions above there is no need to consider the implications of the proposal on the protected site because the scheme is unacceptable for other reasons.
- 21. The appellant has expressed general dissatisfaction with the Council's handling of the application, but this is a matter between those parties, and it does not in this instance have any bearing on my determination of this appeal.

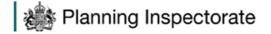
Conclusion

22. For the reasons above, the proposal would conflict with the development plan and the material considerations, including the Framework, do not indicate that the appeal should be decided other than in accordance with it. The appeal is therefore dismissed.

A Wright

INSPECTOR

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Site visit made on 10 April 2025

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2025

Appeal Ref: APP/V2255/D/25/3361462

60 Shortlands Road, Sittingbourne, Kent ME10 3JT

- 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 Mr. J Tatler against the decision of Swale Borough Council.
- The application Ref is 24/504437/FULL.
- The development proposed is Roof alterations, including rear dormer (retrospective).

Decision

1. The appeal is dismissed.

Preliminary Matters

 I observed at my site visit that the extension appears to have been constructed in accordance with the plans before me, therefore I have considered the appeal on the basis that the development has already taken place.

Main Issue

3. The main issue is the effect of the development on the character and appearance of the host property and surrounding area.

Reasons

- 4. The appeal property is a two storey end of terrace property with a pitched roof, and a rear projection, referred to by the main parties as an outshot projection. Immediately to the rear of the appeal site is a short row of bungalows, which have clear views towards the appeal property's rear elevation.
- 5. The roof alterations including the rear dormer are expansive, spanning the full width of the rear roof, as well as covering the roof of the rear outshot projection. Whilst it is constructed in matching materials, the large, flat roof dormer spans from the eaves to the ridge height, creating a particularly bulky addition which results in an out of proportion, top-heavy and dominant form of development. Overall, due to its size and bulk, it fails to respect the original form and architecture of the host building.
- 6. The Council refer to its Designing an Extension: A Guide for Householders Supplementary Planning Guidance (SPG). My attention has been drawn to 5.4 and 5.5 of the SPG which outlines that dormers should be in proportion with the roof and only as large as necessary to allow light into the roof space. They should also be no deeper than half the depth of the roof slope and should normally have pitched roofs with tiles to match the main roof.

- 7. The dormer cannot be said to be in proportion to the original roof, and it has a large flat roof expanse rather than a pitched roof. It is also significantly deeper than half the depth of the roof slope. Overall, it is a very bulky and disproportionate addition to the appeal property. The appellant indicates that the style of dormer is not uncommon. However, my attention has not been drawn to any other similar dormer extensions within the local area.
- The rear dormer is not prominent in public views from the front of the appeal property. However, given the densely built up nature of the area, it is clearly visible in views from the bungalows to the rear of the appeal site.
- 9. For the above reasons, I conclude that the appeal development harms the character and appearance of the host dwelling and surrounding area. I therefore find that it conflicts with Policies CP4, DM14 and DM16 of the Bearing Fruits 2031– The Swale Borough Local Plan (2017). These policies seek to ensure, amongst other aspects, that all new development is of a high standard of design and respects local character.
- As set out above, the dormer design also conflicts with the SPG in relation to rear dormer design.

Other Matters

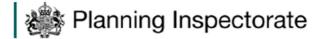
 The proposal does not cause harm to the living conditions of neighbouring occupiers. Be that as it may, this matter does not outweigh the harm I have identified.

Conclusion

12. The development harms the character and appearance of the host property and the surrounding area. For the above reasons, having had regard to the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

B Pattison

INSPECTOR



Site visit made on 31 March 2025

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 April 2025

Appeal Ref: APP/V2255/W/24/3357550

4 Church View Cottages, Boxted Lane, Newington, KENT ME9 7LD

- 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 Mr Richard Pearson against the decision of Swale Borough Council.
- The application Ref is 24/502295/FULL.
- The development proposed is described as storage for forestry and agricultural equipment and animal feed. This would be a timber frame and wood cladded building upon a concreate base with a tin roof and barn door facing south.

Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs has been made by Mr Richard Pearson against Swale Borough Council and that will be the subject of a separate decision.

Preliminary Matters

- I have taken the site address and description of proposed development from the planning application form although I note these are expressed differently on other documents.
- A revised version of the National Planning Policy Framework (the Framework) has been published since the planning application was determined by the Council. I have had regard to the revised Framework in reaching my decision.

Main Issues

- 5. The main issues raised by this appeal are: -
 - a) Whether the proposed development would represent sustainable growth and expansion of business and enterprise in the rural area and the effect of the proposed development on the character and appearance of the countryside; and
 - b) The effect of the proposed development on Best and Most Versatile agricultural land.

Reasons

Countryside

- 6. Policy DM3 of the Bearing Fruits 2031 The Swale Borough Local Plan 2017 sets out a hierarchical approach to development proposals for rural based employment. It firstly seeks to locate new development at rural local service centres and urban areas. Following that, for all proposals this policy directs development to the appropriate re-use of existing buildings or the development of other previously develop land, unless such sites are not available or it is demonstrated that a particular location is necessary to support the needs of rural communities or the active and sustainable management of the countryside.
- 7. The proposed building is to provide secure storage for agricultural and forestry tools, including some larger machinery and tractor, associated with the applicant's tree surgery works and a local farmer. No substantive information has been provided in respect of any farming enterprise that the farmer is associated with. The building would also store equestrian feed and garden equipment. However, it is not clear whether the equine related use would benefit rural based employment. Furthermore, the storage of domestic garden related equipment would not fall within the scope of Policy DM3.
- 8. The site falls within a rural location. No compelling information has been provided to show that there are no other buildings or previously developed land available within the wider area that could facilitate the proposed use. The appellant contends that he intends to store agricultural equipment for activities such as copsing, which is said would benefit the countryside and the environment. Nonetheless, there is no clear indication that the site would be necessary for this purposes or would support the needs of rural communities or the active and sustainable management of the countryside. I cannot clearly conclude that the location of the site is necessary to support the needs of the appellant and/or farmer, rural communities or the active and sustainable management of the active and sustainable management of the countryside.
- 9. The site lies within the Upchurch and Lower Halstow Fruit Belt Character Area as set out within the Swale Landscape and Biodiversity Appraisal Supplementary Planning Document. Although there is some built form in the locality the prevailing character of the area is one of rural appearance and openness. Whilst having the appearance of an agricultural building the proposal would be a large structure, having a stand-alone appearance, sited within a parcel of undeveloped grass land.
- 10. A building of this size would represent an encroachment into the countryside and would have a visually detrimental impact upon the character and appearance of the rural landscape, particularly given a need has not been established for it to be placed at this location. As such, the intrinsic value, landscape or beauty of the countryside would not be protected or enhanced as a result of the proposed development. Although vegetation reduces the site's visibility in public views from Boxted Lane, the visual harm arising from the development would be clearly visible within this rural landscape and in views from the wider area.

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11. My attention has been drawn to a housing estate that is currently under construction not far from the appeal site. Whilst it is contended that that development does not align with the principles of protecting the character,

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appearance and intrinsic value of the landscape, the planning considerations pertaining to that residential development will be very different. That development offers little weight in favour of this proposal. The proposal that is before me can and should be considered on its own individual merits.

- 12. The appellant highlights that no local objection has been received to the proposal. Whilst this may be so, the proposal needs to be considered in terms of the wider public interest.
- 13. For these reasons, I conclude that the proposed development would not represent sustainable growth and expansion of business and enterprise in the rural area with the need for such a building not having been demonstrated. Furthermore, the proposal would have a harmful effect on the character and appearance of the countryside. The proposal would, therefore conflict with Policies ST3, CP4, DM3, DM14 and DM24 of the Bearing Fruits 2031 The Swale Borough Local Plan 2017. These policies seek, amongst other matters, development to conform with the hierarchical approach to development proposals for rural based employment, to be in keeping with the character of the area and to protect and enhance non-designated landscapes.

Agricultural land

- 14. The site is classed as grade 1 best and most versatile agricultural land. Policy DM31 of the Bearing Fruits 2031 The Swale Borough Local Plan 2017 seeks to protect such land. The placing of built development on this currently undeveloped land would result in the loss of a proportion of this valued agricultural land.
- 15. Given that I have found that the proposal would not represent a sustainable form of development in the rural area and would harm the character and appearance of the countryside, I do not agree with the appellant that the proposal would be a harmonious addition to the landscape. Furthermore, whilst the proposal is said to be intended to implement sustainable practices and integrate green spaces within the development with the aim to enhance the local environment, the proposal would result in the loss of highly valued agricultural land.
- 16. For these reasons, and in the absence of any convincing justification that would demonstrate a necessity to locate the storage building on this site, the proposal conflicts with Policy DM31 as such development would result in an unnecessary loss of best and most versatile agricultural land.

Conclusion

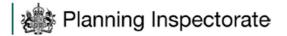
17. Having regard to the above findings, the appeal should be dismissed.

Nicola Davies

INSPECTOR

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by Ken McEntee

a person appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 29 April 2025

Appeal ref: APP/V2255/C/24/3352158 Land at A2 Food Stores, 25 Canterbury Road, Sittingbourne, Kent, ME10 4SG

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991.
- The appeal is brought by Mr A Hasib against an enforcement notice issued by Swale Borough Council.
- The notice was issued on 16 August 2024.
 The breach of planning control as alleged in the notice is: Without planning permission the erection of a metal, open trellis framed enclosure with a fabric roof covering to the front of the Property".
 The requirements of the notice are: "(i) Dismantle the metal, open trellis framed enclosure with a fabric roof covering located to the front of the Property. (ii) Remove all resultant trellis, fabric, metal, materials, debris and rubbish arising from compliance with step (i) above from the Property".

 The time period for compliance with the notice is: "Within three (3) months from the date that this
- The time period for compliance with the notice is: "Within three (3) months from the date that this
 notice takes effect".
- The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.

Summary of decision: The appeal is dismissed and the enforcement notice is upheld without variation.

Reasons for the decision

1. The main reasons stated for requiring more time to comply with the requirements of the notice are to find a practical and lawful solution, to ensure business and security continuity and due to financial and weather considerations. The appellant's supporting arguments to these reasons are set out in his statement of case. He requests that the period for compliance be extended to 9 months. While I acknowledge the appellant's reasons for requesting an extension of time to comply with the requirements of the notice, I am also mindful that more than 7 months have elapsed since the appeal was submitted with enforcement action effectively suspended. As the compliance period will begin again from the date of this decision, the appellant will effectively have had some 10 months in which to comply with the notice, which is 1 month more than that requested. That being the case, there does not appear to be any good reason before me to justify extending the compliance period further. The appeal fails accordingly.

Formal decision

For the reasons given above, the appeal is dismissed and the enforcement notice is upheld without variation.

K McEntee

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