

# Agenda

## Planning Committee Meeting

Date: Thursday, 21 May 2026

Time 7.00 pm

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

Membership: To be confirmed following Annual Council on 13 May 2026.

Quorum = 6

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### Pages

#### Recording and Privacy Notice

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#### 1. Emergency Evacuation Procedure

Visitors and members of the public who are unfamiliar with the building and procedures are advised that:

- (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.
- (b) Exit routes from the chamber are located on each side of the room, one directly to a fire escape, the other to the stairs opposite the lifts.
- (c) In the event of the alarm sounding, leave the building via the 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 5 February 2026 (Minute Nos. 713 – 720), the Extraordinary [Meeting](#) held on 10 March 2026 (Minute Nos. 792 – 794), the Extraordinary [Meeting](#) held on 26 March 2026 (Minute Nos. 851 – 855), the [Meeting](#) held on 2 April 2026 (Minute Nos. 872 - 879), and the Planning Working Group held on 23 April 2026 (Minute Nos. to-follow) as correct records.

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 20 May 2026.

5. Deferred Item 1 - 25/502451/FULL New Acres, Spade Lane Hartlip 9 - 42
  6. 2.1 - 25/503466/FULL Land North of Solar Farm, Eastchurch 43 - 98
  7. 4.1 - Spirit of Sittingbourne Multi Storey Car Park, Sittingbourne 99 - 108
  8. Part 5 applications 109 - 128
- Decisions by County Council and Secretary of State, reported for information.

**Issued on Tuesday, 12 May 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](mailto:democraticservices@swale.gov.uk). To find out more about the work of this meeting, please visit [www.swale.gov.uk](http://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

**21<sup>ST</sup> May 2026**

#### **Standard Index to Contents**

**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

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**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 – 21<sup>st</sup> May 2026**

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

### **DEFERRED**

|                            |                |                             |
|----------------------------|----------------|-----------------------------|
| <b>DEF1 25/502451/FULL</b> | <b>HARTLIP</b> | <b>New Acres Spade Lane</b> |
|----------------------------|----------------|-----------------------------|

### **PART 2**

|                           |                   |                                 |
|---------------------------|-------------------|---------------------------------|
| <b>2.1 25/503466/FULL</b> | <b>EASTCHURCH</b> | <b>Land North Of Solar Farm</b> |
|---------------------------|-------------------|---------------------------------|

### **PART 4**

|                           |                      |                                                      |
|---------------------------|----------------------|------------------------------------------------------|
| <b>4.1 26/500901/FULL</b> | <b>SITTINGBOURNE</b> | <b>Spirit Of Sittingbourne Multi Storey Car Park</b> |
|---------------------------|----------------------|------------------------------------------------------|

### **PART 5**

|                            |                       |                                   |
|----------------------------|-----------------------|-----------------------------------|
| <b>5.1 22/501765/LDCEX</b> | <b>MINSTER-ON-SEA</b> | <b>Happy Days, Bell Farm Lane</b> |
|----------------------------|-----------------------|-----------------------------------|

|                           |                 |                                         |
|---------------------------|-----------------|-----------------------------------------|
| <b>5.2 25/502836/FULL</b> | <b>TUNSTALL</b> | <b>58 Roseleigh Road, Sittingbourne</b> |
|---------------------------|-----------------|-----------------------------------------|

|                             |                |                                  |
|-----------------------------|----------------|----------------------------------|
| <b>5.3 21/500428/CHANGE</b> | <b>SELLING</b> | <b>Land North of Perry Leigh</b> |
|-----------------------------|----------------|----------------------------------|

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## PLANNING COMMITTEE – 21<sup>st</sup> May 2026

## DEFERRED ITEM

Report of the Head of Planning

### DEFERRED ITEMS

Reports shown in previous Minutes as being deferred from that Meeting

|                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                       |                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|-----------------------------------------------------------------------------------|
| <b>DEF ITEM 1 - REFERENCE NO - 25/502451/FULL</b>                                                                                                                                                                                                                                                                                                                                                                                            |                                       |                                                                                   |
| <b>PROPOSAL</b> - Retention of existing 8 plot gypsy traveller site, each with 2 mobile homes and 2 touring caravans and associated day rooms, new access, driveway, hard standing, package treatment plants, boundary fencing and landscaping (previously granted at appeal reference APP/V3355/W/20/3254539) (retrospective).                                                                                                              |                                       |                                                                                   |
| <b>SITE LOCATION</b> - New Acres, Spade Lane, Hartlip, Kent ME9 7TT                                                                                                                                                                                                                                                                                                                                                                          |                                       |                                                                                   |
| <b>RECOMMENDATION</b> Delegate to the Head of Planning to grant planning permission subject to appropriate conditions, with further delegation to the Head of Planning / Head of Legal Services (as appropriate) to negotiate the precise wording of conditions, including adding or amending such conditions as may be necessary and appropriate.                                                                                           |                                       |                                                                                   |
| <b>APPLICATION TYPE</b> – Full Major                                                                                                                                                                                                                                                                                                                                                                                                         |                                       |                                                                                   |
| <b>REASON FOR REFERRAL TO COMMITTEE</b> - The recommendation of Officers is contrary to the objections received from Hartlip Parish Council and they have requested that, in that circumstance, the application is determined by the Council's Planning Committee. The application has also been called-in to Planning Committee by Cllr R. Palmer.                                                                                          |                                       |                                                                                   |
| <b>Case Officer</b> – Christian De Grussa                                                                                                                                                                                                                                                                                                                                                                                                    |                                       |                                                                                   |
| <b>WARD</b><br>Hartlip, Newington And Upchurch                                                                                                                                                                                                                                                                                                                                                                                               | <b>PARISH/TOWN COUNCIL</b><br>Hartlip | <b>APPLICANT</b><br>Mr Frank Mongen<br><b>AGENT</b><br>Perfect Pitch Planning Ltd |
| <b>DATE REGISTERED</b><br>25 July 2025                                                                                                                                                                                                                                                                                                                                                                                                       |                                       | <b>TARGET DATE</b><br>08 April 2026                                               |
| <b>BACKGROUND PAPERS AND INFORMATION:</b><br>The full suite of documents submitted and representations received pursuant to the above application are available via the link below: -<br><br><a href="https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=SXSH6STYLDL00">https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&amp;keyVal=SXSH6STYLDL00</a> |                                       |                                                                                   |

## 1. BACKGROUND

- 1.1 This application was reported to the Planning Committee meeting on 2<sup>nd</sup> April 2026. The original committee report is attached at Appendix A. At that meeting, Members resolved the following:

*“That application 25/502451/FULL be deferred to allow the Planning Working Group to meet on site.”*

- 1.2 The site meeting took place on 23 April 2026. The minutes from that site meeting will be included within the same agenda pack as this report.
- 1.3 Following the Planning Working Group site meeting, this application is now being reported back to the Planning Committee for determination.
- 1.4 One matter to provide an update in relation to is that, upon being notified of the Planning Committee, the Environment Agency wrote to confirm that they have no further comments to make.
- 1.5 On 8<sup>th</sup> May 2026, the Council has received a letter from the Ministry of Housing, Communities and Local Government who have confirmed that they received third party requests to call-in the application for determination by the Secretary of State. MHCLG have set out that *“the Secretary of State has decided not to call in this application. He is content that it should be determined by the local planning authority.”*
- 1.6 The MHCLG letter went on to stress that their determination has been made without making any assessment as to whether the development should be considered EIA development and that the LPA remain the responsible authority for determining whether the development is EIA development for the purposes of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. In this case, the Council had not adopted a Screening Opinion in respect of the proposal. However, the development has now been screened and an opinion has been adopted. It has been concluded that the development is not EIA Development.
- 1.7 It is noted that an interested party raised at the site visit that noise from the use of generators had caused disturbance to living conditions at properties within the vicinity of the site. It is understood that a connection to mains electricity will be able to be provided once planning permission is granted and, as such, this matter would be addressed. It is not considered necessary to impose a condition addressing the use of generators at the site.

## 2. RECOMMENDATION

- 2.1. The recommendation remains to delegate to the Head of Planning to grant planning permission subject to the conditions that were previously specified in the report that is attached at Appendix A.



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|                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                       |                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|-----------------------------------------------------------------------------------|
| <b>2.2 REFERENCE NO</b> - 25/502451/FULL                                                                                                                                                                                                                                                                                                                                                                                                     |                                       |                                                                                   |
| <b>PROPOSAL</b> - Retention of existing 8 plot gypsy traveller site, each with 2 mobile homes and 2 touring caravans and associated day rooms, new access, driveway, hard standing, package treatment plants, boundary fencing and landscaping (previously granted at appeal reference APP/V3355/W/20/3254539) (retrospective).                                                                                                              |                                       |                                                                                   |
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## 1. SITE LOCATION AND DESCRIPTION

- 1.1 In terms of its overall setting, the application site is located within a flat area of land bound by the A2, Spade Lane, South Bush Lane and Meresborough Lane. Spade Lane contains a few dispersed houses on its eastern side and South Bush Lane has sporadic housing on both sides. To the south is Meresborough Lane which also has sporadic housing to each side. More significant development exists adjacent to the A2 including a car business and a storage facility. Notwithstanding the presence of the development on the A2, the other roads are rural in nature, being generally single-track and surrounded by open land.

- 1.2 The site extends for some considerable depth towards South Bush Lane (approximately 289m). The site measures 1.6 hectares in area.
- 1.2. The site has been used for the siting of caravans, with this use being lawful for a three-year period up to 8th June 2025 as a result of a planning permission granted following an appeal against the refusal of planning application 19/503694/FULL as detailed below. That permission enabled the occupation of the site by persons who met the definition of Gypsy and traveller that is set out at Annex 1: Glossary of Planning Policy for Traveller Sites. That was enforced by condition 1 of the applicable permission. Condition 3 of that permission limited the number of caravans at the site to 16 and the number of plots to 8.
- 1.3. Under the terms of the permission, a pre-existing access from Spade Lane was required to be replaced. This was detailed within approval of details application 22/503798/SUB. That approved access appears to have been implemented.
- 1.4. An earlier permission, allowed at appeal under the terms of application 16/506942/FULL authorised a comparable use between 15 December 2017 and three years after that date.
- 1.5. The site is enclosed by and contains means of enclosure that range from timber fences, brick walls/columns, and gates.

## 2. PLANNING HISTORY

- 2.1. SW/13/1485 - Change of use of the land to a residential gypsy caravan site comprising two pitches, including the laying of hardstanding, new access, associated access track and amenity block. Refused for the following reasons:

- Unsustainably located within the open countryside
- Harm to the visual amenities of the surrounding area
- Harmful impact on residential amenities as a result of noise and activity.
- Unjustified loss of best and most versatile agricultural land

An appeal against the refusal was dismissed at appeal for the following reasons:

- The proposal would not promote the use of sustainable modes of transport.
- Harm to the character and appearance of the surrounding landscape
- Harmful loss of best and most versatile agricultural land
- In combination, the proposal would not represent a sustainable form of development.

- 2.2. 16/506942/FULL - Proposed private traveller site comprising 8 pitches, each with a mobile home, touring caravan and utility room together with access road. Refused for the following:

- Harm to the character and appearance of the surrounding landscape.
- Unacceptable loss of best and most versatile agricultural land.

- Unsustainably located within the open countryside causing a reliance on journeys by unsustainable modes of transport.
- Detrimental to highway safety due to the inability to provide adequate visibility splays at the access.

The above application was subsequently allowed at appeal but only for a time limited period of three years so that it could be reassessed against an updated supply of sites for the Gypsy, Traveller and Travelling Showpeople population across Swale Borough. At that time, the Inspector found harm to arise on the grounds of:

- The harm to the character and appearance of the area was unacceptable and greater than was identified in the earlier appeal decision which addressed a smaller and more compact development.
- The loss of agricultural land.

2.3. 19/503694/FULL - Change of use of land to an 8 pitch gypsy traveller site, with associated day rooms, new access, drive way, hard standing, package treatment plants, boundary fencing and landscaping (part retrospective). Refused for the following:

- Harm to the visual amenities of the surrounding area and the character and appearance of the countryside
- Harmful loss of best and most versatile agricultural land
- Recreational disturbance to the Swale Special Protection Area

The above application was subsequently allowed at appeal on 8th June 2022 but only for a time limited period of three years so that the residents can have opportunity to find an alternative site and so that opportunity exists for further sites to come forward. Key points within the appeal decision are considered to be as follows:

- *“The site is highly visible from the surrounding area, including from the public footpath which runs across the open land to the north. Within the predominantly open and rural landscape, the existing site appears prominent and discordant.*
- Any landscaping proposed to soften the appearance of the site would have to “be so significant to be effective that it would, in itself, appear incongruous within the area.”
- Around 70% of the land in the Swale Borough is BMV agricultural land and other land is constrained and so it would be difficult to locate on land that is not within this definition. However, in the absence of evidence of a search of such sites, a policy conflict was identified and this was given moderate weight.
- The third reason for the refusal of the application, related to the Swale Protection Area, was addressed prior to the appeal hearing.
- At that time, a 3.5 year supply of Gypsy and traveller sites existed but the ‘windfall’ approach that is contained within Policy DM8 was providing sites in excess of the GTAA identified need. However, the inability to demonstrate a 5 year supply of sites was considered to weigh in favour of the proposal.
- Regard was had to the personal circumstances of the applicants and occupiers of the site, which were given significant weight.

- Moderate harm was attributed to the deliberate unauthorised nature of the development.
- The harm identified was considered to outweigh the benefits and, as such, permanent permission should not be granted. However, it was found that temporary permission should be granted as this *“would be an acceptable time period and would enable the residents and the local situation to gain an opportunity for alternative sites.”*

### 3. PROPOSED DEVELOPMENT

- 3.1. Planning permission is sought for the use of the site for the purposes of providing of 8 Gypsy and traveller pitches, each with space for 2 mobile homes, 2 touring caravans, and associated amenity/utility blocks. The description refers to the retention of the existing access, driveway and hard standing. Package treatment plants, boundary fencing and landscaping are also features of the development.
- 3.2. This application follows the lapsing of the temporary permission granted under the terms of the abovementioned 2019 application on the 8th of June 2025.

### 4. REPRESENTATIONS

- 4.1. Two rounds of consultation have been undertaken, during which letters were sent to neighbouring occupiers. A notice was displayed at the application site and the application was advertised in the local newspaper. Full details of representations are available online.
- 4.2. During the first round 8 letters of representation objecting to the application were received. Excluding duplicates, 9 letters of representation objecting to the application were received in relation to the second consultation. Concerns/ comments were raised in relation to the following matters:

| First Round Comments                                                                                                   | Report reference                                                                                                                                                                          |
|------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Detrimental to highway safety and impact on the free flow of traffic, contrary to Policy DM6 and ST1.                  | Section 7.7                                                                                                                                                                               |
| Exacerbation of inadequacy of local infrastructure including highways, education and health provisions.                | Sections 7.7. At eight pitches, the development is not of a scale that would derive education or health contributions.                                                                    |
| Harmful visual impact to the surrounding area                                                                          | Section 7.3                                                                                                                                                                               |
| Lack of consultation and insufficient details                                                                          | Sections 4.1 and 4.2 address consultation. Sufficient details are considered to have been submitted.                                                                                      |
| Overdevelopment of the plot, with double the number of caravans.                                                       | Sections 7.2.34 and throughout.                                                                                                                                                           |
| Conditions on former permission ignored including a period of time where a much higher number of caravans was present. | Planning practice guidance states that development should not be refused if any unacceptable matters can be made acceptable through conditions. The likelihood of breach is not a factor. |

|                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                               |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Overlooking and lack of privacy has necessitated the erection of boundary fencing. Noise, lighting and disturbance are also harmful impacts of the development. The development therefore conflicts with policies E1, DM14 and DM19. | Section 7.4                                                                                                                                                                                                                                                   |
| Unacceptable loss of agricultural land                                                                                                                                                                                               | Section 7.2.30 to 7.2.33                                                                                                                                                                                                                                      |
| The site has been occupied by persons that do not meet the definition of Gypsy or Traveller.                                                                                                                                         | Section 7.2.20                                                                                                                                                                                                                                                |
| Unsustainably located in countryside away from all facilities required for day-to-day living.                                                                                                                                        | Section 7.2.4                                                                                                                                                                                                                                                 |
| Absence of utilities and unacceptable living conditions, contrary to policies H4 and DM19.                                                                                                                                           | It is known that securing an electricity connection is subject to planning permission being granted. Other provisions would be able to be made for the accommodation to be adequate for the intended occupiers.                                               |
| Accusations made of anti-social, unneighbourly and other unacceptable or unlawful behaviour.                                                                                                                                         | Officers are not in a position to comment on these matters and will make a recommendation based on the consideration of planning merits.                                                                                                                      |
| Removal of trees                                                                                                                                                                                                                     | No tree removal is proposed.                                                                                                                                                                                                                                  |
| The personal circumstances of the applicant's should not outweigh the identified harms.                                                                                                                                              | Sections 7.2.19 and 7.11.9                                                                                                                                                                                                                                    |
| The effect of the development on the Special Protection Area should be mitigated through a SAMMs payment.                                                                                                                            | Section 7.6                                                                                                                                                                                                                                                   |
| Biodiversity Net Gain should be sought.                                                                                                                                                                                              | See paragraph 7.6.18                                                                                                                                                                                                                                          |
| Conflict with the Settlement Strategy and policies ST3, CP4, DM19 and DM25 of the Local Plan.                                                                                                                                        | Policy DM25 addressed Important Local Countryside Gaps, which the site is not within. Policy DM19 addresses sustainable design and construction and therefore does not relate to landscape impacts or locational sustainability as suggested by the objector. |
| Precedent of supporting unauthorised development.                                                                                                                                                                                    | All applications should be considered on their own merits and it is noted that the planning system allows for breaches to be regularised.                                                                                                                     |
| Cumulative Impacts                                                                                                                                                                                                                   | Other Gypsy and Traveller pitches are not considered to be determinative in the assessment of this case.                                                                                                                                                      |
| Permanent use has never been intended.                                                                                                                                                                                               | The history of the site demonstrates that permanent occupation has never been accepted before.                                                                                                                                                                |

| <b>Second Round - Additional Comments</b>                                                                                                                                                                    | <b>Report reference</b>                                                                                                                                                                                                                                                                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| In terms of the definition of sustainability, the development fails to meet the economic or social objectives, conflicts with the environmental objection and does not meet the needs of future generations. | Considered throughout, with an assessment of the overall benefits concluded in the planning balance. In summary, no economic or environmental benefits are identified but the provision of Gypsy and traveller pitches can be considered to accord with the social objective and be a benefit. |
| It is questioned whether relevant permits have been obtained from the Environment Agency                                                                                                                     | This is a matter for the Environment Agency.                                                                                                                                                                                                                                                   |
| The accommodation at the site has been advertised for rent.                                                                                                                                                  | Section 7.2.20                                                                                                                                                                                                                                                                                 |
| The attendance at local schools by children residing at the site should not be construed as evidence of community integration.                                                                               | Section 7.2.8                                                                                                                                                                                                                                                                                  |
| Evidence exists that demonstrates that the residents have used other addresses.                                                                                                                              | The recommendation made is on the basis of the use of the site rather than as a personal permission.                                                                                                                                                                                           |
| The development dominates the nearest settlement.                                                                                                                                                            | Section 7.2.9                                                                                                                                                                                                                                                                                  |
| It is unclear if the personal circumstances of the applicant's remain the same as set out before.                                                                                                            | The recommendation made is on the basis of the use of the site rather than as a personal permission.                                                                                                                                                                                           |
| Increased flood risk.                                                                                                                                                                                        | Section 7.8                                                                                                                                                                                                                                                                                    |
| Electricity generators at the site are causing noise disturbance.                                                                                                                                            | Section 7.4 and comment above about supply of electricity.                                                                                                                                                                                                                                     |
| Other sites have been occupied for comparable uses without planning permission.                                                                                                                              | This application is to be considered on its own planning merits.                                                                                                                                                                                                                               |
| The Council should not be 'worn down' into granting planning permission.                                                                                                                                     | The recommendation has been made on the basis of the evidence before Officers.                                                                                                                                                                                                                 |
| The use of the site (including the burning of materials) conflicts with the element of policy that requires for healthy lifestyles to be enabled through the provision of open space and sports facilities.  | Environmental protection is addressed as far as falls within the scope of planning. However, this is not and should not be in the context of policies that relate to open space and sports facility provision.                                                                                 |
| The applicant stating that the site could enlarge should be taken as an indication of the applicant's intentions.                                                                                            | The application shall be considered on its merits as submitted. The comment of the applicant was made in response to the policy requirement that is set out within Policy DM6.                                                                                                                 |
| In addition to policies cited above, the development conflicts with policies DM10, DM24 and DM31                                                                                                             | All applicable policies have been considered.                                                                                                                                                                                                                                                  |

|                                                                                                                                                                                                                                                |                                                                                                                                                                                           |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The welfare of all children should be considered, including those resident at the site and those resident in the area. In particular, it has been stated that children off-site were affected by an unofficial electricity supply to the site. | The living conditions of existing residents is considered at Section 7.4                                                                                                                  |
| The decision of the previous Inspector to only grant temporary permission should carry weight, especially as circumstances have not materially changed.                                                                                        | That decision is considered throughout.                                                                                                                                                   |
| Previous conditions and limitations have not been complied with or enforced.                                                                                                                                                                   | Planning practice guidance states that development should not be refused if any unacceptable matters can be made acceptable through conditions. The likelihood of breach is not a factor. |
| Harm to Green Belt.                                                                                                                                                                                                                            | There is no Green Belt in the Swale Borough.                                                                                                                                              |
| Irreversible harm has already been caused that is contrary to the landscape protection objectives of the local plan.                                                                                                                           | Section 7.3                                                                                                                                                                               |

4.3. Hartlip Parish Council object to the application on the following grounds:

| First Round Comments                                                                                                                                                                  | Report reference                                                                                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| None received.                                                                                                                                                                        | N/A                                                                                                                           |
| Second Round - Additional Comments                                                                                                                                                    | Report reference                                                                                                              |
| Circumstances have not materially changed since permanent planning permission was previously not granted at appeal.                                                                   | A full assessment of current circumstances is provided.                                                                       |
| The former temporary permission should not be made permanent.                                                                                                                         | Noted.                                                                                                                        |
| The planning application and enforcement history should be reason to find the development unacceptable, as it demonstrates inadequate site management and compliance with conditions. | A full assessment of current circumstances is provided, a former decision can be informative but does not have to be binding. |
| Accommodation at the site has been advertised for rent.                                                                                                                               | The recommendation is based on the evidence of need that exists. Occupation can be enforced by condition.                     |
| Future expansion and intensification of the site should be considered, including the adverse visual impacts and impacts on living conditions. Landscaping would                       | Section 7.3. The application has to be considered as submitted.                                                               |

|                                                                                            |                     |
|--------------------------------------------------------------------------------------------|---------------------|
| not address the visual impacts and cannot be relied upon.                                  |                     |
| The access arrangements to the site are not acceptable if the use of the site intensifies. | Section 7.7         |
| Enforcement and monitoring of the site has proven difficult and should be more robust.     | This view is noted. |
| The location of the site is not sustainable.                                               | Section 7.2.4       |

## 5. CONSULTATIONS

- 5.1. Set out below is a summary of matters raised in representations, with the comments reflecting the final position of the consultee. There have been two rounds of consultation for most consultees.
- 5.2. **KCC Highways** – No objections, subject to conditions.
- 5.3. **KCC Flood and Water Management** – No objection subject to condition.
- 5.4. **KCC Minerals and Waste** – No objections.
- 5.5. **Mid-Kent Environmental Protection** – No objection.
- 5.6. **Environment Agency (EA)** – No objection subject to conditions

## 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  
 ST5 The Sittingbourne Area Strategy  
 CP2 Promoting sustainable development  
 CP3 Delivering a wide choice of high quality homes  
 CP4 Requiring good design  
 CP7 Conserving and enhancing the natural environment – providing for green infrastructure  
 DM6 Managing transport demand and impact  
 DM7 Vehicle parking  
 DM10 Gypsy and Traveller Sites  
 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  
 DM34 Scheduled Monuments and archaeological sites



**Supplementary Planning Guidance/Documents -**

Landscape Character Assessment and Biodiversity Appraisal (LCA&BA), 2011.

Parking Standard Supplementary Planning Document, 2020.

Gypsy and Traveller and Travelling Showperson Accommodation Assessment

Housing Economic Land Availability Assessment (HELAA) 2025

**National Planning Policy Framework (the NPPF)****National Planning Practice Guidance (NPPG)****MHCLG Planning policy for traveller sites (PPTS)****Kent Mineral and Waste Local Plan 2024-39 (KM&WLP), 2025 & the Kent Mineral Sites Plan (KMSP), 2020.****7. ASSESSMENT**

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

- Principle
- Landscape and Visual Effects and Character and Appearance
- Living Conditions
- Archaeology
- Ecology
- Transport and Highways
- Sustainable Design and Construction
- Flood Risk, Drainage and Surface Water
- Other Matters

**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.

**Settlement Strategy**

7.2.3. Policy ST3, supported and referred to by Policies ST1 and DM10, states that “*at locations in the open countryside, outside the built-up area boundaries shown on the Proposals Map, development will not be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.*”

7.2.4. The site is within the countryside and, setting aside the assessment of whether the development would accord with the NPPF until the planning balance section below, it

is clear that the development does not “*contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.*” There is, therefore, a conflict with Policy ST3 and, in turn, ST1(4) which requires development to accord with the Local Plan settlement strategy. It is noted that a consequence of the development being in this location is that the occupiers are distant from shops, services and other facilities and, as such, there would be a dependency on private modes of transport. This has not, however, been a previous successful reason for the refusal of the application. In this regard it is noted that the Inspector for the 2017 appeal, following the refusal of the 2016 application, set out at paragraph 25 “*that the site location, so far as it relates to the need to travel by private car, does not weigh for or against the development.*”

### Policy DM10

7.2.5. Policy DM10 states that the Council will grant planning permission for sites for Gypsies, Travellers and Travelling Show People, where it is demonstrated that proposals:

1. Are in accordance with Policy ST3 by reference to the deliverability of potential or existing sites at each settlement tier(s) above that proposed by the application, unless:
  - a. there are exceptional mitigating and/or personal circumstances where the applicant has demonstrated that a particular site is required to meet their needs and where there is no overriding harm to the locality; or
  - b. where required to meet an affordable housing need either via a rural exception site in accordance with Policy DM9 or specific allocation; or
  - c. the proposal is for an extension to, or stationing of, additional caravans at an existing site.
2. Can establish that the applicants have previously led a nomadic lifestyle, the reasons for ceasing a nomadic lifestyle and/or an intention to return to a nomadic lifestyle in accordance with Annex 1 of Planning Policy for Traveller Sites (2015);
3. Can achieve an integrated co-existence between all communities;
4. Are of a scale appropriate to meet the accommodation need identified and not introduce a scale of development that singly or cumulatively dominates the nearest settlement or causes significant harm to the character of an area, its landscape, or the capacity of local services;
5. Can, where appropriate, accommodate living and working in the same location, either through a mixed-use site or on land nearby, whilst having regard to the safety and amenity of occupants and neighbouring residents;
6. Cause no significant harm to the health and wellbeing of occupants or others by noise, disturbance, vibration, air quality or other circumstances;
7. Cause no significant harm to the Area of Outstanding Natural Beauty, national/local landscape or biodiversity designations and other natural or built environment that cannot be adequately mitigated;
8. Provide landscaping to enhance the environment in a way that increases openness and avoids exclusion and isolation from the rest of the community;
9. Provide for healthy lifestyles through open space, amenity areas for each pitch and play areas;

10. Would be safe from flooding by meeting both the exceptions and sequential tests in accordance with national policy and Policy DM22;
11. Achieve safe and convenient parking and pedestrian and/or vehicular access without unacceptable impact on highway safety; and
12. Where appropriate, include visitor or transit pitches and/or sufficient areas for future expansion. Planning conditions may be used to limit the length of time that caravans can stop at transit sites and on visitor pitches.

- 7.2.6. Points 2, 6, 8, 11, are considered further below within this report and, considering the application site's location outside of a designated flood zone or Area of Outstanding Natural Beauty (now National Landscape) or any other designated landscape areas, there would be no conflict with points 7 or 10.
- 7.2.7. With respect to criteria 1, as will be established from the commentary that is provided below in respect of the need for Gypsy and traveller accommodation, the Council is not able to demonstrate an adequate supply. Policy DM10(1) sets out with policy ST3 (the Council's Settlement Strategy) *"by reference to the deliverability of potential or existing sites at each settlement tier(s) above that proposed by the application."* In this respect, having regard to the below commentary in relation to the need and supply for sites of all types of residential accommodation it is considered that it would be highly unlikely that there would be any potential or existing sites available at a settlement tier above *"locations in the open countryside."* Consequently, it is not considered that the development conflicts with that element of Policy DM10.
- 7.2.8. The 2019 delegated report identified "a pattern of behaviour which is unlikely to achieve an integrated co-existence between all communities". Consequently, the development was considered to conflict with policy DM10(3) at that time. The applicant has set out that children living at the site attend local schools and that the current occupiers have become integrated by virtue of the amount of time they have been present at the site. Whilst the case of the applicant is noted, there is no evidence available that corroborates the content of the submitted statement, and it is noted that counter claims have been made within the objections received. Therefore, in the absence of evidence to support the case of the applicant, it is considered that the application should be determined on the basis that it has not been demonstrated that the development accords with policy DM10(3) of the Local Plan 2017 and the NPPF. This is considered to be a sound stance to take, particularly in the context that the site is distant from most other residences and detached from any of the identified settlements which gives the impression of detachment even if some integration does occur.
- 7.2.9. In respect of DM10(4), the scale of the development inevitable means that it has a noticeable impact on the local area and, as a group of 8 pitches, the content of the site covers a much greater area than the sporadic housing of the area. However, the test of the policy is whether the development dominates local settlements and, in this respect, it is not considered that the site is dominating of the local settlements of, Hartlip, Newington or Rainham or any intervening village. The site is sufficiently distant from all such settlements to not have a dominating effect. No objection has been previously raised to the development of the site on this ground, by the Council or the Planning Inspectors that have determined appeals, and it is not considered that there is now reason to reach a different conclusion on this matter. At paragraph 26 of

the 2017 appeal decision, the Inspector had regard to the local community and found that it would not be dominated by the development.

- 7.2.10. In respect of DM10(5), the desire to enable “working” at a site has to be balanced with the need to protect the amenities of an area. In this case, there would be space for vehicles associated with some industries to be parked without obstructing the main highways. However, it would not be desirable in the interests of living conditions and the character of the area for the site to be used for extensive on-site work or a base for commercial work. Consequently, conditions are suggested to control this matter. It is noted that it was previously established, within the delegated report for 19/503694/FULL, that the scheme could provide for scope for living and working to both occur from the site. There is no reason to reach a different conclusion in this respect and, as such, the development is considered to accord with that element of policy DM10.
- 7.2.11. In terms of open space and amenity areas to enable healthy living, it is considered that each pitch would be of sufficient size to enable adequate outdoor space to be provided. This is the equivalent of gardens rather than formal open space and, from this basis whilst the policy terminology and the reference of an objector to the provision of public open space and sport facilities is noted, it is not considered that an objection should be raised as adequate outdoor space would be provided for residents of the site.
- 7.2.12. With respect to criteria 12, no transit or visitor pitches are proposed. The policy only requires this to be addressed “where appropriate” with no indication of what that should mean. In this instance, noting the objections raised by interested parties on the grounds that the movement of caravans has blocked the surrounding highways, it is not considered that this would be a welcome location for visitor or transit pitches, where the turnover at a site would be more frequent, to be provided. In terms of future expansion, the applicant has advised that this would be possible and, as a matter of fact, this is true as there are no physical barriers to the site being extended or intensified. However, this is not to say that such expansion or intensification would be found acceptable and it is essential that the application is determined on the basis of the application that has been submitted rather than some alternative approach that might be taken in the future. In this context and subject to the proviso about future expansion not necessarily being found acceptable even if it is possible, no objection is raised on the grounds of criteria 12 of policy DM10.

*Planning Policy for Traveller Sites (PPTS)*

- 7.2.13. Policy H of The PPTS states that local planning authorities should consider the following issues amongst other relevant matters when considering planning applications for traveller sites:
- a) the existing level of local provision and need for sites;
  - b) the availability (or lack) of alternative accommodation for the applicants;
  - c) other personal circumstances of the applicant
  - d) that the locally specific criteria used to guide the allocation of sites in plans or which form the policy where there is no identified need for pitches/plots should be used to assess applications that may come forward on unallocated sites;

e) that they should determine applications for sites from any travellers and not just those with local connections.

- 7.2.14. Each of these criteria are considered elsewhere or can be taken to indicate that regard need not be had to certain factors. For example, there is no requirement for the applicant to have a local connection.
- 7.2.15. The PPTS goes on to state that *“Local planning authorities should very strictly limit new traveller site development in open countryside that is away from existing settlements or outside areas allocated in the development plan. Local planning authorities should ensure that sites in rural areas respect the scale of, and do not dominate, the nearest settled community, and avoid placing an undue pressure on the local infrastructure.”*
- 7.2.16. It is noted that the development conflicts with the first part of the abovementioned policy as the site is in the open countryside, away from existing settlements and outside areas allocated in the development plan. For reasons that are set out elsewhere, it is not considered that the development dominates the nearest settled community. Moreover, given the number of pitches and occupiers, it is not considered that the use of the site would cause undue pressure on local infrastructure. In this regard, whilst the content of objections raised is noted, if considered in the context of other developments where it would be very unlikely for an application for 8 dwellings to be refused due to the impact on infrastructure, it is not considered that it would be reasonable to cite any impacts on infrastructure as a reason for objection to an application for 8 pitches.
- 7.2.17. Other matters raised within Policy H of the PPTS are not considered to be applicable to this development or are addressed elsewhere.

#### *The Occupiers of the Site.*

- 7.2.18. The development is proposed to be occupied by members of the Gypsy and travelling community, the identity of which was previously confirmed at appeal. A material consideration is whether potential occupiers of the site would meet the definition of as set out in the PPTS. The PPTS definition of gypsy/traveller is as follows:

*‘persons of the nomadic habitat of life whatever their race or origin, including such persons who on grounds only of their own or their family’s or dependents’ educational or health needs or old age have ceased to travel temporarily, but excluding members of an organised group of travelling showpeople or circus people travelling together as such’.*

- 7.2.19. The applicant’s planning statement provides details of the occupiers of the site and their lifestyle which is consistent with the information submitted previously at appeal and, having reviewed this, the inspector was satisfied that the occupiers would meet the above definition. In any case, and notwithstanding the requirement of policy, it is acknowledged that there is a need to supply Gypsy and traveller pitches which goes beyond the personal circumstances of the applicant. A condition limiting the use of the site to the current occupiers, therefore, could only be deemed to be necessary where the personal circumstances of the applicant are of such weight that they are grounds

to support an otherwise unacceptable development. From that basis, the details provided are noted, but the need to personalise the permission will be considered in the planning balance section that is to be undertaken further below.

- 7.2.20. It is noted that there is an allegation within the representations that the site has been occupied by persons other than those that fall within the abovementioned definition. This has been previously investigated by the Council's Planning Investigations Team and it is understood that the occupation of the site has reverted to be only by persons that can comply with the condition that was previously imposed. As set out elsewhere, the need that exists is not specific to individuals and therefore, even if the persons meeting the definition were to leave, there is scope to conclude that the site would be needed to meet the wider need that exists. A condition relating to the occupation of the site would address this matter and meet all the tests, including the test of enforceability. Consequently, no objection is raised on the grounds of criteria 2 of Policy DM10.

*Need for and provision of sites*

- 7.2.21. The PPTS states that Local Planning Authorities should identify and update annually a supply of specific strategic deliverable sites sufficient to provide 5 years' worth of sites against their locally identified need.
- 7.2.22. The Swale Borough Council Gypsy, Traveller and Travelling Showperson Accommodation Assessment 2023 (the GTAA) is the most recent study on the accommodation needs of these communities. The GTAA analysis takes into account the needs arising from existing households, households on unauthorised sites, newly forming households, in-migrant households and vacancies on existing public and private pitches. The GTAA concludes there is an overall need for 114 additional Gypsy and Traveller pitches across the Borough over the period 2022/23 to 2037/38. This is need over the whole plan period (not the 5 year supply of traveller sites).
- 7.2.23. The Council's Housing Economic Land Availability Assessment 2025 (HELAA) states that monitoring between 1 April 2022 (base date of GTAA evidence) and 31 December 2025 has identified 23 pitches have been consented. This means for the purposes of meeting the immediate 5 year unmet need there is a requirement for 57 additional pitches. Therefore, Swale Borough Council does not have a supply of specific deliverable sites sufficient to provide 5 years' worth of sites. The lack of a five-year supply engages the presumption in favour of sustainable development set out in paragraph 11(d) of the Framework.
- 7.2.24. Due to the temporary permission, the application site was counted towards the existing provision within the Borough and, therefore, to refuse this application would be to effectively reduce the overall provision whilst, in turn, increase the need for further pitches to be identified. Though not determinative or preventing a refusal of permission if warranted by policy, it is relevant that this would exacerbate the shortfall identified in the GTAA as outlined above. Whilst not binding, paragraph 6.31 of the GTAA recommends that a number of unauthorised sites should be re-appraised to try and meet the Borough's needs. In this regard, the site would not have been included in the 35 pitches that fell into that category at the time the GTAA was published; but would do now. Therefore, whilst the previous refusals are acknowledged, it is considered

appropriate to re-appraise the site as per the GTAA. However, it is also acknowledged that the Council's HELAA identifies that the site is not suitable.

- 7.2.25. In this respect, it is noted that at the time of the previous appeal decision, the Inspector based their decision on the Council having a supply of 3.5 years, with it being indicated that the Council's policy based on a "windfall" approach was being successful in terms of providing more sites than required by the GTAA. The temporary permission was granted to enable the applicant and the Council to identify an alternative site with it presumably being the case that the supply and policy would enable such an alternative site to come forward.
- 7.2.26. Since that time, the Council's GTAA has identified a need for 80 pitches up to the period ending 2026/27 which has not been addressed. This was corroborated at an appeal in May 2025 (APP/V2255/W/24/3357886) in relation to Land at Eden Top, Sheppey Way, Bobbing where the Inspector identified that *"The GTAA analysis takes into account the needs arising from existing households, households on unauthorised sites, newly forming households, in-migrant households and vacancies on existing public and private pitches. The report concludes there is an overall need for 114 additional Gypsy and Traveller pitches across the Borough over the period 2022/23 to 2037/38, with a shortfall of 80 in the five year period 2022/23 to 2026/27 and 34 pitches in the longer term."*
- 7.2.27. That Inspector went on to identify that *"The current definition in the 2024 PPTS has been broadened to include all other persons with a cultural tradition of nomadism or of living in a caravan. The identified need of 114 pitches is probably an under-estimate for this reason alone."* Consequently, with the Council identifying within that appeal that it could demonstrate a 1.3 year supply of pitches, the Inspector found that *"the evidence indicates a very significant shortfall in pitches in the Borough. The lack of a five year supply engages the presumption in favour of sustainable development set out in paragraph 11(d) of the Framework, unless the application of policies protecting the North Kent Marshes Special Protection Areas and Ramsar sites (the SPA) provide a strong reason for refusing the development proposed."*
- 7.2.28. Similarly, whilst appeal APP/V2255/W/24/3354226 (June 2025) was dismissed on the grounds of coastal erosion matters, the Inspector stated that *"When I factor in the lack of five-year supply, the current unmet need for pitches, the absence of an alternative site, and the failure of policy that has led to this situation, the provision of one pitch adds significant weight in favour of the proposed development."*
- 7.2.29. The number of pitches in the current application is greater than that example and, as such, the benefit should be acknowledged to be afforded to be greater. The weight to afford can still be significant.

#### Loss of Agricultural Land

- 7.2.30. Policy DM31 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. As set out above, there is an overriding need and no basis to expect that this can be met within the built-up area boundaries, particularly in light of there being a shortfall of housing land supply and objectives built into local planning policy to

support employment development and avoid the unwarranted loss of employment land. This element of the policy is therefore complied with, albeit this addresses all agricultural land and, as such, implies that development could occur on agricultural land that is not BMV as that land is subject to the following policy.

- 7.2.31. That policy goes on to state that development on best and most versatile agricultural land (specifically Grades 1, 2 and 3a) will not be permitted unless:
1. The site is allocated for development by the Local Plan; or
  2. There is no alternative site on land of a lower grade than 3a or that use of land of a lower grade would significantly and demonstrably work against the achievement of sustainable development; and
  3. 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.
- 7.2.32. The development of the application site has resulted in the loss of Best and Most Versatile (BMV) agricultural land, however, it was previously agreed by the inspector that, as around 70% of farmed land within the Swale Borough is BMV and the majority of non-BMV land is within the Kent Downs Area of Outstanding Natural Beauty (AONB) and the Isle of Sheppey “it would be very difficult to locate non-BMV land for the use proposed”.
- 7.2.33. As such, despite the development continuing conflict with policy DM31, as per the inspector's appeal decision, only moderate weight is given to the loss of BMV agricultural land in this case.

#### Other Matters

- 7.2.34. It is noted that the proposed capacity of the site that is set out within the description of the development would double the number of caravans relative to what was approved at the site on a temporary basis. The implications of this additional site capacity will be considered below. Whilst it is conventional for most sites of this type to have one mobile home, one touring caravan and a day room, there is no policy or legislation to insist upon this. Indeed, at appeal APP/V2255/W/23/3333589 (following refused application 23/504136/FULL) in respect of land at The Retreat, Elverland Lane, Ospringe, Faversham ME13 0SP, the Inspector limited the capacity of the site to two static and two touring caravans, albeit that was also a personal permission. In this instance, noting that some family units are larger than others and the applicant has detailed who would occupy the caravans (which could be the case whether it is these named individuals or others that occupy the site in the future) it is considered that there is no basis to not consider an application that would enable more caravans to be present than might normally be expected. In this regard, whilst previous breaches of the site capacity condition are noted, it is not considered that this should be reason to not consider the application on the basis of the terms that are detailed within the application.



### 7.3. Landscape and Visual Effects and Character and Appearance

- 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 site is not within a designated landscape and, as such, it is relevant that Policy DM24 states that landscapes will be protected and planning permission will be granted where adverse landscape impacts are minimised and mitigated or, where significant adverse impacts remain, only support applications where the social and/or economic benefits significantly and demonstrably outweigh the harm to the landscape character and value of the area.
- 7.3.2. 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.
- 7.3.3. The NPPF requires decisions to ensure that development is '*sympathetic to... landscape setting*'. Moreover, it requires that the intrinsic character and beauty of the countryside is recognised and, amongst other requirements, planning decisions should ensure that developments function well and are visually attractive as a result of good layout and appropriate and effective landscaping.
- 7.3.4. The site is within the Hartlip Downs Landscape Character Area as identified within the Council's Landscape Character Assessment and Biodiversity Appraisal (LCA&BA), 2011. The condition of that LCA is assessed as being good and the sensitivity to development is moderate. The overall approach recommended within that document is to conserve and reinforce with a suggestion being to "*conserve the distinctive and open landscape character of the chalk valleys, with their slopes and ridges, together with the character of narrow enclosed lanes, by the retention and management of the landscape structure of chalk grassland, woodland and hedgerows. Additionally, look for opportunities to reinforce landscape structure (including the removal of conifer trees), especially in localised denuded and open areas.*" Whilst reference is made to the setting of the National Landscape and its protection and due regard is had to the need to further the purposes of the conservation and enhancement of the natural beauty of the landscape, in this case it is considered that the scale of development and the distance from the National Landscape means that the development would not conflict with the purpose and, by enabling development outside the National Landscape, it would reduce any pressure that exists to undertake development within the National Landscape or its setting.
- 7.3.5. It was previously found by the inspector that the development, owing to its visibility from the surrounding area (including from the public footpath which runs across the open land towards the north) would consequently "appear prominent and discordant" along with being "significantly out of place" and "unacceptably urbanising". The Inspector identified that there are some hedgerows within the area but that these allow for open views across the land.
- 7.3.6. Compared to the previous temporary permission, there would be 16 additional caravans comprising of 8 additional statics and 8 additional touring caravans. This would cause the visual impact of the use of the site to be materially greater and even more unacceptable than was found to be the case by the Council and the Inspector

previously. Consequently, the findings of the Inspector not only remain applicable, but the impact would also be increased and more harm would be derived.

- 7.3.7. Relative to the time of that previous decision, it appears that there is some additional to the north of the site and, in combination with other landscaping in the area, it is considered that the site is less prominent from the north than it appears to have been before. The site remains prominent in views from the highways to the south and east, with clear views being intermittently achievable from the highway to the west.
- 7.3.8. The submitted plans show potential for soft landscaping to be incorporated along the exterior of the site which would represent an improvement when compared to the previous appeal and what has been achieved at the site, despite the approval of a Site Development Scheme showing landscaping at all boundaries. It is considered that this would help to soften the visual appearance of the content of the site and partially mitigate its visual impact.
- 7.3.9. In this regard it is noted that the previous Inspector found that intensive landscaping at the site could also appear incongruous within the area and contrary to the advice in the PPTS at paragraph 26. This is noted. However, since that time it is noted that the adjacent fields to the north have been used for tree planting on the basis of what appears to be an agricultural business and, as such, the context of the site has changed, albeit there is no guarantee that the adjacent land would continue to be used in that way and, as this appears to be a crop rather than long-term planting it is likely that there would be periodical changes to this landscaping. Moreover, whilst the Inspector found that planting could appear incongruous, it is noted that there are belts of hedges and trees at the boundaries of fields within the vicinity of the site such that there would be scope to partially reduce the visual impact of the development, albeit not to the extent that it would be entirely screened, which was resisted by the Inspector.
- 7.3.10. Overall, it is considered that a balanced landscaping approach could be taken which would soften and partially mitigate the visual impact of the development, without that landscaping becoming visually incongruous. This would not entirely screen the site and its contents but would be able to have a softening and partially mitigating impact. This could reduce the landscaping impact below the threshold of significant and result in Policy DM24 being complied with.
- 7.3.11. Even allowing for landscaping, visual harm would continue to exist and would likely be increased as a result of the presence of additional caravans relative to that which temporarily allowed and found unacceptable before. The development would, therefore, continue to conflict with policies ST1, ST3, CP4, DM10(4), and DM14 of the Local Plan 2017

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

- 7.4.1. Policy DM14 of the Local Plan and the NPPF requires that new development has sufficient regard for the living conditions of neighbouring occupiers.
- 7.4.2. No unacceptable impacts upon the amenity of residents were previously identified by the local authority or inspector when assessing 19/503694/FULL. Even noting that

there would be additional caravans at the site as a result of this application, it remains the case that the development is acceptable in these respects, not causing an unacceptable loss of light, privacy or outlook. Potential disturbance brought about by the use of the site can be controlled through conditions.

- 7.4.3. For this reason, even noting the increased capacity of the site compared to the developments that were considered previously, the development is considered to be in accordance with policies DM10(6) and DM14 of the Local Plan 2017 and the NPPF.

## 7.5. **Archaeology**

- 7.5.1. Policy DM34 of the Local Plan sets out that planning applications on sites where there is or is the potential for an archaeological heritage asset, there is a preference to preserve important archaeological features in situ, however, where this is not justified suitable mitigation must be achieved.
- 7.5.2. The NPPF sets out that where development has the potential to affect heritage assets with archaeological interest, Local Planning Authority's should require developers to submit an appropriate desk-based assessment, and where necessary, a field evaluation.
- 7.5.3. The site falls within an Area of Archaeological Potential, however, no unacceptable impacts upon buried heritage assets were considered to occur under 19/503694/FULL. Even allowing for the additional elements compared to the previously considered development, it would continue to accord with policy DM34 of the Swale Borough Local Plan 2017 and the NPPF.

## 7.6. **Ecology**

- 7.6.1. 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.
- 7.6.2. 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.

### Habitat Sites

- 7.6.3. 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.’

- 7.6.4. The Local Plan requires new development to ensure there are no adverse effects upon the integrity of a SAC, SPA or Ramsar site, alone or in combination with other plans/projects.
- 7.6.5. Considering that the application site is located within 6km of the North Kent Marshes SPA/Ramsar Sites, the proposed development is likely to have a significant effect, either alone or in-combination, upon the coastal Swale Special Protection Areas (SPAs)/Ramsar sites stemming from recreational disturbance on the over-wintering bird interest.
- 7.6.6. Natural England have previously advised the local planning authority 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.
- 7.6.7. These 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.
- 7.6.8. 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.
- 7.6.9. An Appropriate Assessment is carried out below and is adopted by the Council as the Competent Authority, which concludes that the development will not adversely affect the integrity of the Thames Estuary & Marshes SPA and Ramsar Site and Swale SPA and Ramsar Site.

Appropriate Assessment under Conservation of Habitats and Species Regulations 2017.

- 7.6.10. The project being assessed will result in a net increase of four residential dwellings in 6km of the North Kent SPAs 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.

- 7.6.11. 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
- 7.6.12. 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.
- 7.6.13. 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. It's noted that a per dwelling tariff of £337.49 is required in order to mitigate the increased recreational pressure upon the Swale SPA though, for the purposes of this application, a 'dwelling' is considered to be synonymous with a residential unit (i.e. a pitch) and the necessary financial contribution has been calculated on that basis.
- 7.6.14. 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 have subsequently agreed that the mitigation measures to ensure additional impacts from recreational disturbance to the SPAs and Ramsar Sites are ecologically sound. On that basis, the Applicant does not need to provide their own evidence base on these aspects.
- 7.6.15. The SAMMS tariff of £337.49 per dwelling has been paid to ensure that the impacts upon the SPA arising from the development will not be significant or long term. It is therefore considered that any adverse effect on the integrity of the SPA have been satisfactorily addressed through this aforementioned mitigation measure. Consequently, this appropriate assessment ascertains 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.
- 7.6.16. Having made this appropriate assessment of the implications of the project for the site(s) in view of that site's conservation objectives, the authority may now agree to

the plan or project under regulation 63 of the Conservation of Habitats and Species Regulations 2017.

### On-Site Biodiversity

- 7.6.17. No unacceptable impacts upon protected habitats or their species were previously identified by the local planning authority or inspector under 19/503694/FULL and, although three years has since lapsed, there is no reason to conclude that ecological arrangements have varied substantially (given the manner in which the site has been used) to reach a difference conclusion.
- 7.6.18. Biodiversity Net Gain is addressed post decision, but it is considered that at least one of the exemptions would apply, as existing habitats would not be affected and the application is retrospective.

### **7.7. Transport and Highways**

- 7.7.1. 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.
- 7.7.2. 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.”*

- 7.7.3. No unacceptable impacts upon either highway or pedestrian safety were previously identified by the local planning authority or the planning inspector when assessing 19/503694/FULL subject to the imposition of a condition which required details of the proposed access to the site to be submitted and approved. That access has subsequently been provided with it appearing to have been installed between August 2022 and June 2023. Whilst the number of caravans intended to be at the site has increased relative to the previously considered development, it remains the case that the proposed development is acceptable in these respects, not posing an undue threat to highway safety and being able to be served by adequate access and parking arrangements.
- 7.7.4. It is noted that no objection has been raised to the application by the Highway Authority subject to conditions and, in line with their comments, it is considered appropriate to add a condition requiring the retention of the access and visibility splays from that access. However, noting that there is adequate space for vehicles to be kept at the site and there is a limited likelihood of vehicles being kept in demarcated bays, it is considered that the condition relating to the parking spaces shown on the submitted

plans is unnecessary and impractical. The application is considered to be equally acceptable without such a condition imposed.

- 7.7.5. As such, whilst it is noted that the number of caravans at the site would increase, there would remain 8 pitches and as the access would be the same as previously found acceptable, it would continue to be in accordance with policies DM14 and DM10(11) of the Local Plan 2017 and the NPPF.

## 7.8. **Flood Risk, Drainage and Surface Water**

- 7.8.1. 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.
- 7.8.2. The previous submission of this application (19/503694/FULL) indicated that sealed cesspits were to be utilised for foul drainage. However, the current application form now states that package treatment plants are being used. Given this uncertainty the Environment Agency have requested the submission of a foul water drainage scheme.
- 7.8.3. KCC Drainage have also confirmed the development would be of a low flood risk (from fluvial and pluvial sources) though, to ensure the site is served by adequate surface water drainage, request for any new hardstanding to be supported by appropriate details of drainage provision.
- 7.8.4. Subject to the above being secured by conditions, the proposed development is considered to be in accordance with policy DM21 of the Swale Borough Local Plan 2017 and the NPPF.

## 7.9. **Sustainability / Energy**

- 7.9.1. Policy DM19 of the Local Plan requires development proposals to include measures to address climate change.
- 7.9.2. In this case, given the moveable nature of the items to be kept at the site, it is not considered that achieving any gains in this regard would be practical. Therefore, whilst not according with the requirement, neither is an objection raised.

## 7.10. **Other matters**

- 7.10.1. The Public Sector Equality Duty (PSED) requires consideration to be had as to how policies or decisions would affect people who are protected under the Equality Act which, in this instance, would be likely to include the occupiers of the site on account of their race. As the recommendation reached upon below is to approve the application, a decision to that effect would align with the Duty.

## 7.11. **Planning Balance – Benefits and Harm**

- 7.11.1. 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.

7.11.2. In this case conflict with policies in the development plan have been identified as set out above. This amounts to conflict with the settlement strategy and policies ST1 and ST3, conflict with policy DM31 as a result of the loss of Best and Most Versatile agricultural land and visual harm that conflicts with policies ST1, ST3, CP4, DM10(4) and DM14.

7.11.3. Paragraph 28 of the PPTS clarifies that if a local planning authority cannot demonstrate an up-to-date 5 year supply of deliverable sites, the provisions in paragraph 11(d) of the National Planning Policy Framework apply. 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.”*

7.11.4. In this case, the Council is not able to demonstrate an adequate supply of Gypsy and Traveller accommodation and, more broadly, the Council is not able to demonstrate a sufficient supply of housing and the local plan review that was required to take place has not occurred. For each of these reasons, the approach set out at ii) above is applicable such that the assessment turns on whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. and the NPPF.

### Benefits

7.11.5. As above, the primary benefit from approving the development is that it would contribute towards meeting a shortfall of Gypsy and Traveller sites that has been found to be significant in recent assessments and appeals. The Council is unable to demonstrate a 5 year supply of sites as per the most recently updated GTAA from December 2023 which identified a shortfall of 114 pitches over the period 2022/23 to 2037/38 with no alternative sites identified. More recently, the Council's Housing Economic Land Availability Assessment 2025 (HELAA) states that, whilst 23 pitches have been consented, for the purposes of meeting the immediate 5 year unmet need there is a requirement for 57 additional pitches. Therefore, Swale Borough Council does not have a supply of specific deliverable sites sufficient to provide 5 years' worth of sites.



- 7.11.6. The grounds stipulated for a temporary three-year permission under 19/503694/FULL was to enable its reassessment against an updated supply of pitches as part of a revised GTAA, however, the shortfall within the Swale Borough has only increased since that decision. The development therefore makes a valuable contribution to the supply of gypsy and traveller pitches in the borough at a time when the council are unable to demonstrate a five year supply. This weighs significantly in favour of the development.
- 7.11.7. It is not considered that any economic or environmental benefits would arise from the development. In this regard, any landscaping gains would be to partially mitigate the effect of development and, as such, is considered a necessity rather than a benefit.

### Harm

- 7.11.8. The harms are, as set out above, most notably a harmful visual impact that would not be able to be fully mitigated by landscaping. This is contrary to paragraphs 131, 135, and 187 of the NPPF and paragraph 26 of the PPTS. The harm arising in this respect can be afforded significant weight.
- 7.11.9. Furthermore, the continued loss of best and most versatile agricultural land would be contrary to paragraph 187 of the NPPF. The conflict with the Council's settlement strategy is not directly in conflict with the NPPF as there are no comparable policies within the NPPF. However, by being contrary to the plan-led approach, it is considered that there is conflict arising with the overarching principle of the NPPF. The harms in these respects are often afforded little or moderate weight by Planning Inspectors.

### NPPF Balance

- 7.11.10. Overall, even affording significant weight to the visual harm caused by the development and the conflict with the NPPF arising from this and moderate weight to the other harms, it is considered that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the significant benefit arising from the boost to the supply of Gypsy and Traveller sites. In view of the benefits arising from the provision of the gypsy and traveller accommodation proposed and the conclusions reached, there is no need in this instance to rely on the personal circumstances of the occupants on site. A condition requiring any future occupants to comply with the definition set out in Annex 1 of the PPTS would ensure that the site would continue to make a valuable contribution to the supply of gypsy and traveller sites in the borough in the long term.

## **7.12. Conclusion**

- 7.12.1. Whilst the development is contrary to the development plan when it is taken as a whole, the development is supported by the NPPF. As set out above, the application should be determined in accordance with the development plan unless material considerations indicate otherwise and, in this case, it is considered that the NPPF indicates that planning permission should be granted.
- 7.12.2. 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.

### 7.13. **Recommendation**

7.13.1. Grant planning permission subject to conditions:

### 7.14. **Conditions**

1. The development hereby approved shall be carried out in accordance with the submitted drawings/documents received on 13/06/2025:

- 2025-PPP046v1-Location – Location Plan
- Plan 3 – Proposed Utility Block
- 2025-PPP-046v1-Block – Block Plan

Reason: To secure the proper development of the area.

2. No drainage systems for the infiltration of surface water to the ground may be installed other than with the prior written consent of the local planning authority. Any proposals for such systems must be supported by an assessment of the risks to controlled waters. Any approved surface water infiltration installations shall be provided only in accordance with the approved details.

Reason: To ensure that the development does not contribute to and is not put at unacceptable risk from or adversely affected by unacceptable levels of water pollution caused by mobilised contaminants.

3. The site shall not be occupied by any persons other than gypsies and travellers, meaning persons of nomadic habit of life, whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, and all other persons with a cultural tradition of nomadism or of living in a caravan, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.

Reason: The location of the site would not be suitable for unrestricted residential accommodation.

4. There shall be no more than 8 pitches on the site and on each of the 8 pitches hereby approved no more than 4 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, shall be stationed at any time, of which no more than 2 caravans shall be static caravans or mobile homes.

Reason: In the interests of the visual amenity of the locality.

5. No more than one commercial vehicle per pitch shall be kept on the land for use by the occupiers of the caravans hereby permitted, and it shall not exceed 3.5 tonnes in weight.

Reason: In the interests of neighbouring residential amenity and the general amenity of the rural locality.

6. No commercial activities shall take place on the land, including the storage of materials.

Reason: In the interests of neighbouring residential amenity and the general amenity of the rural locality.

7. The use hereby permitted shall cease and all structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-

- i. within six months of the date of this decision a scheme detailing the provision of foul water disposal facilities, a hard and soft landscaping scheme and a timetable of all works (including the provision of foul water disposal facilities and the undertaking of hard and soft landscaping works) shall have been submitted for the written approval of the local planning authority. The hard and soft landscaping details shall include existing 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, means of enclosure, hard surfacing materials. In addition, if any additional or new hard landscaping is proposed, this shall be accompanied with details of measures to provide surface water drainage enhancements at the site.
- ii. if within six months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii. if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

Subsequently, the approved foul water disposal facilities shall be provided in accordance with the approved timetable and all hard and soft landscaping works (including any approved surface water drainage enhancements) shall be carried out and completed in accordance with the approved timetable.

Reason: In the interests of visual amenity and ensuring the adequate provision of foul water disposal provisions.

8. Any trees or plants included in the approved scheme of landscaping which within a period of 5 years from the completion of the planting scheme die, are

removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

9. No floodlighting, security lighting or other external lighting shall be installed or operated at the site, other than in accordance with details that have first been submitted to and approved in writing by the local planning authority.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

10. The access to the site shall be retained in accordance with the access arrangements previously submitted to and approved by the Local Planning Authority under the terms of application 22/503798/SUB. This shall include the retention of the visibility splays (2.4m x 45m) which shall be kept clear of any obstructions above a height of 0.8m above ground level.

Reason: In the interests of highway safety.



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Report of the Head of Planning

## PART 2

Applications for which **PERMISSION** is recommended

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                          |                                                                                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|----------------------------------------------------------------------------------------------|
| <b>2.1 REFERENCE NO - 25/503466/FULL</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                          |                                                                                              |
| <b>PROPOSAL</b> - Conversion of agricultural land (Sui Generis) into a Battery Energy Storage System (BESS) facility (Sui Generis) including the erection/formation/installation of ancillary access arrangements, equipment, infrastructure, structures, and landscaping.                                                                                                                                                                                                                                                                                                  |                                          |                                                                                              |
| <b>SITE LOCATION</b> - Land North of Solar Farm, Old Rides Farm, Leysdown Road, Eastchurch, Kent                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                          |                                                                                              |
| <b>RECOMMENDATION</b> - Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions and the completion of a Section 106 agreement or Conservation Covenant as set out in the report, with further delegation to the Head of Planning / Head of Legal Services (as appropriate) to negotiate the precise wording of conditions, including adding or amending such conditions and precise Heads of Terms as may be necessary and appropriate.                                                                                |                                          |                                                                                              |
| <b>APPLICATION TYPE:</b> Major (Full Application)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                          |                                                                                              |
| <b>REASON FOR REFERRAL TO COMMITTEE</b> - The officer recommendation for approval is contrary to an objection received from a statutory consultee (KCC Public Right of Way).                                                                                                                                                                                                                                                                                                                                                                                                |                                          |                                                                                              |
| <b>Case Officer:</b> Andrew Gambrill                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                          |                                                                                              |
| <b>WARD</b><br>Sheppey East                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <b>PARISH/TOWN COUNCIL</b><br>Eastchurch | <b>APPLICANT</b><br>Old Rides Energy Storage Limited<br><b>AGENT</b><br>Ridge & Partners LLP |
| <b>DATE REGISTERED</b><br>28 August 2025                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                          | <b>TARGET DATE</b><br>22 May 2026                                                            |
| <b>BACKGROUND PAPERS AND INFORMATION:</b><br><br>The full suite of documents submitted and representations received pursuant to the above application are available via the link below: -<br><br><a href="#">25/503466/FULL   Conversion of agricultural land (Sui Generis) into a Battery Energy Storage System (BESS) facility (Sui Generis) including the erection/formation/installation of ancillary access arrangements, equipment, infrastructure, structures, and landscaping.   Land North Of Solar Farm Old Rides Farm Leysdown Road Eastchurch Kent ME12 4BD</a> |                                          |                                                                                              |

1. SITE LOCATION AND DESCRIPTION

- 1.1. The site occupies an area of 49 Hectares and is currently in agricultural use. The surrounding area features a mix of rural and semi-developed landscapes. From a landscape perspective the site is within the Greater Thames Estuary National Character Area. The Swale Landscape Character and Biodiversity Appraisal SPD, identifies the site as being within the 'Clay Farmlands' Landscape Character Type area; and Landscape Character Area 13 - Central Sheppey Farmlands.
- 1.2. The site is not a valued landscape for the purposes of paragraph 180 of the NPPF.
- 1.3. To the north, the site is bordered by Leysdown Road beyond which the land slopes upward and is in agricultural use. To the east the site adjoins the Old Rides Farm buildings and undeveloped farmland. The existing farm buildings are of a considerable size, and in addition, numerous large vehicles (combine harvesters) are stored adjacent to the large farm buildings.
- 1.4. The site itself is largely flat, the southern boundary adjoins a solar farm and wind turbines, beyond which land slopes downward towards the south coast of the Island. To the south, due to the falling topography, there is no inter-visibility with the adjacent solar farm or the marshes from within the site. To the west is more farmland and further west, HM Prison buildings.
- 1.5. Access is provided via a two-lane track from Leysdown Road, with a secondary informal agricultural entrance from Leysdown Road to the west of the main entrance.
- 1.6. Two ditches traverse the central part of the site. One flows from the north towards the south-western corner, while the other runs westward from the eastern corner, eventually converging with the first. There are no trees within the centre of the proposed development fields; however, the site has a number of trees and hedges around its perimeter.
- 1.7. The surrounding area is characterised by open agricultural land interspersed with isolated farmsteads, farm buildings and infrastructure, such as wind turbines and solar installations.
- 1.8. While the village of Eastchurch lies relatively close by, the site's position is visually and physically separated from the settlement.
- 1.9. The site lies within open countryside and is not subject to other designations. While no adopted Public Rights of Way (PROW) pass through the site, an application has been made to KCC for a right of way running roughly from the southeast to the northwest of the site. That application was made on the basis that a right of way is alleged to subsist across the land.
- 1.10. Approximately 850m to the south is the Site of Special Scientific Interest (SSSI), Special Protection Area (SPA) and Ramsar site. There are no historically significant buildings within or near to the site, no trees on site are subject to tree protection orders.



- 1.11. Parts of the site are at medium/high risk of surface water flooding, particularly in proximity to Old Rides Farm/the solar farm to the south east, ditches that lie across the site and parts of the north of the site.

**2. PLANNING HISTORY**

- 2.1. 25/501228/ENVSCR: Screening Opinion: Proposed battery energy storage system ('BESS') facility with a capacity of up to 1 giga-watt (GW).

Environmental Impact Assessment not required      Date: 10.04.2025

- 2.2. Apart from the Screening Opinion above, the site itself does not have any other planning history which is relevant. Set out below is the planning history of nearby sites considered relevant to the determination of the current application.

**Land immediately to the south of the application site (Old Rides Farm)**

- 2.3. 15/505091/FULL: Siting of spare parts container for use in connection with solar farm approved under SW/12/1448.

Approved      Date: 17.08.2015

- 2.4. SW/12/1448: Installation of an 8 MWP solar photovoltaic farm comprising 32,832 solar panels and associated transformer inverter units, and substation, with associated security fence, grid connection and landscaping.

Approved      Date: 14.02.2013

**Land immediately to the west of the application site (Solar Farm)**

- 2.5. 21/503240/FULL: Full planning permission for the installation of a ground mounted photovoltaic (PV) solar energy generation system, associated infrastructure, security measures (including CCTV) and landscaping.

Approved      Date: 30.09.2021

**Land immediately to the west of the application site (Wind Farm)**

- 2.6. 24/503105/EIFUL Section 73 - Application for variation of condition 3 (to allow change of permission expiry from 25 years from the date when electricity is first exported from the wind turbines, to 40 years) pursuant to SW/13/1571 for - The erection of four wind turbines with a maximum blade tip height of up to 126.5 metres, together with a substation and control building, associated hardstanding, an improved access junction, connecting internal access tracks, and other related infrastructure.

Approved      Date: 09.12.2025

- 2.7. SW/13/1571: The erection of four wind turbines with a maximum blade tip height of up to 126.5 metres, together with a substation and control building, associated hard standings, an improved access junction, connecting internal access tracks, and other related infrastructure.

Appeal Allowed      Date: 17.01.2014

**Land immediately to the east of the application site (Old Rides Farm)**

- 2.8. 22/501792/FULL: Erection of 2 No. roofs over existing external cattle yards.  
Approved     Date 22.10.2022
- 2.9. 21/504949/FULL: Retrospective application for a change of use of 2 no. agricultural buildings to B8 storage use.  
Approved     Date: 25.04.2024
- 2.10. 15/504964/FULL: Change of use of part of Store 2 from agricultural use to storage and distribution of marquees with use of part of existing offices as offices in association  
Approved     Date: 12.10.2015
- 2.11. SW/07/0691: Administration and staff facilities building with farm produce shop, associated car park and additional farm access road (elevational and material amendments to those approved under application SW/06/0771)  
Approved     Date: 03.09.2007
- 2.12. SW/06/0771: Administration and staff facilities building with farm produce shop, associated car parking and additional farm access road.  
Approved     Date: 08.08.2006
- 2.13. SW/05/1186: Erection of agricultural buildings for livestock housing and fodder storage.  
Approved     Date: 03.11.2005
- 2.14. SW/99/0154: Agricultural storage building and associated paved areas.  
Approved     Date: 04.05.1999

3. **PROPOSED DEVELOPMENT**

- 3.1. Planning permission is sought for the conversion of agricultural land (Sui Generis) into a Battery Energy Storage System (BESS) facility (Sui Generis) including the erection/formation/installation of ancillary access arrangements, equipment, infrastructure, structures, and landscaping.
- 3.2. The overall site is approximately 49 hectares in area. The majority of the site would accommodate BESS units, with the remainder accommodating switchgear buildings, converters, a substation, access roads, security fencing, CCTV, emergency water tank, and both hard and soft landscaping features.
- 3.3. The compounds for the BESS equipment accommodate storage units arranged in rows, enclosed by perimeter fencing with gated access. The units would be built on hardstanding and equipped with fire safety measures and CCTV surveillance.
- 3.4. The BESS storage containers would be arranged in linear rows and separated by internal access tracks; the plans indicate that there would be 15 compounds. The compounds vary in size (some would accommodate more BESS units than others);

the Transport Statement indicates approximately 1,200 BESS containers would be located within the 15 compounds.

- 3.5. Additionally, the site will include Power Conversion Systems (Medium Voltage Skid Units) and Electrical Switchgear units.
- 3.6. The energy storage containers would have a maximum height of approximately 3.1 metres above ground level, while the Low Voltage switchgear buildings are proposed to be taller, at around 4.1 metres. The units are proposed to be green in colour. The Power Conversion Systems would be circa 3 metres tall.
- 3.7. A substation area is proposed to the southeast of the site, including water tanks, internal roads/tracks, landscaping, noise mitigation measures (an acoustic fence), engineering works related to level changes, and other associated works. The overall system could store 1GW of electricity. Battery storage of this size is no longer required to proceed through the Nationally Significant Infrastructure Project (NSIP) process.
- 3.8. The substation area would cover approximately 0.8 hectares of the site and would be a compound accommodating High Voltage (HV) equipment, including HV transformers. Infrastructure in this part of the site would be up to 10.22m in height. This area would contain several Medium Voltage (MV) switchgear buildings, a control room, and a fire safety system, and will be enclosed by an acoustic fence (9.5m high), a 2.4m high security fence is also proposed around the substation.
- 3.9. A 2.4m high security fence is also proposed around the perimeter of the BESS areas, with secure access gates for controlled entry. The fencing would be finished in a green colour to reduce visual impact. To monitor operations, a Closed-Circuit Television (CCTV) system would be installed, covering both the external areas of the compounds and the interiors. Externally, the cameras would be positioned on poles.
- 3.10. Proposed lighting would be motion-sensitive for security reasons (lights would only turn on if sensors are triggered by movement). As the site would operate without regular on-site personnel, it would typically remain unlit.
- 3.11. Vehicular access from Old Rides Farm, off Leysdown Road is proposed. The existing vehicular bell mouth entrance would be widened. A second emergency access is proposed approximately 475m to the west of the main entrance to the site from Leysdown Road.
- 3.12. A comprehensive landscape scheme is proposed, including trees, hedging, raised bunds, and additional planting.

#### 4. REPRESENTATIONS

- 4.1. One round of consultation was undertaken, during which letters were sent to nearby occupiers. A notice was displayed at the application site, and the application was advertised in the local newspaper. Full details of representations are available online.
- 4.2. In response to the consultation, two letters of representation objecting to the proposal were received. Concerns/ comments were raised in relation to the following matters:

| First Round Comments                                                                                                          | Report reference         |
|-------------------------------------------------------------------------------------------------------------------------------|--------------------------|
| Concerns that the increase in traffic would exacerbate existing congestion.                                                   | 7.9.11 - 7.9.15          |
| Additional traffic would worsen existing highway safety issues.                                                               | 7.9.11 - 7.9.15          |
| There is no plan submitted for returning the site to agricultural land when the BESS use becomes obsolete.                    | 7.2.23 – 7.2.25          |
| The development would cause low frequency noise and cause health concerns from emissions associated with the battery storage. | 7.14.2 – 7.14.3          |
| There would be impacts on the community from 24 hour site visits.                                                             | 7.9.15 – 7.9.16          |
| There would be an impact upon wildlife including from lighting.                                                               | 7.8.26                   |
| The natural environment would be displaced.                                                                                   | 7.3; 7.8                 |
| The wind turbines already create noise the proposal would exacerbate noise impacts.                                           | 7.14.3                   |
| Agricultural land would be lost.                                                                                              | 7.2.32 – 7.2.35; 7.16.29 |
| There are concerns that the proposal would impact on human health and that of nearby live stock.                              | 7.14.3                   |

4.3. Eastchurch Parish Council object to the application on the following grounds:

| First Round Comments                                                                                                                                                           | Report reference                         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
| The NPPF stresses sustainable development, protection of agricultural land, and safeguarding local communities from harmful impacts. The development would conflict with this. | 7.14.3; 7.2.32 – 7.2.35; 7.16.29; 7.17.1 |
| The proposal involves the permanent loss of agricultural land and risks conflict with Local Plan policies on landscape character, biodiversity, and rural amenity.             | 7.2.32 – 7.2.35; 7.3; 7.16.28 – 7.16.35  |
| Lithium-ion battery storage carries significant risks of fire and explosion, which are well documented across the UK and internationally.                                      | 7.15.2 – 7.15.9                          |
| The proximity to residential areas heightens the danger, particularly given limited emergency response capacity on the Isle of Sheppey.                                        |                                          |

|                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The development would introduce large-scale industrial infrastructure into a rural setting, negatively affecting the character of the landscape.                                            | 7.3; 7.7                                                                                                                                                                                                                                                                                                                                                          |
| The local community would be severely impacted by visual intrusion, noise, and the risks associated with hazardous battery technology.                                                      | 7.14; 7.15.2 – 7.15.9                                                                                                                                                                                                                                                                                                                                             |
| The application does not provide adequate detail on safety systems, fire suppression measures, or emergency response protocols.                                                             | 7.15.2 – 7.15.9                                                                                                                                                                                                                                                                                                                                                   |
| A site meeting is requested with planning officers and the applicant to fully assess the proposal.                                                                                          | Whilst a site meeting has not been carried out with Eastchurch Parish Council, officers have fully assessed the application having considered comments made by the Parish Council during the course of the application, on the basis of the plans/information submitted by the applicant and having visited the site.                                             |
| The Parish Council urges that any financial or community benefit must remain within Eastchurch and the eastern end of the Isle of Sheppey, as this area would bear the brunt of the impact. | Given the nature of the proposals, no financial contributions other than the monitoring fee required for the ongoing monitoring of Biodiversity Net Gain (para 7.8.40) are to be secured. Whilst sitting outside of the planning regime, the applicant has committed up to £1m per year for the life of the project being secured under a community benefit fund. |

## 5. CONSULTATIONS

- 5.1. Set out below is a summary of matters raised in representations. For those individual consultees that have been consulted more than once, the comments represent the final position of the consultee:
- 5.2. **KCC Highways** – No objection subject to conditions.
- 5.3. **KCC Flood and Water Management** - No objection subject to conditions.
- 5.4. **KCC Ecological Advice Service (KCC EAS)** – No objection subject to conditions and planning obligations.
- 5.5. **KCC Public Rights of Way (PROW)** – KCC PROW are in receipt of a claim to record a PROW which crosses through the middle of the site. They strongly advise that the

application should be considered as if this application will be successful. Either the application should be amended to accommodate this PRow, or no decision on the application is made until the PRow issue has been determined. Otherwise, should the claim be successful and the BESS built as currently laid out, the proposals would result in an unlawful obstruction of a public highway. For this reason, they place a holding objection on this application at the current time.

**Officer comment** – *Since these comments were issued (September 2025), KCC Public Right of Way have confirmed that they are in the process of making an Order to record the route as having footpath status on the Definitive Map of Public Rights of Way. This order once ‘made’ is subject to a 6 week advertising period where anybody can object to the order. If any objections are received, the case is submitted to the Planning Inspector for decision. This can add substantial delay. If no objections are received, then KCC will confirm the order itself. KCC cannot confirm an order if objections are outstanding. KCC PRow have advised that they have no objection to the planning principle but maintain their holding objection given the impact on the claimed route pending that matter being concluded.*

- 5.6. **KCC Archaeology** - No objection subject to conditions.
- 5.7. **SBC Design** – No comment to make.
- 5.8. **SBC Tree Officer** - No objection subject to conditions.
- 5.9. **SBC Climate Change Officer** – No objection.
- 5.10. **Mid-Kent Environmental Protection** – No objection subject to conditions.
- 5.11. **National Highways** - No Objection, the matters raised in pre-application scoping have been addressed in the submission.
- 5.12. **Environment Agency (EA)** – No objection.
- 5.13. **UK Power Networks** – No objection subject to conditions.
- 5.14. **Natural England (NE)** – No objection.
- 5.15. **Lower Medway Internal Drainage Board (LMIDB)** – No objection subject to conditions.
- 5.16. **Southern Water** – No objection following submission of additional information.
- 5.17. **Kent Police** – No objection subject to conditions.
- 5.18. **Kent Fire and Rescue** – Would expect the applicant to liaise with KFRS to ensure water provisions are adequate for the site and firefighting operations. Initial access concerns relating to the southern part of the site have now been addressed by the applicant in terms of an amended route into the lower section to create an additional access point with a full loop which is broadly compliant from a KFRS perspective at this stage.

Acknowledge that the final Emergency Response Plan and Battery Safety Management Plan will be completed further down the line due to the evolving

document (procurement/construction/maintenance etc.) and note it will be carried out in conjunction with KFRS as highlighted by the applicant.

5.19. **Health and Safety Executive** – No comments received.

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

CP1 Building a strong, competitive economy

CP2 Promoting sustainable development

CP4 Requiring good design

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

CP8 Conserving and enhancing the historic environment

DM3 The rural economy

DM6 Managing transport demand and impact

DM7 Vehicle parking

DM14 General development criteria

DM19 Sustainable design and construction

DM20 Renewable and low carbon energy

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

DM34 Scheduled monuments and archaeological sites

**Supplementary Planning Guidance/Documents -**

Landscape Character Assessment and Biodiversity Appraisal (LCA&BA), 2011.

Parking Standard Supplementary Planning Document, 2020.

Swale Landscape Assessment (2019)

Air Quality and Planning Technical Guidance (July 2024)

Noise and Vibration Planning Technical Guidance (May 2020)

Renewable Energy Guide (July 2014)

Planting on New Developments Supplementary Planning Guidance

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

**National Planning Practice Guidance (NPPG)**

**Kent Mineral and Waste Local Plan 2024-39 (KM&WLP), 2025 & the Kent Mineral Sites Plan (KMSP), 2020.**

**7. ASSESSMENT**

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

- Principle
- Landscape and Visual
- Heritage
- Archaeology
- Trees
- Character and appearance
- Ecology
- Transport and Highways
- Air Quality
- Community Infrastructure
- Flood Risk, Drainage and Surface Water
- Contamination
- Living Conditions
- Other Matters

**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. 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. Chapter 14 of the NPPF specifically relates to meeting the challenge of climate change stating that the planning system should support the transition to a low carbon future and support renewable and low carbon energy and associated infrastructure.
- 7.2.4. NPPF paragraph 161 requires that the planning system should support the transition to net zero by 2050. NPPF paragraph 168 states that when determining planning applications for all forms of renewable and low carbon energy developments and their associated infrastructure, local planning authorities should not require applicants to demonstrate the overall need for renewable or low carbon energy and should give significant weight to the benefits associated with renewable and low carbon energy generation and the proposal's contribution to a net zero future.
- 7.2.5. Further to the above, relevant national acts, strategies and white papers underpin the government's drive towards decarbonisation of the energy sector.
- 7.2.6. Local Plan Policy ST1 provides support for the expansion of renewable energy in the Borough, stating in part that development proposals will as appropriate meet the challenge of climate change through promotion of sustainable design and construction, and the expansion of renewable energy.
- 7.2.7. The proposal would be located in the countryside. Policy ST3 relates to the Swale settlement strategy and states that at locations in the open countryside, outside the built-up area boundaries shown on the Proposals Map, development will not be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities. Whether the proposal demonstrates that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside is considered in Section 7.3 of this report.
- 7.2.8. Policy ST6 which relates to the Isle of Sheppey sets out that development proposals will be located at sites within built-up area boundaries.
- 7.2.9. Local Plan Policy DM20 promotes development which delivers renewable and low carbon energy generation. Whilst the policy does not specifically address BESS proposals, it is acknowledged that that these are critical components of an energy system involving wind and solar generation.
- 7.2.10. The proposals have been considered against the criteria of policy DM20 below, insofar as that relates to renewable energy and low carbon generation which these proposals would benefit.
- 1      *Analysis of all impacts and methods to avoid and mitigate harm from these impacts is fully addressed in any planning application for such proposals.*
- 7.2.11. The proposal has the potential to result in a variety of impacts, and it is noted that the application is supported by a comprehensive suite of documents which seek to address these points. An analysis of this is undertaken in the relevant sections of the report below.

*2 Demonstrating how opportunities highlighted in the Borough's Energy Opportunities Map have been exploited, in particular in the delivery of district heating, where shown to be financially viable and technically feasible.*

- 7.2.12. The Energy Opportunities Map (EOM) does not include any reference to BESS, which is an energy technology which has been developed since the EOM was produced.
- 7.2.13. The proposal would support the principle of the Energy Opportunities Map, which is to reduce energy usage and promote the Council's plans set out in the Climate Emergency declaration.
- 7.2.14. Surplus energy is typically created when renewable sources such as existing and future solar farms and wind turbines are producing more electricity than demand requires. Rather than curtailing that renewable generation, the excess energy is absorbed by the battery energy storage system (BESS), stored, and then discharged back to the grid when demand increases or renewable output drops.
- 7.2.15. This allows the BESS to support grid stability, reduce curtailment of renewable energy, and help balance supply and demand more efficiently. The proposal would support renewable energy generation, including from schemes on the Isle of Sheppey, which is a location identified in the EOM as being appropriate for energy generation from wind.

*3 Priority will be given to development on previously developed land or buildings and proposals which incorporate renewable, decentralised and low carbon energy as integral to new commercial or residential schemes;*

- 7.2.16. Due to the scale and type of development proposed, it is logical that it be located away from sensitive receptors, particularly given the site needs to be large enough to accommodate the proposal. The scale of previously developed land required (49 Ha in a single location) is not considered to be available.

*4 For schemes on agricultural land, it has been demonstrated that poorer quality land has been used in preference to higher quality. In exceptional cases, where schemes are demonstrated as necessary on agricultural land, that they fully explore options for continued agricultural use.*

- 7.2.17. The loss of Best and Most Versatile agricultural land is discussed in detail in the following section of this report.

*5 Opportunities to enhance biodiversity are exploited.*

- 7.2.18. The proposal would achieve significant Biodiversity Net Gain (BNG), well above the government requirement of 10% BNG. The proposal clearly accords with this requirement.

*6 Landscape, visual and heritage impacts as well as impacts on geology, soils and flood risk, including cumulative impacts, are minimised and mitigated to acceptable levels*

- 7.2.19. Landscape and visual impacts are discussed in Section 7.3 of this report, flooding in Section 7.12. There would be no harm to heritage assets, the development would be

safe from flooding and landscape and visual impacts would be minimised and partially mitigated.

*7 Impacts on residential amenity and safety, including noise, air quality, tranquillity and transport are minimised and mitigated to acceptable levels*

7.2.20. The above matters are discussed in the subsequent sections of this report, however in summary, the proposal would accord with this part of Policy DM20.

*8 Applications demonstrate evidence of local community involvement and/or leadership.*

7.2.21. The application is accompanied by a Statement of Community Involvement which details the nature of public consultation carried out prior to the application being submitted.

*9 All relevant plans, policies, appraisals and associated guidance, including landscape appraisals and designations and biodiversity management plans, are referenced in any planning application to ascertain the appropriate type and scale of development for any particular location.*

7.2.22. The application is comprehensive, relevant policies and guidance are appropriately referenced.

*10 In cases of temporary planning permission, detailed proposals for the restoration of the site at the end of its functional life are set out as a part of any application.*

7.2.23. The application does not seek temporary planning permission. That said the Applicant has advised that it is possible that the proposed development may end at some point in the future. The BESS and Battery deteriorate over time, Lithium-Ion cells degrade just like any battery technology. If permission is granted a condition should be imposed on any consent requiring a decommissioning plan to ensure that once the BESS is no longer required, the land is restored to its pre-development condition as closely as possible.

7.2.24. The Applicant advised that decommissioning typically covers the following stages:

- Disconnection from electrical network
- Removal of energy storage units from site
- Removal of transformers and other electrical equipment from site
- Demolition of buildings and removal of materials
- Demolition and removal of foundations
- Excavation and removal of hardstanding
- Reinstatement of subsoil and topsoil
- Removal of site security fence
- Demobilisation from site
- Implementation of restoration plan

- 7.2.25. The units are containerised, and this means removal is straight forward. Subject to a condition being imposed on any consent to secure a decommissioning and restoration plan, no objection would be raised.
- 7.2.26. In conclusion the proposal would comply with the majority of Policy DM20, save for criteria (4) and (6). Whether the proposal would comply with Policy ST3 in terms of landscape impacts is examined in more detail in the relevant sections below.
- 7.2.27. Rural economy and Best and Most Versatile Agricultural Land
- 7.2.28. The site is in a rural location and as such Policy DM3 of the Local Plan is relevant. The policy states that planning permission will be granted for the sustainable growth and expansion of business and enterprise in the rural area. The development would not be permanently staffed such that there would be limited benefits arising from an employment perspective during the operational phase, other than those generated by the management and maintenance of the site. There would be economic benefits arising during the construction phase as a result of employment during that period, albeit this would be on a temporary basis.
- 7.2.29. The loss of the farmland to the proposed development would impact on rural workers who could be engaged in farming. Applying the ratio of agricultural jobs in Swale per hectare of land from DEFRA (April 2025: Land use, Livestock and Agricultural workforce in England by Local Authority) this gives a ratio of 0.05 (Full Time Equivalent) jobs per hectare. This would give a total of around 2.5 agricultural jobs that could be displaced by the development, noting that the agricultural economy extends beyond the site itself. It is unclear how the proposals would support rural employment. In view of this, the proposals are considered to be in conflict with Policy DM3.
- 7.2.30. The NPPF at paragraph 180 states in part that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued soils and the wider benefits from natural capital and ecosystem services, by recognising the economic and other benefits of the best and most versatile agricultural land.
- 7.2.31. Local Plan Policy DM31 aims to ensure that Best and Most Versatile (BMV) land is only developed where there is a demonstrated need and where other options have been examined first; and having regard to other sustainability considerations.
- 7.2.32. Part of the site comprises Grade 3a agricultural land (16.4 Ha or 31% of the site), which is classed as BMV agricultural land. The overall need for renewable or low carbon energy is established in national policy. Given the scale of the proposal (49 Ha), it is difficult to see how the proposal could be accommodated within the Borough's built-up boundary.
- 7.2.33. The site is not allocated for development. The Applicant has undertaken an assessment of the availability of lower grade agricultural land; however the analysis is problematic, it does not stratify Grade 3 agricultural land (into 3a which is BMV and 3b which is not), this means it is not possible to conclude from the analysis that land of a lower grade is not available.

- 7.2.34. The landowner has confirmed that the site represents only a small part of the agricultural land holding, and the remainder will continue to be farmed.
- 7.2.35. While the proposal accords with elements of Policy DM31, overall, it does not comply with it. The proposed loss of BMV is contrary to Policy DM31, and this weighs against the proposal in the planning balance.

### 7.3. Landscape and Visual

- 7.3.1. 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.
- 7.3.2. Local Plan Policy DM14 relates to general development criteria and requires development to reflect the positive characteristics and features of the site and locality, conserve and enhance the natural and/or built environments taking in to account the desirability of sustaining and enhancing the significance of heritage assets.
- 7.3.3. 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'.
- 7.3.4. The application is accompanied by a Landscape Visual Impact Assessment (LVIA). This establishes a 'Study Area' which was defined in part by the use of 'Zone of Theoretical Visibility' (ZTV). A ZTV is defined in the 'Guidelines for Landscape and Visual Impact Assessment' (GLVIA3) as "A map usually digitally produced, showing areas of land within which, a Proposed Development is theoretically visible".
- 7.3.5. The ZTV takes account of topographical data, the proposed height of development and the main visual barriers within the landscape, such as existing buildings.
- 7.3.6. At a national level this LVIA concludes that there will no adverse impacts on nationally designated landscapes. The assessment concludes that there will be no adverse effects on the Kent Level: North Kent Marshes Area of High Landscape Value (AHLV) which is located approximately 550m to the south of the site at its nearest point.
- 7.3.7. Even though the site is not considered to be a valued landscape for the purposes of paragraph 180 of the NPPF, Local Plan Policy DM24 states that non-designated landscapes will be protected and enhanced (the development would not protect or enhance the landscape). When significant adverse impacts remain, the social and or economic benefits of the proposal need to significantly and demonstrably outweigh the harm to the landscape character and value of the area.
- 7.3.8. Reference is made to National Character Areas for England. National Character Areas (NCAs) divide England into 159 distinct natural areas. The site is located within the central part of National Character Area 81: Greater Thames Estuary. Some of the key characteristics which are relevant to the site and study area are identified as:

- Predominantly flat, low-lying coastal landscape where extensive open spaces are dominated by the sky, and the pervasive presence of water and numerous coastal estuaries extend the maritime influence far inland.
- Geological contrast and variety along the coastline provided by Sheppey, a long, low island rising from a stretch of very flat marsh along the Swale Estuary in Kent with low, steep clay cliffs facing towards Essex, and Mersea Island in the Blackwater Estuary in Essex.
- Open grazing pastures patterned by a network of ancient and modern reed-fringed drainage ditches and dykes, numerous creeks and few hedges or fences, with tree cover a rarity.
- Traditional unimproved wet pasture grazed with sheep and cattle combined with extensive drained and ploughed arable land protected from floods by sea walls, with some areas of more mixed agriculture on higher ground.
- Strong feelings of remoteness and wilderness persist on extensive salt marshes, mudflats and reclaimed farmed marshland, which support internationally important plants, invertebrates and populations of breeding and overwintering birds, notably overwintering Brent geese.
- Some of the least settled parts of the English coast with numerous small villages and hamlets on higher ground and marsh edges reflecting medieval patterns and the coastal economy.
- Increasing development pressures around major settlements and especially towards London, with urban, industrial and recreational sites often highly visible within the low-lying marshes.

7.3.9. The site displays many of the characteristics of NCA 81. The most recently published Landscape Character assessment of relevance to the site is the Swale Landscape Character and Biodiversity Appraisal SPD. The site is located within Landscape Character Area (LCA) 13 - Central Sheppey Farmlands. The key characteristics of the LCA 13 are identified as:

- Ridge of London clay rising steeply to north
- Eroded clay cliffs of geological significance
- Coastal views of estuary and windfarm
- Large-scale open predominantly arable landscape, with infrequent isolated orchards
- Remnant shelterbelts and fragments of over-mature hedgerows
- Poor quality urban fringe developments including holiday parks
- Distinctive outcrop at Bunny bank, Eastchurch
- Prison complex raised on Stanford Hill provides a dominant feature

7.3.10. The Landscape and Visual Impact Assessment (LVIA) notes that the features/elements/characteristics identified as important or “key” to the landscape character of the site are:

- Low-lying gently undulating arable landscape.
- Field pattern defined by hedgerows and ditches.
- Rural qualities with a sense of openness.
- Marshes to the south of the arable landscape.

- 7.3.11. The methodology used for assessing the landscape and visual effects is based on the recommendations in Guidelines for Landscape and Visual Impact Assessment 3rd Edition, published by The Landscape Institute and the Institute of Environmental Management & Assessment in 2013 (GLVIA3).
- 7.3.12. In addition to GLVIA3, the following guidance was also used:
- Landscape Institute's Technical Guidance Note LITGN-2024-01 Notes and Clarifications on Aspects of Guidelines for Landscape and Visual Impact Assessment Third Edition (GLVIA3), published August 2024.
  - Landscape Institute's Technical Guidance Note 02/21 Assessing landscape value outside national designations.
  - Landscape Institute's Technical Guidance Note, Visual Representation of Development Proposals, September 2019.
- 7.3.13. In landscape and visual assessments, a distinction is normally drawn between landscape effects (i.e. effects on the character or quality of the landscape, irrespective of whether there are any views of the landscape, or viewers to see them) and visual effects (i.e. effects on people's views of the landscape, principally from residential properties, but also from public rights of way and other areas with public access).
- 7.3.14. The assessment set out in the LVIA is based on an appropriate and recognised methodology. The methodology has been applied in a consistent and fair manner, and the level of effects identified seems, on balance, to be reasonable. The LVIA considers the Council's Urban Extension Landscape Capacity Study and Landscape Character and Biodiversity Appraisal SPD. The coverage and content of the assessment is generally balanced. The effects as set out in the LVIA form a reasonable basis for taking into account landscape and visual effects as part of the overall planning balance.
- 7.3.15. Mitigation
- 7.3.16. Mitigation measures are proposed to avoid or reduce adverse effects. These include:
- The location of the battery storage area is positioned to avoid the removal of vegetation and drainage ditches, retaining existing field pattern.
  - Strengthening and infilling gaps in the existing hedgerows to reduce visual effects.
  - New native hedgerows with trees are proposed through the centre of the site alongside the drainage ditches, to provide screening whilst providing wildlife corridors and connections to existing features. Sections of native hedgerows with trees are also proposed along the eastern and southern boundaries.
  - Areas of native scrub with trees have been proposed in blocks around the site, to provide some screening, particularly for nearby residents, and to enhance existing habitats.
  - Buffers from existing hedgerows and trees within the site are included to ensure existing features that contribute to the character of the landscape are retained and protected, including Root Protection Areas (RPAs).
  - Perimeter fencing is to be offset from existing hedgerows and tree canopy edges to ensure existing vegetation is not damaged or disturbed.

- The battery storage units and perimeter fencing are to be painted a recessive colour.
- Raised and planted bunds are proposed.

7.3.17. Effects on the landscape

7.3.18. The LVIA assessment covers the following scenarios:

- Construction phase - this includes all clearance and levelling works, and the construction of the proposed battery storage. Construction is expected to be up to 18 months.
- Operation at year 1 – the fully constructed and completed proposed battery storage development, including mitigation planting.
- Operation at year 15 – the operational battery storage development with established and maturing proposed mitigation planting.

7.3.19. The degree of the likely landscape effects of the proposed development is determined by relating the sensitivity of the receptors to the changes arising from the proposals, and the degree and nature of the changes in the landscape arising from the proposed development. The effects of the proposal on the landscape identified in the LVIA are shown in the table below:

| Receptor                                       | Construction           | Year 1                 | Year 15                   |
|------------------------------------------------|------------------------|------------------------|---------------------------|
| Low-lying gently undulating arable landscape:  | Moderate adverse       | Moderate adverse       | Moderate adverse          |
| Field pattern defined by hedgerows and ditches | Moderate adverse       | Moderate adverse       | Minor-moderate beneficial |
| Rural qualities with a sense of openness       | Moderate-major adverse | Moderate adverse       | Minor-moderate adverse    |
| Marshes to the south of the arable landscape   | Minor-moderate adverse | Minor-moderate adverse | Minor adverse             |

7.3.20. At year 15, the associated planting within the site would be established. The scrub planting, hedgerow, trees, scrub and grassland within the site would be largely established, providing additional screening of the proposed development. This would reduce the sense of openness in the BESS area and obscure some mid-distance views. Although the LVIA comments that the “proposed 9.5m acoustic fencing around the substation in the southeast of the site would help to reduce some perceptual changes within the north of the marshes”, that is not agreed. Whilst it would help to screen the introduction of industrial type infrastructure (the substation) in the landscape, it would be a tall and visually imposing structure in of itself. It is not agreed that it would have a minor adverse impact (it would be moderate at least), as it would be a readily noticeable structure in the landscape. It is recognised however, that the substation and fencing would be seen within the context of the solar farm to south and adjacent farm buildings to the east.



7.3.21. While the proposed development would continue to detract from the rural qualities of the site, the establishment of planting would help to partially mitigate this impact. The planting would also provide some screening of the adjacent large farm buildings.

7.3.22. Visual effects

7.3.23. The degree of the likely visual effects of the proposed development is determined by relating the sensitivity of the receptors to the changes arising from the proposed development, and the degree and nature of the changes in the views available to people and in their visual amenity arising from the development.

7.3.24. The ridgelines to the north and west of the site would limit views of the proposed development to within circa 0.5km to the north and west of the site. To the east, potential views would extend towards the edges of Warden and Leysdown on-Sea to about 2km from the site boundary.

7.3.25. To the south of the site, where topography of the marshes is flatter and the site is slightly more elevated, views would extend further to the south. Screening features would reduce views of the proposed BESS elements to moderate but due to equipment in the substation part of the site being circa 10.2m in height with a 9.5m acoustic fence surrounding it, the substation would be more visible from a wider area.

7.3.26. A photographic survey was undertaken to identify the potential extent of the visibility of the proposed development by locating viewpoints available to sensitive receptors. Potentially sensitive visual receptors within the study area include residents, users of public rights of way, visitors, and road users.

7.3.27. A total of 11 views were studied to illustrate the site and its appearance in publicly available locations. The view positions were chosen to represent the most open view available and are considered reasonable.

7.3.28. The assessment of visual effects is described by considering how the different groups of “visual receptors” may be affected. Visual receptors include:

- People in settlements and residential properties.
- Users of public rights of way and visitors to the Marshes.
- Road users.

7.3.29. The visual effects of the proposal identified in the LVIA are shown in the table below:

| Receptor                                                                                        | Construction                            | Year 1                                  | Year 15                                    |
|-------------------------------------------------------------------------------------------------|-----------------------------------------|-----------------------------------------|--------------------------------------------|
| Residents in dwellings adjacent to the site with open and unobscured views towards the site.    | Major adverse or Moderate-major adverse | Major adverse or Moderate-major adverse | Moderate adverse or minor-moderate adverse |
| Residents in dwellings within 300m of the site with open and unobscured views towards the site. | Major adverse                           | Moderate-major adverse                  | Moderate adverse                           |
| Residents in the scattered dwellings and farmsteads between 300m and                            | Moderate adverse                        | Moderate adverse                        | Minor adverse                              |

|                                                                                                   |                                            |                                            |                                         |
|---------------------------------------------------------------------------------------------------|--------------------------------------------|--------------------------------------------|-----------------------------------------|
| 1km of the site with filtered, oblique or partial views.                                          |                                            |                                            |                                         |
| Users of public rights of way within 1km of the site with open views towards the site.            | Moderate-major adverse or moderate adverse | Moderate adverse or minor-moderate adverse | Minor-moderate adverse or minor adverse |
| Users of public rights of way beyond 1km of the site with open views towards the site.            | Minor-moderate adverse                     | Minor-moderate adverse                     | Minor adverse                           |
| Local road users within 1km of the site with oblique, partial or filtered views towards the site. | Moderate adverse                           | Moderate adverse                           | Negligible                              |

- 7.3.30. It is noted that in some instances the effect has more than one conclusion (e.g., Moderate-major adverse or moderate adverse). The Applicant's landscape consultant has advised that this is logical as the assessment is based on a number of viewpoints, which are representative of different visual receptors. The magnitude of change is different at each viewpoint because it depends on factors such as the angle of view and the scale of the development in the view.
- 7.3.31. Residents, as a group of receptors, are represented by more than one assessment photograph. For some residents adjacent to the site, there would be Major Adverse visual effects, while for others, effects would be Moderate-major. The effect depends on the nature of the view experienced and intervening features.
- 7.3.32. This is the case for each group of receptors where more than one location of view is included. The other example where 'or' is used is for 'Users of public rights of way within 1km of the site with open views towards the site'. The effects on this group are not consistent across the whole study area, so two different levels of effects are included – 'Moderate-major adverse or moderate adverse'.
- 7.3.33. By year 15, the proposed hedgerow planting with trees along around the boundary of the site would be well established. These features, along with bunding and shrub and scrub planting, are expected to filter views of the battery compound and substation.
- 7.3.34. The proposed landscaping is also likely to screen some views of the existing farm buildings and wind turbines in the distance. Views of the open farmland would be changed to close views of native hedgerow and trees. The planting would provide greater screening and filtering, reducing the overall scale of change. Views of the established planting would be a typical characteristic along the roadside.
- 7.3.35. Overall, the visual effects would be largely contained within the immediate vicinity of the site due to the rolling topography and the presence of boundary vegetation and nearby buildings that provide some screening. The proposed development, save for the substation and acoustic fencing which is set to the south of the site, is relatively low in height and would sit below the horizon with the central farmlands continuing to for the backdrop to views.

7.3.36. Any views of the development would be seen in the context of existing features such as the wind farm, solar farm, and adjacent large buildings at Old Rides Farm. If approved conditions would be required to ensure planting is secured.

7.3.37. Landscape and visual – Conclusion

7.3.38. Ultimately, there would be harmful landscape and visual impacts that the proposed mitigation would not be able to entirely overcome.

7.3.39. The landscape and visual impacts across the site would be considered contrary to the landscape aspects of policies ST1, ST3, ST6, DM14 and DM20 of the Local Plan, and weigh against the scheme.

7.3.40. Policy DM24 is clear that when significant adverse impacts remain, an assessment needs to be made as to whether the social and/or economic benefits of the proposal significantly and demonstrably outweigh the harm to the landscape character and value of the area. This is considered in the Planning Balance section of this report.

7.4. **Heritage**

7.4.1. 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 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.

7.4.2. Local Plan Policy CP8 sets out various requirements proposals must accord with to sustain and enhance the significance of Swale's designated heritage assets. The policy states that development will sustain and enhance the significance of designated and non-designated heritage assets to sustain the historic environment whilst creating for all areas a sense of place and special identity.

7.4.3. Policy DM32 of the Local Plan relates to development involving listed buildings and states that development proposals affecting a listed building, or its setting will be permitted provided that the building's special architectural or historic interest, and its setting and any features of special architectural or historic interest which it possesses, are preserved.

7.4.4. The NPPF states that local planning authorities should identify and assess the particular significance of any heritage asset and consider the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits that may arise and this is endorsed by the Local Plan.

7.4.5. In assessing heritage impacts, the first step is for the decision-maker to consider each of the designated heritage assets which could be affected by the proposed development in turn and assess whether the proposed development would result in any harm to the significance of such an asset.

- 7.4.6. The application is accompanied by a Heritage Impact and Archaeological Assessment. In this case, the Grade II\* listed Shurland Castle (and Shurland House Scheduled Monument) lies circa 700m to the north west of the battery infrastructure proposed on the site, with the associated Grade II listed Shurland Garden Walls also located to the west/north west (over 600m away from the battery infrastructure). That significant distance between the proposals and the Shurland Castle Grade II\* listed building/Scheduled Monument combined with the change in topography and intervening vegetation ensures that there is very limited intervisibility between the application site and those designations. The proposals are also sufficiently distant the Grade II listed wall such that it would have a neutral impact on the setting of that designation.
- 7.4.7. The Grade II listed 22 and 24 High Street in Eastchurch lie circa 900m to the north west of the battery infrastructure proposed, whilst further listed buildings, including the Grade I listed Church of All Saints and Grade II\* listed Memorial to 'The Home of Aviation', lie further to the west along Eastchurch High Street. Due to the presence of intervening built form, separation distance and change in topography, there would also be no intervisibility between those designations and the battery infrastructure proposed. The Grade II listed Parsonage Farmhouse and associated garden walls lie circa 900m to the west of the site, with the Grade II listed Four Hangars lying further away to the west. Due to the separation distance and intervening vegetation, as well as planting proposed within the site, the proposals would have no adverse impact on the setting of those designations.
- 7.4.8. Designated heritage assets lie at a significant distance from the proposal, such that the development would not affect the setting of those designations. In view of this, the proposals are considered to be in accordance with policies CP8 and DM32 of the Local Plan and the NPPF. In coming to this conclusion, the council have had special regard to the desirability of preserving listed buildings and their setting, as per the statutory duty.
- 7.5. **Archaeology**
- 7.5.1. Policy DM34 of the Local Plan sets out that planning applications on sites where there is or is the potential for an archaeological heritage asset, there is a preference to preserve important archaeological features in situ, however, where this is not justified suitable mitigation must be achieved. The policy also seeks to ensure that the setting of any Scheduled Monument is not adversely affected by any development proposals.
- 7.5.2. The NPPF sets out that where development has the potential to affect heritage assets with archaeological interest, Local Planning Authority's should require developers to submit an appropriate desk-based assessment, and where necessary, a field evaluation.
- 7.5.3. The Shurland Castle Scheduled Monument lies circa 700m to the north west of the battery infrastructure proposed on the site, with the Scheduled Monument associated with the Cold War Heavy Anti-Aircraft Battery lying on land to east of Harty Ferry Road over 900m to the east.

- 7.5.4. The Heritage Impact and Archaeological Assessment submitted with the application was evaluated by the KCC Archaeologist who advised that the archaeological potential of this area of Sheppey is relatively unknown due mainly to the limited amount of archaeological survey and investigation in the area.
- 7.5.5. The KCC Archaeologist noted that the WW1 and WW2 defences do not extend into the site. Work on similar topography in Sheppey has identified archaeological landscapes around the marsh edges. The KCC Archaeologist considers that there is potential for the development to affect archaeological remains, and that the potential impacts of the scheme on archaeology could be appropriately addressed through further evaluation and mitigation that could be secured through a condition on any consent.
- 7.5.6. Subject to such a condition, no objection is raised in terms of impacts to archaeology. The proposals are also sufficiently distant from the Shurland Castle Scheduled Monument and Scheduled Monument associated with the Cold War Heavy Anti-Aircraft Battery lying on land to east of Harty Ferry Road such that their setting would not be adversely affected by the development. The proposal is, therefore, in accordance with policy DM34 of the Local Plan.
- 7.6. **Trees**
- 7.6.1. The NPPF recognises the contribution of trees to the intrinsic character and beauty of the countryside. The Local Plan requirement is set out primarily within policies CP4 and DM29 of the Local Plan.
- 7.6.2. In summary, Policy CP4 of the Local Plan states that development should retain trees where possible (including old orchards and fruit trees, hedgerows, shelter belts, woodland and scrub) particularly those that make an important contribution either to the amenity, historic, landscape character or biodiversity value of the site or the surrounding area.
- 7.6.3. Local Plan Policy DM29 relates to woodlands, trees and hedges and states that unless the need for, and benefits of development in a location clearly outweigh the adverse impacts, planning permission will be refused where there is a loss of trees (including individual trees, old orchards, fruit trees, hedgerows and woodland scrub) that make an important contribution either to the amenity, historic, landscape, townscape or biodiversity value of the site and/or the surrounding area.
- 7.6.4. The application is accompanied by an Arboricultural Impact Assessment, tree surveys and tree retention plans. There is one category U tree (category U refers to trees that are either dead, dying, or possess serious, irremediable structural defects) which is beyond the red line boundary, within the landowners other holdings, which is not protected and is proposed for removal, based on its poor condition rather than to enable the scheme.
- 7.6.5. Pruning of two trees and hedging is proposed to form a safe visibility splay for the second access to the site (the new entrance proposed approximately 475m west of the existing main entrance, along Leysdown Road). This would necessitate removal of approximately 18m of hedgerow. Partial removal (circa 24m) and replacement of

hedging at the main entrance from Leysdown Road is also proposed to facilitate a wider entrance and visibility splay.

- 7.6.6. In terms of proposed landscaping, new trees are proposed alongside the retained hedgerow along Leysdown Road. The proposed trees are aimed at filtering views for people travelling along Leysdown Road. The retained hedgerow is to be managed to encourage growth of up to 3m high. Where there are any gaps, it is proposed these be in-filled with native hedgerow species.
- 7.6.7. Proposed native shrubs and trees are proposed help screen and filter views of the proposed development for people travelling along Leysdown Road. Further areas of trees and shrubs are shown in the landscape master plans along the eastern and western boundaries of the site. In addition, areas of trees and shrubs are proposed between the boundaries and the BESS compounds (to both the eastern and western sides of the BESS compounds).
- 7.6.8. Native hedgerow with trees are proposed along the main access road to help screen and filter views of the proposed development for nearby residents and users of public rights of way to the east. Proposed species-rich neutral grassland is proposed everywhere beyond the BESS compounds which is not to be otherwise planted.
- 7.6.9. Grassed slopes are proposed immediately adjacent and adjoining all BESS compounds and the substation area. In addition, extensive raised bunds (circa 2m high) planted with grass are proposed to the west and east of the BESS compounds. Native hedgerows are proposed alongside the retained drainage ditches within the site to help filter views of the proposed development. Grass mix would be planted alongside all proposed hedgerows (an ecological benefit).
- 7.6.10. A drainage feature (pond) is proposed to be planted with species-rich wetland grass.
- 7.6.11. The application was referred to the Council's Tree Officer who raised no objection to tree impacts, proposals or the tree retention plans. Subject to conditions to ensure tree protection measures are implemented and to secure the implementation of a comprehensive landscape strategy, and maintenance thereafter of landscaping, the proposal would comply with landscaping and tree aspects of policies CP4 and DM29 of the Local Plan.

## 7.7. **Character and appearance**

- 7.7.1. Local Plan Policies CP4 and DM14 and the NPPF attach great importance to the design of the built environment and set out that design should contribute positively to making places better for people.
- 7.7.2. The Design and Access Statement submitted with the application notes that the layout of the proposed development was informed by various factors, including topography, land availability, drainage, and the site's distance from noise-sensitive receptors, alongside its proximity to the highway and utility infrastructure, there is clear evidence that the proposal responds to constraints and opportunities posed from climate change and natural processes.

- 7.7.3. The development comprises several distinct elements, including energy storage units, a substation, attenuation ponds, fencing and landscaping features. The appearance and scale of the proposed development are aligned with the objective of making efficient use of the available grid connection. While the design is somewhat utilitarian, it is in line with industry standards for similar energy projects, and various measures are proposed to lessen impacts, including limited height, muted colours, and landscape screening.
- 7.7.4. The scheme comprises various types of electrical equipment. The specifications of each component have been designed to minimise the overall footprint of the development, while maximising the efficiency of the grid connection.
- 7.7.5. The proposal would displace farmland, and while the overall height of the proposed built form is limited, the open fields contribute to local character and distinctiveness and these would be largely built over. There would also be some cut and fill reprofiling required across the site to enable a level platform to be provided for the development. The proposed landscaping and the limited scale of the majority of structures would help mitigate impacts. However, while the landscaping would reflect the positive characteristics and features of the site and locality, the BESS equipment and substation and associated development would not.
- 7.7.6. In terms of the scale of the proposal, the BESS units would be approximately 3.1m in height, with Switch Gear structures being 4.1m in height. This scale is akin to a single storey building (noting that there would be a significant number of compounds and BESS units).
- 7.7.7. The substation equipment is greater in height, with some elements rising to circa 10.2m and the overall substation area surrounded by a 9.5m high acoustic fence which in of itself would have an imposing visual presence. It is acknowledged that there are very large farm buildings in existence which would be immediately adjacent (to the east) of the substation site, and that the substation (and its associated fence) would be seen within the context of large existing structures. Nonetheless, it is inevitable that a degree of visual harm would arise from the introduction of structures of this scale and form in this location.
- 7.7.8. Management of the buildings and equipment is proposed, and the application is supported by a Landscape and Ecology Management Plan, there is demonstrable evidence that the proposal involves the long-term maintenance and management of buildings, spaces and features.
- 7.7.9. The inherent nature of the proposed development and the location mean that the proposal does not accord with many of the aspects of policies CP4 and DM14, that said there is clear evidence that to the extent it is possible (given the nature of the built form), the proposal does seek to minimise impacts to the character and appearance of the area. The landscaping strategy in particular would help to partially limit visual impacts. In conclusion there is a degree of conflict with policies CP4 and DM14, which weighs against the scheme in the planning balance.

## 7.8. Ecology

### 7.8.1. Habitat Regulations

- 7.8.2. 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.
- 7.8.3. The Swale Ramsar site and Special Protection Area (SPA) and SSSI are approximately 875m to the southeast (at closest point) of the Site. Although outside of the Zone of Influence, many of the protected features are mobile (birds) and therefore could be present on site, as such there is the potential for the arable fields present on site to provide functionally linked habitat.
- 7.8.4. It is also noted that the Medway Estuary Marshes Ramsar site and SPA is 9km from the Site. However, given the expansive areas of arable farmland present between that European site and the proposed development it is reasonable to conclude that designated features are unlikely to be reliant on the arable fields on site. However, access to the Isle of Sheppey is taken across a bridge (A249) which is bound to the east by The Swale Ramsar site and SPA and to the west by the Medway Estuary Marshes Ramsar site and SPA. Emissions from traffic going to and from the site via the A249 has the potential to impact on the protected sites.
- 7.8.5. Regulation 63 of the Habitat Regulations states that a competent authority (in this case the Council), before giving any consent to a project which:
- is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and
  - is not directly connected with or necessary to the management of that site,
- must make an appropriate assessment of the implications of the project. The competent authority (in this case the Council) may only agree to the project if it will not adversely affect the integrity of the protected site.
- 7.8.6. Under the Natural Environment and Rural Communities Act (2006), the authority must have regard to the purpose of conserving biodiversity. Furthermore, the NPPF states that *'the planning system should contribute to and enhance the natural environment by minimising impacts on biodiversity and delivering net gains in biodiversity where possible'*. The NPPF is clear that if significant harm resulting from a development cannot be avoided, adequately mitigated, or compensated for then planning permission should be refused.
- 7.8.7. The Application includes a shadow Habitat Regulations Assessment Screening Report (HRA screening), which concludes that it is possible to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question.



7.8.8. Emissions

- 7.8.9. Construction traffic would use the A249 to gain access to the Isle of Sheppey. The A249 crosses between The Swale Ramsar site and SPA and the Medway Estuary Ramsar site and SPA between the mainland and the island. Although the large components (for example battery units) used in the development are likely to arrive by sea into the Port of Sheerness (thereby not needing vehicles to drive through the protected habitat sites), it is expected that construction workers and deliveries of some materials will come by road from the mainland.
- 7.8.10. The A249 (as it crosses between the designations) has an annual average daily flow of 44,042 vehicles (data from Department for Transport). The Framework Construction Traffic Management Plan submitted with the application demonstrates a worst-case scenario of up to 120 traffic movements per day. This is up to 80 movements (including arrival and return) for light vehicles (e.g. cars, vans, minibuses) and up to 40 HGV movements (two way).
- 7.8.11. It is noted that the HGV movements represent a real worst-case scenario as many of the movements would be between the Port of Sheerness and the Site and would not come within 200m of the protected sites. The 120 traffic movements represent an increase of approximately 0.27% in traffic movements for a period of up to 18 months.
- 7.8.12. The Air Pollution Information System (APIS) shows that the concentration of nitrogen oxides (NO<sub>x</sub>) is well below the critical level of 30 µg-3 (levels between 14.7 and 15.9 µg-3) on land within the designated sites within 200m of the A249. Given the low levels of traffic and low background concentration it can be concluded that there would be no effect associated with increases in the concentration of NO<sub>x</sub>.
- 7.8.13. The Critical Load for nutrient nitrogen (N) has a minimum of 5 kg/N/ha/yr and a maximum Critical Load of 15 kg/N/ha/yr.
- 7.8.14. The background levels show deposition varies between 10.9 and 11.2 kg/N/ha/yr demonstrating that there is no exceedance of the maximum Critical Load.
- 7.8.15. There is an exceedance of the minimum Critical Load. However, the proposed development would contribute very limited amounts of nutrient nitrogen on a daily basis, and the contribution would be short lived. As coastal grazing marshes and mudflats (the habitats used by the designated features) are naturally nutrient rich the small and short-term contribution of the proposed development can be discounted, both alone and in-combination with other plans and projects. The KCC EAS advise that harm to the integrity of protected habitat sites from construct traffic emissions can be ruled out.
- 7.8.16. Functionally Linked Land (FLL)
- 7.8.17. Natural England's definition of functionally linked land is '*....supporting habitat beyond the boundary of a focal area, such as a designated site, that is connected to the life and reproduction of a population for which a site has been designated or classified. This land will be important to the continuing survival, reproduction and viability of the species population associated with a designated site*'.

- 7.8.18. The closest area of suitable habitat for the breeding birds, passage and wintering birds associated with The Swale is on the Site, with the arable fields providing potential roosting and feeding locations for waterbirds particularly during the winter period. A winter bird survey undertaken on the Site between October 2024 and March 2025 (see the wintering bird report appended to the Ecological Impact Assessment – 16414B-30-01-D01) included twelve survey visits.
- 7.8.19. The number of protected bird species observed overflying the site were small, and no feeding, roosting or loafing activity was noted on the site. Therefore, the evidence suggests strongly that waterbirds do not rely on the site for survival or reproduction of The Swale protected bird population.
- 7.8.20. Given the type of development proposed and the results of the winter bird surveys, the proposal would not result in any Likely Significant Effects associated with human presence and noise during the construction phase either alone or in-combination with other plans and projects. Displacement of birds associated with the European sites from the operation of site would not result in a detectable effect on the populations of non-breeding birds present. Impacts to the protected sites due to construction activities are not expected, subject to typical site management practices that are standard across development projects. The KCC EAS consider that there would be no significant effects downstream and within The Swale SPA and Ramsar site.
- 7.8.21. Conclusion on Habitat Regulations
- 7.8.22. The Proposed Development will not result in any likely significant effects on any European sites, either alone or in-combination with other plans and projects. Harm to the integrity of protected sites can be ruled out and it is unnecessary for an Appropriate Assessment to be undertaken.
- 7.8.23. Protected species
- 7.8.24. The submitted ecological impact assessment and wintering bird survey has detailed that the site is largely an arable field, with grassland margins, hedgerows and ditches. The surveys have confirmed that 52 species were recorded during the wintering birds and there is suitable habitat for breeding birds, foraging bats, water vole, otter, reptiles and hedgehogs.
- 7.8.25. Other than wintering birds, no other specific species surveys were carried out and for the majority of species the KCC EAS advise that there is a rationale for not having undertaken further surveys, as the majority of the boundary habitat will be retained and the proposed landscaping plan demonstrates that there will be an increase in grassland and scrub habitat within the site which will benefit biodiversity.
- 7.8.26. Bats are likely to be present within the site and lighting can have a negative impact on bats (and other nocturnal species) and therefore any lighting must be designed to minimise light spill. The submitted lighting plans do demonstrate that the lighting will drop below 1 lux relatively quickly and as the lighting will only be activated when required, the KCC EAS is satisfied that the site will largely have limited or no lighting. Conditions should be imposed on any consent to secure controls over artificial lighting.

- 7.8.27. The submitted information shows that the proposed habitat would be suitable habitat for breeding birds and due to the proposed management will provide increased foraging opportunities.
- 7.8.28. The site would need to be actively managed for the life time of the development and informed by ongoing species and habitat surveys. If planning permission is granted an ecological mitigation strategy should be secured as a condition of planning permission.
- 7.8.29. To protect retained ecological designations, habitat and faunal species and minimise disturbance to these during construction works, a series of safeguarding and mitigation measures will be implemented during the construction phase. This would also need to be secured by way of a condition on any consent.
- 7.8.30. Biodiversity Net Gain (BNG)
- 7.8.31. 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.
- 7.8.32. This application was submitted after the commencement of Mandatory Biodiversity Net Gain and is therefore required to deliver at least a 10% biodiversity net gain under the Environment Act 2021.
- 7.8.33. The application is accompanied by a BNG assessment. This assesses the base line position, what would be lost to development and then the proposals to increase habitats. The Proposed Development will result in an on-site net change of:
- 140.83 habitat units, an increase of 148.85%
  - 7.94 hedgerow units, an increase of 208.90%
  - 0.90 watercourse units, an increase of 67.21%
- 7.8.34. The Proposed Development would not require the delivery of additional biodiversity units off-site as an excess of 10% BNG is provided for. The KCC EAS have reviewed the BNG assessment and agree that the BNG requirement would be met.
- 7.8.35. Significant on-site gains are areas of habitat creation or enhancement which contribute significantly to the proposed development's biodiversity net gain relative to the biodiversity value before development.
- 7.8.36. The habitat creation constitutes significant on-site gains. Government guidance states: *"The maintenance of these significant enhancements must be secured with a legal agreement (planning obligation or conservation covenant) or planning condition for 30 years in the same way as off-site gains. LPAs will consider the most appropriate mechanism and this will need to be agreed at the planning permission stage."*
- 7.8.37. Developers must maintain significant on-site habitats that they create or enhance for a minimum of 30 years. These habitats would be subject to a monitoring schedule that ensures they achieve the target condition and distinctiveness that was stated in the Biodiversity Metric.
- 7.8.38. The 30-year monitoring period commences once the habitat(s) have been implemented, and a 'Certificate of Completion' issued by the Council. The frequency

of monitoring will be agreed as part of an approved Habitat Management and Monitoring Plan (HMMP) and reflected in the S106 or conservation covenant. Where habitats are identified through monitoring as not meeting the expected target condition or distinctiveness, remedial management strategies may need to be prepared, approved and actioned to address any deficiencies.

- 7.8.39. A monitoring fee is required with the submission of each monitoring report to the Council for approval. The fee covers the costs of Swale Borough Council's and Kent Ecological Advice Service's time and resources to process and review the monitoring reports.
- 7.8.40. The total monitoring fee would equate to £17,413.72 (+VAT and index linked).
- 7.8.41. The significant on-site gains should be subject to a S106 agreement or conservation covenant to secure a monitoring fee and ensure enforceability over a 30-year period. The monitoring fees should be secured as the gains would need to be subject to monitoring reports across 30 years, which would need to be reviewed by the Local Planning Authority with an associated cost.
- 7.8.42. A Landscape and Ecological Management Plan (LEMP) has been submitted which confirms that the habitats can be managed to achieve the condition detailed within the BNG assessment.
- 7.8.43. Under section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 and paragraphs 187 and 193 of the National Planning Policy Framework (NPPF) 2024, biodiversity should be maintained and enhanced through the planning system.
- 7.8.44. The LEMP has confirmed that habitat piles, bat and bird boxes would be incorporated into the site. KCC EAS advise that the LEMP should be reviewed and updated as a condition of planning permission.
- 7.8.45. Conclusion on Ecology
- 7.8.46. Subject to planning conditions imposed on any consent, the application demonstrates that it would not (in combination with other projects) result in harm the integrity of protected sites or species. The required BNG would be achieved, and the proposal would accord with Local Plan policies CP7 and DM28 and the Habitats Regulations.

## 7.9. **Transport and Highways**

- 7.9.1. 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.
- 7.9.2. 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.”*

7.9.3. Access proposals

- 7.9.4. The primary access to the site is proposed from the Old Rides Farm access road and takes the form a priority junction. This access would serve the development for construction traffic, deliveries, and future operational traffic.
- 7.9.5. The primary access proposals include amendments to the bell mouth at the Leysdown Road / Old Rides Farm access junction to accommodate the swept path of delivery vehicles. These amendments include the realignment of the western kerb and existing masonry wall. Additionally, an existing bus stop and telegraph pole (at the entrance to the site) are situated within the required widening area and therefore will be relocated approximately 20m west of their current positions.
- 7.9.6. An internal site road is proposed to connect the existing Old Rides Farm access road to the proposed BESS site. Vehicles would enter the site via the existing Old Rides Farm access, approximately 150m south of the intersection with Leysdown Road. The proposed internal site road has been designed to accommodate the largest expected vehicles requiring access to the site.
- 7.9.7. A secondary access is proposed on B2231 Leysdown Road at the location of an existing farm access, approximately 475m northwest of the Old Rides Farm access.
- 7.9.8. This access will serve as an emergency access to the development site when operational. Kent Fire and Rescue Service require the second access to be provided for fire safety reasons (so that the western side of the development can be accessed by fire appliances in an emergency).
- 7.9.9. KCC Highways advise that adequate visibility splays are achievable from the proposed emergency access (and can be fully contained within highway land).
- 7.9.10. The location is acceptable in terms of accessibility; with access achievable off Leysdown Road, with improvements to the proposed / existing access able to be secured by imposition of a planning condition. Moreover, once constructed, journeys and visits to the BESS are likely to be infrequent and of an irregular nature; mainly revolving around maintenance of the BESS, associated infrastructure and the monitoring of biodiversity areas within the site. This is would not result in any severe traffic or highways impacts. The proposals do not disrupt any routes within the Swale Local Cycling and Walking Infrastructure Plan December 2025.
- 7.9.11. Traffic generation: Construction Traffic
- 7.9.12. The construction of the BESS facility is expected to be constructed over an 18 month period. It is estimated that up to 20 HGVs would be required on site per day during the majority of the construction period (each HGV would arrive and depart, i.e., 20 HGVs equates to 40 vehicle movements). A Construction Management Plan is recommended in the conditions below, securing details of routing, scheduling, and on-site parking measures to minimise impact on Leysdown Road. KCC Highways have

raised no objection to the traffic impacts during construction subject to such a condition.

- 7.9.13. The landowner has advised that peak vehicle activity associated with the existing farm typically occurs between May and September. The applicant proposes to coordinate the construction programme for the BESS facility with the landowner to avoid the highest levels of construction traffic interacting with the peak farming periods.
- 7.9.14. Traffic generation: Operational Traffic
- 7.9.15. The BESS facility would be operated remotely when the site is fully operational, therefore there will not be any regular (day-to-day) vehicle movements to and from the site.
- 7.9.16. The site will however require routine maintenance, which is expected to be undertaken on a monthly basis by an engineer in a Light Goods Vehicle (LGV). It is expected the site will generate 3 to 4 vehicle trips per week; as such 3 parking spaces are proposed at the site, all with 'Active' EV charging capabilities.
- 7.9.17. HGVs would not be required to access the site on a regular basis once operational, other than for (infrequent) replacing of equipment.
- 7.9.18. The Swale Parking Standards SPD does not have a category for energy storage uses. Three parking spaces are proposed at the site to accommodate regular weekly maintenance of the BESS facility. All three parking spaces are to be 'Active' charging spaces with electric supply and physical charging implemented from the outset. Given the limited access needed for staff to attend the site during operation (it is largely operated remotely), the proposed parking is considered adequate.
- 7.9.19. Public Rights of Way (PROW)
- 7.9.20. Paragraph 105 of the NPPF states inter alia that planning policies and decisions should protect and enhance public rights of way and access, including taking opportunities to provide better facilities for users.
- 7.9.21. Local Plan Policy CP2 relates to promoting sustainable transport and states in part that development proposals will, as appropriate, provide integrated walking and cycling routes to link existing and new communities with local services and facilities, public transport and the Green Grid network.
- 7.9.22. The supporting text to Local Plan Policy DM6 states that existing public rights of way through a development site should be retained on their established routes unless there are exceptional reasons to agree an alternative and or it can be demonstrated to the satisfaction of the Council and Kent County Council Public Rights of Way Access that change to the network would enhance its recreational value.
- 7.9.23. Part 3 (b) of Policy DM6 states the location, design and layout of development proposals will demonstrate that existing public rights of way are retained, or exceptionally diverted, and new routes created in appropriate locations. Policy DM14 (10) states inter alia that all development proposals will, as appropriate, achieve convenient routes and facilities for pedestrians.

- 7.9.24. While there are no PROW in existence on the site, the KCC Public Rights of Way and Access Service are in receipt of an application / claim to record a PROW which crosses through the site - roughly through one/two compounds and the substation. The claim has been made on the basis that there had historically been a right of way which crossed the site.
- 7.9.25. Having investigated that claim, the County Council are now in the process of making an Order to record the route as a footpath on the Definitive Map of Public Rights of Way. This order once 'made' is subject to a six week advertising period, where anybody can object to the order. If they do so, the case is submitted to the Planning Inspector for decision and can add substantial delay to the process. If no objections are received, then KCC will confirm the order itself. KCC cannot confirm an order if objections are outstanding. At the time of writing this Committee Report, the Order to record the route of the footpath had not yet been made.
- 7.9.26. KCC PROW advised during the course of the application that the proposals should be considered as if the application will be successful and have previously requested that the application should be amended to accommodate this PROW, or no decision on the application made until the PROW issue has been determined. Whilst they have no objection to the principle of the proposals, they have raised a holding objection to the planning application.
- 7.9.27. The proposed layout of the site would obstruct the potential PROW, however there are a number of factors which need to be taken into account in understanding the weight to give to any perceived conflict with policies relating to PROW.
- 7.9.28. The first is that the application for the potential PROW across the site is at an early stage in the process, with the Order to proceed with the route as a designated footpath not yet complete. Even when complete, it will be subject to a consultation period which may result in objection, triggering the need for the case to be considered by the Planning Inspectorate. Whilst KCC PROW are of the view that a right of way is reasonably alleged to subsist, this is not to say that the Order itself (when produced by KCC) will be confirmed.
- 7.9.29. The UK government has a Clean Power by 2030 Action Plan whilst the NPPF states that the planning system should support the transition to net zero by 2050. As part of this the electricity network must undergo expansion, as the economy electrifies, to deliver decarbonisation. To connect new generation and meet future demand, around twice as much new transmission network infrastructure will be needed. Delaying the current planning application (potentially for some time) while a final decision is made on the claimed right of way that crosses the site would not align with National clean energy aims or avoid unnecessary delay as advocated by the NPPF.
- 7.9.30. In this case, there is the potential that the claimed footpath route running partially across the site (roughly through one/two compounds and the substation) could be confirmed. Whilst this would impact on the layout of the infrastructure proposed under this application, the developer would be in a position to vary their proposals or seek a diversion of the route. KCC PROW would also be in a position to enforce and take legal action over any obstruction of the route, so there are mechanisms in place that

would ensure the route, if confirmed, could still be maintained. For these reasons, the application proposed at this stage is not considered to prejudice the route of the claimed footpath in the long term. It is therefore recommended that the application not be refused for this reason, particularly given that there are separate legal powers over confirmed public right of way that could be utilised to safeguard the claimed route in the event any Order was confirmed.

7.9.31. Conclusion on highway matters

7.9.32. There would be no unacceptable impact on highway safety, nor would the residual cumulative impacts on the highway network be severe. No objection has been raised to the proposal by National Highways or KCC Highways in these respects. The application would comply with Local Plan Policies CP2, DM6 and DM7 from a highway network perspective.

7.9.33. The proposal covers an area which may potentially become a designated right of way route, however the PROW is not confirmed at this stage and may never be. There are other factors (discussed above) which need to be taken into account in understanding the weight that can be afforded to any perceived conflict with PROW related policies. This is discussed in the Planning Balance section of this report.

7.10. **Air Quality**

7.10.1. 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.

7.10.2. 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.

7.10.3. 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.

7.10.4. 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.*

- 7.10.5. The applicant has undertaken an Air Quality Assessment in support of this proposal, this has been reviewed by the Council's Environmental Protection Officer and found to be accurate. The Air Quality Assessment notes that there are no AQMAs in the study area.
- 7.10.6. The Environmental Protection Officer confirmed that Air Quality guidance only requires an assessment of construction traffic air quality where the number of vehicles generated by the proposed development exceeded 500 car/van trips or 100 HGV trips daily. As these thresholds would not be exceeded during construction, the construction traffic associated with the development would not give rise to significant air quality effects on sensitive receptors along the route.
- 7.10.7. In terms of dust during construction, earthworks are proposed to focus on levelling areas for platforms (BESS, substations, and construction compounds) and creating ponds and bunds. Measures are proposed to mitigate against dust during the construction phase, and subject to conditions being imposed on any consent to control and manage construction, no objection is raised in terms of air quality.

#### 7.11. **Community Infrastructure**

- 7.11.1. Planning obligations must accord 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
- 7.11.2. The significant on site BNG gains would need to be secured by way of a planning obligation or conservation covenant. In addition, a monitoring fee is required with the submission of each BNG monitoring report to the Council for approval. The fee covers the costs of the time and resources required to process and review the monitoring reports.
- 7.11.3. The total monitoring fee would equate to £17,413.72 (+VAT and index linked).
- 7.11.4. This planning obligation is considered to meet the requisite tests and should be secured in a S106 legal agreement associated with any consent.

#### 7.12. **Flood Risk, Drainage and Surface Water**

- 7.12.1. In respect of flooding from rivers and seas, the site is within flood zone 1 (the lowest-risk area), however parts of the site – particularly to the south east and north, as well as along ditch channels - are at risk of surface water flooding. Local Plan Policy DM21 relates to water, flooding and drainage and requires that when considering the water-related, flooding and drainage implications of development, development proposals

will need to accord with several criteria, including according with national planning policy and planning practice guidance.

- 7.12.2. Paragraph 175 of the NPPF states the sequential test should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific flood risk assessment demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future.
- 7.12.3. The Planning Practice Guidance on Flood Risk and Coastal Change states that in applying paragraph 175, a proportionate approach should be taken. Where a site-specific flood risk assessment demonstrates clearly 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 (therefore addressing the risks identified e.g. by Environment Agency flood risk mapping), without increasing flood risk elsewhere, then the sequential test need not be applied.
- 7.12.4. With reference to NPPF Annex 3 'Flood Risk Vulnerability Classification', it is noted that Battery Storage is considered as 'Essential Infrastructure'. Although the site is at risk of surface water flooding, under the NPPF Annex 3, it is deemed compatible to construct the type of development proposed in areas at risk of surface water flooding.
- 7.12.5. The application is accompanied by a Flood Risk Assessment (FRA) and drainage strategy. The FRA explains that it is proposed to reprofile and widen existing ditches and to implement SuDS features to intercept, contain and redirect the surface water overland flows away from the proposed built development. The overland surface water flow path would be intercepted within the existing ditch in the western side of the proposed development and redirected away from the proposed development. The existing ditch would be regraded and sized to be able to accommodate the amount of surface water going into it.
- 7.12.6. The provision of an appropriately designed sustainable surface water drainage system in conjunction with appropriate consideration of overland surface water flows within proposed topographical amendments, would be sufficient to mitigate the requirement for flood storage compensation.
- 7.12.7. All proposed highways and associated drainage would be designed in accordance with the "Design and Construction Guidance for Foul and Surface Water Sewers offered for adoption under the Code of adoption agreements" and current Building Regulations criteria, adopting overland flow routes for the conveyance of excess floodwater toward areas of low vulnerability and water compatible end use (such as open space and soft landscaping), where water may be temporarily detained where required.
- 7.12.8. The technical assessment of flood risk presented in the FRA demonstrates that the immediate and residual flood risks over the lifetime of the development are readily manageable. KCC Flood and Water Management raise no objection to the proposals subject to conditions. The proposals are considered acceptable in terms of flood risk

throughout their lifetime, without increasing flood risk elsewhere, such that the sequential test is not required. Southern Water raise no objection to the proposals.

- 7.12.9. In view of the above, the proposals are compliant with the NPPF and Policy DM21 of the Local Plan.

**7.13. Contamination**

- 7.13.1. 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 local planning authorities should ensure that the site is suitable for its new use taking account of various matters, including pollution arising from previous uses.
- 7.13.2. The application is supported by a contamination assessment. This identifies potential sources of contamination (for example, historically there had been a light railway line traversing the site, and activities associated with the Old Rides Farm operations may have resulted in contamination).
- 7.13.3. By considering the sources, pathways and receptors (pollutant linkages), an assessment of the human health/ environmental risks is made with reference to the significance and degree of the risk. The risk assessment was undertaken with reference to BS 10175:2011+A1:2013 and CIRIA Document C552: Contaminated Land Risk assessment 'A Guide to Good Practice'.
- 7.13.4. Due to the nature of the materials being stored on site, specialist precautions need to be taken to ensure that in the event of a fire, any contaminated surface water runoff does not enter the ditches that have been proposed to outfall the surface water.
- 7.13.5. At the penultimate manholes prior to the outfall location, Penstock Valves (a robust, sliding-gate valve used to control, isolate, and regulate water flow in drainage/flood prevention systems) would be used to divert contaminated water into temporary underground storage tanks, preventing it reaching the pond and ditches. Any contaminated water would then be pumped and taken away from site for specialist treatment and disposal.
- 7.13.6. The application was referred to the Environmental Protection Officer who advised that the submitted contamination assessment follows an acceptable methodology and demonstrates the previous history, and the Conceptual Model of potential contaminants and receptor linkages.
- 7.13.7. The Study determines a low risk for end users, though it recommends a watching brief for the construction works. This should be secured by way of a condition being imposed on any consent.
- 7.13.8. The study also recommends further limited investigations on Made Ground to confirm presence of localised contaminants. Subject to this requirement being secured through a condition on any consent no objections are raised.
- 7.13.9. As a result of the above the proposals comply with policy ST1 of the Local Plan.

**7.14. Living Conditions**Existing residents

- 7.14.1. Policy DM14 of the Local Plan and the NPPF requires that new development has sufficient regard for the living conditions of neighbouring occupiers.
- 7.14.2. The application was referred to the Council's Environmental Protection Officer, who advised that the Noise Impact Assessment and additional technical note follow an acceptable methodology. The submissions show a low risk for noise issues for the construction phase, provided the proposed mitigations (set out in the Construction Environmental Management Plan (CEMP)) are implemented. A condition is recommended to secure this and the CEMP.
- 7.14.3. In order to avoid any unacceptable impacts from the sub-station, the Noise Impact Assessment submitted recommends the installation of an acoustic fence around the perimeter of that part of the site. This is recommended to be secured by condition and installed prior to any of the equipment within the substation being brought into use. During the course of the application, the applicant was also asked to provide additional information relating to low frequency noise. A technical note assessing low frequency noise as per Defra's NANR45 criteria, was subsequently provided. The Council's Environmental Protection Officer advised that this demonstrated that low frequency sounds would be below the threshold reference curve at the nearest representative noise sensitive receptors. No objection was raised by the Council's Environmental Protection Officer in terms of operational noise.
- 7.14.4. In terms of light spill, a Lighting Assessment was submitted with the application, this shows that the lighting scheme would comply with the Institute of Lighting Professionals guidelines. Subject to conditions being imposed on any consent to ensure the lighting scheme proposed is the one installed, the Council's Environmental Protection Officer raised no objection.
- 7.14.5. In respect of other living condition considerations such as impacts on light, privacy and outlook, the infrastructure proposed on the site is sufficiently distant from neighbouring residential property to the east and elsewhere such that it would not give rise to any unacceptable impacts on residential amenity.
- 7.14.6. In view of the above and subject to conditions relating to lighting, construction and the acoustic fencing, the proposals would be in accordance with Policy DM14 of the Local Plan.

**7.15. Other matters****7.15.1. Fire Safety**

- 7.15.2. The application is accompanied by an Outline Battery Safety Management Plan (OBSMP). That document outlines the key fire safety provisions, including measures to reduce fire risk, as well as fire protection measures and systems, for the 1GW Battery Energy Storage System (BESS) proposed on site.

- 7.15.3. The OBSMP formalises the Applicant's commitment to comply with the Construction (Design and Management) Regulations 2015, by outlining their approach to identifying, assessing, and mitigating health and safety risks throughout the project lifecycle, from design to decommissioning specific to BESS hazards.
- 7.15.4. The applicant proposes to produce a Detailed Battery Safety Management Plan (DBSMP), which would detail the appointment of key roles and establish clear communication channels between all stakeholders. The DBSMP would also incorporate comprehensive risk assessments, emergency response protocols, and design considerations specific to BESS hazards. The safety standards would be updated in the DBSMP.
- 7.15.5. The DBSMP would include:
- A statement on the battery system specifications,
  - A statement on the fire detection and suppression systems.
  - A statement on operational procedures and training requirements, including emergency operations.
  - A statement on the overall compliance of the system with all applicable legislation.
  - A statement on governance, general site management and maintenance.
  - A detailed procurement exercise to ensure that the battery technology selected conforms to current UK and international standards, with the detailed design, including drawings of the BESS.
  - A fire risk assessment which evaluates potential ignition sources, fuel loads, and fire spread scenarios. It will also assess the adequacy of existing fire detection, suppression, and evacuation measures.
  - An environmental risk assessment to ensure that the potential for indirect risks e.g. through leakage or other emissions, is understood and mitigated.
  - A Smoke Plume Analysis Report.
  - An Emergency Response Plan covering construction, operation and decommissioning phases developed in consultation with KFRS, to include the adequate and appropriate provision of firefighting equipment on-site.
- 7.15.6. Provision of the above information prior to construction would demonstrate that all the considerations and requirements set out in the OBSMP have been addressed, and the BESS installation would be safe and continually monitored to enable immediate action on the detection of a fault or abnormal signal reading. A condition should be imposed on any consent to secure a Detailed Battery Safety Management Plan.
- 7.15.7. The application was referred to Kent Fire and Rescue Service. They requested clarity during the course of the application on matters such as water provision across the site and access for emergency vehicles to the south.
- 7.15.8. The applicant has submitted a Draft Emergency Response Plan in response. This states that private fire hydrants connected to a wet pipe system will be installed across the site, approximately 90m apart, in compliance with BS9990 Non-automatic Firefighting Systems. These will be appropriately positioned to enable the fire and rescue service to have multiple options concerning the positioning of equipment and personnel. It is recommended that details of appropriate water provision across the site be secured in a Detailed Emergency Response Plan condition. The same

document also clarifies that an access loop will be provided to the south of the site, enabling suitable access for emergency vehicles.

- 7.15.9. Kent Fire and Rescue advise that the access proposals are broadly compliant from a KFR perspective but advise that they expect future liaison with the applicant as the Emergency Response Plan evolves. A condition securing a Detailed Emergency Response Plan is recommended below.
- 7.15.10. Five year commencement
- 7.15.11. Subject to the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004) outlines that every planning permission granted should be subject to a condition that the development to which it relates must be begun not later than the expiration of a set period of time beginning with the date on which the permission is granted. The time period is usually 3 years; however, Section 91(b) permits such other period (whether longer or shorter) beginning with that date as the authority concerned with the terms of planning permission may direct.
- 7.15.12. In this case, the applicant has asked for a period of five years to commence on the basis that it would *“enable the coordinated delivery of the development alongside transmission network connection programmes and associated strategic infrastructure upgrades. This is particularly relevant given the ongoing pressures on the UK transmission network and the substantial pipeline of energy infrastructure projects currently progressing through the grid connection process”*.
- 7.15.13. In view of the above, it is considered reasonable in this case to recommend a five year period for commencement.

## 7.16. **Planning Balance**

- 7.16.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise. It is therefore necessary to determine whether the applications is consistent or otherwise with the local development plan.
- 7.16.2. In this case conflict with policies in the development plan have been identified as set out below:

### Local Plan

- *ST1 Delivering sustainable development in Swale.*
- *ST3 The Swale settlement strategy.*
- *ST6 The Isle of Sheppey area strategy*
- *CP4 Requiring good design.*
- *DM3 The rural economy.*
- *DM14 General development criteria.*
- *DM31 Agricultural land.*

- 7.16.3. A conclusion as to the compliance of the proposal with Local Plan Policy DM24 requires a balance to be struck between landscape impacts and the benefits of the scheme. This is set out in later in this section.
- 7.16.4. In establishing compliance with the development plan as whole, recognition needs to be made for example of the fact that in most cases there is a partial conflict and often partial compliance with the same policies. However, officers are of the view that the Development Plan when taken as a whole cannot be said to be complied with.
- 7.16.5. For the purposes of this application, the following weight is given to conflicts and benefits across the spectrum of categories (and in some cases I refer to weight across categories):
- Neutral
  - Limited
  - Moderate
  - Significant
- 7.16.6. Benefits
- 7.16.7. Biodiversity Net Gain (BNG)
- 7.16.8. There would be 149% uplift in habitat units, 209% in hedgerow units and 67% in watercourse units. The proposals greatly exceed the statutory 10% gain requirement. Achieving a BNG assists with reversing a national decline in biodiversity, significant positive weight is afforded to this benefit.
- 7.16.9. Energy storage
- 7.16.10. Paragraph 161 of the NPPF states inter alia that the planning system should support the transition to net zero by 2050 and take full account of all climate impacts. It should help support renewable and low carbon energy and associated infrastructure.
- 7.16.11. Paragraph 168 of the NPPF states that when determining planning applications for all forms of renewable and low carbon energy developments and their associated infrastructure, local planning authorities should not require applicants to demonstrate the overall need for renewable or low carbon energy, and give significant weight to the benefits associated with renewable and low carbon energy generation and the proposal's contribution to a net zero future. This formalizes the high value of green energy projects in the planning balance.
- 7.16.12. The Clean Power 2030 Action Plan was published in December 2024. It sets out the Government's plan to deliver a clean power system by 2030, setting a target of clean sources producing at least 95% of Great Britain's generation means by 2030. The proposals would support the storage of renewable energy, making a positive contribution to meeting these targets.
- 7.16.13. The proposed development will have a power capacity of up to 1,000MW (1.0 GW). Data for 2023 indicates that the total installed renewable energy capacity in the South East stood at 4.5 GW. This serves to highlight that the proposals could store up to

22% of renewable energy generated across the region. Energy Storage Systems help to provide additional flexibility in the grid network.

- 7.16.14. The UK is transitioning away from non-renewable sources of energy supply towards lower carbon renewable sources. This has translated to a considerably lower carbon footprint in the grid network, and the application would support this.
- 7.16.15. At times, such as night-time or when there is no wind, when energy is not being generated by solar panels or wind turbines or when excess energy is being generated and cannot be passed directly into the transmission network, the BESS would temporarily store this energy. In doing so, BESS plays an important part in ensuring that the 'lights stay on' and that the flow of energy into the grid from when it is generated to when it is needed is balanced.
- 7.16.16. The proposed development is estimated to offset up to 1,615 tonnes of CO<sub>2</sub> per day. This amounts to 589,550 tonnes over the course of a year.
- 7.16.17. The NPPF directly ties planning decisions to the UK's 2050 net zero targets and energy security. This change reinforces the importance of renewable energy in achieving the UK's decarbonisation targets. This benefit is afforded significant positive weight.
- 7.16.18. Economic benefits
- 7.16.19. Paragraph 85 of the NPPF highlights that planning policy and decisions should place significant weight on the need to support economic growth and productivity, identifying that Britain should capitalise on areas where it can be a global leader in innovation, and address any challenges for the future.
- 7.16.20. The U.K.'s Modern Industrial Strategy (2025) presents plan to deliver certainty and stability; encourage investment in high growth sectors; and drive the UK's growth mission. The strategy sets out a commitment to achieve sustainable growth in alignment with Net Zero and wider environmental objectives. It also outlines the ambition for the UK to be a global climate leader and build a strong and sustainable economy, creating good, well-paid jobs in the green sectors of today and of the future.
- 7.16.21. The Industrial Strategy identifies eight growth-oriented sectors, which include Clean Energy industries. The strategy highlights that Clean Energy industries are a major driver of global growth and that there is global demand for low-carbon products.
- 7.16.22. During construction there would be construction jobs and spending on materials and equipment, all with associated economic benefits. The application is accompanied by an analysis of economic benefits, which calculates that the proposed development could support 90 direct Full-Time Equivalent (FTE) jobs during construction.
- 7.16.23. Construction involves purchases from a range of suppliers, who in turn purchase their goods and raw materials from businesses further down the supply chain. It is anticipated that businesses in Swale and the wider region could benefit from supply chain linkages and trade connections established during the construction of the proposed development. This would support additional indirect jobs.



- 7.16.24. The construction phase could be expected to support 110 indirect FTE jobs. In total, therefore, during construction, the proposed development is expected to support 200 direct and indirect FTE jobs during the peak period of the construction phase.
- 7.16.25. During the operational phase, the energy storage sector supports employment across a host of occupations, in professional, scientific and technical activities. The delivery of a new Energy Storage System would support these sorts of opportunities offsite.
- 7.16.26. The additional direct employment supported, as well as the energy produced/stored by the proposals, could also be expected to make a positive contribution towards local economic output, measured on the basis of Gross Value Added (GVA). Moderate positive weight is afforded to the economic benefits of the proposal.
- 7.16.27. Harm
- 7.16.28. The Application would conflict with Policy ST1 (3) - impacts to the rural economy, (4) - development outside of the settlement strategy, and (11) - failing to protect, and where possible, enhance, the intrinsic character, beauty and tranquillity of the countryside. Noting the broad scope of the policy and that there are elements the proposal would accord with the conflict can be afforded moderate weight.
- 7.16.29. The Application would partly conflict with Policy ST3 (5) due to the fact that the proposals would fail to protect the intrinsic value, landscape setting, tranquillity and beauty of the countryside. Policy DM20 of the Local Plan acknowledges that proposals for energy may be located on agricultural land, but does require poorer quality land to be used in preference to higher quality land. Policy DM31 also seeks to ensure that poorer quality land is used in preference to BMV. Given the scale of the proposals and the difficulty in securing a site within a built-up area boundary or on previously developed land of the required size, a countryside location is necessary for the development, whilst there is national policy support for the proposal. Moderate weight is afforded to the loss of BMV land, which makes up 31% of the site area.
- 7.16.30. There is a conflict with Local Plan policies CP4 and DM14 as these relate to retaining and enhancing features which contribute to local character and distinctiveness and being of an appropriate scale given the context. Given the landscape screening proposed, the impact would be moderated but nonetheless, given the impact on the character of the area, significant weight is given to this impact.
- 7.16.31. Policy DM3 seeks to protect the rural economy, while there would be a loss of farmland and flow on impacts to the rural economy, the scheme would also bring economic benefits, limited weight is afforded to this conflict.
- 7.16.32. Part B of Local Plan Policy DM24 relates to non-designated landscapes and states that where significant adverse impacts remain planning permission will be granted if the social and or economic benefits of the proposal significantly and demonstrably outweigh the harm to the landscape character and value of the area. That balance is undertaken here.
- 7.16.33. At year 15 there would remain moderate adverse impacts to the arable landscape. Other adverse effects would be less impactful. There would be beneficial impacts at year 15 to the field pattern defined by hedgerows and ditches.

- 7.16.34. By year 15, visual impacts would be moderate adverse or less. While the change to the landscape character of the area would be significant, the weight given to this harm is moderated by the proposed mitigation.
- 7.16.35. 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, although a significant impact would remain, given the mitigation and moderate extent of harmful residual impacts to the undesignated landscape, the social and economic benefits of the proposal are considered to significantly and demonstrably outweigh the harm.
- 7.16.36. The proposed layout of the site would obstruct a potential PROW and could therefore potentially conflict with elements of Local Plan policies CP2 and DM6. However Policy DM6 relates to existing PROW, and the PROW in question is not existing and may never be confirmed. Delaying the current planning application (potentially for years) while a decision is made on the confirmation of the potential PROW would not align with National clean energy aims or avoid unnecessary delay, as advocated by the NPPF.
- 7.16.37. Portions of the potential PROW route already accommodate physical structures. In the event that the claimed PROW is eventually confirmed, the layout of the proposals would need to be amended or the route diverted. In the event of any structures obstructing the route, enforcement action could be taken to have them removed. Given the claimed PROW route has not yet been confirmed and there are separate legal mechanisms available to prevent any obstruction of a designated route, limited weight is afforded to this conflict in the planning balance.
- 7.16.38. Even if the council were to proceed on the basis that the PROW was confirmed, it is considered that the need for energy storage would have to be weighed against this and, in this case, it is considered that the benefits of the proposal would outweigh the harm arising from the obstruction of the public right of way.

7.17. **Conclusion**

- 7.17.1. The benefits of the scheme and the reasoning for the weight afforded to them are set out in the preceding Section of this report, including significant benefits arising from the support the proposals would provide to storing energy generated by renewable energy sources and supporting national carbon reduction targets, along with the other benefits. When balanced against the harm and conflicts, the benefits of the scheme outweigh the harms identified. The proposal is therefore considered to accord with the NPPF and that, as well as other material considerations, indicate that planning permission should be granted despite the proposal not being in accordance with the development plan.
- 7.17.2. 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.

## 7.18. RECOMMENDATION

### 7.18.1. Grant Planning Permission, subject to the conditions below:

#### Conditions

##### 1. Time limit

The development to which this permission relates must be begun no later than the expiration of five 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. Plans

The development hereby permitted shall be carried out in accordance with the following approved plans and specifications:

Lighting plan 630001 P01, 630002 P01  
 0001-NPLUK-00-XX-DR-ED-0006  
 BA24981TPP - Sheet 1  
 BA24981AIA - Sheet 2  
 BA24981TPP - Sheet 3  
 Site Plan 1613-RDG-PS-BE01-M2-ED-0001 Rev P02  
 Section 1613-RDG-PS-BE01-M2-ED-0005 Rev P03  
 Section 1613-RDG-PS-BE01-M2-ED-0004 Rev P03  
 Tree protection plan BA24981TPP - Whole Site Rev P  
 Control room plan 0001-NPLUK-00-XX-DR-ED-0008 Rev P01  
 LV Building plan 0001-NPLUK-00-XX-DR-ED-0009 Rev P01  
 Battery container plan 0001-NPLUK-00-XX-DR-ED-0001 Rev P01  
 Transformer plan 0001-NPLUK-00-XX-DR-ED-0003 Rev P01  
 Substation plan 0001-NPLUK-00-XX-DR-ED-0016 Rev P01  
 Switch gear plan 0001-NPLUK-00-XX-DR-ED-0005 Rev P01  
 Levels sheet 1 - 110701 Rev P03  
 Levels sheet 2 - 110702 Rev P03  
 Power Conversion System Details 0001-NPLUK-00-XX-DR-ED-0002 Rev P01  
 Oil Filled Transformer plan 0001-NPLUK-00-XX-DR-ED-0010 Rev P01  
 Typical Cross Section Details Maintenance Road 0001-NPLUK-00-XX-DR-ED-0012 Rev P01  
 Maintenance Road and Culvert Typical Cross Section Details 0001-NPLUK-00-XX-DR-ED-0013 Rev P01  
 Water Tank and Pump Housing Typical Details 0001-NPLUK-00-XX-DR-ED-0021 Rev P01  
 Storage Container Details 0001-NPLUK-00-XX-DR-ED-0004 Rev P01  
 Site Fencing and Gate Details 0001-NPLUK-00-XX-DR-ED-0007 Rev P01  
 Site Acoustic Fencing Detail 1613-NPLUK-00-XX-DR-ED-0014 Rev P01  
 Proposed Site Layout 1613-RDG-PS-BE01-M2-ED-0003 Rev P04  
 Emergency Access Visibility Splay And Vehicle Swept Path Analysis 5028073-RDG-XX-XX-DR-H-0004 Rev P03

Primary Site Access, Visibility Splays And Internal Site Road Access 5028073-RDG-XX-XX-DR-H-0001 Rev P03

Primary Site Access Vehicle Swept Path Analysis 5028073-RDG-XX-XX-DR-H-0002 Rev P03

Outline Drainage Strategy 5028073-RDG-XX-XX-D-C-110500 Rev P05

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

**3. Detailed Battery Safety Management Plan**

No development shall take place until a Detailed Battery Safety Management Plan (DBSMP) based on the principles within the Outline Battery Safety Management Plan (April 2025) that has been submitted with the application have been submitted to and approved in writing by the Local Planning Authority. It shall include details of safety measures and risk mitigation across the construction, operational, and decommissioning phases of the development. The development shall be carried out and maintained for the duration of the permission in accordance with the approved DBSMP.

Reason: In the interests of fire safety. These details are required prior to the commencement of development in order to secure appropriate fire safety measures at operational stage.

**4. Detailed Emergency Response Plan**

Prior to the first use of any of the equipment on the development hereby approved, a detailed Emergency Response Plan (ERP) shall be submitted to and approved in writing by the Local Planning Authority. This shall include details of suitable access for fire and rescue services, as well as sufficient water provision across the site. The development shall be carried out and maintained for the duration of the permission in accordance with the approved details.

Reason: In the interests of fire safety.

**5. Acoustic fencing**

The development hereby approved shall not be brought into operation until the acoustic fencing, as shown on the approved layout plan 1613-RDG-PS-BE01-M2-ED-0001 Rev P02 and elevation drawing no. 1613-NPLUK-00-XX-DR-ED-0014 Rev P01, has been installed. The acoustic fence installed shall have a minimum surface mass density of 13 Kg/m<sup>2</sup> and airborne sound insulation performance of 27 dB R, being of solid construction and continuous, with no gaps on the horizontal or vertical plane.

Once installed as such, the acoustic fence shall be maintained as such thereafter.

Reason: In the interests of residential amenity

## 6. Decommissioning

No later than 6 months prior to any decommissioning of the development, a decommissioning and restoration scheme shall be submitted to and approved by the Local Planning Authority in writing. The decommissioning scheme shall include a programme and a scheme of works for the removal and restoration of the site; and also detail which aspects of landscaping, biodiversity and/or ecological measures at the site will be retained.

The decommissioning of the site shall be implemented in accordance with the approved details.

All buildings, structures and associated infrastructure shall be removed, and the land restored, in accordance with the approved details of the decommissioning scheme.

Reason: To ensure the site is appropriately restored and to mitigate landscape and environmental impacts associated with the development.

## 7. Contamination 1

Prior to the commencement of development the following components of a scheme to deal with the risks associated with contamination of the site shall be submitted to and approved in writing by the local planning authority:

- 1) A preliminary risk assessment which has identified: all previous uses and potential contaminants associated with those uses a conceptual model of the site indicating sources, pathways and receptors potentially unacceptable risks arising from contamination at the site.
- 2) A site investigation, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- 3) A remediation method statement (RMS) based on the site investigation results and the detailed risk assessment (2). This should give full details of the remediation measures required and how they are to be undertaken. The RMS should also include a verification plan to detail the data that will be collected in order to demonstrate that the works set out in the RMS are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express consent of the local planning authority. The scheme shall thereafter be implemented as approved.

Reason: Required prior to commencement of development to ensure that any ground contamination on the site is identified and remediated and in the interests of the wellbeing of construction workers and future operatives.

## 8. Contamination 2

No part of the development hereby approved shall be brought into use until a closure report has been submitted to and approved in writing by the Local Planning Authority. The closure report shall include full verification details as set out in the approved remediation strategy. This should include details of any post remediation sampling and

analysis, together with documentation certifying quantities and source/destination of any material brought onto or taken from the site. Any material brought onto the site shall be certified clean.

Reason: In order to ensure that any required contamination remediation works are carried out satisfactorily in the interests of the wellbeing of future operatives.

**9. Contamination 3**

If during construction/demolition works evidence of potential contamination is encountered, works shall cease and the site fully assessed to enable an appropriate remediation plan to be developed. Works shall not re-commence until an appropriate remediation scheme has been submitted to, and approved in writing by, the Local Planning Authority and the remediation has been completed.

Reason: In order to ensure that any required contamination remediation works are carried out satisfactorily in the interests of the wellbeing of future operatives.

**10. Construction Management Plan**

Prior to the commencement of development, a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The 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.
- c) Timing of deliveries.
- d) Provision of wheel washing facilities.
- e) Measures to prevent the discharge of surface water onto the highway.
- f) Temporary traffic management / signage.
- g) Details of dust control measures
- h) Hours of work.

The development shall be undertaken in accordance with the approved Construction Management Plan.

Reason: In the interests of highway safety and the free flow of traffic on the highway and to prevent unacceptable impacts to amenity, human health and the environment.

**11. Construction Surface Water Management Plan**

Prior to the commencement of the development hereby approved, a Construction Surface Water Management Plan (CSWMP) shall be submitted to and approved by the Local Planning Authority. The CSWMP shall detail how surface water and storm water will be managed on the site during construction. The plan should outline the phases of construction showing where and when drainage features will be installed and how runoff will be managed, to minimise flood risk and water quality impacts on site and to the surrounding areas.

The development shall be implemented in accordance with the approved CSWMP.

Reason: In the interest of managing flood risk during the construction stage. The objectives and purposes of this condition are such that it is required to be complied with before commencement. As such, those objectives and purposes would not be met if expressed other than as a pre-commencement condition.

## **12. Sustainable drainage**

No development shall begin until a detailed sustainable surface water drainage scheme for the site has been submitted to (and approved in writing by) the local planning authority. The detailed drainage scheme shall be based upon the Technical Note prepared by Ridge dated 17.12.2025.

The submitted scheme shall demonstrate compliance with the required technical standards at the time of submission and shall demonstrate 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 without increase to flood risk on or off-site.

The detailed drainage scheme will also be required to demonstrate that any existing surface water flow paths can be accommodated and disposed of without increase to flood risk on or off site. 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.
- 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.

The drainage scheme shall be implemented in accordance with the approved details.

Reason: To ensure the development is served by satisfactory arrangements for the disposal of surface water and to ensure 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.

## **13. Verification of surface water drainage**

No part of the development (or within an agreed implementation schedule) hereby permitted shall be brought into use until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved by the Local Planning Authority. The Report shall demonstrate that the drainage system constructed is consistent with that which was approved.

The Report shall contain information and evidence (including 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 paragraph 182 of the National Planning Policy Framework.

#### **14. Landscaping 1**

Prior to commencement of the development hereby approved, full details of both hard and soft landscape works (informed by drawing no. L100 (Landscape Masterplan) and the access routes shown on drawing no. 1613-RDG-PS-BE01-M2-ED-0003 Rev P04) shall have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing 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, means of enclosure, hard surfacing materials, and an implementation programme.

The development shall be carried out in accordance with the approved implementation programme.

Reason: In the interests of the visual amenities of the area and encouraging wildlife and biodiversity.

#### **15. Landscaping 2**

Upon completion of the approved landscaping scheme, any trees or shrubs that are removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced with tree or shrubs of such size and species as may be agreed in writing with the Local Planning Authority, and within whatever planting season is agreed.

Reason: In the interest of visual amenities of the area and encouraging wildlife and biodiversity.

#### **16. Lighting**

No floodlighting, security lighting or other external lighting shall be installed or operated at the site, other than in accordance with details that have first been submitted to and agreed in writing by the Local Planning Authority. These details shall include:

- A statement of why lighting is required, the proposed frequency of the use and the hours of illumination.
- A site plan showing the area to be lit relative to the surrounding area, indicating parking or access arrangements where appropriate, and highlighting any significant existing or proposed landscape or boundary features.
- Details of the number, location and height of the lighting columns or other fixtures.



- The type, number, mounting height and alignment of the luminaries.
- The beam angles and upwards waste light ratio for each light.
- An isolux diagram showing the predicted illuminance levels at critical locations on the boundary of the site and where the site abuts residential properties.

Reason: In the interests of visual amenity and the residential amenities of occupiers of nearby dwellings.

## **17. Ecology 1**

Prior to commencement of the development hereby approved, an ecological mitigation strategy must be submitted to and approved in writing by the Local Planning Authority. The Mitigation Strategy shall be based on up-to date ecological survey information, as advised by a suitably qualified ecologist and include the following:

- Retained tree and hedgerow protection measures in accordance with BS 5837:2012;
- Overview of the ecological mitigation to be implemented within the site.
- Extent and location of proposed construction and mitigation works, shown on appropriate scale maps and plans;
- Specific measures (which may be presented as a series of method statements) to avoid impacts to protected/notable species (including but not limited to wintering and breeding birds)
- A timetable for implementation of the measures demonstrating they are in alignment with the construction works and
- Persons responsible for implementing the measures, including times during construction when specialist ecologists need to be present on-site;

The approved mitigation strategy shall be adhered to and implemented throughout the construction and operational phases in accordance with the approved details.

Reason: In the interests of biodiversity and to protect and promote ecology.

## **18. Ecology 2**

Any hedgerow and trees to be retained, including its roots, shall be protected from damage in line with The British Standard "Trees in Relation to Design, Demolition and Construction to Construction - Recommendations" (BS 5837) (2012).

Any required clearance of tall/dense vegetation with potential to support reptiles should be undertaken in two stages, with a first cut to 150mm, followed by a second cut several days later to ground level.

Brash, rubble and log piles to be relocated shall be dismantled by hand. Where these are suitable for hibernating reptiles/hedgehog, removal shall be conducted outside of the hibernation period (November – February).

Backfilling of trenches and other excavations shall be undertaken before nightfall, or a ramp shall be left to allow any animals to easily exit.

All excavations and trenches shall be checked each morning throughout the construction period and prior to infilling.

All temporarily stored building materials (that might act as temporary resting places) shall be isolated within hardstanding areas and raised off the ground, e.g. on pallets.

Any work to vegetation/structures that may provide suitable nesting habitats should be carried out outside of the bird breeding season (1st March to 31st August inclusive) to avoid destroying or damaging bird nests in use or being built. If vegetation/structures need to be removed during the breeding season, mitigation measures need to be implemented. This includes examination by a suitably qualified and experienced ecologist immediately prior to starting work. If any nesting birds are found, works must cease until after the birds have finished nesting.

If at anytime a protected species is discovered within the works area all works must stop while a suitably qualified ecologist and/or Natural England are consulted. Works shall not resume until any required surveys and/or mitigation are completed.

Reason: In the interest of biodiversity.

## **19. Landscape and Ecological Management Plan**

Prior to commencement of the development hereby approved, an updated Landscape and Ecological Management Plan (taking into account Landscape and Ecology Management Plan; TIR; April 2025) shall be submitted to and approved in writing by the Local Planning Authority. The updated LEMP must include the following additional information:

- Updated Maintenance tables in chapter 8 to include all habitats
- Details of habitat and species monitoring to be carried out
- Timings of when the metric will be reviewed
- Details of management plan reviews
- Plan showing the location of ecological enhancement features.

The updated Landscaping and Ecological Management Plan must be implemented as approved.

Reason: To ensure landscaping and habitats are appropriately maintained and in the interests of biodiversity.

## **20. Materials and fencing**

Prior to commencement of the development hereby approved, full details of external materials, finishes and colours, security fencing style, materials, and measures to facilitate movement of protected species shall have been submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

Reason: In the interest of preserving or enhancing the character and appearance of the surrounding area and biodiversity.

**21. Visibility splays**

Prior to the first use of either access into the site in connection with the development hereby approved, the visibility splays shown on the approved plans with no obstructions over 1.05 metres above carriageway level within the splays, or 0.6 metres where a footway crosses the access, shall be provided, and thereafter be maintained for the life of the development.

Reason: In the interests of highway safety.

**22. Access**

Prior to the commencement of the development hereby approved, detailed designs for the vehicle access and associated highway works, including the relocation of the bus stop and widening of the access to include the relocation of the telegraph pole west of the access as indicatively shown on the submitted plans shall be submitted to and approved in writing by the Local Planning Authority.

The development shall be carried out in accordance with the details approved prior to the first operation of any infrastructure on the site.

Reason: In the interests of highway safety.

**23. Archaeology**

A) Prior to any development works the applicant (or their agents or successors in title) shall secure and have reported a programme of archaeological field evaluation works, in accordance with a specification and written timetable which has been submitted to and approved by the local planning authority.

B) Following completion of archaeological evaluation works, no development shall take place until the applicant or their agents or successors in title, has secured the implementation of any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved by the local planning authority.

C) The archaeological safeguarding measures, investigation and recording shall be carried out in accordance with the agreed specification and timetable.

D) Within 6 months of the completion of archaeological works a Post Excavation Assessment Report shall be submitted to and approved in writing by the local planning authority. The Post-Excavation Assessment Report shall be in accordance with Kent County Council's requirements and include:

- a. a description and assessment of the results of all archaeological investigations that have been undertaken in that part (or parts) of the development;

- b. an Updated Project Design outlining measures to analyse and publish the findings of the archaeological investigations, together with an implementation strategy and timetable for the same;
- c. a scheme detailing the arrangements for providing and maintaining an archaeological site archive and its deposition following completion.

E) The measures outlined in the Post-Excavation Assessment Report shall be implemented in full and in accordance with the agreed timings.

Reason: To assess and mitigate the impacts of development on significant archaeological remains.

## 24. Security

Prior to above ground works, details demonstrating the development accords with Secure By Design guidance to address designing out crime shall be submitted to and approved in writing by the Local Planning Authority.

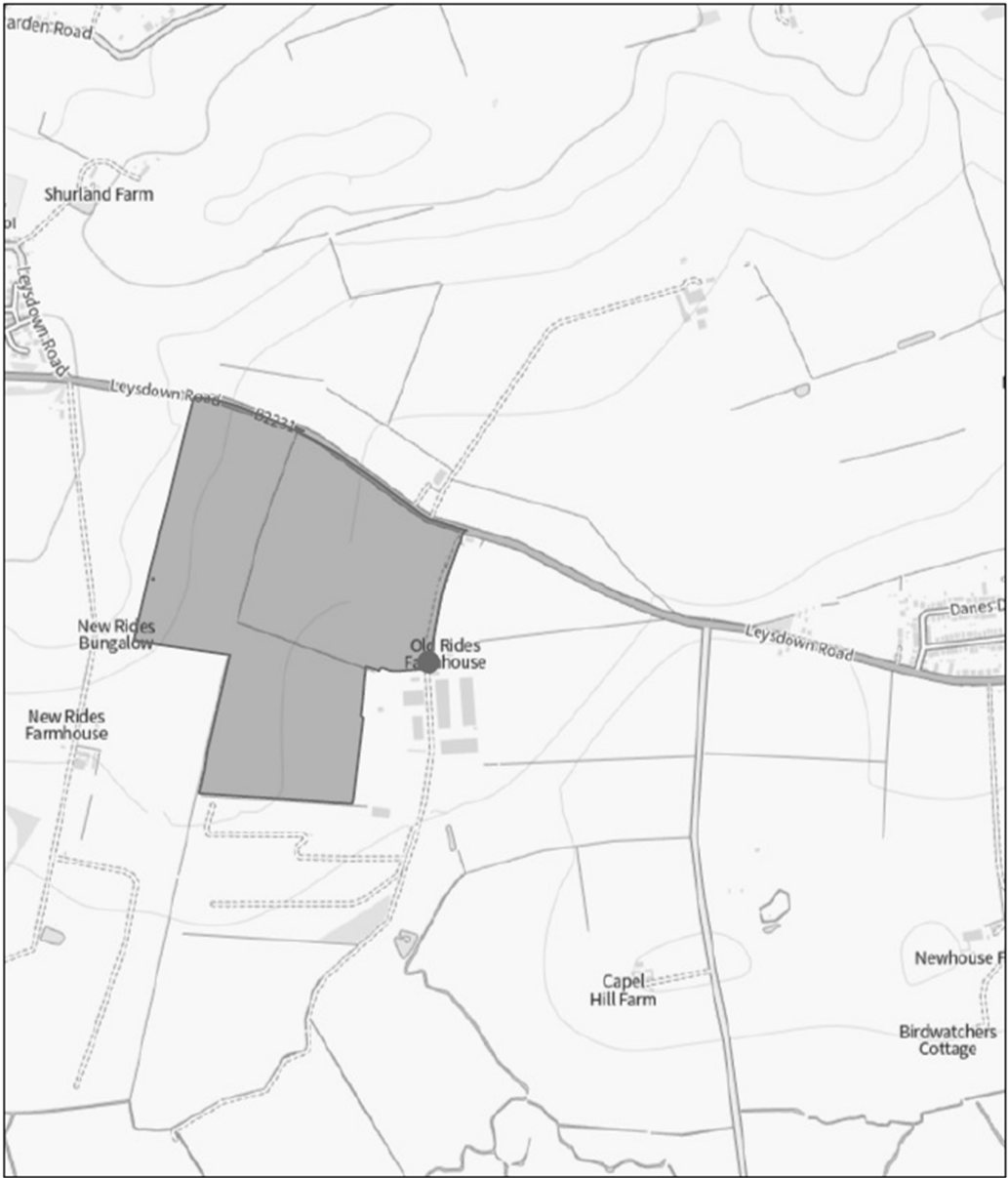
The details shall include:

- A clear audit trail for Designing Out Crime, Crime Prevention and Community Safety and to meet Local Authority statutory duties under Section 17 of the Crime and Disorder Act 1998.
- General security arrangements regarding the existing buildings, including perimeter security, alarm systems, lighting and CCTV.
- Perimeter security of the site, including gates, should be reviewed to control site permeability and prevent theft of property.
- Building security
- Security fencing system
- Additional defensive planting of natural hedging around the boundary and along the existing footpath
- Security marking of copper cable, transformers, inverters, switch gear and any other equipment of high value should be security marked, and a full equipment inventory
- All string inverters, substations, transformer stations and buildings/ storage containers alarmed with a monitored system and covered by CCTV (compliant with the Information Commissioner's Office guidance).
- Appropriate security locks and devices should be installed on all equipment cabinets and associated buildings.
- One way security clutch head security bolts/screws or similar can also be utilised to prevent easy removal.
- Monitored CCTV and alarms systems to be installed and operational to cover vulnerable elevations and site entrances in addition to point
- Crime prevention/security signage warning of the use of CCTV and forensic marking solutions should be installed on the exterior face of the security fencing and any gates.
- Doorsets and windows to meet PAS 24:2022 as a minimum-security standard.
- Door locking points with locks that meet the British Standard.

- Glazing for windows to be laminated rather than just toughened for security purposes.

Thereafter the development shall accord with the approved details.

Reason: In the interests of safety and security.



**PLANNING COMMITTEE – 21<sup>st</sup> May 2026****PART 4**

Report of the Head of Planning

**PART 4**

Swale Borough Council's own development; observation on County Council's development; observation of development by Statutory Undertakers and by Government Departments; and recommendations to the County Council on 'County Matter' applications.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                   |                                                                                          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|------------------------------------------------------------------------------------------|
| <b>4.1 REFERENCE NO - 26/500901/FULL</b>                                                                                                                                                                                                                                                                                                                                                                                                                            |                                   |                                                                                          |
| <b>PROPOSAL</b><br>Change of Use of the existing building from a multi-storey car park to a mixed use comprised of a multi-storey car park and a non-ancillary CCTV control room.                                                                                                                                                                                                                                                                                   |                                   |                                                                                          |
| <b>SITE LOCATION</b> Spirit of Sittingbourne Multi Storey Car Park, Station Street, Sittingbourne, Kent. ME10 3LF                                                                                                                                                                                                                                                                                                                                                   |                                   |                                                                                          |
| <b>RECOMMENDATION</b> Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions as set out in the report, 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.                                                                                                         |                                   |                                                                                          |
| <b>APPLICATION TYPE</b> Full (Minor)                                                                                                                                                                                                                                                                                                                                                                                                                                |                                   |                                                                                          |
| <b>REASON FOR REFERRAL TO COMMITTEE</b><br>Application submitted by Swale Borough Council.                                                                                                                                                                                                                                                                                                                                                                          |                                   |                                                                                          |
| <b>CASE OFFICER</b> Kelly Sharp                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                   |                                                                                          |
| <b>WARD</b> Chalkwell                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>PARISH/TOWN COUNCIL</b><br>N/A | <b>APPLICANT</b> Swale Borough Council<br><b>AGENT</b> Mr Suchindra Reddy - Airey Miller |
| <b>DATE REGISTERED</b><br>9/03/2026                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                   | <b>TARGET DATE</b><br>04/05/2026                                                         |
| <b>BA CKGROUND PAPERS AND INFORMATION:</b><br><b>Documents referenced in report are as follows: -</b><br>All drawings submitted<br>All representations received<br>The full suite of documents submitted pursuant to the above application are available via the link below: -<br><a href="#">26/500901/FULL   Change of Use of the existing building from a multi-storey car park to a mixed use comprised of a multi-storey car park and a non-ancillary CCTV</a> |                                   |                                                                                          |

[control room. | Spirit Of Sittingbourne Multi Storey Car Park Station Street  
Sittingbourne Kent ME10 3LF](#)

## 1. SITE LOCATION AND DESCRIPTION

- 1.1 The Spirit of Sittingbourne Multi Storey Car Park (MSCP) is situated within the built up area boundary of Sittingbourne. It lies within the defined Sittingbourne Town Centre boundary and a regeneration area, as defined by Policy Regen 1 in the Local Plan. It is located on St Michaels Road, positioned immediately to the north of the eastern end of The Forum.
- 1.2 The surrounding area is characterised by a mix of town centre uses, predominantly retail and commercial, consistent with its central urban location.
- 1.3 The MSCP consists of five levels with the existing parking comprising of 22 disabled bays, 10 motorcycle bays, 4 parent and child bays, 4 electric bays and 2 waiting bays at ground floor and 287 standard parking bays divided across the first, second, third floor and the roof top.
- 1.4 The vehicle entrance is situated on the eastern elevation with pedestrian entrances on the east elevation and on the west elevation at the north west corner of the building. The west elevation of the MSCP adjoins The Forum with a covered pedestrian access into the shopping centre.
- 1.5 Adjacent to the pedestrian entrance to the MSCP on the north western side is an existing internal control room measuring approximately 7.7m by 9.8m.
- 1.6 The MSCP is adjacent to the Sittingbourne High Street Conservation Area, however it does not fall within it.

## 2. PLANNING HISTORY

- 2.1 14/505440/FULL - Spirit of Sittingbourne – regeneration across six sites, including cinema and multi-storey car park (The MSCP relates to Site 5). Approved.

## 3. PROPOSED DEVELOPMENT

- 3.1 This application seeks planning permission for the change of use of the existing building from a multi-storey car park to a mixed use comprised of a multi-storey car park and a non-ancillary CCTV control room. As set out above, there is already a control room in place at the site and it is known that this was used for purposes that were ancillary to the car park but that it has also been partially used for wider operational purposes connected with the safety and security of the area.
- 3.2 The drawings submitted show that the existing internal control room within the car park will be enlarged on the south western side by 11.07m with a matching depth as the existing control room. An access ramp will be sited on the southwest side of the control room.



- 3.3 The works will be constructed in masonry with a render and painted white finish to match the existing. An aluminium framed metal door is proposed which will match the existing windows on the control room.
- 3.4 As the resultant control room will be entirely within the existing MSCP it should be noted that the physical works do not require planning permission. However, as the floorspace is to be used for purposes that are not associated with the existing MSCP, it is considered that the proposal represents a partial change of use of the overall building. The application has been submitted to seek planning permission for this.
- 3.5 To accommodate the extension three disabled parking bays will be removed from the location of the enlarged control room. Replacement disabled bays are proposed with one positioned on the first floor, one on the second and one on the third floor to maintain the overall number of disabled bays provided within the MSCP. These will be sited on the north eastern side in close proximity to the lift on each floor.
- 3.6 The proposed parking will comprise of 19 disabled bays, 10 motorcycle bays, 4 electric bays, 4 parent and child bays and 2 waiting bays at ground floor. First, second and third floors will each have 1 disabled bay and 69 standard parking bays. The roof top will have 74 standard parking bays. The proposal will see the loss of 6 standard parking bays.
- 3.7 A supporting statement has been submitted with the proposal stating:
- ‘The client has taken a cautious and informed approach, recognising that standard bays within the facility are currently underutilised. The resulting minor reduction in standard parking spaces is therefore considered a justified and reasonable measure that maintains compliance with the Equality Act 2010 and local planning policies, while supporting the functional enhancement of the car park without any external visual change.’*
- 3.8 No external changes to the multi storey car park are proposed.

#### 4. REPRESENTATIONS

- 4.1 Two rounds of consultation have been undertaken (one of which follows a revision to the description), during which letters were sent to neighbouring occupiers and a notice was displayed at the application site.
- 4.2 No representations were received from neighbouring residents.

#### 5. CONSULTATIONS

- 5.1 Ward Councillors - No representations received.

## 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  
ST4 Meeting the local plan development targets  
ST5 The Sittingbourne area strategy  
CP1 Building a strong, competitive economy  
CP2 Promoting sustainable transport  
CP4 Requiring good design  
Regen 1 Central Sittingbourne: Regeneration Area  
DM2 Proposals for main town centre uses  
DM6 Managing transport demand and impact  
DM7 Vehicle parking  
DM14 General development criteria  
DM28 Biodiversity and geological conservation  
DM33 Development affecting a conservation area

### **Supplementary Planning Documents (SPD)**

Sittingbourne Town Centre SPD 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 of Development
- Visual Impact
- Living Conditions
- Parking
- Biodiversity
- Other Matters

### **Principle of Development**

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 National Planning Policy Framework provides the national policy context for the proposed development and is a material consideration of considerable weight in the determination of the application. The NPPF states that any proposed development that

accords with an up-to-date local plan should be approved without delay. At the heart of the NPPF is a presumption in favour of sustainable development and for decision-taking this means approving development that accords with the development plan.

- 7.4 The application site lies within the built-up area boundary of Sittingbourne where development is generally supported under Policy ST3 of the Local Plan.
- 7.5 The Sittingbourne Town Centre SPD identifies opportunities to create new mixed use developments on St Michaels Road and it is noted that this opportunity was taken as part of the wider Spirit of Sittingbourne development that has previously been approved and undertaken. This proposal seeks an amendment to the use of the building but does not conflict with the approach of supporting mixed use developments and, therefore, the principle of the change of use of the existing building from a multi-storey car park to a mixed use comprising of a multi-storey car park and a non-ancillary CCTV control room is considered acceptable and in compliance with the SPD.
- 7.6 The site is located within the Sittingbourne Regeneration Area and Policy Regen 1 sets out that proposals providing for suitable car parking that will support existing and new uses and which are in accordance with an overall parking strategy for the centre will be permitted. Policy DM2 of the Local Plan states, amongst other things, that development should not materially prejudice the provision of other land uses, particularly the supply of commercial uses, housing, community use and open space. It also states that non-retail uses will be permitted provided that they would not lead to a significant concentration of non-retail floorspace or housing or the loss of significant retail frontage; or result in the loss of existing residential accommodation or a use important to the community. There would be no loss of retail use as the change of use is in relation to the existing MSCP. The increase in floor area of the internal control room would result in the loss of three disabled parking spaces at ground floor level, however these would be relocated within the MSCP. Although this will result in the loss of 6 standard parking spaces it is considered that this loss would not have a significantly harmful impact on the important parking provision serving the town centre and community use which is assessed further within the report.
- 7.7 For these reasons, the proposal accords with policies ST3, DM2 and Regen 1 of the Local Plan as well as the Sittingbourne Town Centre SPD.

### **Visual Impact**

- 7.8 Policies CP4 and DM14 of the Local Plan require development proposals to be of high-quality design and to be in keeping with the character of the area. They state that particular regard should be paid to the scale, height, materials, detailing, mass, bulk, articulation and site coverage of any proposals.
- 7.9 This section of St Michaels Road is characterised by a range of commercial activities including open car sales, parking and tyre and exhaust centres. The proposed physical works will be sited within the MSCP and therefore there will be no visual changes to the streetscene. The proposal will therefore not detract from the character or appearance of the building or its setting. The proposal does not involve any increase in building height, footprint, or massing, and retains the building's overall form and urban presence.

- 7.10 Overall, the visual impact of the proposal is considered acceptable and accords with policies CP4 and DM14 of the Local Plan.

### **Living Conditions**

- 7.11 Policy DM14 of the Local Plan 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. Any new proposed schemes should not result in significant overshadowing through a loss of daylight or sunlight, give rise to an unreasonable loss of privacy, or result in an unreasonable loss of outlook or in excessive noise or odour pollution.
- 7.12 Given the character of the surrounding area which is predominantly retail and commercial and noting that no external changes are proposed to the MSCP, the proposal is considered to comply with policy DM14 of the Local Plan, and would not result in undue harm to the amenity of neighbouring residents.

### **Parking**

- 7.13 Policy DM7 of the Local Plan requires parking provision to be in accordance with the Council's Parking SPD which provides guidelines for vehicle parking for non-residential uses which will take into account the need to maintain an adequate level of car parking within town centres to ensure that viability of the centres is not compromised.
- 7.14 The proposed extension will see three disabled spaces relocated within the MSCP which will result in the loss of 6 standard parking spaces. This is considered to be a minor loss of standard car parking spaces. When noting the justification provided within the supporting statement that maintaining the overall number of disabled bays is considered essential to uphold accessibility standards and when considering that the standard bays within the facility are currently underutilised, the loss of standard parking spaces rather than disabled spaces is considered to be appropriate. The retention of the remaining 281 standard parking spaces will ensure that there is sufficient parking on site.
- 7.15 The proposal is therefore considered to be in accordance with Policy DM7 of the Local Plan.

### **Biodiversity Net Gain**

- 7.16 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.
- 7.17 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).

- 7.18 The proposals are for a change of use with no external alterations proposed to the existing building. The proposals fall under the de minimis exemption, such that the proposal is exempt from being required to provide BNG.
- 7.19 The proposals are considered to be in accordance with policies DM28 of the Local Plan, as well as the NPPF.

### **Other Matters**

- 7.20 As set out above, the site is near to the Sittingbourne Conservation Area. However, the site is not within it and, given the nature of the works, the proposal would have no effect on the setting of the Conservation Area. Consequently, no objections are raised to the proposal on the grounds of any effects on heritage assets.

### **CONCLUSION**

- 7.20 The proposed change of use of the existing building from a MSCP to a mixed use comprised of a MSCP and a non-ancillary CCTV control room has been assessed against relevant national and local planning policies and is considered acceptable in principle according with policies ST3, Regen 1 and DM2 of the Local Plan as well as the Sittingbourne Town Centre SPD. It would not result in unacceptable harm to visual or residential amenities. Furthermore, it would not result in an unacceptable loss of standard parking within the MSCP and, as such, the development would not have a detrimental impact on parking provision serving the town centre. As such, it is recommended that planning permission be granted.

### **RECOMMENDATION**

- 7.21 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:

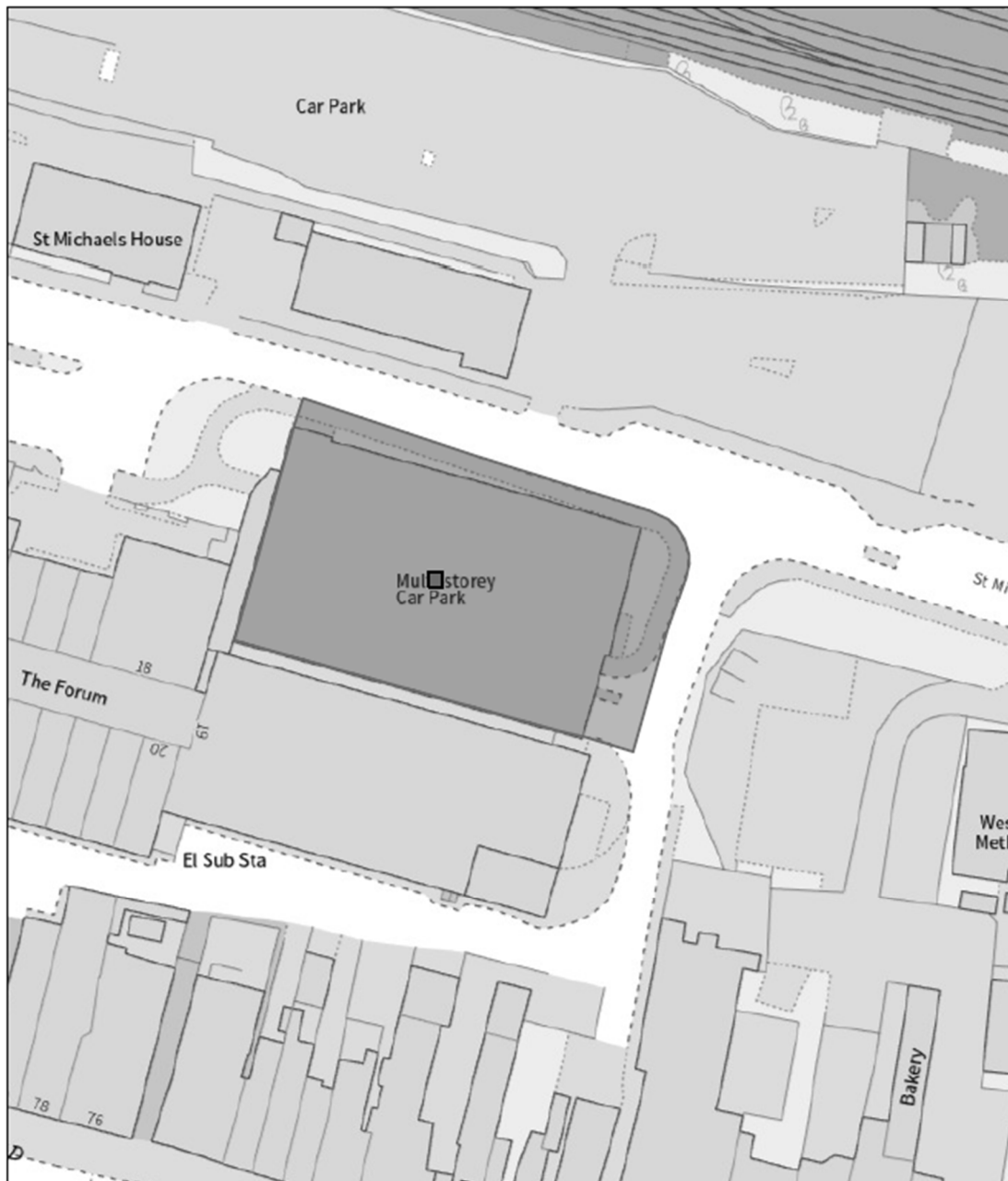
- SCR-AMSL-XX-00-DP-A-1105 Rev P1 – Proposed Floor Plan

- SCR-AMSL-XX-XX-DE-A-2100 Rev P1 – Section A-A' & B-B'
- SCR-AMSL-XX-XX-DE-A-3000 Rev P1 – Existing and Proposed Car Park Elevations
- SCR-AMSL-XX-XX-DE-A-3002 Rev P1 – Proposed Control Room Elevations
- SCR-AMSL-XX-XX-DP-A-1104 Rev P1 – Proposed Car Park GA Plans

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

- (3) The three relocated disabled parking bays shown on drawing SCR-AMSL-XX-XX-DP-A-1104 Rev P1 shall be provided prior to the construction of the internal control room extension and once provided shall be maintained as such thereafter.

Reason: In the interests of maintaining the overall number of disabled bays.



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**PLANNING COMMITTEE – 21<sup>st</sup> May 2026**

**PART 5**

Report of the Head of Planning

**PART 5**

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

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- **Item 5.1 – Happy Days, Bell Farm Lane, Minister-on-Sea ME12 4JB**

**PINS Decision: APPEAL ALLOWED**

**Committee or Officer Decision : DELEGATED REFUSAL**

**Observations**

A Certificate of Lawfulness for the use of land as a single dwellinghouse was sought but refused on the grounds that insufficient evidence had been provided to demonstrate that the structure at the site was a building and, by extension, a dwellinghouse.

The Inspector assessed the planning history of the site, which included the site having been approved to accommodate caravans for use by a Gypsy family 2005. The Inspector went on to note that the case of the appellant revolved around the structure at the site, which had been in place since 2009, being a building rather than a caravan. The Inspector then went on to set out various important matters around procedure and the relevant definitions, noting that planning merits was not part of the assessment for the appeal as it related to an application for a Certificate of Lawfulness.

The Inspector identified that the evidence provided by the appellant showed that the structure had been brought onto the site in four parts and therefore exceeded the limit of two parts that is inherent to the definition of a caravan. The Inspector agreed with the appellant's interpretation of the means of construction of the structure being grounds to conclude that it did not represent a caravan and noted that there was no contravening evidence provided by the Council in this regard.

The Inspector also found that, consistent with the appellant's evidence, the structure would not be moveable and, therefore, the structure should be considered to not be a caravan when the 'mobility' test is applied. In this regard it was noted that there were no obvious lifting points and that the structure would have to be substantially dismantled to be moved.

Having regard to the tests of a building, it was found that the tests of size and permanence meant that it should be considered a building.

For these reasons, the Inspector concluded that the structure represented a dwellinghouse from the point that it was constructed. It was, therefore lawful in the context of either the 4 or 10 years rules that apply to matters of lawfulness, albeit the Inspector concluded that the 4 year rule was applicable in this case.

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- **Item 5.2 – 58 Roseleigh Road, Sittingbourne, KENT ME10 1RR**

**PINS Decision: APPEAL DISMISSED**

**Committee or Officer Decision : DELEGATED REFUSAL**

**Observations**

Planning permission was sought for the erection of a single storey rear extension. The application was refused on the grounds of the impact on the living conditions of neighbouring residents in terms of light and outlook. This was the main issue that was considered by the Inspector.

The Inspector found that *“the visually overbearing impact of the rear extension in outlook, given its proposed size and close proximity to the adjoining occupiers, would diminish the enjoyment of the residential living environment, particularly that of the outdoor amenity space, for the neighbouring occupiers. This would harm the enjoyment the existing occupiers should reasonably expect to enjoy.”* However, due to the extension being to the north west of 57 Roseleigh Road, it was found that the impact on light was not unacceptable.

Whilst a list of other permissions within the area were provided by the appellant, this was not considered to be determinative by the Inspector noting that no details of the proposals had been provided and, as such, it was not possible to be certain that circumstances were similar. The Inspector noted that, in any case, the merits of each proposal would have to be considered independently. The Inspector also found that the potential for a larger home extension to be built under permitted development rights and the absence of an objection from the neighbouring resident were not grounds to conclude that the proposal should be found acceptable. Furthermore, other considerations such as design and other developments within the area, were not reason to find the proposal acceptable.

The appeal was, therefore dismissed.

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- **Item 5.3 – Land North of Perry Leigh, Grove Road, Selling, Kent ME13 9RN**

**PINS Decision: APPEAL ALLOWED**

**Committee or Officer Decision : ENFORCEMENT NOTICE**

**Observations**

Using the ‘second bite’ approach following a previous enforcement notice being quashed, a new enforcement notice was served to address the unauthorised use of land for the siting of containers for the storage of machinery and materials associated with a pallet recycling business and the grazing of horses taking place on the land.

A Certificate of Lawfulness has previously been granted for the use of part of the site for the storage of pallets and it was accepted that the grazing of horses on the wider site was lawful. The case of the Council was that the use of the wider site had altered as a result of 14 storage containers having been positioned on the land (in addition to 3 pre-existing containers) and that the siting and use of these containers represented a change of use of land relative to the established lawful uses.

The Inspector found that the containers had been stationed on the land and, therefore, the ground B appeal (on the grounds that the alleged breach had not occurred as a matter of fact) failed.

The Ground (c) appeal (that the alleged breach did not represent a breach of planning control) was assessed on the basis of whether the alteration of the mix of uses at the site represented a material change of use of land. In this regard, the Inspector found that *“Although they take up a large volume, the storage of these items within the storage containers is reasonably necessary and proportionate to the Pallets element, the Horses element, and the maintenance of the land. They are therefore ancillary to the lawful use of the land because they have a functional relationship with the lawful use and their extent and scale are commensurate with that lawful use, considering the particular circumstances of the site (including its size, layout and location) and the way it is lawfully used (including the unique way the appellant operates the pallet business).”*

The Inspector went on to say that *“the siting of up to 17 storage containers to securely store items associated with the lawful use of the site, internally, is functionally related to that lawful use. Accordingly, no material change of use has taken place through the introduction of any additional primary use to the site.”*

An assessment was undertaken as to whether an intensification of the use of the site had occurred to the extent that a material change of use had been brought about. In this regard, the Inspector was satisfied that *“the siting of up to 17 storage containers has not led to a material change in the definable character of the use of the land”* and that *“the level of intensification has been low, and the change in appearance has not been significant enough to fundamentally change the character of the use which has been ongoing for a number of years prior to formal enforcement action being taken.”*

From this basis, the Ground (c) appeal was successful and the enforcement notice was quashed.

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**PLANNING COMMITTEE – 21<sup>st</sup> May 2026****PART 5**

Report of the Head of Planning

**PART 5**

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



Planning Inspectorate

## Appeal Decision

Site visit made on 14 March 2026

by A U Ghafoor BSc (Hons) MA MRTPI FCMI fCMgr

an Inspector appointed by the Secretary of State

Decision date: 24<sup>th</sup> March 2026

Appeal Ref: APP/V2255/X/24/3340364

Happy Days, Bell Farm Lane, Minister-on-Sea ME12 4JB

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended ("the 1990 Act") against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Carl Lucas against the decision of the Swale Borough Council.
- The application Ref 22/501785/LDC EX, dated 4 April 2022, was refused by decision dated 17 October 2023.
- The application was made under section 191(1)(a) or (b) of the Act.
- The proposed development for which a certificate of lawful use is described in the application form as follows: *use of land as a single dwelling house.*

### Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is found to be lawful.

### Preliminary matter

2. As the Planning Practice Guidance (PPG) states, an application needs to describe precisely what is being applied for. The application form describes the development as an existing use however the appeal form describes the development as the erection of a dwellinghouse, which is consistent with the Council's refusal notice. The written representations refer to the latter, and I consider that description appropriate. I proceed on that basis.

### Reasons

3. The **main issue** is whether the decision to refuse the LDC was well founded. The burden of proof is firmly upon the appellant whose own evidence does not need to be corroborated by independent evidence to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous on the balance of probability [emphasis added].
4. The planning history is outlined in the representations, and I do not need to rehearse that here. Of relevance is the 2005 appeal decision granting retrospective planning permission for the site's residential use for one gypsy family - stationing of mobile home, touring caravan, utility room and fencing (the 2005 Permission)<sup>1</sup>. There have been subsequent application including variations of conditions, but none are of direct relevance to this appeal. The 2005 Permission relates to the material change in the use of the site facilitated by the stationing of a mobile home. However, as the appeal parties acknowledge, the latter was replaced by the existing structure in 2009.

<sup>1</sup> Council ref SW/03/1396/1 appeal ref APP/V2255/A/04/1142401.



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5. The site, known as Happy Days, is located at the end of Bell Farm Lane. The property is landscaped; there are two outbuildings and a residential unit. The appellant describes the latter as a building while it is labelled as a caravan or twin-unit mobile home by the Council. The structure is located along the eastern boundary, it is set back from the access, and it is placed on several jacks over solid level ground, which appears to form its foundation. Essentially, the nub of the appellant's argument is a simple one, namely, that the Council is wrong in describing the structure as a caravan because it is a building constructed on site in 2009. On the other hand, the Council refused to grant the LDC as insufficient evidence had been provided to demonstrate the structure is a building.

For the following reasons, I disagree with the Council's analysis and approach.

6. I have detected a fundamental misunderstanding requiring my attention. In this appeal, concepts like immunity and lawfulness are crucial: an incorrect approach, misunderstanding, or a misdirection can have drastic consequences. Additionally, the submitted information needs to be considered, reviewed and analysed by the decision-maker in the round, and they need to grapple with the issues in totality applying the correct tests as set out in the law and relevant judicial authority. Planning merits has no role in the determination.
7. The word "lawfulness" has a specific meaning. A use or operation may be lawful at any time if no enforcement action may then be taken in respect of that specific use. This may be because the time for taking enforcement action has expired, and the use or operation does not constitute a contravention of any requirements of an enforcement notice then in force: nothing before me indicates the latter applies here. In the context of an LDC application, the relevant date for ascertaining whether the existing use or operation is lawful is the date of the LDC application.
8. Time limits are set out in s171B of the Act and the recent change to the law is of no consequence in this case. Sub-section (3) of the provision explains: where there has been a breach of planning control consisting in the carrying out of a material change in use, *no enforcement action may be taken after the end of the period of 10-years beginning with the date of the breach*. However, the erection of a single dwellinghouse involves building work and sub-section (1) of s171B is directly relevant. This explains where there has been a breach of planning control consisting in the carrying out of building or other operations, *no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed*. Given the LDC application seeks to certify building operations involved in the erection of a dwelling, the relevant date is 4 April 2018 [emphasis added].
9. There is considerable body of judicial authority regarding the interpretation of concepts like caravan or buildings and the relevant statutory provisions: I will not summarise these judgments as the appeal parties have referred to them. The findings contained therein indicate that each case needs to be considered upon its individual circumstances on a fact and degree basis.
10. The statutory definition of a "caravan" is any structure designed or adapted for human habitation which is capable of being moved from one place to another, whether by being towed, or by being transported on a motor vehicle or trailer. This can comprise not more than two sections designed to be assembled on site, which is physically capable when assembled of being moved by road from one place to another, provided the structure does not exceed specified dimensions. The assessment requires evidence of construction and mobility. For planning purposes, the definition of the word "building" is given in s336(1) of the Act and



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includes any structure. Similarly, the word “development” is defined in s55(1) and includes the carrying out of building operations.

11. I pause here with a slight digression. The Council say no photographs of the construction work have been submitted by the appellant, but statements and supporting documentary evidence, including drawing no 13282 and a structural engineer's report by a suitably qualified surveyor, have been submitted. As the PPG indicates, anyone with an interest in the land, or neighbours, may have evidence which is relevant. If that evidence supports immunity claim, it is up to the appellant to produce it, if they choose to do so, in support of the case. Similarly, if the Council has evidence of its own to disprove the appellant's case, then, instead of sitting on it, they should produce it and explain why their evidence undermines or casts significant doubt over the veracity of the appellant's claims.
12. Now then, the structure is of dimensions that meet a standard twin-unit static caravan. The Council opines it could be possible for a larger number of components to be brought onto a site and assembled into two sections if this was not a building operation, and that the final act comprised the joining of the two sections. However, the evidence presented shows that the structure was made to order as four component parts. It was delivered in parts and assembled by specialists on the site. Even if the Council is right and the axels, chassis, frame and wheels remain intact, all the technical information and drawings tendered, including the appellant's structural report, clearly shows that the structure is in fact composed of more than two sections separately constructed and designed to be assembled by means of bolts, clamps or other devices requiring significant building work.
13. I attach significant weight to the appellant's construction test argument because, apart from vague assertions, the Council produce no evidence of its own to contradict the appellant's precise statement about the nature of the building work involved in constructing the four separate components. There is nothing before me to undermine the claim that, once assembled on site, the structure has remained in place since 2009 as illustrated in the aerial photographs.
14. The evidence points to the likelihood that it would not be possible for the structure to be moved intact. As the structural engineer states, it could not be transported in one piece due to its size, weight, and means of construction. Additionally, there appear to be no evidence of lifting points, and it is unclear to me how a crane could, practically, lift the structure without causing considerable damage to the structure. It would not have the structural strength and rigidity to be lifted in one piece onto a trailer without distortion and sustaining serious damage.
15. Theoretically, the structure could be cut into separate halves, but to me that would undermine the mobility test. In addition, it would be highly impractical given its design and scale and it would potentially involve its significant dismantling. It would potentially involve the removal of the roof coverings and the roof trusses. It would involve the cutting or physical removal of the main beams and structural elements. In addition to all of that, the separation of the units would potentially expose the interiors to the elements, due to the design and internal layout of the structure.
16. Contrary to the Council's arguments, the facts and circumstances clearly demonstrate the structure fails to satisfy the construction and mobility tests. The structure cannot be deemed to be a caravan or a twin-unit caravan even if it had been described as such in several applications for planning permission<sup>2</sup>. So, is it a building? In that context, several well-known legal authorities have been referred to by the appeal parties: I will not summarise these

<sup>2</sup> For example, Council ref: 18/500422/FULL. In 2018 the appellant sought the removal of condition 1) imposed on SW/07/1447.

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judgments here. However, from the case law three factors are essentially relevant - size, permanence and degree of physical attachment.

17. The structure is not insignificant or de minimis in size and closely resembles the building shown in drawing no 13282. It is certainly large enough to have significance in the planning context, both visually and in its effect on the site and surroundings within which the site lies. Moreover, as I have already said elsewhere, there is nothing to contradict the appellant's clear statement that the structure has not moved since its erection. I have referred to the practical difficulties which would be involved in trying to move the structure from its present location given its construction, weight and scale.
18. Pulling all the above threads together, in my assessment, the structure's size combined with its attachment through its own weight strongly indicates a physical change in the land with a significant degree of permanence. As a matter of fact and degree, I find that the structure meets the definition of a building for planning purposes, which required significant building work to construct on the site. As the documentary evidence shows, the work required some pre-planning, technical knowledge and expertise. The erection of the single dwellinghouse constitutes development and required express planning permission.
19. As the planning history demonstrates, several applications were made to the Council. In practice, a site visit would be made by officers for assessment purposes. Given the structure's design and external appearance, it resembles a dwellinghouse. Alarm bells should have been triggered but it is now too late. This is because the evidence clearly demonstrates to me that the building operations involved in the erection of the dwellinghouse, shown in drawing no 13282, were substantially completed on 8 May 2009. There may have been some kind of improvements or renovations over time, but the quantum of evidence presented clearly shows to me that the building was substantially completed and used as someone's home on or before the relevant date and it has been occupied and used as such without interruption. Even if an alternative view prevails over which immunity period applies, the evidence shows that the development is lawful under the 10-year rule.
20. My inescapable findings are that, for the reasons given above, based on the evidence now available, I find that the existing operation comprised in the erection of a single dwellinghouse, illustrated in drawing no 13282, is lawful at the date of the LDC application. I shall specify that drawing for clarity's sake.

#### Conclusion

21. For the reasons given above and having considered all other matters, I conclude that the Council's refusal to grant a certificate of lawful development was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

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#### Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192  
(as amended by Section 10 of the Planning and Compensation Act 1991)  
TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT  
PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 4 April 2022 the matter described in the First Schedule hereto, constituting the the erection of a single dwellinghouse, in respect of the land specified in the Second Schedule hereto and edged on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The building operations comprised in the erection of a single dwellinghouse were substantially completed on or before 4 April 2018 and the matters are now time barred by reason of immunity and the matters did not constitute a contravention of any of the requirements of any enforcement notice in force.

Signed

*A U Ghafoor*

INSPECTOR

Date: 24<sup>th</sup> March 2026

Reference: APP/V2255/X/24/3340364

***First Schedule***

The the erection of a single dwellinghouse as illustrated in drawing no 13282 (Stately Albion Ltd technical drawing dated 13/02/2009).

***Second Schedule***

Land edged as shown on the plan attached to this certificate and identified as Happy Days, Bell Farm Lane, Minister-on-Sea ME12 4JB.

**NOTES**

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the existing operation described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the existing operation as described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation or use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

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## Plan

This is the plan referred to in the Lawful Development Certificate dated: 24<sup>th</sup> March 2026

by A U Ghafoor BSc (Hons) MA MRTPI FCI fCMgr

Land edged as shown on the plan attached to this certificate and identified as Happy Days, Bell Farm Lane, Minister-on-Sea ME12 4JB.

Reference: APP/V2255/X/24/3340364

Scale: Not to Scale





## Planning Inspectorate

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### Appeal Decision

Site visit made on 23 March 2026

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2026

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Appeal Ref: 6003297

58 Roseleigh Road, Sittingbourne, KENT ME10 1RR

- 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 Martin Sayer against the decision of Swale Borough Council.
  - The application Ref is 25/502836/FULL.
  - The development proposed is the erection of a single storey rear extension including 1no. rooflight.
- 

#### Decision

1. The appeal is dismissed.

#### Preliminary Matter

2. I have taken the description of proposed development from the Council's decision notice as this clearly and succinctly describes the act of development only.

#### Main Issue

3. The main issue raised by this appeal is the effect of the proposed development on the living conditions of the occupiers of No.57 Roseleigh Road, particularly in regard to outlook and light.

#### Reasons

4. The occupiers of neighbouring properties should reasonably expect to enjoy an acceptable outlook as part of their residential lives. The visually overbearing impact of the rear extension in outlook, given its proposed size and close proximity to the adjoining occupiers, would diminish the enjoyment of the residential living environment, particularly that of the outdoor amenity space, for the neighbouring occupiers. This would harm the enjoyment the existing occupiers should reasonably expect to enjoy.
5. Notwithstanding the above, the extension would be to the north west of No.57 Roseleigh Road and, taking into account the orientation of the sun, would not cast overshadowing over the existing dwelling to the south east. Natural light would not be obstructed to No.57 Roseleigh Road as a result of the development. Consequently, I do not consider the proposal would create significant harm in respect of light impacts.
6. A list of planning permission reference numbers has been provided by the appellant relating to other similar developments. I acknowledge that there may be examples of other similar extensions to dwellings in the locality, however I have not been

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Appeal Decision 6003297

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provided the full details of any of those cases that might enable me to compare what similarity, if any, those developments would have to that which is before me. Even if there are other similar examples locally, this does not justify other development where harm would result.

7. It has been suggested that the proposal would satisfy the criteria for Prior Approval for Larger Home Extension. However, I have not been provided with evidence that would indicate such criteria would be met or that any such approval is in place here. This offers little weight in support of the proposal.
8. No objections to the proposal have been received from existing neighbouring occupiers, including that of the occupiers of No.57 Roseleigh Road. Whilst this may be so, this does not make an unacceptable development acceptable or justify the proposed development.
9. I acknowledge that the proposal would be to the rear of the property and, therefore, would not be open to general public views. It would be constructed of similar materials to that of the host property. Whilst these are merits of the proposed scheme, they do not overcome my above concerns. I note that there are existing dormer style roof additions at the rear of properties, however, I have considered the appeal on the basis of the proposal that is before me.
10. For these reasons, I conclude that the proposed development would be harmful to the living conditions of the occupiers of No.57 Roseleigh Road, particularly in regard to outlook. The proposal would, therefore, conflict with Policies DM14 and DM15 of the Swale Borough Local Plan and the provisions of the National Planning Policy Framework. These policies seek, amongst other matters, residential extensions to protect residential amenity.

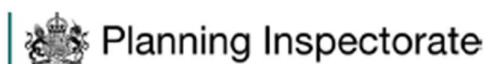
#### Conclusion

11. Having regard to the above findings, the appeal should be dismissed.

*Nicola Davies*

INSPECTOR





## Appeal Decision

Inquiry held on 17 March 2026

Site visit made on 16 March 2026

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20<sup>th</sup> April 2026

Appeal Ref: APP/V2255/C/25/3375967

Land North of Perry Leigh, Grove Road, Selling, Kent ME13 9RN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act).
- The appeal is made by Mr Brian Macey against an enforcement notice issued by Swale Borough Council.
- The notice was issued on 15 October 2025.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of Land from a mixed use comprising (1) part for the making and recycling of pallets and (2) part for the keeping and grazing of horses; and part for the siting of 3 containers used for purposes ancillary to the keeping and grazing of horses and the making and recycling of pallets; to a mixed use comprising (1) part for the making and recycling of pallets and (2) part for the keeping and grazing of horses and (3) part for the siting of more than 3 storage containers (currently 17) used for the storage of machinery and materials associated with the keeping and grazing of horses and the making and recycling of pallets.
- The requirements of the notice are: (i) Cease using the Land for the siting of storage containers. (ii) Remove all storage containers from the Land other than those three shown in their approximate position marked by black crosses on the attached plan.
- The period for compliance with the requirements is twelve months after the notice comes into effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), and (f) of the 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.

**Summary of Decision:** The appeal is allowed and the enforcement notice is quashed.

### Background

1. The appellant runs a business involved in the making and recycling of pallets at the site. He is the sole employee of that business, and he carries out all activities associated with that business, except for the collection of finished pallets from the site by employees of a pallet firm. The appellant also rents out part of the site, including a stable building, to people who keep and graze 2 horses on the land. Seventeen storage containers<sup>1</sup> are sited on the land to store tools, machinery, hay, and other items associated with the making and recycling of pallets, the keeping and grazing of horses, and the maintenance of the land.
2. Initially because of the Covid-19 pandemic, and then due to the appellant's health since, some of the storage containers have not been regularly accessed for long periods. Parts of the site have therefore become overgrown to such an extent that some of the storage containers are currently inaccessible. The appellant is also unable to open some of the containers on account of keys being lost or locks/doors having been damaged by people trying to break in.

<sup>1</sup> Referred to throughout by the numbers provided in Appendix 4 to the Proof of Evidence of Brian Macey dated February 2024

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3. A certificate of lawfulness for an existing use (LDC) was granted by the Council in respect of a small part of the site for 'use of land for storage of pallets' in 2017<sup>2</sup> on the basis that such use had been continuing for at least ten years prior to the date of the application for an LDC.
4. In a previous appeal decision<sup>3</sup>, an earlier enforcement notice (the 2021 EN) related to only part of the site and referred to the alleged breach of planning control as '*the material change of use of the Land from the keeping and grazing of horses to a mixed use of the Land for the keeping and grazing of horses and the stationing of storage containers*'. That notice was quashed because, amongst other things, the description of the alleged breach was imprecise, and it could not be corrected without causing injustice. The notice the subject of this appeal intends to address the shortcomings of the 2021 EN, and the Council's case relies in part on section 171B(4) of the Act, which sets out the 'second bite' provisions. The Council's failure to ensure the notice explicitly refers to section 171B(4) does not render it invalid, but this would be relevant to an appeal on ground (d).
5. The previous appeal decision clarifies at paragraph 7 that the 2021 EN '*intended to attack an alleged storage use that had expanded from an incidental scale to become a primary use in its own right; a use that is facilitated by the containers.*' The Council's Statement of Case confirms the same about the notice the subject of this appeal, which refers to the change of use from a mixed use comprising part for the making and recycling of pallets (the Pallets element), part for the keeping and grazing of horses (the Horses element), and part for the siting of 3 storage containers used for purposes ancillary to the Pallets element and the Horses element, to a mixed use comprising the Pallets element, the Horses element, and part for the siting of more than 3 storage containers (currently 17) used for the storage of machinery and materials associated with the Pallets element and the Horses element (the Containers element). There is no dispute that the site is a single planning unit with a lawful mixed use for purposes including, as a minimum, the Pallets element and the Horses element. I see no reason to disagree with these basic agreed facts.
6. I wrote to the main parties in advance of a Case Management Conference prior to the Inquiry and asked whether the description of the alleged breach should refer to an alleged intensification of a lawful mixed use if all the storage containers were used in association with the Pallets element and the Horses element. On that basis, I put forward a possible alternative description of the alleged breach which referred specifically to intensification, for the parties to consider. The Council has endorsed this approach and claims the notice can be altered in this manner without causing injustice, whilst also maintaining that the existing description of the alleged breach is not in need of correction. I shall therefore consider the appeal based on the description of the alleged breach stated in the notice.
7. All evidence in respect of grounds (b), (c), and (d) was heard by sworn affirmation.

#### The appeal on ground (b)

8. For the appeal under ground (b) to succeed, the appellant needs to show that the alleged breach of planning control has not occurred.

<sup>2</sup> The Council's ref: 16/502524/LDCEX

<sup>3</sup> Appeal ref: APP/V2255/C/21/3287862, in respect of an enforcement notice dated 25 October 2021



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9. Essentially, the allegation is that 14 storage containers have been sited on the land (in addition to 3 pre-existing storage containers which the Council accepts as ancillary to the lawful use of the land), which has brought about a material change in the use of the site. There is no dispute that the siting of the storage containers comprises a use of the land, rather than operational development, and I see no reason to find otherwise. Whether the siting of those storage containers has resulted in a material change of use requiring planning permission is more relevant to the appeal on ground (c), rather than ground (b).
10. The LDC confirms the storage of pallets is lawful on a relatively small part of the site, without reference to any other uses of the land. This does not mean that the same use was not, or is not, lawful over larger parts of the site. Indeed, aerial photographs and Mr Macey's evidence strongly suggest that pallets and other items associated with the Pallets element have been stored outside over large parts of the site for a considerable period, and since at least 2007.
11. In the context of the wider site and its undisputed lawful use for mixed purposes including at least the Pallets element and the Horses element, the storage use referred to by the LDC does not form another primary element of the lawful mixed use of the site. This is because the outside storage of pallets across the whole site is seen and experienced as part of the function of the Pallets element, even though the making and recycling of pallets is not referred to within the LDC. It is therefore not essential for the description of the alleged breach to refer to the storage of pallets, although I take the appellant's point that the storage use certified as lawful on part of the site informs the character of the lawful mixed use of the wider site, which is relevant to the appeal on ground (c). It is also not essential for the notice to refer to the LDC, as compliance with the notice would not affect the lawful use of the area of land referred to by the LDC.
12. Aside from any other potential defects, errors or misdescriptions in the notice which may or may not be corrected without causing injustice, it is clear that the notice attacks the siting of the additional 14 storage containers on the land. As such, the matters alleged in the notice have occurred and the key issue is whether this has resulted in a breach of planning control.
13. The appeal on ground (b) therefore fails.

#### The appeal on ground (c)

14. For the appeal under ground (c) to succeed, the appellant needs to show that the alleged breach does not constitute a breach of planning control, on the balance of probabilities.
15. Section 57 of the Act states that planning permission is required for the carrying out of any development of land. The relevant meaning of 'development' is provided at section 55 of the Act, which includes the making of any material change in the use of any buildings or other land. A change in the use of any land is therefore only capable of constituting development requiring planning permission if the change is material.
16. It is the Council's case that the Containers element is not ancillary or incidental to the lawful mixed use of the land for the Pallets element and the Horses element and that the introduction of the Containers element has had an effect on the character of the use of the site significant enough for the Containers element to

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comprise a new primary use. This, it is claimed, has brought about a material change in the use of the land.

17. There is no dispute that the contents of the storage containers comprise items associated with the Pallets element, the Horses element, and the maintenance of the land. Such items include timber, tractors, tools, fuel, trailers, racking, hay, straw, and tractor/trailer parts. These items are not being stored for any other purposes or uses within or outside the site. Moreover, the aerial photographs suggest a reduction in items stored in the open on the land prior to the 14 additional storage containers being sited there, consistent with the appellant's claims that many of those items have simply been moved inside the storage containers.
18. Many pallets are kept in the open, while there are 2 boxes for horses within the stable building, which is also largely used for the storage of timber associated with the pallets business. In addition, the items within the storage containers are all reasonably necessary to carry out the lawful use of the land. Mr Macey has explained that timber stored in the open is prone to rotting and that thefts and damage caused to items stored in the open brought about the need to securely store them inside, which influenced the positioning of the last 12 storage containers moved onto the land.
19. Although they take up a large volume, the storage of these items within the storage containers is reasonably necessary and proportionate to the Pallets element, the Horses element, and the maintenance of the land. They are therefore ancillary to the lawful use of the land because they have a functional relationship with the lawful use and their extent and scale are commensurate with that lawful use, considering the particular circumstances of the site (including its size, layout and location) and the way it is lawfully used (including the unique way the appellant operates the pallet business).
20. Mr Gregory, on behalf of the Council, has suggested that the siting of the 14 additional storage containers represents a 566% increase in storage needs. However, there is little to show the storage needs of the lawful use may have increased, when aerial photographs indicate items were previously stored to a similar or larger extent in the open. In that sense, there has been a change in the way items are stored, as they are now stored internally rather than externally, but this has not changed the nature of the items being stored. The storage remains ancillary to the lawful use, albeit by an enclosed and more secure method.
21. Having regard to the above, and everything else I have read, seen and heard, the siting of up to 17 storage containers to securely store items associated with the lawful use of the site, internally, is functionally related to that lawful use. Accordingly, no material change of use has taken place through the introduction of any additional primary use to the site.
22. Despite the comments at paragraph 7 of the previous Inspector's decision, the description of the alleged breach in the notice, and the position set out in the Council's Statement of Case, Mr Gregory's opinion is that a material change of use by way of intensification has taken place. Under the provisions of section 176(1) of the Act, I can correct the description of the alleged breach to ensure it refers to a material change of use by way of intensification, if no injustice would be caused.
23. Intensification of a lawful use may bring about a material change of use requiring planning permission if it causes the character of the use to change in a

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fundamental way, such that materially different planning circumstances apply. There needs to be a material change in the definable character of the use of the land.

24. It is claimed by the Council that the scale of the operation now taking place at the site is of a different nature on account of a 566% increase in storage needs and through items now being stored internally, rather than in the open. Under cross-examination, Mr Gregory confirmed that other than reference to the increase in the number of storage containers from 3 to 17, the Council held no evidence of any changes to how the Pallets element operates. Two horses were now being kept on the land, but there is no dispute that the Horses element comprises part of the lawful use of the land and there was no other evidence of changes in this regard.
25. Mr Macey commenced the pallets business on the land in 1991. In 2002, after he left other permanent employment, he started to spend most days at the site fixing pallets and looking after the land. Other than the increase in the number of storage containers sited on the land, there is little difference between the appearance of the site in the aerial photographs dated 2007 through to 2017, save for a reduction in the number of items apparently stored in the open.
26. However, Mr Gregory has claimed that if an additional 14 storage containers are now required, something must have changed such that the use of the land was no longer "low-key", that the pallets business must be doing well, that comings and goings must have increased, that the appellant must be at the site more often, and that more work must be undertaken at the site. No evidence has been provided to support these claims, which are contrary to the sworn oral evidence of Mr Macey, tested in cross-examination. On this basis, alongside the aerial photographs which appear to show snapshots of similar levels of activity since 2007, I see no reason to doubt the evidence of Mr Macey in this regard. Moreover, the increase in the number of storage containers on the land, on its own, does not necessarily signify a change in operation of the pallets business from a hobby to 'more of a business'. I therefore assign significant weight to the evidence of Mr Macey, which explains that there has been no change in how the Pallets element operates, other than through items now being stored inside the additional storage containers.
27. The changes in the character of the use referred to by the Council relate to the visual effect of the 14 additional storage containers sited on the land, and the change in the appearance of the site/use. Mr Hester, on behalf of the appellant, accepts that there has been a change in its appearance, but he maintains that the character of the lawful mixed use has not changed.
28. I have seen that the storage containers numbered 3 and 6 to 17 are highly visible in views from a residential property and public right of way (PROW) to the west, while views of storage containers from a PROW to the east are more limited by the changes in land levels and thick intervening vegetation. I have also seen how pallets are stored and stacked to varying heights in the open, exceeding the height of the storage containers in some instances. Stacks of pallets are more visible than storage containers from the PROW to the east on account of their height.
29. Views of the site have changed in this sensitive landscape<sup>4</sup>, as unattractive blue and green storage containers, which are synonymous with industrial uses, are now visible from outside the site, including from PROWs which could be regularly used

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<sup>4</sup> Part of the Kent Downs National Landscape



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by many different people. This is not the type of location where one expects to see this number of storage containers lined up alongside a modest countryside stable building, but it is also not the type of location where one would expect to see the number of items associated with the Pallets element which have also been present on the site. Tall stacks of pallets, for instance, are now an odd and uncharacteristic established feature of the site, which the storage containers are seen and experienced alongside.

30. Mr Macey has been carrying on the making and recycling of pallets, including their storage, on the land alongside the keeping and grazing of horses for a significant period such that those activities have become lawful. The established character of the lawful use of the site is therefore unattractive and atypical for its location even in the absence of the 14 additional storage containers, where many pallets can be seen stacked to great heights, and various tools, materials, and machinery have previously been kept outside. Mr Macey's sworn evidence and the aerial photographs show, on the balance of probabilities, that there has not been any increase in activity levels or any other operational intensification beyond the change in storage method.
31. In this context, and as a matter of fact and degree, the scale of the storage containers is commensurate with the lawful use of the land as they are not excessive for the keeping of those items dry and secure in this particular case, where the appellant has operated the pallets business largely by himself on a large, rural site for a significant period. There has been no significant change in the scale of items stored or the uses taking place, and the storage containers are proportionate to the lawful mixed use of the land in light of the specific circumstances of how the land has been used over a long period. The storage containers have a functional relationship with the lawful use of the land and there has been little change in the character of the use of the site, compared to how the site has been lawfully used. Therefore, on the balance of probabilities, the siting of up to 17 storage containers has not led to a material change in the definable character of the use of the land.
32. There has been some level of intensification in the lawful mixed use of the site, and this has changed its appearance and had an adverse effect on the character and appearance of the area. However, on the balance of probabilities, the level of intensification has been low, and the change in appearance has not been significant enough to fundamentally change the character of the use which has been ongoing for a number of years prior to formal enforcement action being taken. For the above reasons, I do not find the change from the storage of items associated with the lawful use in the open to the storage of those items within up to 17 storage containers to be a fundamental change, such that materially different planning circumstances apply. On the particular circumstances in this case, the siting of up to 17 storage containers on the land has not therefore brought about a material change of use by way of intensification.
33. Drawing things together, the allegation stated in the notice does not constitute a breach of planning control, because the siting of more than 3 storage containers (currently 17) on the land to store items associated with the lawful use of the land in this particular case is functionally related to the lawful use of the land. The Containers element does not form an additional primary use of the land alongside the Pallets element and the Horses element. This does not mean the notice must

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be quashed on that basis, as I may correct the description of the alleged breach, if doing so would not cause injustice.

34. However, even if I was able to correct the notice without causing injustice to ensure it refers to a material change of use by way of intensification, the appeal on ground (c) would still succeed, as I have found that the level of intensification which has taken place is low and insufficient to constitute a material change in the use of the land. It is not therefore necessary for me to correct the notice, as it will be quashed in either case.

35. The appeal on ground (c) therefore succeeds.

#### Conclusion

36. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed. In these circumstances, the appeal on grounds (d), (a), and (f), and the application for planning permission deemed to have been made under section 177(5) of the Act do not fall to be considered.

#### Formal Decision

37. The appeal is allowed and the enforcement notice is quashed.

*L Douglas*

INSPECTOR

#### APPEARANCES

##### FOR THE APPELLANT:

|             |                                                     |
|-------------|-----------------------------------------------------|
| Robin Green | Counsel, instructed by Vic Hester of VLH Associates |
| He called   |                                                     |
| Brian Macey | Appellant                                           |
| Vic Hester  | Planning Consultant, VLH Associates                 |

##### FOR THE LOCAL PLANNING AUTHORITY:

|                |                                                               |
|----------------|---------------------------------------------------------------|
| Giles Atkinson | Counsel, instructed by the Head of Law, Swale Borough Council |
| He called      |                                                               |
| Paul Gregory   | Team Leader, Swale Borough Council                            |

##### INTERESTED PARTIES:

|                  |                                    |
|------------------|------------------------------------|
| Damaris Gardiner | Local resident                     |
| Jonnie Reeves    | Councillor, Selling Parish Council |

##### DOCUMENTS PROVIDED AT THE INQUIRY

Statement and photographs by Damaris Gardiner on behalf of Mr and Mrs R M Gardiner and Mr and Mrs J Gavin

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