

**PLANNING COMMITTEE – 15 SEPTEMBER 2022****PART 3**

Report of the Head of Planning

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

<b>REFERENCE NO - 22/501402/FULL</b>		
<b>APPLICATION PROPOSAL</b> Erection of a detached dwelling with associated parking and amenity space.		
<b>ADDRESS</b> Land Adjacent to Hinkleys Mill Teynham Street Teynham Sittingbourne Kent ME9 9EU		
<b>RECOMMENDATION</b> Refuse		
<b>REASON FOR REFERRAL TO COMMITTEE</b> Cllr Bowen call in following local support		
<b>WARD</b> Teynham And Lynsted	<b>PARISH/TOWN COUNCIL</b> Teynham	<b>APPLICANT</b> Mr And Mrs Dixon <b>AGENT</b> APX Architecture
<b>DECISION DUE DATE</b> 16/06/22	<b>PUBLICITY EXPIRY DATE</b> 26/05/22	<b>CASE OFFICER</b> Alice Reeves

**Planning History**

SW/09/0049 &amp; SW/09/0051

Erection of 2 storey side extension to form annexe accommodation, removal of chimney, insertion of front door, excavation works around proposed annexe, provision of solar panels and side dormer windows.

Refused Decision Date: 08.04.2009

SW/01/0253

One dwelling with garage

Refused Decision Date:

**1. DESCRIPTION OF SITE**

- 1.1 The site is located in a rural location outside of any defined built-up area boundary and sits within a small hamlet with a loose knit development pattern.
- 1.2 The application site is located between two Grade II listed buildings on a parcel of land which effectively now forms part of the garden area to the converted Hinkleys Mill, which dates from the 16<sup>th</sup> Century, and may have once been the Millers House in relation to a former windmill since demolished. The area of land between Hinkleys Mill and the separately listed Banks Cottages appears to have always been partly undeveloped and open, with the house benefitting from the current open rural setting in terms of helping to understand its historic function.

- 1.3 The adjacent Banks Farm Cottages also date from the 16<sup>th</sup> Century and was historically a single, Wealden Hall type house before later being subdivided into two cottages.
- 1.4 An application was submitted on the same site for a residential dwelling in 2001, which was refused due to the site being outside any defined built-up area boundary and the associated harm to the setting of adjacent listed buildings.

## **2. PROPOSAL**

- 2.1 The application seeks planning permission for the erection of a four-bedroom detached family home. The proposed site plan shows some limited landscaping and designated parking for two cars. The proposed dwelling would be accessed by the existing site access from Teynham Street.
- 2.2 The proposed dwelling has been designed as a modern barn and would measure 14.25m in length x 7m in width, with a single storey rear projection of just under 3.2m. Materials include:
  - Black stained vertical timber boarding
  - Natural timber boarding feature panels treated with wood protection to provide a silver-grey appearance
  - Dark framed powder coated aluminium windows and doors
  - Agricultural style box guttering and downpipes
  - Corrugated metal roof finish
- 2.3 The application is supported by an Arboricultural Report, Heritage Statement and Design and Access Statement. I have taken the following points from these documents:
  - The applicant's family has been farming in Conyer and Teynham for over 200 years
  - The family own several properties and land within the immediate area, including Hlnkleys Mill which is owned by the applicant's sister who has agreed to make the application site available for a potential new multi-generational family home
  - The applicant has a son who requires a high level of care, a need that will continue to grow
  - The applicant's family reside in the immediate area of the application site, it is practical for the applicant to seek accommodation within the locality
  - A further complication is being able to source suitable accommodation which can be adapted to the future needs of the family
  - A bedroom and shower room are proposed on the ground floor for the applicant's mother who requires ground floor accommodation
  - The building will be of Passivhaus standard

## **3. PLANNING CONSTRAINTS**

Potential Archaeological Importance

Designated Countryside

#### **4. POLICY AND CONSIDERATIONS**

##### 4.1 Development Plan: Bearing Fruits 2031: The Swale Borough Local Plan 2017 policies.

ST1 (Delivering sustainable development in Swale)  
ST3 (The Swale settlement strategy)  
CP3 (Delivering a wide choice of high-quality homes)  
CP4 (Design)  
DM7 (Parking)  
DM14 (General development criteria)  
DM19 (Sustainable design and construction)  
DM32 (Listed Buildings)

##### 4.2 The Supplementary Planning Document: Swale Borough Council – Parking Standards 2020 (which has been adopted since the Local Plan was published and supersede the County standards referred to in policy DM14)

##### 4.3 The National Planning Policy Framework 2021 (NPPF): Chapters 2, 4, 5, 12, 14, 15 and 16

#### **5. LOCAL REPRESENTATIONS**

##### 5.1 Two letters were received from local residents neither objecting or supporting which can be summarised as follows:

- Not against the principle of development but there are aspects that are unacceptable
- The proposed house is set a long way back from the existing building line which would adversely affect the appearance of the street
- The side elevations show first floor windows which would adversely affect privacy into garden
- Black weatherboarding is not a suitable material
- The application form states that there are no trees that would be affected but this isn't the case

##### 5.2 One letter of objection was received and can be summarised as follows:

- We support development on this site but object to the proposed scheme
- Harmful effect on the adjacent listed buildings and rural street scene
- The proposed development would sit as a discordant element in the street by reason of siting deep into the plot
- Parking to the front of the building would dominate the street scene
- The site is not allocated for residential development and lies outside the defined built-up area of Teynham and Conyer
- It is noted that the applicant is putting forward a case that the new home is needed to provide care for the applicant's son, will the council if permission is granted place additional planning conditions on the property
- The land adjacent to Hinckley Mill has long lost any association to the farm and is an ideal location to place a new dwelling for a family intending to live and work in the area – in principle we support development to sustain our rural community

- Fully support a contemporary design however have concerns with the vertically hung black cladding which may overwhelm the adjacent listed properties
- A more visually modest design would have less impact on the adjacent listed buildings
- Bus services between Teynham and Conyer have been significantly reduced. There are no safe footpaths or street lighting on Conyer Road, the residents of Teynham Street rely solely on private vehicle transport – this new dwelling will add at least 2-3 cars to what is only a small country lane
- The applicant should endeavour to contact residents and demonstrate a willingness to fully consider the needs of their neighbours

5.3 Four letters of support were received (three of which are family members who live locally) and can be summarised as follows:

- I go past the site most days and like the design and think it will sit nicely on the street
- It is good that the building is set back so that Hinkleys Mill and Banks Farm Cottages are still the prominent properties on the road
- As family members we fully understand the need for a new family home to be built
- Will provide appropriately designed accommodation for a family who are considering the long-term care and support of their family members with special needs
- This new home will mean the applicants are closer to wider family for their support thus reducing a future need for social/local services
- We are confident the design will be delivered in a way to enhance the surrounding area which already aesthetically balances new and old designs
- The plot lends itself to development to “finish” off the street with the additional of another property

## 6. CONSULTATIONS

- 6.1 Natural England – Raises no objection to the application subject to strategic mitigation (payment) in respect of possible increased recreational disturbance to The Swale SPA/Ramsar site.
- 6.2 Kent Highways and Transportation – The proposal does not warrant involvement from the Highway Authority.
- 6.3 Teynham Parish Council – no comments received.

## 7. BACKGROUND PAPERS AND PLANS

- 7.1 All plans and documents related to 22/501402/FULL.

## 8. APPRAISAL

### Principle of development

- 8.1 One of the main considerations in the determination of this application is whether this would be classed as sustainable development. The Council's adopted Local Plan states that development proposals will be supported in accordance with the settlement hierarchy which

is set in Policy ST3. This identifies settlements in descending order of sustainability and this site ranks at the very bottom in order of settlements where residential development should be pursued. This site is remote from local services and Policy ST3 states:

*‘At locations in the open countryside, outside the built-up area boundaries 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.’*

8.2 The Council remains firm in its position that sites which are located outside of any built-up area boundary and in the designated countryside are covered by national and local planning policies which restrict development in the countryside, with particular focus on new residential development.

8.3 The Council do not consider that the advice set out within the NPPF lends support to the scheme. The NPPF, whilst clearly promoting the need to provide a wide choice of quality homes, does not allow this at all costs. The golden thread running through the document is the presumption in favour of sustainable development, where the NPPF emphasises that decisions should be made in accordance with the development plan unless material considerations indicate otherwise. As the Council cannot currently demonstrate a 5-year housing land supply paragraph 11(d) of the NPPF is triggered. Paragraph 11(d) states:

*‘where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, granting permission unless:*

*i. The application of policies in this Framework that protect areas or assets of particular importance provides a clear 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.’*

*Footnote 7 to paragraph 11 adds that designated heritage assets are included within the definition of assets of particular importance, as set out in paragraph 11(d) i above.*

8.4 In respect of housing in the countryside, paragraph 79 of the NPPF states:

*‘To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.’*

8.5 This then raises the question as to whether a new residential dwelling in this location would enhance or maintain the vitality of rural communities. It is the view of the Local Planning Authority that the contribution of a single dwelling would be negligible, so this cannot be considered the case here.

8.6 The application site is located outside a defined settlement and has very limited access to amenities meaning that the use of the car is essential in order to access necessary services and facilities such as a doctor’s surgery and schools. I appreciate that the Design and

Access Statement states that Teynham is only 1 mile walk away, and whilst that may be the case however, there are no dedicated footpaths and limited street lighting. The future occupants would be required to walk or cycle down a narrow unlit designated rural lane in order to reach the limited facilities that Teynham provides, which makes this undesirable. Therefore, future occupants of the development are likely to be largely reliant on the use of the private motor car to access services and facilities, which is contrary to the environmental aims of the NPPF.

- 8.7 It is noted that the applicant has stated that there are specific medical needs within the family and that the proposed dwelling would ensure that nearby family members can help with care and will help to reduce the costs of care on the local authority. The Council appreciates the specific requirements of the family, but a material consideration is the dismissed appeal from 2001 (SW/00/1244, APP/V2255/A/01/1064578). It is acknowledged that this appeal decision is 20 years old and relates to a site elsewhere in the Borough at Doddington, however, the key issues at hand here are comparable in that the appellants wished to erect a new dwelling outside the built-up area boundary and had a son with complex medical needs. The Inspector stated in his decision:

*'I have found this proposal to be contrary to settlement, countryside and landscape protection policies... I have identified the Appellant's personal circumstances as a material consideration in this case and have accordingly paid due regard to these factors.'*

*'Whilst sympathetic to these circumstances and after careful consideration, I find them to represent insufficient justification to overcome the significant adverse consequences on the character and appearance of the area arising from the development proposed.'*

#### Impact on nearby listed buildings

- 8.8 The Local Planning Authority also has significant reservations regarding the impact of the proposed dwelling on the character and setting of the adjacent listed buildings. The proposed scheme is broadly like the refused 2001 scheme for this site, although the design of the current scheme is more contemporary in its approach and with the siting of the current proposal markedly different to that of the 2001 scheme.
- 8.9 The second reason for refusal of the 2001 scheme referenced the overtly dominant and harmful impact of the adjacent listed building. Whilst it might be argued that pushing the building further back in to the site means that the new dwelling would have less of an impact on the setting of the listed buildings either side of the proposed new house, in practice, the Council considers that the slight decrease in the level of visual impact would be marginal as the current, long undeveloped green space, which is important to the rural character and setting of each listed building, would be significantly taken up by the new dwelling and associated parking.
- 8.10 There may be an argument to suggest that the vaguely barn-like, weatherboarded form of the proposed dwelling is more appropriate than the imitation vernacular approach used in the 2001 application, but this is a debatable, highly subjective issue. What is not in question is that erecting a house in this location would be harmful to the setting of both adjacent listed building's settings which each in turn derive some degree of significance from the current rural, green setting due to their simple vernacular rural form. Whilst the level of

heritage impact may fall within a mid-range spectrum, less than substantial harm in each case, the level of public benefit is unlikely to be sufficient to outweigh that harm and as such is contrary to policy 202 of the NPPF.

### Parking

The proposed site plan shows only two car parking spaces for the proposed four-bedroom dwelling which is contrary to the Council's Parking SPD which expects at least 3 off road car parking spaces for a property of this size in the rural area. This is a large plot, and the parking could have been amended if there weren't overriding issues regarding the principle of development and the impact on the setting of the adjacent listed buildings.

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

- 8.11 This Appropriate Assessment has been undertaken without information provided by the applicant. The application site is located within 6km of The Swale 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).
- 8.12 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.
- 8.13 Due to the scale of development, there is no scope to provide onsite 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. The proposal thus has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.
- 8.14 In considering the European site interest, Natural England (NE) 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 advises that the proposal is not necessary for the management of the European sites and that subject to a financial contribution to strategic mitigation, the proposal is unlikely to have significant effects on these sites.
- 8.15 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 (NKEPG).

- 8.16 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 (NKEPG) and that such strategic mitigation must be in place before the dwelling is occupied. Based on the correspondence with Natural England (via the NKEPG), I conclude that off site mitigation is required in this instance.
- 8.17 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 (to be secured by either s106 agreement or unilateral undertaking on all qualifying developments) 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, and this is a matter that may still need to be resolved at appeal stage.
- 8.18 It can be noted that the required mitigation works will be carried out by Bird Wise, the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, which itself is a partnership of local authorities, developers and environmental organisations, including SBC, KCC, Medway Council, Canterbury Council, the RSPB, Kent Wildlife Trust, and others.

## **9. PLANNING BALANCE**

- 9.1 It is acknowledged that the proposed dwelling would contribute to the current 5-year Land Supply deficit at Swale Borough Council. Whilst the personal circumstances of the applicant have been considered, they are not considered to justify the harm that would arise to the setting of the adjacent listed buildings and the proposal is contrary to both national and local policy which aims to protect the rural areas.
- 9.2 Therefore, and in light of the above, the Tilted Balance does not apply to this application, as the proposal clearly fails the tests as set out in Footnote 7 of paragraph 11 d) i of the NPPF, in terms of protecting the setting of listed buildings, which are defined assets of particular importance.

## **10. RECOMMENDATION**

REFUSE for the following reasons:

### **REASONS**

- (1) The proposed development would not represent sustainable development as this location is a considerable distance outside any established built-up area boundary where occupants would be dependent on private transport for all daily needs contrary to policies ST1, ST3 and DM14 of Bearing Fruits 2031; and paragraphs 8, 11 and 12 of the National Planning Policy Framework 2021. The applicants' family circumstances have been very carefully considered but are not considered to be sufficient to override the strong presumption against this development or to outweigh the harm to the area resulting from this development.



- (2) The proposed dwelling by virtue of its location, scale and architectural style would be overly dominant and harmful to the setting of the adjacent listed buildings, a less than substantial impact which is not outweighed by public benefit contrary to policy DM32 of Bearing Fruits 2031; and paragraphs 11 d) i and 202, of the National Planning Policy Framework 2021.
- (3) The proposed development would provide an insufficient number of parking spaces which is contrary to policy DM14 of Bearing Fruits 2031 and the Supplementary Planning Document Swale Borough Council – Parking Standards 2020.
- (4) The proposed development will create potential for recreational disturbance to the Swale Special Protection Area. The application submission does not include an appropriate financial contribution to the Thames, Medway and Swale Strategic Access Management and Monitoring Strategy (SAMMS), or the means of securing such a contribution, and therefore fails to provide adequate mitigation against that potential harm. The development would therefore affect the integrity of this designated European site, and would be contrary to the aims of policies ST1, DM14, and DM28 of Bearing Fruits 2031 - The Swale Borough Local Plan 2017; and the National Planning Policy Framework.

### **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.

