

<b>2.3 REFERENCE NO - 25/501620/FULL</b>		
<b>PROPOSAL</b> - Section 73 - Application for variation of Condition 2 (Garage Location and Extension to rear of the Garage) and Condition 5 (Foundation design & Tree Protection Strategy) related to planning permission 24/500695/FULL.		
<b>SITE LOCATION</b> - Rose Cottage The Street Hartlip Kent ME9 7TJ		
<b>RECOMMENDATION</b> Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions, with further delegation to the Head of Planning to negotiate the precise wording of conditions, including adding or amending such conditions as may be necessary and appropriate.		
<b>APPLICATION TYPE</b> – Householder Section 73 – Application for Variation of Conditions.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> – Councillor R. Palmer has called-in the application to the Planning Committee in order for the impact of the proposal upon the conservation area to be considered.		
<b>Case Officer</b> - Guy Martin		
<b>WARD</b> Hartlip, Newington and Upchurch	<b>PARISH/TOWN COUNCIL</b> Hartlip Parish Council	<b>APPLICANT</b> Mr And Mrs A Nicholls  <b>AGENT</b> Lander Planning
<b>DATE REGISTERED</b> 24/04/2025		<b>TARGET DATE</b> 12/09/25
<b>BACKGROUND PAPERS AND INFORMATION:</b>  The full suite of documents submitted and representations received pursuant to the above application are available via the link below: -  <u><a href="#">25/501620/FULL   Section 73 - Application for variation of Condition 2 (Garage Location and Extension to rear of the Garage) and Condition 5 (Foundation design &amp; Tree Protection Strategy) related to planning permission 24/500695/FULL.   Rose Cottage The Street Hartlip Kent ME9 7TJ</a></u>		

1. SITE LOCATION AND DESCRIPTION

- 1.1. Rose Cottage is a detached property located within the built confines of Hartlip on the eastern side of The Street located within a Conservation Area.

2. PLANNING HISTORY

- 2.1. **24/500695/FULL:** Erection of detached garage, demolition of side wall and extension of drive. Approved Decision Date: 17.05.2024

- 2.2. **22/502448/FULL:** Erection of a single storey detached garage (resubmission-21/503261/FULL). Withdrawn. Decision Date: 07.10.2022
- 2.3. **21/503261/FULL:** Erection of detached garage with office above. Refused. Decision Date: 11.08.2021
- 2.4. **18/504778/FULL:** Conversion of existing Garage to a habitable space, with new first floor accommodation above. Removal of existing ground floor rear workshop with a new G.F structure. Removal of rear garden room with associated terrace with a new larger orangery and new terrace layout. Approved. Decision Date: 19.12.2018

### 3. PROPOSED DEVELOPMENT

- 3.1. This application seeks planning permission for a variation of Condition 2 (Garage Location and Extension to rear of the Garage) and Condition 5 (Foundation design & Tree Protection Strategy) related to planning permission 24/500695/FULL.
- 3.2. That permission approved the erection of a garage building with a rectangular footprint, measuring 6 metres deep and 4.5 metres wide. The building was shown to have an eaves height of 2.2 metres and a ridge height of 4.6 metres. There were two iterations of the plans for the garage building, but the latest (the approved) indicated that the building would be positioned with its front elevation set 9.3 metres rearwards relative to the closest part of the front elevation of the host dwelling. The approved development also involved the removal of a wall and the provision of additional hardstanding to the front of the garage to connect to the existing driveway within the site.
- 3.3. Condition 2 of planning permission 24/500695/FULL states:
- “The development hereby approved shall be carried out in accordance with the following approved drawings: 21.31.PL03 dated 13.02.24, 24.06.\_PL04,*
- Reason: For the avoidance of doubt and in the interests of proper planning.”*
- 3.4. Condition 5 of planning permission 24/500695/FULL states:
- “The development shall be carried out strictly in accordance with the foundation design and tree protection strategy as set out within the Arboricultural Impact Assessment, plan 24.06\_PL03 dated 13.02.24.*
- Reason: To ensure the protection of the adjacent trees”*
- 3.5. As a result of development being undertaken and a case being made with the Council’s Planning Investigations team, the development that occurred and the planning permission that was granted have been compared.
- 3.6. Through this process it has been identified that an incorrect plan reference was included within Condition 2, resulting in an inconsistency between approved plans with respect to the siting of the garage. Plan 24.06.PL04 shows the front of the garage set

back 9.3m from the front elevation of Rose Cottage. However, Plan 21.31.PL03 shows the front of the garage sited 3.5m from the front of the dwelling.

- 3.7. It has also been identified that the building that has been erected does not accord with the approved plans, most notably through including a single storey projection to the rear of the garage that measures 1.6 metres by 2.4 metres. The development also incorporates two windows on the northern elevation and two additional doors, one on the northern elevation and one on the eastern elevation which were not previously shown.
- 3.8. The plan referred to in condition 5 shows tree protection details, but with the building shown in a position where it was not built.
- 3.9. The intention of this application is to amend the approved plans to reflect the development that has occurred. The application was invited by Officers to regularise the situation that has arisen.
- 3.10. During the process of the consideration of the application, it was identified that the submitted plans did not accurately demonstrate the position of the building. This has subsequently been addressed through the submission of amended plans which have been consulted upon.

#### 4. REPRESENTATIONS

- 4.1. Two rounds of consultation have been undertaken, during which letters were sent to neighbouring occupiers. A notice was displayed at the application site and the application was advertised in the local newspaper. Full details of representations are available online.
- 4.2. During the first round three letters of representation objecting to the proposal were received. Following receipt of further information, no further letters of representation were received in relation to the second consultation.

First Round Comments	Report Reference
Section 73 applications represent a 'back door route' to achieving amendments to what was approved previously.	The relevant legislation allows for such applications to be made.
The proposal would result in the loss of gaps and space when viewed from The Street.	See paragraphs 7.3.7.
The previously shown set back of the building from the highway was ineffective from a design point of view.	See paragraphs 7.3.6.
The existing front gardens of the Hartlip Conservation Area are, for the most part, free from development.	The works forward of the dwelling are the same as previously approved and the garage is to the side.
The plans approved by the 2024 application did not overcome the reason for refusal of the 2021 application.	Whilst the forward positioning of the garage was similar to this proposal, the garage in the 2021 scheme was set further forward and was two storey

	building, thereby being substantially different to the development that is the subject of this application.
The provision of a two storey garage would be out-of-keeping with the established character and appearance of the Conservation Area and the balcony would cause overlooking.	The garage is single storey and there is no balcony proposed. These comments related to the earlier proposals and are not considered to be applicable to this proposal.
The erosion of green space around the building would harm Rose Cottage (as a non-designated heritage asset) and the Hartlip Conservation Area (a designated heritage asset). As there are no public benefits, this harm should be a reason for the refusal of the application.	See paragraphs 7.3.6, 7.3.8
Trees should not be a material consideration in assessing impacts on living conditions.	See paragraphs 7.4.1 to 7.4.4
The impact on trees has not been adequately assessed within the applicant's submissions.	See paragraphs 7.5.1 to 7.5.2.
The applicant has taken advantage of the inconsistency within the approved plans and should have taken this step of regularising the matter prior to undertaking works.	This is not determinative. Retrospective applications are allowed for by Sections 73 and 73a of the Act.
The applicant's submissions are inadequate and incorrect.	The submissions have been corrected and are now considered to be accurate.
The submitted plans do not reflect what has been built as the position is not correctly shown.	The submissions have been corrected and are now considered to be accurate.
No weight should be given to the fact that the building already exists.	The assessment of planning merits are considered regardless of the fact that the building has been erected. The development having been completed is, however, relevant to a consideration relating to the imposition of conditions.
Civil matters and Building Regulation issues are raised.	The Objector acknowledges that these are not material to the assessment of this application.
Little weight should be given to the Parish Council's comments as they are not fulfilling their function of protecting heritage assets.	Regard is had to all comments received as required by legislation.
<b>Second Round - Additional Comments</b>	<b>Report Reference</b>
No additional representations made	N/A

- 4.3. **Hartlip Parish Council** state that they have no objections to the application. However, as there have been changes to the original application, the Parish Council has asked that any neighbours comments are taken into consideration.

5. **CONSULTATIONS**

- 5.1. Set out below is a summary of matters raised in representations, with the comments reflecting the final position of the consultee. There have been 2 rounds of consultation for all consultees.
- 5.2. **SBC Heritage:** No Objection is raised. The comments are discussed further below.
- 5.3. **SBC Trees:** – It has been stated that the amended tree details shown on the submitted arboricultural impact assessment plan (AIA) do not identify any new arboricultural issues. Therefore, provided the AIA is complied with by way of a condition, no arboricultural objections are raised.

6. **DEVELOPMENT PLAN POLICIES**

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

ST1 Delivering sustainable development in Swale

ST3 The Swale settlement strategy

CP4 Requiring good design

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

CP8 Conserving and enhancing the historic environment

DM7 Vehicle parking

DM14 General development criteria

DM16 Alterations and extensions

DM19 Sustainable design and construction

DM28 Biodiversity and geological conservation

DM29 Woodland, trees and hedges

DM32 Development involving listed buildings

DM33 Development affecting a conservation area

**Supplementary Planning Guidance/Documents -**  
Parking Standard Supplementary Planning Document, 2020.

**National Planning Policy Framework (the NPPF)**

**National Planning Practice Guidance (NPPG)****7. ASSESSMENT**

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

- Principle
- Character and Appearance and Heritage Assets
- Living Conditions
- Trees
- Other Matters

**7.2. Principle**

7.2.1. The application has been submitted under the terms of Section 73 of the Town and Country Planning Act 1990 as amended. Section 73 gives an express power to apply for planning permission for the development without complying conditions attached to an earlier permission. The effect of a successful application under Section 73 is to produce fresh planning permission but there are limitations on the use of the Section 73.

7.2.2. Section 73(2) states that the decision maker shall consider only the question of the conditions subject to which planning permission should be granted. As such the principle of the development on the site has been accepted by virtue of the granting of the planning permission. Consequently, the assessment in this case should be related to the effects of the proposed amendment to condition 2 in respect to the design and location of the garage and condition 5 in respect to the foundation design and tree protection. It is considered that the earlier description of development remains accurate for the amended proposal and, as such and having regard to relevant case law that clarifies how Section 73 applications can be used, it is considered that the amendment can be progressed in this way.

7.2.3. The principle of development was found acceptable before and, subject to the consideration of all matters of detail that are affected by the amendments to conditions, the principle of development should continue to be found acceptable.

7.2.4. In assessing the amendments to conditions, it is relevant that 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.

7.2.5. The National Planning Policy Framework provides the national policy context for the proposed development and is a material consideration of considerable weight in the determination of the application. The NPPF states that any proposed development that accords with an up-to-date local plan should be approved without delay. At the heart of the NPPF is a presumption in favour of sustainable development and for decision-taking this means approving development that accords with the development plan.

### 7.3. Character and Appearance and Heritage Assets

- 7.3.1. Rose Cottage lies within the Hartlip Conservation Area. The application must, therefore, be assessed in accordance with the requirements of section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. This requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of that area.
- 7.3.2. 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.
- 7.3.3. Policy DM33 of the Local Plan states that development (including changes of use and the demolition of unlisted buildings or other structures) within, affecting the setting of, or views into and out of a conservation area, will preserve or enhance all features that contribute positively to the area's special character or appearance.
- 7.3.4. In addition, Policies CP4, DM14 and DM16 of the Local Plan require development proposals to be of high-quality design and to be in keeping with the character of the area. They state that particular regard should be paid to the scale, height, materials, detailing, mass, bulk, articulation and site coverage of any proposals. Similarly, the NPPF sets out that good design is a key aspect of sustainable development and requires that developments are visually attractive as a result of good architecture, layout and appropriate and effective landscaping.
- 7.3.5. Beginning with the effect on the Conservation Area, it is noted that the Hartlip Conservation Area Character Appraisal identifies that the Conservation Area has a strong visual identity centred around The Street.
- 7.3.6. In respect of the earlier application, SBC Heritage found that the building at the site does not constitute a non-designated heritage asset and found that the building and site makes a neutral contribution to the character and appearance of the Conservation Area. It was found that the contribution of the site to the Conservation Area would not be affected by the garage development as a result of its setback and modest scale.

In this case, the Council's Heritage Advisor has commented that the application site is within the Hartlip Conservation Area which has a strong visual identity centred around The Street, with part of the special character as being of dwellings on large plots with a loose knit character and good degrees of landscaping. In relation to the garage being positioned further forward it was identified that, whilst this reduces the visual benefit of a generous setback distance away from the front elevation of the main house which was a feature of the previous design, the proposed position of the garage in a modest scale would still result in a subservient building which would not drastically alter the character of the space. In addition, as the additional projection to the rear of the garage would not be readily viewed given its position, no objection is raised to the alteration on heritage grounds. It is recommended details of materials of the new

windows and doors are submitted for approval by condition. No objection is raised on the grounds of the works to trees. The Officer concluded that the proposed changes would preserve the character and appearance of the conservation area.

- 7.3.7. This advice is considered to be sound. Garage buildings to the side of dwellings, attached and detached, are a common feature of the Conservation Area and, by reflecting this established form of development within the locality, it is considered that the proposal maintains the established character of the Conservation Area.
- 7.3.8. It is noted that the heritage advice received suggests adding conditions relating to the materials and rainwater goods to be used and the requiring further details of the doors and windows. However, the development has occurred and is considered to be acceptable as it has been built. Therefore, it is not considered to be necessary to impose conditions to require these matters to be addressed.
- 7.3.9. In terms of the setting of listed buildings, 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 it possesses.
- 7.3.10. The closest listed building is Popes Hall which is distant from the site, 150 metres to the south, with other properties in the intervening space. Consequently, the development is not considered to have an impact on the setting of that listed building.
- 7.3.11. In terms of the more generic character and appearance considerations and the application of the abovementioned policies, it is considered that the height and positioning of the garage enables it to appear subservient to the house with a design and materials that reflect features of the host dwelling. Whilst not set back from the road to the same degree as shown on previously approved plans, the set back is sufficient to ensure that the garage is not unduly prominent and has an acceptable impact on the character and appearance of the site and the locality.
- 7.3.12. For these reasons, in terms of its general design, impact on character and appearance of the area and the impact on heritage assets it is considered that the proposal accords with the policies of the development plan and the NPPF. The proposal maintains the character and appearance of the Conservation Area and maintains the setting of nearby listed buildings as is required by the abovementioned statutory duty that is set out within the Planning (Listed Building and Conservation Areas Act) 1990.

#### **7.4. Living Conditions**

- 7.4.1. Policy DM14 of the Local Plan and the NPPF requires that new development has sufficient regard for the living conditions of neighbouring occupiers.
- 7.4.2. The garage is located adjacent to the southern boundary of the property. As a result, the primary dwelling to consider the impact of the development upon is Burwell Grange. The dwelling on that plot is located approximately 25m to the south of the



site. The southern boundary comprises of a close boarded fence with a row of mature conifers set behind which would screen the views from this neighbour of the proposed development.

- 7.4.3. The separation distance between the garage and Burwell Grange and the scale of the development ensures that the development does not have an adverse impact upon this neighbour in terms of light. Moreover, whilst there are rear and side facing windows within the development and it is noted that this represents an uplift compared to before, these being orientated away from the immediately adjacent neighbour, being at ground floor and the intervening separation distance from habitable rooms ensures that the garage does not cause overlooking or an unacceptable loss of privacy within the neighbouring property. Furthermore, as the type of application means that the garage can only be used for purposes that are associated with the host residential dwelling, the impact of such a use cannot be considered to be unneighbourly in terms of noise or odour.
- 7.4.4. No other properties would be materially impacted by the proposal in such a way that the living conditions of their occupiers would be harmed. In consequence it is considered that the proposal would not adversely impact upon local amenities meeting the requirements of national and local planning policies.

#### 7.5. **Trees**

- 7.5.1. Policy DM29 of the Local Plan states that the Council will seek to ensure the protection, enhancement and sustainable management of woodlands, orchards trees and hedges. The NPPF also recognises the importance of trees at paragraph 136 and 187.
- 7.5.2. The Council's Tree Officer has raised no objection to the development. It is noted that the development has occurred without the immediate loss of trees and with no obvious signs that trees will be or have been harmfully impacted upon by the development. The forward position of the garage relative to the previously approved plans enables a magnolia tree to the rear of the garage to be retained. This is considered to be beneficial. For this reason, no objection is raised in relation to the impact on trees and the development is considered to accord with Policy DM29 of the Local Plan and the NPPF.

#### 7.6. **Other matters**

- 7.6.1. The proposed development would provide an uplift in parking and cause no additional impacts on highway safety as no additional points of access are proposed. The proposal is therefore considered to be acceptable in terms of the impact on highway safety, access and parking provision.
- 7.6.2. The list of approved plans can be updated and, in that respect, an updated version of condition 2 is the only condition that is considered to be appropriate to retain having regard to the tests of a condition that are set out within the NPPF. The time limit condition and the condition controlling the hours of construction which were imposed before can be removed as the development has been implemented and completed. As discussed above, no version of former condition 3 (materials and detailing) is considered to be required as the works have been completed in a satisfactory manner.

- 7.6.3. Whilst it was proposed to amend condition 5, as the development has been completed, it is not considered that this would continue to serve a purpose and is, therefore, unnecessary. Moreover, whilst conditions 6 and 7 previously required a landscaping scheme to be submitted, agreed, implemented and retained, as the Magnolia tree is now able to be retained and there is a line of trees have been planted near to the south boundary the site, it is not considered that it is necessary to retain these conditions.

## 7.7. Conclusion

- 7.7.1. The amended development is considered to be acceptable in all respects. No harm arises from the proposal and the development is considered to be in accordance with the development plan. No other material considerations indicate that planning permission should be refused and it is therefore recommended that permission is granted.
- 7.7.2. In considering the application, account has been taken of the 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.

## 7.7.3. Conditions

- 1) The development hereby approved shall be carried out in accordance with the following approved drawings:

Received 07 August 2025

21.31.PL03 revision B - Proposed Block Plan

24.06.PL05 revision B – Proposed Hard and Soft Landscaping

Received 21 May 2025

24.06\_PL03 revision A - Tree Location Plan

Received 15 April 2025

21.06-PL.EL-01 revision A - Proposed Floor, Roof Plans and Elevations

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

