

FAVERSHAM CREEK NEIGHBOURHOOD PLAN

(Submission Version November 2014)

**Report of the Examination into the Faversham Creek  
Neighbourhood Plan**

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# **Report of the Examination into the Faversham Creek Neighbourhood Plan**

## **1. Introduction**

### *Neighbourhood planning*

1. The Localism Act 2011 Part 6 Chapter 3 introduced neighbourhood planning, including provision for neighbourhood development plans. A neighbourhood development plan should reflect the needs and priorities of the community concerned and should set out a positive vision for the future, setting planning policies to determine decisions on planning applications. If approved by a referendum and made by the local planning authority, such plans form part of the Development Plan for the neighbourhood concerned. Applications for planning permission should be determined in accordance with the Development Plan, unless material considerations indicate otherwise.

2. This report concerns the Submission Version of the Faversham Creek Neighbourhood Development Plan (“the Draft NDP”).

### *Appointment and role*

3. Swale Borough Council (“SBC”), with the agreement of Faversham Town Council (“FTC”), has appointed me, to examine the Draft NDP. I am a member of the planning bar and am independent of SBC, FTC, and of those who have made representations in respect of the Draft NDP. I do not have any interest in any land that may be affected by it.

4. My examination has involved considering written submissions, a hearing at the Alexander Centre Faversham, an accompanied site visit and unaccompanied site visits at different states of the tide. The site visits included the neighbourhood plan area and neighbouring parts of the town of Faversham.

5. My role may be summarised briefly as to consider whether certain statutory requirements have been met, to consider whether the Draft NDP meets the basic conditions, to consider human rights issues, to recommend which of the three options specified in paragraph 13 below applies and, if appropriate, to consider the referendum area. I must act proportionately, recognising that Parliament has intended the neighbourhood plan process to be relatively inexpensive.

## **2. Preliminary Matters**

### *Public consultation*

6. I am satisfied that the Consultation Statement and the summary of consultation on page 13 of the draft NDP are accurate and that FTC took public consultation seriously and that sufficient consultation resulted from this approach. I bear in mind that town councillors are democratically accountable, subject to a code of conduct and likely to be in close contact with the community they represent. I also note that a particularly substantial number of local residents made representations in respect of the plan. If there had been any failure in consultation, I would have been satisfied that it would not have caused substantial prejudice. The consultation met the requirements of the Neighbourhood Planning (General) Regulations 2012 (“the General Regulations”).

### *Other statutory requirements*

7. I am satisfied of the following matters:
- (1) The Draft NDP area is that part of Faversham Creek and the land adjoining it shown on the plan on its page 15. FTC is authorised to act in respect of this area (Town and Country Planning Act 1990 (“TCPA”) s61F (1) as read with the Planning and Compulsory Purchase Act 2004 (“PCPA”) s38C (2)(a));
  - (2) The Draft NDP does not include provision about development that is excluded development (as defined in TCPA s61K), and does not relate to more than one neighbourhood area (PCPA s38B (1));
  - (3) No other neighbourhood development plan has been made for the neighbourhood area (PCPA s38B (2)); and
  - (4) There is no conflict with PCPA s38A and s38B (TCPA Sch 4B para 8(1)(b) and PCPA s38C (5)(b)) other than mentioned in the next paragraph.

8. The Draft NDP does not specify the period for which it is to have effect. This is a statutory requirement that must be complied with.<sup>1</sup> I recommend specifying a period that corresponds with the emerging Swale Local Plan. In any event it should not specify a termination date later than 2031. The exact detail is a matter for FTC.

#### **Recommended modification 1**

The draft NDP must specify a period, either 2016-2031, or 2016 to such year (no later than 2031) as FTC considers appropriate.

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<sup>1</sup> PCPA s38B(1)(a).

### **3. The Extent and Limits of an Examiner's Role**

9. I am required to consider whether the Draft NDP meets the basic conditions specified in TCPA Sch 4B para 8(2) as varied for neighbourhood development plans, namely:

(a) Having regard to national policies and advice contained in guidance issued by the Secretary of State, it is appropriate to make the Plan;

(d)<sup>2</sup> The making of the Plan contributes to the achievement of sustainable development;

(e) The making of the Plan is in general conformity with the strategic policies contained in the development plan for the area of the authority (or any part of that area);

(f) The making of the Plan does not breach, and is otherwise compatible with, EU obligations; and

(g) Prescribed conditions are met in relation to the Plan and prescribed matters have been complied with in connection with the proposal for the Plan.

10. There is one prescribed basic condition:<sup>3</sup> *“The making of the neighbourhood development plan is not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2010) or a European offshore marine site (as defined in the Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007 (either alone or in combination with other plans or projects)”*.

11. The combined effect of TCPA Sch 4B para 8(6) and para 10(3)(b) and the Human Rights Act 1998 means that I must consider whether the Draft NDP is compatible with Convention rights. ‘Convention rights’ are defined in the Human Rights Act 1998 as (a) Articles 2 to 12 and 14 of the European Convention on Human Rights (“the Convention”), (b) Articles 1 to 3 of its First Protocol, and (c) Article 1 of its Thirteenth Protocol, as read with Articles 16 to 18 of the Convention. The Convention rights that are most likely to be relevant to town and country planning are those under the Convention’s Article 6(1), 8 and 14 and under its First Protocol Article 1.

12. In my examination of the substantial merits of the Draft NDP, I may not consider matters other than those specified in the last three paragraphs. In particular I may not consider whether any other test, such as the soundness test provided for in respect of examinations under PCPA s20, is met. Rather it is clear that Parliament has decided not to use the soundness test, but to use the, to some extent, less demanding tests in the basic conditions. It is not my role to write or to rewrite a neighbourhood development plan to reflect my personal views.

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<sup>2</sup> The omission of (b) and (c) results from these clauses of paragraph 8(2) not applying to neighbourhood development plans (PCPA s38C (5)(d)).

<sup>3</sup> Sch 2 of the General Regulations prescribes this.

13. Having considered the basic conditions and human rights, I have three options, which I must exercise in the light of my findings. These are: (1) that the Draft NDP proceeds to a referendum as submitted; (2) that the Draft NDP is modified to meet basic conditions and then the modified version proceeds to a referendum; or (3) that the Draft NDP does not proceed to referendum. If I determine that either of the first two options is appropriate, I must also consider whether referendum area should be extended. My power to recommend modifications is limited by statute in the following terms:

*The only modifications that may be recommended are—*

*(a) modifications that the examiner considers need to be made to secure that the draft order meets the basic conditions mentioned in paragraph 8(2),*

*(b) modifications that the examiner considers need to be made to secure that the draft order is compatible with the Convention rights,*

*(c) modifications that the examiner considers need to be made to secure that the draft order complies with the provision made by or under sections 61E(2), 61J and 61L,*

*(d) modifications specifying a period under section 61L(2)(b) or (5), and*

*(e) modifications for the purpose of correcting errors.<sup>4</sup>*

14. The word “only” prevents me recommending any other modifications. That includes any proposed ‘minor modification’ that does not fall within one of the above five categories. My report therefore concentrates on the Submission draft and not on later proposed ‘minor modifications’. I should add that I would not describe several these as minor and I have some sympathy for Ms Taylor’s concern as to lack of consultation in respect of these. While I understand the reasons why FTC, SBC and English Heritage (“EH”) (now Historic England) agreed their Statement of Common Ground, the word “only” in the statutory provision does not allow me discretion in the matter. The mere fact that a modification is desirable is not a sufficient ground to recommend it. If they consider it appropriate FTC and SBC may use the Statement of Common Ground or a rewriting of it without substantial alteration as a background paper. For the reasons given below I have accepted the proposed new policy HE4 and some of the proposed wording in respect of Site 02 Ordnance Wharf and Site 05 Swan Quay.

#### **4 Consideration of Objections**

15. I have given all objections careful consideration, but have not felt it necessary to comment on most of them. Rather in accordance with the statutory requirement I have concentrated on giving reasons for my recommendations.<sup>5</sup> Where I am required to consider

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<sup>4</sup> TCPA Sch 4B para 10(3).

<sup>5</sup> TCPA Sch 4B para 10(6).

the effect of the whole Draft NDP, I have, of course, borne it all in mind, including, where appropriate, recommended modifications.

16. Underlying many objections is a familiar problem in the field of town and country planning: a tension (and sometimes a conflict) between those who wish to retain and restore historic aspects of an area and those who consider that this is impracticable, or practicable only to a limited extent. The gist of the disagreements is briefly summarised in the middle two paragraphs on the second column of the Draft NDP's page 13. It is not my role to determine the relative merits of this in a broad sense; nor is it my role to say, whether, if I had been responsible for drawing up the Draft NDP, I would have reconciled the differences in the same way. Rather it is my role to consider the basic conditions and other matters specified above. These conditions are considered more fully in section 6 below. They include national and adopted local strategic heritage policies. Such policies are made in a context that includes statutory provisions, including those under the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the LBA").

17. There were some criticisms of the past actions of various bodies and individuals. It is not my role to judge these.

## **5. Public Hearing**

18. The general rule is that the examination of the issues by the examiner is to take the form of the consideration of the written representations. However an examiner must cause a hearing to be held for the purpose of receiving oral representations about a particular issue in any case where the examiner considers that the consideration of oral representations is necessary to ensure (1) adequate examination of the issue or (2) a person has a fair chance to put a case. The latter does not apply: No persons have shown themselves unable to put their case in writing. In particular, there is no reason to believe that any person who wished to make representations lacked adequate literacy in the English language. Having considered the written material, I concluded that (1) applied in respect of certain matters and issued guidance and directions in respect of this. The public hearing took place over three days in Faversham.

19. I would like to thank all those who participated in the hearing. They did so in a courteous and intelligent manner and impressed me with their knowledge and dedication. Although I have not found it necessary to detail the extensive representatives, I have found them helpful, have taken time considering them and, to the extent that they relate to my role, borne all in mind. While I have found that it is appropriate for the NDP to continue to allow some development, I have been impressed by the level of local interest in and commitment to the area's built heritage and find this reassuring for the future of those sites that most merit preservation.

## **6. The Basic Conditions and Human Rights**

### *Regard to national policies and advice*

20. The first basic condition requires that I consider whether it is appropriate that the plan should be made “*having regard to national policies and advice contained in guidance issued by the Secretary of State*”. A requirement to have regard to policies and advice does not require that such policy and advice must necessarily be followed, but it is intended to have and does have a significant effect.

21. The principal document in which national planning policy is contained is the National Planning Policy Framework (March 2012) (“the Framework”) and I have borne that in mind. I have also borne in mind national Planning Practice Guidance (“NPPG”), particularly its section on neighbourhood planning, and the Written Ministerial Statement of 25<sup>th</sup> March 2015 (“the WMS”).

### *Contributing to the achievement of sustainable development*

22. The second basic condition means that I must consider whether the making of the Plan contributes to the achievement of sustainable development. Unless the Draft NDP, or the Draft NDP as modified, contributes to sustainable development, it cannot proceed to a referendum. This condition relates to the making of the Plan as a whole. It does not require that each policy in it contribute to sustainable development.

23. The bulk of the Framework constitutes guidance on sustainable development. As its para 6 says, “*The policies in paragraphs 18 to 219, taken as a whole, constitute the Government’s view of what sustainable development... means in practice for the planning system.*”

### *General conformity with the development plan’s strategic policies*

24. The third basic condition means that I must consider whether the Draft NDP is in general conformity with the strategic policies contained in the development plan for the area of the authority. The development plan means the adopted development plan, not any emerging plan. This accords with normal usage in planning statutes and has been confirmed by Supperstone J in BDW Trading (t/a Barratt Homes) v Cheshire West and Chester Borough Council, where he said: <sup>6</sup>

*... the only statutory requirement imposed by Condition (e) is that the neighbourhood plan as a whole should be in conformity with the plan as a whole. Whether or not there*

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<sup>6</sup> [2014] EWHC 1470, para 82.



*was any tension between one policy in the Neighbourhood Plan and one element of the emerging Local Plan was not a matter for the Examiner to determine.*

25. Lewis J quoted this without criticism in R. (Gladman Developments Ltd) v Aylesbury Vale District Council.<sup>7</sup> Even if I had any doubts about this (and on the contrary I am of the respectful opinion that it is correct), I would be obliged to follow it. The same applies to SBC and FTC.

26. There is no conformity requirement in respect of supplementary policy.

27. The adjective ‘*general*’ allows a degree of (but not unlimited) flexibility and requires the exercise of planning judgement. This condition only applies to strategic policies. In assessing whether a policy is strategic, one must bear in mind the advice in NPPG para 074.<sup>8</sup>

28. The relevant part of the development plan is the Swale Borough Local Plan (“SBLP”), which was adopted in February 2008. The saved policies of plans relating to waste and minerals are not relevant. There is also an emerging Local Plan that is expected to run until 2031. As explained above basic condition (e) does not apply to this. Of SBLP’s policies, policies B1 and AAP2 are particularly important in the context of the issues raised by representations

29. SBLP’s Local Plan policy B1 states:

*“Supporting and Retaining Existing Employment Land and Businesses*

- 1. Land and buildings currently in employment use will be retained for that use unless it is: inappropriately located for any employment use, and having an unacceptable environmental impact in an area; or demonstrated by expert advice that the site is no longer suitable for any employment use; or demonstrated by market testing that there is insufficient demand to justify its retention for any employment use; or allocated in the Plan for other purposes.*

*In cases involving a change of use or redevelopment for residential purposes, the Council will additionally require proposals to: (a) demonstrate, by reference to 1a) to d) above, that a mixed use approach to the site, involving a viable level of replacement or alternative employment provision, is not appropriate; and (b) that there is no conflict with Policy SH1.*

- 2. Proposals for the expansion of existing businesses on-site, or onto adjoining land, will be permitted provided the expansion proposal would not result in a loss in the supply of small sites or units which are specifically intended for start-up businesses. Where expansion would*

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<sup>7</sup> [2014] EWHC 4323 (Admin), [2015] JPL 656.

<sup>8</sup> NPPG, Neighbourhood Planning para 074, Reference ID: 41-074-20140306.

*result in the development of greenfield land, mitigation measures will be required to minimise any adverse impacts on biodiversity and landscape.”*

30. I am satisfied that this is a strategic policy. The NDP must therefore be in general conformity with it.

31. SBLP’s policy AAP2 states:

*“Faversham Creekside*

*An Area Action Plan is designated for Faversham Creekside, as shown on the Proposals Map. Within this area the Borough Council will seek to ensure that it continues to function as a place of special interest and activity with strong associations with the water, and will specifically encourage the regeneration of the creek basin for commercial and tourism purposes, including use of the basin and its wharfage for historic craft. Planning permission will not be granted for proposals that would result in the loss of land or buildings suitable for employment uses or, on appropriate sites, would not involve active use or management of the creek itself. All development proposals will:*

- 1. maintain or enhance a mix of uses and activity that respect the maritime, industrial and residential character, as appropriate to the varied parts of the AAP area;*
- 2. maintain or enhance an environment appropriate to enable traditional waterside activities to flourish, including, where appropriate, financially contributing toward improving and maintaining the navigability of the creek channel and its infrastructure, including providing wharfage and moorings;*
- 3. preserve or enhance the area's special archaeological, architectural and historic character, including its open spaces; and*
- 4. avoid any significant adverse environmental impacts and where possible enhance the biodiversity interest of neighbouring internationally designated sites for nature conservation.*

*The Borough Council will expect development to:*

- (a) preserve or enhance landmark and other important buildings, waterside structures and details;*
- (b) preserve and create access to the waterside, including wharfage and moorings, and where appropriate provide for a creekside walk;*
- (c) by use of its grain, scale, form and theme of materials, be creekside in character;*
- (d) retain existing greenspace and, where appropriate provide new areas; and*
- (e) retain or enhance existing townscapes, including those in the views of higher ground.*

*A Supplementary Planning Document will be prepared and adopted by the Council to guide matters relating to the Area Action Plan.”*

32. I am satisfied that this is a strategic policy. The NDP should therefore be in general conformity with it.

#### *EU obligations*

33. The fourth basic condition requires me to consider whether the Draft NDP breaches or is otherwise incompatible with, EU obligations. I have in particular considered the following Directives: the Strategic Environmental Assessment Directive (2001/42/EC) (“the SEA Directive”); the Environmental Impact Assessment Directive (2011/92/EU); the Habitats Directive (92/43/EEC); the Wild Birds Directive (2009/147/EC); the Waste Framework Directive (2008/98/EC); the Air Quality Directive (2008/50/EC); and the Water Framework Directive (2000/60/EC). I am satisfied that no issue arises in respect of equality under general principles of EU law or any EU equality directive.

34. Faversham Creek Trust and Brents Community Association consider the SEA should have been prepared earlier than it was (June 2015). I agree. In some cases that could cause serious problems. However, I note that no participants at the hearing sought an adjournment to enable them to deal with the SEA more fully. In the light of the need to act proportionately, to avoid delay unless necessary and to avoid extra costs, I did not consider it appropriate to adjourn the hearing of my own motion without any application from any of the parties, all of whom were clearly well able to put their cases. In this case I consider that the late preparation of the report has not resulted in the Draft NDP being different from what it would otherwise have been and I do not consider that any party has suffered prejudice as a result. On the contrary the very extensive public involvement throughout this matter has ensured compliance with both the Aarhus Convention and the article 6(1) Convention right.

35. I am satisfied that the making of the NDP would not breach, and be otherwise incompatible with, EU obligations.

#### *European site and European offshore marine site*

36. The Swale, including most of the creek beyond Iron Wharf/Brents Boatyard is a designated a Ramsar site and a Special Protection Area (SPA).<sup>9</sup> I am satisfied that the making of the NDP would not be likely to have a significant effect on these or any other European site or European offshore marine.

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<sup>9</sup> SEA para 7.3.3.

## *Human Rights*

37. It is also necessary to consider whether the Draft NDP would cause any Convention right to be breached. English Planning law in general complies with the Convention. This matter can also be dealt with briefly in advance of detailed consideration of the contents of the Draft NDP. I have considered whether anything in the Draft NDP would cause a breach of any Convention right. In particular I have considered the Convention's Articles 6(1), 8 and 14 and its First Protocol Article 1. Nothing in my examination of the Draft NDP indicates any breach of a Convention right. It is therefore not necessary to consider human rights in the parts of this report that deal with specific parts of the Draft NDP.

38. I welcome the recognition of the need to comply with legislation designed to benefit disabled people<sup>10</sup> and the references in policy to access for disabled people.<sup>11</sup> This shows a recognition of duties under the Equality Act 2010, the principle of equality inherent in EU law and the human rights of disabled people.

39. It will be apparent from the above that, having been satisfied in respect of basic conditions (f) and (g) and human rights, I have needed to concentrate on basic conditions (a), (d) and (e). My recommended modifications are those that I consider need to be made to secure that the Draft NDP meets these basic conditions, to meet the statutory requirement to specify a plan period and to correct errors.

## **7. The Draft NDP**

40. The Draft NDP has a clear structure, being sensibly divided into seven appropriate sections: Vision + Objectives; Background to the Plan; Urban Analysis; Context of the Creek; Creekwide Policies; Site Specific Policies; and Plan Monitoring. I commend it for being well written, logical, clear, appropriately concise and intelligible to a reasonably intelligent lay reader with no expertise in town and country planning.

41. The following sections of the report consider whether modifications are needed to make the Draft NDP comply with basic conditions (a), (d) and (e). I have concluded that some modification is necessary, but that with this, the Draft NDP can proceed to a referendum and that, if passed by that, it would be appropriate that the NDP should be made. My recommended modifications are in Appendix A. I have not in this report given detailed written consideration to every part of the Draft NDP. I have, before writing it, considered the whole of it. Minor self-explanatory corrections are only mentioned in Appendix A.

42. The Draft NDP says:<sup>12</sup>

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<sup>10</sup> Pages 21 and 37 – the statutory references are out of date – see Appendix A.

<sup>11</sup> Pages 37 and 44.

<sup>12</sup> Page 19, 1st column.

*“The neighbourhood plan must not be treated as a collection of individual development sites. Instead, it must be seen as a neighbourhood in its own right, one that contributes to the overall success of Faversham town as a whole.”*

43. I share that view and recognise that it is necessary to consider the draft NDP as a whole. Nonetheless like the Draft NDP I shall, while keeping this in mind, consider the sites in turn both because this is the practicable approach and because the sites vary considerably.

## **8. The first four sections**

44. I have no concerns in respect of the first three sections and no concerns of substance in respect of the fourth section - minor matters that need correcting are in Appendix A.

## **9. Creekwide Policies**

45. While the Draft NDP mentions archaeology in its text, it has no policy to deal with this. I have had regard to national policies contained in the Framework’s paras 128, 139, 169 and at two points in its Glossary. I have also considered and accept the potential for archaeology agreed between FTC, SBC and EH. In these circumstances I do not consider that it would be appropriate to make an NDP in an area with such considerable archaeological potential without a policy covering archaeology. A proposed policy was included in the Statement of Common Ground and Schedule of Minor Modifications agreed by FTC, SBC and EH. That has been available to members of the general public and was considered at the hearing. I see no reason to depart from it significantly. I therefore recommend modification to add it.

### Recommendation 6

On page 27 after policy HE4 insert a new policy

*“HE4. New development will be designed to preserve nationally important archaeological remains in-situ. Archaeological remains of local or regional significance will be either preserved in situ or subject to archaeological investigation so as to advance understanding of the significance of archaeological remains that provide evidence of the development of the Creek’s historic maritime and industrial uses. The preservation of evidence of the area’s development during the Middle Ages and of the development of the Faversham gunpowder and boat-building industries will be given a particularly high priority. Development proposals should be informed by discussion with the archaeological adviser used by Swale Borough Council and, where appropriate, by a programme of pre-determination archaeological evaluation in order to determine the nature, condition and extent of archaeological remains that may be present and the appropriate response to these.”*

46. The Design Quality policies do not conflict with any basic condition, the Framework, the development plan’s strategic policies, or the WMS. I do not recommend any modification to them or to any part of page 28.

47. It is necessary to define the Local Green Spaces clearly. At present the Draft NDP does this partly through the plan on page 46. While the rest is clear from the text and on the ground on my site visits, that is not sufficient. I am satisfied that these green spaces satisfy the Framework’s paras 76 and 77. It is therefore necessary to include a plan showing the Local Green Spaces and to modify policy NE2.

Recommendations 8 and 9

Replace policy NE2 with

*“NE2 The green spaces to either side of the Albion Taverna and between the Upper Brents and Crab Island and shown on the plan on page ... shall be designated as Local Green Spaces.”*

Add a plan that shows the designated Local Green Spaces specified on page 33 column 1.

48. The last sentence on page 36 states what a future policy of FTC and SBC will do. An NDP cannot do that. Any such policy would require consultation with representatives of those who live in vessels.

Recommendation 10

Delete the last sentence on the second column of page 36

49. The reference to “DDA compliant” in policy INF3 is out of date. The Equality Act 2010 repealed and replaced the whole of the Disability Discrimination Act.

Recommendation 11

Replace policy INF3 with the following:

*“INF3 Any new road and footpath surface treatments and street furniture, including signage, will be in accordance with the standards specified in the Faversham Creek Streetscape Strategy, and shall be comply with legislation that protects disabled people.”*

## **10. Site Specific Policies**

50. The section on site-specific policies is the most controversial, mainly for the reason stated in paragraph 16 above. It requires the most detailed consideration.

*Site 01 The Purifier*

51. I was impressed by the use for boatbuilding and for training in maritime skills to which the Purifier Building is being put. I was also impressed with the building itself. This

use contributes to sustainability<sup>13</sup> and should be protected both from development on the site and from nearby development that might cause problems for the building continuing its present use. That use is a mixed use that includes B2 use, some of which is in the open air. Bearing in mind my accompanied site visit, I accept Ms Akhurst's evidence in respect of use. Whether that B2 use is currently lawful is not clear; but, in any event, I have no reason to believe that the current use would be enforced against. Rather the likelihood is that, even if not lawful now, it will become lawful over time. It is important that the draft NDP acknowledges this B2 use. Otherwise future neighbours might allege that any B2 use was new. Policy P1 is too restrictive and would create an inaccurate impression for future decision-makers and I recommend its modification.

Recommendation

Replace policy P1 with the following:

*"P1 The building and its curtilage are to be used for small business workshops, together with associated educational uses (mixed use B1, B2 and D1)."*

53. It should be noted that as a mixed use, change of use within, for example, B2 is not automatically permitted by the Town and Country Planning (Use Classes) Order 1987.

*Site 02 Ordnance Wharf*

54. The site is derelict and unused. While I understand the desire to limit its use to traditional maritime activities I am not persuaded that this is realistic in this particular location. In particular, even if I felt that it was within my power to recommend the proposed minor modification to policy OW1 (which I do not), I would have no reason to believe that this would be viable. On the other hand I am concerned that any development on this site should not cause problems to the Purifer in the form of complaints about noise and other nuisance from the latter. This would be undesirable in itself and also contrary to the desire to retain employment uses contained in SBLP policies B1 and AAP2. At the hearing Ms Taylor for the landowner assured me that it would be possible to carry out development on Ordnance Wharf that would not suffer nuisance from the Purifer Building and referred to sketch plan SK03 rev C, which shows the built development on the far side of Ordnance Wharf from the Purifer Building. I accept her assurance as to possibility, but consider that achieving this would involve considerable care in development management.

55. I recommend that policy OW5 and the related text on page 42 be strengthened to reflect this.

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<sup>13</sup> Particularly in the light of the shortfall in jobs in Faversham: SEA para 7.7.1.

Recommendations 15 and 18

Replace the 5<sup>th</sup> indent on the second column on page 42 with the following:

*“New development must have regard for the presence of the adjacent Purifier Building and respond in an appropriate manner to the scale, massing and materials of this existing built form. Modern designs that contrast with the Purifier will be encouraged, as will more traditional designs — both approaches need to be of high quality design. New development must also have regard for the existing uses the adjacent Purifier Building and through location, sound insulation and external and internal layout avoid adverse impact on those uses.”*

Replace policy OW5 with the following:

*“OW5 Any new development must have regard to the presence of the Purifier site adjacent and the impact new development will have upon the setting and must avoid adverse impact on use of this existing building.”*

56. I am also concerned in the light of government policy on archaeology that it would be inappropriate not to draw attention to the site’s archaeological potential. While not all of the suggested ‘minor modification’ is needed, it does have the advantage of having been available for public consideration.

Recommendation 14

A new paragraph should be inserted after the first paragraph in column 1 of page 42 in the following terms:

*“Archaeological investigation has identified a section of stone wharf walling with a timber staircase leading down to the Creek and the stone base of a crane, each of which is believed to be evidence of the 18<sup>th</sup>-century gunpowder wharf.”*

Recommendation 17

An eighth indent should be added on page 42.

*“Any new development proposal should be informed by further archaeological investigation, including areas that were not accessible for previous investigations. New development should be designed to preserve and better reveal the significance of archaeological remains that illustrate the historic role of the wharf as a part of the Home Works of the Faversham Gunpowder Works, including the previously identified sections of 18th Century wharf and crane base, which should be included in publicly accessible space where practical.”*

Recommendation 19



A new policy OW8 should be added on page 43

*“OW8 New development should be designed to preserve or enhance evidence of the site’s historic role as part of the Home Works of the Faversham Gunpowder Works as wharfs, including provision for conservation of the 18th Century wharf walls and stone crane base with a wharf edge space and revealing identified archaeological remains as publicly accessible space, where practical. New buildings must be designed to avoid the loss of archaeological remains including by the use of appropriate construction techniques.”*

*Site 03 BMM Weston*

57. This was a relatively uncontroversial site and I have no reason to take a different view on the acceptability of the proposals for it. I have not added the proposed archaeological policy since I do not consider that this site needs such a policy in addition to the Creekwide policy. I recognise that there is a tension between the proposals and SBLP policy B1, but have concluded that the degree of conflict (after allowance is made for my recommending strengthening of policies to protect employment uses in sites 01 and 05) would not such as to breach the general conformity requirement. It is not my role to determine whether an old planning permission was commenced. The draft NDP is correct in saying that it was not constructed. I do not recommend any modification in respect of site 03.

*Site 04 Frank and Whittome*

58. This is also a relatively uncontroversial site. I do not recommend any modification in respect of it.

*Site 05 Swan Quay*

59. Site 05 is in a particularly sensitive location. As the plan on page 46 shows, it is to the north of a critical cluster of heritage assets (TS Hazard with undesignated heritage assets) and existing local landmarks, next to the Creek and at a location that is clearly visible from the publicly accessible Brents Swing Bridge and the proposed (in my opinion rightly) Designated Local Green Space at Front Bents. Two listed buildings, TS Hazard (built in the 15<sup>th</sup> century as a town warehouse and grade II\*) and the Faversham Creek Hotel (18<sup>th</sup>-century, grade II) are very close to it and within the site the early 19<sup>th</sup>-century Chandlery building is listed grade II. It contains a maritime use (sail-making) in a modern building that is in an appropriate style for its location and that contributes to jobs in a town that has a shortfall of jobs.<sup>14</sup> I am not persuaded that the possibility that somewhere might be found for this in new development is a likelihood or a risk worth taking. As such, the loss of this employment use

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<sup>14</sup> SEA para 7.7.1.

would conflict with SBLP policies B1 and AAP2 and would be of sufficient importance to prevent the NDP being in general conformity with the development plan.

60. In considering this site, I have had regard to national policies and advice contained in guidance issued by the Secretary of State. This includes:

- The Framework's 10<sup>th</sup> core principle, "*conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations*";<sup>15</sup>
- The special position of designated heritage asset's in the Framework's paragraph 65; and
- The Framework's specific advice on Conserving and Enhancing the Historic Environment;<sup>16</sup>

61. I also note

- The fact that the LBA in general and the general duties under its ss 66 and 72 underpin government and local policy in respect of listed buildings and their settings and of conservation areas;
- The references in the SBLP to Faversham's "*outstanding range and quality of historic buildings*" and its "*rich architectural and historical heritage reflecting its naval and maritime history, its Roman and medieval legacy and its industrial heritage and archaeology*";<sup>17</sup>
- The protection for existing buildings provided in SBLP's policy AAP2's "*preserve or enhance landmark and other important buildings, waterside structures and details*"; and
- The fact that EH had serious reservations about the appropriateness of the development proposed.<sup>18</sup>

62. The proposals,<sup>19</sup> which I recognise are illustrative, that Ms Taylor showed me for redevelopment of this site, did not impress me. Rather they illustrated the risk of gentrification of a part of the Creek that maintains something of its old character. I do not consider that residential development of this site would occur without gentrification. I recognise that, for some people, more open views of the creek down Quay Lane would be attractive, but this factor does not begin to outweigh my concerns about the historic damage of the proposals.

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<sup>15</sup> Framework, para 17.

<sup>16</sup> Framework, paras 126 to 141.

<sup>17</sup> Para 2.5

<sup>18</sup> Letter from English Heritage South East of 18.12.2015, page 7.

<sup>19</sup> Dwg 06900-SK-118 Rev C.

63. I consider that the first two paragraphs on page 47's column 1 are inadequate for this particularly sensitive site. The suggested 'minor modification' gives a better and adequate description, which corresponds with my opinion following my site visits. Accordingly I recommend modification to replace the existing text.

#### Recommendation 20

Replace the first two paragraphs on page 47's column 1 with the following:

*“This site was formerly used by the Frank and Whittome Joinery Company and comprises four buildings:*

*The first, the Chandlery building set at right angles to the Creek, is listed grade II and is an early 19<sup>th</sup>-century industrial building last used as an office. Attached to the rear of this is the second building, a shed dating from the turn of the 19th and 20th Centuries, which has been re-clad in weatherboarding to the south and west sides. This is currently vacant, but as an attached building would require listed building consent for any alterations that would affect its contribution to the listed building's historic or architectural interest.*

*The third building is an open shed with a metal-trussed roof with a long elevation to Conduit Street with attached modern offices built in the 1990s. As an industrial building illustrating the working history of this part of the Conservation Area, the form, shape and scale of the open sided shed makes a positive contribution to the character of the Conservation Area.*

*The fourth building is a modern building built for the joinery company (c. 1990), constructed in brick and weatherboard and now occupied by a sail maker. The low level of the building, its sensitive choice of materials (preserving an industrial aesthetic) and its position set back from the Creek's edge creating a wharf space, means this building has integrated well with the Conservation Area and retained a distinct working edge to the Creek with views over it to the surrounding historic buildings.*

*The site provides a long section of timber wharf fronting the Creek with an open space of quay behind, each of which make a positive contribution to the character and appearance of this part of the Conservation Area as part of the historic working Creekside. A slipway within the site provides one of the few points of access for boat launching in this side.*

*The site lies adjacent to the medieval Town Quay and close to the Grade II\* listed 15<sup>th</sup>-century warehouse now 'TS Hazard'. The site is likely to have formed a part of the Abbey wharfs from the medieval period and is known to have included a dock in the late 18th Century. The potential for a waterlogged environment and the likelihood of successive phases of wharf development, as well as development of buildings and structures for associated uses throughout the site's history creates a high potential for remains of archaeological interest and, potentially, those of national importance.”*

64. Having regard to national policies and advice contained in guidance issued by the Secretary of State, I would not consider it appropriate to make the Plan if the proposals in the draft NDP in respect of Swan Quay remained. Without modification, basic conditions (a) and (e) would not be met. I would also have given considerable weight in the balance exercise basic condition (d) requires to the negative contribution to the achievement of sustainable development that these proposals would entail. However since I am recommending modification to meet basic condition (a) and (e), I need not consider the latter point more fully.

65. In addition to my rejection in principle of the approach to site 05, I do not consider that three and three and a half storey (or higher) buildings would be appropriate in this location. This is not based on public opposition,<sup>20</sup> which is not a matter for the examination stage of the draft NDP, but on my assessment of the impact of such buildings. I agree with the criticisms of such tall buildings by Mr Harrison, whose architectural and conservation expertise I note with respect.<sup>21</sup> I am of course aware that there are taller buildings in other part of the Creek, but I do not consider that these set a precedent in this sensitive location.

#### Recommendation 21

On page 47 delete the bottom half of column 1 from and including the heading “*Suggested Redevelopments, Designs and Land Uses*” and the whole of column 2 replace with:

*“The current nature of the site, including its role as part of the setting of nearby listed buildings should be preserved and enhanced.*

- Land uses could include offices/workshops (Class B1), maritime general industrial (B2 limited by condition) and a gallery (Class D1) and some limited car parking, but not dwelling houses (Class C3). It may be possible to permit new building consistent with the site’s current character. If so, they should be constructed in yellow stock brickwork and slate roof with metal framed windows.*
- In the event of any substantial development on the site a Creekside walkway must be provided along the frontage of the site in front of all the buildings.*
- Moorings to be provided along the frontage suitable for a range of sizes of craft.*
- Any redevelopment will need to provide a connection to the nearest point of adequate capacity in the sewerage network, as advised by Southern Water. There should be an adequate gap between the wastewater pumping station and development to allow odour dispersion and help prevent an unacceptable impact from vibration. Development proposals*

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<sup>20</sup> Faversham Creek Trust and Brents Community Association Response to Neighbourhood Plan Consultation, page 29.

<sup>21</sup> Submission of objection to Faversham Creek Neighbourhood Plan 15.12.2014.

*must ensure future access to the existing sewerage infrastructure for maintenance and upsizing purposes.*

*• Close to this site is the junction of Quay Lane and Conduit Street. The Faversham Creek Streetscape Strategy sets out a project to form a sitting-out area for the Faversham Creek Hotel and formation of a square with better quality paving, measures to encourage slower traffic including a shared surface and measures to improve the boundary treatments of adjoining sites.*

*The neighbourhood plan places responsibility firmly upon any applicant to demonstrate the appropriateness and suitability of their proposed design through the formal planning application process. This demonstration must be made with regard to the range of policies in this neighbourhood plan, not just the site-specific ones. It must also comply with the Planning (Listed Buildings and Conservation Areas) Act 1990 sections 66 and 72.”*

66. For the above reasons I also recommend modification of policies SWQ1 and SWQ2.

Recommendations 22

Replace policies SWQ1 and SWQ2 with:

“SWQ1: Use classes: the site shall be used for a mix of office and workshops (Class B1) retail, maritime general industrial (Class B2 limited by condition), and may be used for a gallery (Class D1). It shall not be used for dwelling houses (Class C3).

“SWQ2 Public walkways shall be created along the Creek frontage and to the extent that is consistent with the site’s character through the site from Belvedere Road.”

67. Policy SWQ3 would remain unaltered.

68. I accept that the proposed policies SWQ4 and SWQ5 in the ‘minor modifications’ are needed.

Recommendation 23

After policy SWQ3 add the following:

*“SWQ4. Existing buildings and features identified as making a positive contribution to the character and appearance of the Conservation Area, both within the site and in its surroundings should be retained and where practical enhanced, within proposals for new development through the careful design of new buildings and landscaping and sensitive reuse of historic structures. In conformity with National Planning Policy Framework and National Planning Practice Guidance, the optimum viable use of the site will be considered as that which best sustains and reveals its historic significance as part of the Conservation Area, whilst ensuring its future maintenance.*

*SWQ5. Development proposals will need to be informed by a programme of archaeological assessment, possibly including evaluation, completed according to a written scheme of investigation agreed with the Swale Borough Council. The design and construction method of new development will be required to preserve nationally important remains in-situ. Where it might be agreed that archaeological remains might be removed as part of development this will need to be in accordance with a programme of archaeological works agreed with Swale Borough Council and designed to advance understanding of the significance of the archaeological assets to be lost.”*

*Site 06 Former Oil Depot*

69. This site is currently vacant. As a former oil depot it is likely that that decontamination costs will be high. This means that any redevelopment is likely to require a use with a high land value, all the more so if the cost of a public walkway and moorings is to be met by the developer. The approach of the Draft NDP, does not conflict with any basic condition. I do not recommend any modifications.

*Site 07 Former Coach Depot*

70. The site is currently underused by businesses that are not maritime and do not require a waterside location. The approach of the Draft NDP, does not conflict with any basic condition. I do not recommend any modifications.

*Site 08 Standard Quay*

71. Site 8 includes an important collection of listed buildings: a grade II\* listed building (the old granary) and also grade II listed buildings (former warehouses). These are of obvious and considerable importance both individually and as a group. The appearance of the site includes car-repair, which detracts from it, and antique, café and garden centre uses that appear to serve tourism. The approach of the Draft NDP, does not conflict with any basic condition. I have no power to follow the proposed ‘minor modifications’ to delete “*Activities associated with maritime trades are to be encouraged*” and I would not in any event consider this deletion to be appropriate in the light of SBLP policy AAP2. I do not recommend any modifications.

*Site 09 Standard House*

72. Standard House is a grade II listed building. Bearing the LBA s66 and my sites visits in mind I consider that the ‘minor modification’ to the fourth indent on page 54 is needed.

Recommendation 24

Replace the fourth indent in column 1 on page 54 with

*“The open character of the curtilage and isolated position of the house must be maintained and enhanced. Parking in front of the building is considered inappropriate.”*

73. I also agree that the ‘minor modification’ to the fifth indent on page 54, which more clearly reflects what is intended in a sensitive location, is needed.

Recommendation 25

Replace the fifth indent in column 1 on page 54 with

*“To the south of Standard House, including the existing later industrial building and vacant land, there is potential for new development to provide housing of two storeys in traditional materials.”*

74. Similarly I consider that the more detailed version of policy STH4 is needed.

Recommendation 26

Replace policy STH4 with

*“STH4. Any new housing development must be of no more than two storeys and should be located to preserve the prominence of Standard House as a landmark on the Creekside in views along the Creek and from Standard Quay and the footpath.”*

75. Subject to that, the approach of the Draft NDP, does not conflict with any basic condition. I do not recommend any other modifications.

*Site 10 Fentiman’s Yard*

76. This site is behind and within the setting of the old granary grade II\* listed building. Any development must as matter of law comply with the LBA s66. I have considered whether this should be specified in policy, but decided that it is not necessary. The approach of the Draft NDP, does not conflict with any basic condition. I do not recommend any modifications.

*Site 11 Brents Industrial Estate*

77. This is not a particularly sensitive site. The approach of the Draft NDP does not conflict with any basic condition. I do not recommend any modifications.

*Site 12 Iron Wharf*

78. The proposed retention of this site’s existing uses is clearly of benefit. The importance of Oyster Bay House (listed grade II), an impressive landmark building is rightly

recognised. The approach of the Draft NDP does not conflict with any basic condition. I do not recommend any modifications.

## **11. The Referendum Area**

79. The designated plan area would not be an appropriate referendum area. It is an irregular shaped area of land that to a substantial extent excludes residential areas that benefit greatly from it and whose residents relate to it. Significant effects of the draft NDP extend beyond the plan area into the town of Faversham. I have no hesitation in accepting that *“The Creek does not stand alone from the rest of Faversham. It is an integral part of the wider town and its community”*.<sup>22</sup> While there will be some effects beyond the town and while I understand with sympathy why the clerk to Luddenham Parish Council has sought a more extended area, I do not consider that these are sufficient to justify further extending the referendum area. I therefore recommend that the referendum area should be the town of Faversham, *i.e.* FTC’s area.

## **12. Summary of Main Findings**

80. I commend the Draft NDP for being well written, logical, clear, appropriately concise and intelligible to a reasonably intelligent lay reader with no expertise in town and country planning.

81. I recommend that the Draft NDP be modified in the terms specified in Appendix A to this report in order to meet basic conditions and to correct errors. I am satisfied with those parts of the Draft NDP to which I am not recommending modifications.

82. With those modifications the Draft NDP will meet all the basic conditions. Specifically

- I have had regard to national policies and advice contained in guidance issued by the Secretary of State, and, having done so, am of the firm view that that it would be appropriate to make the NDP as modified by my recommendations;
- The making of the NDP as modified by my recommendations contains substantial elements that contributes to the achievement of sustainable development and taken as a whole would contribute significantly to the achievement of sustainable development;
- The making of the NDP as modified by my recommendations would be in general conformity with the strategic policies contained in the development plan for the area;

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<sup>22</sup> Draft NDP, page 16, 1<sup>st</sup> column.



- The making of the NDP as modified by my recommendations would not breach, and would not otherwise be incompatible with, EU obligations;
- The making of the NDP as modified by my recommendations would not be likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects).

83. The relatively limited nature of the modifications that I recommend is such that they will not give rise to any further obligations under the SEA Directive.

84. The Draft NDP as modified by my recommendations would in all respects be fully compatible with Convention rights contained in the Human Rights Act 1998.

85. I consider that it is appropriate that the Draft NDP as modified by my recommendations proceed to a referendum and recommend that it does so, the referendum area being the town of Faversham.

Timothy Jones, Barrister, FCI Arb,

Independent Examiner,

No 5 Chambers

March 2016.

## **Appendix A: Recommended Modifications**

### 1. *Front Cover*

The draft NDP should specify a period, either 2016-2031, or 2016 to such year (no later than 2031) as FTC considers appropriate.

### 2. *Page 20, column 1, 2<sup>nd</sup> paragraph:*

Replace “plans” with “plan”, “presnts” with “presents” and “creek” with “Creek”.

### 3. *Page 21, column 1,*

Replace “Disability Discrimination Act” with “the requirements for disabled people that arise by virtue of the Equality Act 2010”.

### 4. *Page 22, column 1, 1<sup>st</sup> para*

Replace “Section” with “paragraph”.

### 5. *Page 24*

Either give the area, or delete “(hectares yet to be agreed)”.

### 6. *Page 27 after policy HE4*

Insert a new policy:

“HE4. New development will be designed to preserve nationally important archaeological remains in-situ. Archaeological remains of local or regional significance will be either preserved in situ or subject to archaeological investigation so as to advance understanding of the significance of archaeological remains that provide evidence of the development of the Creek’s historic maritime and industrial uses. The preservation of evidence of the area’s development during the Middle Ages and of the development of the Faversham gunpowder and boat-building industries will be given a particularly high priority. Development proposals should be informed by discussion with the archaeological adviser used by Swale Borough Council and, where appropriate, by a programme of pre-determination archaeological evaluation in order to determine the nature, condition and extent of archaeological remains that may be present and the appropriate response to these.”

### 7. *Page 32, column 2*

Replace “respond” with “response”.

8. *Page 33*

Replace policy NE2 with:

“NE2 The green spaces to either side of the Albion Taverna and between the Upper Brents and Crab Island and shown on the plan on page ... shall be designated as Local Green Spaces.”

9. *In an appropriate location*

Add a plan that shows the designated Local Green Spaces specified on page 33 column 1.

10. *Page 36, column 2*

Delete the last sentence on the second column.

11. *Page 37*

Replace policy INF3 with the following:

“INF3 Any new road and footpath surface treatments and street furniture, including signage will be in accordance with the standards specified in the Faversham Creek Streetscape Strategy, and shall be comply with legislation that protects disabled people.”

12. *Pages 39 and 40*

The plans should either contain a key or direct readers to a key elsewhere.

13. *Page 41*

Replace policy P1 with the following:

“P1 The building and its curtilage are to be used for small business workshops, together with associated educational uses (mixed use B1, B2 and D1).”

14. *Page 42, after the first paragraph in column 1*

Insert the following:

“Archaeological investigation has identified a section of stone wharf walling with a timber staircase leading down to the Creek and the stone base of a crane, each of which is believed to be evidence of the 18<sup>th</sup>-century gunpowder wharf.”

15. *Page 42, 5<sup>th</sup> indent in column 2*

Replace with the following:

*“New development must have regard for the presence of the adjacent Purifier Building and respond in an appropriate manner to the scale, massing and materials of this existing built form. Modern designs that contrast with the Purifier will be encouraged, as will more traditional designs — both approaches need to be of high quality design. New development must also have regard for the existing uses the adjacent Purifier Building and through*

*location, sound insulation and external and internal layout avoid adverse impact on those uses.”*

16. *Page 42, 2<sup>nd</sup> column 6<sup>th</sup> indent, line 1*

Replace “affects” with “effects”.

17. *Page 42, after the 7<sup>th</sup> indent*

Add at 8<sup>th</sup> indent:

“Any new development proposal should be informed by further archaeological investigation, including areas that were not accessible for previous investigations. New development should be designed to preserve and better reveal the significance of archaeological remains that illustrate the historic role of the wharf as a part of the Home Works of the Faversham Gunpowder Works, including the previously identified sections of 18th Century wharf and crane base, which should be included in publicly accessible space where practical.”

18. *Page 43*

Replace policy OW5 with the following:

“OW5 Any new development must have regard to the presence of the Purifier site adjacent and the impact new development will have upon the setting and must avoid adverse impact on use of this existing building.”

19. *Page 43 after policy OW7*

Insert a new policy OW8:

“OW8 New development should be designed to preserve or enhance evidence of the site’s historic role as part of the Home Works of the Faversham Gunpowder Works as wharfs, including provision for conservation of the 18th Century wharf walls and stone crane base with a wharf edge space and revealing identified archaeological remains as publicly accessible space, where practical. New buildings must be designed to avoid the loss of archaeological remains including by the use of appropriate construction techniques.”

20. *Page 47, column 1, first two paragraphs*

Replace these with the following:

“This site was formerly used by the Frank and Whittome Joinery Company and comprises four buildings:

The first, the Chandlery building set at right angles to the Creek, is listed grade II and is an early 19th-century industrial building last used as an office. Attached to the rear of this is the second building, a shed dating from the turn of the 19th and 20th Centuries, which has been re-clad in weatherboarding to the south and west sides. This is currently vacant, but as an

attached building would require listed building consent for any alterations that would affect its contribution to the listed building's historic or architectural interest.

The third building is an open shed with a metal-trussed roof with a long elevation to Conduit Street with attached modern offices built in the 1990s. As an industrial building illustrating the working history of this part of the Conservation Area, the form, shape and scale of the open sided shed makes a positive contribution to the character of the Conservation Area.

The fourth building is a modern building built for the joinery company (c. 1990), constructed in brick and weatherboard and now occupied by a sail maker. The low level of the building, its sensitive choice of materials (preserving an industrial aesthetic) and its position set back from the Creek's edge creating a wharf space, means this building has integrated well with the Conservation Area and retained a distinct working edge to the Creek with views over it to the surrounding historic buildings.

The site provides a long section of timber wharf fronting the Creek with an open space of quay behind, each of which make a positive contribution to the character and appearance of this part of the Conservation Area as part of the historic working Creekside. A slipway within the site provides one of the few points of access for boat launching in this side.

The site lies adjacent to the medieval Town Quay and close to the Grade II\* listed 15th-century warehouse now 'TS Hazard'. The site is likely to have formed a part of the Abbey wharfs from the medieval period and is known to have included a dock in the late 18th Century. The potential for a waterlogged environment and the likelihood of successive phases of wharf development, as well as development of buildings and structures for associated uses throughout the site's history creates a high potential for remains of archaeological interest and, potentially, those of national importance."

21. Page 47, from and including the heading "*Suggested Redevelopments, Designs and Land Uses*" until the end of column 2

Delete all and replace with:

"The current nature of the site, including its role as part of the setting of nearby listed buildings should be preserved and enhanced.

- Land uses could include offices/workshops (Class B1), maritime general industrial (B2 limited by condition) and a gallery (Class D1) and some limited car parking, but not dwelling houses (Class C3). It may be possible to permit new buildings consistent with the site's current character. If so, they should be constructed in yellow stock brickwork and slate roof with metal framed windows.
- In the event of any substantial development on the site a Creekside walkway must be provided along the frontage of the site in front of all the buildings.
- Moorings to be provided along the frontage suitable for a range of sizes of craft.

- Any redevelopment will need to provide a connection to the nearest point of adequate capacity in the sewerage network, as advised by Southern Water. There should be an adequate gap between the wastewater pumping station and development to allow odour dispersion and help prevent an unacceptable impact from vibration. Development proposals must ensure future access to the existing sewerage infrastructure for maintenance and upsizing purposes.
- Close to this site is the junction of Quay Lane and Conduit Street. The Faversham Creek Streetscape Strategy sets out a project to form a sitting-out area for the Faversham Creek Hotel and formation of a square with better quality paving, measures to encourage slower traffic including a shared surface and measures to improve the boundary treatments of adjoining sites.

The neighbourhood plan places responsibility firmly upon any applicant to demonstrate the appropriateness and suitability of their proposed design through the formal planning application process. This demonstration must be made with regard to the range of policies in this neighbourhood plan, not just the site-specific ones. It must also comply with the Planning (Listed Buildings and Conservation Areas) Act 1990 sections 66 and 72.”

22. *Page 48, column 1*

Replace policies SWQ1 and SWQ2 with:

“SWQ1: Use classes: the site shall be used for a mix of office and workshops (Class B1) retail, maritime general industrial (Class B2 limited by condition), and may be used for a gallery (Class D1). It shall not be used for dwelling houses (Class C3).

“SWQ2 Public walkways shall be created along the Creek frontage and to the extent that is consistent with the site’s character through the site from Belvedere Road”.

23. *Page 48, after policy SWQ3*

Add the following:

“SWQ4. Existing buildings and features identified as making a positive contribution to the character and appearance of the Conservation Area, both within the site and in its surroundings should be retained and where practical enhanced, within proposals for new development through the careful design of new buildings and landscaping and sensitive reuse of historic structures. In conformity with National Planning Policy Framework and National Planning Practice Guidance, the optimum viable use of the site will be considered as that which best sustains and reveals its historic significance as part of the Conservation Area, whilst ensuring its future maintenance.

SWQ5. Development proposals will need to be informed by a programme of archaeological assessment, possibly including evaluation, completed according to a written scheme of investigation agreed with the Swale Borough Council. The design and construction method of

new development will be required to preserve nationally important remains in-situ. Where it might be agreed that archaeological remains might be removed as part of development this will need to be in accordance with a programme of archaeological works agreed with Swale Borough Council and designed to advance understanding of the significance of the archaeological assets to be lost.”

24. *Page 54, column 1, 4<sup>th</sup> indent*

Replace with:

“The open character of the curtilage and isolated position of the house must be maintained and enhanced. Parking in front of the building is considered inappropriate.”

25. *Page 54, column 1, 5<sup>th</sup> indent*

Replace with:

“To the south of Standard House, including the existing later industrial building and vacant land, there is potential for new development to provide housing of two storeys in traditional materials.”

26. *Page 54, column 2, policy STH4*

Replace this with:

“STH4. Any new housing development must be of no more than two storeys and should be located to preserve the prominence of Standard House as a landmark on the Creekside in views along the Creek and from Standard Quay and the footpath.”

27. *Updating*

Where indisputable primary facts change, the draft UDP should be appropriately modified. For example, if the change to the name of Davington Priory Ward occurs before the referendum, pages 7 and 29 should be modified accordingly.

## **Appendix B: Abbreviations**

The following abbreviations are used in this report:

|                     |  |
|---------------------|--|
| Convention          | European Convention on Human Rights  |
| Draft NDP           | Submission Version of the Faversham Creek Neighbourhood Development Plan (November 2014) |
| EH                  | English Heritage (the relevant part of which is now Historic England)                    |
| EU                  | European Union   |
| Framework           | National Planning Policy Framework (DCLG, March 2012)                                    |
| FTC                 | Faversham Town Council   |
| General Regulations | Neighbourhood Planning (General) Regulations 2012  |
| LBA                 | Planning (Listed Buildings and Conservation Areas) Act 1990                              |
| NDP                 | Neighbourhood Development Plan   |
| NPPG                | national Planning Practice Guidance  |
| para                | paragraph  |
| PCPA                | Planning and Compulsory Purchase Act 2004 (as amended)                                   |
| reg                 | regulation   |
| s                   | section  |
| SBC                 | Swale Borough Council  |
| Sch                 | Schedule   |
| SEA Directive       | Strategic Environmental Assessment Directive (2001/42/EC)                                |
| TCPA                | Town and Country Planning Act 1990 (as amended)  |
| WMS                 | Written Ministerial Statement of Eric Pickles MP of 25 <sup>th</sup> March 2015.         |

Please note that where I use the verb *'include'*, I am not using it to mean *'comprise'*. The words that follow are not exclusive.