

Agenda

Planning Committee Meeting

Date: Thursday, 5 February 2026

Time 7.00 pm

Venue: Council Chamber, Swale House, East Street, Sittingbourne, ME10 3HT

Membership:

Councillors Monique Bonney, Andy Booth (Chair), Hayden Brawn, Ann Cavanagh, Lloyd Chapman, Simon Clark (Vice-Chair), Kieran Golding, James Hunt, Elliott Jayes, Peter MacDonald, Peter Marchington, Claire Martin, Ben J Martin, Julien Speed, Paul Stephen, Terry Thompson and Tony Winckless.

Quorum = 6

Pages

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- (a) The fire alarm is a continuous loud ringing. In the event that a fire drill is planned during the meeting, the Chair will advise of this.
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nearest safe exit and gather at the assembly point on the far side of the car park. Do not leave the assembly point or re-enter the building until advised to do so. Do not use the lifts.

- (d) Anyone unable to use the stairs should make themselves known during this agenda item.

2. Apologies for Absence

3. Minutes

To approve the Minutes of the Meeting held on 15 January 2026 (Minute Nos. to-follow) as a correct record.

4. Declarations of Interest

Councillors should not act or take decisions in order to gain financial or other material benefits for themselves, their families or friends.

The Chair will ask Members if they have any disclosable pecuniary interests (DPIs) or disclosable non-pecuniary interests (DNPIs) to declare in respect of items on the agenda. Members with a DPI in an item must leave the room for that item and may not participate in the debate or vote.

Aside from disclosable interests, where a fair-minded and informed observer would think there was a real possibility that a Member might be biased or predetermined on an item, the Member should declare this and leave the room while that item is considered.

Members who are in any doubt about interests, bias or predetermination should contact the monitoring officer for advice prior to the meeting.

Part B reports for the Planning Committee to decide

5 - 8

The Council operates a scheme of public speaking at meetings of the Planning Committee. All applications on which the public has registered to speak will be taken first. Requests to speak at the meeting must be registered with Democratic Services (democraticservices@swale.gov.uk or call 01795 417328) by noon on Wednesday 4 February 2026.

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|----|---|----------|
| 5. | 2.1 - 25/504680/FULL 6 Marine Parade, Sheerness, Kent, ME12 2AL | 9 - 24 |
| 6. | 2.2 - 24/504410/OUT Land East of Holywell Primary School, Forge Lane, Upchurch, ME9 7AD | 25 - 64 |
| 7. | 3.1 - 25/504706/OUT Ten Acres, Breach Lane, Lower Halstow, Kent, ME9 7DD | 65 - 90 |
| 8. | Part 5 applications | 91 - 108 |

Decisions by County Council and Secretary of State, reported for information.

Issued on Wednesday, 28 January 2026

The reports included in Part I of this agenda can be made available in alternative formats. For further information about this service, or to arrange for special facilities to be provided at the meeting, please contact democraticservices@swale.gov.uk. To find out more about the work of this meeting, please visit www.swale.gov.uk.

**Chief Executive, Swale Borough Council,
Swale House, East Street, Sittingbourne, Kent, ME10 3HT**

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SWALE BOROUGH COUNCIL

PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

5th February 2026

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DEFERRED ITEMS Items shown in previous Minutes as being deferred from that meeting may be considered at this meeting

PART 1 Reports to be considered in public session not included elsewhere on this Agenda

PART 2 Applications for which permission is recommended

PART 3 Applications for which refusal is recommended

PART 4 Swale Borough Council's own development; observation on County Council's development; observations on development in other districts or by Statutory Undertakers and by Government Departments; and recommendations to the County Council on 'County Matter' applications.

PART 5 Decisions by County Council and the Secretary of State on appeal, reported for information

PART 6 Reports containing "Exempt Information" during the consideration of which it is anticipated that the press and public will be excluded

ABBREVIATIONS: commonly used in this Agenda

CDA Crime and Disorder Act 1998

GPDO The Town and Country Planning (General Permitted Development) (England) Order 2015

HRA Human Rights Act 1998

SBLP Swale Borough Local Plan 2017

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INDEX OF ITEMS FOR PLANNING COMMITTEE – 5th February 2026

- **Minutes of last Planning Committee Meeting**
- **Deferred Items**
- **Minutes of any Working Party Meetings**

PART 2

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| 2.1 | 25/504680/FULL | SHEERNESS | 6 Marine Parade |
| 2.2 | 24/504410/OUT | UPCHURCH | Land Adjacent To Holywell Primary School |

PART 3

- | | | | |
|------------|----------------------|----------------------|--|
| 3.1 | 25/504706/OUT | LOWER HALSTOW | Ten Acres, Breach Lane, Lower Halstow |
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PART 5

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|------------|------------------------|------------------|---|
| 5.1 | 25/500019/FULL | WARDEN | Unit 1, Jetty Road, Warden, ME12 4NF |
| 5.2 | 24/504803/FULL | BOBBING | Webbenditch Cottage, Cold Harbour Lane |
| 5.3 | 21/500518/OPDEV | FAVERSHAM | Land at The Tractor Shed, Provender Lane |

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PLANNING COMMITTEE – 5th February 2026**PART 2**

Report of the Head of Planning

PART 2Applications for which **PERMISSION** is recommended

2.1 REFERENCE NO - 25/504680/FULL		
PROPOSAL Proposed change of use of existing building to 9 bed HMO (Sui Generis).		
SITE LOCATION 6 Marine Parade, Sheerness, Kent. ME12 2AL		
RECOMMENDATION Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions as set out in the report and the payment of the SAMMS tariff, with further delegation to the Head of Planning to negotiate the precise wording of conditions, including adding or amending such conditions as may be consequently necessary and appropriate.		
APPLICATION TYPE Full (Minor)		
REASON FOR REFERRAL TO COMMITTEE Objection from Sheerness Town Council including a request for the item to be presented to the Council's Planning Committee.		
CASE OFFICER Kelly Sharp		
WARD Sheerness	PARISH/TOWN COUNCIL Sheerness Town Council	APPLICANT Mr Andrew Johnstone - AJJ Management Ltd AGENT Mrs Hayley Richardson – Planning Geek
DATE REGISTERED – 13/11/2025		TARGET DATE – 13/02/2026
BACKGROUND PAPERS AND INFORMATION: Documents referenced in report are as follows: - All drawings submitted All representations received The full suite of documents submitted pursuant to the above application are available via the link below: - https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=T5O4BWTYHSI00		

1. SITE LOCATION AND DESCRIPTION

- 1.1 6 Marine Parade is a large four-storey (including lower ground floor) end of terrace residential property. It is located on a prominent corner plot on the junction of Marine Parade and Berridge Road.
- 1.2 There is no front amenity space and the front door is accessed directly from the footpath on Marine Parade. There is a private amenity space to the rear of the property along with two garages.
- 1.3 The site lies within the built-up area boundary of Sheerness and is also located within the Marine Town Conservation Area. The Grade II listed Neptune Terrace lies circa 25m to the north of the property.
- 1.4 The site lies within Flood Zone 3.
- 1.5 The property lies within a street comprising of residential terraces to the west along Marine Parade and within Berridge Road which is adjacent to the dwelling. Within this section of Marine Parade to the east are a number of residential flats as well as commercial businesses. Adjacent to the property at no. 7 is a commercial hairdresser at ground floor with residential flats above.

2. PLANNING HISTORY

- 2.1 25/503548/LAWPRO - Lawful Development Certificate Proposed conversion of dwellinghouse (C3) to 6 bed HMO (C4).
Approved: 21.10.2025
- 2.2 SW/03/0833 - Three storey rear extension plus lower ground floor store.
Grant of Conditional PP 01.09.2003
- 2.3 SW/03/0419 - Three storey rear extension, plus lower ground floor store.
Refused: 21.05.2003
- 2.4 SW/01/0012 - Change of use from guest house to single dwelling.
Grant of Conditional PP : 22.02.2001

3. PROPOSED DEVELOPMENT

- 3.1 This application seeks planning permission for the change of use of the existing residential property to a nine-bedroom HMO.
- 3.2 Internally, two bedrooms will remain to the lower ground floor where each will have an ensuite. A utility room, store rooms and a WC will also be located on this floor. At ground floor will be the third bedroom with an ensuite, a kitchen and dining room. At

first floor will be three bedrooms (one with ensuite) and a separate shower room. Three bedrooms will be located on the second floor (one with ensuite). The loft space will be used as a safe refuge should climate change increase the likelihood of a breach in the defences affecting the site along with an additional store area.

3.3 No external changes to the building are proposed.

3.4 Within the rear amenity area will be a timber enclosure to store the bins as well as a vertical bicycle hanger shelter for a minimum of 9 bicycles.

4. REPRESENTATIONS

4.1 One round of consultation has been undertaken during which letters were sent to neighbouring properties. A site notice was displayed at the site whilst an advert was also placed in the press. No letters from neighbours were received.

4.2 **Sheerness Town Council** were consulted on the application. In response to the consultation they raised an objection on the following grounds (full representations are available online):

Comment	Report reference
Concerns raised regarding the overdevelopment of the property.	Paragraph 7.12 – 7.14
Concerns with associated Flood Risk safety issues.	Paragraph 7.30 – 7.34

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 has been one round of consultation for consultees.

5.2 **Mid-Kent Environmental Protection** have no issues regarding Air Quality, Land contamination or lighting. It is noted that the property is semi-detached in which noise from multiple occupants can potentially affect neighbouring properties as well as noise from individuals in the property unto others. They support the HMO management plan in dealing with any noise issues that may arise. They note that the property is also adjacent to a commercial property where issues could arise in the transfer of sound from certain activities associated with the business and have recommended a condition regarding commercial/residential noise transmission.

5.3 **KCC Highways** have advised that this development proposal does not meet the criteria to warrant their involvement.

5.4 **Environment Agency** raises no objection to the proposed development following review of the Flood Risk Assessment.

5.5 **SBC Private Sector Housing Manager** raises no objection considering that *‘the proposed bedrooms all meet or exceed the minimum size for single occupancy, and most are large enough to provide some private living space. Two rooms are slightly below the threshold for combined bedroom and living space, so the communal provision is important. The kitchen measures 11.2 m², which meets the required size for nine occupants, and the separate dining/living area is 15.5 m². While this is marginally below the recommended size for a communal living room, the overall shared space of 26.7 m² is considered reasonable for the proposed occupancy.*

Sanitary provision is very good: five en-suites and two shared shower rooms, all with WC and wash hand basin, and every bedroom has a wash basin in the en-suite or separately. This exceeds the minimum requirement for bathrooms and WCs for this level of occupancy.

In summary, the layout appears broadly capable of meeting space and amenity standards for a nine-bed HMO.’

6. DEVELOPMENT PLAN POLICIES

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

ST1	Delivering sustainable development in Swale
ST3	The Swale settlement strategy
ST6	The Isle of Sheppey area strategy
CP3	Delivering a wide choice of high quality homes
CP4	Requiring good design
CP7	Conserving and enhancing the natural environment - providing for green infrastructure
CP8	Conserving and enhancing the historic environment
DM7	Vehicle Parking
DM14	General development criteria
DM16	Alterations and extensions
DM19	Sustainable design and construction
DM21	Water, Flooding and Drainage
DM28	Biodiversity and geological conservation
DM32	Development Involving Listed Buildings
DM33	Development Affecting a Conservation areas

Supplementary Planning Guidance SPG

Conversion of Buildings into Flats and Houses in Multiple Occupation

Supplementary Planning Documents

Swale Borough Council Parking Standards 2020

National Planning Policy Framework (NPPF)

National Planning Practice Guidance (NPPG)

7. ASSESSMENT

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

- Principle
- Visual Impact including Heritage
- Living conditions
- Highways and parking
- Flood risk
- Ecology

Principle

7.2 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.

7.3 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.

7.4 The application site lies within the built-up area boundary of Sheerness, where the principle of development is supported under Policy ST3 of the Local Plan. The proposal seeks the change of use of the existing residential building to a nine (9) bedroom HMO which would contribute to the provision of a wider choice of housing types and respond to local housing needs, in accordance with Policy CP3.

7.5 A Lawful Development Certificate has been granted under application 25/503548/LAWPRO for the conversion of the property to a six-bedroom HMO. This development therefore constitutes a fallback position that must be taken into account

during the determination of this application.

- 7.6 For reasons set out above, the change of use to a nine (9) bedroom HMO is considered acceptable in principle, subject to consideration of detailed matters including design, amenity, parking, flood risk and compliance with relevant supplementary guidance.

Visual Impact including Heritage

- 7.7 The NPPF attaches great importance to the design of the built environment and states that design should contribute positively to making places better for people. The Swale Borough Local Plan reinforces this requirement through policies CP4 and DM14, which require development proposals to be of high-quality design and to be in keeping with the character of the area.
- 7.8 The NPPF states that LPAs should identify and assess the particular significance of any heritage asset and consider the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal. Policy DM32 seeks to ensure that the setting of listed buildings is preserved, whilst Policy DM33 sets out that proposals should preserve or enhance the character and appearance of conservation areas.
- 7.9 Any planning application for development which will affect a listed building or its setting must be assessed in accordance with the requirements of section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. This requires a Local Planning Authority (LPA) to have special regard to the desirability of preserving the building or its setting or any feature of special architectural or historic interest which it possesses.
- 7.10 A similar duty exists where the proposed development will be within a conservation area where section 72 of the same Act requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
- 7.11 The application site is located within the Marine Town Conservation Area and circa 25m south of the Grade II listed Neptune Terrace (List entry no. 1258778), an early 19th-century two storey terrace. The part of Sheerness where the property is located forms one of the earliest phases of development in Marine Town and is characterised by unspoiled 19th-century Victorian terraces arranged in a cohesive rectilinear street pattern. As such, the area possesses a strong and consistent architectural character that contributes positively to the significance of the conservation area.
- 7.12 The proposed change of use would require minor internal reconfiguration but would not result in any external alterations to the building that would affect its appearance within the streetscape. A cycle store and refuse store are to be erected in the rear garden but would appear as small ancillary buildings within the existing curtilage that

would not be readily visible from public vantage points surrounding the site. The use of the building as a large HMO would therefore have a neutral impact on the character and appearance of the area.

- 7.13 In light of the above and given the absence of any external changes to the building, the proposal is considered to preserve the setting of the Grade II listed Neptune Terrace and the character and appearance of the Marine Town Conservation Area, in accordance with policies DM32 and DM33. Furthermore, the development is considered to comply with Policy DM14, which requires proposals to respond positively to the character and appearance of the surrounding area and to reinforce local distinctiveness.
- 7.14 In considering the impact of this proposal upon designated heritage assets, officers have had regard to the Council's obligations pursuant to the Planning (Listed Building and Conservation Areas Act) 1990.

Living Conditions

- 7.15 Policy DM14 states that any new proposed developments should not cause significant harm to the amenities of surrounding uses or areas and due consideration will be given to the impact of the proposed development upon neighbouring properties.

Existing residents

- 7.16 In terms of impacts on the living conditions of neighbouring occupiers, the proposals would intensify an existing residential use of the site. Whilst the use of the property as a nine (9) person HMO has the potential to generate increased activity and comings and goings, given the property would remain in a residential use, it is not considered that the proposals would give rise to an unacceptable noise and disturbance impact on neighbouring amenity. This is particularly the case when considering that the existing property can lawfully be occupied as a six (6) person HMO, with the proposals therefore representing a modest three person uplift on the fallback position. The erection of the small scale cycle and bin stores in the rear garden would also not give rise to any unacceptable overbearing or overshadowing impact on neighbouring living conditions, given their size.
- 7.17 A 'HMO Management Plan' has been submitted with the application and provides clarity on the future management of the property. It sets out that in the event of any anti-social or noise issues, verbal and written warnings would be issued and tenancies terminated if issues persist. Environmental Health have reviewed this plan and support the approach to be used. Whilst the termination of tenancies is a private contractual matter rather than a planning matter, it provides additional comfort that any noise issues arising from the use of the property as a nine (9) person HMO would be appropriately managed.

Future occupiers

- 7.18 The HMO would comprise bedrooms over four floors (including the lower ground floor) served by shower rooms and en-suites with a communal kitchen/dining/living area located on the ground floor. The SBC Private Sector Housing Manager raises no objection to the proposals and considers the layout broadly capable of meeting space and amenity standards for a nine-bed HMO. The standard of internal accommodation is therefore considered acceptable. Future occupiers would have sufficient space to the rear of the site for use as external amenity, whilst there is also sufficient space for bin and cycle storage as shown on the plans.
- 7.19 A condition is recommended to ensure that the bin and cycle storage provision shown on the plans is installed prior to the first use of the building as a large HMO and retained as such thereafter.
- 7.20 Given the presence of a commercial business at ground floor in the adjoining property, Environmental Health have advised that future occupiers could be affected by the transfer of sound from certain activities associated with the business. Whilst a condition has been recommended by Environmental Health in order to prevent any unacceptable commercial/residential noise transmission, the property is already in residential use and the use taking place (a hairdressers) is considered one which can operate in a residential area without causing undue harm. Therefore, this condition is not necessary and has not been included.
- 7.21 The proposal is considered to provide an acceptable standard of accommodation for future occupants and would not result in undue harm to the amenity of neighbouring residents. The development is therefore considered to comply with Policy DM14 of the Local Plan.

Transport and Highways

- 7.22 Policy DM7 of the Local Plan requires parking provision to be in accordance with the Council's Parking SPD. The NPPF promotes sustainable patterns of development and expects land use and transport planning to work in parallel in order to deliver such. A core principle of the NPPF is that:

“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.”

- 7.23 In respect of parking, the Swale Parking SPD (2020) sets out that in Sheerness, town centre parking standards will not apply and certain criteria should be used to determine whether parking is provided in accordance with 'advisory' or 'recommended' Edge of

Centre standards. The criteria sets out that ‘advisory’ standards can be used where on-street parking controls are present within 200 meters of the site. In this case, the mapping in the Swale Parking SPD shows ‘Waiting Restrictions’ along Marine Parade such that advisory standards can be applied. The SPD also acknowledges that a lower provision may be justified in instances where, for example, there is good access to sustainable transport options.

- 7.24 In terms of assessing the need for parking in this location, the site is located within a sustainable urban location in Sheerness with good access to public transport. There is a bus stop across the road from the property, and it is within reasonable walking distance of the train station, employment opportunities, and Sheerness High Street such that it possesses good access to services and facilities which reduce dependency on the private car.
- 7.25 In the event that future occupiers were to own a car, the surrounding area includes on-street parking opportunities, in particular within Berridge Road which runs adjacent to the site. In light of the availability of on-street parking and given the property can lawfully be occupied as a six (6) person HMO, it is considered that the use of the property as a nine (9) person HMO would not give rise to an unacceptable impact on highways safety as a result of parking pressure from any additional occupants.
- 7.26 In view of the highly sustainable location of the site, the absence of on-site parking to meet the needs of all future occupiers is considered acceptable in this instance.
- 7.27 Cycle storage is also proposed within the site, which supports sustainable travel choices and aligns with the aims of Policy DM7 and the Parking Standards SPD. A condition is included below to ensure this storage is provided prior to the occupation of the property as a large HMO (ie more than six occupiers).
- 7.28 For reasons set out above, the proposals are considered acceptable from a parking and highways safety perspective. The proposal would not result in severe harm to highway safety or amenity and is therefore compliant with Policy DM7 of the Local Plan and the NPPF.

Flood Risk

- 7.29 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.
- 7.30 The application site lies within Flood Zone 3 indicating a high probability of flooding from rivers and the sea. Paragraph 176 and Footnote 62 of the National Planning Policy Framework (NPPF) states that the Sequential Test nor the Exceptions Test is required for changes of use (e.g. the proposed conversion to a House in Multiple

Occupation (HMO)) but that proposals should still meet the requirements of a specific FRA. As a result, neither the Sequential Test nor the Exceptions Test is applicable in this case.

- 7.31 A site-specific Flood Risk Assessment (FRA) has been submitted which confirms that the site is located within a defended flood zone, benefiting from existing flood defences including the Sheerness Sea Wall.
- 7.32 The FRA concludes that:
- The risk of flooding from fluvial and tidal sources is low.
 - There is a low risk of surface water flooding, and
 - There is a low risk from groundwater and existing sewers and the site is not at risk of flooding from reservoirs.
- 7.33 The Environment Agency have reviewed the submitted FRA and raise no objection to the proposals. It is acknowledged that there will be bedrooms at lower ground floor level, however there are two existing bedrooms already present at this level. The submitted FRA advises that the loft area will be used as a safe refuge should climate change increase the likelihood of a breach in the defences affecting the site, ensuring that future occupants would be safe in the event of a flood.
- 7.34 In light of the above, the proposal is considered acceptable in terms of flood risk and compliant with Policy DM21 of the Local Plan and NPPF.

Ecology

- 7.35 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.
- 7.36 The site lies within 6km of The Swale Special Protection Area (SPA)/Ramsar and The Medway Estuary and Marshes SPA/Ramsar, European designated sites which have been afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). SPAs are protected sites classified for the prevalence of rare and vulnerable birds and for regularly occurring migratory species on the site. Article 4(4) of the Birds Directive (2009/147/EC) requires steps to be taken by the relevant authorities to avoid activities on the site which are likely to result in pollution or in the deterioration or disturbance of bird habitat.

- 7.37 For completeness an Appropriate Assessment is set out below. Since this application will result in a net increase in residential accommodation on the site, impacts to the SPA and Ramsar sites may occur from increased recreational disturbance. Due to the scale of the development, there is no scope to provide on-site mitigation and therefore off-site mitigation is required by means of developer contributions at a total cost of £2,699.92. The agent has provided written confirmation that the applicant would be willing to pay this mitigation fee in principle, which would need to be secured prior to the issuing of planning permission.

Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017

- 7.38 The project being assessed would result in the occupation of the property as a nine (9) person HMO within 6km of the Swale and Medway SPA and Ramsar Sites. In line with Policy CP7 'Conserving and enhancing the natural environment – providing for green infrastructure' and Policy DM28 'Biodiversity and geological conservation' and based upon the best available evidence, a permanent likely significant effect on the SPAs and Ramsar Sites due to increase in recreational disturbance as a result of the new development is likely to occur. As such, in order to avoid and mitigate for an adverse effect on the integrity of the SPAs and Ramsar Site(s), the development will need to include a package of avoidance and mitigation measures.
- 7.39 The North Kent Strategic Access Management and Monitoring Strategy (SAMMS) sets out a strategy to resolve disturbance issues to wintering birds on the North Kent Marshes, focusing on the European Protected Sites and Ramsar Sites and their internationally important bird interest features. Elements within the strategy are:
- Rangers to provide wardening and visitor engagement
 - A North Kent Coast dog project to promote responsible dog ownership and encourage walking on lead in sensitive areas
 - Codes of conduct developed in partnership with local groups and clubs to raise awareness of recreational disturbance in a variety of activities both on and off of the water
 - Interpretation and signage
 - New and/or enhanced infrastructure
 - Enforcement and Monitoring
- 7.40 The report also considered alternative measures, such as legal covenants relating to pet ownership in new developments, and capping visitor numbers at recreational sites. Due to the complexities in enforcing legal covenants and in reducing visitor numbers to the North Kent marshes, it is difficult to have confidence that such measures would be effective in the long term.
- 7.41 The suite of strategic mitigation measures are being delivered through the Bird Wise project, a partnership of local authorities and conservation organisations in North Kent,

to ensure that development, considered in-combination, does not have an adverse effect on the integrity of the European sites. In this case, a total contribution of £2,699.92 in line with the SAMMS tariff would be required as mitigation.

7.42 Natural England has worked with the north Kent Local Planning Authorities to support them in preparing the SAMMS and the underpinning evidence base. Natural England agree that the mitigation measures to ensure additional impacts from recreational disturbance to the SPAs and Ramsar Sites are ecologically sound. As such, the Applicant does not need to provide their own evidence base on these aspects. Evidence should however be submitted showing that a mitigation contribution payment has either:

- Been made to the Bird Wise scheme through a Unilateral Undertaking; or
- Will be made through a s106 agreement where Heads of Terms have been agreed and the agreement will be signed prior to any permission being granted; or
- Been paid in full prior to consent being granted.

7.43 Having considered the proposed mitigation and avoidance measures to be provided in-perpetuity through the secured contribution to the Bird Wise scheme, Swale Council conclude that with mitigation, the plan or project will have no adverse effect on the integrity of the European protected site(s). In this case, the agent of the application has confirmed that the applicant has agreed to pay the necessary SAMMS payment prior to any grant of planning permission.

7.44 Natural England have advised that providing that the appropriate assessment concludes that the measures can be secured and providing that there are no other likely significant effects identified (on this or other protected sites) which require consideration by way of appropriate assessment, they will be satisfied that the appropriate assessments will be able to ascertain with sufficient certainty that there will be no adverse effect on the integrity of the European Site from recreational pressure in view of the site's conservation objectives.

7.45 Having made this appropriate assessment of the implications of the plan or project for the site(s) in view of that site's conservation objectives and having consulted Natural England and fully considered any representation received, the authority may now agree to the plan or project under regulation 63 of the Conservation of Habitats and Species Regulations 2017.

Biodiversity Net Gain

7.46 In terms of the Local Plan, Policy DM28 requires that development proposals will conserve, enhance and extend biodiversity, provide for net gains in biodiversity, where

possible, minimise any adverse impacts and compensate where impacts cannot be mitigated.

- 7.47 The NPPF states amongst other matters that planning decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity. From February 2024, developments are required to provide at least 10% Biodiversity Net Gain (BNG) as set out under paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990. There are exemptions to this, including the de minimis exemption. To qualify for this exemption, the development must not impact on any onsite priority habitat and secondly, if there is an impact on other onsite habitat, that impact must be on less than 25 square metres with a biodiversity value greater than zero and on less than 5 metres of onsite linear habitat (such as a hedgerow).
- 7.48 The proposals are for a change of use with no external alterations to the existing building. The proposals fall under the de minimis exemption, such that the proposal is exempt from being required to provide BNG.
- 7.49 The proposals are considered to be in accordance with policies CP7 and DM28 of the Local Plan, as well as the NPPF.

CONCLUSION

- 7.50 In view of the assessment carried out above, the proposed use of the building as a nine person HMO would not result in unacceptable harm to visual or residential amenities, nor will it result in a harmful increase in on-street parking. The proposal would provide an acceptable standard of accommodation for future occupants and is considered acceptable in terms of flood risk. The internal reconfiguration would not affect the external appearance of the building, preserving the character and appearance of the Marine Town Conservation Area and setting of the Grade II listed Neptune Terrace. As such, it is recommended that planning permission be granted.

RECOMMENDATION

- 7.51 Grant Planning Permission subject to the following conditions:

CONDITIONS

- (1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.

Reason: In pursuance of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- (2) The development hereby approved shall be carried out in accordance with the following approved drawings / details:

- 2526_PL16 – Proposed Floor Plans
- 2526_PL15 – Site Location Plan, Existing and Proposed Block Plans
- 2526_PL18 – Proposed Vertical Bicycle Hanger Shelter
- 2526_PL19 – Proposed Refuse Enclosure
- 2526_PL17 Rev A – Proposed Elevations. Received 8 January 2026

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

- (3) The bin stores as shown on drawing no. 2526_PL19 shall be provided prior to the first use of the building as a large HMO (ie more than six occupiers) and once provided shall be maintained as such thereafter.

Reason: In the interest of amenity.

- (4) The vertical bicycle Hanger Shelter as shown on drawing no. 2526_PL18 shall be provided prior to the first use of the building as a large HMO (ie more than six occupiers) and once provided shall be maintained as such thereafter.

Reason: In the interests of promoting sustainable travel.

- (5) The House in Multiple Occupation hereby approved shall not be occupied by more than nine (9) residents at any time.

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

- (6) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times: - Monday to Friday 0800 - 1800 hours, Saturdays 0800 - 1300 hours unless in association with an emergency or with the prior written approval of the Local Planning Authority.

Reason: In the interest of residential amenity.



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2.2 REFERENCE NO. 24/504410/OUT

PROPOSAL

Outline application (access and layout sought) for overflow community parking, erection of 16no. dwellings, with associated parking and gardens, and formation of new access and egress points onto Forge Lane.

SITE LOCATION

Land East Of Holywell Primary School, Forge Lane, Upchurch (ME9 7AD)

RECOMMENDATION

Officers respond to the appeal (on the grounds of non-determination) on the basis that no objection is raised to the proposal, subject to the imposition of conditions and a legal agreement pursuant to Section 106 of the Town and Country Planning Act 1990 being acceptable.

APPLICATION TYPE

Large Major Dwelling (Outline)

REASON FOR REFERRAL TO COMMITTEE

Cllr. Richard Palmer requested the application be called-in on the grounds that the proposal is inappropriate for a non-rural service centre and its potential detrimental impacts on the highway to the front of the neighbouring school.

An appeal for non-determination has been submitted and, therefore, the application is being presented to the Planning Committee to establish what its decision would have been if it still had the powers to determine the application.

Case Officer

Demetri Prevatt

WARD

Hartlip, Newington and Upchurch

PARISH/TOWN COUNCIL

Upchurch

APPLICANT

Cantium Land And Development Ltd.

AGENT

Mrs. J. Scott Finns

DATE REGISTERED

24.10.2024

TARGET DATE

22.07.2025

BACKGROUND PAPERS AND INFORMATION:

Documents

Acoustic Memo (ref. 5113_AC_1.1) -- Prepared by Lustre Consulting (28.01.2025)

Agricultural Quality of Land Report (ref. 2404/1) -- Prepared by Land Research Associated (12.09.2024)

Baseline Habitat Assessment - Site A (ref. 1458_R05_BNG Baseline Assessment) -

- Prepared by Native Ecology (01.08.2024)

Baseline Habitat Assessment - Site B (ref. 1458_R04_BNG Baseline Assessment) -

- Prepared by Native Ecology (06.08.2024)

Baseline Habitat Assessment - Site C (ref. 1458_R05_BNG Baseline Assessment) -

- Prepared by Native Ecology (01.08.2024)

Baseline Habitat Assessment - Site D (ref. 1458_R01_BNG Baseline Assessment) -

- Prepared by Native Ecology (06.08.2024)

Baseline Habitat Condition Assessment (ref. 1458_R01_Habitat Condition Assessment) -- Prepared by Native Ecology (18.04.2024)

Biodiversity Net Gain Assessment: Feasibility Stage (ref. 1458_R02_BNG Feasibility Report) -- Prepared by Native Ecology (18.04.2024)

Biodiversity Net Gain Assessment: Design Stage (ref. 1458_R03_REV A_BNG Design Stage) -- Prepared by Native Ecology (01.10.2025)
 Covering Letter (ref. JS/MEC) -- Prepared by Finn's (15.10.2024)
 Covering Letter (ref. JS/MEC) -- Prepared by Finn's (28.04.2025)
 Design and Access Statement Rev. P11 (ref. 22.110-ONA-XX-XX-RP-A-0001) -- Prepared by On Architecture (07.10.2024)
 Draft Unilateral Undertaking -- Prepared by Ayshland Limited (03.12.2025)
 Drainage Strategy -- Prepared by RMB Consultants Ltd. (December 2024)
 Drainage Strategy (Houses) -- Prepared by RMB Consultants (08.08.2025)
 Drainage Strategy (Road) -- Prepared by RMB Consultants (08.08.2025)
 Financial Viability Assessment (ref. 269153) -- Prepared by Strutt & Parker (18.09.2024)
 Landscape and Visual Impact Assessment (ref. DPLC/442/LVIA) -- Prepared by DPLC (11.12.2024)
 Offsite Condition Assessment Sheets A
 Offsite Condition Assessment Sheets B
 Offsite Condition Assessment Sheets C
 Offsite Condition Assessment Sheets D
 Planning Statement (ref. 3427/00) -- Prepared by Finn's (October 2025)
 Preliminary Ecological Appraisal -- Prepared by Calumma Ecological Services (08.09.2022)
 Reptile Survey -- Prepared by Calumma Ecological Services (11.10.2022)
 Reptile Receptor Site -- Prepared by Calumma Ecological Services (19.11.2025)
 Road Safety Audit Stage 1 (ref. RSA/RMB/24/02) -- Prepared by Laurence Shaw Associates (April 2024)
 Sequential Test -- Prepared by RMB Consultants Ltd. (April 2025)
 Statement of Community Involvement (ref. 3427/00) -- Prepared by Finn's (October 2024)
 Statutory Biodiversity Metric Calculation
 Statutory Biodiversity Metric Calculation (Site A)
 Statutory Biodiversity Metric Calculation (Site B)
 Statutory Biodiversity Metric Calculation (Site C)
 Statutory Biodiversity Metric Calculation (Site D)
 Supporting Letter on BNG and Ecology (ref. JS/MEC) -- Prepared by Finn's (07.10.2025)
 Supporting Letter on BNG -- Prepared by Calumma Ecological Services (29.08.2025)
 Supporting Letter on First Homes -- Prepared by Stuart & Parker (13.12.2024)
 Transport Statement -- Prepared by RMB Consultants Ltd. (December 2024)
 Updated Ecological Appraisal (ref. 2224/27/4) -- Prepared by Calumma Ecological Services (15.04.2024)

Drawings

1 -- Existing Site Levels Plan
 50.000 Rev. A -- Site Location Plan
 100.000 Rev. L -- Proposed Site Plan (Coloured)
 100.000 Rev. L -- Proposed Site Plan
 400.000 Rev. D -- Illustrative Proposed Street Scene Elevation
 500.000 Rev. D -- Proposed Density Parameter Plan
 500.001 Rev. D -- Proposed Building Height Parameter Plan

500.002 Rev. F -- Proposed Landscape Parameter Plan
 500.003 Rev. F -- Proposed Road Hierarchy Parameter Plan
 500.004 Rev. B -- Proposed Open Space Management Plan
 500.005 Rev. A -- Proposed Vehicle Parking Plan
 1163/201A -- Proposed Access Layout
 1163/202C -- Visibility Splays
 1163/203A -- Swept Path Analysis (Minibus)
 1163/204C -- Swept Path Analysis (Refuse Vehicle - Entrance)
 1163/205C -- Swept Path Analysis (Refuse Vehicle - Rear)
 1163/207C -- Surface Water Drainage Strategy
 1163/208D -- Proposed Vehicle Parking Layout
 1163/209B -- Pedestrian Access Plan

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=SLP7K3TY1BC00>

A. STATUS OF APPLICATION

On 14.01.2026, the Council was notified by the Planning Inspectorate (PINS) that PINS considered an Appeal for Non-Determination sought by the Applicant to be valid as the Council has not determined the application within the statutory timeframe. The notification provided by PINS included a timetable for the Appeal process that sets a deadline of 18.02.2026 for the Council to submit an Appeal Statement in response to the Appellant's Statement of Case.

As the application was called into the Planning Committee, the application is being presented to the Committee to ascertain their view as to what the outcome would have been if the Council still had the ability to determine the application. The Committee's view will facilitate the production of the Council's Appeal Statement.

1. SITE LOCATION AND DESCRIPTION

- 1.1. The application site ("the site") is a 0.79ha irregularly shaped parcel of land located on the southern side of Forge Lane, outside the Built-Up Area Boundary of Upchurch. It is a grass field that does not appear to have any formal vehicle access points. The adjacent property to the west is the Holywell Primary School. A public footpath (ZR12) runs along the eastern boundary of the application site, with the footpath being bound by a large residential property comprised mainly of grassed open land located to its east. The lands to the north of Forge Lane are in use as orchards. Open fields are found to the south of the site including one with paddocks and stables. The Council's mapping indicates that the site and surrounding land is Grade 1 Best and Most Versatile Agricultural Land.
- 1.2. The local area falls within the Upchurch and Lower Halstow Fruit Belt Landscape Character Area with the site being located within the Upchurch Area (LW2/UH1) as

set out in the Swale Landscape Sensitivity Assessment Area. The site and local area are not located within either a Kent or Swale level Area of High Landscape Value. The local landscape is visible from various places in the local area including public highways (e.g. Forge Lane) and public footpaths (i.e. ZR10 and ZR12).

- 1.3. A substantial part of the frontage of the site (approximately a third of the site) is classified as being at high risk of surface water flooding. However, it is not located within Flood Zones 2 or 3 in relation to fluvial or tidal flooding. The site is located within: a Great Crested Newt Green Zone, a brickearth safeguarded area, the Medway Ports Authority explosive safeguarding zone, the Medway Estuary and Marshes Site of Special Scientific Interest (SSSI) impact risk zone, 6.0km of the Medway Estuary and Marshes RAMSAR site, and 6.0km of the Medway Estuary and Marshes Special Protection Area (SPA).
- 1.4. In terms of heritage-related planning constraints, the site is neither found within a Conservation Area, and does not contain any Listed Buildings. However, the Grade I Listed Church of St. Mary the Virgin (List Entry no. 1343934) is located approximately 250 metres to the west of the site, which is within the Upchurch Conservation Area that is also to the west. Further to the east of the site are the Grade II Listed Holywell Cottages (List Entry no. 1069321) and Holywell Farmhouse (List Entry no. 1343933).

2. PLANNING HISTORY

- 2.1. None.

3. PROPOSED DEVELOPMENT

- 3.1. The proposal seeks Outline Planning Permission for the erection of sixteen dwellings (Use Class C3) with associated gardens and vehicle parking spaces, the provision of overflow community parking, and the formation of formation of vehicle access points along Forge Lane. The application seeks the approval of the matters of access and layout, meaning the matters of appearance, landscaping and scale would be reserved.
- 3.2. The main entrance to the site would be formed centrally along the host property's frontage to Forge Lane. It would mark the start of the primary access road through the development site and proceed to a junction with a secondary access road located behind hedgerows and landscaped islands to be formed behind a public footpath developed along Forge Lane. The primary access road would snake to the southwest corner of the site providing access to twelve of the proposed dwellings and their driveways / parking bays, as well as three parallel visitor parking spaces on its southern side. A footpath would also run along the southern side of the road. The primary access road would terminate at a 'T'-junction with a secondary access road onto which two dwellinghouses and their driveways would front. The footpath running through the site would turn south along the lower secondary access road to provide access to a connection point with public footpath ZR12.
- 3.3. At the northeast of the site would be a subsidiary road leading from the primary road that would provide access to two dwellinghouses and their driveways.

- 3.4. Ten of the proposed dwellings would benefit from driveways leading to car barns or garages with the remaining six dwellings benefiting from off-street parking bays.
- 3.5. The submitted drawings illustrate a second entrance to the site being formed along Forge Lane near the northwest corner of the site. It would lead to the secondary access road running parallel to Forge Lane and the eleven public/visitor parking spaces (including one dedicated to a mini-bus) to be formed to the south of that road. This would link to the main route through the site at its eastern end.
- 3.6. The layout of the sixteen residential properties illustrated on the submitted drawings indicate each dwelling being setback from the street onto which they front and all but one would benefit from a generously sized adjoining rear garden. The single dwelling without an adjoining rear garden would be provided with a private garden to the rear of the garden of an adjoining dwelling.
- 3.7. Although landscaping is a reserved matter, the application was supported by a Proposed Landscape Parameter Plan (dwg. 500.002 Rev. F) and Proposed Site Plans (dwgs. 100.000 Rev. L) that illustratively show hedgerows to the front of the development site and buffer/screening planting along the southwest facing boundaries of the site.

4. REPRESENTATIONS

- 4.1. Two rounds of public consultation have been undertaken, during which notification letters were sent to neighbouring occupiers. During each round of public consultation, a site notice was displayed at the application site and the application was advertised in the local newspaper. Full details of the representations received are available online.
- 4.2. A single individual/party responded to the public notification with neutral comments in relation to the following matter.

Comments	Report Reference / Officer Response
There is currently a lack of footpaths and drop-off/pick-up points along Forge Lane.	Section 7.11

- 4.3. Forty-three individuals/parties including the Local Governing Board of Holywell Primary School responded to the public notification in objection to the proposal. The concerns/comments raised in the objections were in relation to the following matters.

Comments	Report Reference / Officer Response
The proposal has failed to demonstrate that there is a need for additional or greenfield housing in the village.	Section 7.2
The development of the open space could result in an undue loss of biodiversity, greenspace, and wildlife.	Section 7.10

The proposal would lead to unsustainable increases in the use of the limited commercial services available in the village.	Section 7.20.
The proposal would lead to unsustainable increases in the utilisation of soft and hard infrastructure (incl. drainage, education, healthcare, public transport, waste collection and utilities) in the local area.	Section 7.13
The design, materiality, form and scale of the proposal would be out of keeping with character and appearance of the local area.	Section 7.8
The proposal would give rise to undue increases in flood risk.	Section 7.15
The layout of the proposal would accommodate further, and unacceptable, expansion of the village.	Section 7.2
The proposal would have a detrimental impact on the character, appearance and/or setting of the local Conservation Area and Listed Buildings.	Section 7.7
The layout of the proposal would accommodate the provision of an excessive number of dwellings that would constitute an overdevelopment of the host property.	Section 7.8
The proposal would be an out of keeping addition to the local pattern of development to the detriment of the rural, village and tranquil character of the local landscape.	Sections 7.2 and 7.6
The proposal would give rise to undue enclosures, overlooking and losses of light at neighbouring dwellings.	Section 7.17
The construction works necessary to implement the proposed development would give rise to undue nuisances.	Section 7.17 & Conditions
The proposal would generate nuisance levels of light and noise pollution, as well as disturbances and odours.	Section 7.17 & Conditions
The proposal would introduce opportunities for the overlooking of the adjoining primary school to the detriment of the privacy and safety of students.	Section 7.17
The proposal would be detrimental to the safeguarding of a local mineral reserve.	Section 7.19

The proposal would increase vehicle movements along Forge Lane to the detriment of highway safety and the flow of vehicle traffic.	Section 7.11
The proposal would provide an insufficient number of visitor car parking spaces to the detriment of the provision of public car parking spaces.	Section 7.11
Insufficient information has been provided to justify the need for a school drop-off point and demonstrate it would be acceptable in terms of highway safety and the flow of vehicle traffic.	Section 7.11

- 4.4. A single individual/party responded to the public notification in support of the proposal. The benefits/comments raised by the supporter were in relation to the following matters.

Comments	Report Reference / Officer Response
The proposal would enable the delivery of much needed dwellings in the area on an underutilised site.	Section 7.2

- 4.5. Upchurch Parish Council responded in objection to the proposal stating concerns in relation to the following matters:

Comments	Report Reference / Officer Response
The proposal has failed to demonstrate that there is a need for number and type of new dwellings proposed.	Section 7.2
Substandard information was provided in regard to ecology.	Section 7.10
The development of the open space could result in an undue loss of biodiversity, greenspace, and wildlife.	Section 7.10
The proposal would lead to unsustainable increases in the utilisation of soft and hard infrastructure in the local area.	Section 7.13
The proposal would be an out of keeping addition to the local pattern of development to the detriment of character, appearance and landscape of the village.	Section 7.6 and 7.7
The proposal would generate nuisance levels of light and noise pollution.	Section 7.17 & Conditions
The proposal would increase vehicle movements along Forge Lane to the	Section 7.11

detriment of highway safety and the flow of vehicle traffic.	
Insufficient information has been provided to justify the need for a school drop-off point and demonstrate it would be acceptable in terms of highway safety and the flow of vehicle traffic.	Section 7.11

5. CONSULTATIONS

- 5.1. Set out below is a summary of matters raised in representations received from consultees with the comments reflecting the final position of the consultee. There have been four rounds of consultation for most consultees.
- 5.2. **KCC Highways:** The consultee had no objections subject to the imposition of conditions.
- 5.3. **KCC Flood and Water Management:** The consultee had no objections subject to the imposition of conditions.
- 5.4. **KCC Development and Investment:** The consultee raises no objection subject to the Applicant/Developer entering into a Section 106 Legal Agreement with the Council to secure adequate financial contributions for community, education, and waste services.
- 5.5. **KCC Minerals and Waste:** The consultee had no comments or objections.
- 5.6. **KCC Ecological Advice Service:** The consultee raised no objection subject to:
- a) the Applicant/Developer enter into Section 106 Legal Agreement with the Council designed to secure a financial contribution associated with a Strategic Access Management and Monitoring Strategy (SAMMS) payment; and
 - b) conditions being imposed.
- 5.7. **KCC Public Rights of Way:** The consultee had no objections provided that informatives are used to highlight the status and protection of the PRow.
- 5.8. **SBC Affordable Housing:** The amount and tenure of the proposed affordable housing would not align with the needs of the Borough as the provision would fall short of the 40% requirement, with a mix that would be entirely intermediate housing. However, it is noted that there are wider difficulties around the provision of affordable housing at this time and the provision of six units at the site would be a positive boost to the supply of affordable homes. Discussions with the providers of affordable housing are welcomed.
- 5.9. **SBC Greenspaces:** The consultee noted that there would be insufficient space within the development to provide usable open space. However, no objection is raised subject to the Applicant/Developer entering into a Section 106 Legal Agreement to secure adequate financial contributions for the off-site provision of open (play/fitness) space and formal sport space.

- 5.10. **SBC Tree Officer:** The consultee had no objections subject to the imposition of conditions.
- 5.11. **Mid-Kent Environmental Protection:** The consultee had no objections subject to the imposition of conditions.
- 5.12. **Health and Safety Executive (HSE):** The consultee had no comments to make provided that none of the buildings would be classified by the HSE as “vulnerable” (i.e. a building with a notable amount of large glazed/frangible panels that would make the building susceptible to disproportionate damage in the event of an explosion), which none of the proposed dwellings appear to be.
- 5.13. **Environment Agency:** The consultee had no comments.
- 5.14. **Natural England:** 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. Therefore, further information (i.e. an Appropriate Assessment) is required to determine the proposal’s impacts on designated sites.
- 5.15. **NHS:** It was advised that contributions are not sought in relation to residential proposals for less than twenty (20) dwellings.
- 5.16. **Lower Medway Internal Drainage Board:** The consultee had no comments.
- 5.17. **Southern Water:** The consultee had no objections but asked that informatives are used.
- 5.18. **Kent Police:** The consultee recommended that Secured by Design principles be incorporated into the proposal.
- 5.19. **Swale Footpaths Group:** The consultee had no objections.
- 5.20. **UK Power Networks:** The consultee had no objections.

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
- ST5 The Sittingbourne Area Strategy
- CP1 Building a Strong, Competitive Economy
- CP2 Promoting Sustainable Transport
- CP3 Delivering a Wide Choice of High Quality Homes
- CP4 Requiring Good Design
- CP5 Health and Wellbeing
- CP6 Community Facilities and Services to Meet Local Needs
- CP7 Conserving and Enhancing the Natural Environment

CP8 Conserving and Enhancing the Historic Environment
 DM3 The rural economy
 DM6 Managing Transport Demand and Impact
 DM7 Vehicle Parking
 DM8 Affordable Housing
 DM14 General Development Criteria
 DM17 Open Space, Sports and Recreation Provision
 DM19 Sustainable Design and Construction
 DM21 Water, Flooding and Drainage
 DM24 Conserving and Enhancing Valued Landscapes
 DM28 Biodiversity and geological conservation
 DM29 Woodland, Trees and Hedges
 DM31 Agricultural land
 DM32 Development Involving Listed Buildings
 DM33 Development Affecting a Conservation Area

National Planning Policy/Guidance

National Planning Policy Framework 2024 (As Amended) (“the NPPF”)
 National Planning Practice Guidance (NPPG)

Supplementary Planning Guidance/Documents

Air Quality Technical Guidance (2021)
 KCC Developer Contributions Guide (2023)
 Kent Mineral and Waste Local Plan 2024-39 (KMWLP) (2025)
 Landscape Character Assessment and Biodiversity Appraisal (2011)
 Swale Borough Council’s Noise and Vibration Planning Technical Guidance (2020)
 Swale Landscape Character and Biodiversity Appraisal (2011)
 Swale Parking Standards (2020)

7. ASSESSMENT

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

- Principle
- Size and Type of Housing
- Affordable Housing
- Landscape and Visual
- Heritage
- Trees
- Ecology
- Transport and Highways
- Air Quality
- Community Infrastructure
- Open Space
- Flood Risk, Drainage and Surface Water
- Contamination
- Living Conditions
- Sustainability / Energy
- Planning Balance

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.
- 7.2.3. Paragraph 11 states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless:
- i. The application of policies in the 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.
- 7.2.4. As Swale Borough Council is unable to provide a 5-Year supply of housing, Paragraph 11 of the NPPF is engaged.
- 7.2.5. Policy ST1 of the Swale Borough Local Plan 2017 (the Local Plan) seeks to deliver sustainable development that accords with the settlement strategy for the Borough.
- 7.2.6. Policy ST3 sets out the settlement strategy and directs development to existing defined settlements and allocated sites. It seeks to restrict development in the countryside unless it is supported by national planning policy and able to demonstrate that it would contribute to protecting the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.
- 7.2.7. For the purposes of the Local Plan, the application site is unallocated and located within the countryside, outside of any built-up area boundary. It is also noted that the visual impact of the proposal would not contribute to protecting the intrinsic value, landscape setting, tranquillity and beauty of the countryside or its buildings as this report will further detail below. Consequently, the proposed development would not accord with Policy ST3 of the Local Plan.
- 7.2.8. As noted in the site description provided in Section 1 above, the application site is located near to but outside of the built-up area boundary of Upchurch. This village is identified as a Tier 5 Settlement (Other Villages with Built-Up Area Boundaries) within the Swale Settlement Strategy, which categorises such villages on the basis of them

displaying more sustainable characteristics which is usually as a result of better levels of public transport provision and/or local facilities and/or their closeness to urban or larger village populations.

- 7.2.9. Due to the site having an irregular projection at the northwest corner, the site would be able to connect to an existing footpath into the centre of the village. Although the footpath currently terminates near to the eastern edge of the school frontage, the proposal involves the extension of this footpath into the proposed development ensuring every dwellinghouse would be within walking distance of the community facilities, shops and services provided within Upchurch. One such service would be the 327 bus route that stops along Forge Lane on the way to both Chatham and Sittingbourne. The application site's proximity to the nearby bus stops, community facilities, services and shops within Upchurch allow it to be considered a relatively sustainable location for the proposed dwellings.
- 7.2.10. It is acknowledged that Swale Borough Council is unable to demonstrate a 5-Year supply of housing and the requirement for the Council to undertake an early local plan review has not been complied with. Therefore, Paragraph 11(d) of the NPPF is applicable and the presumption in favour of sustainable development applies. The benefits of the proposal, the harm that it would cause, and its compliance/non-compliance with the Local Plan and NPPF is material consideration that must be given significant weight. Once all other material planning considerations have been acknowledged, this significant material consideration will be considered fully in a balancing exercise detailed below.

7.3. **Agricultural Land**

- 7.3.1. Policy DM31 of the Local Plan states that development on agricultural land will only be permitted when there is an overriding need that cannot be met on land within the built-up area boundaries, and development on the best and most versatile (BMV) agricultural land will only be permitted when there is an overriding need that cannot be met on land within the built-up area boundaries. The policy states that development on the BMV agricultural land (i.e. Grades 1, 2 and 3a) will not be permitted unless: i) the site is allocated for development by the Local Plan; or ii) there is no alternative site on land of a lower grade than 3a; and iii) the development will not result in the remainder of the agricultural holding becoming not viable or lead to likely accumulated and significant losses of high quality agricultural land.
- 7.3.2. While the Council's mapping indicates that the Agricultural Land Classification of the site is Grade 1, the application was supported by an Agricultural Quality of Land Report (ref. 2404/1) demonstrating the site should actually be classified as Grade 3B – i.e. not BMV.
- 7.3.3. In this instance, it is considered that there is an overriding need for development that cannot be met within the built-up area boundaries and, as such, that aspect of the abovementioned policy is complied with. There is no evidence that the site is used or has been used for agriculture and this appears to have been the case for a considerable period of time and, as such, the proposal would not cause a wider agricultural holding to become unviable. The small size of the site compounds this. As the Council is not in a position to question the applicant's submissions in relation

to the agricultural quality of the land, no objection is raised on this ground. Even if there was a conflict with the abovementioned policy as it happened to be identified that the land was of higher quality than set out by the applicant, it is not considered that there would be harm arising from this policy conflict that would materially change the weighting and planning balance exercise that is undertaken below.

7.4. Size and Type of Housing

7.4.1. The NPPF recognises that to create sustainable, inclusive, and diverse communities, a mix of housing types, based on demographic trends, market trends, and the needs of different groups, should be provided.

7.4.2. Policy CP3 of the Local Plan requires the mix of tenures and sizes of homes provided in any particular development to reflect local needs. The Local Plan requires developments to achieve a mix of housing types, which reflect that of the Strategic Housing Market Assessment (SHMA). Subsequent to the adoption of the Local Plan, the Council's Housing Market Assessment (HMA) was prepared in 2020 (i.e., more recently than the Local Plan) after the introduction of the standard method for calculating the objectively assessed need. As such, officers have considered the proposed and indicative housing mix against that set out in the HMA.

Tenure – HMA	1 Bed	2 Bed	3 Bed	4 Bed
Market Required	7%	33%	41%	19%
Market Proposed	0%	0%	0%	100%
Affordable Required	27%	23%	30%	20%
Affordable Proposed	33%	50%	17%	0%

7.4.3. The HMA (2020) broadly echoes the Local Plan requirements in terms of the mix of dwelling sizes. It should be remembered that this reflects the Borough wide need.

7.4.4. On a more local level, Policy CP3 indicates that housing proposals should be tailored to the issues present within the local housing market area. The pre-ambles to the policy provides background to this stating that, in the area of Newington and the ME9 post code generally, house prices are relatively high and there are reasonable levels of demand. It goes on to state that *“the aspiration could be to encourage the development of good quality family housing, for which the greatest local demand exists”*.

7.4.5. From this basis, whilst the proposal does little to address the needs of the Borough as a whole and conflicts with criteria 5 of Policy CP3 as a result, it is considered that the proposal is tailored to the local housing market in terms of providing open-market housing, with the potential (subject to reserved matters) to be of a high quality and suitable to accommodate families and, therefore accords with criteria 3 of that policy.

7.4.6. Moreover, in respect of criteria 3 of Policy CP3 which requires development to be at a density that is determined by the local context, it is considered that the envisaged type of dwellings within the development and the overall density of the development is appropriate in the context of the surrounding area.

- 7.4.7. Overall, whilst not complying with Policy CP3 in all respects, it is considered that the proposal is consistent with other parts of the policy in such a way that no objection is raised to the mix of dwellings that is proposed.

7.5. **Affordable Housing**

- 7.5.1. According to Policy DM8 of the Local Plan, major residential developments in rural locations are required to provide forty percent of the proposed dwellings as Affordable Housing (AH) with the size, tenure and type of these units delivered in accordance with the needs of the area. Policy DM8 also states that, where possible, AH provisions should support Starter Homes in appropriate circumstances and locations. In order to meet the identified need for AH of different tenures, Paragraph 7.3.8 of the supporting text for Policy DM8 states that, in the first instance, the Council will seek an indicative target of ninety percent (90%) affordable/social rent and ten percent (10%) intermediate products.
- 7.5.2. The development of sixteen dwellinghouses means that the proposal is a major residential development that would need to comply with Policy DM8 of the Local Plan. In this regard, the Applicant is proposing an AH provision that would result in six of the sixteen dwellinghouses being delivered as affordable dwellings. Two of these affordable dwellings would be delivered as First Home dwellings by the developer and four as Shared Ownership dwellings. This constitutes a provision of 37.5%.
- 7.5.3. Viability submissions of the applicant have been reviewed and discussions proceeded on the basis of financial contribution being made in lieu of an on-site provision. However, the appeal submissions make it clear that the applicant wishes the application to be considered on the basis of the above provision.
- 7.5.4. The affordable housing proposals would not be fully compliant with Policy DM8 of the Local Plan as the provision would represent a shortfall of 2.5%. However, in times where on-site provision is challenging due to the nature of the Registered Provider market, it is considered that the harm arising from the policy conflict, which effectively arises as the requirement has been rounded down rather than up, should be afforded limited weight. There would still be a benefit arising from the provision of 6 affordable units which can be construed as a benefit of the proposal even though the provision would not be policy compliant.
- 7.5.5. Paragraph 11(d) is applicable to the determination of this application with regard to a presumption in favour of sustainable development as detailed above in Paragraph 7.2.10. Once all other material planning considerations have been acknowledged, this significant material consideration will be considered fully in a balancing exercise detailed below.

7.6. **Landscape and Visual**

- 7.6.1. Section 12 of the NPPF states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve (Paragraph 131). Moreover, it requires that developments are

sympathetic to local character and history, including the surrounding built environment and landscape setting (Paragraph 135).

- 7.6.2. Policy DM24 of the Local Plan supports this strategic planning objective of achieving well-designed places as it states the value, character, amenity and tranquillity of the Borough's landscapes will be protected, enhanced and, where appropriate, managed.
- 7.6.3. The site is located within the Upchurch and Lower Halstow Fruit Belt Landscape Character Area (LCA) and the Upchurch Area (UH1) assessment area of the Swale Landscape Sensitivity Assessment (2019). The Swale Landscape and Biodiversity Appraisal SPD (2011) lists the key characteristics of this LCA as including:
- Small to medium-scale rural landscape with a strong sense of enclosure;
 - Small nucleated villages with historic centres and modern urban expansion on periphery; undulating landscape with occasional long views to north and south; and
 - Fragmented structure of mature hedgerows and shelterbelts surround orchards, pasture and arable fields.
- 7.6.4. The appraisal mentioned in the paragraph above concludes that both the condition and sensitivity of the LCA is moderate and provides guidelines with the objective of conserving and creating. It also provides the following relevant guidance:
- Conserve the remaining enclosed landscape structure and look for opportunities to create features to restore a strong landscape structure with tree, shelterbelt, hedge planting and wetland features such as watercress beds.
- 7.6.5. The Swale Landscape Sensitivity Assessment (2019) states that the landscape of the Upchurch Area (LW2/UH1) sensitivity assessment area has an undulating landform, low-moderate valued natural features and semi-natural habitats, and a moderate sense of rural character with limited modern human influences. It also notes that the elevation of Upchurch increases its sensitivity, although the settlement edge is not well integrated. In light of these landscape characteristics, the assessment concludes that moderate overall sensitivity to future change from residential development (i.e. two to three-storey housing, over 2.0ha). The assessment also notes that, as the settlement edge at Upchurch is poorly defined, there is an opportunity to create a better settlement edge for Upchurch by small scale development. However, this should remain contained by Chaffes Lane in the south and should not extend beyond one or two fields east to maintain the clear landscape gap between Upchurch and Lower Halstow.
- 7.6.6. It is noted that the application site is located north of Chaffes Lane and directly to the east of the settlement edge of Upchurch, but the proposal would extend the settlement of Upchurch eastwards by more than one field as has been suggested by the abovementioned document. Whilst there is some tree and hedge planting at the edges of the site, the site currently does not feature substantial hedgerow or shelterbelts that are characteristic of the local LCA. The attributes, location and size of the application site suggests that it has the potential to support landscape-led development commensurate with the moderate sensitivity of the Upchurch Area (UH1) sensitivity assessment area.

- 7.6.7. The Landscape and Visual Impact Assessment (ref. DPLC.442.LVIA) (herein referred to as the “LVIA”) submitted with the application has assessed the proposal from 23 locations around the site, identifying that the development would not be visible from three of those locations. From the remaining 20 vantage points, the impact would be insignificant from 7 locations, low from 9 and significant from 4. Whilst the LVIA has not been considered by an independent assessor, the assessment of Officers generally aligns with the content of the LVIA. It is noted that the significant impacts have been identified to be from Forge Lane and the northernmost part of footpath ZR12. This is considered to be sound, and it is noted that the LVIA has identified that there are currently view of the Grade I listed church that would be impacted by the proposal.
- 7.6.8. However, it is noted that for a stretch along public footpath ZR12, between receptor viewpoints 15 and 16 in the Applicant’s LVIA, footpath users are able to enjoy an impressive view across the south of the site to the orchards and coast beyond. The view from receptor point 16 is identified to be of high value and this is considered to be applicable to all of that stretch, particularly given that it strongly defines the setting and context of Upchurch as a small Kent settlement that features fruit growing and its coastline as a substantial part of its history. The proposed dwellings would obscure this view and as such, the impact is considered to be far greater than “minor and slightly adverse” and the significance is considered to be greater than “low.” Aspects of this view are considered in longer views (from receptor points 18, 19, 20 and 22) where the impact is found to be low or insignificant which is considered to be a generally acceptable conclusion given that there are wider views from those locations and the narrow shape of the site and the layout of dwellings means that the impact would be limited.
- 7.6.9. Aside from the above, the LVIA is considered to be a sound basis to consider the proposal. The applicant identifies that mitigation in the form of soft landscape would be able to reduce the impact of the development, with the LVIA concluding that *“the overall effect of the proposal upon visual amenity is considered to be Minor, slightly adverse, with effective mitigation to reduce significant adverse effects and of Low Significance.”* In earlier sections of the LVIA, it also states that “the effect of the proposal upon the small to medium scale rural landscape would be Minor and adverse, however the proposal would strengthen enclosure at the edge of the village” and “the proposal would have a limited significant effect upon a small number of nearby receptor viewpoints in close proximity to the proposal site”.
- 7.6.10. Since mature hedgerows and shelterbelts are key characteristics of the LCA that local guidance indicates should be restored, the introduction of these landscaping features along Forge Lane and adjacent to public footpath ZR12 could be considered a positive impact on the LCA. Although these features would not fully screen the impacted viewpoints from massing/roofs of the proposed dwellings, their maximum heights of two-storey would be in keeping with the landscape-led guidance provided within the Swale Landscape Sensitivity Assessment (2019).
- 7.6.11. Although the proposal would result in the loss of open land, the development site is not within a designated area of high landscape value. Furthermore, it is agreed that the level of harm that the proposal would cause would be at a generally low level other than from a few viewpoints, within a contained area and in accordance with local

guidance. Consequently, the harm to the landscape expected to be generated by the proposed development would be apparent yet sufficiently limited and mitigated to the extent that the overall impact would not be significantly adverse. This is relevant in the context of Part B of Policy DM24 which states that permission will be granted in non-designated landscapes subject to the minimisation and mitigation of adverse landscape impacts. Even if it was found that there were significant impacts remaining, Policy DM24 indicates that development should still be allowed where the social and or economic benefits of the proposal significantly and demonstrably outweigh the harm to the landscape character and value of the area.

7.7. Heritage

- 7.7.1. Any planning application for development which will affect a listed building or its setting must be assessed in accordance with the requirements of section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. This requires a Local Planning Authority (LPA) to have special regard to the desirability of preserving the building or its setting or any feature of special architectural or historic interest which it possesses.
- 7.7.2. A similar duty exists where the proposed development will be within a conservation area where section 72 of the same Act requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
- 7.7.3. The NPPF states that LPAs should identify and assess the particular significance of any heritage asset and consider the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits that may arise and this is endorsed by the Local Plan.
- 7.7.4. The application site is adjacent to the Upchurch Conservation Area while the Grade I Listed Church of St. Mary the Virgin (List Entry no. 1343934) is approximately 250m to the west of the site and the Grade II Listed Holywell Cottages (List Entry no. 1069321) and Holywell Farmhouse (List Entry no. 1343933) are approximately 500m to the east.
- 7.7.5. The Church of St. Mary the Virgin is partially visible in views across the application site. Although the townscape of Upchurch does provide a setting for the Grade I Listed Building, the 250m distance between the build and site means the view is notable but not prominent. It is also noted that the views of the heritage asset and its setting are intermittent due to landscaping along the west of the site. Therefore, the proposal is expected to result in a low level of less than substantial harm to contribution the Church of St. Mary the Virgin makes to the visual amenity provided by some of the long views across the site.
- 7.7.6. It is likely that the proposed development would be visible from an east facing tower window of the Church of St. Mary the Virgin. However, the proposal would appear as a logical continuation of the roofs of neighbouring developments (i.e. dwellings and the school), thereby, avoiding causing harm to the setting of the Listed Building in this regard.

- 7.7.7. The Grade II Listed Buildings are not visible in views across the application site. Therefore, the proposal would not result any harm to the contributions that the Holywell Cottages and Holywell Farmhouse make to the visual amenity provided by some of the long views to the east across the site.
- 7.7.8. The closest parts of the Upchurch Conservation Area are distant from the site, with the closest section along Forge Lane being to the northeast of the junction with Church Farm Road and the closest section to the southwest being beyond Chaffes Lane. There would be a very low level of intervisibility between the Conservation Area and the site and, even from where there would be glimpses, it is considered that the impact would be negligible. It is noted that the development would alter the approach to the Conservation Area along Forge Lane, but the impact on the setting caused as a result of this would be partially mitigated by the proposed landscaping provisions at the frontage of the site. Consequently, it is considered that any impacts would be at the lowest of levels to the point of being negligible and, as such, it is considered that the proposal would maintain the setting of the Conservation Area.
- 7.7.9. As required by Paragraph 212 of the NPPF, considerable weight has been given to the conservation of the four heritage assets located in close proximity to the application with respect to the impact of the proposed development. This impact is expected to avoid causing any harm to the Grade II Listed Buildings (Holywell Cottages and Holywell Farmhouse) and the Upchurch Conservation Area and result in less than substantial harm, which would be at the lower end of the scale, to the Grade I Listed Building (Church of St. Mary the Virgin). The limitation and mitigation of the less than substantial harm to the heritage assets would be secured at the reserved matters stage. In particular, the Applicant will need to submit acceptable details relating to the matter of scale to show that for the proposed dwellings would cause no more than a very limited harm to the setting of the Grade I listed building.
- 7.7.10. In instances where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, Paragraph 215 of the NPPF requires this harm to be weighed against the public benefits of the proposal. With regard to the public benefits of the subject proposal, it is noted that the borough does not have a 5-year supply of housing in sustainable locations. Therefore, the proposal's intention to deliver sixteen homes in a relatively sustainable location is expected to generate public benefits that would outweigh the less than substantial harm it could cause to the local heritage assets. The heritage impact of the proposal is considered acceptable and the proposal deemed to accord with Section 66 of the Planning (Listed Buildings and Conservation Areas) Act (1990) (As Amended) and the supporting planning policies.

7.8. **Character & Appearance**

- 7.8.1. Local Plan Policies CP4 and DM14 and the NPPF attach great importance to the design of the built environment and that design should contribute positively to making places better for people.
- 7.8.2. Whilst appearance, landscaping and scale are reserved matters, the definitive access and layout of the proposed development would have impacts on the character and appearance of the proposal.

- 7.8.3. In general, it is considered that the layout of the residential part of the development is acceptable. There would be dwellings fronting Forge Lane, some facing southwards across the fields which would provide some interest to the view from the PRow and the remainder would face the internal estate road. Whilst the houses to the east would have their backs and rear gardens facing the PRow, this is not considered to be unusual or out-of-keeping with the existing situation where views of the rear boundaries of dwellings are common.
- 7.8.4. An eleven space car park is a substantial feature of the frontage of the site could dominate the street scene along Forge Lane. However, it is noted that the layout does indicate that an appreciable amount of landscaping would be provided along the site's frontage to provide visual screening of the proposed car park. It is also acknowledged that moving some of the proposed dwellings closer to the front of the site and shifting the car park further back could have a negative impact on character and pattern of development. Similarly, providing additional open space at the front of the site and relocating the car park to a suitably sized alternative location within the site could unduly break the logical pattern of development proposed. Therefore, subject to the provision of abundant landscaping along the frontage of the site, it is considered that the development would have an acceptable layout in the context of the character and appearance of the area. The layout would, therefore, accord with the abovementioned policies.
- 7.9. **Trees**
- 7.9.1. Policy DM29 of the Local Plan and the NPPF recognise the contribution of trees to the intrinsic character and beauty of the countryside.
- 7.9.2. The details of layout submitted for approval with the application identify areas of the application site where the siting of buildings and means of access could have an impact on existing trees, both on and off site. Since the layout and access would be approved, it is necessary to consider the impact of this matters on the trees at and near the site.
- 7.9.3. The Tree Officer has examined the details submitted with the application and concluded that the site does not have any arboriculturally constraints in terms of layout and the proposed layout would provide opportunities for new tree planting. Securing acceptable details on tree planting as part of a large landscaping strategy can be dealt with at the reserved matter stage.
- 7.10. **Ecology**
- 7.10.1. 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.

7.10.2. The Swale/Medway SPA and Ramsar sites

- 7.10.3. The application site is located within 6km of The Swale/Medway Special Protection Areas (SPA) and Ramsar which are European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).
- 7.10.4. As the application site is within 6km of the North Kent SPA/Ramsar Sites, the proposed development is likely to have a significant effect, either alone or in-combination, on the coastal Special Protection Areas (SPAs)/Ramsar sites from recreational disturbance on the over-wintering bird interest.
- 7.10.5. Natural England has advised that an appropriate tariff of £337.49 per dwelling (excluding any legal and monitoring officer's costs) should be collected to fund strategic measures across the Thames, Medway and Swale Estuaries. The necessary contribution would be £5,399.84 in this case (16 x £337.49).
- 7.10.6. These strategic SAMMS mitigation measures are being delivered through Bird Wise North Kent, which is the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, and the mitigation measures have been informed by the Category A measures identified in the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMM) produced by Footprint Ecology in July 2014.
- 7.10.7. A decision from the Court of Justice of the European Union (*People Over Wind v Coillte Teoranta*, ref. C-323/17) detailed that mitigation measures cannot be taken into account when carrying out a screening assessment to decide whether a full 'appropriate assessment' is needed under the Habitats Directive. Given the need for the application to contribute to the North Kent SAMMS, there is a need for an appropriate assessment to be carried out as part of this application.
- 7.10.8. An Appropriate Assessment has been carried out as per below and has been adopted by the Council as the Competent Authority, which concludes that the proposed development will not adversely affect the integrity of the Swale/Medway SPA and Ramsar Sites subject to the necessary financial mitigation being secured via legal agreement.

Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017

- 7.10.9. The project being assessed would result in a net increase of up to 16 dwellings within 6km of the Swale/Medway SPA and Ramsar Sites. In line with Policy CP7 'Conserving and enhancing the natural environment – providing for green infrastructure' and Policy DM28 'Biodiversity and geological conservation' and based upon the best available evidence, a permanent likely significant effect on the SPAs and Ramsar Sites due to increase in recreational disturbance as a result of the new development, is likely to occur. As such, in order to avoid and mitigate for an adverse effect on the integrity of the SPAs and Ramsar Site(s), the development will need to include a package of avoidance and mitigation measures.

- 7.10.10. The North Kent Strategic Access Management and Monitoring Strategy (SAMMS) sets out a strategy to resolve disturbance issues to wintering birds on the North Kent Marshes, focusing on the European Protected Sites and Ramsar Sites and their internationally important bird interest features. Elements within the strategy are:
- Rangers to provide wardening and visitor engagement
 - A North Kent Coast dog project to promote responsible dog ownership and encourage walking on lead in sensitive areas
 - Codes of conduct developed in partnership with local groups and clubs to raise awareness of recreational disturbance in a variety of activities both on and off of the water
 - Interpretation and signage
 - New and/or enhanced infrastructure
 - Enforcement and Monitoring
- 7.10.11. The report also considered alternative measures, such as legal covenants relating to pet ownership in new developments, and capping visitor numbers at recreational sites. Due to the complexities in enforcing legal covenants and in reducing visitor numbers to the North Kent marshes, it is difficult to have confidence that such measures would be effective in the long term.
- 7.10.12. The suite of strategic mitigation measures are being delivered through the Bird Wise project, a partnership of local authorities and conservation organisations in North Kent, to ensure that development, considered in-combination, does not have an adverse effect on the integrity of the European sites. A per-dwelling tariff of £337.49 is required as a contribution towards the SAMMS.
- 7.10.13. Natural England has worked with the north Kent Local Planning Authorities to support them in preparing the SAMMS and the underpinning evidence base. Natural England agree that the mitigation measures to ensure additional impacts from recreational disturbance to the SPAs and Ramsar Sites are ecologically sound. As such, the Applicant does not need to provide their own evidence base on these aspects. Evidence should however be submitted showing that a mitigation contribution payment has either:
- Been made to the Bird Wise scheme through a Unilateral Undertaking; or
 - Will be made through a s106 agreement where Heads of Terms have been agreed and the agreement will be signed prior to any permission being granted; or
 - Been paid in full prior to consent being granted.
- 7.10.14. Natural England advised that providing that the appropriate assessment concludes that the measures can be secured and providing that there are no other likely significant effects identified (on this or other protected sites) which require consideration by way of appropriate assessment, they will be satisfied that the appropriate assessments will be able to ascertain with sufficient certainty that there will be no adverse effect on the integrity of the European Site from recreational pressure in view of the site's conservation objectives.

- 7.10.15. The applicant has agreed to make the necessary financial payment towards SAMMS through a Section 106 Legal Agreement. Having considered the proposed mitigation and avoidance measures to be provided in-perpetuity through the secured contribution to the Bird Wise scheme, Swale Borough Council can conclude that, with mitigation, the plan or project would have no adverse effect on the integrity of the European protected site.
- 7.10.16. However, the Council is no longer the determining authority for the planning application and, as such, is no longer the competent authority in the context of the Habitat Regulations. Consequently, it is not necessary for the Council to complete an Appropriate assessment. Notwithstanding this, no objection will be raised and it is advised that the Council responds to the appeal to state that the plan or project can be agreed under regulation 63 of the Conservation of Habitats and Species Regulations 2017.

Protected Species

- 7.10.17. 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.’
- 7.10.18. 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.
- 7.10.19. The application was supported by a Preliminary Ecological Appraisal (PEA) and Reptile Survey. These submissions confirmed the presence of a low population of common lizard.
- 7.10.20. Although the PEA stated that the requisite precautionary working methods proposed within the assessment would be sufficient and any reptiles encountered during works will be relocated, the necessary details on a relocation area that would confirm the feasibility and acceptability of the requisite precautionary working methods were not provided by the PEA.
- 7.10.21. Upon receipt and review of a Reptile Receptor Site relating to an identified receptor site on the land in the control of the Applicant to the southwest of the site, KCC’s Ecological Advice Service confirmed that the proposal can satisfactorily avoid adverse impacts to protected and notable species. Therefore, subject to conditions relating to Biodiversity Enhancement, Lighting, and Precautionary Mitigation Measures, the proposal’s impact on protected species would be able to be made acceptable.

Biodiversity Net Gain

- 7.10.22. This application was submitted after the commencement of Mandatory BNG and is therefore required to deliver at least a 10% BNG under the Environment Act 2021.
- 7.10.23. As the proposal does not benefit from any exemptions to the subsection of the biodiversity gain planning condition, it was supported by biodiversity metric calculations, BNG assessments, habitat assessments, and supporting letters. These submissions indicated that the proposal would result in a loss of 4.95 habitats units (-77.51%) and gain of 0.93 hedgerow units (no baseline). The submissions also stated that the proposal would include habitat creation measures (i.e. the creation of modified grasslands and planting of trees) that would contribute 0.88 habitats units to BNG.
- 7.10.24. After reviewing all of the submissions provided by the Applicant, KCC's Ecological Advice Service confirmed that the development would require the delivery of 6.24 units of off-site habitat creation on land adjoining the application site that is under the ownership of the Applicant (See: Area outlined in blue on dwg. 50.000 Rev. A). Furthermore, the significant gains required from the proposal necessitate securing these gains for thirty (30) years and the provision of an acceptable Habitat Management and Monitoring Plan (HMMP). In light of the observations provided by KCC's Ecological Advice Service, it is considered possible for the proposal to deliver the requisite BNG through on-site and off-site creation measures.
- 7.10.25. Any Planning Permission granted for the proposal would be subject to the statutory biodiversity gain condition requiring the submission and approval of an acceptable Biodiversity Gain Plan prior to the commencement of development. As by its nature, BNG is a post decision process, any legal agreement required to secure the off-site gains necessary would need to be in place prior to the discharge of the Biodiversity Gain Plan condition. This would ensure the delivery of the on-site and off-site creation measures referenced above. Additionally, this recommendation includes a HMMP conditions provided by KCC's Ecological Advice Service that would secure the gains for thirty (30) years as recommended by the service.

7.11. Transport and Highways

- 7.11.1. 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.
- 7.11.2. The NPPF promotes sustainable patterns of development and expects land use and transport planning to work in parallel in order to deliver such. A core principle of the NPPF is that:
"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."

7.11.3. The provision of two (2) access points into the development and their position are considered acceptable by the Highway Authority who raised no objections in these regards. Similarly, the Highway Authority considered the final details provided by the Applicant on swept-path analysis for vehicles entering, existing and navigating the development to be acceptable. They have also raised no objection with the number and format of off-street vehicle parking spaces for the dwellings. As such, the proposal is not expected to have any unduly adverse impacts on the safety and flow of traffic (i.e. pedestrian and vehicular) along Forge Lane or generate unacceptable impacts on the internal access roads proposed.

7.11.4. It is noted that an area of community car parking has been proposed to the frontage of the site. It is understood that this was proposed following discussions with the adjacent school to meet a need for drop-off and collection time parking which would ease parking within local roads. However, the Local Governing Board (LGB) of Holywell Primary School submitted a representation in which they are clearly unsupportive of the proposal. Whilst the provision of the car parking area would be secured by the draft legal agreement that has been provided by the applicant, its subsequent retention and availability is not clarified. From this basis, it is considered that there is no reason to object to provision of a parking area to serve the local community and it is recognised that a designated parking would be likely to reduce the occurrence of short stay parking within the surrounding roads at the start and end of a school day. However, it is not considered to be a benefit to afford more than a limited amount of weight as the terms of the use of the car park within the applicant's draft legal agreement are vague.

7.12. **Air Quality**

7.12.1. The importance of improving air quality in areas of the borough has become increasingly apparent over recent years. Legislation has been introduced at a European level and a national level in the past decade with the aim of protecting human health and the environment by avoiding, reducing or preventing harmful concentrations of air pollution.

7.12.2. Policy DM6 of the Local Plan sets out that development proposals will integrate air quality management and environmental quality into the location and design of, and access to development and in so doing, demonstrate that proposals do not worsen air quality to an unacceptable degree. It is supported by SBC's Air Quality Technical Guidance (2024) that explains Air Quality Technical Guidance.

7.12.3. The NPPF states that the planning system should contribute to and enhance the natural and local environment by preventing new/existing development from contributing to or being put at unacceptable risk from, or being adversely affected by, inter alia, unacceptable levels of air pollution. It also requires the effects of air pollution and the potential sensitivity of the area to its effects to be taken into account in planning decisions.

7.12.4. The Planning Practice Guidance on Air Quality (Paragraph: 005 Reference ID: 32-005-20191101) states that:

“Whether air quality is relevant to a planning decision will depend on the proposed development and its location. Concerns could arise if the development is likely to have an adverse effect on air quality in areas where it is already known to be poor, particularly if it could affect the implementation of air quality strategies and action plans and/or breach legal obligations (including those relating to the conservation of habitats and species). Air quality may also be a material consideration if the proposed development would be particularly sensitive to poor air quality in its vicinity.”

7.12.5. Upon a review of the local site context and details submitted with the application, an Environmental Health Officer from Mid-Kent Services determined that there were no concerns regarding air quality subject to any Planning Permission granted being subject to a Construction Management Plan condition requiring the submission and approval of acceptable details on the management/mitigation of dust generated during the construction phases of development. On this basis, the proposal is considered acceptable in terms of air quality management.

7.13. Community Infrastructure

7.13.1. Policies CP5 and CP6 of the Local Plan set out that provision shall be made to accommodate local community services, social care and health facilities within new developments.

7.13.2. As with any planning application, the request for financial contributions needs to be scrutinised in accordance with Regulation 122 of the Community Infrastructure Regulations 2010 (which were amended in 2014). These stipulate that an obligation can only be a reason for granting planning permission if it is:

- Necessary
- Related to the development
- Reasonably related in scale and kind

7.13.3. The following outline the financial contributions that are necessary to mitigate the impact of the development upon services, with these contributions all for specific capital projects which have been identified and assessed by Officers to comply with the Regulations (as amended).

7.13.4. The following financial contributions have been sought by KCC Economic Development and Investment Team, KCC Highways, and Swale Borough Council to mitigate the impact of the development upon services.

KCC Contribution Requests		Total
Primary Education	£5,412.74 per dwelling	£75,778.36
Secondary Education	£5,587.19 per dwelling	£78,220.66
SEND	£559.83 per dwelling	£7,837.62
Integrated children's services	£74.05 per dwelling	£1,036.70
Libraries	£62.63 per dwelling	£1,002.08
Adult Social Care	£180.88 per dwelling	£2,894.08
Community learning	£34.21 per dwelling	£547.36
Refuse	£194.13 per dwelling	£3,106.08

NHS Contribution Requests		
NHS contribution	No Request	n/a
Swale Borough Council Contribution Requests		
Swale Bin provision	£120.30 per dwelling	£1,924.80
SAMMs	£337.49 per dwelling	£5,399.84
Formal sport provision	£729.57 per dwelling	£11,673.12
Play and fitness	£548.73 per dwelling	£8,779.68

7.14. Open Space

- 7.14.1. Policy DM17 of the Local Plan sets out that new housing development shall make provision for appropriate outdoor open space proportionate to the likely number of people who will live there. This space should be fully accessible all year round.
- 7.14.2. The size of the site and the proposed layout means that the proposed development would not be able to provide on-site the 0.28ha of usable communal open space required for a residential development of the type proposed. Therefore, the Applicant/Developer would need to enter into a legal agreement with Swale Borough Council designed to secure a financial contribution to provide the requisite open space (i.e. open play/fitness space, and formal sport space) off-site.

7.15. Flood Risk, Drainage and Surface Water

- 7.15.1. Policy DM21 of the Local Plan and the NPPF requires that LPAs should ensure that flood risk is not increased elsewhere and that any residual risk can be safely managed. This is reflected in.
- 7.15.2. Although the application site is not located in Flood Zones 2/3, mapping indicates that parts of the site are at high risk of surface water flooding. This significant level of risk means that a sequential test should be completed in accordance with Paragraph 175 of the NPPF unless the proposal represents a situation in which a site-specific flood risk assessment demonstrates that no built development within the site boundary would be located on an area that would be at risk of flooding, now and in the future, from any source. In light of this requirement, the application was supported by a Drainage Strategy Incorporating a Flood Risk Assessment among other supporting drainage / flood risk management submissions.
- 7.15.3. The Lead Local Flood Authority (LLFA) (i.e. Kent County Council) completed an assessment of the details submitted with the application. Although there was some concern with the increase in impermeable area that would result from the proposed development, the suite of supporting details/information/plans on drainage / flood risk management provided by the Applicant satisfied the LLFA that the development could satisfactorily manage flood risk provided that any Planning Permission granted is subject to conditions on drainage.
- 7.15.4. The PPG on Flood Risk and Coastal Change and Section 14 of the NPPF state that the sequential test for development need not be applied in situations where a site-specific flood risk assessment clearly demonstrates that the proposed layout, design, and mitigation measures would ensure that occupiers and users would remain safe

from current and future surface water flood risk for the lifetime of the development. On this basis, the proposal is concerned acceptable in terms of flood risk management.

7.16. **Contamination**

7.16.1. Policy ST1 of the Local Plan states that development proposals shall conserve and enhance the natural environment by applying national planning policy in respect of pollution, despoiled, degraded, derelict, contaminated, unstable and previously developed land. The NPPF states that LPAs should ensure that the site is suitable for its new use taking account of various matters, including pollution arising from previous uses.

7.16.2. Upon a review of the local site context and details submitted with the application, an Environmental Health Officer from Mid-Kent Services determined that there were no concerns regarding land contamination subject to any Planning Permission granted being subject to a condition related to unsuspected land contamination found during the implementation of the development. On this basis, the proposal is concerned acceptable in terms land contamination.

7.17. **Living Conditions**

Existing residents and Neighbouring Uses

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

7.17.2. It is noted that the only residential property that would likely be impacted by the proposed development in terms of residential amenity would be the dwelling at St. Annes Orchard to the southeast and east of the site. The details on layout submitted with the application indicate that most of the dwellings to be created would be set away from this adjoining residential property by over 30m. This siting of these dwellings would be sufficient to ensure that they would avoid having any detrimental impacts on the living conditions of neighbouring occupiers in terms of enclosure, light, outlook and privacy. While the dwelling at the proposed Plot 15 would be closer to the dwelling at St. Annes Orchard, the proposed siting of the dwelling at Plot 15 would ensure that the dwelling would avoid having any detrimental impacts on adjoining residential amenity.

7.17.3. Whilst scale is a reserved matter, the definitive layout of the proposed development and indicative parameter densities and heights illustrated on the drawings submitted with the application confirm that the proposal would result in an increase in the intensity of the use of the host property. It is noted that the density of the development would be in keeping with that expected with residential development in the Upchurch area. Therefore, the level of activity, disturbance and noise likely to be generated by the development would likely avoid giving rise to any undue impacts on the living conditions at residential properties in the area.

7.17.4. Whilst it is noted that a school exists at a neighbouring site, it is not considered that there would be any unconventional relationships arising between properties, with it

being a regular occurrence for residential properties to neighbours schools. Therefore, whilst the concerns of interested parties are noted, no objection is raised in this regard.

Future residents

- 7.17.5. 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.
- 7.17.6. Whilst scale is a reserved matter, the definitive layout of the proposed development and parameter densities and heights illustrated on the drawings submitted with the application indicate that the proposal should be able to accommodate dwellings that accord with the abovementioned standards. Similarly, the layout indicates that future occupants will, for the most part, have practical, usable and high-quality external amenity spaces.
- 7.17.7. The layout of Plot 1 is exception to this as it would have an inconveniently located garden positioned to the rear of the neighbour's garden. Whilst this would not be a desirable relationship, given that the property served by that garden is small and unlikely to have a substantial need for outdoor space, it is considered that the proposed arrangement can be tolerated.
- 7.17.8. The applicant's submissions include an acoustic report which identifies a need to provide an acoustic barrier at the north west boundary to ensure that the use of the school does not cause undue disturbance within the proposed dwellings. This can be secured by a condition.
- 7.17.9. For these reasons, subject to further detail being provided and considered at reserved matters stage, the proposal is considered in respect of providing adequate living conditions for future occupiers.

7.18. Sustainability / Energy

- 7.18.1. Policy DM19 of the Local Plan requires development proposals to include measures to address climate change.
- 7.18.2. In order to deliver development that is adaptable and environmentally sustainable in a changing climate, the Council requires proposals to ensure that they meet a minimum water efficiency standard of 110 litres per person per day and are compliant with Build Regulations requiring reduced greenhouse gas emissions (Local Plan - Policy DM19). Therefore, this recommendation includes a Water Use condition designed to ensure achievement of the water efficiency standard and an External Energy Generation condition that would ensure that the generation measures to be used to achieve compliance with the aforementioned Building Regulations are acceptable in planning terms.

7.19. Minerals

- 7.19.1. The Local Plan defines “mineral safeguarding area” as an area designated by Minerals Planning Authorities (i.e. Kent Country Council) that covers known deposits of minerals which are desired to be kept safeguarded from unnecessary sterilisation by non-mineral development. In this regard, the application site is located within a mineral safeguarding area for brickearth designated by Kent County Council’s Minerals and Waste Local Plan. Kent County Council’s Minerals and Waste team were consulted on this safeguarding designation and confirmed that there are no land-won minerals constraints on the application site that would warrant an objection. Therefore, the proposed development is not expected to result in an unnecessary minerals sterilisation.

7.20. Planning Balance – Benefits and Harm

- 7.20.1. 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.
- 7.20.2. In this case conflict with policies in the development plan have been identified as set out above.
- 7.20.3. 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.”

- 7.20.4. In this case, the application of policies that protect areas or assets of particular importance do not provide a reason for refusing the development. Therefore, it is necessary to consider if 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. For the avoidance of doubt, whilst there would be a low level of harm to the setting of a listed building, albeit the heritage balance exercise undertaken above, has indicated

that this should not be a reason for refusal and, therefore, this weighs neutrally in this case.

Benefits

- 7.20.5. The benefits arising in this case amount to the provision of 16 dwellings at a time when the Council cannot demonstrate a 5 year housing land supply. The benefit should be afforded significant weight. Moreover, 6 affordable housing units would be provided which, whilst not being policy compliant, can still attract positive weight, albeit the shortcomings of the affordable housing offer also weigh against the proposal as set out below. The provision of a community car parking area can be afforded some weight as a benefit and it is considered that there would be economic benefits arising from the construction process and the subsequent occupation of the dwellings (where occupants would use and strengthen the viability of local services). These aspects of the proposal can also be afforded weight as a benefit.

Harm

- 7.20.6. The harm arising from the proposal is considered to be that which is caused by the proposal representing development in the countryside. There would be a visual impact on the local landscape that, whilst being able to be mitigated to an extent, would still detract from the countryside setting. The affordable housing provision does not accord with local plan policy and therefore, whilst the provision of 6 units can weigh in favour of the proposal, the absence of a contribution to 'top-up' the affordable provision to be policy compliant and the mix of affordable housing and, in these respects, there is a small degree of policy conflict harm and the benefit set out above is moderated.

7.21. Conclusion

- 7.21.1. Overall, in most respects, the development is acceptable or tolerable. The harm arising from the proposal does not outweigh the benefits and, therefore, the NPPF indicates that planning permission should be granted. The NPPF is a material consideration of importance in this case and therefore, whilst the proposal conflicts with the development plan, it is considered that this factor is outweighed by other material considerations and planning permission should, therefore, be granted. It is recommended that the Council responds to the appeal accordingly.

- 7.21.2. 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.

7.21.3. Conditions Suggested by the Local Planning Authority

The following list of conditions is an indicative list of conditions that may be subject to change as part of the appeal process, with conditions potentially being added, removed or amended.

1. Reserved Matters

Within three (3) years of the date of this permission details of the following reserved matters shall be submitted to the Local Planning Authority for approval and the development shall be begun not later than two (2) years from the date of the final approval of all of the reserved matters:

- (1) Appearance;
- (2) Landscaping; and
- (3) Scale.

No development shall commence until the above matters have been approved.

Reason: These matters were not submitted for consideration as part of the Outline Planning Permission application and to comply with the provisions of the Town and Country Planning Act 1990 (As Amended) and the Planning and Compulsory Purchase Act 2004 (As Amended).

2. Drawings

Unless otherwise previously agreed by the Local Planning Authority in writing, the development hereby permitted shall be carried out entirely in accordance with the approved drawings submitted with the application as listed below:

- 100.000 Rev. L -- Proposed Site Plan (Coloured);
- 100.000 Rev. L -- Proposed Site Plan;
- 1163/201A -- Proposed Access Layout;
- 1163/208D -- Proposed Vehicle Parking Layout; and
- 1163/209B -- Pedestrian Access Plan.

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

3. Housing Mix

The mix dwellings (in terms of the number of bedrooms per dwelling) shown within the reserved matters submission shall reflect the “Schedule of Accommodation” stated on the proposed site plan (100.000 Rev. L) unless an alternative mix of dwellings has first been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure a sustainable mix of dwellings is provided by the approved development.

4. Construction Management Plan

Prior to the commencement of any construction or excavation works, a Construction Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority. The management plan shall include the following:

- A. Routing of construction and delivery vehicles to / from site;

- B. Parking and turning areas for construction and delivery vehicles and site personnel, which may require supporting vehicle tracking/swept paths;
- C. Timing of deliveries, avoiding network and school peaks where possible;
- D. Provision of wheel washing facilities;
- E. Measures to prevent the discharge of surface water onto the highway; and
- F. Temporary traffic management / signage.

All construction phases of the development shall be carried out strictly in accordance with the approved details, as well as Code of Construction Practice, BS5228 Noise Vibration and Control on Construction and Open Sites, the Control of Dust from Construction Sites (BRE DTi Feb 2003), and the Institute of Air Quality Management (IAQM) 'Guidance on the Assessment of Dust from Demolition and Construction'.

Reason: To safeguard the amenity of surrounding residents and the area generally, and to prevent adverse impacts upon the transport network during the construction phase of the development. This condition is required to be pre-commencement to ensure that all phases of construction do not adversely impact the amenity of surrounding residents and the area generally, and do not adversely impact upon the transport network.

5. Habitat Management and Monitoring Plan

Prior to the commencement of the development hereby approved, a Habitat Management and Monitoring Plan (HMMP) prepared in accordance with the Biodiversity Gain Plan approved pursuant to this consent shall be submitted to and approved in writing by the Local Planning Authority (LPA). The HMMP shall include:

- a) A non-technical summary;
- b) The roles and responsibilities of the people or organisation(s) delivering the HMMP;
- c) The planned habitat creation and enhancement works to create or improve habitat to achieve the biodiversity net gain in accordance with the approved Biodiversity Gain Plan;
- d) The management measures to maintain habitat in accordance with the approved Biodiversity Gain Plan for a period of 30 years from the [first occupation of the approved dwellings / completion of development]; and
- e) A monitoring methodology to ensure the submission of monitoring reports in years 2, 5, 10, 15, 20, 25 and 30 from [first occupation of the approved dwellings / completion of development] and demonstrate how the Biodiversity Gain Plan is progressing towards achieving its objectives including evidence of arrangements and any rectifying measures needed.

The development shall be implemented in full accordance with the requirements of the approved Habitat Management and Monitoring Plan, with monitoring reports submitted to the LPA at the specified intervals.

Reason: To ensure that the approved development delivers the mandatory biodiversity net gain. As some of the works necessary to commence the approved development could be harmful to these interests, it is necessary to secure satisfactory details prior to the commencement of development.

6. Pedestrian Facilities

Prior to the commencement of the development hereby approved, detailed designs of the pedestrian access and footway indicatively shown on dwg. 1163/209B shall be submitted to and approved in writing by the Local Planning Authority. The approved pedestrian access and footway facilities shall be provided prior to first occupation of the development and, thereafter, retained and maintained for the life of the development.

Reason: To provide adequate facilities for pedestrians and increase the use of active and sustainable modes of transport.

7. Sustainable Surface Water Drainage Scheme

Prior to the commencement of the development hereby approved, a detailed sustainable surface water drainage scheme for the site shall be submitted to and approved in writing by the Local Planning Authority. The detailed drainage scheme shall demonstrate that due consideration has first been given to the possibility of utilising infiltration techniques and that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of within the curtilage of the site without increase to flood risk on or off-site. Should the use of infiltration prove to be beyond being reasonably practical then any surface water leaving site shall not exceed greenfield rate for all rainfall events.

The drainage scheme shall also demonstrate (with reference to published guidance):

- That silt and pollutants resulting from the site use can be adequately managed to ensure there is no pollution risk to receiving waters; and
- Appropriate operational, maintenance and access requirements for each drainage feature or SuDS component are adequately considered, including any proposed arrangements for future adoption by any public body or statutory undertaker.

Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water and that the development does not exacerbate the risk of on/off site flooding. These details and accompanying calculations are required prior to the commencement of the development as they form an intrinsic part of the proposal, the approval of which cannot be disaggregated from the carrying out of the rest of the development.

8. Biodiversity Enhancement

Prior to the commencement of any above ground works, a Biodiversity Enhancement Strategy shall be submitted to and approved in writing by the Local Planning Authority. The enhancement and landscaping measures shall include, but not necessarily be limited to, a combination of the following: a ratio of 1:1 swift brick per dwelling with bricks installed in pairs, durable and suitably-placed bat and bird boxes, hedgehog highways, and suitable tree planting.

In regard to content, the strategy shall include the following:

- Purpose and conservation objectives for the proposed enhancement measures;
- Detailed designs to achieve stated objectives;
- Locations of proposed enhancement measures by appropriate maps and plans;
- Persons responsible for implementing the enhancement measures; and
- Details of initial aftercare and long-term maintenance where relevant.

The proposed measures/works shall be implemented in full accordance with the approved details prior to the first occupant of the dwellings hereby approved and, thereafter, retained and maintained for the life of the development.

Reason: In the interest of biodiversity and wildlife conservation (incl. protected and priority species).

9. Lighting

Prior to the commencement of any above ground works, a lighting design scheme designed to protect and enhance local biodiversity (incl. wildlife), protect amenity at neighbouring residential properties and limit light pollution shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall identify those features on site that are particularly sensitive for wildlife / nocturnal animals (incl. bats) and that are likely to cause disturbance along important routes used for foraging, as well as illustrate how and where external lighting will be installed, through the provision of appropriate external lighting layout plan(s), lighting contour plans, Isolux drawings, and technical specifications so that it can be clearly demonstrated that areas to be lit will not disturb or prevent wildlife from using their territory. Similarly, the submitted details must also demonstrate that the light from proposed illuminations will not cause a nuisance to the occupants of neighbouring properties or result in obtrusive light in accordance with the guidance provided by the Institution of Lighting Professionals' Guidance Notes for the Reduction of Obtrusive Light (2021).

All external lighting shall be installed in strict accordance with the approved details and, thereafter, retained and maintained for the life of the development.

Reason: In the interests of protecting biodiversity, wildlife (incl. protected and priority species), residential amenity and visual amenity.

10. Sustainable Construction Techniques

No development shall take place above slab level until details of the materials and measures to be used to increase water efficiency, energy efficiency and reduce carbon emissions have been submitted to and approved in writing by the Local Planning Authority. No dwelling shall subsequently be constructed other than in full accordance with the approved details, with all details being implemented prior to the first occupation of that dwelling. The approved details shall subsequently be retained thereafter.

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

11. Access

Prior to the first occupation of any of the approved dwellings, the access points to the site shown on the drawings listed in Condition 2 shall be provided and, thereafter, retained and maintained for the life of the development.

Reason: To provide safe and satisfactory access to the site.

12. Cycle Storage

No dwelling shall be occupied until it has been provided with cycle parking facilities in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority. The approved and provided facilities shall, thereafter, be retained and maintained at all times.

Reason: To provide adequate facilities for cyclists and increase the use of active and sustainable modes of transport.

13. Drainage Verification

Prior to the first occupation of any of the approved dwellings, details of a Verification Report pertaining to the surface water drainage system shall be submitted to and approved in writing by the Local Planning Authority. The report must be prepared by a suitably competent person and demonstrate that the drainage system constructed is consistent with that which was approved.

The Report shall contain information and evidence (incl. photographs) of details and locations of inlets, outlets and control structures; landscape plans; full as built drawings; information pertinent to the installation of those items identified on the critical drainage assets drawing; and the submission of an operation and maintenance manual for the sustainable drainage scheme as constructed.

Reason: To ensure that flood risks from development to the future users of the land and neighbouring land are minimised, together with those risks to controlled waters, property and ecological systems, and to ensure that the development as constructed is compliant with and subsequently maintained pursuant to the requirements of Paragraphs 175 and 182 of the National Planning Policy Framework.

14. Highways Works

Prior to the first occupation of any of the approved dwellings, the works between the dwelling and public highway(s) listed below must be carried out to completion:

- A. Footways and/or footpaths, with the exception of the wearing course; and
- B. Carriageways, with the exception of the wearing course but including a turning facility, highway drainage, visibility splays, street lighting, street nameplates and highway structures (if any).

The wearing courses for the footways, footpaths and carriageways shall subsequently be provided prior to the occupation of the 15th dwelling at the site.

The area agreed shall thereafter be maintained for that purpose.

Reason: In the interest of highway accessibility and safety.

15. Noise Mitigation

Prior to the first occupation of the dwellings located adjacent to the northwestern boundary of the site, all of the mitigation measures (incl. an acoustic barrier) detailed in the Acoustic Memo (ref. 5113_AC_1.1) prepared by Lustre Consulting and dated 28.01.2025 must be fully implemented. Once implemented, these measures must be retained and maintained for the life of the development.

Reason: To ensure that the amenity of occupiers of the approved development is not adversely affected by noise from the adjoining school.

16. Parking Management Plan

Prior to the first occupation of any of the approved dwellings, a Parking Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The plan must include details on the assignment, management and street signing of vehicle parking spaces to ensure that no less than four (4) spaces are provided as visitor spaces and eleven (11) spaces (incl. one (1) dedicated to a mini bus) are provided as community/public parking spaces as shown on dwg. 1163/208D.

The development shall be carried out strictly in accordance with the approved plan for the life of the development.

Reason: To provide adequate parking facilities for motorists without prejudicing strategies adopted to increase the use of sustainable modes of transport.

17. Secured by Design

Any reserved matters application shall include a statement setting out how the development incorporates security and safety measures in compliance with Secured By Design principles. The development shall be implemented in accordance with the approved details which shall thereafter be retained.

Reason: To provide a safe and secure environment for future occupiers.

18. Vehicle Parking

No dwelling hereby approved shall be occupied until the parking shown to serve that dwelling on drawing no. 1163/208D (including garages, car ports, undercover parking and surface parking), or some other such parking provision that shall have been approved in writing by the Local Planning Authority prior to the occupation of that dwelling, has been provided and made available for use by the occupiers of that dwelling. Moreover, all visitor spaces shall be provided prior to the occupation of the dwelling that is closest to that parking space.

Reason: To ensure the provision of adequate car parking.

19. Vehicle Turning Facilities

Prior to the first occupation of any of the approved dwellings, the vehicle turning facilities shown on dwgs. 1163/204C, 1163/203A, and 1163/205C listed in Condition 2 shall be provided and, thereafter, retained and maintained for the life of the development.

Reason: To ensure the flow and safety of traffic along internal and external road networks.

20. Biodiversity Enhancement Verification

Within twelve months of the first occupation of any dwelling hereby approved, photographic evidence of the implementation of the approved biodiversity enhancement measures approved under the terms of Condition 8 shall be submitted to and approved in writing by the Local Planning Authority. The implemented measures shall be retained and maintained for the life of the development.

Reason: In the interest of biodiversity and wildlife conservation (incl. protected and priority species).

21. Ecological Mitigation Measures

All mitigation measures for hedgehogs, nesting birds and reptiles detailed in the Reptile Receptor Site prepared by Calumma Ecological Services, and dated 19.11.2025, as well as the Updated Ecological Appraisal (ref. 2224/27/4) prepared by Calumma Ecological Services, and dated 15.04.2024, shall be fully implemented during the relevant phase(s) of construction works (incl. clearance, construction, demolition and excavation).

Reason: In the interest of biodiversity and wildlife conservation (incl. protected and priority species).

22. Unsuspected Contamination

The presence of any unsuspected contamination encountered during the development must be drawn to the attention of the Local Planning Authority by the Applicant/Developer.

In the event of contamination to land and/or water being encountered, no development shall continue until a programme of investigation and/or remedial work (incl. methods of monitoring and certification of such work undertaken) has been submitted to and approved in writing by the Local Planning Authority. No part of the development shall be occupied until the approved remedial works, monitoring, and certification of the works have been carried out and a full validation report has been submitted to and approved in writing by the Local Planning Authority.

In the event that no contamination is encountered, the developer shall provide a written statement (incl. photographic evidence) to the Local Planning Authority confirming that this was the case. The development shall only be occupied after written approval is

provided by the Local Planning Authority. The evidence shall include waste disposal transfer notes proving correct disposal of soil.

Reason: To safeguard public and environmental health by ensuring that any and all land contamination issues are fully and appropriately addressed.

23. Water Use

The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and the dwellings shall not be occupied unless the notice for that dwelling of the potential consumption of water per person per day required by the Building Regulations 2015 (As amended) has been given to the Building Control Inspector (internal or external).

Reason: To ensure high standards of sustainable design and construction in new development.



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PLANNING COMMITTEE – 5th February 2026

PART 3

Report of the Head of Planning

PART 3

Applications for which REFUSAL is recommended

3.1 REFERENCE NO - 25/504706/OUT

PROPOSAL - Outline application (with all matters reserved except access) for demolition of existing brick outbuilding and erection of 3no. detached custom-build dwellings.

SITE LOCATION - Ten Acres Breach Lane Lower Halstow Kent ME9 7DD

RECOMMENDATION - Delegate to the Head of Place to refuse planning permission, with further delegation to the Head of Place 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 - Cllr Hunt requested that the application be determined by Committee if the recommendation is to refuse planning permission due to the involvement of the Committee in the consideration of previous applications at the site.

Case Officer - Matt Duigan

WARD

Bobbing, Iwade and Lower Halstow

PARISH/TOWN COUNCIL

Lower Halstow

APPLICANT

Mr & Mrs Keith & Glenda Tress

AGENT

Benchmark Design Build LTD

DATE REGISTERED

24/11/2025

TARGET DATE

19/01/2026

BACKGROUND PAPERS AND INFORMATION:

The full suite of documents submitted, and representations received pursuant to the above application are available via the link below: -

[25/504706/OUT | Outline application \(with all matters reserved except access\) for demolition of existing brick outbuilding and erection of 3no. detached custom-build dwellings. | Ten Acres Breach Lane Lower Halstow Kent ME9 7DD](#)

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, known as 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 northwest 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. Reserved Matters approval has subsequently been granted. 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 the eastern side of 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 (noting that the development would not encroach in any way on the PROW network).

2. PLANNING HISTORY

- 2.1. 25/500821/FULL - Demolition of existing brick outbuilding and erection of 3 detached self-build dwellings with associated works.

Refused – 07.11.2025

- 2.2. 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 - 19.08.2019.

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

- 2.3. 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

- 2.4. 25/503549/FULL - Section 73 - Application for minor material amendment to approved plans condition 1 (to allow alterations to internal layout and change of detached garage to an attached garage with utility to rear) pursuant to 24/502764/REM for - 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 – 12.12.2025

- 2.5. 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

- 2.6. 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. Outline planning permission (with all matters reserved except access) is sought for the demolition of an existing brick outbuilding and the erection of three detached self-build dwellings.
- 3.2. The proposals would be served by accesses off Breach Lane. Each of the plots would comprise an area for a dwelling, soft landscaped area and hardstanding to the front for the parking of vehicles. Gardens are indicatively shown as being located to the rear.
- 3.3. For clarity, matters relating to appearance, landscaping, layout and scale are not for determination at this stage. In the event of approval, these matters would be determined as part of reserved matters applications submitted at a later date.

4. REPRESENTATIONS

- 4.1. One round of consultation was undertaken, during which letters were sent to adjoining and neighbouring occupiers. A site notice was displayed at the application site and an advertisement was published in the press. Full details of representations are available online.

- 4.2. During the consultation 16, letters of representation objecting to the proposal were received. Concerns were raised in relation to the following matters:

Comments	Report reference/explanation
The site is located outside the village boundary- representing further isolated growth into the countryside.	7.2.3 to 7.2.17
Unacceptable urbanisation of the site and intensification of sporadic development, representing an unsustainable and harmful form of development in a rural location,	7.2.3 to 7.2.17
A previous application for the above development was refused in November 2025, and the reasons for refusal for this application remain the same	This application differs from the previous application in that all matters (apart from access) are now reserved. This changes the approach to the application as it can now be considered custom/self-build.
These 3 houses are overwhelming, overcrowded and imposing for the size of the land. The development would be out of keeping with the character of the area.	7.3.7
Upchurch village has limited facilities, including just one pub, a primary school, and a small convenience store. This means the development is not well located in relation to goods and services future residents would need on a day to day basis, therefore future residents would have to use motor vehicles to access basic needs.	7.2.6 to 7.2.9
The claim that Upchurch is a short walk away is misleading, the route is lengthy, unsafe, not well lit, with no foot path and largely inaccessible for those with mobility issues. Newington is too far from the site to be walkable.	7.2.6 to 7.2.9
Essential services such as schools, doctors, and shops are not accessible without a car, placing additional strain	7.2.8

on local infrastructure. Busses are in frequent.	
Additional traffic generated by the development would pose highway safety issues. The proposed accesses are at an unsafe part of the road. Insufficient parking is proposed.	7.5.5, 7.5.7
The development would rely of cars for future residents to access services.	7.5.8
Protected wildlife species would be harmed.	7.4.22 – 7.4.23
Residents at the proposed dwellings would require cars in order to access facilities, the location of the proposal is not sustainable.	7.5.8
The application has not been advertised and notified correctly. Neighbours have not been notified.	The application was advertised in the press, a site notice was erected at the site and adjoining and nearby neighbours were consulted. The application has been notified in accordance with statutory requirements.
The site notice erected at the site is erroneous.	4.1
The development would be on a former allotment site.	7.2.19
This is an unsustainable, isolated development that sits outside the village boundary.	7.2.8
Noise, pollution and lighting which will significantly impact the environment within the area.	7.7.3 – 7.7.4
The nearby footways and accesses are unsuitable as a solution for access to and from the site and facilities.	7.5.8
Protected species and other wildlife may be impacted.	7.4.22 – 7.4.23
The proposal does not meet government requirements on sustainability or low carbon emissions.	7.8.2
These 3 houses are overwhelming, overcrowded and imposing for the size of the land	7.3.5

There is a lack of onsite parking for construction workers.	7.5.7
Southern Water can't supply the homes with water, and the NHS can't cope with additional patients	Southern Water are responsible for wastewater disposal, while they have not commented on this application, they have raised no objection to the previous proposals (including for 10 dwellings proposed in application ref: 19/500764/OUT).
The development would overlook existing neighbours, resulting a loss of privacy	7.7.4
The environmental impact and effect on the landscape in this historic site will be significant.	7.3.7 noting that the site has not historical designation.
The design style is not in keeping with the current style of the historic cottages that are present.	7.3.5 to 7.3.8

4.3. In addition, 7 (as of 19.01.2026) submissions were received in support of the proposal.

Comments	Report reference/explanation
New housing would make good use of a vacant site. The housing would fit in with existing housing development in the area. 3 houses on the site will tidy up the whole area and fill in the gap.	7.3.7
Sufficient parking is proposed and speed restrictions in the area mean vehicles would travel slowly reducing any traffic safety concerns.	7.5.7
There is a footpath on Breach Lane and another one across the fields so it's easy to get to the school, playing field, pub or shop.	7.5.8
In 2022 approval was given for a single dwelling on land adjoining the site for a self-build house. There is an unmet need for self build housing in the Borough.	7.2.11 – 7.2.12

Self-build properties allow owners more freedom of choice in terms of design. They encourages high quality, low carbon, environmentally friendly properties.	
This a barren piece of land that presents an unpleasant view beside the main road approaching the village and is opposite a row of cottages.	7.3.7
Future residents would spend in local businesses and support the facilities available in the village and surrounding area.	7.10.8
These proposed properties are within Lower Halstow parish and close to the centre of the village, with safe and easy pedestrian access to its principal facilities, primary school, shop, pub and church (not isolated).	7.2.8 to 7.2.12
Access, footpaths and lighting along footways are all adequate. The site is easily accessible.	7.5.8
By adding housing gradually to the Village, in the form of small developments in this type of location, suitable sizes for a family to upgrade to, you allow families and communities to evolve in a natural and sustainable way.	7.2.6
Britain's population is expanding; this form of development is a good way of delivering housing while retaining the aspects of the village that makes all of us want to live here.	7.2.5 - 7.2.17

4.4. **Lower Halstow Parish Council** support the application on the basis that the proposal aligns with the policy objectives and does not contravene any specific policy.

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.

5.2. **KCC Highways** – No objection subject to conditions.

5.3. **KCC Flood and Water Management** – No objection.

- 5.4. **KCC Ecological Advice Service (KCC EAS)** – No objection subject to conditions.
- 5.5. **KCC Public Rights of Way (PROW)** – No objection.
- 5.6. **Mid-Kent Environmental Protection** – No objection subject to conditions.
- 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.
- [The proposed buildings do not meet the criteria to be vulnerable buildings].
- 5.8. **Environment Agency** - No objection.
- 5.9. **Swale Footpath Group** - No objection.
- 5.10. **Natural England (NE)** – Require recreational impacts (from future residents) to protected sites to be mitigated.

[Mitigation is achieved through the SAMMS tariff, which the Applicant has paid]

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
- ST5 The Sittingbourne area strategy
- 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 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 proposed housing is set in the open countryside and is not within the designated built-up boundary of the Local Plan.
- 7.2.4. Local Plan Policy ST1 (4) requires development proposals to accord with the Local Plan settlement strategy. In terms of conformity with the NPPF Policy ST1 aligns with many of the NPPF topics and objectives.
- 7.2.5. Local Plan Policy ST3 (5) relates to the settlement strategy and states that at locations in the open countryside, outside the built-up area boundaries development will not be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside. The primary objective of the strategy is to protect the countryside from isolated development (as is proposed).
- 7.2.6. The location of the site is remote from the Lower Halstow 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 footway along the road, the occupants of the development would be likely to rely on car-borne journeys.
- 7.2.7. Local Plan Policy ST5 (part 4) directs development proposals to Sittingbourne or at other sites within urban and village confines, or as extensions to settlements, where indicated by proposed allocations. The site is outside of the areas stated and nor is it allocated for development. The application is in conflict with Policy ST5 which conforms with much of the NPPF. Given the location, the proposals for housing are contrary to Local Plan policies ST1, ST3 and ST5.
- 7.2.8. 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.*
- 7.2.9. The site and its surroundings retain the same overall characteristics in terms of limited access to services, facilities, and footpaths as they did at the time of the previous appeal (19/500764/OUT).
- 7.2.10. Whilst the current application is now for three dwellings, it remains the case that the site is not in a suitable location for the proposed development, and the scheme continues to perform poorly against the requirements of Policy ST3 of the Local Plan.

- 7.2.11. With regard to the new dwelling approved immediately to the north of the site (under ref. 22/502340/OUT), the Planning Committee considered that proposal for a single dwelling to be acceptable, overturning the Officer's recommendation for refusal.
- 7.2.12. Although the adjoining decision (22/502340/OUT) is recognised, each application is assessed on its own merits. In having assessed the current proposals, and with regard to the previous Inspector's appeal decision which in part related to the same site 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.
- 7.2.13. Paragraph 11 of the NPPF states that decisions should apply a presumption in favour of sustainable development and for decision-taking this means:
- “c) approving development proposals that accord with the Development Plan without delay; and,*
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, 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 proposed⁷; 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.”*
- 7.2.14. Footnote 8 of the NPPF states that policies which are most important for determining the application are out-of-date includes, for housing proposals, situations where the local planning authority cannot demonstrate a 5-year supply of deliverable housing sites.
- 7.2.15. As the Council cannot demonstrate a 5-year supply of housing, the policies for the supply of housing are not up to date. In such circumstances, the so-called 'tilted balance' is engaged, unless protected assets or areas of particular importance are impacted to the extent the NPPF policies would provide a reason for refusing permission.
- 7.2.16. While the tilted balance is engaged in this case, this does not lead to an automatic assumption that planning permission should be granted for housing in locations that would otherwise conflict with Development Plan policies. Rather in situations where the relevant Development Plan policies are out of date, the NPPF seeks to ensure that the 'presumption in favour of sustainable development' is duly applied.
- 7.2.17. In summary, the proposed development is located outside of the settlement boundary and would result in the encroachment of housing into the countryside resulting in an urbanising impact, harmful to the intrinsic amenity value of the countryside, contrary to Local Plan policies ST1, ST3, and ST5.

- 7.2.18. There is a conflict with Development Plan policies and whether the harm caused by the proposal is outweighed by other material considerations (the benefits of the proposal) is considered in a planning balance section at the end of this report.
- 7.2.19. Comments have been received raising concern that the site had been used as allotments at some point in the past. The site is clearly not currently being used as allotments. It is noted that there are existing allotments to the south of Westfield Cottages (approximately 125m south of the application site), given the situation, no concern is raised that the proposal might reduce the provision of allotments in Swale.
- 7.2.20. Self / Custom Build
- 7.2.21. 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) (the Act), 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.
- 7.2.22. The Council's Self-Build Register, as of the 30/10/2025 Base Period, the Council has 130 individuals seeking 131 plots and 5 associations seeking 32 plots for Self-Build Custom Housing building.
- 7.2.23. The Act places a duty on local authorities to grant sufficient development permissions to meet the demand for self-build and custom housebuilding in their area arising in each statutory Base Period within the three years after the end of a Base Period.
- 7.2.24. The Council is not currently meeting its statutory duty under the Act in respect of granting permissions for Self -Custom Build plots.
- 7.2.25. The Applicant has provided a Unilateral Undertaking which would bind the applicant to ensuring the plots are sold for self-build/custom build purposes in accordance with the Act. The application is in outline form with all matters reserved, which would allow the initial owner of each plot to have primary input into the design and layout of the dwelling.
- 7.2.26. There is sufficient evidence to conclude that the application for the three dwellings meets the definition of Custom – Self Build dwellings. The weight to afford this will be considered further below.
- 7.2.27. Previously developed land
- 7.2.28. 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.
- 7.2.29. 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 constitutes previously developed land. This appeal decision confirms that whilst the partial brownfield status of the site and the presence of existing development in the

locality represents an environmental benefit, it does not in of itself override the restrictive policy approach to new development in the countryside (Policy ST3 of the Local Plan).

7.2.30. Loss of Best and Most Versatile Agricultural Land

7.2.31. Policy DM31 of the Local Plan seeks to safeguard the best and most versatile agricultural land from development.

7.2.32. 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.

7.2.33. 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. Local Plan Policy ST3 sets out the Swale settlement strategy. Part 5 of this Policy advises that at locations in the open countryside, outside the built-up area boundaries shown on the Proposals Map, development will not be permitted, unless certain criteria are met including enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside.

7.3.3. The site is also part of the Upchurch and Lower Halstow Fruit Belt as designated in the Swale Landscape Character and Biodiversity Appraisal 2011 (SLCBA). 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 SLCBA 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.

7.3.4. Policy ST5 (10) requires development to improve the condition and quality of landscapes in the area and ensure that development is appropriate to landscape character and quality. The proposals, for reasons set out below, would not improve the condition and quality of the landscape or be appropriate to the landscape character of the area.

- 7.3.5. Policy DM14 (5) requires development to reflect the positive characteristics and features of the site and locality, the proposed housing would reflect the openness of the area in which it would be set (which is considered to be a positive characteristic of the locality).
- 7.3.6. 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.”*
- 7.3.7. While scale and appearance are reserved matters, it is inevitable that the introduction of dwellings on the site together with any associated hardstanding or parking areas to the front, would detract from the rural landscape character and erode the visual quality of the surrounding area. The development is highly likely to appear as visually prominent in what is currently (with the exception of a single outbuilding) open land.
- 7.3.8. The proposal would extend beyond the established pattern of development and, due to its prominent position in the landscape, would result in harm to the character and appearance of the open countryside. It would appear as a 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.
- 7.3.9. The landscape and visual impacts across the site would be permanent and are considered contrary to policies ST3, ST5, DM14 of the Local Plan, and weigh against the scheme in the planning balance.
- 7.3.10. In terms of DM24, whether the social and or economic benefits of the proposal significantly and demonstrably outweigh the harm to the landscape is a matter considered in the planning balance section at the end of this report.

7.4. **Ecology**

7.4.1. Policy / legislative context

- 7.4.2. 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.

- 7.4.3. 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.’
- 7.4.4. 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.
- 7.4.5. The Swale/Medway SPA and Ramsar sites
- 7.4.6. The application site is located within 6km of The Swale/Medway Special Protection Areas (SPA) and Ramsar which are European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).
- 7.4.7. As the application site is within 6km of the North Kent SPA/Ramsar Sites, the proposed development is likely to have a significant effect, either alone or in-combination, on the coastal Special Protection Areas (SPAs)/Ramsar sites from recreational disturbance on the over-wintering bird interest.
- 7.4.8. Natural England has advised that an appropriate tariff of £337.49 per dwelling (excluding any legal and monitoring officer’s costs) should be collected to fund strategic measures across the Thames, Medway and Swale Estuaries. The necessary contribution (3 x £337.49) has been paid by the applicant in this case.
- 7.4.9. These strategic SAMMS mitigation measures are being delivered through Bird Wise North Kent, which is the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, and the mitigation measures have been informed by the Category A measures identified in the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMM) produced by Footprint Ecology in July 2014.
- 7.4.10. A decision from the Court of Justice of the European Union (*People Over Wind v Coillte Teoranta*, ref. C-323/17) detailed that mitigation measures cannot be taken into account when carrying out a screening assessment to decide whether a full ‘appropriate assessment’ is needed under the Habitats Directive. Given the need for

the application to contribute to the North Kent SAMMS, there is a need for an appropriate assessment to be carried out as part of this application.

- 7.4.11. An Appropriate Assessment has been carried out as per below and has been adopted by the Council as the Competent Authority, which concludes that the proposed development will not adversely affect the integrity of the Swale/Medway SPA and Ramsar Sites.

Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017

- 7.4.12. The project being assessed would result in a net increase of up to 3 dwellings within 6km of the Swale/Medway SPA and Ramsar Sites. In line with Policy CP7 'Conserving and enhancing the natural environment – providing for green infrastructure' and Policy DM28 'Biodiversity and geological conservation' and based upon the best available evidence, a permanent likely significant effect on the SPAs and Ramsar Sites due to increase in recreational disturbance as a result of the new development, is likely to occur. As such, in order to avoid and mitigate for an adverse effect on the integrity of the SPAs and Ramsar Site(s), the development will need to include a package of avoidance and mitigation measures.

- 7.4.13. The North Kent Strategic Access Management and Monitoring Strategy (SAMMS) sets out a strategy to resolve disturbance issues to wintering birds on the North Kent Marshes, focusing on the European Protected Sites and Ramsar Sites and their internationally important bird interest features. Elements within the strategy are:

- Rangers to provide wardening and visitor engagement
- A North Kent Coast dog project to promote responsible dog ownership and encourage walking on lead in sensitive areas
- Codes of conduct developed in partnership with local groups and clubs to raise awareness of recreational disturbance in a variety of activities both on and off of the water
- Interpretation and signage
- New and/or enhanced infrastructure
- Enforcement and Monitoring

- 7.4.14. The report also considered alternative measures, such as legal covenants relating to pet ownership in new developments, and capping visitor numbers at recreational sites. Due to the complexities in enforcing legal covenants and in reducing visitor numbers to the North Kent marshes, it is difficult to have confidence that such measures would be effective in the long term.

- 7.4.15. The suite of strategic mitigation measures are being delivered through the Bird Wise project, a partnership of local authorities and conservation organisations in North Kent, to ensure that development, considered in-combination, does not have an adverse

effect on the integrity of the European sites. A per-dwelling tariff of £337.49 is required as a contribution towards the SAMMS.

7.4.16. Natural England has worked with the north Kent Local Planning Authorities to support them in preparing the SAMMS and the underpinning evidence base. Natural England agree that the mitigation measures to ensure additional impacts from recreational disturbance to the SPAs and Ramsar Sites are ecologically sound. As such, the Applicant does not need to provide their own evidence base on these aspects. Evidence should however be submitted showing that a mitigation contribution payment has either:

- Been made to the Bird Wise scheme through a Unilateral Undertaking; or
- Will be made through a s106 agreement where Heads of Terms have been agreed and the agreement will be signed prior to any permission being granted; or
- Been paid in full prior to consent being granted.

7.4.17. Having considered the proposed mitigation and avoidance measures to be provided in-perpetuity through the secured contribution to the Bird Wise scheme, Swale Council conclude that with mitigation, the plan or project will have no adverse effect on the integrity of the European protected site(s).

7.4.18. The applicant has made the required financial payments under SAMMS through a direct payment to the council.

7.4.19. Natural England have advised that providing that the appropriate assessment concludes that the measures can be secured and providing that there are no other likely significant effects identified (on this or other protected sites) which require consideration by way of appropriate assessment, they will be satisfied that the appropriate assessments will be able to ascertain with sufficient certainty that there will be no adverse effect on the integrity of the European Site from recreational pressure in view of the site's conservation objectives.

7.4.20. Having made this appropriate assessment of the implications of the plan or project for the site(s) in view of that site's conservation objectives and having consulted Natural England and fully considered any representation received, the authority may now agree to the plan or project under regulation 63 of the Conservation of Habitats and Species Regulations 2017.

7.4.21. Site Specific Ecology / Protected Species

7.4.22. The applicant has submitted a Preliminary Ecological Appraisal and landscape plan with associated biodiversity enhancements alongside the application. The KCC Ecological Advice Service have reviewed the application and raised no objection, subject to conditions being imposed on any consent to secure biodiversity improvements, precautionary construction methods, a lighting plan and mitigation of recreational impacts to protected habitat sites.

7.4.23. The site occupies an area of bare ground with short emergent vegetation that has been cleared of scrub. A single dilapidated barn building is present onsite, which was

determined to be of negligible potential for supporting roosting bats, though there is some potential for nesting birds. The site as a whole is 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. Any 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.

7.4.24. Biodiversity Net Gain (BNG)

7.4.25. 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.

7.4.26. The application relates to self-build/custom build housing and is therefore exempt from the BNG requirement. Given the Unilateral Undertaking provided by the Applicant, being a binding commitment to the development being genuinely self / custom build, it is accepted that the development is exempt from the BNG requirement.

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. A core principle of the NPPF is that:

“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. Two access ways are proposed to access the three plots (one accessway would serve two of the plots. Access is not a reserved matter, and KCC Highways have raised no concerns in relation to the access arrangements, and as such no objection is raised.

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. KCC Highways have considered the issue and raised no objection to the proposals from a

highway or transportation perspective. Adequate manoeuvring area exists on site for vehicles to enter and leave in a forward direction, whilst sight lines and visibility splays are considered acceptable by the Local Highway Authority.

- 7.5.5. In terms of traffic volumes, the proposal is for 3 dwellings, KCC Highways are not of the view 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.
- 7.5.6. Assuming the dwellings could accommodate 4 bedrooms, 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.
- 7.5.7. The plots are generous in size, and KCC Highways consider that there would be sufficient space on site to accommodate the required parking, if approved conditions would need to be imposed on any consent to ensure adequate provision is made for onsite parking and vehicles manoeuvring areas. 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.
- 7.5.8. 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, this weighs against the scheme in the planning balance.
- 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 would 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. 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

- 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, as the scheme is in outline form, no detailed design has been presented, at the detailed design stage the housing could be designed in such a way as to avoid any unacceptable overlooking impacts to neighbours.
- 7.7.4. Directly opposite the site lie Breach Cottages. While the proposed dwellings are likely to be larger in scale and introduce elevated views, the layout, set back and positioning of the development would avoid any unacceptable impact on the privacy or living conditions of neighbouring occupiers. There is no reason why, at reserved matters stage, the detailed design and layout of the proposed buildings could not have an acceptable relationship with existing properties (in terms of overlooking, overshadowing, and loss of light). Therefore, no objection is raised.

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. Given the size of the plots, there is no reason to assume that dwellings with acceptable internal floor areas could not be accommodated on the site at the reserved matters stage. It is also considered that the proposals could be laid out in such a way so as to prevent any unacceptable overbearing, overlooking, loss of privacy, overshadowing or enclosing impacts on the occupiers of the three plots themselves.

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 need to 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.

7.10. 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. Section 70(2) of the Town and Country Planning Act 1990 outlines that the decision-maker needs to have regard to the provisions of the development plan and any other material considerations.

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. In this case, the application of policies that protect areas or assets of particular importance do not provide a reason for refusing the development. Therefore, it is necessary to consider if 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.

7.10.5. Benefits

7.10.6. The proposal would deliver benefits, including 3 residential dwellings, which would help address the 5 year supply and self-build dwelling requirement. The Borough's short fall against the 5 year housing need is 1,149 dwellings. The proposal would represent a contribution of 0.26% towards the 5 year housing supply.

7.10.7. In terms of a contribution towards the shortfall in self/custom build housing the proposal would contribute towards meeting the Borough's shortfall in self / custom build homes, albeit this would only be to the extent of 3 dwellings and, as such, would be a small contribution.

7.10.8. There would also be short-term economic benefits during construction (jobs and spending). Future occupiers may also provide spend in local shops. The development would involve jobs and spending during construction. Future residents would spend in shops etc, there would be economic benefits associated with the development. Given the modest scale of the proposal, limited weight is afforded to economic benefits.

7.10.9. Compliance with the development plan

7.10.10. The site is also identified as Grade 1 agricultural land, 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.

7.10.11. The assessment in this report has found that the proposed development is not compliant with the following Development Plan policies:

Local Plan

- ST1 Delivering sustainable development in Swale
- ST3 The Swale settlement strategy
- ST5 The Sittingbourne area strategy
- CP2 Promoting sustainable transport
- CP4 Requiring good design
- DM6 Managing transport demand and impact
- DM14 General development criteria
- DM24 Conserving and enhancing valued landscapes
- DM31 Agricultural land

7.10.12. In terms of the compliance with the development plan, officers consider that in view of the nature and extent of the identified non-compliances with specific policies of the development plan, when looked at as a whole the development plan cannot be said to be complied with. Significant weight is afforded to the harms and conflict with the development plan.

7.10.13. This means that the application should be refused planning permission unless there are material considerations weighing in favour of the application that are of sufficient weight to justify the grant of planning permission contrary to the development plan.

7.10.14. To comply with Policy DM24, the social and or economic benefits of the proposal must significantly and demonstrably outweigh the harm to the landscape character and value of the area. In this case given the residual landscape harm to the undesignated areas of landscape that would be impacted by the development, the social and economic benefits of the proposal are not considered to significantly and demonstrably outweigh the harm. The application is contrary to Part B (1) (2) of Local Plan Policy DM24.

7.10.15. Balance

7.10.16. The Council cannot currently demonstrate a sufficient housing land supply (current supply is 3.97 years). Also, the Council is not currently meeting its statutory duty under the Self Build and Custom Housebuilding Act 2015 (as amended) (the Act) in respect of granting permissions for Self and Custom Build plots.

7.10.17. Consequently, paragraph 11 d) ii) of the Framework is engaged. The location of the application site would be at odds with the settlement strategy and that future occupants would have poor access to services and facilities by sustainable forms of transport.

7.10.18. Notwithstanding the engagement of the tilted balance, 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.

7.10.19. Paragraph 232 of the Framework makes it clear that due weight should be given to existing policies according to the degree of consistency with the Framework. The Framework identifies that the planning system should be genuinely plan-led and expects development to promote sustainable travel modes. While the Local Plan is out of date this does not mean no weight should be afforded to the Plan policies, rather weight given to the policies depending on conformity with the NPPF. In this case the policies are in general conformity with the NPPF. Therefore, the conflict between the proposal and Policies set out above should be given significant weight.

7.10.20. The Framework's objectives to promote sustainable development in rural areas by locating housing where it will maintain the vitality of rural communities and maximise sustainable transport solutions would not be achieved through locating development at the site. Given that the existing settlement strategy is not providing sufficient housing land supply currently, this would temper the conflict with the Framework in this respect.

7.10.21. On balance, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the NPPF taken as a whole.

7.11. **Conclusion**

7.11.1. 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.

7.11.2. 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.

7.12. **Recommendation**

7.12.1. Refuse for the following reason.

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, ST5, CP2, CP4, DM6, DM14 and DM24 of Bearing Fruits 2031: The Swale Borough Council Local Plan 2017 and the National Planning Policy Framework.



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PLANNING COMMITTEE – 5th February 2026

PART 5

Report of the Head of Planning

PART 5

Decisions by County Council and Secretary of State, reported for information

- **Item 5.1 – Unit 1, Jetty Road, Warden, Kent ME12 4NF**

PINS Decision: APPEAL ALLOWED

Committee or Officer Decision: DELEGATED REFUSAL

Observations

Planning permission was sought for single storey front and rear extensions to the shop at the site, a first floor terrace to serve the first floor flat at the site and residential parking to the rear. The main issue was the effect of the development on the character and appearance of the area.

The Inspector found that, whilst deep, the low height and flat roof design of the extension ensured that it would appear subservient to the host building and, noting the scale of other buildings around the site, the size of the extension would appear visually appropriate and not dominant. It was concluded that a sufficient garden would be retained to enable a sense of spaciousness to continue to exist.

Whilst the side elevation would be visible from Sea View Gardens, the Inspector raised no concerns in the impact on that view, again finding the scale of the extension acceptable and mitigated by the provision of fencing to provide greater definition to the plot and be an improvement relative to its current condition. The inclusion of a green roof was also welcomed as it would soften the massing and mitigate the visual impact.

The materials of the extension and the detailing of the balcony was also found to be acceptable.

For these reasons, the development was considered to accord with the local plan and the NPPF and, therefore, the appeal was allowed, and planning permission was granted.

- **Item 5.2 – Webbenditch Cottage, Cold Harbour Lane, Bobbing, Kent ME9 8NN**

PINS Decision: APPEAL ALLOWED

Committee or Officer Decision : DELEGATED REFUSAL

Observations

Planning permission was sought for the erection of a self-build, two bedroom dwelling with associated parking. The main issues were whether the site was a suitable location for housing development having regard to access by sustainable modes of transport and the effect on the Medway Estuary and Marshes SPA. The second of these main issues fell away as a result of the provision of the required SAMMS payment.

In relation to accessibility, the Inspector noted that the site is on a narrow, unlit rural road but close to a lit footpaths which lead to bus stops and the facilities at the Sheppey Way/A249 junction. The ability to reach Newington by bicycle was also noted. From this basis, whilst the Inspector found that there would be a likelihood of car use, it was considered that future occupiers would not be solely dependent. Overall, the Inspector concluded that there are limitations on the choice of modes of transport and the site is not in a sustainable location, but the harm arising from this was modest due to the abovementioned provisions. This was, however, found to be contrary to policies ST1, ST3 and CP2 of the local plan.

The development was found to be acceptable in all other respects and the Inspector weighed factors such as the 5 year housing land supply situation and the securing of the dwelling as a self and custom build dwelling in favour of the proposal. It was also found that the proposal represented the development of brownfield land. In conclusion, the Inspector found that the adverse impacts were modest and did not significantly and demonstrably outweigh its important benefits. Therefore, notwithstanding the conflict with the development plan, the Inspector determined that planning permission should be granted and allowed the appeal.

- **Item 5.3 – Land at The Tractor Shed, Provender Lane, Faversham ME13 0SL**

PINS Decision: NOTICE QUASHED

Committee or Officer Decision : ENFORCEMENT NOTICE ISSUED

Observations

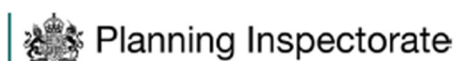
The enforcement notice, which was served on the 21st February 2023, targeted the use of the land at the site for the siting of storage containers. The Inspector found that the containers were not being stored at the site but instead were being kept at the site for storage purposes. The Inspector also identified that the activities occurring at part of the site were different to what was stated in the notice as part of the site was in use as a builders yard and there are other activities occurring at the wider site which indicated that the site should be described as being in mixed use. The Inspector found that altering the notice to address these matters would “fundamentally alter the purpose of the notice, as would finding that a mixed use had occurred.” The Inspector determined that changing the description of the alleged use, as had been suggested, would not be sufficient to encompass all the uses occurring at the site. The Inspector therefore concluded that the enforcement did not specify the alleged breach of planning control with sufficient clarity and therefore the notice was quashed.

PLANNING COMMITTEE – 5th February 2026**PART 5**

Report of the Head of Planning

PART 5

Decisions by County Council and Secretary of State, reported for information



Appeal Decision

Site visit made on 4 December 2025

by B Pattison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th December 2025

Appeal Ref: APP/V2255/W/25/3373193**Unit 1, Jetty Road, Warden, Kent ME12 4NF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Nanthan against the decision of Swale Borough Council.
 - The application Ref is 25/500019/FULL.
 - The development proposed is single storey front and rear extension to the shop, new first floor external terrace to the first floor residential flat and ancillary residential parking at rear of the site.
-

Decision

1. The appeal is allowed and planning permission is granted for single storey front and rear extension to the shop, new first floor external terrace to the first floor residential flat and ancillary residential parking at rear of the site at Unit 1, Jetty Road, Warden, Kent, ME12 4NF in accordance with the terms of the application, Ref 25/500019/FULL, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: PE-03 rev A; PE-04; PE-05; PE-06; and Site Location Plan.
 - 3) No development hereby permitted shall be commenced until a scheme for the implementation of Property Flood Resilience (PFR) measures has been submitted to and approved in writing by the Local Planning Authority.
 - 4) The external surfaces of the development hereby permitted shall be constructed in the materials shown on drawing numbers PE-03 rev A, PE-05 and PE-06.
 - 5) The area shown on approved drawing No. PE-03 rev A as vehicle parking space shall be provided before first occupation of the dwellings hereby permitted, and this area shall at all times be retained for the use of the occupiers of the property.
 - 6) No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times: -
Monday to Friday 0730 - 1800 hours: and Saturdays 0800 - 1300 hours, unless in association with an emergency or with the prior written approval of the Local Planning Authority.

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Preliminary Matter

2. On 16 December 2025, the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework). Whilst broad changes to the structure of the Framework are proposed as part of this consultation, these proposals could be subject to further change and can only be given very limited weight at this stage. It has therefore not been necessary to consult the parties on the changes, and in reaching my decision, I have had regard to the Framework published in December 2024.

Main Issue

3. The main issue is the effect of the proposal on the character and appearance of the host building and local area.

Reasons

4. The appeal site contains a two storey detached building with a tile hung front gable, front balcony, and rendered walls, set back from the main road behind a small access and parking area. The ground floor is in commercial use, whilst the upper storey is a residential flat. To the rear, the plot includes a substantial garden area that is currently overgrown and lacks boundary fencing. This absence of enclosure detracts from the overall appearance of the street scene.
5. The property is within a small grouping of larger, commercial buildings with relatively deep footprints, including the Oasis store and Warden Bay public house. The neighbouring residential dwellings to the side and rear of the appeal site are a mixture of bungalows and smaller scale two storey dwellings, set within small plots.
6. Whilst of notable depth, the proposal's height and flat roof-form would minimise its bulk, ensuring that it would be appreciably lower than the host building's principal roof. When considered in the context of the neighbouring buildings, which are characterised by comparatively large footprints, the extension would fit into the existing built envelope without appearing visually dominant.
7. The Council indicate that the rear garden area is approximately 27 metres in length. Even with the extension's proposed depth, a substantial proportion of this rear area would remain free from development. The retained open space would maintain the spacious character of the plot, whilst the generous setback from the rear boundary would allow the extension to sit comfortably within the site.
8. Due to its location fronting Sea View Gardens, the extension's side elevation would be clearly visible from various points along the street. However, it would appear as a side wall element providing a sense of enclosure to the plot. The addition of a two-metre-high timber-boarded boundary fence would provide definition and structure to the plot that is currently open and overgrown. The combination of this new enclosure and the form of the rear extension would result in a more ordered and maintained appearance. The proposed green roof, which would cover the majority of the flat roof area, would introduce planting which would soften its massing and mitigate its visual presence in public views.
9. The use of render on the extension's elevations would match the predominant facing material on the host property. The rear balcony would introduce a new

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architectural feature, however, the use of obscure-glazed balustrading would not be a particularly unusual material to surround a rear balcony.

10. The increased height of the side extension would be modest, and its flat-roof design would maintain a consistent roof form across the ground floor projections, thereby maintaining a coherent design.
11. For these reasons the proposal would accord with policies CP4, DM14 and DM16 of Bearing Fruits 2031 - The Swale Borough Local Plan (2017) which collectively require that proposals are of good quality design that are well-sited and that extensions are of an appropriate design and quality which respond positively to the style and character of the building being extended.
12. Additionally, the proposal would accord with paragraph 135 of the Framework which requires that developments function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development.

Conditions

13. I have assessed the proposed planning conditions in regard to the advice provided in the National Planning Policy Guidance. In addition to the standard time limit condition, I have imposed a condition requiring compliance with the relevant plans. This is in the interests of certainty.
14. In the interests of character and appearance I have imposed the suggested condition requiring the external materials to be those identified within the drawings.
15. In order to reduce the risk of flooding to future occupiers, I have imposed the Council's suggested condition which requires the submission of a scheme for the implementation of Property Flood Resilience measures. I have also imposed the suggested condition which requires the provision of the identified parking space on site prior to occupation. However, the Framework outlines that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. As a result, I have modified the condition so that it does not result in the removal of permitted development rights.
16. A condition restricting the construction working hours is necessary to mitigate the effects on the living conditions of neighbouring occupiers.

Conclusion

17. For the above reasons, and having had regard to all other matters raised, I conclude that the proposed development would accord with the development plan and the Framework. The appeal is therefore allowed.

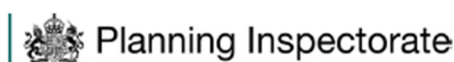
B Pattison

INSPECTOR

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Appeal Decision

Site visit made on 15 October 2025

by H Miles BA (hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 JANUARY 2026

Appeal Ref: APP/V2255/W/25/3368690

Webbenditch Cottage, Cold Harbour Lane, Bobbing, Kent ME9 8NN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Jake Shaw against the decision of Swale Borough Council.
 - The application Ref is 24/504803/FULL.
 - The development proposed is erection of a self-build 2 bed dwelling with associated parking and landscaping.
-

Decision

1. The appeal is allowed and planning permission is granted for erection of a self-build 2 bed dwelling with associated parking and landscaping at Webbenditch Cottage, Cold Harbour Lane, Bobbing, Kent ME9 8NN in accordance with the terms of the application, Ref 24/504803/FULL, subject to the conditions in the attached schedule.

Preliminary Matters

2. A unilateral undertaking (UU) has been submitted which seeks to secure the property as self-build housing. I will return to this matter later in the decision.
3. The description of development is taken from the decision notice and appeal form as it accurately and clearly describes the development proposed.

Main Issues

4. The main issues are
 - Whether the site is a suitable location for housing with particular regard to its accessibility by sustainable transport modes.
 - The effect of the proposed development on the Medway Estuary and Marshes Special Protection Area (SPA).

Reasons

Sustainable transport

5. Together policies ST1, ST3 and CP2 of Bearing Fruits 2031, The Swale Borough Local Plan (2017) (LP) set out the settlement strategy for Swale. They seek growth to be focused in existing built up areas with development in the countryside only permitted if it protects the intrinsic value, tranquillity and beauty of the countryside amongst other things, and for development to promote access to sustainable forms of transport.

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6. Webbenditch Cottage is located outside the built up area boundaries and in the countryside for the purposes of the development plan. It is on a narrow rural road with no lighting or pavements until it reaches Bobbing Hill, a short distance away. From the corner of Bobbing Hill and Cold Harbour Lane there is a lit pedestrian pavement which leads to the A2, where there are bus stops within a short walk and these provide connections between Chatham and Sittingbourne. From here, there are also pedestrian routes into Sittingbourne, although they cross a busy junction of the A2/A249. From the corner of Bobbing Hill there is also a paved, but partly unlit pedestrian footpath which connects with Sheppey Way where there is a pub, fast food restaurant and convenience store within a petrol station, as well as a school beyond. There are pedestrian refuges to cross Sheppey Way. Also, Newington Train station could be reached by cycle along Bobbing Hill and the A2, and although this is a busy main road the route is direct and mainly lit and therefore it would be suitable for some cyclists.
7. An appeal decision from October 2023 for an annexe at the appeal site (ref: APP/V2255/W/23/3321025) states that accommodation would be heavily dependent on the car. Subsequently, planning permission has been granted for a new dwelling in October 2024 at Pigeon Farm Cottage (LPA ref 24/503217/FULL) which is at the corner of Bobbing Hill and Cold Harbour Lane where the pedestrian footpath ends. The Council determined, from that location, future residents would have reasonable access to a range of facilities and services within a 10 minute walk of the site and would not be solely dependent on the private car.
8. From the appeal site to the corner of Bobbing Hill, occupiers would have to walk along a short, straight, stretch of road with narrow verges but no pavement or streetlighting. This would not be an attractive route for pedestrians when it is dark, or for those with children or mobility issues. Nevertheless, given its character and length, it is likely that some occupiers would take the short walk to access the nearby services and facilities. Consequently, in this case and based on the evidence before me now, whilst car journeys would be likely to be required for some trips, occupiers would not be solely dependent on private cars.
9. Although there would be an increase in car journeys, the number of movements associated with this two bedroom dwelling would be limited. In these circumstances, there would not be harm to highway safety.
10. There are limitations as to the choice of transport modes for future occupiers and therefore the proposed development would not promote walking, cycling or the use of public transport and would not be in a sustainable location. However, residents would not be wholly dependent on the car and there would be access to some nearby services and facilities by a choice of sustainable transport modes. This would limit the need to travel and minimise any associated effect on the intrinsic value, tranquillity and beauty of the countryside. As such, the harm in this respect would be modest.
11. Consequently, the proposed development would not be a suitable location for housing with particular regard to its accessibility by sustainable transport modes. Therefore, it would conflict with policies ST1, ST3 and CP2 of the LP in this regard, the aims of which are set out above.

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Special Protection Area

12. The Medway Estuary and Marshes SPA are designated because of their rare and vulnerable birds and regularly occurring migratory species. Due to the potential for recreational disturbance and without any mitigation in place, in combination with other plans and projects, there would be a likely significant effect on the interest features of the site from the proposed development.
13. The Conservation of Habitats and Species Regulations 2017 require competent authorities before granting consent for a plan or project, to carry out an appropriate assessment (AA) in circumstances where the plan or project is likely to have a significant effect on a European site, alone or in-combination with other plans or projects. I am therefore required to undertake an AA.
14. The Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring (SAMM) Strategy recommends that the pressures from recreational activities can be appropriately mitigated via approaches which include a dog project, wardening and new access infrastructure and parking, amongst other things. Natural England has been consulted on this specific application and indicated that the SAMM will provide appropriate mitigation. I have taken these comments into account. As such, the mitigation measures proposed within it would be effective in this case.
15. I have clear evidence that a payment towards this strategic scheme has already been made. Consequently, I am satisfied that there would be adequate mitigation for the effect on the SPA and as such, I can be certain that there would be no adverse effect on the integrity of the SPA.
16. The development would therefore be in accordance with policies ST1, DM14 and DM28 of the LP. Together these require that development conserves biodiversity and natural environments with the highest level of protection for internationally designated sites. Albeit the lack of harm in this regard would be a neutral matter in any planning balance.

Other Matters

17. The surrounding area is characterised by clusters of built form within the countryside. The proposed development would introduce a new building which would be subordinate to the existing property and set away from the site boundaries. The pair of properties would be suitably spacious and appropriate to the existing character and appearance of this area. Any noise associated with a single new dwelling would not significantly differ from the existing residential use. Nevertheless, the lack of harm from these matters does not weigh in favour of the development.
18. A UU has been submitted which seeks to secure that the property would be self-build housing. Given the nature of this requirement, a planning obligation is an appropriate method of securing this type of housing. All persons with a registered interest in the land are now parties to the agreement and therefore it would be enforceable against them. The obligation secures that the development would be in accordance with the definition of self-build housing in the Self Build and Custom Housebuilding Act 2015, and first occupation would be by the applicant, with occupation for three years. It does not expressly state that the initial owner must have primary input into its final design and layout. However, it is stated on the self-

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certified proforma, and this is an appeal made by an individual for a single dwelling. Along with the restrictions set out, I am satisfied that, based on the evidence in this case, the proposed property would be suitably secured as self-build housing. The biodiversity net gain condition would also not apply to certain types of self-build and custom build development.

19. The Council cannot demonstrate a 5 year supply of deliverable housing sites, and the main parties put to me that there is around a 4 year supply. Evidence has also been submitted by the appellant that there is a shortfall of 134 self-build plots in Swale, and there is little to dispute this figure by the Council. Particularly when considered together, there is a clear shortfall for the type of development proposed.
20. The written ministerial statement entitled 'Planning Reform: Next Phase' supports bringing forward small and medium sites and a diverse mix of homes. The National Planning Policy Framework: draft text for Consultation (2025) provides a list of exceptions to assess development outside settlements including with regard to previously developed land and criteria to be met in situations where there is an evidenced unmet need for development. However, it is in draft and therefore may be subject to change before the final document is published. As such, I afford it limited weight. Nonetheless, the proposed development would provide a new dwelling in this area and would make a contribution towards the undersupply of housing including custom and self-build housing. The development would also be on Brownfield land, albeit outside a settlement. Overall, the appeal scheme makes a valuable positive contribution to these multiple important matters.

Planning Balance

21. The Council does not have a five year housing land supply. Consequently, the presumption in favour of sustainable development contained within paragraph 11 d) of the National Planning Policy Framework 2024 (Framework) would be engaged. This requires that planning permission be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits of the development, when assessed against the policies within the Framework taken as a whole having particular regard to key policies.
22. The proposed development would provide one new self-build dwelling. This would make a small but positive contribution to the provision of housing, including towards these specific housing requirements, and would be an effective use of land in this regard. Given the shortfall in both these respects, these are important benefits which weigh in favour of the appeal scheme.
23. On the other hand, for the reasons above, harm is identified with respect to the location for housing with particular regard to the accessibility of the development by sustainable transport modes. There is therefore some conflict with the Framework's aim to direct development to sustainable locations and the relevant local plan policies. However, for the reasons set out above the harm associated with the appeal scheme would be modest.
24. Consequently, overall, the modest adverse impacts of the development would not significantly and demonstrably outweigh its important benefits. As a result, the application of paragraph 11 d) of the Framework indicates that permission should be granted, when assessed against the policies in the Framework taken as a whole having particular regard to key policies.

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Conditions

25. Regard has been had to the planning conditions that have been suggested by the Council and they have been considered against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents.
26. The standard implementation condition is attached and in the interests of certainty a condition to define the plans with which the scheme should accord. Details of hard and soft landscaping are required along with their implementation and replacement if needed, in the interests of the character and appearance of the area and biodiversity. The first two parts have been combined for brevity. However, reference to Fig Tree House has been removed as this does not relate to the scheme under consideration.
27. Details of sustainable construction techniques are required to promote water and energy efficiency, and details of ecological enhancements are also needed for biodiversity reasons. The provision and retention of parking spaces is necessary in the interests of highway safety, and cycle parking in the interests of sustainable transport. A condition to ensure the access adjacent to the highway is made of bound material is also required for highway safety purposes. However, the installation of electric vehicle charge points in new homes is covered by building regulations and as such a condition requiring this provision would not be necessary, and it has not been included. Hours of construction are controlled by other legislation and there is little before me to indicate that there are specific circumstances at this site, which would require further limitations.
28. During the course of this appeal a UU has been submitted which secures the property as self-build housing. This is an appropriate mechanism to ensure the house is built and occupied in this way. Therefore, the suggested condition relating to this matter is not included.

Conclusion

29. The proposal conflicts with the development plan as a whole, but in this case the provisions of the Framework indicate that planning permission should be granted otherwise than in accordance with the development plan.
30. For this reason, I conclude that the appeal should be allowed, subject to conditions.

H Miles

INSPECTOR

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Schedule of Conditions

- 1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which the permission is granted.
- 2) The development hereby approved shall be carried out in accordance with drawing title numbers: 22_147-PL-11 Site Location Plan, 22_147-PL-13 Proposed Floor Plan and Block Plan, 22_147-PL-14 Proposed East and North Elevations, 22_147-PL-15 Proposed West and South Elevations.
- 3) No development beyond the construction of foundations shall take place until details of sustainable construction techniques such as water conservation and recycling, renewable energy production including the inclusion of solar thermal or solar photo voltaic installations, and energy efficiency have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be incorporated prior to the first occupation of the development.
- 4) No development beyond the construction of foundations shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include boundary treatment and all other means of enclosure, hard surfacing details and materials including pathways, trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, and an implementation programme of works. All hard and soft landscape works shall be carried out in accordance with the approved details prior to the first occupation of the development or in accordance with the approved implementation programme.
- 5) Upon completion of the approved landscape works, if any trees or shrubs are removed, dying, severely damaged or becoming seriously diseased within five years of planting, details of the size, species and an implementation programme for replacement trees or shrubs shall be submitted to and approved in writing by the Local Planning Authority. Replacement planting shall be carried out in accordance with the approved details.
- 6) Prior to the first occupation of the development hereby approved, the vehicle parking spaces as shown on the approved plans shall be provided and permanently retained thereafter. The parking areas shall be kept available for such use at all times and shall not be used for any other purpose.
- 7) Prior to the first occupation of the development hereby approved, secure and covered cycle parking facilities for a minimum of two bicycles shall be provided and permanently retained as such thereafter.
- 8) Prior to the first occupation of the development hereby approved an ecological enhancement plan shall be submitted to and approved in writing by the Local Planning Authority. The plan shall detail what ecological enhancements will be incorporated in to the site. The ecological enhancement plan shall be carried out prior to the first occupation of the development and the enhancements shall be permanently retained as such thereafter.

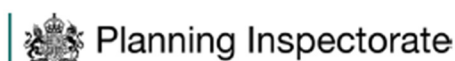
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- 9) The first 5 metres of the access from the edge of the highway shall be constructed using a bound surface material and shall be permanently retained as such thereafter.

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Appeal Decision

Site visit made on 20 November 2025

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2026

Appeal Ref: APP/V2255/C/23/3319501

Land at The Tractor Shed, Provender Lane, Norton, Faversham ME13 0SL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Albert Connor against an enforcement notice issued by Swale Borough Council.
 - The notice was issued on 21 February 2023.
 - The breach of planning control as alleged in the notice is "Without planning permission the material change of use of land from agriculture to the stationing of storage containers."
 - The requirements of the notice are:
 1. Cease the use of the Land for the stationing of storage containers except those marked "A" and "B" on the attached plan.
 2. Permanently remove from the Land all the storage containers except for those marked "A" and "B" on the attached plan.
 - The period for compliance with the requirements is six (6) months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act"). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Decision

1. The enforcement notice is quashed.

Matters concerning the notice

2. It is incumbent upon me to put the notice in order. The notice alleges that a material change of use of the land "from agriculture to the stationing of storage containers" has occurred. There is no evidence to suggest that the land edged red on the plan attached to the notice was in agricultural use before the containers were stationed on the land. There is however no need for the former use to be identified in the allegation and therefore "from agriculture" could be deleted without causing injustice.
3. There is no suggestion within the allegation that any operational development has occurred. It is reasonable to assume therefore that the Council consider the storage containers to be moveable structures, like caravans. It is therefore the purpose for which the storage containers are stationed that constitutes the use of land, not the "stationing" itself.
4. Section 173(1)(a) of the 1990 Act requires a notice to include the matters which appear to the local planning authority to constitute a breach of planning control. Section 173(2) confirms that a notice complies with section 173(1)(a) if it enables any person on whom a copy of it is served to know what those matters are.
5. The purpose for which the storage containers are stationed on this land is not discernible from the wording of the allegation. The reasons for issuing the notice

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however refer to *"the use of the land for the storage of containers"*. Storing containers is a use of land, however this is not the same as what has been alleged. The 'storage of containers' would infer that containers come and go from the land, and that they are not themselves put to any purpose while being stored.

6. I saw during my site visit that the storage containers are not themselves being stored. Many are numbered and the appellant explained that he rents them out, in effect as self-storage units. I was also shown inside a container by the person renting it. Their container was being used to store fishing tackle, and materials and equipment they said are used in the operation of their business. This activity is clearly independent of the use of the building, which the appellant rents out to Garden and Orchard Mowers.
7. Further, a fence divides the land into two parts. The part not containing the building has building materials stored on it and waste materials stored in skips, as well as 3 containers. The landowner advised that 2 of these containers were rented from him, while the tenant has brought on the additional container.
8. The allegation as set out in the notice is incorrect. Given the discrepancies between what is set out in the notice and what I saw on site, I sought the appellant's and Council's clarification as to what activities were taking place on the land at the time the notice was issued. I also sought their views on whether the allegation could be corrected to accurately describe those activities without causing injustice.
9. In terms of activities taking place on the land, the Council confirms that, at the time the notice was issued, the first floor of the building was in use as a personal training studio. The studio has the benefit of planning permission (application reference 17/502661/FULL). They are aware that Garden Orchard and Mowers occupy the ground floor of the building and use outside areas for the display of goods and for storage. They confirm the landowner's Planning Contravention Notice response refers to the containers being rented out for storage purposes. They also advise that in June 2021 a case was raised with the enforcement team which has the description 'waste'.
10. The Council do not however consider the land has been divided or that part of it is being used as a builder's yard. They refer to the use of the land having *"fluidity"* and confirm that the notice is directed at securing the removal of containers used for storage purposes.
11. The appellant confirms the containers are used for storage purposes and have been used as such since before 2013. The exclusion of the area of land where building materials etc are being stored would fundamentally alter the purpose of the notice, as would finding that a mixed use has occurred. The appellant raises significant concerns that such changes to the notice are fundamental and would cause them injustice.
12. Both main appeal parties have however indicated that they would not object to the allegation being corrected to read *"Without planning permission, a material change of use to a mixed use comprising the sale and repair of mowers and tractors, and the stationing of containers for storage purposes"*. However, I am no longer convinced that such a description encompasses all the uses taking place on the land.

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13. Both the appellant and Council remain of the opinion that the land forms a single planning unit. Accepting that fact and having regard to what I saw and the comments received, the land edged red on the plan attached to the notice was clearly being put to several primary uses at the time the notice was issued. The land was therefore in a mixed use, and it is necessary to identify all its component uses.
14. Garden Orchard and Mowers occupy the ground floor of the building, they have at least one container used for incidental storage purposes and make use of the accesses, parking area and other outside space. The containers used for storage purposes occupy identifiable areas of the land, but people renting those containers have use of the accesses, parking area and other outside space.
15. The personal training studio occupies the first floor of the building. I have not been provided with any details to show how the first floor is accessed or whether customers make use of outside areas for parking and access. It is not therefore clear whether the personal training studio use is a component part of the mixed use.
16. It is not disputed that skips containing waste were located on the land. It is not clear however whether they constitute a primary use or are incidental to other activities taking place on the land.
17. Taking the above factors together, the land is, on the balance of probabilities, in a mixed use. The component parts of that mixed use are not clear from within the 'four corners of the notice' or from the additional information I have been provided with. To correct the notice without being able to precisely identify the component parts of the mixed use would cause injustice to the appellant and conflict with section 173(2) of the 1990 Act.

Conclusion

18. For the reasons given above, I conclude that the enforcement notice does not specify the alleged breach of planning control with sufficient clarity. It is not open to me to correct the allegation in accordance with my powers under section 176(1)(a) of the 1990 Act (as amended) as injustice would be caused were I to do so. The enforcement notice is therefore invalid and shall be quashed.
19. In these circumstances, the appeal on the grounds set out in section 174(2) (b), (a) (f) and (g) of the 1990 Act and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act does not fall to be considered.

M Madge

INSPECTOR

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