

PLANNING COMMITTEE – 15 SEPTEMBER 2022**DEFERRED ITEM**

Report of the Head of Planning

DEFERRED ITEMS

Reports shown in previous Minutes as being deferred from that Meeting

DEF ITEM 1 REFERENCE NO - 21/505936/FULL			
APPLICATION PROPOSAL Erection of 3no. dwellings to replace those demolished under application 19/501984/DEMREQ			
ADDRESS 19-21 Mount Field Queenborough Kent ME11 5DB			
RECOMMENDATION Grant subject to conditions and completion and receipt of an appropriate SAMMS payment			
SUMMARY OF REASONS FOR RECOMMENDATION Please refer to full committee report			
REASON FOR REFERRAL TO COMMITTEE This application was originally deferred by the Planning Committee on 23 rd June 2022			
WARD Queenborough and Halfway	PARISH/TOWN COUNCIL Queenborough	APPLICANT Mr Q Searle AGENT Building Drawings	
DECISION DUE DATE 31/12/21	PUBLICITY EXPIRY DATE 22/06/22	CASE OFFICER Rebecca Corrigan	
RELEVANT PLANNING HISTORY			
Application no.	Description	Decision	Date
SW/06/0377	The construction of fourteen number three bedroom houses at two and three storeys, a new access road, landscaping and car parking.	Approval, subject to conditions	22.11.2022
19/501984/DEM REQ	Prior Notification for the proposed demolition of 3 dwellings	Prior Approval not required	07.06.2019

1. INTRODUCTION

1.1 This application was previously reported to the Planning Committee on 23 June 2022, with a recommendation for approval. However, at that meeting Members resolved the following:

“That application 21/505936/FULL be deferred and Southern Water be requested to review the sewerage drains in the vicinity to ensure they were fit for purpose.”.

1.2 The original Committee report is attached to this report as Appendix A

2. CONSULTATIONS

- 2.1 Southern Water (02.08.2022) Advise that there were previously foul flooding issues which resulted in a Notice being served on the developer. Ultimately Southern Water intervened and undertook a 110m relay/diversion of the drains.
- 2.2 KCC Drainage (04.08.2022) The application under the above reference number falls outside the definition of major development and also falls outside of KCC's remit as statutory consultee
- 2.3 Environment Agency (11.08.2022) raise no objection to the proposed development
- 2.4 Environmental Services (16.08.2022) No additional comments
- 2.5 KCC Biodiversity (25.08.2022) Advised to add a planning condition to provide net gains in biodiversity

3. Appraisal

- 3.1 The application was presented to Planning Committee on 23rd June 2022 however, it was deferred by members as concerns were raised in relation to the sewer system which runs under the property and within the immediate area. Members brought to officers attention that the original drainage system for the (now demolished) dwellings was inadequate, leading to a collapsed system and as a result foul water flooded the neighbouring properties. Officers were advised that Southern Water were heavily involved pumping the foul water out of the flooded neighbouring properties as well as the carrying out of essential maintenance works to rectify the damage caused.
- 3.2 Southern Water had been consulted as part of the original application and raised no objection to the proposal. However, Members were concerned that no reference to the above problems had been mentioned in Southern Waters' response and wanted to ensure that the previous issues had been taken into consideration.
- 3.3 Southern Water have now provided further information and advise that there were foul flooding problems arising from work undertaken by a developer who was subsequently served notice by Southern Water in 2014. Eventually Southern Water undertook a 110m relay/diversion to deal with the problem which was completed in 2017. This would explain why Southern Water do not raise objection to the current application.

4. CONCLUSION

- 4.1 In view of the above, it remains my opinion that the proposal is acceptable. I therefore recommend that the application be granted subject to conditions outlined in the original report and the inclusion of an additional condition (16), as set out below:

5. RECOMMENDATION

GRANT Subject to the following conditions including the

- 1) The development which this permission relates shall be begun not later than the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town & Country Planning Act 1990

- 2) The development hereby approved shall be carried out in accordance with drawing title number(s): 21061QS-PP-(03)01-Proposed Plans-Ground and First Floor; 21061QS-PP-(03)02-Proposed Plans-Second Floor and Roof; 21061QS-PP-(04)01-Proposed Elevations-All; 21061QS-PP-(13)01-Site Plans-Location Plan; 21061QS-PP-(13)02-Site Plans-Existing Block Plan; 21061QS-PP-(13)03-Site Plans-Proposed Block Plan

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

- 3) All external materials to be used in the development shall match those specified on the application form.

Reason: To ensure that the materials harmonise with the surroundings, in accordance

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

Reason: In the interest of residential amenity.

- 5) No development beyond the construction of foundations shall take place 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.

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

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

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

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

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

- 8) The dwelling(s) hereby approved shall be constructed and tested to achieve the following measure:

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

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

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

- 9) No development beyond construction of foundations shall take place until a scheme for the adequate provision of active electric vehicle charging points has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to the first occupation of the development hereby approved.

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

- 10) The development shall be carried out using the flood resilience measures specified in the revised Flood Risk Assessment submitted with the application.

Reason: To minimise risks from flooding.

- 11) The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and no dwelling shall be occupied unless the notice for that dwelling of the potential consumption of water per person per day required by the Building Regulations 2015 (As amended) has been given to the Building Control Inspector (internal or external).

Reason: In the interests of water conservation and sustainability.

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

Reason: In the interests of neighbouring amenities, flood risk and retention of sufficient amenity provision

- 13) Construction of the development shall not commence until details of the proposed means of foul sewerage and surface water disposal have been submitted to, and approved in writing by, the Local Planning Authority in consultation with Southern Water.

Reason: To minimise risk from flooding

- 14) Prior to the completion of the development hereby approved, details of how the development will enhance biodiversity will be submitted to, and approved in writing by, the Local Planning Authority. These shall include the installation of bat and bird nesting boxes along with provision of generous native species planting where possible. The approved details will be implemented and thereafter retained.

Reason: To minimise impacts on and provide net gains for biodiversity in accordance with the requirements of the NPPF.

- 15) The area shown on the submitted plans as car parking space (including the integral garages) 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 dwelling(s) hereby permitted.

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

- 16) Construction of the development shall not commence until written evidence is provided to demonstrate that the developer has agreed with Southern Water, the measures to be undertaken to protect/divert the public water supply main.

Reason: To minimise risk from flooding.

INFORMATIVES

Southern Water

You are referred to the response received to the Council from Southern Water on 4th January 2022. As per the contents of the advisory note, you are advised to liaise directly with Southern Water regarding the location of the public sewer prior to the implementation of development. This planning permission does not remove or override any requirement for approval from Southern Water in respect of development over or near a public sewer.

KCC Ecological Service

The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended (section 1), it is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this Act. Trees and scrub are likely to contain nesting birds between 1st March and 31st August inclusive. These habitats are present on the application site and are to be assumed to contain nesting birds between the above dates, unless a recent survey has been undertaken by a competent ecologist to assess the nesting bird activity on site during this period and has shown it is absolutely certain that nesting birds are not present.

Network Rail

You are referred to the response received to the Council from Network Rail on 1st February 2022. As per the contents of the advisory note, due to the close proximity of the proposed dwellings to Network Rail's land and the operational railway, you are advised to liaise with National Rail directly and follow the Asset Protection informatives which are issued to all proposals within close proximity to the railway (compliance with the informatives does not remove the need to engage with Network Rail ASPRO team).

Highways

It is important to note that planning permission does not convey any approval to carry out works on or affecting the public highway.

Any changes to or affecting the public highway in Kent require the formal agreement of the Highway Authority, Kent County Council (KCC), and it should not be assumed that this will be a given because planning permission has been granted. For this reason, anyone considering works

which may affect the public highway, including any highway-owned street furniture, is advised to engage with KCC Highways and Transportation at an early stage in the design process.

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

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

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

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

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

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

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

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

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

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

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

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat

Regulations require a Habitat Regulations Assessment. For similar proposals NE also advise that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation and site remediation satisfactory to the EA, the proposal is unlikely to have significant effects on these sites.

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

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

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

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

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

The Council's approach to the application

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), July 2021 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

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

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

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

