

PLANNING COMMITTEE – 6th November 2025**PART 3**

Report of the Head of Planning

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

3.1 REFERENCE NO 25/500821/FULL		
PROPOSAL Demolition of existing brick outbuilding and erection of 3 detached self-build dwellings with associated works.		
SITE LOCATION Ten Acres Breach Lane Lower Halstow Kent ME9 7DD		
RECOMMENDATION Delegate to the Head of Planning to refuse planning permission, with further delegation to the Head of Planning to negotiate the precise wording of reasons of refusal, including adding or amending such reasons as may be necessary and appropriate.		
APPLICATION TYPE Minor		
REASON FOR REFERRAL TO COMMITTEE Call-in from Ward Councillor for reason that it is in the public's interest		
Case Officer Rebecca Corrigan		
WARD Bobbing, Iwade And Lower Halstow	PARISH/TOWN COUNCIL Lower Halstow	APPLICANT Mr & Mrs Keith & Glenda Tress AGENT Benchmark Design Build LTD
DATE REGISTERED 03.03.2025		TARGET DATE 17.10.2025
BACKGROUND PAPERS AND INFORMATION: The full suite of documents submitted and representations received pursuant to the above application are available via the link below: - https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=SSCMKTTYGE800		

1. **SITE LOCATION AND DESCRIPTION**

- 1.1. The application site relates to a parcel of land on the west side of Breach Lane, to the north of an existing dwelling, Westfield House.

- 1.2. The site is roughly rectangular in shape. It has a site area of approximately 0.18ha. There is a derelict outbuilding within the north west corner of the site. The land is generally clear of vegetation.
- 1.3. The site is bordered to the north by a vacant plot which gained outline planning permission for a single dwelling under application ref: 22/502340/OUT. This was followed by the approval of a Reserved Matters application Ref: 24/502764/REM. Further afield to the north and west is open countryside. Westfield House is located to the south, beyond which is more open land. There are residential dwellings to the east situated on the opposite side of Breach Lane.
- 1.4. Access to the site is via Breach Lane, with the entrance located toward the northern part of the plot, directly opposite The Club House and Club Cottages, which sit at the northern end of the terrace of dwellings along Breach Lane.
- 1.5. The site is located approx. 150m to the south of Lower Halstow and falls outside of the built confines of the village.
- 1.6. There is a public right of way (footpath, ZR43) situated to the north of the site.

2. PLANNING HISTORY

- 2.1. **19/500764/OUT** - Outline application (all matters reserved except access) for the demolition of former farm building/garage and erection of 10 no. 2, 3- and 4-bedroom dwellings with garages, associated landscaping and parking, together with new access and part widening of Breach Lane.

Refused - 19.08.2025.

The application was subject to an appeal which was dismissed, dated 31.07.2020.

- 2.2. **17/502046/OUT** – Outline application (some matters reserved) for the erection of 9 dwellings and garages, new access with associated landscaping and parking – access to be sought at this stage.

Refused - 11.07.2017.

Immediately adjoining parcel of land to the north

- 2.3. **24/502764/REM** - Approval of Reserved Matters (appearance, landscaping, layout and scale) for the erection of a single detached self-build dwellinghouse and carport/garage pursuant to 22/502340/OUT.

Application Permitted - 10.10.2024

- 2.4. **22/502340/OUT** – Outline application (all matters reserved except access) for the erection of a single detached self-build dwellinghouse and carport/garage.

Application Permitted - 06.12.2022

3. PROPOSED DEVELOPMENT

- 3.1. Planning permission is sought for the demolition of an existing brick outbuilding and the erection of three no. two storey detached self-build dwellings. The proposals would be served by two accesses off of Breach Lane, one to the north of the site where the existing access is located, and another further to the south. Each of the plots would comprise a soft landscaped area and hardstanding to the front for the parking of vehicles, with the southernmost dwelling served by a detached single-storey garage. Gardens would be located to rear.

4. REPRESENTATIONS

- 4.1. Two rounds of consultation have been undertaken, during which letters were sent to neighbouring occupiers. A site notice was displayed at the application site. Full details of representations are available online.
- 4.2. A total of 26 letters of representation were received in relation to the consultation. Of these 14 were letters of objection received from 12 separate households and 12 letters of representation in support were received from 10 separate households. Concerns/ comments were raised in relation to the following matters:

COMMENTS	Report Reference
The site is located outside the village boundary- further isolated growth into the countryside.	7.2.3 – 7.2.7
Upchurch village has limited facilities, including just one pub, a primary school, and a small convenience store.	7.2.3 – 7.2.7
Essential services such as schools, doctors, and shops are not accessible without a car, placing additional strain on local infrastructure.	7.2.3, 7.2.5 & 7.5.10
The claim that Upchurch is a short walk away is misleading, the route is lengthy, unsafe, and largely inaccessible for those with mobility issues.	7.2.3 & 7.5.10
The proposal does not meet sustainability or low-carbon requirements.	7.2.3, 7.8 & 7.5.10
It fails to align with Swale Council's Bearing Fruits 2031 policies	7.2.4, 7.2.11, 7.3.5, 7.5.10, 7.10.9 & 7.11.1
A similar development proposal in 2017 was rejected due to poor access to services, and the situation remains unchanged.	2.2
The proposal closely resembles a previously refused application (19/500764/OUT), upheld on appeal, affirming that adverse impacts significantly outweighed any benefits.	2.1, 7.2.5 – 7.2.7
The bus service is infrequent and does not reliably stop near the site.	7.2.3, 7.2.8 & 7.5.10
Limited public transport options mean residents would rely heavily on private vehicles.	7.2.3, 7.2.8 & 7.5.10

The proposed houses do not match the architectural style and design of historic properties within the surrounding area.	7.3.4
Negative effects on Westfield Cottages and the wider village, including noise, pollution, and lighting impacts.	7.7.1 - 7.7.4
A housing estate of any size would fundamentally alter the rural nature of the area, contributing to the urbanization of a once quiet village.	7.3.4 - 7.3.5
An increase in traffic would worsen road safety, especially as the 20mph speed limit is often ignored.	7.5.4, 7.5.5 - 7.5.6
Access points for Plots 3 & 4 are located on a blind corner, posing risks for pedestrians, cyclists, and vehicles.	7.5.4, 7.5.5 - 7.5.6
Previous support for a single dwelling was based on its accessible location; this larger development intensifies hazards.	7.5.6
The revised layout worsens concerns, introducing seven entrances in a small area, including two used for farm equipment access.	3.1, 7.5.4 - 7.5.6
Road conditions—including potholes, blind bends, and the absence of footpaths—make walking and cycling unsafe.	7.5.10
The new buildings would cast shadows over existing homes, reducing sunlight and cause disruption from headlights.	7.7.1 - 7.7.4
The adjacent property has an unusual layout, with a small rear garden and a larger front amenity space, which would be heavily impacted.	7.7.2
Loss of privacy and views that contribute to the rural setting	7.7.1 - 7.7.4
The site previously supported wildlife, including bats and owls, but clearance has led to a decline in biodiversity	7.4.6 & 7.4.8 – 7.4.9
Lighting changes could negatively impact protected wildlife.	7.4.6
Insufficient parking despite planned spaces. Will exacerbate existing situation	7.5.7 - 7.5.9
No consideration for contractor parking during construction, leading to congestion and unsafe parking practices.	7.5.9
School placements, healthcare access, and other services are already overstretched.	7.9.1
The development does not contribute to affordable housing.	7.9.1
Offers only short-term construction jobs with no lasting benefits.	7.10.6
The replacement of permeable land with impermeable materials would increase surface runoff, raising the risk of flooding	7.6.4
Immediate neighbours were not properly notified by the LPA	4.1
Increased demand may lead to problems with sewage disposal.	7.6.5
A known manhole overflow poses health and safety risks.	7.6.5

4.3. The letters of support raised the following matters:

Comments	Report reference
The location is accessible, with footpaths leading to the village centre, and street lighting ensures safe road crossing.	7.2.3, 7.2.5 & 7.2.7
Slightly outside the central area but close to key amenities like school, pub, and shop.	7.2.3, 7.2.5 - 7.2.7
Accessibility to local amenities was acknowledged in previous approvals for Plot 1.	7.2.7 & 7.2.8
The land is currently bare and does not contribute to the village scenery or wildlife	7.3.2 - 7.3.5 & 7.4.6
The site is previously developed land, aligning with central government policy supporting such development.	7.2.20 - 7.2.22
Frequently heard concerns about housing shortages. A proposal for three additional houses is a better alternative to large housing estates.	7.9.2
Rejecting small developments could make it easier for large-scale projects to be approved in the future.	7.9.2
Larger homes are needed to help growing families stay in the area and free up smaller homes.	7.2.10 & 7.10.6
Highlights the challenges young families face in securing housing in Lower Halstow due to high demand and long-term property ownership.	7.2.4 & 7.2.12
Four-bedroom home has already been approved, and additional similar homes would meet local demand and align with the Parish Council's development plan	7.2.8
The new dwellings follow Plot 1's modern design with similar materials and ecological features, including hedgerow planting and bird, bat, and insect habitats.	7.2.8, 7.4.5 - 7.4.9
Swale lacks a five-year housing land supply and self/custom build policies, highlighting the demand for housing opportunities	7.2.12, 7.2.17-7.2.19, 7.9.3 & 7.9.6
Local tradespeople could find work during construction.	7.10.6
The proposed houses align with an approved home, creating an attractive entrance to the village.	7.3.3 - 7.3.4
The proposed homes will fit well within the space without appearing cramped. Homes will be set back between Plot 1 and Westfield House to maintain openness and reduce prominence.	7.3.4 - 7.3.5 & 7.7.4
The land is very much a part of the village and I cannot see how 3 or 4 homes with disrupt the village feel.	7.2.3-7.2.4 & 7.3.2 - 7.3.5
The proposed site is on brownfield land, and continuous rejection has led some landowners to sell plots, which are then used for mobile homes that expand rapidly.	7.2.20 - 7.2.22
Support a previously approved self-build home, praising its design for fitting with the area's aesthetic. A self-build project would generate jobs for local tradespeople and benefit the village school.	7.2.8 & 7.2.19
The new entrance poses no safety concerns with clear sightlines and visibility in both directions.	7.5.5 - 7.5.6

Breach Lane's 20mph speed limit enhances pedestrian and cyclist safety.	7.5.5
The proposal includes infrastructure improvements, like road widening and enhanced parking, to support sustainable growth.	7.5.6 - 7.5.8
The current site is unattractive, and the proposed homes would improve the village's entrance visually.	7.3.4
The proposal meets most criteria outlined in Lower Halstow Parish Council's planning strategy.	6
An ecological survey found no environmental concerns, and the author describes the land as barren.	7.4.6

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 most consultees. Full copies of consultation responses are available online.
- 5.2. **KCC Highways** – Initially raised concerns as the visibility splays to the north of the existing and proposed access had been drawn incorrectly. In addition, it was advised that a minimum of 3 car park spaces are required for 4 bedroom dwellings and that garages are not considered as part of the allocation. Following receipt of amended plans raise no objection subject to conditions.
- 5.3. **KCC Flood and Water Management** – Set out that the application falls outside the definition of major development and therefore falls outside of KCC's remit as statutory consultee on this matter.
- 5.4. **KCC Ecological Advice Service (KCC EAS)** - Sufficient information has been provided and no objection is raised to the proposal. In the event of an approval, conditions are requested for a Biodiversity Enhancement Plan, Precautionary Working Methods and details of external lighting.
- 5.5. **KCC Public Rights of Way (PROW)** - Satisfied that it would not affect ZR 39 and 43 on their present lines.
- 5.6. **Mid-Kent Environmental Protection** - Raise no concerns relating to noise, air quality or lighting. A condition is recommended for land contamination and an informative is recommended to bring the Mid Kent Environmental Code of Development Practice to the attention of the applicant.
- 5.7. **Health and Safety Executive (HSE)** - The proposed development falls within the SD3 distance of the nearby licensed explosives site, but outside SD2 distance. HSE therefore has no comment to make on the planning application provided that the development is not a vulnerable building – which it is not.
- 5.8. **Environment Agency (EA)** - Due to the scale, nature and setting of this proposal and the supporting information submitted, the proposal is considered low risk. The EA do not have any specific comments to add.

- 5.9. **Natural England (NE)** - The proposed development has the potential to have a harmful effect on terrestrial Sites of Special Scientific Interest (SSSIs) and those Special Areas of Conservation (SACs), Special Protection Areas (SPAs) or Ramsar sites that they underpin. As the competent authority, the Council can apply an Appropriate Assessment. Providing the appropriate assessment concludes that the measures can be secured by means of a SAMMS payment, Natural England will be satisfied.

6. DEVELOPMENT PLAN POLICIES

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

ST1 Delivering sustainable development in Swale
ST2 Development targets for jobs and homes 2014-2031
ST3 The Swale settlement strategy
ST4 Meeting the Local Plan development targets
CP2 Promoting sustainable development
CP3 Delivering a wide choice of high quality homes
CP4 Requiring good design
DM6 Managing transport demand and impact
DM7 Vehicle parking
DM14 General development criteria
DM19 Sustainable design and construction
DM21 Water, flooding and drainage
DM24 Conserving and enhancing valued landscapes
DM28 Biodiversity and geological conservation
DM31 Agricultural land

Supplementary Planning Guidance/Documents

Landscape Character Assessment and Biodiversity Appraisal (LCA&BA), 2011.
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
- Landscape and Visual
- Ecology
- Transport and Highways
- Flood Risk, Drainage and Surface Water
- Living Conditions
- Sustainability / Energy

7.2. Principle

- 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 NPPF 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.

Location of Development

- 7.2.3. The site is located within the open countryside, outside of the built up area boundary of Lower Halstow. Lower Halstow itself is a Tier 5 settlement (as set out in the supporting text to Policy ST3) with limited services. The location of the site is remote from the village which is some 150m to the north. Access to the village is possible via a footpath on the east side, although this is largely unlit. Given the limited services available in the village, the remote location of the site away from the village, and the unlit nature of the road, the occupants of the development would be likely to rely on car-borne journeys.
- 7.2.4. The main relevant planning policy is ST3 of the Local Plan, which sets out the settlement strategy for the Borough. Policy ST3 of the Local Plan states that at locations in the open countryside outside the defined built-up area boundaries, development will not be permitted unless supported by national policy and where it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquility and beauty of the countryside, its buildings, and the vitality of rural communities. As will be assessed in further detail below, the visual impact of the proposal would not contribute to protecting the intrinsic value, landscape setting, tranquility and beauty of the countryside or its buildings. Consequently, the proposal does not accord with Policy ST3 of the Local Plan.
- 7.2.5. It is also material to highlight an appeal decision for 10 dwellings which included the land subject to this application (following the Council's decision to refuse permission under 19/500764/OUT). The appeal Inspector stated in paragraph 11:

I conclude that the appeal site would not be a suitable location for the proposed development having regard to the settlement strategy and its poor access to local services and facilities and would conflict with policies ST1, ST3 and DM9 of the LP and paragraphs 8,11,79,and 170 of the National Planning Policy Framework (2019) (the Framework), which when read together seek to deliver sustainable development consistent with the settlement strategy by restricting development in the open countryside.

- 7.2.6. The site and its surroundings retain the same overall characteristics in terms of access to services, facilities, and footpaths as they did at the time of the previous appeal (19/500764/OUT).
- 7.2.7. Whilst the current application is now for three dwellings, it remains the case that the site is not in a suitable location for such development, and the scheme continues to perform poorly under policy ST3 of the Local Plan.
- 7.2.8. With regard to the new dwelling approved immediately to the north of the site (under ref. 22/502340/OUT, which has yet to be built out), the Planning Committee considered that proposal for a single dwelling to be acceptable, overturning the Officer's recommendation for refusal. Although this decision is recognised, each application must be assessed on its own merits. In having carefully assessed the current proposals, and with regard to the previous Inspector's appeal decision which in part related to the same site as now being assessed, it is considered that this site remains unsuitable for housing due to its open countryside location and poor access to services and facilities.
- 7.2.9. It is also the case that the Council cannot currently demonstrate a five-year supply of housing land such that paragraph 11 of the NPPF is engaged.
- 7.2.10. In accordance with footnote 8 to paragraph 11 of the NPPF, the Council's relevant policies for the supply of housing cannot be considered up-to-date. This does not, however, lead to an automatic assumption that planning permission should be granted for residential development in locations that would otherwise have conflicted with Development Plan policies. Rather in situations where the Development Plan policies have failed to secure a sufficient supply of deliverable housing sites, the NPPF seeks to ensure that the 'presumption in favour of sustainable development' is duly applied. If the adverse impacts of the proposal significantly and demonstrably outweigh the benefits, then planning permission should still be refused.
- 7.2.11. The harm caused by the proposal, the benefits of the proposal and the associated conflict and accordance with the Local Plan and 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.

Self-Build

- 7.2.12. The application has been submitted on the basis that it would deliver three self-build/custom build dwellings. Under the Self-build and Custom Housebuilding Act 2015 (as amended), local planning authorities are required to keep a register of individuals and associations seeking to acquire serviced plots of land in the Borough for their own self-build and custom housebuilding projects. The Council's Self-Build Register, as of the base date of 30 October 2024, records 127 individuals seeking 128 plots and 5 associations seeking 32 plots for self-build/custom housebuilding.

- 7.2.13. The Act and associated Planning Practice Guidance (PPG) define self-build and custom house building as housing built or completed by individuals (or associations) to be occupied as their own home, where the initial owner has primary input into the design and layout of the dwelling. The self/custom build act states,

“it does not include the building of a house on a plot acquired from a person who builds the house wholly or mainly to plans or specifications decided or offered by that person”.

The PPG states, *“Off-plan housing, homes purchased at the plan stage prior to construction and without input into the design and layout from the buyer, are not considered to meet the definition of self-build and custom housing”.*

- 7.2.14. As such, homes built to a fixed design without input, as is the case here, do not meet this definition.
- 7.2.15. The applicant has provided a statement explaining that purchasers would be able to specify internal layouts, finishes, and some external materials, and that the landowner would not act as a developer selling completed homes. It is also stated that the plots would be marketed as self-build opportunities and that flexibility could be secured through conditions or a legal agreement. The applicant has offered to enter into a Section 106 agreement requiring that the plots are sold for self-build/custom build purposes in accordance with the Act, including an occupancy clause of three years. It is the applicant's opinion that this would provide a suitable mechanism to secure the principle of self-build and address enforceability concerns.
- 7.2.16. In addition, the applicant has advised that there is now interest from self-builders in both Plots 2 and 3, subject to planning approval being granted, despite these plots not currently being marketed. The applicant considers this demonstrates clear demand for such plots and argues that this strengthens their position that the supply of approved self-build sites is not keeping pace with demand.
- 7.2.17. Whilst this interest is noted, the application still seeks full planning permission for fixed house designs and layouts. Although the proposed legal agreement would result in the plots being marketed and sold for self-build purposes, the level of flexibility described (internal finishes and minor layout changes) does not demonstrate that future occupiers would have primary input into the overall design and layout prior to construction. This remains a key requirement of the statutory definition and national guidance.
- 7.2.18. Appeal decisions confirm that the ability for the initial owner to influence the design is fundamental to meeting the statutory definition. In APP/J3720/W/25/3364463 (Bidford-on-Avon) the Inspector dealt with the issues of self-build in detail emphasising that design input by the initial owner is essential and detailing the requirements to be met in order for the development to be considered self-build. The decision demonstrates

that simply marketing plots as self-build, without securing meaningful design input, is insufficient.

- 7.2.19. In the absence of design input from the initial owner, the Council cannot be satisfied that the proposal qualifies as self-build/custom build housing. Consequently, the development cannot be considered as contributing to the Council's obligations under the Self-build and Custom Housebuilding Act 2015.

Previously Developed Land

- 7.2.20. The applicant asserts that the site qualifies as brownfield land. It contains a small brick structure and remnants of hardstanding. According to the NPPF, there is a strong emphasis on redeveloping brownfield (previously developed) land, especially for housing. Annex 2 of the NPPF defines previously developed land as:

“Land which has been lawfully developed and is or was occupied by a permanent structure and any fixed surface infrastructure associated with it, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed). It also includes land comprising large areas of fixed surface infrastructure such as large areas of hardstanding which have been lawfully developed. Previously developed land excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.”

- 7.2.21. The planning history of the site is also a material consideration. In the appeal decision for application 19/500764/OUT, the Inspector acknowledged that part of the site (Parcel B) constitutes previously developed land, stating:

“I acknowledge that part of Parcel B is previously developed land and due to the rows of dwellings opposite, the appeal site cannot be considered isolated in the true sense of its meaning. However, Policy ST3 does not make provision for an exception to the restrictive approach to development in the countryside for such sites.” (paragraph 7)

The Inspector further noted that:

“The proposal would produce some environmental benefits including the remediation of previously developed land on part of Parcel B; would reduce the pressure on agricultural land for development and would make a financial contribution towards mitigation of any impacts arising from the development on the SPA. I attach moderate weight to these benefits.” (paragraph 22)

- 7.2.22. This appeal decision confirms that whilst the partial brownfield status of the site and the presence of existing development in the locality are relevant, they do not in themselves override the restrictive policy approach to new development in the countryside (Policy ST3 of the Local Plan). The Inspector attached only moderate weight to the environmental benefits arising from the remediation of previously developed land, and did not consider these sufficient to justify an exception to policy. It is considered that the same assessment of this matter applies in terms of the current application.

Loss of Best and Most Versatile Agricultural Land

- 7.2.23. Policy DM31 of the Local Plan seeks to safeguard the best and most versatile agricultural land from development.
- 7.2.24. The application site comprises Grade 1 agricultural land, which is classified as being of the highest quality. However, based on the available evidence, the land does not appear to have been previously farmed and, due to its limited size, would not constitute a viable agricultural unit. Whilst the proposal would result in the loss of land designated as best and most versatile, the scale and nature of the site significantly limits its agricultural potential.
- 7.2.25. As such, although a degree of conflict with Policy DM31 of the Local Plan is acknowledged, the weight attributed to this harm within the overall planning balance is considered to be minimal.

7.3. Landscape and Visual

- 7.3.1. Policy DM24 of the Local Plan states the value, character, amenity and tranquillity of the Borough's landscapes will be protected, enhanced and, where appropriate, managed. The NPPF requires decisions to ensure that development is '*sympathetic to... landscape setting*'.
- 7.3.2. The site is also part of the Upchurch and Lower Halstow Fruit Belt as designated in the Swale Landscape Character and Biodiversity Appraisal 2011 (SPD). The key characteristics of the area are of an undulating landscape with occasional long views to north and south, small to medium-scale rural landscapes with a strong sense of enclosure and small villages with historic centres and modern urban expansion on the periphery, amongst others. The SPD notes that the landscape is in 'moderate' condition and moderately visually sensitive. Guidelines for this character area include conserving the remaining enclosed landscape structure and look for opportunities to create features to restore a strong landscape structure with trees, shelterbelt, hedge planting and wetland features.
- 7.3.3. In terms of visual impact, the Inspector's comments in relation to 19/500764/OUT, highlight that the site's partial brownfield status and its relationship to existing built form are material, but the proposal must still be assessed against the need to protect the character and appearance of the countryside. The site is in a non-designated landscape and on this basis Policy DM24 of the Local Plan states: "*Non-designated*

landscapes will be protected and enhanced and planning permission will be granted subject to:

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

- 7.3.4. The current proposal for three new detached dwellings, together with a detached garage, opposite a modest row of terraced cottages on Breach Lane, would appear visually intrusive and overly dominant within the streetscape. The scale and massing of the proposed dwellings, combined with the extent of hardstanding to the front, would detract from the rural landscape character and erode the visual quality of the surrounding area. The development would appear as unduly prominent additions to the street scene, failing to have sufficient regard for the established character, setting, and context of the site.
- 7.3.5. Furthermore, the proposal would extend beyond the established pattern of development and, due to its prominent position in the landscape, would result in significant harm to the character and appearance of the open countryside. It would appear as an incongruous residential intrusion in a rural setting. For these reasons, it is concluded that the development would have a detrimental impact on the character and visual quality of the site and its surroundings. It is considered that adverse landscape impacts of the proposal have not been minimised or mitigated and (as discussed further in the balancing exercise below) the social and or economic benefits do not outweigh the identified harm to the landscape character and value of the area. Therefore, the proposal conflicts with Policies ST1, ST3, CP4, DM14, and DM24 of the Local Plan and the NPPF.

7.4. **Ecology**

- 7.4.1. The Conservation of Habitats and Species Regulations 2017 (‘the Habitats Regulations’) affords protection to certain species or species groups, commonly known as European Protected Species (EPS), which are also protected by the Wildlife and Countryside Act 1981. This is endorsed by Policies CP7 and DM28 of the Local Plan, which relates to the protection of sites of international conservation importance including Special Areas of Conservation (SAC), Special Protection Areas (SPA) or Ramsar Sites.
- 7.4.2. Section 40 of the Natural Environment and Rural Communities Act (2006) states “*For the purposes of this section “the general biodiversity objective” is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England*” and “*A public authority which has any functions exercisable in relation to England must from time to time consider what action the authority can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective.*” Furthermore, the NPPF states that ‘the planning system should contribute to and enhance the natural environment by minimising impacts on and providing net gains for biodiversity.’ The NPPF 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.’

- 7.4.3. 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.

Habitats / Appropriate Assessment

- 7.4.4. The application has been the subject of an Appropriate Assessment (AA) under the Habitats Regulations, the conclusion of the AA was that there is a potential risk of harm to the European designated sites at the Swale/Medway SPA and Ramsar Site. The impacts were assessed for this development and this development in combination with other planned development. The AA, which was prepared in consultation with Natural England concludes that these impacts can be mitigated (the SAMMS payment).
- 7.4.5. Off-site mitigation is required by means of developer contributions at the rate of £337.49 per dwelling (total £1012.47). The applicant has confirmed willingness to make the SAMMS payment under a unilateral undertaking (UU) which would provide an acceptable form of mitigation. However, in the absence of the UU securing the necessary mitigation, the Council cannot conclude that there will be no harm. On this basis, the proposal is in conflict with Policies ST1, CP7 and DM28 of the Local Plan and the NPPF.

Site Specific Ecology / Protected Species

- 7.4.6. In terms of the site itself, the applicant has submitted a Preliminary Ecological Appraisal and landscape plan with associated biodiversity enhancements alongside the application. KCC Ecology have provided comment. The site occupies an area of bare ground with short emergent vegetation that appears to have been cleared of scrub between 2020 and 2022. A single dilapidated barn building is present onsite, which was determined to be of negligible potential for supporting roosting bats as reported within the Preliminary Ecological Appraisal (PEA), though there is some potential for nesting birds. The PEA determined that the site as a whole was of overall low-negligible for supporting protected species (e.g. reptiles/amphibian/dormice), and therefore it is considered that adverse impacts to these species may be avoided through the implementation of precautionary practices. These ecological impacts arising are therefore considered to be acceptable subject to conditions securing a biodiversity enhancement plan, details of precautionary working practices and details of external lighting in the event of an approval.

BNG

- 7.4.7. Paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990 (TCPA) (as inserted by the Environment Act 2021) introduces a general condition requiring most developments to achieve a minimum 10% biodiversity net gain. This requirement does

not apply where an exemption is engaged, including for self-build and custom housebuilding developments that meet the criteria set out in the Biodiversity Gain Requirements (Exemptions) Regulations 2024.

- 7.4.8. The applicant asserts that the proposal qualifies as self-build/custom build housing and is therefore exempt from the BNG requirement. However, as set out in the Self-Build section above, the Council is not satisfied that the proposal meets the statutory definition of self-build/custom build housing. This is because the application seeks full planning permission for fixed designs and does not demonstrate that initial owner(s) would have primary input into the design and layout prior to construction. Consequently, the exemption cannot be applied, and the development remains subject to the biodiversity gain condition.
- 7.4.9. No Biodiversity Gain metric or draft plan has been submitted, consequently, there is insufficient information to conclude how appropriate BNG will be delivered. The PPG indicates it would generally be inappropriate to refuse an application on grounds that the biodiversity gain objective will not be met. Rather, decision makers must consider more broadly whether the biodiversity gain condition is capable of being successfully discharged. As a result, although there is insufficient information at this point, if planning permission was granted the mandatory condition for a minimum 10% of BNG would be applicable. This would be a pre commencement condition and is the mechanism to confirm whether the development meets the biodiversity gain objective. As a result, in that scenario, the development would be unable to commence until the Biodiversity Gain Plan, required as part of the condition, was approved. Therefore, as the minimum 10% BNG would be able to be achieved via a number of routes, such as on-site or off-site, it is likely that the biodiversity gain condition would be capable of being discharged. As such, despite there not being sufficient information at this point for the purposes of the statutory BNG condition, this is not considered to be a reason to refuse the application.

7.5. **Transport and Highways**

- 7.5.1. Local Plan Policies CP2 and DM6 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. Policy DM7 of the Local Plan requires parking provision to be in accordance with the Council's Parking SPD.
- 7.5.2. The NPPF promotes sustainable patterns of development and expects land use and transport planning to work in parallel in order to deliver such. The NPPF states:
- “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.”*
- 7.5.3. The development proposes a new vehicular and pedestrian access onto Breach Lane to serve two of the properties, with the third property using the existing access.

- 7.5.4. Several representations have been received raising concerns that the development would increase road safety risks in an area already affected by traffic and ineffective speed limits. Objectors also highlight that the proposed access points are located near a blind corner, which they consider would exacerbate highway safety issues.
- 7.5.5. KCC Highways initially raised concerns that the visibility splays to the north of both the existing and proposed accesses were incorrectly drawn. Revised plans were subsequently submitted, and a full re-consultation was carried out. Following review of the amended plans, KCC Highways confirmed they are satisfied with the proposal, subject to conditions in the event of approval. On this basis, highway safety is considered acceptable.
- 7.5.6. In terms of traffic volumes, it is not considered that the vehicle movements associated with three dwellings would give rise to any severe impacts upon the surrounding highway network. The scheme is therefore acceptable in this regard.
- 7.5.7. Based on the Council's Parking Standards SPD, four-bedroom dwellings in this location require three spaces each, plus an additional 0.2 spaces per dwelling for visitors, equating to a total requirement of 10 spaces. Initially, KCC Highways highlighted that a minimum of three parking spaces per four-bedroom dwelling is required, and garages cannot be counted towards this provision. The plans were amended accordingly.
- 7.5.8. The revised layout now provides nine on-plot parking spaces, with additional capacity within garages. Each property also has sufficient space to accommodate visitor parking.
- 7.5.9. Should planning permission be forthcoming, a condition is recommended to ensure the delivery and retention of parking spaces. A condition could also be applied to ensure sufficient parking space during construction. In view of the above, the parking proposals are considered to comply with Policy DM7 of the Swale Local Plan and the relevant provisions of the NPPF.
- 7.5.10. Policies CP2 and DM6 of the Local Plan require proposals to minimise the need to travel for employment and services, facilitate sustainable transport and requires priority to be given to pedestrians and cyclists. As set out above when considering the location of development, there is an unlit footpath which would provide access to Lower Halstow. However, Lower Halstow itself only has a very limited number of services and facilities, which is reflected in its position low down in the settlement hierarchy as set out in Policy ST3. Therefore, due to the distance of the site from higher order centres which contain services and facilities necessary for day-to-day living, the scheme would not minimise the need to travel. In addition, due to the unlit footpath, it is not considered that sustainable travel methods would be prioritised. On this basis, the scheme would conflict with those elements of Policy DM6 and CP2 which relate to these specific matters.

7.6. Flood Risk, Drainage and Surface Water

- 7.6.1. Policy DM21 of the Local Plan and the NPPF requires that Local Planning Authorities should ensure that flood risk is not increased elsewhere and that any residual risk can be safely managed.
- 7.6.2. The site is not located within Flood Zone 2 or 3; however, the Council's Strategic Flood Risk Assessment and Environment Agency maps indicate that a section to the west of the site (rear garden) is at medium/high risk of surface water flooding.
- 7.6.3. On 17 September 2025, the Government updated the Planning Practice Guidance (PPG) on flood risk. The revised guidance introduces a more pragmatic and proportionate approach to surface water flood risk. Specifically, where a site-specific Flood Risk Assessment (FRA) clearly demonstrates that the proposed layout, design, and mitigation measures will ensure that occupiers and users remain safe from current and future surface water flood risk for the lifetime of the development without increasing flood risk elsewhere the sequential test does not need to be applied.
- 7.6.4. Although a site-specific Flood Risk Assessment has not been submitted, the location and design of the development ensure that no built elements are at risk from any form of flooding. Surface water management would be achieved through soakaways and permeable driveways, as detailed in the submitted Drainage Strategy Report and supported by site-specific infiltration tests. The Environment Agency, having reviewed the supporting information, assessed the proposal as low risk and had no specific comments.
- 7.6.5. Concerns have been raised in representations regarding the potential impact of the development on sewage disposal, as well as reference to an existing manhole overflow and the potential for associated health and safety risks. While these concerns are noted, matters relating to foul drainage is addressed through separate legislation and regulatory regimes, including the Building Regulations. Any connection to the public sewerage network would require approval from Southern Water under Section 106 of the Water Industry Act, and any existing issues with infrastructure maintenance fall outside the scope of planning control. As such, these matters are not material planning considerations in the determination of this application.
- 7.6.6. Overall, the proposal aligns with the objectives of Policy DM21 of the Local Plan and the NPPF and is considered acceptable.

7.7. Living Conditions

Existing residents

- 7.7.1. Policy DM14 of the Local Plan and the NPPF requires that new development has sufficient regard for the living conditions of neighbouring occupiers.

- 7.7.2. The nearest property to the site is Westfield House, located to the south. It is set back within its plot, with its main amenity space situated to the north and front of the dwelling. Although the proposed new dwellings would extend further forward than Westfield House, a separation distance of 18 meters would be maintained between the main house and the side boundary. This ensures that there would be no unacceptable loss of light to the existing property. Furthermore, given the orientation of the site where the new development would be positioned to the north, any overshadowing would be minimal.
- 7.7.3. Regarding privacy, no windows are proposed on the southern side elevation of the nearest new dwelling, eliminating concerns about direct overlooking. Additionally, the placement of windows at the front and rear prevent direct overlooking. While the garden of Westfield House is located to the side, with regards to privacy this would be acceptable again based upon the location of the windows and furthermore immediate views into the space would be limited by a boundary fence.
- 7.7.4. Directly opposite the site lie Breach Cottages. While the proposed dwellings are larger in scale and introduce elevated views, the layout and positioning of the development have been carefully considered to avoid any unacceptable impact on the privacy or living conditions of neighbouring occupiers. The relationship between the new dwellings and existing properties is such that issues of overlooking, overshadowing, and loss of light are not considered to be significant. As a result, any potential impact on residential amenity is deemed acceptable in this regard.

Future residents

- 7.7.5. 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.
- 7.7.6. The proposed dwellings offer a good quality living environment, with two-storey layouts that meet the national internal space standards. All habitable rooms benefit from natural light and ventilation, contributing to a comfortable living space. Although the garden areas are smaller than typically expected for dwellings of this size, they are considered sufficient to meet the day-to-day needs of future residents and are therefore acceptable.
- 7.7.7. As such, the proposed development is considered to provide an acceptable standard of amenity for both existing neighbouring occupiers and future residents. The layout, scale, and design of the dwellings ensure that issues such as privacy, light, and outlook have been appropriately addressed. The internal accommodation meets the Nationally Described Space Standards, and although garden sizes are modest, they are sufficient to meet the needs of future occupiers. As such, the proposal is

considered to comply with Policy DM14 of the Local Plan and the NPPF, which seeks to ensure that developments provide a good standard of amenity for all.

7.8. **Sustainability / Energy**

7.8.1. Policy DM19 of the Local Plan requires development proposals to include measures to address climate change.

7.8.2. If the application was approved a condition would 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 conditions securing this detail, the application would comply with Policy DM19 of the Local Plan and the NPPF.

7.9. **Other Matters**

7.9.1 Some representations have raised concerns regarding the potential impact of the proposed development on local infrastructure, including school placements, healthcare access, and other overstretched services. Comments have also been received in relation to the provision of affordable housing. However, the proposal comprises only three dwellings and does not meet the threshold for a major application. As such, it is not considered to result in a significant impact on local infrastructure or to trigger requirements for affordable housing provision under current planning policy.

7.9.2 While some representations suggest that small-scale developments such as this proposal for three dwellings are preferable to large housing estates and could help address housing shortages, this argument does not outweigh the planning concerns identified in this case. The National Planning Policy Framework (NPPF) does support the contribution of small and medium-sized sites to housing supply (paragraph 69); however, such support is conditional on proposals being well-designed, appropriately located, and policy-compliant. The fact that a development is small does not justify setting aside other material considerations, particularly where harm has been identified. Furthermore, the refusal of this application would not set a precedent that favours large-scale development, as each proposal is assessed on its own merits and in accordance with the development plan and material considerations.

7.10. **Planning Balance – Benefits and Harm**

7.10.1. 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.

7.10.2. In this case conflict with policies in the development plan have been identified as set out above.

- 7.10.3. The NPPF is a material consideration and as the Council are unable to demonstrate a 5-year supply of housing land, paragraph 11.d of the NPPF is engaged. This states the following:

“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 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.”

- 7.10.4. As per part (i), in the absence of a UU, whilst it would be resolvable, the proposal currently fails to mitigate its impact on designated habitat sites, which conflicts with Policies ST1, CP7 and DM28 of the Local Plan. As a result of the impact on designated habitats not being mitigated, the application of policies that protect areas or assets of particular importance do provide a strong reason for refusing the development.
- 7.10.5. However, proceeding on the basis that this could easily be resolved if a UU were to be submitted securing the necessary contribution towards mitigation, it is considered sensible to undertake an assessment on the basis of the habitats harm being addressed. In such circumstances, it would need to be considered whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This assessment is carried out below.

Benefits

- 7.10.6. The proposal would deliver some benefits, including a modest contribution to housing supply (not self-build) and short-term economic benefits during construction. Future occupiers may also provide limited support to local services. Moderate weight is attached to these public benefits.

Harm (excluding the impact on protected habitats for the reason set out at 7.9.5)

- 7.10.7. The application site lies within the open countryside for the purposes of the Local Plan. The proposals would give rise to a harmful urbanising effect on the rural landscape character of the site, conflicting with the settlement strategy and Policies ST1, ST3, CP2, elements of policy DM6 and DM24 of the Local Plan and with the design and

character objectives of Policies ST3, CP4 and DM14 of the Local Plan. Substantial weight is given to this harm.

- 7.10.8. The site is also identified as Grade 1 agricultural land, and its loss would conflict with Policy DM31 of the Local Plan. Given the size of the site and its potential for viable agricultural activity the weight attributed to this harm is limited.

Balance

- 7.10.9. The Council cannot currently demonstrate a five-year housing land supply, and therefore paragraph 11(d) of the NPPF is engaged. Notwithstanding the impact on protected habitats for the reason set out at 7.9.5 and applying the 'titled balance' on the basis that the protected habitats harm can be easily resolved, it is still considered that the harm arising from the unsustainable location and harmful impact upon the rural character, results in conflict with the NPPF which would significantly and demonstrably outweigh the benefits of the proposal.

7.11. Conclusion

- 7.11.1. For the reasons given above, the development plan indicates that planning permission should be refused and there are no other material considerations, including the NPPF, which indicate that a different decision should be reached. Consequently, it is recommended that the application is refused on the grounds of the unsustainable location and the visual impact upon the rural character of the site; and due to the lack of a SAMMS contribution.
- 7.11.2. 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.

7.12. Recommendation

- 7.12.1. Refuse for the following reasons.

7.13. Reasons for refusal

1. The proposed dwellings, by virtue of their location outside of any identified built-up settlement boundary, would give rise to unacceptable urbanisation of the site and intensification of sporadic development, representing an unsustainable and harmful form of development in a rural location, poorly related to day-to-day services and facilities. The adverse impacts of the proposal would significantly and demonstrably outweigh the benefits arising. The application is therefore contrary to Policies ST1, ST3, CP2, CP4, DM6, DM14 and DM24 of Bearing Fruits 2031: The Swale Borough Council Local Plan 2017 and the National Planning Policy Framework.

2. The proposed development will create potential for recreational disturbance to the Swale Special Protection Area and 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, CP7 and DM28 of Bearing Fruits 2031: The Swale Borough Local Plan 2017 and the National Planning Policy Framework

