

Agenda

Planning Committee Meeting

Date: Thursday, 13 August 2026

Time 7.00 pm

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

Membership:

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

Quorum = 6

Pages

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- (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 Meetings held on 13 May 2026 (Minute Nos. 24 – 25), the [21 May 2026](#) (Minute Nos. 40 – 47), the [18 June 2026](#) (Minute Nos. 106 - 111) and the Extraordinary Meeting held on [24 June 2026](#) (Minute Nos. 124 - 127) 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 Chairman 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

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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 12 August.2026

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|----|--|-----------|
| 5. | Deferred Item 1 - 25/501882/FULL Teynham Land To The North Of Lower Road | 9 - 78 |
| 6. | 2.1 - 26/501448/FULL Teynham Lion Yard Worlds End | 79 - 86 |
| 7. | 2.2 - 26/500987/FULL Faversham Albion Tavern Front Brents | 87 - 114 |
| 8. | Part 5 applications | 115 - 172 |
- Decisions by County Council and Secretary of State, reported for information.

Issued on Wednesday, 5 August 2026

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

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

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SWALE BOROUGH COUNCIL

PLANNING SERVICES

Planning Items to be submitted to the Planning Committee

13th August 2026

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PART 2 Applications for which permission is recommended

PART 3 Applications for which refusal is recommended

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

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

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

ABBREVIATIONS: commonly used in this Agenda

CDA Crime and Disorder Act 1998

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

HRA Human Rights Act 1998

SBLP Swale Borough Local Plan 2017

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INDEX OF ITEMS FOR PLANNING COMMITTEE – 13th August 2026

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

DEFERRED

1. 25/501882/FULL	TEYNHAM	Land To The North Of Lower Road
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PART 2

2.1 26/501448/FULL	TEYNHAM	Lion Yard Worlds End
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2.2 26/500987/FULL	FAVERSHAM	Albion Tavern Front Brents
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PART 5

5.1 25/502229/PIP	BOUGHTON UNDER BLEAN	Land to the South of Fox Lane
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5.2 25/505072/FULL	FAVERSHAM	2 The Mall
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5.3 24/504520/FULL	MINSTER-ON-SEA	Salvation Place, Bell Farm Lane
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5.4 24/502717/OUT	BORDEN	Land West of Borden Lane
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5.5 24/504410/OUT	UPCHURCH	Land East of Holywell Primary School
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PLANNING COMMITTEE – 13th August 2026

DEFERRED ITEM

Report of the Head of Planning

DEFERRED ITEMS

Reports shown in previous Minutes as being deferred from that Meeting.

DEF 1 REFERENCE NO 25/501882/FULL		
PROPOSAL Erection of 23no. dwellings (Including Affordable Housing) with associated public open space, access, vehicle parking and an enhanced pedestrian route to Teynham (together with off-site highway works).		
SITE LOCATION Land To The North Of Lower Road, Teynham, Kent, ME9 9EQ.		
RECOMMENDATION Delegate to the Head of Planning to grant planning permission subject to appropriate conditions and the completion of a Section 106 agreement as set out in this report and that attached at Appendix A, with further delegation to the Head of Planning to negotiate the precise wording of conditions, including adding or amending such conditions and precise Heads of Terms as may be necessary and appropriate.		
APPLICATION TYPE – Full		
REASON FOR REFERRAL TO COMMITTEE Originally referred to Planning Committee as the officer recommendation for approval was contrary to a recommendation for refusal by a statutory consultee (KCC Highways). <i>[Officer note – Following amendments and clarification, this objection has now been lifted.]</i>		
Case Officer Andrew Gambrill		
WARD Teynham and Lynsted	PARISH/TOWN COUNCIL Teynham	APPLICANT Guy Osborne AGENT N/A
DATE REGISTERED 02/06/2025		TARGET DATE 21/07/2026
BACKGROUND PAPERS AND INFORMATION: The full suite of documents submitted and representations received pursuant to the above application are available via the link below: https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=SVY7QLTYGW400		

1. INTRODUCTION

- 1.1 This application was initially reported to the Council's Planning Committee on the 5th March 2026, with a recommendation that planning permission be granted subject to conditions and the prior completion of a Section 106 agreement. The Planning Committee resolved to defer the application to provide officers with time to liaise with KCC Highways to establish if their objection could be overcome, with their primary issue being the onward crossing of Lower Road opposite Selby Court. Members also queried the parking provision on the site and requested that a condition be imposed regarding the roads within the development being constructed to an adoptable standard.
- 1.2 The original Committee report is attached to this report as Appendix A and the minutes from the previous Committee meeting are available at Appendix B.

2. RESPONSE TO THE REASONS FOR DEFERRAL

- 2.1 Following the deferral by Members and in order to overcome the concerns raised by KCC Highways, the applicant has submitted an off-site highway improvement plan since the application was last presented to the Planning Committee. This shows the proposed introduction of a footpath on Lower Road opposite the entrance with Selby Court/1-4 Selby Court and onwards towards French's Row. The footpath would have a width of 1.2m. The applicant has also submitted a new internal layout plan with three additional parking spaces introduced in response to comments made by Members at the Planning Committee on the 5th March.

3. CONSULTATION RESPONSES RECEIVED SINCE PREVIOUS COMMITTEE

- 3.1 **KCC Highways** - Following submission and review of the latest off-site highway improvement plan, they no longer raise objection. They are satisfied that the revised proposal overcomes the previous highway safety concerns that formed the primary reason for refusal. In particular, the scheme now provides appropriate mitigation to address pedestrian safety along this section of carriageway.

4. REPRESENTATIONS RECEIVED SINCE PREVIOUS COMMITTEE

- 4.1 Following the receipt of the additional off-site highway works plan and the associated change to the description, neighbours and the Teynham Parish Council were reconsulted on the proposals.
- 4.2 No further comments were received from the Teynham Parish Council, but three further objections were received from members of the public. The majority of the comments received raise no new material considerations beyond those previously considered in Appendix A. New concerns raised are set out below:
 - Concerned that a further narrow walkway to the opposite of the entrance (near French's Row) would make walking even more dangerous and precarious than it already is.

- The dropped kerb at French's Row creates a new problem - pedestrians and wheelchair users are given a false sense of security with this extended pavement, and may lack awareness that there will be vehicles entering and accessing French's Row, particularly if they are focused on when they can safely cross Lower Rd.
- Concerned that the pedestrian footpath proposed between the main part of the site and Lower Road would not be secured in perpetuity by the legal agreement submitted – there is a high chance of redevelopment in the area resulting in its partial loss.
- Comment that the pedestrian route as it runs along the access road between Selby House car park and Lower Road does not meet KCC or nationally recognised standards - measurement on the ground shows the road is narrower than shown on the plans, which in turn impacts on the proposed pedestrian route
- Unclear where bollards are proposed.
- The additional housing proposed will intensify problems with existing water supply for existing residents and the water provider alike.

5. UPDATE TO THE ASSESSMENT MADE IN APPENDIX A

Highways safety

- 5.1 As set out above, the main change since the application was last reported to the Planning Committee on the 5th March is that an off-site footpath is now proposed on Lower Road opposite the entrance into Selby Court/1-4 Selby Court. The works would see the width of the main Lower Road reduced by approximately 1m in order to facilitate the introduction of the circa 18m long footpath along the southern edge of the highway. A dropped kerb would lie opposite the western edge of the Selby Court junction to accommodate footpath access from the site, with the footpath then leading towards French's Row to the west. This proposed footpath falls on public highway land rather than private land, meaning that the applicant would require agreement from KCC Highways prior to the works being carried out.
- 5.2 The purpose of introducing this footpath in this location is to support safer active travel movements between the entrance into Selby Court and onwards towards services and facilities found elsewhere within Teynham. Not only would the off-site footpath aid safer movement for proposed residents of the development subject of this application, but it would also be of benefit to existing residents in proximity.
- 5.3 KCC Highways were reconsulted on the proposals for the off-site footpath, with the proposals also subject to review by a member of their team who is a Road Safety Auditor.
- 5.4 Following this review, KCC Highways have confirmed that, in their view, the revised proposal overcomes the previous highway safety concerns raised. In particular, the scheme now provides appropriate mitigation to address pedestrian safety along this section of carriageway. They advise that it is evident that pedestrians currently utilise this stretch of road to access Selby Court and for

onward journeys, despite the absence of formal footway provision. The introduction of these off-site works, particularly in the vicinity of the bend, represents a material improvement to pedestrian safety in this location. On this basis, KCC Highways are no longer objecting to the proposals. As the introduction of this off-site footpath would be on public highway land, it can be secured by condition, with the final detailed approval of the highway alterations agreed between the developer and KCC Highways.

5.5 The NPPF 2024 states at paragraph 116 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.

5.6 In the absence of any severe or unacceptable impact on the highways network, the NPPF discourages refusal. For the reasons set out above and in line with the assessment carried out in Section 7.11 of the original Committee Report at Appendix A, the proposals are considered acceptable from a highway safety perspective.

5.7 Notwithstanding the above, comments were received in the latest round of consultation regarding the potential safety implications at French's Row as a result of the improvements. Given the low speed nature of French's Row, it is not considered that the introduction of a footpath adjacent would give rise to any unacceptable highways safety impacts. Further to this, KCC Highways have not identified this as a concern.

5.8 Comment was also received about a lack of detail on the bollards proposed to serve the pedestrian route between Selby House and Lower Road. The location of these is shown on drawing no. 500/HDH/004/A, whilst a condition securing further details of the actual bollards proposed to be installed is recommended under condition 22 of Appendix A. The footpath along that route is to be 1.2m in width, which is considered sufficient for a pedestrian route. The plans reflect the actual width of the internal road to be altered. Other comments received in the latest consultation relating to the movement of refuse vehicles and conflict with condition 9 of 23/501073/FULL are addressed in Appendix A in Section 7.11. The width of the access route is capable of accommodating the 1.2m footpath between Selby House and Lower Road. As set out in Appendix A, a Unilateral Undertaking is to be secured ahead of determination to ensure that the footpath proposed is delivered and maintained as shown in perpetuity. The delivery of this footpath is also referenced in condition 22 of Appendix A. In respect of comments relating to the potential redevelopment of the area and partial loss of the footpath in future, the application has to be considered on its merits at this stage, rather than on the basis of something that could be applied for in the future.

5.9 In addition to the plans showing the off-site footpath, the applicant has also submitted new layout plans which introduce a further three visitor parking spaces into the site. These have been included following Member comments at the 5th March Planning Committee meeting about the potential overspill within the estate

and onto Lower Road. Whilst the previous layout showed sufficient space for parking, these additional three spaces provide further capacity in the site, bringing the total number of spaces available on site to 69. This helps to further ensure that the proposals would not give rise to any unacceptable overspill.

- 5.10 A comment was also made at the previous 5th March Planning Committee meeting about extending the 30mph speed limit further east along Lower Road. Whilst that would be a matter for discussion with Kent County Council as the local highway authority, it is apparent from the position that they have reached that the highway authority does not consider that any additional measures are required to make the development acceptable.
- 5.11 In view of the assessment carried out above and in Appendix A, the proposals are considered acceptable from a highways safety perspective. Amendments to relevant highways conditions, as well as additional conditions securing the off-site highway works and construction of the internal road to an adoptable standard are set out at the end of this report.

Water supply

- 5.12 One comment received during the latest round of reconsultation has referred to the impacts of the proposals on water supply. At 23 dwellings, the scheme is relatively small in scale. In light of its size, it is not considered necessary in this case to impose a pre-commencement condition relating to water supply. Instead, the supply of water to the site can be controlled via the separate statutory regime.

Other matters

- 5.13 For the avoidance of any doubt, the NHS contributions required from the development are £35,378. This is to be secured by legal agreement. The £360 per occupant referred to in the table under paragraph 7.13.4 of Appendix A was erroneous.
- 5.14 Matters relating to foulwater are addressed under paragraph 7.15.7 of Appendix A, whilst impacts on biodiversity are discussed in paragraphs 7.10.13 – 7.10.19 of that same appendix.
- 5.15 It is not considered necessary to include the EV charging condition requested by KCC Highways on the basis that EV charging is addressed under Building Regulations.

6. RECOMMENDATION

- 6.1 There have been no policy changes made at a national or local level that would materially alter the previous assessment set out under Appendix A. The Council remain unable to demonstrate a five year housing land supply such that the presumption in favour of sustainable development set out in the NPPF continues to apply to the proposals.

- 6.2 Aside from new matters discussed in the assessment above, the overall assessment of the application remains as set out in the previous Committee Report. It is recommended that planning permission is granted subject to the conditions listed in Appendix A, with the amendments and additional conditions as set out below and the planning obligations as set out in Appendix A.

RECOMMENDATION – GRANT PLANNING PERMISSION subject to conditions and the prior completion of a Section 106 legal agreement.

Recommended conditions are as set out in the Committee Report provided at Appendix A subject to the following amendments.

AMENDED CONDITIONS (amendments shown in bold)

Condition 2 has been amended to reflect the updated drawings.

Conditions 4, 19 and 24 have been amended as per below in line with KCC Highways latest consultation response and the conditions they recommend.

Plans

2. The development hereby permitted shall be carried out in accordance with the following approved drawings and documents:

Site Location Plan 500-RS-001 D

Selby Court Pedestrian Lane details 500/HDH/004/A

Proposed Site Layout Plan Page 1 500/RS/004/**M**

Proposed Site Layout Plan Page 2 500/RS/005/**J**

Plots 1, 2 and 3 500-RS-006

Plot 4 500-RS-007

Plots 5 and 6 500-RS-008

Plot 7 and 8 500-RS-009

Plots 9 and 10 500-RS-010

Plot 11 500-RS-011

Plots 12 and 13 500-RS-012

Plots 14 and 15 500-RS-013

Plot 16 500-RS-014

Plot 17 and 18 500-RS-015

Plots 19 and 20 500-RS-016

Plot 21 500-RS-017-A

Plot 22 and 23 500-RS-018-A

Car Ports Plans Elevations and Sections 500/RS/019

PROPOSED FOOTWAY ALONG LOWER ROAD 0002 Rev P3

Reason: To ensure that the development is carried out in accordance with the approved documents, plans and drawings submitted with this application.

Construction Management Plan

4. Prior to the commencement of the development hereby approved, a Construction Management Plan comprising of:

- (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, **avoiding network and school peaks where possible**
- (d) Provision of wheel washing facilities
- (e) Measures to prevent the discharge of surface water onto the highway**
- (f) Temporary traffic management / signage
- (g) a Dust Management Plan (according with the Control of Dust from Construction Sites (BRE DTi Feb 2003) and the Institute of Air Quality Management (IAQM) 'Guidance on the Assessment of Dust from Demolition and Construction')
- (h) details of all other measures require to accord with the Code of Construction Practice and BS5228 Noise Vibration and Control on Construction and Open Sites,

shall be submitted to and approved in writing by the Local Planning Authority. Subsequently, the development shall only be undertaken in full compliance with the approved Construction Management plan.

Reason: To control the construction process in the interests of highway safety, neighbouring living conditions and air quality.

Parking Space Provision and Retention

19. No dwelling hereby approved shall be occupied until the parking shown to serve that dwelling on drawing no. 500/RS/004/**M** (including garages, car ports, undercover parking and surface parking) , or some other such parking provision that shall have been approved in writing by the Local Planning Authority prior to the occupation of that dwelling, has been provided and made available for use by the occupiers of that dwelling. Moreover, all visitor spaces shall be provided prior to the occupation of the dwelling that is closest to that parking space.

Reason: To ensure the provision of adequate car parking.

Visibility Splays

24. Prior to the first use of the approved vehicular access into the site, all visibility splays shown on drawing no. 500/RS/004/**M** shall be provided. The visibility splays shall subsequently be kept free from any obstructions over **1.05 metres** above carriageway level **within the splays or 0.6 metres where a footway crosses the access.**

Reason: In the interests of highway safety.

ADDITIONAL CONDITIONS

Condition 29 has been added as it secures the delivery of the off-site footpath opposite Selby Court.

Condition 30 has been added following member comments received at the 5th March committee about adoptable roads.

Off-site Highway Works (Footway)

29. Prior to first occupation of the development hereby approved, the highway works as shown on drawing no. 0002 P3 shall have been completed in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority. The submission of finalised details shall be accompanied with a Road Safety Audit and evidence of how any mitigation measures recommended by that RSA have been incorporated into the finalised details.

Reason: In the interests of highway safety and in order to support active travel.

Adoptable Standards

30. No dwelling shall be occupied until the estate road carriageway serving the dwellings within the development as shown on drawing no. 500/RS/004/M has been laid out and constructed to an adoptable standard.

Reason: In the interests of highway safety.



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

Report of the Head of Planning

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

2.1 REFERENCE NO - 25/501882/FULL		
PROPOSAL - Erection of 23no. dwellings (Including Affordable Housing) with associated public open space, access, vehicle parking and an enhanced pedestrian route to Teynham.		
SITE LOCATION - Land to The North of Lower Road, Teynham, Kent, ME9 9EQ.		
RECOMMENDATION - Delegate to the Head of Planning to grant planning permission subject to appropriate conditions and the completion of a Section 106 agreement 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 and precise Heads of Terms as may be necessary and appropriate.		
APPLICATION TYPE – Full		
REASON FOR REFERRAL TO COMMITTEE The officer recommendation for approval is contrary to a recommendation for refusal by a statutory consultee (KCC Highways).		
Case Officer – Andrew Gambrill		
WARD Teynham and Lynsted	PARISH/TOWN COUNCIL Teynham	APPLICANT Guy Osborne AGENT N/A
DATE REGISTERED – 02/06/2025		TARGET DATE – 10/03/2026
BACKGROUND PAPERS AND INFORMATION: The full suite of documents submitted and representations received pursuant to the above application are available via the link below: - https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=SVY7QLTYGW400		

1. SITE LOCATION AND DESCRIPTION

- 1.1. The site lies to the east of the rural service centre of Teynham, with the houses proposed on a site outside of the designated built-up area boundary of the settlement and the footpath access past Selby Court towards Lower Road within. The site is bound by Lower Road to the south (a designated Rural Lane with a long frontage screened by trees and hedgerows), a railway line to the north (on land elevated above the site) and Selby House/The Old Squash Courts/The Old School Cottage to the west.
- 1.2. The topography slopes down from west to east. To the north of the railway line lies an Area of High Landscape Value, with PRoW ZR251 to the south east of the site and PRoW ZR250 to the south west. The eastern part of the site lies within a medium/high risk area for surface water flooding.

2. PLANNING HISTORY

- 2.1. 21/505096/FULL – Erection of 23no. dwellings with associated landscaping, parking, relocation of commercial buildings and provision of a PROW cycleway/footpath – Refused June 2024 and appeal dismissed December 2024.
- 2.2. The Inspector determining the appeal dismissed the appeal primarily on the grounds of accessibility, as per paragraphs 19, 26 and 27 below:

19. Overall, the pedestrian route past Selby House through to Lower Road would not be a safe or suitable pedestrian access for future occupiers of the proposal. The development would therefore conflict with policy CP 2 of the Swale Borough Local Plan (2017) which aims to improve safety and ensure development provides integrated walking and cycling routes to link existing and new communities with local services and facilities; and Local Plan policy DM6 which requires priority is given to the needs of pedestrians and cyclists, including the disabled, through the provision of safe routes which minimise cyclist/pedestrian and traffic conflicts. It would also conflict with Local Plan policy ST 1 by failing to be located so as to achieve safe shared spaces.

26. In contrast, the failure of the development to provide a safe pedestrian access would conflict with paragraph 115 of the Framework which requires development to provide safe and suitable access to sites for all users. This conflict is a matter of considerable importance. Paragraph 116 adds that development should be prevented on highway grounds if there would be an unacceptable impact on highway safety.

27. Overall, I consider that the harms would significantly and demonstrably outweigh the benefits. Therefore, the presumption in favour of sustainable development does not apply.

- 2.3. In addition, partially within the application site due to a pedestrian access extending from the primary part of the site, the following planning applications that largely affect land adjacent to the site are relevant:
- 2.4. 23/501073/FULL - Section 73 - Application for minor material amendment to approved plans listed in condition 2 (to allow change of car parking area from block paving to tarmac, with drainage to an onsite soakaway, alterations to parking space positions and landscaping areas, and relocation of bin store) and 13 (hard and soft landscape works) pursuant to 19/506271/FULL for - Erection of a block of 6 no. flats with associated parking, cycle and refuse storage, as amended by drawings received 05/06/2020 and drawing received 14/08/2020 – Granted October 2024
- 2.5. 19/506271/FULL - Erection of a block of 6 no. flats with associated parking, cycle and refuse storage, as amended by drawings received 05/06/2020 and drawing received 14/08/2020 – Granted October 2020

3. PROPOSED DEVELOPMENT

- 3.1. The application seeks planning permission for the erection of 23 dwellings. Three of the dwellings would be affordable in the context of the formal definition. The housing mix would be as follows:

	One Beds	Two Beds	Three Beds	Four + Beds	Total
Open Market	1	3	12	4	20
Affordable	0	3	0	0	3
Total					23

- 3.2. The housing provision would include 4 detached open market dwellings. There would be 16 semi-detached dwellings and 3 terraced properties.
- 3.3. The main vehicular entrance into the site would be via an existing access point opposite Whiteleaf Villa, with the main estate road then routing west through the site towards Selby House/The Old Squash Courts. A pedestrian route is proposed through the site and through an existing residential area to the west of the primary part of the site, where it would then feed out onto Lower Road. No vehicular access is proposed from the development along that route. The pedestrian access route would necessitate changes to the existing surface of the access route serving Selby House/The Old

Squash Courts, together with the addition of pedestrian signage, hatching and bollards to aid separation between vehicles and people on foot. As a result of the necessity to undertake those works, the land required has been included within the application site.

- 3.4. Dwellings would be street facing towards the internal access route, with all buildings featuring accommodation over two storeys. Carports would also be present within the site with 66 parking spaces proposed in total to serve the development. In terms of materials, the submitted Design and Access Statement indicates that the dwellings would be constructed from a palette featuring stock brickwork, weatherboarding, hanging tile and render, with timber joinery and clay roof tiles.
- 3.5. To the west of the proposed dwellings is a proposed wildflower meadow, whilst the east of the site would comprise a SUDs pond and orchard planting. A proposed footpath route would link Lower Road with the PRow to the south east of the site.

4. REPRESENTATIONS

- 4.1. Two rounds of consultation have been undertaken, during which letters were sent to neighbouring occupiers. Two notices were displayed near to the application site and the application was advertised in the local newspaper. Full details of representations are available online.
- 4.2. 11 letters of representation objecting to the proposal were received in the first round of consultation. Concerns and comments were raised in relation to the following matters:

Comments	Report Reference
Impact on on-site biodiversity (including Turtle Dove)	7.10.13 – 7.10.19
Proposed entrance to the site is on a low-visibility section of the road which will increase risk/no path which is very risky for any parents and children, prams and even walking dogs.	7.11.3 - 7.11.19
Pedestrian route proposed is the same as under the application dismissed at appeal - addition of some marking does not change the dangerous nature of this route. Notably, at the point where pedestrians reach the car park area, there is still no marked pedestrian route, so pedestrians, cyclist, wheelchair users will come into conflict with cars/safety risk to children and parents/very narrow shared entrance which is already dangerous due to restricted vision	7.11.7 – 7.11.19
Access road between Lower Road and the Selby House car park is very narrow and inadequate to accommodate the additional pedestrian/cycle traffic from the new development,	7.11.11

with barely enough width for pedestrians and traffic to pass each other at pinch points	
Refuse trucks reverse up the access road to Selby House with potential for accidents	7.11.11
Increased traffic/road users/pedestrians will impose further risks to those who use the Lower Road, where it turns into a national speed limit	7.11.7 – 7.11.19
Access on the map (based on red line) would add an additional 46 cars through the existing access to Selby House	The access past Selby House is for pedestrians only.
Previous appeal was dismissed and nothing has changed	7.11.7 – 7.11.19
Access issues mean that presumption in favour of development does not apply and the application should be determined in accordance with the development plan	7.19.1 – 7.19.4
Falls outside settlement boundary of Teynham	7.2.7 - 7.2.11
Substation has been installed on site so probably a done deal	Any substation installed on the site is not connected to the consideration of this application.
Conflict with condition 9 of 23/501073, which required the footpath from the development to be removed as part of any landscaping plan submission. A hedge to the south west of the bin store and native planting and boundary treatment were conditioned to be located along the eastern boundary of the Selby House site, but this application does not show that	7.11.13
The roads and existing services cannot cope with the additional demand arising	7.11.3 - 7.11.19
Impacts on rural appeal of village	7.5.1 – 7.5.16
Part of site adjacent to railway bridge floods year round	7.15.1 – 7.15.8
Cumulative impact with other development would change character of area (Chartway development)	7.18.2

Strain on local services	7.13.7
From the railway will be viewed as a line of development through the village	7.5.1 – 7.5.16

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

Comments	Response
Lack of engagement from applicant with the PC prior to submitting	Noted.
Scheme is located outside the defined settlement boundary of Teynham and would utilise grade 1 agricultural land	7.2.7 - 7.2.11 and 7.2.12 - 7.2.18
Scheme would impact upon the beauty, value and tranquillity of the countryside and it is unlikely that they would contribute to the viability of existing services and facilities, going instead to Faversham or Sittingbourne	7.5.1 – 7.5.16 and 7.19.5
The proposal, comprising standard, non-contextual house designs, contributes nothing to local identity and community and would amount to harmful urban sprawl	7.5.1 – 7.5.16
There is no public footway/footpath along Lower Road connecting the site to that existing at Barrow Green. Lower Road is not wide enough for such a footpath to be safely provided and it would also need to negotiate a potentially hazardous hill on a bend in the road which has poor visibility for pedestrians and vehicular traffic alike	7.11.7 – 7.11.19
Access via the Selby House development directs pedestrians through a car park, raising clear safety concerns	7.11.7 – 7.11.19
PRoW routes are unsuitable for regular pedestrian use, particularly in poor weather or for mobility-impaired users and do not connect directly to key services or shops on Greenstreet/London Road	7.11.18
Lack of bus services	7.2.8
Lower Road suffers from visibility constraints and inadequate width, posing ongoing risks for all road users – proposals fails to meet visibility standards set by	7.11.3 – 7.11.6

Manual for Streets and the Design Manual for Roads and Bridges. Unclear if design has considered impacts on all vehicle types, including mopeds and refuse lorries	
Impact on onward capacity from Lower Road towards Teynham/Sittingbourne in the west and towards Faversham in the east	7.11.3 – 7.11.6
Cannot see how any Air Quality Impact Assessment required would demonstrate that the proposed development would not give rise to unacceptable harm	7.12.5
Elevation change of approximately 9 metres between the centre of the site and the Selby House car park results in steep gradients that are unsuitable for individuals with reduced mobility	7.11.7 – 7.11.19
Proposed use of the Selby House access route would increase traffic, noise, and general disturbance to existing residents, contrary to the NPPF	7.8.3

- 4.4. In addition to the comments above, four comments of support were received. These are summarised below:

Comments	Response
Support the idea of having a new small community added to Teynham, rather than a multi thousand development where there is no community spirit present	Noted.
Houses have to be built somewhere and if they fit in well with the local community surely that's the aim of having new builds	Noted.
Support development of affordable homes - rent is high and having more affordable options is essential	Noted.
Size of proposals would allow it to develop sense of community	Noted.

- 4.5. Following changes to the plans to incorporate bollards to the pedestrian access route between Lower Road and the Old Squash Courts, neighbours were reconsulted. Two further objections were received as summarised below:

Comments	Response
No significant difference between the appealed application and this proposal. Road access is still unsafe, proposed pedestrian access will cause significant disruption and noise to existing residence/application has also been rejected by Planning Inspectorate due to safety concerns.	7.11.7 – 7.11.19 and 7.8.3
Serious consideration has to be given to the lack of engagement from the applicant, evidently showing the applicants lack of adhering to difficult opposition and being bombastic in their approach with regards this build.	Noted.
Proposed pedestrian route is a complete and utter danger to any pedestrians trying to navigate via that manner of walkway, whilst lighting is non-existent and is an added peril and accident waiting to happen.	7.11.7 – 7.11.19

- 4.6. In addition, one comment neither objecting nor supporting the application was received, providing the following observations:

Comments	Response
Clarity should be provided regarding the presence or otherwise of reptiles on site, with any amendments reviewed by KCC Ecology.	7.10.13 – 7.10.24
The BNG metric may need updating, as it currently appears to include hedgerow and trees present within private curtilages.	7.10.13 – 7.10.24
Has heard Turtle Dove on site – whilst aware they are not afforded any real level of protection above that of all	7.10.18

nesting birds, their presence and BOCC status should be enough to trigger a survey and have appropriate mitigation measures and enhancement features designed.	
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5. CONSULTATIONS

- 5.1. Set out below is a summary of matters raised in representations, with the comments reflecting the final position of the consultee.
- 5.2. **Environment Agency (EA)** – No objection in relation to groundwater and contaminated land and refer to guidance in respect of matters such as groundwater protection, piling and discharge of effluent.
- 5.3. **Mid-Kent Environmental Health** – No objection subject to conditions securing details of noise mitigation (in relation to noise arising from the railway and adjacent road on future occupiers), air quality mitigation, contamination remediation and a construction method statement.
- 5.4. **Kent Fire and Rescue** – The emergency access requirements of the development have been met, but the parking within the turning head should be appropriately managed to ensure that emergency vehicles have unrestricted access at all times. Should this proposal be successful, it would then be subject to a Building Regulations consultation where the access arrangements would again be examined.
- 5.5. **KCC Highways** – Following a review of the amended drawings submitted by the applicant, Highways acknowledges the improvements made to pedestrian connectivity within the site, particularly the provision of a separate pedestrian lane through Selby Court. These changes are welcomed and improve pedestrian movement within the site.
- 5.6. However, Highways maintains its objection to the application on the grounds of highway safety, specifically relating to pedestrian crossing arrangements on Lower Road. KCC Highways comments and a response to those is set out paragraphs 7.11.14 to 7.11.17.
- 5.7. **KCC Flood and Water Management** – No objection subject to conditions for a surface water drainage strategy, verification reports and controls on infiltration to ensure that there are no resultant unacceptable risk to controlled waters and/or ground stability.
- 5.8. **KCC Strategic Development and Place** – Requests financial contributions in order to mitigate the impacts of the development on social/community infrastructure.

- 5.9. **KCC Ecological Advice Service** – No further ecological survey work is required. In respect of Biodiversity Net Gain, two existing baselines have been submitted (one with an orchard and one without) and it should be agreed prior to submission of the Biodiversity Gain Plan which of the two should be relied upon in order to discharge the BGP. Either way, the on-site biodiversity gain is considered significant, so a Habitat Management and Monitoring Plan (HMMP) should be imposed by condition and a monitoring fee secured via legal agreement. Conditions securing a Construction Ecological Management Plan (CEMP), details of external lighting and a biodiversity enhancement plan are recommended.
- 5.10. **KCC Minerals and Waste** – No land-won minerals or waste management capacity safeguarding objections or comments to make regarding this matter.
- 5.11. **KCC Archaeology** – No objection subject to a condition securing an archaeological programme of works.
- 5.12. **KCC Public Rights of Way (PROW)** - No comments to make as PROW are unaffected.
- 5.13. **SBC Heritage and Design** – No objections - the proposal would preserve the setting of designated heritage assets outside of the site subject to a condition preventing permitted development rights for roof alterations to dwellings north of the main access road through the site.
- 5.14. **SBC Affordable Housing** – In light of the viability assessment coupled with the previous agreement regarding the affordable homes on this site, able to accept that three 2-bedroom homes will be provided as the affordable housing.
- SBC Greenspaces** – Contributions are required towards outdoor sport and play facilities.
- 5.15. **SBC Tree Officer** – No objections to the development layout subject to compliance with the tree protection measures being secured by way of a condition.
- 5.16. **Natural England (NE)** – Comment that additional information is required with regards to recreational impacts on European Sites and that an Appropriate Assessment should be carried out. Acknowledge that Swale has measures in place to manage potential impacts through a strategic solution which Natural England considers will be effective in preventing adverse impacts on the integrity of the site(s).
- 5.17. **NHS** – Request £35,378 for the refurbishment, reconfiguration and or extension to general practice and other healthcare facilities within a 3-mile radius of the

development site or towards new healthcare facility to be provided in the community in line with the healthcare infrastructure strategy for the area.

- 5.18. **SBC Active Travel** – Comments that there are challenges with walking and cycling due to widths of footpaths and roads, whilst it is also difficult to see oncoming traffic at the site entrance. Unless a suitable and sustainable solution is found and clearly presented, cannot support this application.
- 5.19. **Lower Medway Internal Drainage Board (LMIDB)** – Comments that KCC is the appropriate authority to comment on drainage design and flood risk. Suggest conditions securing a surface water drainage scheme, a maintenance schedule and a verification report.
- 5.20. **Southern Water** - No objection. Comments that there is adequate capacity in the network to accommodate the proposals. Request an informative be added requiring details of surface/foul water drainage and that a condition is imposed with regards to protection of the sewer as part of the landscaping scheme.
- 5.21. **Kent Police** – Recommend a condition regarding designing out crime.
- 5.22. **Swale Footpaths Group** - Query if the enhanced pedestrian route would be added to the Definitive Map.
- 5.23. **UK Power Networks** – Comments that all works should be undertaken with due regard to Health & Safety Guidance notes HS(G)47 (Avoiding Danger from Underground services). This document is available from the local HSE office. Should any diversion works be necessary as a result of the development then enquiries should be made to the UKPN Customer Connections department.

6. DEVELOPMENT PLAN POLICIES

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

- ST1 Delivering sustainable development in swale
- ST2 Development targets for jobs and homes 2014-2031
- ST3 The Swale settlement strategy
- ST4 Meeting the Local Plan development targets
- ST5 The Sittingbourne strategy area
- CP1 Building a strong, competitive economy
- CP2 Promoting sustainable development

- CP3 Delivering a wide choice of high quality homes
- CP4 Requiring good design
- CP5 Health and wellbeing
- CP6 Community facilities and services to meet local needs
- CP7 Conserving and enhancing the natural environment – providing for green infrastructure
- CP8 Conserving and enhancing the historic environment
- DM6 Managing transport demand and impact
- DM7 Vehicle parking
- DM8 Affordable Housing
- DM14 General development criteria
- DM17 Open space, sports and recreation provision
- DM19 Sustainable design and construction
- DM20 Renewable and low carbon energy
- DM21 Water, flooding and drainage
- DM24 Conserving and enhancing valued landscapes
- DM26 Rural Lanes
- DM28 Biodiversity and geological conservation
- DM29 Woodland, trees and hedges
- DM31 Agricultural land
- DM32 Development involving listed buildings
- DM34 Scheduled Monuments and archaeological sites

Supplementary Planning Guidance/Documents -

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

Swale Landscape Sensitivity Assessment, 2019.

Developer Contributions Supplementary Planning Document, 2009.

Noise and Vibration – Planning Technical Guidance Document, 2020.

Parking Standard Supplementary Planning Document, 2020.

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

National Planning Policy Framework (the NPPF)

National Planning Practice Guidance (NPPG)

7. ASSESSMENT

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

- Principle
- Landscape Effect, Layout, Scale and Appearance
- Heritage
- Archaeology
- Living Conditions
- Trees
- Ecology
- Transport and Highways
- Air Quality
- Community Infrastructure
- Open Space
- Flood Risk, Drainage and Surface Water
- Contamination
- Sustainability / Energy
- 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.

7.2.3. Paragraph 11 of the NPPF states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless:

- i. the application of policies in the Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination .

- 7.2.4. Swale Council are currently unable to demonstrate a 5 year supply of housing such that paragraph 11 of the NPPF is engaged.
- 7.2.5. Policy ST1 of the Local Plan seeks to deliver sustainable development that accords with the settlement strategy for the Borough.
- 7.2.6. Policy ST3 of the Local Plan sets out the settlement strategy and directs development to existing defined settlements and allocated sites. It seeks to restrict development in the countryside unless it is supported by national planning policy and able to demonstrate that it would contribute to protecting the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities.
- 7.2.7. Other than the proposed pedestrian access route between Lower Road and past Selby House/The Old Squash Courts which lie within the built-up area boundary of Teynham, the application site is located outside the built-up area boundary of the settlement and in the open countryside. As will be assessed in further detail below, the visual impact of the proposal would not contribute to protecting the intrinsic value, landscape setting, tranquillity and beauty of the countryside or its buildings. Consequently, the proposal would not accord with the settlement strategy set out in Policy ST3 and nor would it accord with criteria 4 of Policy ST1 or Criteria 1 of Policy CP3 (both of which refer to the settlement strategy).
- 7.2.8. However as detailed above, the housing on the site immediately abuts the built up area boundary of Teynham. Policy ST3 identifies Teynham as a Rural Local Service Centre, which represent the *“tertiary focus for growth in the Borough and the primary focus for the rural area”*. In this regard it is noted that Teynham is served by train and bus connections, a Primary School, shops and other such services. The site is therefore in a relatively good location with regards to services and facilities and is a reasonably suitable location for housing, notwithstanding the conflict with Policies ST1, ST3 and CP3 of the Local Plan identified above.

- 7.2.9. On the basis that Swale are unable to demonstrate a 5 year supply of housing, paragraph 11(d) of the NPPF is engaged and the presumption in favour of sustainable development applies.
- 7.2.10. The harm caused by the proposal, the benefits of the proposal and the associated conflict and accordance with the Local Plan and the content of the NPPF, as a material consideration of significant weight, will be considered fully in a balancing exercise below, once other material considerations have also been considered.
- 7.2.11. A material consideration of note is that by the time the previously refused scheme (21/505096/FULL) was appealed under reference APP/V2255/W/24/3349574, the Council could no longer demonstrate a five year housing land supply. The Council therefore withdrew its original reason for refusal relating to the location of the development in the open countryside during the appeal process. Planning Practice Guidance advocates determining similar cases in a consistent manner.

Loss of Best and Most Versatile Agricultural Land

- 7.2.12. Policy DM31 of the Local Plan states that development on such land will only be permitted where there is an overriding need that cannot be met on land within the built-up area boundaries. For reasons that will be set out elsewhere, there is a demonstrable housing need that cannot currently be met within built-up area boundaries.
- 7.2.13. As far as is relevant to this site and proposal which relates to a site that is not allocated for development by the local plan (criteria 1), the policy goes on to state that development on Best and Most Versatile (BMV) agricultural land (specifically Grades 1, 2 and 3a) will not be permitted unless 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 (criteria 2) and the development will not result in the remainder of the agricultural holding becoming unviable or leading to likely accumulated and significant losses of high quality agricultural land (criteria 3).
- 7.2.14. The applicant has provided an Agricultural Land Quality Considerations document (dated August 2023). Whilst the council's internal mapping system shows the site as Grade 1 land, the document submitted with the application sets out that it can likely be deduced from assessments carried out on sites to the south and west that the site comprises Grade 2 land. Notwithstanding whether the site is Grade 1 or Grade 2, it is Best and Most Versatile in any event, such that its loss triggers the need for an assessment against Policy DM31 of the Local Plan.

- 7.2.15. The document referred to above is the same document that was submitted under the previous application on the site. The officer of the previous application reviewed that document and concluded that criteria 2 would be satisfied.
- 7.2.16. However, in respect of the third criteria, no information has been submitted by the applicant to demonstrate that the loss of this parcel of land would not lead to the remainder of the holding becoming unviable or lead to significant losses of high-quality agricultural land. As per the assessment carried out under the previous application, the applicant has therefore failed to satisfy criteria 3 of Policy DM31 of the Local Plan such that the proposals conflict with the policy as a whole.
- 7.2.17. For these reasons, the loss of Best and Most Versatile agricultural land would conflict with the abovementioned policy.
- 7.2.18. For reasons that will be set out elsewhere, it will be relevant to consider how much weight to afford the harm arising from the loss of Grade 1/2 BMV. In this regard, appeal decisions for in excess of 100 dwellings within the Swale Borough have given this conflict moderate weight on appeals at London Road, Newington (APP/V2255/W/23/3318448) and Swanstree Avenue, Sittingbourne (APP/V2255/W/22/3311224). Given the size of the site, the conflict arising is considered to attract limited to moderate weight in the planning balance.

7.3. **Size and Type of Housing**

- 7.3.1. The NPPF recognises that to create sustainable, inclusive, and diverse communities, a mix of housing types, based on demographic trends, market trends, and the needs of different groups, should be provided.
- 7.3.2. Policy CP3 of the Local Plan requires the mix of tenures and sizes of homes provided in any particular development to reflect local needs. The Local Plan requires developments to achieve a mix of housing types, which reflect that of the Strategic Housing Market Assessment (SHMA). Subsequent to the adoption of the Local Plan, the Council's Housing Market Assessment (HMA) was prepared in 2020 (i.e., more recently than the Local Plan) after the introduction of the standard method for calculating the objectively assessed need. As such, officers have considered the proposed and indicative housing mix against that set out in the HMA.

Tenure – HMA	1 Bed	2 Bed	3 Bed	4 Bed
Market Required	7%	33%	41%	19%
Market Proposed	5%	15%	60%	20%
Affordable Required	27%	23%	30%	20%
Affordable Proposed	0%	100%	0%	0%

- 7.3.3. The HMA (2020) broadly echoes the Local Plan requirements in terms of the mix of dwelling sizes. It should be remembered that this reflects the Borough wide need.
- 7.3.4. On a more local level, Policy CP3 of the Local Plan indicates that housing proposals should be tailored to the issues present within the local housing market area. The preamble to the policy provides background to this stating that, in the area of Teynham, house prices are relatively high and there are reasonable levels of demand. It goes on to state that going forward, *“the aspiration could be to encourage the development of good quality family housing, for which the greatest local demand exists”*.
- 7.3.5. From this basis, whilst the does not closely align with the needs of the Borough as a whole and conflicts with criteria 5 of Policy CP3 of the Local Plan as a result, it is considered that the proposal is tailored to the local housing market in terms of providing open-market housing of a high quality and suitable to accommodate families and, therefore accords with criteria 2 of that policy.
- 7.3.6. Moreover, in respect of criteria 3 of Policy CP3 of the Local Plan which requires development to be at a density that is determined by the local context, it is considered that the overall density of the development is appropriate for the semi-rural context within which it would sit.
- 7.3.7. Overall, whilst not complying with Policy CP3 of the Local Plan in all respects, it is considered that the proposal is consistent with other parts of the policy in such a way that no objection is raised to the mix of dwellings that is proposed.

7.4. **Affordable Housing**

- 7.4.1. Policy DM8 of the Local Plan indicates that the development at this site should include 40% affordable housing and states that the size, tenure and type of affordable housing units should be in accordance with the needs of the area. It also requires that, where possible, homes are designed for use by disabled, elderly and vulnerable residents. Policy DM8 is supported by Policy CP3 of the Local Plan.

- 7.4.2. In the context of affordable housing, there is a requirement in this location for 40% affordable housing due to the location of the site within the open countryside. Criteria 5c of Policy DM8 of the Local Plan does however set out that in situations where an applicant can demonstrate that providing the full affordable housing provision would result in the scheme becoming unviable, a reduced requirement may be considered.
- 7.4.3. In this case, a Viability Appraisal (September 2025) was commissioned during the course of the application. The appraisal carried out concludes that taking into account the costs associated with the scheme (including contributions towards education and healthcare), the proposals can only provide three of the 23 units as affordable dwellings. These three units are proposed as two beds for affordable rent.
- 7.4.4. A Viability Assessment was also carried out in support of the previously refused scheme (21/505096/FULL). That found that the scheme for the same number of dwellings could only afford to provide three of those units as affordable housing for affordable rent. In that case, the arrangement was considered acceptable to officers.
- 7.4.5. Although it is regrettable that more affordable units are unable to be provided, given the conclusions of the Viability Appraisal carried out in September 2025 and the conclusions reached by officers of the previous application, the provision of three, two bed affordable rent units is considered acceptable in the circumstances. The provision of the units as affordable rented products would be broadly in keeping with the desired 90/10 split sought in paragraph 7.3.8 of the Local Plan, given the limited number of units able to be provided through the development.
- 7.4.6. Whilst the quantum of affordable housing being provided by the development does not meet the 40% typically sought in open countryside locations such as this, given the council have declared an Affordable Housing Emergency, the proposals would make a small yet valuable contribution to affordable housing provision in the borough.
- 7.4.7. 22 of the 23 properties on the site are proposed to be constructed to M4(2) standard, with all of the affordable properties constructed to M4(2). Whilst no M4(3) units are proposed, the provision of M4(2) units across the site would make a valuable contributions towards the provision of accessible and adaptable dwellings in the borough.
- 7.4.8. Given the quantum of affordable housing to be provided has been informed by a Viability Appraisal, the proposal would accord with the provisions of Policy DM8 of the Local Plan. Whilst the mix of affordable housing would not wholly accord with the preferred mix, it is considered that this represents a partial conflict with policy driven by the lower number of units being secured and, where there is an overall need for all types of affordable housing, it is not considered that this is grounds to conclude that the proposal is contrary to the policy as a whole.

7.5. **Landscape and Visual**

- 7.5.1. Policy DM14 of the Local Plan sets out general development criteria, requiring, amongst other elements, developments to reflect the positive characteristics and features of the site and locality, be well-sited and of a scale, design and appearance to be sympathetic and appropriate to the location. Policy CP4 of the Local Plan seeks to ensure that all development proposals are of a high quality design that is appropriate to its surroundings.
- 7.5.2. 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. For 'non-designated' landscapes such as the application site, policy seeks to minimise and mitigate adverse impacts and, where significant adverse impacts remain, requires that the social and or economic benefits of the proposal significantly and demonstrably outweigh the harm to the landscape character and value of the area.
- 7.5.3. Lower Road is also a designated Rural Lane. Policy DM26 of the Local Plan states that planning permission will not be granted for development that would either physically, or as a result of traffic levels, significantly harm the character of rural lanes.

Landscape

- 7.5.4. No Landscape and Visual Impact Assessment has been submitted in support of the application, but part of the D&A provided discusses the wider landscape impacts of the proposals. Given the scale of the development and the surrounding context, the impacts arising can be sufficiently understood notwithstanding the absence of an LVIA.
- 7.5.5. The site itself falls within an undesignated landscape, although an Area of High Landscape Value is located to the north of the railway that bounds the site. With regards to the general character of the area, the site is located within the Teynham Fruit Belt Landscape Character Area (LCA) as defined by the Swale Landscape Character and Biodiversity Appraisal 2011. This identifies key characteristics of the area. Characteristics that apply to this site include the undulating landscape and the narrow winding lanes enclosed by mature hedgerows. Overall, the condition of the Teynham Fruit Belt is stated to be moderate, with the overall sensitivity also considered to be moderate. The guidelines for conserving and enhancing the area focus, in part, on creating a stronger/crisper urban edge which provides a clear transition between rural and urban areas.
- 7.5.6. Further to the above, the Swale Landscape Sensitivity Assessment (2019) divides Teynham's settlement edge into two areas for assessment of sensitivity. The site falls within area TM1 - the enclosed farmlands to the east and south east. It finds that the overall assessment of landscape sensitivity to future change to residential development (2-3 storey housing over 2ha) is medium-high (noting the landscape

comprises features such as a gently undulating landform), as well as a moderate to high sense of rural character with some modern human influences and varying visual prominence and enclosure. Whilst the site is under 2ha (circa 1.38ha), this provides helpful background of the character of the area within which the site is located.

- 7.5.7. The site itself and the parcel of land which is to be developed for housing steeply inclines from east to west. An embankment rising to the railway line is located on parts of the northern boundary. The site had previously been used as an orchard. The presence of mature vegetation around the boundary and the generally undeveloped nature of the site ensures it continues to possess a relatively verdant rural character.
- 7.5.8. The proposals would see the introduction of 23 dwellings within a cul-de-sac type arrangement. They would be predominantly two storey in height and served by an access opposite Whiteleaf Villa. An orchard is proposed to the east of the site, with additional open space proposed to the west of the site in proximity to Selby House. The layout of the proposals is very similar to those considered under application 21/505096/FULL. The only real difference of note with that application is that there is a slight change in the size of window openings to the front of the properties and a drainage pond has been introduced to the east.
- 7.5.9. The introduction of 23 houses and the associated infrastructure required to deliver the housing would clearly have an urbanising impact on the landscape character in this location. It would be readily visible from public vantage points outside of the site, particularly upon approach to Teynham from the east of the site in proximity to Osier Road. However, from wider vantage points, the development would be relatively well screened by existing built form to the west, mature vegetation proposed to be maintained as part of the development to the southern edge and by the railway line and associated embankment in situ to the northern edge of the site. Whilst the most exposed part of the site would be to the east of the development, harm arising in that location is proposed to be softened by additional tree and orchard planting which would help to minimise and mitigate the impacts on the surrounding landscape.
- 7.5.10. The Local Plan seeks to ensure that sites in non-designated landscapes minimise and mitigate adverse landscape impacts. The development itself is located centrally within the site and is relatively well visually contained. In areas of greater exposure, tree planting/landscaping is proposed, with an orchard to the east, ensuring no significant harm to the designated rural lane adjacent. The development as a whole would be relatively low density and parking would be set to the side of properties, ensuring a spacious character.
- 7.5.11. In view of the above, the impact on landscape character is therefore considered, on balance, to accord with Policies CP4, DM24 and DM26 of the Local Plan. This is consistent with the conclusions of the previous application on the site, 21/505096/FULL.

Urban design

- 7.5.12. The Local Plan requires that development proposals are of a high quality design appropriate to their surroundings.
- 7.5.13. Dwellings proposed across the site are two-storeys in height. They comprise a mix of hipped, gabled and barn hipped dwellings utilising a combination of brick, weatherboarding and hanging clay tiles, as well as timber fenestration. The dwellings are of a high quality design that would appear sufficiently sympathetic and appropriate to the location.
- 7.5.14. As set out in sections above, the development is laid out in an irregular but linear, cul-de-sac arrangement. Housing is contained centrally within the plot which makes space for open space to east and west. The density is relatively low but is appropriate in this case given the location of the development at the edge of Teynham and in the open countryside. The introduction of a landscape-led housing development at a lower density helps to ensure that the development proposals have sufficient regard for the character, setting and context of the site. Subject to conditions relating to materials and details of soft and hard landscaping, the design of the proposals is considered acceptable.
- 7.5.15. It is worth noting that the changes proposed for the pedestrian route through the site and towards Lower Road would see the introduction of tarmac in that location, as well as some modest signage and bollards to create the defined pedestrian route. Whilst this would partially change the character of the route from Lower Road towards the Old Squash Courts near Selby House, the change in surface material and introduction of street furniture would be seen in the context of existing road and parking infrastructure. Those changes are therefore considered to have an acceptable impact on the visual amenity of the area.

Summary

- 7.5.16. Having considered the conclusions of the previous assessment in respect of landscape and the general design quality of the development, whilst the proposals do not strictly comply with criterion 6 of policy DM14 the proposals, on balance, are considered to accord with Policies CP4, and DM24 of the Local Plan and broadly the NPPF.

7.6. Heritage

- 7.6.1. 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.

- 7.6.2. 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.
- 7.6.3. 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.
- 7.6.4. 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.
- 7.6.5. 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.
- 7.6.6. In this case, there are no listed buildings located within or adjacent to the application site. The nearest listed buildings are three Grade II listed buildings forming part of Osiers Farm to the northern side of the railway line, off Osier Lane. These are approximately 150 metres to the north of the site. This distance, in combination with the elevated railway line to the north of the site and intervening trees and hedgerow mean there would be little intervisibility between the proposed houses and the listed buildings. The Grade I listed St Mary's Church is located circa 810 metres north of the proposal, and the separation distance would help ensure there would be no harm to the setting of the church.
- 7.6.7. SBC Heritage have reviewed the proposals and raise no objections to the development, subject to a condition being imposed that removes permitted development rights for roof alterations (including dormers) to the dwellings on the north side of the site access road. However, given the separation distance of the proposals from those identified heritage assets above, it is not considered that this condition is necessary in this case.

- 7.6.8. In considering the impact of this proposal upon designated heritage assets, officers have had regard to the duties of the Council pursuant to the Planning (Listed Buildings and Conservation Areas Act) 1990. Overall, it is concluded that the proposal will preserve the setting of listed buildings, thus complying with Policies CP8, DM14 and DM32 of the Local Plan and the NPPF.

7.7. **Archaeology**

- 7.7.1. 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.
- 7.7.2. 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.
- 7.7.3. KCC Archaeology have been consulted on the application and advise that the Teynham area is rich in archaeological remains, having been the focus of several investigations. Although there are no known remains on the site itself, it lies close to a projected Roman route, a track between the main road, Watling Street and Roman buildings and settlement around the parish hall. Evidence for Roman and Saxon settlement, probably focused on the stream to the east has been found at Osiers Farm to the north of the site and the railway. Neolithic finds have also been made in that area. The brickearth and gravel head deposits in the area have potential for Palaeolithic remains. The ground investigation provided with the submission confirms that head deposits survive on the site and have not been removed by nearby brick workings around White Leaf.
- 7.7.4. The site has remained open and undeveloped and there is no evidence of significant existing disturbance of the ground on the site. New groundworks associated with the development would potentially affect archaeology if present.
- 7.7.5. Given the above there is potential for the development to affect archaeological remains. The potential impacts of the scheme on archaeology can be appropriately addressed through further assessment, evaluation and mitigation that can be secured through a condition on a consent for the present scheme.
- 7.7.6. The advice given is considered to be sound and therefore, subject to the imposition of a condition, it is considered that the proposal can be made acceptable and, therefore, the proposal would accord with the requirements of Policy DM34 of the Local Plan and the abovementioned section of the NPPF.

7.8. **Living Conditions**

Existing residents

- 7.8.1. Policy DM14 of the Local Plan and the NPPF requires that new development has sufficient regard for the living conditions of neighbouring occupiers.
- 7.8.2. Given the separation distance of the proposals from any residential property outside of the site, the proposals would not give rise to any unacceptable impact on neighbouring living conditions.
- 7.8.3. Although there would be some pedestrian movements in proximity to Selby House and other properties in the vicinity of the enhanced pedestrian route proposed, it is not considered that the limited movements arising would give rise to any unacceptable noise and disturbance impacts on neighbouring occupiers.

Future residents

- 7.8.4. The layout of the proposed development ensures that all plots are served by a private garden area of acceptable size, being arranged in such a way that there would be no issues of unacceptable overlooking within habitable rooms or garden areas. Moreover, it is considered that the spacing between dwellings would ensure that all properties are served by sufficient light, whilst all dwellings would be provided with a good standard of internal accommodation. There is space at each of the plots for adequate refuse and cycle storage.
- 7.8.5. Given the site lies in immediate proximity to Lower Road and an existing railway line, Environmental Health have advised that a condition securing details of any noise mitigation to maintain acceptable internal and external noise conditions for future occupiers should be secured. This could be imposed in the event of any approval.
- 7.8.6. In view of the above, the proposals would be compliant with Policy DM14 of the Local Plan and the NPPF in this respect.

7.9. **Trees**

- 7.9.1. Policy DM29 of the Local Plan and the NPPF recognise the contribution of trees to the intrinsic character and beauty of the countryside.
- 7.9.2. The submitted Arboricultural Report and Proposed Tree Protection Plan only show the removal of a row of poor-quality Category U trees/hedgerow to the west of the site entrance to enable appropriate visibility splays. The applicant's supporting submissions demonstrate that the most important trees can be retained and protected.

SBC Trees have been consulted and raise no objection to the development layout, subject to a condition securing that the works are carried out in accordance with the submitted Arboricultural Report and Tree Protection Plan.

- 7.9.3. The landscaping proposals within the development are also considered to be acceptable subject to conditions, and particularly around the access would help to mitigate for the loss of any existing hedgerow in that location.
- 7.9.4. The advice provided is considered to be sound and is agreed with. Therefore, the proposal is considered to accord with the abovementioned development plan policy and the NPPF.

7.10. **Ecology**

Habitats

- 7.10.1. The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') affords protection to certain species or species groups, commonly known as European Protected Species (EPS), which are also protected by the Wildlife and Countryside Act 1981. This is endorsed by Policies CP7 and DM28 of the Local Plan, which relates to the protection of sites of international conservation importance including Special Areas of Conservation (SAC), Special Protection Areas (SPA) or Ramsar Sites.
- 7.10.2. The site lies within 6km of the Swale Special Protection Area (SPA), a European designated site which has been afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).
- 7.10.3. SPAs are protected sites classified for the prevalence of rare and vulnerable birds and for regularly occurring migratory species on the site. Article 4(4) of the Birds Directive (2009/147/EC) requires steps to be taken by the relevant authorities to avoid activities on the site which are likely to result in pollution or in the deterioration or disturbance of bird habitat.
- 7.10.4. Due to the scale of the development there is no scope to provide on-site mitigation and therefore off site mitigation would be required by means of developer contributions at the rate of £337.49 per new dwelling. This is the agreed strategic approach to mitigating the effects of new dwellings within the 6km buffer zone of the SPA (SAMMS) which have the potential to give rise to a likely significant effect as a result of increased recreational disturbance. In this case, the applicant has agreed to pay the financial contribution necessary and has sent through a Unilateral Undertaking to secure it. An Appropriate Assessment has been carried out which concludes that subject to the financial contribution being secured, the proposals would not give rise to a likely significant effect on designated habitats.

Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017

- 7.10.5. The project being assessed would result in a net increase of up to 23 dwellings within 6km of the Swale SPA and Ramsar Site. In line with Policy CP7 'Conserving and enhancing the natural environment – providing for green infrastructure' and Policy DM28 'Biodiversity and geological conservation' of the Local Plan and based upon the best available evidence, a permanent likely significant effect on the SPAs and Ramsar Sites due to increase in recreational disturbance as a result of the new development, is likely to occur. As such, in order to avoid and mitigate for an adverse effect on the integrity of the SPAs and Ramsar Site(s), the development will need to include a package of avoidance and mitigation measures.
- 7.10.6. The North Kent Strategic Access Management and Monitoring Strategy (SAMMS) sets out a strategy to resolve disturbance issues to wintering birds on the North Kent Marshes, focusing on the European Protected Sites and Ramsar Sites and their internationally important bird interest features. Elements within the strategy are:
- Rangers to provide wardening and visitor engagement
 - A North Kent Coast dog project to promote responsible dog ownership and encourage walking on lead in sensitive areas
 - Codes of conduct developed in partnership with local groups and clubs to raise awareness of recreational disturbance in a variety of activities both on and off of the water
 - Interpretation and signage
 - New and/or enhanced infrastructure
 - Enforcement and Monitoring
- 7.10.7. The report also considered alternative measures, such as legal covenants relating to pet ownership in new developments, and capping visitor numbers at recreational sites. Due to the complexities in enforcing legal covenants and in reducing visitor numbers to the North Kent marshes, it is difficult to have confidence that such measures would be effective in the long term.
- 7.10.8. The suite of strategic mitigation measures are being delivered through the Bird Wise project, a partnership of local authorities and conservation organisations in North Kent, to ensure that development, considered in-combination, does not have an adverse effect on the integrity of the European sites. A per-dwelling tariff of £337.49 is required as a contribution towards the SAMMS.
- 7.10.9. Natural England has worked with the north Kent Local Planning Authorities to support them in preparing the SAMMS and the underpinning evidence base. Natural England agree that the mitigation measures to ensure additional impacts from recreational disturbance to the SPAs and Ramsar Sites are ecologically sound. As such, the Applicant does not need to provide their own evidence base on these aspects.

Evidence should however be submitted showing that a mitigation contribution payment has either:

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

7.10.10. The applicant has submitted a Unilateral Undertaking to secure the necessary SAMMS payment prior to commencement. Having considered the proposed mitigation and avoidance measures to be provided in-perpetuity through the secured contribution to the Bird Wise scheme, Swale Council conclude that with mitigation, the plan or project will have no adverse effect on the integrity of the European protected site(s).

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

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

Protected/Notable Species

7.10.13. Section 40 of the Natural Environment and Rural Communities Act (2006) states *"For the purposes of this section "the general biodiversity objective" is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England"* and *"A public authority which has any functions exercisable in relation to England must from time to time consider what action the authority can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective."* Furthermore, the NPPF states that 'the planning system should contribute to and enhance the natural environment by minimising impacts on and providing net gains for biodiversity.' The NPPF states that 'if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.'

- 7.10.14. In terms of the Local Plan, Policy DM28 sets out that development proposals will conserve, enhance, and extend biodiversity, provide for net gains where possible, minimise any adverse impacts and compensate where impacts cannot be mitigated.
- 7.10.15. The applicant has submitted a Preliminary Ecological Appraisal (dated April 2021) and an Ecological Impact Assessment (dated December 2023).
- 7.10.16. The Preliminary Ecological Assessment detailed there was potential for roosting foraging and commuting bats, reptiles, breeding birds, dormouse, nesting birds and great crested newts within the site. Following this, a Reptile Survey was carried out in 2021 and confirmed a population of slow worms and juvenile common lizard were present throughout the site.
- 7.10.17. The Ecological Impact Assessment provided also concluded that similar species are likely to be present on site, but given the retention of boundary habitats, advised that no further surveys were required. Whilst the EcIA does not acknowledge that a reptile population was previously recorded within the site, photos showing the current condition of the site were provided during the course of the application. KCC Ecology have reviewed these and advise that due to the current condition of the site, no further ecological surveys are required.
- 7.10.18. As reptiles have previously been recorded on site there is a requirement for an ecological mitigation strategy to be produced if planning permission is granted. A Construction Ecological Management Plan (CEMP) is therefore recommended to be secured by condition, requiring details of any ecological mitigation measures necessary during the course of construction in order to mitigate any impacts on protected / notable species on site. Whilst no evidence of Turtle Doves as noted in representations received has been provided, this condition would nonetheless ensure that any notable species on site would be suitably protected during construction.
- 7.10.19. Lighting installed on the site could have an adverse impact on bats and other nocturnal species in and around the site. In order to minimise any impacts arising from lighting, a condition securing details of the type and spread of light arising is also recommended to be secured. This is in line with the recommendations of KCC Ecology.

Biodiversity Net Gain (BNG)

- 7.10.20. This application was submitted after the commencement of Mandatory BNG and is therefore required to deliver at least a 10% BNG under the Environment Act 2021.
- 7.10.21. As an orchard on the site had been cleared since 30th January 2020, KCC Ecology queried whether the original BNG metric as submitted with the application

had used the correct existing baseline. Whilst the applicant has explained that the orchard was scrubbed out to make way for the planting of agricultural crops, the relevant BNG legislation and associated guidance does not define that if site clearance works have been as a result of on-going agricultural practices then the current (rather than pre-existing) baseline can be used in a submitted metric.

7.10.22. In order to address the issue prior to determination, the applicant has therefore submitted two metrics – one taking into account the presence of the orchard and one based on the existing condition of the land. As the approval of the Biodiversity Gain Plan is a post-determination matter, the correct baseline can be agreed at a later stage. In both cases, KCC Ecology are satisfied that 10% BNG can be achieved. In the case of using the pre-existing condition (i.e. with orchard) as the baseline where the baseline is of higher biodiversity value, a 1.7ha off-site orchard or off-site credits would need to be provided/purchased to achieve the 10%. In either situation, the mandatory 10% BNG is capable of being achieved.

7.10.23. A Habitat Management and Monitoring Plan (HMMP) condition is recommended by KCC Ecology to secure the long-term management of onsite biodiversity gains and is included accordingly. These onsite gains are considered significant and will be subject to a monitoring fee, which are required for significant onsite gains as these will be subject to 30 years of monitoring reports which will need to be reviewed by the LPA, which comes at a cost. The monitoring fee is confirmed to be £7,868.71, which shall be paid prior to the decision being issued or secured by S106 legal agreement so that it is paid prior to the commencement of the development.

7.10.24. Subject to the conditions and monitoring fee above being secured, the proposal would have an acceptable impact on ecology and biodiversity in accordance with Policies CP7 and DM28 of the Local Plan and the NPPF.

7.11. **Transport, Highways, Access and Parking**

7.11.1. Local Plan Policies CP2 and DM6 promotes sustainable transport through utilising good design principles. It sets out that where highway capacity is exceeded and/ or safety standards are compromised proposals will need to mitigate harm. Policy DM7 of the Local Plan requires parking provision to be in accordance with the Council's Parking SPD. The requirement to "*achieve safe vehicular access, convenient routes and facilities for pedestrians and cyclists, enhanced public transport facilities and services, together with parking and servicing facilities in accordance with the County Council's standards*" is also set out within Policy DM14 of the Local Plan.

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

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios.”

Access and Parking Provision

- 7.11.3. The access into the site and the parking arrangement proposed match that submitted under the previous application 21/505096/FULL. The Transport Statement submitted with the application advises that there would be a total of 20 movements in the AM peak (8am-9am) and 20 in the PM peak (5pm-6pm).
- 7.11.4. The previous officer assessment concluded that the vehicular access into the site was acceptable and that there was sufficient capacity in the network to accommodate the transport movements arising from the development. That conclusion remains applicable to these proposals.
- 7.11.5. In respect of the parking arrangement proposed, 67 spaces are proposed across the site (including visitor spaces). This would provide sufficient parking to meet the needs of future occupiers and ensure that the proposals would not have an adverse impact on highways safety.
- 7.11.6. Sufficient space is also available within each plot to accommodate the necessary cycle parking for each dwelling. Subject to a condition securing details of the cycle parking arrangements, the proposals would be in accordance with Policy DM7 of the Local Plan and the Swale Parking Standards SPD 2020.

Pedestrian Routes

- 7.11.7. The previous application was refused, in part, on the basis that the proposed pedestrian link to the west of the site and the quality of the ongoing route to Teynham village centre was convoluted, poor-quality, inconvenient for wheelchairs, cyclists and prams and would be unsafe.
- 7.11.8. This was largely upheld by the Inspector of the determined appeal APP/V2255/W/24/3349574, who concluded in their assessment of the pedestrian route that:

19. Overall, the pedestrian route past Selby House through to Lower Road would not be a safe or suitable pedestrian access for future occupiers of the proposal. The development would therefore conflict with policy CP 2 of the Swale Borough Local Plan (2017) which aims to improve safety and ensure development provides integrated walking and cycling routes to link existing and

new communities with local services and facilities; and Local Plan policy DM6 which requires priority is given to the needs of pedestrians and cyclists, including the disabled, through the provision of safe routes which minimise cyclist/pedestrian and traffic conflicts. It would also conflict with Local Plan policy ST 1 by failing to be located so as to achieve safe shared spaces.

7.11.9. Previously, the pedestrian route simply followed an unmade stretch of road between Selby House and Lower Road with no separation between vehicles and future users. As part of this application, the applicant has sought to address the concerns of the Inspector by proposing a defined pedestrian link between the western edge of the site adjacent to Selby House through to Lower Road. It is noted that the Inspector raised no concerns with the pedestrian route in the primary part of the site.

7.11.10. The applicant is now proposing a 1.2m pedestrian lane between the housing on the site and Lower Road. Lighting is to be secured by condition along the part of the route within the part of the site to the east of Selby House. A large part of the route between Selby House and Lower Road would be marked with white lines and hatching to define the pedestrian lane, whilst the surface would be laid with tarmac. Bollards would be introduced along the pedestrian route to prevent unsafe conflict between pedestrians and vehicles using that route. Pedestrian signage is proposed on the surface of the route, whilst physical signage is also incorporated at the beginning and end of the pedestrian route past Selby House/The Old Squash Courts is also proposed, increasing awareness of the need to be careful of pedestrians utilising the route. The applicant has also submitted a Unilateral Undertaking as part of the application to demonstrate that the access route would be provided and maintained in accordance with the plans attached for use by pedestrians.

7.11.11. KCC Highways have reviewed the submitted details for this new and enhanced pedestrian route, commenting that it would improve pedestrian movement within the site. Tracking plans have been submitted, demonstrating that cars, together with refuse and emergency vehicles would be able to safely navigate the amended route when the pedestrian infrastructure has been implemented.

7.11.12. The proposed pedestrian route would provide a clear and convenient access to Lower Road from the site for active travel which is considered to overcome the concerns raised by the Inspector. It would represent a defined route for pedestrians with a made and bound surface that would be clearly visible to vehicular users manoeuvring, parking or reversing around the small car park and the route between the Old Squash Court building and Lower Road. Bollards along the route would also help to prevent unsafe conflict between vehicular users and pedestrians.

7.11.13. The Inspector identified in their appeal decision that there was a condition (condition 9) imposed on the neighbouring application 23/501073/FULL which requires

the removal of a footpath between the car park and the rear of Selby House on any submitted landscaping plans, as well as details of planting to be installed along the eastern boundary i.e. where the footpath is proposed from the site. The Inspector noted that this condition meant there was some doubt that the path could be provided, but in this scenario the application site (i.e. area within the red line) lies across that area to west which was not the case under the previous application. As such, any permission granted here would supersede that previous condition. The circumstances are materially different in this respect in comparison to the previous application and appeal decision.

7.11.14. Notwithstanding that the Inspector's concerns about the pedestrian route towards Lower Road from the western end of the site have been overcome, KCC Highways' main concern under this application relates to the crossing of Lower Road once the pedestrian route ends. They advise that visibility at this location is significantly compromised due to the alignment of the road and the presence of an existing boundary wall and hedge at Jordan Cottage. They contend that this restricts the ability of pedestrians to see oncoming vehicles and vice versa, increasing the risk of conflict, whilst alternative crossing points would also necessitate pedestrians walking within the carriageway, potentially with vehicles approaching from behind. KCC Highways consider that this scenario presents a safety concern that is not acceptable from a highways safety perspective and object to the proposals as a result. SBC Active Travel also raise similar concerns about it being difficult to see oncoming traffic due to the bend, whilst also commenting about the narrow footpaths available for onward connection into Teynham.

7.11.15. In considering the crossing of Lower Road and onward connection into Teynham at the appeal stage, the Inspector stated:

17. On Lower Road, there would be a short stretch, of around 20 metres, where pedestrians would need to walk in the road. This stretch is also used by the occupiers of the nine dwellings in Selby Court and Jordan Cottage opposite, as well as those people using the Selby House access. The development would therefore result in the occupiers of about 50 units having to walk along Lower Road. However, due to the wide entrance to Selby Court and the position of French's Row, it is likely that pedestrians, just by crossing the road, would cover this distance and would very quickly be on the pavement on the south side of Lower Road. The pavement thereon into the centre of the village is narrow but is part of the established wider footway network used by many residents of this part of the village. In that context, the additional use of the pavement by the occupiers of the development would be minimal.

7.11.16. From the above, it is clear that the ability to cross Lower Road was not part of the reason for the previous appeal being dismissed. Given the comments made by

the Inspector about the crossing of Lower Road and the pavement thereon forming part of the established footway network in Teynham, it is recommended that the concerns raised by KCC Highways and the SBC Active Travel Officer are not advanced as reasons to find the proposal unacceptable. The Inspector, in coming to the view set out in their appeal decision, clearly assesses the crossing of Lower Road, with their dismissal of the appeal instead driven by the poor pedestrian route that had been proposed between Lower Road and the site entrance adjacent to the Old Squash Courts rather than the ability to cross Lower Road.

- 7.11.17. Officers have carefully considered the comments raised by KCC Highways, but in the context of the appeal decision issued by the Planning Inspectorate, have come to an on-balance conclusion that pedestrian crossing over Lower Road would not be unacceptable.

Public Right of Way

- 7.11.18. The proposal would include a footway link to the east comprising of a new route that would connect Lower Road with PRoW ZR251. The KCC PROW team have been consulted and raise no objection to the proposals on the basis that the PRoW network would be unaffected by the proposals. The proposals do not rely on PRoW for access to services, with those located to west.

Overall

- 7.11.19. The proposed development is considered to be acceptable. The comments made by KCC Highways and the Council's Active Travel Officer regarding the crossing of Lower Road and onward connection have been carefully considered by Officers, but in light of the previous Inspector's assessment, it is not recommended that an objection is raised to the potential conflict arising. The improvements made to the pedestrian route between the site and Lower Road are considered to have overcome the previous Inspector's concerns. Consequently, neither the development plan nor the NPPF indicate that the application should be refused on these grounds.

7.12. **Air Quality**

- 7.12.1. The importance of improving air quality in areas of the Borough has become increasingly apparent over recent years. Legislation has been introduced at a European level and a national level in the past decade with the aim of protecting human health and the environment by avoiding, reducing or preventing harmful concentrations of air pollution.
- 7.12.2. Policy DM6 of the Local Plan sets out that development proposals will integrate air quality management and environmental quality into the location and design of, and

access to development and in so doing, demonstrate that proposals do not worsen air quality to an unacceptable degree.

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

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

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

7.12.5. The Council's Environmental Health Officer has commented that due to the scale of the proposals and the location of this development being close to the Teynham AQMA, an Air Quality Assessment should be secured by condition and completed prior to commencement. They identify that air quality has improved within the area; however it is essential an assessment is made to measure the impacts from the development on air pollution along the AQMA and identify any mitigation that may be required.

7.12.6. Subject to such a condition, the proposals could be considered to be in accordance with Policy DM6 of the Local Plan.

7.13. **Community Infrastructure**

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

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

- Necessary
- Related to the development

- Reasonably related in scale and kind

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

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

KCC Contribution Requests		Total
Primary Education	£5,412.74 per dwelling	£119,080.28
Secondary Education	£5,329.27 per dwelling	£117,243.94
Special Educational Needs and Disabilities (SEND)	£559.83 per dwelling	£12,316.26
Integrated children's services	£74.05 per dwelling	£1,629.10
Libraries	£62.63 per dwelling	£1,440.49
Adult Social Care	£180.88 per dwelling	£4,160.24
Community learning	£34.21 per dwelling	£786.83
Waste	£194.13 per dwelling	£4,464.99
BNG Monitoring	N/A	£7,868.71
NHS Contribution Requests		
NHS contribution	£360 per occupant	£35,378
Swale Borough Council Contribution Requests		
Swale Bin provision	£130.20 per dwelling	£2,994.60
SAMMs	£337.49 per dwelling	£7,762.27
Formal sport provision	£729.57 per dwelling	£16,780.11
Play area provision	£548.73 per dwelling	£12,620.79

7.13.5. The application has been assessed in accordance with the KCC Development Contributions Guide, and inevitably, given the increased population as a result of additional dwellings, the proposed development will put pressure on existing community facilities. The above contributions and identified projects are considered to be CIL-compliant, required by policy and necessary to make the development acceptable in planning terms to provide sufficient community infrastructure to serve additional populations and mitigate recreational impacts on the Swale SPA. The applicant has agreed to pay contributions in each of these respects.

7.13.6. Subject to all necessary contributions being secured in a legal agreement, the proposed development would mitigate its pressure upon existing services and the Swale SPA is in accordance with Policies DM17, ST1, CP7, DM28, CP5 and CP6 of the Local Plan and the NPPF.

7.13.7. It is noted that comments received from interested parties raise concerns about the strain on existing services and the ability for these facilities to cope with the additional demand that would result from additional residents being within the locality. In this regard, it is considered appropriate to stress that planning obligations can only be sought that are reasonably related in scale and kind to the proposed development. The role of planning obligations is to mitigate the impact of development rather than solve pre-existing capacity issues and from this basis, it is considered that the development making a proportionate contribution to these facilities should be considered acceptable.

7.14. **Open Space**

7.14.1. Policy DM17 of the Local Plan sets out that new housing development shall make provision for appropriate outdoor open space proportionate to the likely number of people who will live there.

7.14.2. The submitted Design and Access Statement confirms that 0.4ha of open space is to be provided within the site, which is in accordance with the quantum of open space required through Policy DM17 of the Local Plan. The details of this will be able to be secured by condition to ensure that it is of sufficient quality and usability, with particular attention being paid to the orchard and wildflower spaces shown to the west and east of the site. However, in the absence of any outdoor sport and play facilities on the site, as set out above, contributions of £729.57 per dwelling towards off-site outdoor sports facilities and £548.73 per dwelling towards off-site play facilities has been sought and is considered to meet the relevant tests. Subject to these matters being suitably secured, the proposal is considered to accord with Policy DM17 of the Local Plan.

7.15. **Flood Risk, Drainage and Surface Water**

7.15.1. 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.

7.15.2. The site is within Flood Zone 1 in terms of fluvial and tidal flood risk. However, the Environment Agency (EA) mapping indicates that parts of the site to the east are susceptible to surface water drainage flood risk and, as such, the sequential test would typically be applicable.

7.15.3. Paragraph 175 of the NPPF sets out that:

“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 (having regard to potential changes in flood risk)."

7.15.4. Planning Practice Guidance further sets out 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.

The absence of a 5-year housing land supply is not a relevant consideration in applying the sequential test for individual applications. However, housing considerations, including housing land supply, may be relevant in the planning balance, alongside the outcome of the sequential test."

7.15.5. The submitted Flood Risk Assessment and Drainage Statements submitted in support of the application demonstrate that dwellings within the site would not be at an unacceptable risk of flooding once measures of mitigation such as raising finished floor levels have been incorporated. The information submitted alongside the application also demonstrates that the proposals could be designed to prevent any increase in flood risk off-site. Whilst the applicant has submitted a sequential test with the application which was considered acceptable for the purposes of the appeal for the previously refused application on the site (and there is no material reason why it would not remain acceptable now), the sequential test need not be applied in this case, as set out in the PPG excerpt above which has been introduced since the appeal was determined.

7.15.6. Neither KCC Drainage nor the EA raise any objection to the development. Conditions securing a detailed surface water drainage scheme and verification of that would ensure that the development would be safe for its lifetime. The sustainability benefits arising from the scheme would also provide wider benefit to the community in terms of the provision of homes and support for local services that would outweigh the flood risk. The proposal is therefore acceptable in terms of residual flood risk and, if the exception test was required to be passed, it would be as a result of this and the wider sustainability and public benefits arising.

7.15.7. Southern Water have indicated that the foulwater arising from the proposed development could be accommodated within the network. Foulwater connections would be addressed by both the Water Industry Act and Building Regulations during

the construction process. A condition suggested in relation to the positioning of trees in the context of sewers is considered to be addressed through the conventional landscaping condition.

- 7.15.8. Overall, the proposal would accord with the abovementioned development plan policy and the NPPF insofar as it relates to flood risk, drainage and surface water.

7.16. Contamination

- 7.16.1. Policy ST1 of the Local Plan states that development proposals shall conserve and enhance the natural environment by applying national planning policy in respect of pollution, despoiled, degraded, derelict, contaminated, unstable and previously developed land. The NPPF states that 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.

- 7.16.2. Subject to a condition, the Environmental Health Officer has raised no objection to the proposal on the grounds of potential contamination which is considered to be sound advice given the agricultural use of the land. From this basis, the proposal is considered to accord with the abovementioned policy.

7.17. Sustainability / Energy

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

- 7.17.2. The applicant has submitted an Energy Statement which advises that improved fabric, air tightness and 0.5kw of solar photovoltaics per dwelling would be utilised to minimise energy output from the development. The Energy Statement demonstrates how the development could include measures to address and adapt to climate change, but given the age of the Energy Statement document and the potentially delivery timeframe for the development, it is recommended that an updated Energy Statement be provided prior to commencement on the site. Subject to such a condition, the proposal would accord with the abovementioned policy.

7.18. Other matters

- 7.18.1. No objection has been raised by KCC Minerals Team on the grounds of the impact on safeguarded minerals including brickearth and there is no known reason to disagree with this conclusion.

- 7.18.2. The concerns raised by interested parties about the cumulative impacts of developments in and around Teynham are noted and it is recognised that the character of a rural area will change where development is undertaken. It is however

important to acknowledge that each case has to be considered on its own merits. To varying degrees this factor is considered to be inherent to a number of considerations including the application of the Council's Settlement Strategy and the assessment of the visual impact. For the reasons given, no objections are raised on these grounds.

7.19. Planning Balance – Benefits and Harm

- 7.19.1. 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.
- 7.19.2. In this case conflict with policies in the development plan have been identified as set out above. This primarily relates to conflict with Policies ST1, ST3 and CP3 of the Local Plan by virtue of the development being outside the built-up area boundary and, therefore, being within the countryside and contrary to the Council's Settlement Strategy. The proposal also conflicts with Policy DM31 of the Local Plan as it would result in the loss of Best and Most Versatile Agricultural Land and the visual impact on the landscape conflicts with Policy DM14 (albeit not Policy DM24) of the Local Plan. Consequently, the development does not accord with the development plan.
- 7.19.3. Having assessed the previous application, the first reason for refusal addressed the conflict with the spatial strategy and the loss of best and most versatile agricultural land. During the course of the previous appeal, the Council's housing land supply evolved to a where it could not demonstrate a 5 year supply and, in light of that, it was not considered that the first reason for refusal could be sustained and so was withdrawn. In this instance, noting that a 5 year housing land supply can still not be demonstrated, it is highlighted that it would be consistent for the Council to continue to conclude that the benefits of the scheme outweigh the harms caused in those respects.
- 7.19.4. The NPPF is a material consideration and, as the Council are unable to demonstrate a 5-year supply of housing land, paragraph 11.d of the NPPF is engaged. This states the following:

“where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.”

- 7.19.5. In this case, there are no protected areas or assets of particular importance that would be impacted in such a way that this would represent a strong reason for the refusal of the application. Consequently, it is necessary to consider if any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This assessment is carried out below.

Benefits

- 7.19.6. The primary benefit of the proposal is the provision of 23 residential units at a time when the Council does not have a five year housing land supply. The Planning Inspector of the recent appeal on the site set out the benefits arising from the development of 23 homes on this site as per below:

“22. The provision of an additional 23 family houses to add to the Council’s supply at a time when the Council has a shortfall would be a significant benefit. Furthermore, three of the units would be affordable, which is an additional benefit. This would align with the aims of paragraphs 61 and 66 of the Framework which seek to boost the supply of housing, and provide affordable housing, respectively.

23. It is also not disputed that the development would make an efficient use of the site and would be well designed as supported by paragraphs 129 and 135. Furthermore, the fact that the site is not large, so could be built out quickly, is supported by paragraph 73.

24. There would also be an economic benefit both during the construction phase, and afterwards, to the local community to which I give modest weight given the modest scale of the proposal.

25. The development would provide open space which could be available for the wider community. However as I have no reason to consider access to open space is particularly lacking here, this benefit is of very modest weight.”

- 7.19.7. Given the number of units remains the same as previously considered, the benefits above and the weight attributed continue to apply to this scheme.

Harms

- 7.19.8. The harms are those that have been set out at 7.19.2. It is considered that the conflict with the settlement strategy can only be given limited weight as there is no allowance for built-up area boundaries within the NPPF and the built-up area boundaries as currently drawn are not providing the required level of residential development. Moreover, in line with other appeal decisions, the loss of BMV agricultural land can, at most, be given moderate weight. Although there is not harm arising from the proposal to the degree that there is conflict with Policy DM24 of the Local Plan, it is considered that the development would cause a moderate degree of landscape harm, albeit at a localised level that would conflict with Policy DM14 of the Local Plan. This harm is afforded moderate weight.
- 7.19.9. In coming to their decision on the previously refused scheme, the Planning Inspector was also considering conflict with Policies CP2 and DM6 of the Local Plan as a result of the unsafe pedestrian access that was proposed at the time. For reasons explained in section 7.11, officers are of the view that, on balance, the proposals no longer conflict with Policies CP2 and DM6 of the Local Plan. The conflict with these policies was pivotal in the Planning Inspector coming to the view that the harms arising would significantly and demonstrably outweigh the benefits. In respect of all other matters, the Inspector raised no concern.

NPPF Balance

- 7.19.10. Based on the above, it is not considered that the adverse impacts of the development would significantly and demonstrably outweigh the benefits.

7.20. Conclusion

- 7.20.1. The proposal is contrary to the development plan. However, in this case, it is considered that the benefits arising from the proposals can be considered to outweigh the harm that would arise from the conflict with the development plan. On balance therefore, it is recommended that planning permission is granted subject to the conditions and the planning obligations referred to throughout this report being secured, subject to any amendments deemed necessary by the Head of Planning.
- 7.20.2. In considering the application, account has been taken of the information included with the application submission, the National Planning Policy Framework and the Development Plan, and all other material considerations including representations made including the views of statutory and non-statutory consultees and members of the public.

7.21. ConditionsTime Limit

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.

Plans

2. The development hereby permitted shall be carried out in accordance with the following approved drawings and documents:

Site Location Plan 500-RS-001 D
 Selby Court Pedestrian Lane details 500/HDH/004/A
 Proposed Site Layout Plan Page 1 500/RS/004/L
 Proposed Site Layout Plan Page 2 500/RS/005/H
 Plots 1, 2 and 3 500-RS-006
 Plot 4 500-RS-007
 Plots 5 and 6 500-RS-008
 Plot 7 and 8 500-RS-009
 Plots 9 and 10 500-RS-010
 Plot 11 500-RS-011
 Plots 12 and 13 500-RS-012
 Plots 14 and 15 500-RS-013
 Plot 16 500-RS-014
 Plot 17 and 18 500-RS-015
 Plots 19 and 20 500-RS-016
 Plot 21 500-RS-017-A
 Plot 22 and 23 500-RS-018-A
 Car Ports Plans Elevations and Sections 500/RS/019

Reason: To ensure that the development is carried out in accordance with the approved documents, plans and drawings submitted with this application.

Archaeology

3. 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 in writing by the Local Planning Authority.

B. Following completion of archaeological evaluation works (if it is identified that further works are required), 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:

Construction Management Plan

4. Prior to the commencement of the development hereby approved, a Construction Management Plan comprising of:
 - (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) Temporary traffic management / signage
- (f) a Dust Management Plan (according with the Control of Dust from Construction Sites (BRE DTi Feb 2003) and the Institute of Air Quality Management (IAQM) 'Guidance on the Assessment of Dust from Demolition and Construction')
- (g) details of all other measures require to accord with the Code of Construction Practice and BS5228 Noise Vibration and Control on Construction and Open Sites,

shall be submitted to and approved in writing by the Local Planning Authority. Subsequently, the development shall only be undertaken in full compliance with the approved Construction Management plan.

Reason: To control the construction process in the interests of highway safety, neighbouring living conditions and air quality.

Construction Ecological Management Plan

5. No development or any ground works, site and/or vegetation clearance shall be undertaken until a Construction Ecological Management Plan (CEMP) which contains full details of the ecological mitigation measures required has been submitted to and approved in writing by the Local Planning Authority. The CEMP 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;
 - 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 reptiles, breeding birds and dormouse) and a timetable for implementation of the measures;
 - Details of habitat enhancement/creation required as part of the mitigation works
 - Persons responsible for implementing the measures, including times during construction when specialist ecologists need to be present on-site; and,
 - The role and responsibilities of an Ecological Clerk of Works (ECow) or similarly competent person(s).

The approved CEMP shall be adhered to and implemented throughout the construction period in accordance with the approved details.

Reason: In the interests of nature conservation.

Sustainable Drainage

6. Development shall not 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 Drainage Strategy Prepared by Monson dated 16.09.2025. 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 within the curtilage of the site 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. This should include appropriate modelling that the surface water flood risk identified from the RoFSW mapping can be safely routed, captured, and disposed of without increase to flood risk on or off site. The model shall include a catchment assessment for contributing areas for overland flows and simulate a range of flooding scenarios, durations and timesteps.

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.

Where infiltration is to be used to manage the surface water from the development hereby permitted, it will only be allowed within those parts of the site where information is submitted to demonstrate to the Local Planning Authority's written satisfaction that there is no resultant unacceptable risk to controlled waters and/or ground stability. The development shall only then be carried out in accordance with the approved details.

The drainage scheme shall be implemented in accordance with the approved details prior to the occupation of any dwelling or in accordance with a timetable of works that shall have been submitted to and agreed in writing by the Local Planning Authority prior to the occupation of any dwelling.

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.

Sustainable Drainage Verification

7. No building on the development hereby permitted shall be occupied (or within an agreed implementation schedule) until a Verification Report, pertaining to the surface water drainage system and prepared by a suitably competent person, has been submitted to and approved in writing 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.

Infiltration

8. Where infiltration is to be used to manage the surface water from the development hereby permitted, it will only be allowed within those parts of the site where information is submitted to demonstrate to the Local Planning Authority's written satisfaction that there is no resultant unacceptable risk to controlled waters and/or ground stability. The development shall only then be carried out in accordance with the approved details.

Reason: To protect vulnerable groundwater resources and ensure compliance with the National Planning Policy Framework.

Tree Protection

9. i) No retained tree shall be damaged, cut down, uprooted or destroyed, nor shall any retained tree be pruned other than in accordance with the Arboricultural Report (Ref: SA/1862/21-A, and tree protection plan Ref LN/TPP/1862-01-A) both

dated 10th September 2021, without the written approval of the Local Planning Authority. Any pruning approved shall be carried out in accordance with British Standard 3998:2010 Tree Work - Recommendations or any revisions thereof.

ii) If any retained tree dies, or is removed, uprooted or destroyed, another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted at such time as may be specified in writing by the Local Planning Authority.

iii) The installation of tree protection barriers and the methods of working shall be undertaken in accordance with the Arboricultural Report (Ref: SA/1862/21-A, and tree protection plan Ref LN/TPP/1862-01-A) both dated 10th September 2021.

Reason: In the interests of tree protection and all the visual and environmental benefits that arise from the retention of trees.

Contamination (Pre-Works)

10. The development hereby permitted shall not be commenced until the following components of a scheme to deal with the risks associated with contamination of the site have been submitted to and approved in writing by the Local Planning Authority:

1) A preliminary risk assessment which has identified:

- all previous uses
- 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 written consent of the Local Planning Authority. The scheme shall thereafter be implemented as approved.

Reason: To ensure that any contamination is adequately addressed.

Contamination (Post Works)

11. Upon the completion of works required by condition 10 and prior to the occupation of any dwelling a Verification Report shall be submitted to and approved in writing by the Local Planning Authority. The Verification Report shall include full verification details as set out in the approved Verification Plan. 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. Any changes to these components require the express written consent of the Local Planning Authority. The scheme shall thereafter be implemented as approved.

Reason: To ensure that any contamination is adequately addressed.

Open Space and Landscaping

12. Notwithstanding the submitted details, no development above slab level shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority.

These details shall include, planting schedules of plants, noting species (which shall include 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.

All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out in accordance with the programme agreed in writing with the Local Planning Authority.

Reason: In the interests of character, appearance and assimilating the development into the area.

Open Space and Landscaping

13. 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 trees 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 interests of the visual amenities of the area and encouraging wildlife and biodiversity

Road Design and Detail

14. No development above slab level shall take place until details of the proposed roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, driveway gradients, car parking and street furniture have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details.

Reason: To ensure that the final detail of the development is acceptable in terms of highway safety, accessibility and visual amenity.

Lighting

15. Prior to occupation, a lighting plan shall be submitted to and approved in writing by the Local Planning Authority. The plan shall show the type and locations of external lighting (including details of lighting along the footpath between the eastern edge of the site and the boundary with Selby House), as well as the expected light spill in lux levels, to demonstrate that areas to be lit shall not adversely impact biodiversity. All external lighting shall be installed in accordance with the specifications and locations set out in the approved plan and shall be maintained thereafter.

Reason: To limit the impact of light pollution from artificial light on biodiversity, residential amenity and also to ensure that future occupiers are served by a lit footpath connecting to Lower Road.

Habitat Management and Monitoring Plan

16. The development shall not commence until a Habitat Management and Monitoring Plan (the HMMP), prepared in accordance with the approved Biodiversity Gain Plan has been submitted to and approved in writing by the Local Planning Authority. This shall include:
- a non-technical summary;
 - details of the roles and responsibilities of the people or organisation(s) delivering the HMMP;
 - details of the planned habitat creation and enhancement works to create or improve habitat to achieve the biodiversity net gain in accordance with the approved Biodiversity Gain Plan;

- details of the management measures to maintain habitat in accordance with the approved Biodiversity Gain Plan for a period of 30 years from the completion of development; and
- details of the monitoring methodology and frequency in respect of the created or enhanced habitat to be submitted to the local planning authority.

The HMMP shall thereafter be implemented in accordance with the approved details.

Reason: To ensure the development delivers the required biodiversity net gain on site in accordance with Schedule 7A of the Town and Country Planning Act 1990

Biodiversity Enhancement Plan

17. No development above slab level shall take place until a Biodiversity Enhancement Plan (BEP) has been submitted to and approved in writing by the Local Planning Authority. The Plan shall include full details of the biodiversity enhancements to be implemented on-site, together with a timetable for their implementation. The Plan shall include:

- Provision of integrated bat and/or bird boxes within all buildings. With the exact locations, make and model and height from ground level shown on scaled plans suitable for construction.
- The creation of labelled hedgehog highways (by creating small 13×13cm gaps in close board fencing) to facilitate the movement of hedgehogs across the site;
- The provision of bee bricks and/or insect hotels.
- Log piles/reptile refugia within the open space.

The Plan shall be implemented in accordance with the approved details and timetable for implementation. Once installed, all features shall be retained in that manner thereafter.

Reason: In the interests of nature conservation.

Materials and Details

18. Prior to their use within the development hereby approved, details of any exterior materials to be used within the proposed development (including but not limited to bricks, weatherboarding, hanging tiles, roof tiles, windows, doors, guttering and soffits) shall be submitted to and approved in writing by the Local Planning Authority. Subsequently, the development shall only be undertaken using the approved materials.

Reason: In the interests of ensuring that the development is of high quality and reflects the character and appearance of the locality.

Parking Space Provision and Retention

19. No dwelling hereby approved shall be occupied until the parking shown to serve that dwelling on drawing no. 500/RS/004/L (including garages, car ports, undercover parking and surface parking) , or some other such parking provision that shall have been approved in writing by the Local Planning Authority prior to the occupation of that dwelling, has been provided and made available for use by the occupiers of that dwelling. Moreover, all visitor spaces shall be provided prior to the occupation of the dwelling that is closest to that parking space.

Reason: To ensure the provision of adequate car parking.

Cycle Parking Provision and Retention (General)

20. No dwelling hereby approved shall be occupied until details of the cycle storage facilities serving that dwelling have been submitted to and approved in writing by the Local Planning Authority. The cycle storage shall be provided as approved prior to first occupation of each relevant dwelling.

Reason: To ensure the provision of adequate cycle parking and to reflect that the height of the proposed cycle store is not clear within the submitted plan, thereby requiring further information to be provided in order to ensure usability.

Provision of Vehicle Access

21. No dwelling shall be occupied until the vehicular access into the site has been completed in accordance with the plans hereby approved.

Reason: To ensure the provision of a safe access to the site and ensure that the proposal is not detrimental to highway safety and the flow of traffic.

Pedestrian Works

22. Prior to the first occupation of any dwelling hereby approved, details of the height and appearance of the bollards to be installed along the pedestrian route between Selby House and Lower Road shall be submitted to and approved in writing by the Local Planning Authority.

No dwelling on the development shall be occupied until the pedestrian enhancement works as shown on drawing no. 500/RS/004/A (Selby Court

Pedestrian Lane details) have been completed in full, with the bollards installed in accordance with the details approved under this condition.

The pedestrian works shall be maintained in accordance with the approved details thereafter.

Reason: To ensure the provision of a safe access to the site and in the interests of sustainability.

Access to Dwellings

23. No dwelling shall be occupied until the following works been completed between that dwelling and the adopted highway:

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

Reason: In the interest of providing adequate access to the approved dwellings.

Visibility Splays

24. Prior to the first use of the approved vehicular access into the site, all visibility splays shown on drawing no. 500/RS/004/L shall be provided. The visibility splays shall subsequently be kept free from any obstructions over 1.2metres above carriageway level.

Reason: In the interests of highway safety.

Energy Efficiency

25. No development beyond the construction of foundations shall take place until details have been submitted to and approved in writing by the Local Planning Authority which set out what measures will be taken to ensure that the development incorporates sustainable construction techniques such as water conservation and recycling, renewable energy production including the inclusion of solar thermal or solar photovoltaic installations, and energy efficiency. Upon approval, the details shall be incorporated into the development in accordance with the approved details prior to the first use of any dwelling.

Reason: To reduce the carbon footprint and energy efficiency of the development.

Air Quality Assessment

26. The development shall not be commenced until a report, undertaken by a competent person in accordance with current guidelines and best practice, has been submitted and approved in writing by the Local Planning Authority. The report shall contain and address the following:

1. An assessment of air quality on the application site and of any scheme necessary for the mitigation of poor air quality affecting the residential amenity of occupiers of this development.
2. An assessment of the effect that the development will have on the air quality of the surrounding area and any scheme necessary for the mitigation of poor air quality arising from the development.

Any scheme of mitigation set out in the subsequently approved report shall be implemented prior to the first occupation of any dwelling herein approved and maintained thereafter.

Reason: To ensure that the proposal is acceptable in relation to its impact on air quality.

Water Consumption

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

Reason: In the interests of water conservation and sustainability.

Noise Details

28. Prior to the commencement of the development hereby approved, a scheme to demonstrate that the internal noise levels within the residential units and the external noise levels in gardens and other relevant amenity areas will conform to the standard identified by the current version of BS 8233 2014, Sound Insulation and Noise Reduction for Buildings - shall be submitted to and approved in writing by the Local Planning Authority.

Subsequently, no dwelling shall be occupied until the measures specified within the approved scheme to serve that dwelling have been installed. Those measures shall thereafter be retained at all times.

Reason: To ensure that future occupiers are served by acceptable living conditions.



Planning Committee

MINUTES of the Meeting held in the Council Chamber, Swale House, East Street, Sittingbourne, ME10 3HT on Thursday, 5 March 2026 from 7.00 pm - 9.05 pm.

PRESENT: Councillors Monique Bonney, Andy Booth (Chair), Lloyd Bowen (Substitute for Councillor Julien Speed), Hayden Brawn, Ann Cavanagh, Lloyd Chapman, Shelley Cheesman (Substitute for Councillor Tony Winckless), Simon Clark (Vice-Chair), James Hunt, Peter MacDonald, Peter Marchington, Claire Martin, Ben J Martin, Tom Nundy (Substitute for Councillor Elliott Jayes), Paul Stephen and Terry Thompson.

OFFICERS PRESENT: Andrew Gambrell, Ian Harrison, Joanne Johnson, Tim Neal and Ben Oates.

APOLOGIES: Councillors Kieran Golding, Elliott Jayes, Julien Speed and Tony Winckless.

786 **Emergency Evacuation Procedure**

The Chairman outlined the emergency evacuation procedure.

787 **Declarations of Interest**

No interests were declared.

788 **2.1 - 25/501882/FULL - Land to The North of Lower Road, Teynham, Kent, ME9 9EQ**

2.1 REFERENCE NO 25/501882/FULL	
PROPOSAL Erection of 23no. dwellings (Including Affordable Housing) with associated public open space, access, vehicle parking and an enhanced pedestrian route to Teynham.	
SITE LOCATION Land to the North of Lower Road, Teynham	
WARD Teynham and Lynsted	
PARISH/TOWN COUNCIL Teynham	
APPLICANT Guy Osborne	AGENT N/A

The Team Leader (Planning Applications) introduced the application as set out in the report.

Carly Chapman, a Supporter, spoke in support of the application.
Teresa Ryszskowska, an Objector, spoke against the application.
Guy Osborne, the Applicant, spoke in support of the application.

The Chairman moved the officer recommendation to grant planning permission as per the recommendation in the report, and this was seconded by Councillor Brawn.

The Chairman invited Members to make comments, and these included:

- Disappointment that Kent County Council (KCC) Highways were neither present in person nor online, noting that the committee was being asked to consider a recommendation contrary to KCC Highways' objection;
- noted that KCC Highways' formal objections were unusual and carried weight, and therefore required careful consideration;

- suggested that the current proposal differed from the previous appeal scheme, and that the improved design could alter pedestrian behaviour and increase pedestrian use of the access route, potentially heightening risk where pedestrians must share space with vehicles;
- concerned about highway safety on Lower Road, Teynham which was described locally as an accident black spot. Members questioned whether introducing additional development pressure would exacerbate risks;
- highlighted that the access arrangements onto Lower Road appeared unchanged from earlier schemes, and questioned how the proposal mitigated the perceived danger around the bend at the point where the pedestrian route met the highway;
- the rural character of the Lower Road corridor was referenced, with questions about whether the increased vehicle movements would erode that character, and whether the road could accommodate additional traffic safely;
- parking provision within the site was queried, and noted that the layout relied heavily on tandem parking and offered limited non-tandem spaces, raising concerns that overspill parking may occur on the estate road or onto Lower Road. It was noted that Swale, not KCC, were responsible for internal road layout;
- queried whether the proposed internal roads should be built to adoptable standards and whether a condition could require adoption by KCC to allow enforcement of parking restrictions;
- Questions were raised about the practicalities of moving buggies, wheelchairs and mobility users through the pedestrian link. Members asked whether the route met accessibility standards and whether segregation between cyclists and pedestrians should be required;
- questioned the cumulative impacts of approved nearby developments, including Selby Court and other forthcoming applications, and whether similar concerns should have been raised by KCC Highways in the past;
- sought clarification regarding the mix and location of affordable housing units;
- emphasised the need for a safe, direct and accessible pedestrian route that would genuinely support walking to local services, rather than forcing residents into conflict with vehicles or onto the road network;
- expressed concern about the absence of pavements on sections of Lower Road and the safety implications of crossing movements where footways were discontinued; and
- suggested that a reduction in the speed limit on Lower Road, extending further eastwards, may be necessary if further housing was approved in the area.

Officers provided the following in response:

- The previous appeal had narrowed their concerns specifically to the condition and safety of the short internal section between Selby House and Lower Road. The appeal was not dismissed on the basis of the Lower Road crossing point itself;
- the applicant had amended the scheme directly to address the inspector's concerns by introducing resurfacing, bollard-based segregation between pedestrians and vehicles, and road markings and signage to delineate the pedestrian route;
- it was appropriate to place significant weight on the inspector's previous findings, which had to be balanced against KCC Highways' objection;
- in respect of the internal layout, officers explained that the level of parking provision met Swale's adopted parking standards and that the arrangement—including tandem parking—had previously been considered acceptable at appeal;
- the vehicular access was clarified: the only vehicle access point was to the east

- of the site directly onto Lower Road; the western route was pedestrian/cycle only;
- the pedestrian route width had been designed at 1.2 metres, which officers advised was sufficient for wheelchair access, and a legal agreement would secure the pedestrian connection in perpetuity;
- confirmed that KCC cannot be required to adopt the estate roads, as this sits within a separate statutory process. However, roads could be conditioned to be constructed to an adoptable standard if Members wished;
- on the relationship with third-party land, officers explained that the pedestrian connection would be secured through a legal agreement ensuring continued access even if land ownership changed;
- clarified that the former inspector had explicitly not found the Lower Road crossing point unsafe, but had focused on deficiencies in the internal section now proposed for improvement;
- noted that the speed limit immediately around the vehicular access was currently unrestricted, but that the part of Lower Road where the pedestrian route emerged was already within a 30mph limit; and
- confirmed that affordable housing units were dispersed within the site and not grouped into a single terrace.

Resolved: *That application 25/501882/FULL be DEFERRED to allow officers to liaise with the applicant regarding concerns raised by the committee and to enable discussion with KCC Highways as to how their objection could be overcome.*

789 **2.2 - 25/504418/REM - Land At Lady Dane Farm, Love Lane, Faversham, Kent, ME13 8YN**

2.2 REFERENCE NO 25/504418/REM
PROPOSAL Approval of Reserved Matters (Layout, Scale, Appearance and Landscaping) for residential development comprising 70no. dwellings, together with associated landscaping, drainage, and ancillary works, pursuant to 25/501335/HYBRID.
SITE LOCATION Land At Lady Dane Farm, Love Lane, Faversham, Kent, ME13 8YN
WARD Watling
PARISH/TOWN COUNCIL Faversham Town Council
APPLICANT Fernham Homes Operations Limited
AGENT DHA Planning

The Planning Consultant introduced the application as set out in the report.

The Chairman moved the officer recommendation to grant planning permission as per the recommendation in the report, and this was seconded by Councillor Brawn. The Chairman invited Members to make comments, and these included:

- Disappointment that Faversham Town Council had not attended to explain its objection and commented that the scheme broadly complied with the outline permission and presented no obvious reason for refusal;
- highlighted the positive inclusion of 35% affordable housing across the wider site and noted that this exceeded levels often secured elsewhere;
- concerned that the dwelling mix did not align with the Council's identified housing

needs, particularly the demand for smaller one and two-bedroom units. The development should reflect local evidence of need rather than favour larger properties;

- queried the number of fully accessible units and noted that only three dwellings were proposed to M4(3) wheelchair-user standard;
- There was a general lack of bungalows delivered by major developers, despite high demand and strong market value. Noted that bungalows sell quickly and would meet an important housing need within Swale; and
- repeated their view from an earlier agenda item that estate roads should be required, via condition, to be built to adoptable standards. This was considered important to ensure proper long-term management, prevent unresolved parking issues, and avoid estates remaining in private management where enforcement was more difficult.

Resolved: That application 25/504418/REM be granted as per the recommendation in the report.

790 **3.1 - 24/502717/OUT - Land West of Borden Lane, Sittingbourne, Kent, ME9 8HR**

3.1 REFERENCE NO 24/502717/OUT	
PROPOSAL Outline Application (with all matters reserved) for erection of a care home (Class C2), with associated parking, landscaping and substation.	
SITE LOCATION Land West of Borden Lane, Sittingbourne, Kent, ME9 8HR	
WARD Borden and Grove Park	
PARISH/TOWN COUNCIL Borden	
APPLICANT Aspire LPP	AGENT SLR Consulting Limited

The Planning Manager (Planning Applications) introduced the application as set out in the report.

Borden Parish Councillor Lee Small spoke against the application.

Sarah Booker, an Objector, spoke against the application.

Ryan Nicholls, the Applicant, spoke in support of the application.

The Chairman moved the officer recommendation to refuse planning permission as per the recommendation in the report, and this was seconded by Councillor Brawn.

The Chairman invited Members to make comments, and these included:

- Noted the appeal timetable and the need to confirm the Council's position quickly;
- acknowledged that the application had already been refused and would now be decided by an Inspector, with the committee's task being to confirm which refusal reasons should be defended;
- emphasised that recent appeal decisions on nearby sites were important material evidence and should inform whether the existing ecology reason remained defensible;
- argued that the ecological refusal reason should be withdrawn to avoid a potential application for an award of costs, given the strength of the appellant's evidence and lack of objection from KCC Ecology.

- the site functions was a traditional orchard and priority habitat;
- the ecological value and connectivity to the adjacent wildlife site remained significant;
- the countryside gap reason was still robust and was upheld in a recent appeal;
- criticised reliance on desktop ecology assessments and highlighted local knowledge of the site's wildlife activity;
- concerned about habitat fragmentation, countryside gap erosion, and the loss of agricultural potential;
- voiced doubt that the ecological refusal reason could be successfully defended given national guidance, the treatment of wildlife impacts in recent appeals, and the ability to manage impacts through conditions;
- sought clarification on what methodology the Inspector would use at appeal and whether they would rely solely on desktop evidence; and
- questioned whether the applicant's ecological surveys were adequate, given the site's proximity to a designated wildlife site.

In response, the officer advised:

- While costs risks could be highlighted, Members must base decisions on planning merits;
- the committee must decide whether each refusal reason remained "sound" in the light of new evidence submitted as part of the appeal;
- Inspectors normally held a site visit, but their assessment would most likely be guided primarily by the technical ecological evidence before them;
- similar appeals (e.g., Riddles Road, Sittingbourne), inspectors acknowledged local observations but placed greater weight on professionally prepared ecology reports and the fact that KCC Ecology had raised no objection.
- the applicant had submitted ecology surveys;
- further ecological information accompanied the appeal;
- KCC Ecology had raised no objection;
- the new appeal evidence had not identified ecological constraints; and
- an Inspector would consider countryside gap policy as a separate planning matter, distinct from ecology.

Resolved: That application 24/502717/OUT be refused as per reasons 5.2a and 5.3i in the report.

791 Part 5 applications

Item 5.1 – Gate Service Station, London Road, Dunkirk, Kent ME13 9LN

PINS Decision: APPEAL DISMISSED

Committee or Officer Decision: DELEGATED REFUSAL

Item 5.2 – Land off Riddles Road, Borden, Sittingbourne, Kent ME9 8HP

PINS Decision: APPEAL DISMISSED (PARTIAL AWARD OF COSTS)

Committee or Officer Decision: COMMITTEE DECISION

Item 5.3 – Former Kingsfield Care Home, Jubilee Way, Faversham ME13 8GD**PINS Decision: APPEAL ALLOWED****Committee or Officer Decision: NON-DETERMINATION**Chairman

Copies of this document are available on the Council website <http://www.swale.gov.uk/dso/>. If you would like hard copies or alternative versions (i.e. large print, audio, different language) we will do our best to accommodate your request please contact Swale Borough Council at Swale House, East Street, Sittingbourne, Kent, ME10 3HT or telephone the Customer Service Centre 01795 417850.

All minutes are draft until agreed at the next meeting of the Committee/Panel

PLANNING COMMITTEE – 13th August 2026**PART 2**

Report of the Head of Planning

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

2.1 REFERENCE NO - 26/501448/FULL		
PROPOSAL - Conversion of existing garage into an office replacing the existing flat roof to pitch roof. Infilling of existing front recess. Removal of existing chimney and insertion of 4no. rear roof lights.		
SITE LOCATION Lion Yard Worlds End Lewson Street Norton Kent ME9 9JS		
RECOMMENDATION 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.		
APPLICATION TYPE Householder		
REASON FOR REFERRAL TO COMMITTEE The applicant is an employee of a shared service which includes Swale Borough Council.		
CASE OFFICER Julia Marshall		
WARD Teynham And Lynsted	PARISH/TOWN COUNCIL Norton, Buckland And Stone	APPLICANT Mr & Mrs Alder AGENT Refine Architecture Ltd.
DECISION REGISTERED 15.04.2026		TARGET DATE 11.06.2026
BACKGROUND PAPERS AND INFORMATION: Documents referenced in report are as follows: - All drawings submitted. The full suite of documents submitted pursuant to the above application are available via the link below: - https://pa.midkent.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=TDJLUBTYJ6800		

1. SITE LOCATION AND DESCRIPTION

- 1.1 Lion Yard is a semi-detached chalet bungalow with an attached garage to the front of the property. The front amenity area has hardstanding covering the entire frontage allowing for several parking spaces.
- 1.2 The property lies within the Lewson Street conservation area and within the Local Plan defined built-up area boundary for Lewson Street, which at this point runs down the centre of Worlds End. The grade II listed Thatch Cottage is located approximately 38m to the south west of the application site, with the grade II listed 'World's End' located approximately 63m to the north east. The surrounding street scene comprises of properties with varying designs and styles.

2. PLANNING HISTORY

- 2.1 None relevant.

3. PROPOSED DEVELOPMENT

- 3.1 This application seeks planning permission for the conversion of the existing garage into an office, and the replacement of the existing flat roof to the garage with a pitched roof. As a result, the roof height would be increased from 2.6m to 3.3m. The existing recessed area to the front of the property will also be infilled, bringing the entrance to the property in line with the main front elevation. The proposals also include the removal of existing chimney and insertion of 4no. rear rooflights, both on rear facing roof slopes of the existing property.

4. CONSULTATION

- 4.1 **Norton, Buckland And Stone Parish council** – No comments received.
- 4.2 **SBC Heritage Officer** – No objection, subject to conditions.

5. REPRESENTATIONS

- 5.1 One round of consultation has been undertaken, during which letters were sent to neighbouring occupiers, a site notice was displayed in the area and a notice placed in the newspaper.
- 5.2 No comments were received.

6. DEVELOPMENT PLAN POLICIES

- 6.1 **Bearing Fruits 2031: The Swale Borough Council Local Plan 2017** - policies:
 - ST3** The Swale settlement strategy
 - CP4** Requiring good design

DM7 Vehicle Parking

DM14 General development criteria

DM16 Alterations and extensions

DM32 Development involving listed buildings

DM33 Development affecting a conservation area

6.2 **Supplementary Planning Guidance/Documents**

Supplementary Planning Guidance - Designing an Extension – A Guide for Householders and Conservation Areas

Supplementary Planning Document - Swale Parking Standards

7. ASSESSMENT

7.1 This application is reported to the Planning Committee as the applicant is an employee of a shared service which includes Swale Borough Council. Considering the scheme that has been submitted, the Committee is recommended to consider the following points:

- The Principle of Development
- Character and appearance / Heritage
- Living Conditions
- Highway safety and parking

Principle

7.2 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 sets out that the starting point for decision making is the development plan unless material considerations indicate otherwise.

7.3 The 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 site is located in the built up area boundary of Lewson Street where policy ST3 of the Local Plan supports development in principle. In addition, policy DM16 of the Local Plan supports alterations to existing dwellings providing, amongst other relevant criteria, they are of an appropriate design and maintain or enhance the character of the street scene.

- 7.5 The principle of the development is therefore considered acceptable subject to certain criteria being met. These matters and other relevant material planning considerations are discussed below.

Character and appearance / Heritage

- 7.6 The National Planning Policy Framework attaches great importance to the design of the built environment and that design should contribute positively to making places better for people.
- 7.7 Policy CP4 of the Local Plan requires proposals to be of a high quality design that is appropriate to its surroundings in respect of materials, scale, height and massing. Policy DM16 sets out that alterations and extensions to existing properties will respond positively to style and character of the building being extended, will be appropriately scaled and maintain or enhance the character of the streetscene.
- 7.8 Policy DM32 of the Local Plan requires the setting of listed buildings to be preserved. Policy DM33 of the Local Plan requires proposals to preserve or enhance the special character or appearance of the conservation area.
- 7.9 Starting on the rear of the property, the removal of the existing chimney and insertion of four conservation style rooflights to the rear roof slope of the property would ensure that the character and appearance of Lion Yard would not be affected as viewed from Lewson Street. In addition, these works would not in themselves require planning permission and in any case, are considered to be acceptable alterations. The Council's Conservation Officer has recommended a condition seeking details of the rooflights, however, as they could be installed without the need for planning permission, and as they are located on the rear of the property, this is not considered to be necessary.
- 7.10 The changes to the front of the property involve removing the garage door and replacing it with brickwork and a window, and the replacement of the garage's flat roof with a pitched roof. The proposal also involves bringing the main entrance to the property forward to align with the main existing front wall. In respect of the roof extension, the Council's SPG related to householder development states that prominent extensions are normally better for having pitched roofs. As a result, the proposal would align with this. In addition, pitched roofs are a feature of existing properties in the streetscene and would appear appropriate in this context. In terms of replacing the front elevation of the garage with brickwork and a window, this would use materials to match the existing property. As a result, this element of the scheme is considered acceptable. Finally, infilling the front recessed area would bring the entrance to the property in line with the main existing front elevation, which would have a

minimal impact on the property itself or the wider area and would therefore be acceptable.

- 7.11 Overall, the proposals would result in a modest change to the appearance of the dwelling. They would have sufficient regard for the character, setting and context of the site and appear both appropriate and sympathetic to the location. They would also maintain the visual quality of the street scene and would as a result preserve the special character and appearance of the conservation area.
- 7.12 The grade II listed Thatch Cottage is located approximately 38m to the south west of the property and the grade II listed 'World's End' is located approximately 63m to the north east. However, due to the small scale of the proposals and the intervening buildings, it is considered that the scheme would preserve the setting of these listed buildings.
- 7.13 Taking the above into account the scheme is considered to comply with policies CP4, DM16, DM32 and DM33 of the Local Plan.
- 7.14 In considering the impact of this proposal upon designated heritage assets, officers have had regard to the Council's obligations pursuant to the Planning (Listed Building and Conservation Areas Act) 1990.

Living conditions

- 7.15 The Local Plan requires that new development has sufficient regard for the living conditions of neighbouring occupiers. Specifically, policy DM14 states that any new proposed developments should not cause significant harm to the amenities of surrounding uses or areas and due consideration will be given to the impact of the proposed development upon neighbouring properties. Any new proposed schemes should not result in significant overshadowing through a loss of daylight or sunlight. Policy DM16 also requires that alterations or extensions to existing buildings protect residential amenity.
- 7.16 The only element of the proposal that would extend the building would be the introduction of a pitched roof on the front elevation. This would be located immediately adjacent to the garage located on the adjacent property, 'Blairveen'. There are windows located at first floor level in this adjacent property, however, the proposed roof is of a limited height. Therefore, any impact upon outlook from this window or upon available light would be minimal. The proposal would also introduce a ground floor window into the front elevation, however, this would face towards the highway and therefore it is not considered to give rise to any overlooking. Overall, given the nature, scale and location of the proposals, they would not give rise to any unacceptable impact on the living conditions of any neighbours.

- 7.17 Taking the above into account the proposal is in accordance with policies DM14 and DM16 of the Local Plan 2017.

Highway safety and parking

- 7.18 Local Plan policy DM7 requires development to be in accordance with the Council's Parking SPD.
- 7.19 As the proposal includes the conversion of the garage, an assessment is required as to the impact of this on the parking available to serve the property.
- 7.20 The Council's Parking SPD includes minimum size requirements for garages, which, in the case of a single garage is 7m x 3.6m. The existing garage measures 4.9m in depth x 2.45m wide. It is comfortably undersized when compared to the SPD and therefore it is not considered that a vehicle would be able to be parked within it. As such, the loss of part of the garage has no impact upon the available parking at the property.
- 7.21 Notwithstanding the above, the property has space for multiple vehicles to park to the front of the site, which would be in excess of the amount required for a property of this size in this location, as set out in the Council's Parking SPD. In addition, the conversion of the garage as a standalone matter, would not appear to require planning permission as there is no evidence to show that the space within it is controlled by a planning condition.
- 7.22 In view of the above it is considered that the proposal would not give rise to any adverse impact on highways safety or convenience. As such, the scheme complies with policy DM7 of the Local Plan.

Ecology

- 7.23 From April 2024, minor developments are required to provide at least 10% Biodiversity Net Gain (BNG). There are exemptions to this, including applications made by householders as defined within article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015. This application amounts to householder development, and as such is exempt from the need to provide BNG.

Conclusion

- 7.24 On the basis of the above, the scheme is considered to be in compliance with policies ST3, CP4, DM7, DM14, DM16, DM32 and DM33 of the Local Plan. It is recommended that planning permission is granted.

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 permitted shall be carried out in accordance with drawings:

25.56-PL01 - Site Location and Block Plans

25-56-PL0-04 - Proposed Plans

25-56-PL05 - Proposed Elevations

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

- (3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those on the existing building in terms of type, colour and texture.

Reason: In the interests of visual amenity.

The Council's approach to the application

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), 2023 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.



REFERENCE NO - 26/500987/FULL		
PROPOSAL - Change of use of public open space / grass area to mixed use as a public open space and beer garden (Sui Generis Drinking Establishment and restaurant use) including siting of picnic tables and benches.		
SITE LOCATION - Albion Tavern, Front Brents, Faversham, Kent, ME13 7DH		
RECOMMENDATION Delegate to the Head of Planning to grant planning permission subject to appropriate safeguarding conditions with further delegation to the Head of Planning to negotiate the precise wording of conditions, including adding or amending such conditions.		
APPLICATION TYPE – Full Planning Application		
REASON FOR REFERRAL TO COMMITTEE - Application site comprises council owned land and the recommendation of Officers is contrary to Member Representations received from Cllr Claire Martin and Cllr Alex Eyre along with a representation received from Faversham Town Council who have asked for the application to be considered by the Planning Committee in that scenario.		
Case Officer - Christian De Grussa		
WARD Priory	PARISH / TOWN COUNCIL Faversham Town Council	APPLICANT Shepherd Neame Ltd AGENT Milliken & Co. Chartered Surveyors
DATE REGISTERED 31/03/2026		TARGET DATE 26/05/2026
BACKGROUND PAPERS AND INFORMATION: The full suite of documents submitted, and representations received pursuant to the above application are available via the link below: - https://pa.midkent.gov.uk/online-applications/applicationDetails.do?keyVal=TBU15KTYMQW00&activeTab=summary		

1. SITE LOCATION AND DESCRIPTION

- 1.1. The site comprises a 250 square metre parcel of area of flat, grassed, open space. The site is bounded by the side wall of The Albion Tavern, by the vegetated rear boundaries of houses fronting Upper Brents, by trees and timber bollards lining the northeastern boundary of the car park, and by stone bollards preventing vehicle access from the Creekside track. It has no fence or other means of enclosure on the car park or Front Brents sides and is open to access by the public at all times. It is noted that the property is addressed as Albion

Tavern and Albion Taverna interchangeably within the submissions. Albion Tavern was the address used on the application form and has been therefore used throughout this report.

- 1.2. The site is part of an area of Local Green Space as designated by Policy DM18 of the adopted Swale Borough Local Plan 2017. The site is within the Faversham Conservation Area and within the Faversham Creek Policy Area as defined by Policy NP1.
- 1.3. The site sits adjacent to The Albion Tavern which is shown on the plans to be within the applicant's control and comprises an attractive established C19th public house and Mexican restaurant situated within the Faversham conservation area along Front Brents, facing onto Faversham Creek, with its own private car park to the rear accessed off Church Road/Upper Brents. It also has a small enclosed outside seating area, and it also often has tables on the frontage overlooking the Creek. The car park and outside seating area are beside and behind private houses fronting Upper Brents; two of which are in a grade II listed building which itself used to be another public house (The Willow Tap) that closed some years ago.
- 1.4. The Albion Tavern faces the Creek between Council owned land, including a car park to the southwest of the site in which ten to twelve cars can be parked. This small car park is reached via a track that also leads on to a number of dwellings on Front Brents on either side of the public house. The whole area is very low lying alongside the Creek and is within Flood Zones 2 and 3, whilst the north western part of the site comprises an area at risk of surface water flooding. Both the Albion Tavern and the car park are excluded from the designated Local Green Space.

2. PLANNING HISTORY

- 2.1. 19/500084/FULL - Change of use of public open space/grass area to mixed use as a public open space and beer garden (Class A4 drinking establishment), including siting of tables and chairs/picnic benches. Refused at committee on for the following reason:
 - 1) The proposed mixed use of this area of Local Green Space as defined in the Council's adopted Local Plan would have a negative impact upon the amenities of the area, upon the setting of nearby listed buildings and the special character of the Faversham conservation area, with negative impacts on the residential amenity of adjacent residents, local parking problems and the direct loss of this highly valued open green space in a manner contrary to policies CP5, DM7, DM14, DM17, DM18, DM32 and DM33 of Bearing Fruits 2031 - The Swale Borough Local Plan 2017.
- 2.2. That application was recommended for approval by Officers but the Planning Committee decided to refuse the application.

- 2.3. Earlier applications at the applicant's holding include SW/97/0550 and SW/12/1354. These related to works of extension and advertising but neither are considered to be relevant to the assessment of this proposal

3. PROPOSED DEVELOPMENT

- 3.1. The proposed development is the change of use of the application site from public open space to a mixed use for public open space and for use as a beer garden to be facilitated by the stationing of 10 six-seater timber picnic tables/benches to serve Albion Tavern. Revised drawings were submitted during the course of the application which reduced the number of six-seater timber picnic tables/benches from 12 to 10, reducing the area over which the tables/benches are to be situated.
- 3.2. In this instance it is considered that planning permission is required solely for the change of use. The submissions indicate that the associated picnic tables would not meet all of the relevant tests to be considered buildings, particularly as they would not be fixed to the ground. Their presence and siting are, however, integral to the proposal and the development should be considered in that context.

4. REPRESENTATIONS

- 4.1. Public consultation was undertaken, during which letters were sent to neighbours. A site notice was displayed at the site, and an advert was placed in the local newspaper. Full details of representations are available online.
- 4.2. During the initial consultation (when the application proposed 12 six-seater timber benches), six letters were received supporting the proposal, thirteen letters were received objecting to the proposal, and two letters were received neither objecting nor supporting the scheme.
- 4.3. Upon the receipt of amended plans, showing 10 six-seater timber benches, a second round of consultation was undertaken. One letter was received supporting the proposal, seven letters objecting to the proposal, and one letter neither objecting nor supporting the proposal.
- 4.4. The letters of support raised the following:

First Round Comments	Report reference
Supports the continued viability of the public house whilst making the space more usable and welcome for guests	See paragraphs 7.2.3 to 7.2.10 and 7.10.4.
Contribution to the local economy and social life of Faversham town	See paragraphs 7.2.3 to 7.2.10 and 7.10.4.
Appropriate use of local green space	See paragraphs 7.2.12 - 7.2.23.
Strengthens the vitality of Faversham	See paragraphs 7.2.3 to 7.2.10 and 7.10.4.
No built development being proposed	See section 3 above.
Second Round - Additional Comments	Report reference

Supports the continued viability of the public house whilst making the space more usable and welcome for guests	See paragraphs 7.2.3 to 7.2.10 and 7.10.4.
Contribution to the local economy and social life of Faversham town	See paragraphs 7.2.3 to 7.2.10 and 7.10.4.
No unacceptable noise impacts or antisocial behaviour to be derived from the scheme	See section 7.9.
Appropriate use of local green space	See paragraphs 7.2.12 to 7.2.23.
Strengthens the vitality of Faversham	See paragraphs 7.2.3 to 7.2.10 and 7.10.4.

4.5. The letters of objection raised the following:

First Round Comments	Report reference
Inappropriate loss of green space	See paragraphs 7.2.12 to 7.2.23.
Unjustified extension of commercial use	See paragraphs 7.2.3 to 7.2.10 and 7.10.4.
Noise, disturbance, pollution, littering, and anti-social behaviour	See section 7.9.
Overlooking and loss of privacy	See section 7.9.
Insufficient parking provision and detrimental to highway safety	See section 7.7.
Not mixed use owing to Shepherd Neame only supporting use by non-customers during non-busy periods	The terms of use are set out in Section 3.
Pre-mediated attempt by the developer to land grab and make a profit	Potential profit making is not a material consideration.
Increased risk of flooding	See section 7.8
Limited impact upon local economy	See paragraphs 7.2.3 to 7.2.10 and 7.10.4.
Harm to heritage assets and character of the surrounding area	See section 7.3
Failure to protect natural green areas and biodiversity	See section 7.6
Conditions that are to be recommended would lack enforceability	The conditions that are recommended are considered to meet the tests.
Second Round - Additional Comments	Report reference
Inappropriate loss of green space	See paragraphs 7.2.12 to 7.2.23.
Unjustified extension of commercial use	See paragraphs 7.2.3 to 7.2.10 and 7.10.4.
Noise, disturbance, pollution, littering, and anti-social behaviour	See section 7.9.
Plan does not show access from Creek Cottage	Access onto neighbouring land is a civil matter and would not be affected by the proposals.

A public consultation should be undertaken	As set out throughout this section, public consultation has been undertaken.
Insufficient parking provision and detrimental to highway safety	See section 7.7.
Limited impact upon the local economy	See paragraphs 7.2.3 to 7.2.10 and 7.10.4.
Not mixed use owing to Shepherd Neame only supporting use by non-customers during non-busy periods	The terms of use are set out in Section 3.

4.6. The letters neither supporting nor objecting raised the following:

First Round Comments	Report reference
Tables would be welcome addition	Comment noted.
Requests for opening and closing times to be observed	See section 7.9.
Land in question should not fall into the ownership of Shepherds Neame	Future land ownership is not a material consideration.
Supports the scheme provided no furniture is placed on the highway	Such provisions would fall outside the scope of this application.
Queries if proposed use would be for public or private occupation	The proposal is to use the land for mixed use purposes.
Questions if other representations received are genuine	All representations have been considered in good faith and there is no evidence to justify not having regard to all representations received.
Location of site notice is inadequate	The site notice was posted appropriately.
Second Round - Additional Comments	Report reference
Condition should be imposed as part of any forthcoming decision notice which prevents seating or other furniture from being placed within the road	Such a condition would be unnecessary as provisions like that would be outside the scope of this application.

4.7. Faversham Town Council object to the application on the following grounds:

First Round Comments	Report reference
Inappropriate use of local green space	See paragraphs 7.2.12 to 7.2.23.
Noise and disturbance impact	See section 7.9.
Detrimental to highway safety	See section 7.7.
Second Round - Additional Comments	Report reference
Inappropriate use of local green space	See paragraphs 7.2.12 to 7.2.23.
Noise and disturbance impact along with increased antisocial behaviour	See section 7.9.

Submitted plans do not show the existing access from Creek Cottage	Access onto neighbouring land is a civil matter and would not be affected by the proposals.
A public consultation should be undertaken	As set out throughout this section, public consultation has been undertaken.
Number of safeguarding conditions are requested if application is approved	Appropriate conditions have been suggested.
A review of Faversham's Local Greens spaces should be undertaken prior to determination	The Council is obliged to determine the application in a timely manner and should not wait for other evidence to be prepared.

4.8. The Faversham Society object to the application on the following grounds:

First Round Comments	Report reference
Inappropriate use of public space owned by Swale Borough Council, and a loss of public amenity	Open space is addressed at paragraphs 7.2.24 to 7.2.29 and land ownership is not a relevant material consideration in this case.

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** – The response advised that there are no highway implications from the proposal.

5.3. **KCC Archaeology** – No objection

5.4. **KCC Public Rights of Way (PROW)** – No objection

5.5. **SBC Heritage and Design** – No objection

5.6. **SBC Greenspaces** – No objection

5.7. **Mid-Kent Environmental Protection** – No objection subject to conditions.

5.8. **Environment Agency (EA)** – No comment.

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
ST7	The Faversham area and Kent Downs strategy.
CP1	Building a strong, competitive economy

CP2	Promoting sustainable development
CP4	Requiring good design
CP5	Health and wellbeing
CP6	Community facilities and services to meet local needs
CP7	Conserving and enhancing the natural environment – providing for green infrastructure
CP8	Conserving and enhancing the historic environment
DM2	Main Proposal for main town centre uses
DM6	Managing transport demand and impact
DM7	Vehicle parking
DM14	General development criteria
DM17	Open space, sports, and recreation provision
DM18	Local green spaces [
DM19	Sustainable design and construction
DM21	Water, flooding and drainage
DM28	Biodiversity and geological conservation
DM32	Development involving listed buildings
DM33	Development involving conservation areas.
DM34	Scheduled Monuments and archaeological sites
NP1	Faversham Creek Neighbourhood Plan.

Faversham Neighbourhood Plan 2024

FAV4	Mobility and Sustainable Transport
FAV6	Public Rights of Way, National Trails, Promoted Routes and Cycleways
FAV7	Natural Environment and Landscape
FAV8	Flooding and Surface Water
FAV9	Air Quality
FAV10	Sustainable Design and Character
FAV11	Heritage
FAV12	Community Facilities
FAV15	Faversham Creek Policy Area

Supplementary Planning Guidance/Documents –

Parking Standard Supplementary Planning Document, 2020. Parking Standards SPD (2020)

Faversham Conservation Area Character Appraisal & Management Plan Public Consultation Draft August 2023.

Faversham conservation area character appraisal (2004)

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
- Heritage Assets
- Character and appearance of the site and the area
- Archaeology
- Highway Safety and Parking
- Living Conditions
- Ecology
- Flood Risk

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.

Sustainable Development and Expansion of Existing Business

7.2.3. Policy ST1 of the Local Plan 2017 states that, to deliver sustainable development in Swale, all development proposals will, as appropriate, build a strong competitive economy by meeting identified needs for inward investment and indigenous growth on allocated and suitable sites, including meeting the needs of under-represented sectors (criterion 1) and accord with the Local Plan Settlement Strategy (criterion 4).

7.2.4. The above is echoed by policy ST3 of the Local Plan 2017 which, at criterion 1, sets out that the urban centres of Faversham and Sheerness will provide the secondary urban focus for growth at a scale and form compatible to their historic and natural assets and where it can support their roles as local centres serving their hinterland.

7.2.5. Alongside this, policy CP1 of the Local Plan 2017 seeks to build a strong and competitive economy which, as per criterion 9, is to be achieved by safeguarding or enhancing Swale's' Principal Tourism Assets (defined in Statement Four as including high quality restaurants and pubs) whilst consolidating or widening the Borough's tourism potential, particularly where embracing principles of sustainable tourism. Policy ST7(10) also encourages enhancing the Faversham Creek area as a tourist hub and a place of special interest and activity, with strong associations with the water and improved links to the town centre.

- 7.2.6. Finally, policy FAV15(1a) of the Faversham Neighbourhood Plan 2024 clarifies that development in the Faversham Creek Policy Area (as defined within figure 21 of this document) will be supported where it comprises uses that enhance the economic, leisure, maritime or recreational use of the Creek, including visitor facilities. Similarly, policy FAV15 it goes onto clarify at criterion 8 that development must have no significant adverse impact upon the operations of existing commercial uses.
- 7.2.7. At a national level, paragraph 85 of the NPPF states that “significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.” Moreover, paragraph 98 states that planning decisions should “plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments.”
- 7.2.8. The site is located within the built-up area boundaries of Faversham and the Faversham Creek Regeneration Area. The proposal pertains to the expansion and consolidation of an existing drinking establishment/restaurant, The Albion Tavern, to be facilitated via the change of use the adjacent Local Green Space to one which exhibits a mixed use comprising a beer garden (consisting of ten six-seater public benches) and public open space. The development would function ancillary to the established business, enhancing their offering, whilst also serving the community as an area of open space.
- 7.2.9. The proposed change of use would assist with fostering a strong and competitive economy which contributes to the strength/diversity of Faversham’s wider tourism/employment offer.
- 7.2.10. Moreover, it would have no adverse impact on the operation of existing commercial uses whilst enhancing the economic, leisure, and recreational use of the creek.
- 7.2.11. In light of the above, the proposal is considered to be in accordance with policies ST1(1), ST3(2), ST7(10) and CP1(9) of the Swale Borough Local Plan 2017 together with policy FAV15(1), FAV15(8) of the Faversham Creek Neighbourhood Plan, and the NPPF. This is subject to other material planning considerations set out below.

Local Green Space

- 7.2.12. The site is allocated as a Local Green Space by the local plan. The wider area of Local Green Space that the site is a part of extends from the Swing Bridge to the south west, to the section of open space that sites between Upper Brents and Faversham Reach to the north east. This is an irregularly shaped parcel of land that excludes the Albion Tavern, the adjacent car park and the terraced dwellings to the east but includes all the undeveloped land in the vicinity and the pedestrian routes through and across the otherwise undeveloped land.

7.2.13. The previous Officer Report discussed the purposes and designation of Local Green Space and it is relevant to highlight that such guidance is available at the “Open space, sports and recreation facilities, public rights of way and local green space” section of the Planning Practice Guidance and at paragraph 100 of the NPPF. Regard has been had to that guidance but, as it primarily relates to the designation of Local Green Space rather than the determination of applications where that designation is not in dispute, it is not now considered necessary to cite that guidance.

7.2.14. Policy DM18 of the Swale Borough Local Plan 2017 states that, within designated Local Green Spaces planning permission will not be granted other than for:

1. The construction of a new building for one of the following purposes: essential facilities for outdoor sport or recreation, cemeteries, allotment use, or other uses of land where preserving the openness of the Local Green Space and not conflicting with its purpose;
2. The re-use or replacement of an existing building, provided the re-use does not include any associated uses of land around the building which might conflict with the openness of the Local Green Space or the purposes of including land within it; and
3. The carrying out of an engineering or other operation or the making of any material change of use of land, provided that it maintains the openness and character of the Local Green Space

7.2.15. As set out above, the items to be kept at the site (benches) are not considered to be buildings and as such the proposal would not be considered in the context of the first two criteria set out above. However, the proposal would involve the change of use of land, with the stationing of benches being a feature of that use rather than a building operation. The keeping of these items at the site would inherently reduce openness as structures would be present where none currently exist. In spatial and visual terms, openness would be reduced. In terms of character, the land currently appears as a small part of the overall area of undeveloped land that has been described above, in some respects being of less visual value than other sections due to its small scale and positioning between the car park and the Albion Tavern which gives the impression that it is more general amenity land rather than usable open space. It could be construed that the site is viewed as part of the setting of the adjacent building and fringe to the adjacent car park as much as it is viewed as part of the wider area of undeveloped open space. However, by distinctly changing the use to include a ‘beer garden’ use and bring items onto the site to change that use, the existing character of the Local Green Space would not be maintained. Consequently, there is a conflict with Policy DM18.

7.2.16. The NPPF, at paragraph 108, states that decisions for managing development within a Local Green Space should be consistent with national policy for Green Belts set out in chapter 13 of the NPPF.

- 7.2.17. In this regard it is relevant to note that paragraph 153 of the NPPF states that “when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt, including harm to its openness. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.” Clearly the use of the term Green Belt should be substituted for Local Green Space in the consideration of this proposal.
- 7.2.18. Paragraph 154 of the NPPF goes on to state that the types of development that are not inappropriate in the Green Belt, or in this case in the Local Green Space, one of which is “b) the provision of appropriate facilities (in connection with the existing use of land or a change of use), including buildings, for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.” Another is h)v) the “material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds)” provided that the development preserves the openness of the Local Green Space and does not conflict with the purposes of including land within the designated area.
- 7.2.19. Whichever of the ‘outdoor recreation’ categories are considered, there is a requirement for the development to preserve the openness of the Local Green Space. In the same manner as has been set out above, this would not be achieved. The development is therefore inappropriate development at a Local Green Space. This and the harm to openness both need to be afforded weight in the subsequent assessment of the proposal.
- 7.2.20. Unlike the applicable local plan policy, the NPPF requires a subsequent assessment to be made, namely whether there are very special circumstances that justify supporting the proposal, with it being the case that such circumstances would not exist “unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.” This exercise of weighing harms against benefits will be undertaken in the Conclusion and Planning Balance section.
- 7.2.21. This assessment is consistent with part of the reason for the refusal of the previous application which stated that the development would result in the “...direct loss of this highly valued open green space” and conflict with policy DM18. The reduction of tables at the site from 12, as proposed under the previously refused application, to 10 under the current application, would reduce the effect of the development but not in a manner that would lead to a different overall conclusion being reached specifically in relation to this matter.
- 7.2.22. In terms of the degree of harm that would be caused, it is considered relevant to note the commentary above which identifies that this is a small and fringe part of the overall area of Local Green Space. In that context and noting

that the site would still partially function as an open area with only limited items kept upon it, it is considered that there would only be a limited degree of harm to visual and spatial openness. This is, however, harm and does not give grounds to reach a different conclusion in respect of the considerations that are set out above.

- 7.2.23. Policy FAV 13 relates to Local Green Space but this parcel of land does not fall within one formally designated in the Neighbourhood Plan and the policy is clear that it only relates to those that are specifically designated by the Neighbourhood Plan. In any case, the policy aligns with national policy and so would not introduce any different considerations to those that have been considered above.

Open Space

- 7.2.24. Policy DM17 states that development will safeguard existing open space in accordance with national policy. In addition, Policy CP5 states that the Council will safeguard open space, with reference being made to Policy DM17.
- 7.2.25. Paragraph 104 states that existing open space should not be built on unless an assessment has been provided to show that it is surplus to requirements, the loss would be replaced by an equivalent or better provision or the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.
- 7.2.26. The NPPF defines open space as all open space of public value which offer important opportunities for sport and recreation and can act as a visual amenity. When considered alone and in conjunction with the wider parcel of open space that sits to the west, it is considered that the site constitutes open space.
- 7.2.27. The proposal would not result in the total loss of open space, but the shared use of that open space. This is, in part, encouraged by paragraph 98 of the NPPF which states that planning decisions should *“plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments.”*
- 7.2.28. The proposal would involve the partial change of use of land to enable it to function as a beer garden, albeit it is envisaged that the land would also remain available for use as public open space, being a shared space. Through the partial intervention on the open space, there is a partial conflict with the abovementioned policies as the land would not remain entirely open and available for public use in the same way that is currently the case. This was reflected in the reason for the refusal of the previous application which referenced Policy DM17 and the *“direct loss of this highly valued open green space”*.
- 7.2.29. As per the assessment in the Local Green Space section, it is considered relevant that the site is a small part of the wider area of open space and, considered in that wider context, it is of limited value. There could be an actual

and perceived loss of availability of open space as a result of the land being commandeered as beer garden rather than open space. However, taking into account the overall quantum of open space of which this area forms part, it is recognised that there are other areas in proximity that are more likely to be highly valued by the users of the area. From this basis, whilst there is a partial conflict with policy arising from what is tantamount to an intermittent loss of public open space, it is considered that the harm arising from this is limited.

Main Town Centre Use.

7.2.30. Restaurants and pubs are main town centre uses and, as such, Policy DM2 and section 7 of the NPPF are applicable.

7.2.31. These require a sequential test to be undertaken with a preference being for such developments to be located in town centre or edge of centre locations. However, this would be entirely impractical in this case as the proposal is to be partially ancillary to an existing building and operating business. No other sequentially preferable location for the development could feasibly exist. Moreover, the proposal would fall outside the threshold for any impact assessment to be required. The proposal is therefore not considered to be prevented by the abovementioned policies.

7.3. Heritage Assets

7.3.1. 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.

7.3.2. A similar duty exists where the proposed development will be within a conservation area where section 72 of the same Act requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

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

7.3.4. Policies DM32, DM33 and CP8 also require the protection of the heritage assets, albeit they are not consistent with the NPPF as they do not include a reference to weighing harm against public benefits. Neighbourhood Plan FAV11 also directly addresses heritage. Policies ST1, ST7, and DM14 of the Local Plan 2017 together with policies FAV12, and FAV15(6) of the Faversham Neighbourhood Plan 2024 also seek to protect heritage assets.

- 7.3.5. It is recognised that the previous reason for refusal identified conflict with policies DM32 and DM33 of the local plan and the reason for refusal states that the development would “have a negative impact upon the amenities of the area, upon the setting of nearby listed buildings and the special character of the Faversham conservation area.” The minutes of that meeting do not give a clear indication of the harm that was identified.
- 7.3.6. That stance was in contrast with the recommendations of officers. However, the position of the Council has previously been that the development would be unacceptable in this respect.
- 7.3.7. Although the details are limited, it can be assumed that the harm identified to the Conservation Area would have been as a result of the loss of open space, with it being the case that the open space must have been held as being valuable to the character and appearance of the Conservation Area. In this regard it is noted that the Conservation Area Appraisal (2004) refers to the Front Brents area as set out below, which specifically references the green spaces:

“Small C19 terraced houses, now punctuated by green areas, are set out along Front Brents on the north-west bank of the creek, although the more substantial stuccoed bulk of Bridge House (built in the early C19 and once a place of mercantile exchange) defines the corner with Church Road. Whilst the terraced houses mostly now have painted or rendered brickwork, replacement windows/doors and concrete roof tiles, their modest form and character still contributes positively to the character and history of the Creekside scene. The early C19 Albion public house is distinctive for its white-painted weatherboarding and slate-covered roofs; with twelve-paned sash windows overlooking the creek, and tables and chairs spilling out into the roadway, it is the attractive focus for eating, drinking and conversation which brings welcome life and vitality to the Creekside.

Green spaces (sometimes taking the place of demolished terraced houses) are now a significant feature of Front Brents and give the place a rather informal and relaxed feel. The largest of these is at the northern end of the road, where the lower unkempt section is historically important for embracing a severed loop in the creek left by the straightening of the channel in 1843.

Front Brents itself is a private street with restricted vehicular use so that it has the character of a path-cum-road where views of the creek can be enjoyed in peace and comfort. The creek-side verge (Town Green) forms an attractive green edge with well-spaced willow, birch and hawthorns trees. Kerbs, footways and all the clutter often prevalent in public streets are absent from the roadway so that an attractive and relaxed character predominates. There is access here to a timber jetty built in 1985 with moorings for a dozen or so small leisure craft; this trickle of life and activity on the water, important though it is, is not however on a scale to compensate for the demise of commercial craft. The view here confirms that the 'gritty' working waterside character of the creek has largely vanished and that it is now a quieter and more orderly place.”

- 7.3.8. The nearest listed buildings are Willow Tap Cottage and Creek House, Brents Tavern and St John the Evangelist Church to the north west of the creek and two of the converted former mills to the opposite side. These are all Grade II listed. Alike the harm to the Conservation Area it can be presumed that it was identified that the open space was valuable to the setting of those buildings and that through the alternative use of the site, harm to the setting of some of those buildings would have been identified. It is considered that the distance from the site and the intervening features means that there would be no harm to any listed buildings other than Willow Tap Cottage and Creek House.
- 7.3.9. Other than the reduction of tables at the site, the development is fundamentally the same and that baseline position of the Council has to be respected unless a case can be made that there are different policies or circumstances that would justify reaching a different position in relation to these specific matters.
- 7.3.10. The Design and Heritage Manager has raised no objection in respect of this application, alike his predecessor. In doing so it has been stated that “the picnic tables and benches are simple in design using traditional materials and are inherently temporary and moveable structures. Given the proposal would not alter the open and permeable quality of this green space, the Creekside already functions as a place of open air recreation and leisure, and the limited visibility between the application site and surrounding heritage assets due to intervening hedges, on heritage grounds there is no objection to the proposal which would preserve the character and appearance of the conservation area and the setting of the listed buildings. Overall, there is no objection to the proposed change of use with associated picnic tables and benches that would match the character of the area and is reversible in nature.”
- 7.3.11. The applicant has provided a reviewed version of the Heritage Impact Assessment that was submitted before. In summary this finds that the development “would serve to preserve and enhance the character and appearance of the Conservation Area; would not detract from the setting of a non-designated heritage asset; and would not detract from the setting of a nearby listed building.” As the document is fundamentally the same, its content is not grounds to reach a different conclusion in respect of the proposal.
- 7.3.12. In the interests of being consistent, it is considered that the former decision of the Council must be a material consideration and, other than a minor change being brought about through the number of tables, it is not considered that there would be grounds to reach a different conclusion. The partial loss of open space was found to be harmful to the character and appearance of the Conservation Area previously and in the context of the abovementioned appraisal, this approach can be taken again. However, this must be less than substantial harm in the context of the NPPF and, within the scale that sits within that category of harm, it is suggested that the harm must be at a very low level and at a lower level than was the case previously as a result of the reduction of the number of tables proposed. In this regard it is noted that the Conservation Area has to be viewed as a whole and as such, the change of use of a small parcel of land is not considered to be anywhere near moderately or significantly harmful.

- 7.3.13. Similarly, being consistent with the previous decision of the Council and recognising that harm was identified in respect of the effect on the setting of the abovementioned listed buildings, it is considered that, by definition, this has to be less than substantial harm. Any harm would be at the very low end of the scale due to the distance from the listed buildings and the minor nature of the proposal. As above, whilst the difference is minor, there would also be less harm than would have resulted from the previous proposal as a result of the reduction of the number of tables proposed.
- 7.3.14. As set out above Policies DM32 and DM33 require a binary assessment of whether or not harm would be caused. The reduction of tables is noted but, consistent with the previous decision, harm would still be derived in respect of the impact on the abovementioned heritage assets. There would, therefore, be a conflict with the abovementioned policies.
- 7.3.15. The Faversham Neighbourhood Plan has been made since the previous decision and it is noted that policy FAV11 states that “heritage-led regeneration and the adaptation and reuse of historic buildings will be supported, providing such works preserve or enhance the character or appearance of Conservation Areas and preserve listed buildings and their settings.” Policy FAV11 also states that development in conservation areas should preserve or enhance their character or appearance and setting, including their architectural quality and diversity, historic landscapes, townscape, historic layout and other historic features. Policies FAV12 and FAV15 are less direct in relation to heritage assets but have a similar theme of ensuring protection. There would be a conflict with these policies also.
- 7.3.16. It is noted that the applicant has referred to the building as a non-designated heritage asset. However, this was not assessed previously and the site is not designated on the Council’s local heritage list. Considering the building as a non-designated heritage asset, it is considered that the proposal would have a neutral effect on its setting given that the functional benefit would counteract the visual impact of the tables and, therefore, this does not affect the assessment.
- 7.3.17. The NPPF requires a balancing exercise to be undertaken to establish whether any harm to is outweighed by any public benefits that may arise. This exercise will be undertaken below.
- 7.3.18. In considering the impact of this proposal upon designated heritage assets, officers have had regard to the Council’s obligations pursuant to the Planning (Listed Building and Conservation Areas Act) 1990.

7.4. Character and appearance of the site and the area.

- 7.4.1. Policies CP4 requires that development is of a high quality that is appropriate to its surroundings through, amongst many measures, creating safe, accessible, comfortable, varied and attractive places that enrich the qualities of the existing environment, reinforce local distinctiveness and retain and enhance features that contribute to local character. Policy DM14 provides similar guidance.

7.4.2. Setting aside the consideration of heritage assets, no other harms were identified in respect of the character and appearance of the site and the surrounding area. The Design and Heritage Manager has raised no objection to the proposal and, subject to conditions, it is considered that any objections should be raised other than where they relate to the heritage assets of the area as has been set out above. It is noted that Policy CP4 was not referred to in the previous reason for refusal and there is not considered to be any grounds to introduce any additional reasons for refusal in respect of this matter. In this regard, it is taken that the reference to Policy DM14 but not CP4 indicates that the concern raised in that regard was in respect of the other elements of that policy that are addressed elsewhere.

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 though, given the modest nature of the proposal and there being no below ground works, KCC Archaeology raise no objections. This position is considered to be sound and, as such, the proposal is considered to accord with policies CP8 and DM34 of the Local Plan 2017, FAV11 of the Faversham Neighbourhood Plan 2024 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. Policy DM28 of the Local Plan 2017 clarifies that development which is likely to have an adverse effect upon locally designated sites will be permitted only where the damage can be avoided.

7.6.3. Although no Preliminary Ecological Appraisal accompanied the application, given that the application site is comprised of well-maintained grassland this is considered to be acceptable with regards to impacts upon biodiversity. In terms of Biodiversity Net Gain (BNG), the proposed development would be exempt from

this particular requirement given that the development is below the required threshold and de minimis by not impacting any priority habitats or non-priority on site habitats.

7.6.4. The Swale SSSI, SPA and Ramsar designations lie in excess of 500m to the north east of the site such that no direct impacts would arise. On this basis and given the nature of the proposals and the degree of separation, the proposals would not give rise to a likely significant effect on those designations. As likely significant effects can be screened out (the first stage of the Habitats Regulations Assessment process), an Appropriate Assessment is not required in this case.

7.6.5. Given the above assessment the proposed development is considered to be in accordance with policies CP7 and DM28 of the Swale Borough Local Plan 2017 along with FAV7 of the Faversham Neighbourhood Plan 2024.

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. Given that the proposed beer garden would function as ancillary to the established Albion Tavern drinking establishment, it is not considered that the change of use would significantly increase traffic volume to the detriment of highway safety. It is noted that there are no objections from the Highway Authority in respect of the proposal, and it is therefore suggested that it would not be prudent to object to the application on the grounds of highway safety or traffic generation.

7.7.4. In addition, the Public Right of Way Officer has stated that there are no objections to the proposal in the context of the presence of PROW ZF5. In this regard it is not considered that there would be any obstruction of the PROW caused by the development.

7.7.5. Nevertheless, no additional designated off-street parking has been proposed to reflect an uplift in demand that might arise from the additional tables. In this regard, it is noted that the Council's Parking Standards (2020) which were adopted since the previous decision, advises that 1 space per 6 square metres of floorspace should be provided for a restaurant and 1 space per 15 square

metres for a public house. The area demarked with tables on the submitted plan (with suitable allowances for movement around this tables) amounts to approximately 100 square metres and, as such, the parking standards would justify an uplift of parking provision to the extent of 16 spaces under the restaurant standards and 7 if considered under the public house standards. For 10 tables, 16 seems to be a high amount and so it is considered that the lower amount represents a more appropriate and proportionate provision. However, there would still be expected to be an uplift of parking demand arising from up to 10 tables worth of customers.

7.7.6. It is noted that the previous decision of the Council identified that the development would have a “negative impacts on....local parking problems” and policy DM7 was referenced in the reason for refusal. Although reference was made by an objector to the impact of parking on the usability of flood gates and the potential to cause indiscriminate parking, the minutes of the relevant Committee Meeting the summary indicates that the concern was that parking would be a problem.

7.7.7. For the reasons given above, no objection is raised in respect of highway safety or capacity. However, it is considered that an impact on parking can be an amenity issue. This is particularly the case given that limited fallback or overspill capacity within nearby streets can heighten the potential for amenity conflicts. Although there is some parking availability within the adjacent car park and the surrounding highways, it is known that this is already well used and therefore there could be additional parking strain arising from the proposed development. This would not give rise to demonstrably unsafe conditions but could cause inconvenience to the detriment of the general amenities of nearby residents. Consequently, the proposed development is considered to be in conflict with policies DM7 of the Local Plan 2017. This is, however, considered to be an indirect inconvenience to amenities rather than a direct harm and, therefore, it is not considered that it would cause the significant harm required for Policy DM14 to be conflicted. Moreover, it has to be acknowledged that there would be less of an impact than was the case when the 2019 application was considered due to the reduction of the proposed number of tables.

7.7.8. The Faversham Neighbourhood Plan 2024 has been made since the previous decision and whilst policy FAV4 is noted, it is not considered that it raises any matters that would justify raising an objection to the proposal. Whilst it is noted that it requires all development to provide storage facilities, it is considered to do so would be impractical in this case, particularly due to the small scale of the development. Therefore, no conflict with policy is identified.

7.8. Flood Risk

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 NPPF (paragraph 170) stipulates that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas

at highest risk. If it is not possible, however, for development to be located in areas with a lower risk of flooding, then paragraph 177 of the NPPF requires the application of an exceptions test. The need for the exception test depends on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in Annex 3. Finally, the NPPF sets out at paragraph 181 that, when determining any planning applications, local planning authorities must ensure that flood risk is not increased elsewhere in the district.

7.8.3. Although located in Flood Zone 3 and the northern part of the site comprising a risk of surface water flooding, the site relates to a change of use of land and, as per footnote 60 of the NPPF, neither a sequential nor an exceptions test are required. In any case, given the beer garden would function as ancillary to Albion Tavern, it would be impractical to locate the proposal within an alternative location. Nevertheless, a site-specific Flood Risk Assessment was submitted which confirms the implementation of a Flood Emergency Plan and Evacuation Strategy. This is considered sufficient to overcome any potential flood risk to future patrons.

7.8.4. Subject to this document being secured by condition, the proposal is considered to be in accordance with policy DM21 of the Swale Borough Local Plan 2017, FAV8 of the Faversham Neighbourhood Plan 2024, together with the NPPF in this regard.

7.9. Living Conditions

7.9.1. Policy DM14 of the Local Plan and the NPPF requires that 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. This is also set out within policies FAV10(9) and FAV12 of the Faversham Neighbourhood Plan 2024.

7.9.2. The nearest residential properties are those along Church Road that abut the northwestern boundary of the site. Other residential properties exist at the opposite side of Faversham Creek.

7.9.3. It is recognised that the previous reason for refusal identified conflict with policy DM14 of the local plan and the reason for refusal states that the development would have “negative impacts on the residential amenity of adjacent residents.” The minutes of that meeting indicate that this was a concern, but no additional detail can be drawn from the minutes.

7.9.4. Although the details are limited, it can be assumed that the assessment made by the committee would have been that the proposal would lead to an intensification of use along with increased footfall to the application site owing to the provision of the beer garden. In this regard it is recognised that, although functioning as ancillary to and in subordination with an established business, it would nonetheless lead to an increase in the levels of noise and disturbance impacts resulting from the additional comings and goings from customers, particularly during the summer months. The decision would suggest that the

assessment of the Planning Committee was that this would have caused harm to residential amenity.

- 7.9.5. It has been suggested by the applicant that the hours of use of the site as a beer garden would replicate those of the Albion Tavern and it is noted that the submissions of the applicant indicate that they would be able to wish to use the provisions until 10pm. However, this would be contrary to the guidance that has been provided by the Council's Environmental Health officers who have suggested that the use of the proposed area be limited to 11:00 to 21:00. These reduced hours are considered to be appropriate and would reduce the likelihood of any noise extending into the period where noise is more likely to be noticed and impactful. It is noted that premises already benefits from outdoor seating which means that there is already some noise experienced in the local environment and, at the later times of the day, it is considered that it would be undesirable for this to be added to. That existing activity demonstrates that it is not such a quiet setting that the proposed development would be unduly harmful to residential amenity during the suggested operational times.
- 7.9.6. The Council's Environmental Health Officer has not objected to the current application subject to conditions to control the opening hours, the playing of music and the submission and approval of a Noise Management Plan.
- 7.9.7. Although it would also have been the case at that time, it is considered relevant that the licensing regime would have some powers to control the use of the site where that use relates to the existing business.
- 7.9.8. Moreover, the proposal to require a Noise Management Plan to be submitted and agreed would represent a material change of approach compared to that which was considered previously. This would provide an additional mechanism to control any issues that arise. In addition, as has been set out elsewhere, there would be less disturbance and activity at the site as a result of this proposal when compared to the previous proposal at the site, by virtue of the reduction of the number of tables from 12 to 10.
- 7.9.9. In this regard, whilst the previous position of the Council is respected, it is considered that there are factors that represent material considerations that would justify reaching a different conclusion in this regard. Consequently, the proposed development is not considered to be in conflict with policy DM14 of the Local Plan 2017 together with FAV 12 of the Faversham Creek Neighbourhood Plan 2014 and the NPPF.
- 7.10. Heritage Balance, Assessment of Very Special Circumstances in the context of Local Green Space policy and the Planning Balance.**
- 7.10.1. It is recognised that the Council has a duty to act consistently and as such the decision of the Council in 2019 is an important material consideration. Consistent with that decision, harms have been identified in the assessment that has been undertaken above. In the considerations that will be undertaken below, those harms have to be weighed against any benefits of the proposal. Rather

than repeating the benefits of the scheme for each, it is considered prudent to set them out once.

- 7.10.2. The applicant's operational statement indicate that the benefits would be primarily economic and brought about through the inward investment into the site along with the accompanying increase in local spending from future customers and the direct employment of three additional members of staff.
- 7.10.3. Also, it is suggested that minor social benefits would be gained through improvements and the expansion of the pub within a sustainable location close to the town centre of Faversham.
- 7.10.4. The "Principle" section above identifies that the proposal would align with policies that support economic development. The National Planning Policy Framework, at paragraph 85, sets out that planning decisions 'should help create the conditions in which businesses can invest, expand and adapt' and that 'significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development'. This is also supported by government announcements relating to the hospitality and service sector, including documents such as 'Supporting Pubs and the Hospitality Sector' which was prepared by HM treasury in 2002 which emphasises how restaurants play a vital role in supporting economic growth across the UK and, more recently (June 2025) the House of Commons debate document "Government support for the hospitality sector." There are public benefits arising in this regard that are in line with the objectives of the Framework and cumulatively carry significant weight in favour of the proposed development, albeit it is recognised that the benefit is moderated by virtue of the small scale of the site and the proposal.
- 7.10.5. The previous Officer Report identified that the relevant considerations were finely balanced. Similarly, the minutes from the 2019 Planning Committee meeting indicate that a vote relating to the potential approval of the application was not unanimous. From this basis, as long as the weight applied to the relevant material considerations is done logically, it is considered that it would be reasonable for the Planning Committee to support or refuse the application.

Heritage Balance

- 7.10.6. As set out above and in the interests of consistency, it is considered that a very low level of less than substantial harm to the Faversham Conservation Area and the setting of Grade II listed buildings can be identified. Although the harm would be at a very low level, the NPPF still requires this to be given great weight. However, the NPPF states that 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 of the proposal including, where appropriate, securing its optimum viable use.
- 7.10.7. Even giving great weight to the very low level of less than substantial harm that has been identified, it is considered that the public benefits that have been set out above outweigh that harm. Consequently, the proposal is

considered to accord with the approach set out at section 16 of the NPPF in respect of the effect on the heritage assets at and near the site. In undertaking this balancing exercise, officers have had regard to the Council's obligations pursuant to the Planning (Listed Building and Conservation Areas Act) 1990.

Assessment of Very Special Circumstances in the context of Local Green Space policy

7.10.8. As detailed above, the NPPF sets out that 'very special circumstances' will not exist unless the potential harm to the Green Belt, or in this case the Local Green Space, by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

7.10.9. The proposal represents inappropriate development and harm would also be caused to openness. The NPPF requires that this is afforded substantial weight. Even doing so, the harm arising is considered to be moderated by virtue of the small scale of the impact and the comparatively limited value of the land to the overall function of the Local Green Space.

7.10.10. The benefits of the scheme have been set out above. In this case, it is considered that the circumstances of this case are very special, noting that the proposal represents a unique opportunity to support the established business which, in itself, is an important feature of the locality and the manner in which it functions. In this instance, it is considered that the benefits of economic development, the associated policy support and the circumstances of the case mean that the very special circumstances exist to outweigh the harm that would be derived from development that is inappropriate in a Local Green Space, harmful to the openness of the Local Green Space and all other harm that has been identified. Therefore, the proposal is considered to be acceptable and Local Green Space designation and the impact is not considered to be reason to find the development unacceptable.

Planning Balance

7.10.11. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.

7.10.12. As detailed above, harm has previously been identified in respect of the effect on heritage assets and, whilst there are public benefits of the proposal which outweigh the harm such that there is no conflict with the NPPF, there is conflict with Policies DM32 and DM33 of the local plan which do not enable an assessment of wider benefits. The proposal is also in conflict with policy FAV11 of the Faversham Neighbourhood Plan in this respect. However, the harm arising from this conflict is at a very low level.

7.10.13. The proposal would also conflict with Policy DM18 by representing development at a Local Green Space that does not preserve the openness of that Local Green Space. Similar to the consideration of heritage assets, unlike the NPPF the local plan policies do not include a mechanism of balancing harms

against benefits and, as such, there is a conflict with policy despite there not being a conflict with the NPPF in this regard. The limited harm arising from the inappropriateness of the development in the Local Green Space and the harm to openness is however still required to be afforded substantial weight.

7.10.14. There would also be a shortfall of parking which could cause inconvenience to local residents and as a result, there would be some harm arising from the conflict with Policy DM7.

7.10.15. However, the proposal would accord with various policies and the benefits that have been identified are considered to outweigh the harm that would be caused. The proposal is considered to accord with the NPPF when it is taken as a whole and, therefore this is a material consideration that is considered to justify granting planning permission notwithstanding the conflicts with the development plan that have been identified.

7.11. Conclusion

7.11.1. For the reasons given above, whilst noting that the Council previously refused a similar application at the site, it is considered that the planning application can be supported subject to the imposition of the conditions that are set out below.

7.11.2. In considering the application, account has been taken of the information included with the application submission, the National Planning Policy Framework and the Development Plan, and all other material considerations including representations made including the views of statutory and non-statutory consultees and members of the public.

7.11.3. It is noted that the Officer Report for the previous application recommended that planning permission was granted for a temporary period. This is not considered to be necessary for the reasons given above, but if the Planning Committee were to identify any concerns or wish to apply weight differently, it would be necessary to consider whether they could be addressed through allowing the development on a temporary, trial basis. A suitable period could be 2 years as previously recommended.

7.12. Recommendation

7.12.1. Grant planning permission subject to the following conditions:

Time Limit

1. The development hereby permitted shall be commenced before the expiration of three (3) years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town & Country Planning Act 1990 (as amended).

Drawings

2. The development hereby permitted shall be carried out in accordance with the approved plans and documents listed below.

Site Location Plan

AT-18-100-A - Site Layout as Proposed

26.015.SN.002 - Proposed Site Plan

Standard 6 Seater A-Frame Table Detail (Received 13/03/2026)

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

Noise Management Plan

3. Prior to the use of the development, a Noise Management Plan covering the entirety of the operation shall be submitted to and approved in writing by the local planning authority. The plan shall include but not be limited to examples such as hours of operation, noise from external activities and details of mechanisms to address complaints.

The development shall only be used in full accordance with the approved Noise Management Plan.

Reason: In the interests of the protecting the living conditions of the occupiers of nearby residential properties.

Means of Enclosure

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order), no gate, fence, wall or other means of enclosure shall be erected, constructed, maintained, improved or altered under the terms of Class A of Part 2 of Schedule 2 of that Order unless planning permission has first been granted by the Local Planning Authority. Moreover, notwithstanding the provisions of Class G of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order), no moveable structures shall be provided at the site other than those that have specifically been approved by the permission hereby granted.

Reason: In the interests of the protecting the living conditions of the occupiers of nearby residential properties and in the interests of visual amenity.

External lighting

5. No artificial lighting floodlighting, security lighting or other external lighting shall be installed or operated at the site in connection with the use hereby permitted.

Reason: In the interests of the protecting the living conditions of the occupiers of nearby residential properties and in the interests of visual amenity.

Hours of Use

6. The land shall not be used by customers of the adjoining public house before 11.00am or after 9.00pm on any day.

Reason: In the interests of the protecting the living conditions of the occupiers of nearby residential properties.

Amplified Sound

7. The area to which this planning approval relates shall not be used, at any time, for any live music, and no recorded or amplified music shall be played from the site.

Reason: In the interests of the protecting the living conditions of the occupiers of nearby residential properties.

Picnic Tables / Benches

8. No more than 10 picnic tables / benches of the type shown on the Standard 6 Seater A-Frame Table Detail (Received 13/03/2026) documents that have been submitted with the application shall be sited at the application site in conjunction with the use hereby approved and no picnic tables / benches shall be positioned other than as shown on plan AT-18-100-A hereby approved, no picnic tables / benches of any other type shall be sited at the application site unless details of such provisions have first been submitted to and approved in writing by the Local Planning Authority and no picnic table / bench shall be fixed to the ground at any time.

Reason: In the interests of residential and visual amenity.



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PLANNING COMMITTEE – 13th August 2026

PART 5

Report of the Head of Planning

PART 5

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

Item 5.1 – 25/502229/PIP

Land to the south of Fox Lane, Oversland, Boughton Under Blean ME13 9HF

PINS Decision: DISMISSED

Committee or Officer Decision : DELEGATED REFUSAL

Observations

Permission in Principle was sought for the erection of 7 self-build dwellings. The main issues were the acceptability of the location for development in terms of the Local Plan settlement strategy, the effect on the character of the countryside and the supply of BMV land.

After assessing the facilities of services and the position of Neames Forstal in the settlement hierarchy and the availability and adequacy of pedestrian routes, the Inspector identified that it is *“almost certain that future occupants of dwellings on the appeal site would primarily rely on the use of a car for more local journeys to reach everyday services and facilities.”* Having noted the relationship and connections to Selling and the availability of train services from Selling station, the Inspector went on to state that *“despite the proximity of the train station, the location of the appeal scheme would conflict with the Council’s strategy for the location of development, and future residents would be car dependent insofar as access to local services is concerned.”* The Inspector therefore identified conflict with the settlement strategy.

In terms of the impact on the character of the countryside, the Inspector undertook an assessment of the locality before stating that *“given the topography, it is likely that any residential development would be highly visible from the PROW and from where the PROW meets Fox Lane. The residential use would erode the open and tranquil rural setting, resulting in harm to the character of the countryside.”*

The Inspector went on to conclude that insufficient evidence had been provided to demonstrate that alternative, lower grade agricultural land had been considered and it was a concern that *“incremental losses can cumulatively be significant, consequently harming the availability of the highest grade BMV.”*

The Inspector considered other appeal decisions and proposals that had been brought to their attention and other matters that had been raised before going on to undertake a balancing exercise that addressed housing supply, self-build housing supply and socio-economic benefits as well as the abovementioned harms and associated policy conflicts. The Inspector concluded that the harms would significantly and demonstrably outweigh the benefits of the proposal and therefore the appeal was dismissed.

Item 5.2 – 25/505072/FULL**2 The Mall, Faversham, Kent, ME13 8JL****PINS Decision: ALLOWED****Committee or Officer Decision : DELEGATED REFUSAL****Observations**

Planning permission was sought for a single storey extension. The main issue was the effect of the development on the living conditions of neighbouring residents. It was identified that the proposed extension would only be slightly higher than the existing boundary wall and, therefore, the development would not have an oppressive or overbearing impact on outlook from the windows or garden of the neighbouring property and not have an *"appreciable effect on levels of light."* The development was, therefore, found to be acceptable and the appeal was allowed.

Item 5.3 – 24/504520/FULL**Salvation Place, Bell Farm Lane, Minster-on-Sea, Kent ME12 4JB****PINS Decision: ALLOWED (APPLICATION FOR COSTS REFUSED)****Committee or Officer Decision : DELEGATED REFUSAL****Observations**

Permission was sought for the change of use of land to enable the siting of caravans for residential occupation and associated development. The main issues were the risk of coastal erosion and the effect on the Thames, Medway and Swale Estuary Special Protection Area and Ramsar Site.

The site is within a Coastal Change Management Area and Erosion Zone 1. However, it was noted that only a small part of the site is at short-term risk but the majority of the site is at medium-term risk, i.e. 20 to 50 years into the future. The Inspector noted the objection from the Environment Agency and identified that policy DM23 and the NPPF was conflicted by the proposal.

In respect of the SPA and Ramsar Site, the Inspector found that there would not be a population increase at the site and as such no additional impact to mitigate the development was required.

The Inspector gave significant weight to the benefits of contributing to the supply of Gypsy and traveller pitches and, noting the time when the risk was considered to be most impactful, considered it appropriate to grant a temporary planning permission for a period of 5 years. The fact that the use of the site had been long-established meant that there was a distinction to be made between this appeal and a similar dismissed appeal at a nearby site where the proposal was for a new pitch.

Item 5.4 – 24/502717/OUT

Land West of Borden Lane, Sittingbourne, Kent, ME9 8HR
PINS Decision: ALLOWED (APPLICATION FOR COSTS REFUSED)

Committee or Officer Decision : COMMITTEE DECISION

Observations

Outline planning permission (with access considered) was sought, for the erection of a care home. The main issues considered by the Inspector were the effect on the Important Local Countryside Gap, the Council's Spatial Strategy, the effect on Best and Most Versatile agricultural land (BMV) and the effect on ecology, including protected species and priority habitats.

Firstly, the Inspector found that the proposal would have an adverse effect on the ILCG. It would conflict with the objectives of Policy DM25 insofar as it seeks to ensure that the individual character and setting of settlements is retained and that development does not undermine the purposes of ILCGs.

The Inspector then identified that the proposal would not maintain the setting of settlements, or protect and, where appropriate, enhance the intrinsic value, landscape setting, and beauty of the countryside. Therefore, the proposal was agreed to be contrary to the Council's spatial strategy because of the conflict with Policies ST1 and ST3.

In terms of BMV, the Inspector found that the development would contribute to the gradual and piecemeal erosion of the overall stock of high-quality agricultural land and, therefore, the proposal would conflict with Policy DM31.

With respect to ecology it was found that the proposal would result in the loss of part of a priority habitat and some ecological impact, including potential effects on the adjacent nature reserve. However, having regard to the condition and extent of the existing habitat, the retention and enhancement measures proposed, the findings of the ecological surveys, and the mitigation and provisions secured through the Unilateral Undertaking, the Inspector found that the impacts would be appropriately mitigated and would not result in unacceptable harm to biodiversity or protected species. The proposal was therefore considered to accord with policies DM28 and DM31 and the applicable legislation.

The Inspector assessed other factors that were raised including the effect on living conditions of other residents, highway safety, parking, heritage assets, the need for development, the supply of housing land and the implications for the weight that could be afforded to the local plan, contamination and the fact that the application had been submitted in outline. Then, within a planning balance section, the Inspector weighed all of the material considerations and concluded that *"the proposal would result in moderate harm arising from conflict with the development plan. However, the benefits of the scheme, most notably the delivery of a much-needed care home and its contribution to housing supply, are substantial and attract significant weight. When assessed against the policies in the Framework taken as a whole, I find that these benefits clearly outweigh the identified harms. The adverse impacts would not significantly and demonstrably outweigh the benefits."* The appeal was therefore allowed.

An application for an award of costs was made in respect of the reason for refusal that related to ecology in the context that no objection had been raised by the Council's specialist consultee. Whilst the Inspector found shortcomings in the adequacy of the case that was put forward by the Council and reached a different verdict, the Inspector identified that legitimate concerns were raised and the appellant undertaking additional work was not a result of

unreasonable behaviour by the Council. Therefore, the application for an award of costs was refused.

Item 5.5 – 24/504410/OUT**Land East of Holywell Primary School, Forge Lane, Upchurch ME9 7AD****PINS Decision: DISMISSED (APPLICATION FOR COSTS REFUSED)****Committee or Officer Decision : COMMITTEE DECISION (ANNDDET)****Observations**

Outline planning permission (with access and layout being considered) was sought, for the erection of 16 dwellings at land to the east of Holywell Primary School and south of Forge Lane, Upchurch. This was a non-determination appeal in respect of which the Planning Committee provided putative reasons of refusal on 5th February 2026. The main issues considered by the Inspector were the local plan settlement strategy, the effect on the character and appearance of the area, whether affordable housing would be secured and whether the proposal would result in the loss of Best and Most Versatile agricultural land (BMV).

In summary, the Inspector found that the proposal was in conflict with the settlement strategy by virtue of the location of the site outside and detached from the built-up area boundary of Upchurch. The proposal was therefore found to be in conflict with policies ST1 and ST3.

With respect to the character and appearance of the area, having considered the context of the site, the Inspector found that the development *“would compromise the open character of the site and disrupt the openness of the wider area.”* The Inspector went on to consider the various vantage points from where the development would be seen, concluding that the open views across the site to the landscape and estuary beyond would be interrupted and landscaping would be unlikely to mitigate this. Concerns were also raised in respect of the visual impact of boundary treatments. No objection was raised to the parking at the frontage or the layout of one of the plots but the Inspector found that *the density of the scheme would represent a more intensive form of development than the primary school which, at present provides a transition between the settlement and the countryside, and that this would disrupt the local pattern of development.”* The Inspector therefore concluded that the proposal would conflict with policies DM24, DM14 and CP4.

The Inspector concluded that it would have been possible to secure an appropriate affordable housing provision and, in relation to BMV, the Inspector concluded that the evidence available indicated that the land should not be considered to be BMV. The proposal was, therefore, found to be acceptable in these respects.

The Inspector had regard to the benefits of delivering housing to address the Council's 5 year housing land supply shortfall and affordable housing, the accessibility of local shops and services, the economic benefits of construction, the proposed community parking and BNG. However, the Inspector found that the adverse effects of the development would significantly and demonstrably outweigh the benefits. Both the NPPF and the local plan, therefore, led the Inspector to the conclusion that planning permission should be refused.

An application for an award of costs was refused having been made on the grounds that it was necessary to submit non-determination appeal, that the view of the Planning Committee was different to the view of officers and that the position of the Council in respect of BMV was

contrary to theirs. The Inspector found that the time that the application was with the Council was excessive, but noted that this was in part due to the appellant having to address objections as well as other circumstances that arose. The Planning Committee reaching a different view to officers was found to be due process and it was found that the Council's case around BMV had been sufficiently made even though it was not agreed. The appellant's other claims of unreasonable behaviour in relation to the Council's case and the debate that occurred around the adequacy of the submitted planning obligation were not agreed.

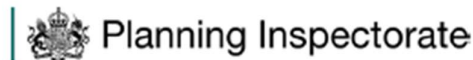
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PLANNING COMMITTEE – 13th August 2026**PART 5**

Report of the Head of Planning

PART 5

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



Appeal Decision

Site visit made on 20 May 2026

by L Francis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th June 2026

Appeal Ref: 6001254**Land to the south of Fox Lane, Oversland, Boughton Under Blean ME13 9HF**

- 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 John Rowley against the decision of Swale Borough Council.
 - The application Ref is 25/502229/PIP.
 - The development proposed is "a phased development of up to 7 self-build dwellings".
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site address on the planning application form does not match that on the decision notice or appeal form. Given that the appeal documentation and the Council's decision notice both refer to the address on the banner heading above, I am satisfied that this appropriately describes the location of the appeal site.
3. The appeal application is for permission in principle, as provided for in the Town and Country Planning (Permission in Principle) Order 2017. The Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development which separates the consideration of matters of principle from the technical detail. Planning permission does not exist unless both the permission in principle and the technical details are approved. This appeal relates to the first of these two stages.
4. The PPG advises that the scope of permission in principle applications is limited to location, land use and amount of development. All other matters are considered as part of a subsequent Technical Details Consent (TDC) application if permission in principle is granted. I have determined the appeal accordingly.
5. The amount of residential development must be expressed as a range, indicating the minimum and maximum number of new dwellings. Although a minimum number was not expressed on the application form, the documents submitted indicate that the range would be between 1 and 7 dwellings.

Main Issues

6. The main issues are whether the appeal site would be a suitable location for housing with regard to:
 - i) the Council's strategy for the location of development and access to services and facilities;

- ii) the character of the countryside; and
- iii) the supply of the Best and Most Versatile Agricultural Land (BMV).

Reasons

Access to Services and Facilities

7. The appeal site lies outside any built up area boundary and is therefore in the countryside for the purposes of planning policy. Policies ST1 and ST3 of the Swale Borough Local Plan 2017 (Local Plan) set out a settlement strategy for the borough. This is hierarchical, focussing development on the larger built-up areas and settlements which provide residents with reasonable access to the services and facilities they require. Policy CP2 aims to improve sustainable transport options including through reducing the need to travel.
8. The appeal site comprises a field off Fox Lane, adjacent to housing in Oversland, a hamlet with no services or facilities. There are some limited services in the neighbouring village of Neames Forstal, comprising Selling train station, a post box and a village shop. At the time of my site visit, the shop's stated opening days were Friday to Sunday. Neames Forstal is a 'Tier 5' settlement. The Local Plan characterises these settlements as having limited sustainability in terms of minimal local facilities and relative isolation from higher order settlements.
9. Pedestrian access to Neames Forstal from the appeal site would be possible via a Public Right of Way (PRoW) which runs alongside the railway and passes by the southern boundary of the appeal site. It would be a reasonably short walk via Selling train station. However, the route would not be suitable for those with buggies or mobility aids due to the nature of the path and stairs to the railway bridge and station. The alternative route to the village would be along the carriageway of Fox Lane until the pavement starts outside Bridge Cottages. Neither route would be particularly attractive in the dark or during inclement weather.
10. The facilities of Neames Forstal would not be sufficient to provide for everyday needs so future residents would need to travel further afield for schools, medical facilities, supermarkets and other everyday requirements. The village of Selling contains a primary school, Public House, village hall and church. My attention has been drawn to a PRoW which links Neames Forstal with Selling. This is an unlit rural footpath and the route to Selling would be rather lengthy and inconvenient from the appeal site. The Council indicate there is no local bus service. It is therefore almost certain that future occupants of dwellings on the appeal site would primarily rely on the use of a car for more local journeys to reach everyday services and facilities.
11. Selling train station has reasonably regular services to Faversham and further afield, with pedestrian access possible along the footpath passing the appeal site. There would therefore be an alternative means of access to employment, leisure and other facilities in more major settlements.
12. Despite the proximity of the train station, the location of the appeal scheme would conflict with the Council's strategy for the location of development, and future residents would be car dependent insofar as access to local services is concerned. The proposal would conflict with Local Plan Policies ST1, ST3 and CP2, along with

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Policy H1 of the Boughton and Dunkirk Neighbourhood Plan 2022-2031. Taken together and amongst other things, these policies set out the Council's spatial strategy which seeks to focus development within identified settlements according to the hierarchy, secure sustainable patterns of development and support sustainable transport.

Character of the Countryside

13. The character of the area is profoundly rural. The small villages and hamlets are surrounded by agricultural land, largely given over to fruit growing. Fields are typically small in size, separated by a network of hedgerows and woodlands.
14. The appeal site comprises a field which has a vegetated boundary to Fox Lane, and there is a small woodland to the rear. The northern side adjoins the garden of a house on the edge of Oversland. The site is open to the PRow and part of Fox Lane, from where the land rises towards the dwellings within Oversland.
15. Oversland itself has a dispersed pattern of development which is focussed on Fox Lane. The use of the appeal site for up to 7 dwellings would effectively extend Oversland towards Neames Forstal. As such I do not regard it as a form of infilling.
16. Although no indicative layout has been provided with the appeal, there is no reason to doubt that the quantum of housing proposed would be capable of being contained within the site. However, given the topography, it is likely that any residential development would be highly visible from the PRow and from where the PRow meets Fox Lane. The residential use would erode the open and tranquil rural setting, resulting in harm to the character of the countryside.
17. The proposal would therefore conflict with Local Plan Policies ST1 and ST3 insofar as the spatial strategy is delivered with the aim of, amongst other things, protecting the character of the countryside.

Agricultural Land

18. The appeal site comprises Grade 1 BMV. Local Plan Policy DM31 states that development on any agricultural land will only be permitted when there is an overriding need that cannot be met within built up area boundaries. Given the housing land supply position, the evidence indicates that the need for housing has not been met through development on allocated sites or within the built up area boundaries.
19. In the case of BMV however, the policy permits its loss only when further criteria are met. The relevant criteria in this case are that there is no alternative, non-BMV site or that use of land of a lower grade would significantly and demonstrably work against the achievement of sustainable development. There is little compelling evidence before me that alternative sites have been explored.
20. Secondly, the policy requires that the development would 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. Neither main party has made the case that the appeal scheme would lead to an agricultural unit becoming unviable. Whilst the appeal site is small in area, and the scheme would not lead to a significant loss of the borough's BMV resource in itself, incremental losses can cumulatively be significant, consequently harming the availability of the highest grade BMV.

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21. In conclusion on this main issue therefore, the proposal would conflict with Local Plan Policy DM31 insofar as it aims to safeguard BMV, allowing its development in limited circumstances.

Other Matters

22. The appeal site falls within the Zone of Influence of European designated sites of the Swale, Thames Estuary and Marshes and the Medway Estuary and Marshes Special Protection Areas and Ramsar sites which are scoped into the Strategic Access, Management and Monitoring Strategy. The sites are designated due to the internationally important numbers of breeding and non-breeding birds and their estuarine habitats.
23. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) require the decision maker to undertake an Appropriate Assessment where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. This responsibility falls to me as the competent authority in the context of this appeal. However, as I am dismissing the appeal for other reasons, it is not necessary for me to carry out an appropriate assessment or pursue this matter further because it would not lead me to a different conclusion.
24. I have been referred to an appeal decision at Basser Hill, Lower Halstow (APP/V2255/W/24/3339042) which allowed 2 self/custom build dwellings. The Inspector afforded significant weight to the provision of self-build housing in the context of the housing land supply shortfall. However, I note that in this case there was already another outline permission for residential development close by. The final planning balance is in any event, highly dependent on the individual circumstances of the proposal.
25. I have also been referred to an allowed appeal, reference APP/F0114/W/22/3310049, where the Inspector found that the loss of an awkwardly shaped, small-scale piece of Grade 2 BMV would result in limited degree of harm. Whilst the appeal site in this case is small in scale, it is not otherwise awkwardly shaped or constrained and as it is also Grade 1 land, there are not direct comparisons to be drawn in this case. It does not lead me to conclude the appeal should be allowed.
26. The appeal reference APP/W0530/W/24/3352408, the Inspector acknowledged that the benefit derived from a small number of residential plots does not carry limited weight. The appeal decision reference APP/T0355/W/22/3309281, the Inspector concluded that it was inevitable that some of the demand for self/custom build would need to be met on otherwise constrained land. It has been brought to my attention that Swale contains several designations which would potentially restrict development including the Kent Downs National Landscape, flood zones 2/3 and BMV land. Although the decisions referred to are not within Swale Borough, I acknowledge that the principles are relevant to this appeal. However, the planning balance is necessarily dependent on the individual circumstances of each case. I have necessarily determined the appeal before me on its own merits according to the development plan and other material considerations.
27. I note that there is a current planning application being considered by the Council (reference 25/501022/OUT) for 90 homes to the south/south-west of Neames Forstal. The evidence before me indicates that a decision has yet to be made on

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this application. Consequently, it has very limited weight as a consideration in my determination of this appeal.

28. I acknowledge the objections of interested parties with regard to matters in addition to the main issues including biodiversity and highway safety. These matters would be considered at TDC stage and as such they do not form part of the considerations relating to permission in principle.

Other Considerations

29. The benefits arising from up to 7 additional dwellings would be moderate given the objective of the National Planning Policy Framework (the Framework) of boosting significantly the supply of housing and its support for small sites. There would also be some modest socio-economic benefits through construction and spend in the local economy.
30. The proposal would also address a significant shortfall in the Council's provision of sites for self and custom build dwellings. I afford moderate weight to this benefit.
31. The Council acknowledges that it is unable to demonstrate a 5-year supply of deliverable housing sites, with the Council's delegated report confirming a supply equivalent to 3.98 years.
32. In these circumstances paragraph 11d)ii of the Framework is applicable. Footnote 8 of the Framework establishes that the policies which are most important for determining the application are deemed out-of-date. Consequently, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard for 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.

Planning Balance

33. The site's countryside location would conflict with the Council's spatial strategy and leave future residents largely reliant on car travel to reach every-day more local facilities including shops, schools, primary medical care and community facilities. The weight that I attribute to the conflict with the development plan in this case is tempered by the access to train services from Selling station which would provide a means of access to services and facilities further afield. I recognise that new housing would maintain the vitality of rural communities as services in nearby villages may be supported by new residents. The Framework also recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Consequently, I afford the conflict with the Council's spatial strategy moderate weight in the overall balance.
34. The Framework also requires development to add to the overall quality of the area, being sympathetic to local character including landscape setting. Furthermore, the Framework states that decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land.

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35. My attention has been drawn to footnote 65 of the Framework which advocates a sequential approach to the quality of BMV to be lost only where significant development is proposed. I do not consider this to be directly relevant as the proposal would not involve significant development. Nevertheless, the Framework recognises the economic and other benefits of BMV, which would be harmfully eroded by the proposal.
36. I afford the harm to the character and appearance of the countryside and loss of BMV significant weight in the planning balance.
37. Drawing the above together, the harm I have identified to the rural character of the area, from the loss of BMV and from the conflict with the spatial strategy, draws the scheme into conflict with the Framework. This harm would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies in the Framework taken as a whole.

Conclusion

38. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above, the appeal should be dismissed.

L Francis

INSPECTOR



Planning Inspectorate

Appeal Decision

Site visit made on 27 April 2026

by C J Leigh BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 June 2026

Appeal Ref: 6005456

2 The Mall, Faversham, Kent, ME13 8JL

- 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 Ben Martin against the decision of Swale Borough Council.
 - The application Ref is 25/505072/FULL.
 - The development proposed is a single storey rear infill extension with mono-pitch glazed roof.
-

Decision

1. The appeal is allowed and planning permission is granted for a single storey rear infill extension with mono-pitch glazed roof at 2 The Mall, Faversham, Kent, ME13 8JL in accordance with the terms of the application ref 25/505072/FULL, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall not be constructed other than in accordance with the materials specified within the application form and plans.
 - 3) The development hereby permitted shall be carried out in accordance with the following approved plans: 25.011A_001, 25.011A_002, 25.011A_010, 25.011A_011, 25.011A_012, 25.011A_013, 25.011A_014 and 25.011A_015.

Main issue

2. The main issue in this appeal is the effect of the proposed development on the living conditions of adjoining occupiers.

Reasons

3. The proposed extension would project from the main rear elevation of the house and extend to the depth of the closet wing, hence infilling the area between this terraced house and its neighbour.
4. Policy DM 16 of the adopted Swale Borough Local Plan (2017) states that planning permission will be granted for alterations and extensions to buildings provided they, amongst other matters, protect residential amenity. Policy DM 14 sets out general development criteria for all development proposals, including that they cause no significant harm to amenity, and they accord with adopted supplementary planning documents and guidance of the Council. The Council have produced Supplementary Planning Guidance: Designing and Extension – A Guide for Householders (SPG). I am not aware of the date of adoption of this or whether it was subject to public consultation. However, it is referenced in the supporting text

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to Policy DM 16 as a material consideration to the determination of proposals; I have had regard to the SPG as a material consideration.

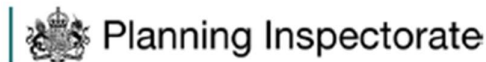
5. The SPG says the Council considers that, for single storey rear extensions close to a common boundary, a maximum projection of 3.0m will be allowed. The depth of the proposed extension would be 6m on the boundary with 4 The Mall. Whilst that is in excess of the figure in the SPG, that depth would lead to little intrusion to the neighbouring property. There is an existing boundary wall between the properties and the drawings show this being utilised for the extension with only a very limited increase in height. The extension is then designed whereby an aluminium flamed structure is set inside the boundary wall, with a mono-pitched roof.
6. The limited height over the boundary wall and these design features would notably reduce the massing of the extension as it lies on the boundary with No. 4 The Mall. This would ensure the proposal is not oppressive or overbearing to the outlook from the windows or the garden space of that property. For similar reasons and from my observations at the site visit, I consider the design approach of the extension ensure there would not be an appreciable effect on levels of light.
7. Thus, in this instance the extension as proposed would not be a significant harm to residential amenity, which is the test set out in development plan policies referred to earlier. The living conditions of adjoining occupiers would be not be materially harmed, notwithstanding that the depth exceeds the numerical figure in the SPG.
8. The design and scale of the extension would respect the host property, and the style and character of the surrounding area, being a modest change to the rear of the building. It would not be visible from the street and have limited presence in the area, due to the location. The character and appearance of the Faversham Conservation Area, within which the site lies, would be preserved.
9. The proposals would therefore accord with the objectives of Policies CP 4, DM 14, DM 16 and DM 33 of the Local Plan, and Policies FAV10 and FAV11 of the Faversham Neighbourhood Plan (2024) which, amongst other matters, seek to ensure development is of high-quality design and preserves the features of conservation areas.
10. I have attached a condition requiring the development to be constructed of materials as shown in the drawings, to ensure a satisfactory appearance to the development. A condition has been attached specifying the approved drawings in the interests of precision. There is no need to attach the appellant's suggested condition relating to obscure glazing as the boundary wall prevents views to the neighbour. I see no need to remove permitted development rights for openings in the house, since that would be a matter unrelated to the development the subject of this appeal. There is also no need for a condition requiring retention of the as-built extension, as any replacement structure would require planning permission. As the scheme is small-scale, I do not see a need for a condition limiting hours of construction.
11. For the reasons given above I conclude the proposed development is consistent with the development plan. The appeal is allowed.

C J Leigh

INSPECTOR

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Appeal Decision

Hearing held on 13 May 2026

Site visit made on 13 May 2026

by N Bowden BA(Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th June 2026

Appeal Ref: 6003458

Salvation Place, Bell Farm Lane, Minster-on-Sea, Kent ME12 4JB

- 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 and Mrs B and H Johnson against the decision of Swale Borough Council.
 - The application Ref is 24/504520/FUL.
 - The development proposed is material change of use of land for stationing of caravans for residential occupation with associated development (hard standing, 2 sheds and cess pool).
-

Decision

1. The appeal is allowed and planning permission is granted for material change of use of land for stationing of caravans for residential occupation with associated development (hard standing, 2 sheds and cess pool) at Salvation Place, Bell Farm Lane, Minster-on-Sea, Kent ME12 4JB in accordance with the terms of the application, Ref 24/504520/FUL, and the plans submitted with it, subject to the conditions in the attached schedule.

Applications for costs

2. The appellant made an application for an award of costs against Swale Borough Council. This is the subject of a separate decision.

Preliminary Matters

3. The description of development included reference to the development being retrospective. Whilst this is the case, it is not an act of development, and I have therefore removed it from the banner heading and from my formal decision.

Main Issues

4. The main issues are:
 - 1) whether the location of the site is suitable for the use, with particular regard to the risk of coastal erosion,
 - 2) the effect of the development on the Thames, Medway and Swale Estuary Special Protection Area and Ramsar Site, and
 - 3) whether there are any other material considerations that are pertinent to the appeal.

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Reasons*Coastal erosion*

5. The appeal site is set along Bell Farm Lane. This is a narrow and largely unmade single-track lane which, along this part, runs roughly parallel with the coastline to the north. It is characterised by a mix of mobile homes, many in gypsy and traveller occupation, holiday chalets and dwellings. This site is one example and presently features a single static mobile home and a few sheds with turfed grass to the front and rear. The rear of the site gives way to the vegetated cliff edge/slope which leads to the shoreline below.
6. The site is within the Coastal Change Management Area (CCMA) and Erosion Zone 1 (EZ1) as set out in policy DM23 of The Swale Borough Local Plan 2017 (SLP). The use of the site for residential purposes is not within one of the limited forms of development that are permissible within EZ1. Even so, criterion 1. of policy DM23 sets out that planning permission will be granted for development proposals subject to them being demonstrated that the proposal will not result in an increased risk to life, nor a significant increase in risk to property.
7. This is consistent with the guidance at paragraphs 184 and 185 of the National Planning Policy Framework (the Framework) which explains, in summary, that development in a CCMA will be appropriate only where it is demonstrated that, inter alia, it will be safe over its planned lifetime and not have an unacceptable impact on coastal change. The overarching approach to this stretch of the coastline is allowing natural processes to take place (cliff erosion) under a policy of no active intervention.
8. Various documents define and explore the projected levels of coastal erosion over the next 100 years. This includes the National Coastal Erosion Risk Mapping (NCERM) and the Council's North Sheppey Erosion Study 2011 (NSES). A small part of the site, closest to the sea is within an area that is subject to short term risk of erosion. However, the majority of the site, which includes the static mobile home itself, and a noteworthy portion of the rear garden is within the medium-term risk area. This equates to a period of 20-50 years.
9. A technical note relating to the adjoining site was also provided with the appeal. Whilst it does not specifically relate to this property, the mapping provided within it clearly shows the appeal site, and mobile home, as comfortably within the medium-term area.
10. The appellant reports that there have been no notable or significant losses to erosion since they occupied the property in the early 2000s. This is evidenced by the fairly substantial and established tree and vegetation growth along the cliff edge. Nevertheless, there is evidence of considerable land-slip at the adjoining site, the Laurels, indicating that such events can be dramatic and severe when they do occur.
11. A consultation response from the Environment Agency¹ highlights this and clearly explains that coastal erosion is unpredictable in nature and more likely to occur in discrete events, resulting in significant losses during a single event. The absence

¹ EA ref: KT/2026/132191/ dated 5 March 2026

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of any significant erosion on this site in the past 20 years is not a guarantee that the site will continue to be unaffected.

12. It follows that I must find conflict with policy DM23 of the SLP and Framework due to the location of the site being within EZ1 of the CCMA and the proposal not meeting all the exceptions set out in this policy. The position of the mobile home within the EZ1 of the CCMA means that there is a risk to human life and property.

Special Protection Area

13. The site is within the Zone of Influence (Zol) for the Thames, Medway and Swale Estuary Special Protection Area (SPA) and Ramsar Site. The SPA is designated due to the presence of key bird species for overwintering, on-passage and breeding birds. Evidence has shown declines in these key bird species with recreational activities causing disturbance impacts highlighted as one potential factor in these population declines. New development resulting in human population increases within the Zol are considered to further exacerbate the pressures on key birds.
14. The Thames, Medway and Swale Estuaries Strategic Access Management and Monitoring Strategy 2014 (TMSESAMMS) sets out the strategy to mitigate these likely significant effects. In summary, Strategic Access Management and Monitoring (SAMM) payments are required on a per dwelling basis. These payments are directed towards various measures to raise awareness of disturbance issues, provide new infrastructure, signage and enhancement to existing sites.
15. The appellant has paid the requisite contribution to SAMM but nevertheless maintains that such a payment is not necessary in this instance. This is because, inter alia, the health condition of the appellants means that they are highly unlikely to visit the SPA and, in any case, they were lawful residents of the site and within the Zol prior to its designation.
16. Whilst I appreciate that the health condition of the residents means that they are unlikely to visit the SPA and therefore not have any direct impact upon it; that is not to say that any guests or visitors may not do so. On this point, and even though I accept a low likelihood, I am unable to conclude that there would be no effect beyond all reasonable scientific doubt.
17. However, I am mindful that at the time of the adoption of the TMSESAMMS, the appellants were lawful residents of the site and had been for a notable period of time. Not only this, but also, the site had a higher population as the appellant's children also occupied the property at that time. They have since moved out and now reside elsewhere, outside the SPA. As a result, this proposal would not result in a population increase that would require a SAMM contribution payment.
18. Accordingly, I conclude that the proposal complies with policy DM28 of the SLP insofar as it would not result in an increase of human population that would have an adverse effect on key bird species. No contribution towards SAMM is required as the proposal complies with policies ST1, DM14, and DM28 of the SLP and Framework.

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Other considerations

19. The Planning Policy for Traveller Sites (PPTS) sets out that local planning authorities should identify and update annually, a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. The Council accepts that it cannot presently demonstrate a five year supply of deliverable gypsy and traveller pitches. The Officer's Report places this figure at 1.3 years worth of supply and this figure is not disputed by the appellants. This is a significant and persistent shortfall. However, in this case, the provisions of paragraph 11 d) i. of the Framework apply as the site is within an area at risk of coastal change, as is set out at footnote 7.
20. The replacement Swale Local Plan is presently at Regulation 18 stage and thus in its very early stages. It is unclear what provision the replacement plan will make to address the present shortfall of gypsy and traveller pitches. Regardless, it will be a period of several years before this bears fruit, and thus, in the intervening period it seems highly unlikely that the shortfall of provision of gypsy and traveller sites will be resolved.
21. The appellants highlighted at the hearing that due to their age and ongoing health concerns that they were no longer actively engaging in a traveller lifestyle. There is, nevertheless, no dispute that they met the definition of gypsies and travellers as defined at Annex 1 of the PPTS. The paucity of alternative sites to relocate to means that a refusal of planning permission and, ultimately, being required to move from Salvation Place would render them effectively homeless.
22. The appellant had not explored alternative sites prior to the planning application being made and has not done so in the intervening period. This was, in part, due to their understanding from the site licence, that their permission was a permanent one. Even so, the council's lack of 5 year sites means that alternatives are unlikely to be forthcoming in the short term.
23. Adding these factors together, I find that they must carry significant weight. However, balanced against this, there is the very real concern that the site could be subject to erosion and an increased risk to life. However, the current static mobile home is located towards the front of the site and it is well away from the area at most risk of immediate erosion. Even if such erosion were to happen, the chances of this occurring to the extent where it would directly affect the static mobile home itself are slim, for the time being.
24. Given the lack of alternative sites and limited immediate threat to the static mobile home itself, it is necessary to consider a temporary permission. The Planning Practice Guidance (PPG) does counsel against the grant of further temporary planning permissions and this site has been the subject of these on multiple occasions already. The PPG states that it will rarely be justifiable to grant a second temporary permission.
25. However, the PPG also states that circumstances where a temporary permission may be appropriate include where it is expected that the planning circumstances will change in a particular way at the end of that period. This is the case here as there are the variables of the replacement Local Plan progressing and, hopefully, identifying sufficient alternative gypsy and traveller sites. In addition, there is the extent of coastal change which can, and will, only be established in the fullness of time. Even if the site is subject to erosion in this time frame, there remains the

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possibility to relocate the mobile home further away from the coast and the areas most at risk on the appeal site.

26. The Council did express that, notwithstanding its objection to the principle of continued occupation of the site, that were the appeal allowed a period of two years would be more appropriate. However, this does not allow sufficient time for the replacement Local Plan to progress in a meaningful way or for any future allocations to come forward as part of a planning application.
27. Accordingly, I find that a period of five years strikes a reasonable balance, giving the appellants sufficient certainty of their tenure and the opportunity for the Council to identify alternative sites for gypsy and traveller accommodation through the Local Plan process. This also factors in the relatively limited risk that the static mobile home itself would be subject to erosion that could affect the occupants. The proposal would not strictly accord with policy DM23 of the SLP insofar as a residential use is not within one of the limited categories of acceptable forms of development nor is it directly related to the coast. Even so, the development is less permanent in nature as a mobile home and this permission is to be temporary. Thus, the negative effects of allowing development within EZ1 of the CCMA are outweighed by the lack of alternative sites. In addition, the risk to the mobile home itself is reduced by its position on the site.
28. Therefore, on balance, I conclude that the significant shortfall in the supply of gypsy and traveller pitches outweighs the risks associated with this proposal and the conflict with policy DM23 of the SLP.

Other Matters

29. Although it was not explored at great length at the hearing, I have been mindful of the recent dismissal of a similar appeal at the adjoining site², now known as Milo's. Notwithstanding the refusal of planning permission, a mobile home has been sited on the land. There is a difference between these two cases. At the adjoining site, the proposal was for a new pitch that would introduce additional population to an area that is within EZ1 of the CCMA. Whereas, at Salvation Place, the use is long established, and it would not result in the introduction of new residents. This is such that I find that reaching a differing conclusion is justified in this case.
30. Whilst the personal circumstances of the appellants were aired at the hearing, I have concluded here that the lack of supply of gypsy and traveller pitches is sufficient in its own right to warrant the grant of a temporary permission. Therefore, it is not necessary for me to explore the personal circumstances of the appellants here.

Conditions

31. I have imposed the conditions set out in the Statement of Common Ground with edits and modifications. This is following discussion at the hearing and having regard to the guidance set out at paragraphs 56 and 57 of the Framework and PPG.
32. Condition 1 relates to the approved plans and is imposed for certainty as to what is permitted.

² APP/V2255/W/24/3354226

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33. Condition 2 authorises the development for a period of five years and is imposed for the reasons I have explained above.
34. Condition 3 restricts the development to no more than one static mobile home and one touring mobile home. This is in the interests of the visual amenity of the area and being mindful that siting of mobile homes further to the coastline increases the risk to human life. It is further imposed in order to restrict, as far as reasonably possible, the number of occupants of the site being mindful of the site's location within the Zone of Influence for the SPA.
35. I have imposed condition 4 to restrict the positions of the static and touring mobile homes. This is in the interests of the visual amenity of the area and being mindful that mobile homes to the rear of the site are more liable to be in a higher risk of erosion. I am mindful that this condition does mean that further approval of the Council would be required to relocate the static mobile home within the five year period, nevertheless, there are no other mechanisms available to me to ensure that the current siting is not altered to a higher risk part of the site.
36. Condition 5 restricts occupation of the site to people who meet the definition of gypsies and travellers set out in Annex 1 of the PPTS and is in order to ensure that the development fulfils its intended purpose. Finally, conditions 6 and 7 are imposed so as to minimise any adverse impacts arising from potential commercial uses of the site.
37. I have not imposed a time limit condition as the proposal is retrospective.
38. A personal permission tying the occupation of the site to the appellants only was aired at the hearing. However, I have balanced the lack of imminent risk to the current position of the mobile home over a five year period against the lack of supply of gypsy and traveller pitches in the locality. This would be applicable to any person in a similar circumstance and meeting the definition at Annex 1 of the PPTS. As such, a personal permission in this instance is not needed and due to the temporary period of the permission.
39. There was discussion at the hearing regarding a potential condition relating to a management plan which would set out the circumstances when the mobile home should, or could, be relocated following potential future erosion. Indeed, at the site visit, a sycamore tree was pointed out to me which marks Mr Johnson's notional line where, should erosion reach that point, the existing static mobile home would have to be relocated further towards the front of the site. The appellants are therefore clearly aware of their circumstances and will invariably have the greatest level of awareness of the state of the site. As such, and given that this permission will only inure for a period of five years, I have not imposed a management plan condition here.

Conclusion

40. The proposed development would conflict with the development plan insofar as it would result in a form of development within EZ1 of the CCMA that is unacceptable having regard to the requirements of policy DM23 of the SLP. However, I have found that the persistent and significant shortfall of gypsy and traveller pitches in the Borough and that the mobile home is set well away from the areas of the site most at risk of erosion are significant material considerations.

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41. Even though paragraph 11 d) ii. of the Framework is not engaged, I still find that the benefits of granting permission for the development outweigh the potential harms to life and property for the temporary period of the permission. As such, the material considerations indicate that a decision should be made other than in accordance with the development plan. Therefore, for the reasons given above the appeal is allowed.

N Bowden

INSPECTOR

Appeal Decision 6003458

Schedule of Conditions

- 1) The development hereby permitted relates to the plans listed below:
Plan 1 – Location Plan
Plan 2 – Proposed Site Layout Plan
Plan 3 – Timber Sheds Elevations and Floorspace
- 2) When the site ceases to be occupied, or at the end of five years from the date of this planning permission, whichever first occurs, the use hereby permitted shall cease and all caravans, buildings, structures, materials and equipment brought on to the land, or works undertaken to it in connection with the use shall be removed and what remains of the land restored to its condition before the development took place.
- 3) No more than two caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (as amended) (of which no more than one shall be a static caravan/mobile home), shall be stationed on the land at any time.
- 4) The caravans shall only be positioned in the location shown on Plan 2.
- 5) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as 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, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.
- 6) 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.
- 7) No commercial activities shall take place on the land, including the storage of materials.

End of Schedule

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Appearances

For the appellant:

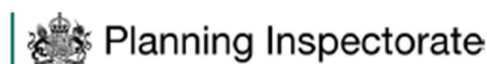
Mrs Alison Heine of Heine Planning Consultancy

Mr Brian Johnson

Mrs Heather Johnson

For the Council:

Mr Christian de Grussa, Senior Planner to Swale Borough Council



Costs Decision

Hearing held on 13 May 2026

Site visit made on 13 May 2026

by N Bowden BA(Hons) Dip TP MRTPI

an inspector appointed by the Secretary of State

Decision date: 8th June 2026

Costs application in relation to Appeal Ref: 6003458

Salvation Place, Bell Farm Lane, Minster-on-Sea, Kent ME12 4JB

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr and Mrs B and H Johnson for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of the Council to grant planning permission for material change of use of land for stationing of caravans for residential occupation with associated development (hard standing, 2 sheds and cess pool).
-

Decision

1. The application for an award of costs is refused.

Background

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant considers the Council has behaved unreasonably due to, in summary; not fully considering the possibility of a temporary planning permission considering rates of coastal erosion and not responding to the applicant's representations relating to Strategic Access Management and Monitoring (SAMM) payments.

Reasons

Temporary permission and coastal erosion

4. The site and wider coastal area are affected by erosion. Although there is no recent study on the extent of erosion locally, the matter is not in dispute, and it is designated in a recent development plan. The broad policy here is for no active management in this natural process and forms of development to be restricted are set out in policy. The Council took the view that the proposal was for residential development in an area subject to erosion and weighed this, and other matters, against the shortage of gypsy and traveller sites. It concluded that on balance, the risk to human life was not outweighed by other considerations and this is a reasonable conclusion to reach.
5. The Council did consider a temporary permission and concluded that this would not outweigh the risk. The period it considered in the Officers Report (OR) was short, at

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two years, and this was not necessarily what the applicant sought. However, it seems to me to be implicit that in exploring whether a two year temporary permission was to be unacceptable, it follows that a longer period would, as a minimum, be equally unpalatable, if not more so. A longer period may have been justified in order to allow the current development plan to be reviewed and replaced and alternative sites for gypsy and traveller accommodation found. Indeed, this is the conclusion I have found in my decision. It does not appear that the Council fully weighed this matter but even so, their approach was clear in explaining no temporary period was acceptable to it.

6. I accept that the Council's assessment of these factors was not flawless but it was still clearly set out in the OR that the Council were adopting a precautionary approach here. The Council relied on the evidence available to it in reaching its decision. Some of this is dated and could have been instigated through a separate study by the Council itself, but there is no requirement for it to do so within any prescribed time frames.
7. Nevertheless, the Council weighed relevant matters together and formed a perfectly rational conclusion. I am, therefore, unable to conclude that its decision, or the way in which it reached it, was unreasonable.

SAMM payment and applicant's representations

8. There is a distinct paucity of policy surrounding SAMM payments in relation to the circumstances of this case. In essence, the mobile home(s) and occupants were present prior to the establishment of the SAMM becoming policy. However, the mobile home(s) and occupation of the site for residential purposes became unlawful due to the expiry of the planning permission in the intervening period. There is no guidance or policy in place locally to address this scenario.
9. The applicant did make various representations and queries in relation to this during the course of the application and appeal. The Council did not fully explore these in the OR nor in its Statement in relation to the appeal. Moreover, the OR did note that the applicant had agreed to make these payments whereas, in fact, they had not. Even so, and despite some inaccuracies, this matter was discussed and explored at the hearing.
10. I find it would have been desirable for the Council to respond the applicant's points earlier and in a more considered manner. The lack of response to these points does amount to unreasonable behaviour but the tests set out in the PPG are that there must be evidence of it having behaved unreasonably *and* (my emphasis) thereby caused the party applying for costs to incur unnecessary or wasted expense.
11. In this instance, the additional time and work required to address this reason for refusal was modest. Moreover, the first reason for refusal remained quite reasonably in contention. Had the Council been minded to grant permission for this development, even for a temporary period, I have no reason to believe that this matter relating to the SAMM payment would not have been resolved.
12. Thus, in relation to this point, although I have found that the Council was unreasonable in not addressing this issue, it has not resulted in unnecessary or wasted expense as establishing the situation in full, in the context of a policy

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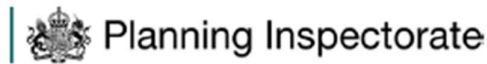
vacuum, prior to the grant of planning permission would have been a requirement were permission to be forthcoming.

Conclusion

13. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

N Bowden

INSPECTOR



Appeal Decision

Hearing held on 31 March 2026

Site visit made on 31 March 2026

by Thomas Courtney BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th July 2026

Appeal Ref: APP/V2255/W/25/3376221

Land West of Borden Lane, Sittingbourne, Kent, ME9 8HR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Michael Lucas (Aspire LPP) against the decision of Swale Borough Council.
 - The application Ref is 24/502717/OUT.
 - The development proposed is described as an Outline Application (with all matters reserved) for the erection of a care home (Class C2), with associated parking, landscaping and substation.
-

Decision

1. The appeal is allowed and outline planning permission is granted (with all matters reserved) for the erection of a care home (Class C2), with associated parking, landscaping and substation at Land West of Borden Lane, Sittingbourne, Kent, ME9 8HR, in accordance with the terms of the application, Ref 24/502717/OUT, and the plans submitted with it, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate decision.

Preliminary Matters

3. A hearing was held on 31 March 2026, attended by representatives of the appellant and the Council, together with interested parties. I undertook an accompanied site visit in the presence of the main parties. I heard evidence from a number of interested parties who raised concerns regarding, amongst other matters, the principle of development, ecology, highway impacts and the need for the proposed care home.
4. The description of development in the banner heading is taken from the decision notice and the appeal form. It differs slightly from the application form in that it refers to reserved matters and the proposed substation. In their submissions at appeal stage, both parties used the description of development as shown in the banner heading. I have therefore proceeded on this basis. I have removed reference to outline application in the decision paragraph to avoid duplication.
5. The application was submitted in outline form with all matters reserved for future consideration. I have therefore assessed the proposal on that basis, having regard to the submitted indicative plans and supporting material where relevant.

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6. Following the close of the hearing, a completed and signed Unilateral Undertaking (UU) was submitted by the appellant. The UU relates to the delivery and long-term management of biodiversity net gain associated with the development, including habitat creation, enhancement and maintenance measures. This is considered later in my decision.

Main Issues

7. The main issues are:

- the effect of the proposal on the Important Local Countryside Gap;
- whether the site is suitably located for the proposed development, having regard to the Council's Spatial Strategy;
- the effect of the proposal on Best and Most Versatile Agricultural Land; and
- the effect of the proposal on ecology, with particular regard to protected species and priority habitats.

Reasons

Important Local Countryside Gap

8. The appeal site comprises a parcel of land fronting Borden Lane, on the built-up edge of the village of Borden. It contains an existing warehouse building together with areas of open land, traditional orchard and grassland. Parts of the site are occupied by scattered machinery, vehicles, discarded materials, informal structures and areas of detritus, giving it a somewhat untidy appearance. It is bounded by woodland along the north-western and north-eastern boundaries which provides a strong vegetated backdrop. Mature trees and vegetation along the site frontage provide substantial screening from Borden Lane, whilst residential properties lie to the south, including No. 124 which shares a boundary with the appeal site. Although the site exhibits signs of informal and ancillary activity, it remains predominantly undeveloped and contributes to the verdant character of this part of Borden Lane and the transition between the built form of the village and the surrounding countryside.
9. The site lies within an identified Important Local Countryside Gap (ILCG) which performs a strategic role in maintaining separation between Sittingbourne and the surrounding villages, including Borden. I have had regard to the Council's ILCG Review¹, which confirms that this part of the gap continues to provide a clear break between settlements and contributes to their individual identity.
10. Policy DM25 of the 'Bearing Fruits 2031' – Swale Borough Local Plan (2017) (the LP) seeks to safeguard the open and undeveloped character of important countryside gaps, maintain the separate identity of settlements and resist piecemeal encroachment. Its aims are consistent with national policy in seeking to protect the intrinsic character and beauty of the countryside.
11. In this location, the separation between Sittingbourne and Borden remains readily appreciable and the appeal site makes a positive contribution to the ILCG. Even where the distance between the settlements is relatively limited, there is still a clear

¹ Swale Borough Council, Swale Important Local Countryside Gaps Review – Final Report (February 2025).

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perception of travelling between distinct places, reinforced by the absence of continuous built development. This sense of separation is an important aspect of the gap's function. The area along Borden Lane between the two settlements is characterised by open paddock land, agricultural fields and woodland with relatively limited built form, which allows the edge of Sittingbourne to be experienced in contrast with the more rural setting of Borden.

12. Whilst the surrounding area is subject to change, including development at Wises Lane, this does not diminish the value and role of the remaining open land, including the appeal site. The gap continues to function as a meaningful break between the settlements, and, in my view, the new development as part of the Wises Lane scheme serves to emphasise the importance of the remaining undeveloped parcels in maintaining that separation.
13. Whilst the proposed building could be set back within the site and would be in proximity to an existing residential plot, the proposal would nevertheless extend built form into land that currently contributes to the openness and continuity of the gap. The increase in built form would thus have a spatial and visual impact on the ILCG. It would not safeguard the open and undeveloped character of the area and would represent an encroachment into the countryside, contributing to the incremental erosion of the gap.
14. However, the extent of harm would be moderated by a number of factors. The proposal would not significantly reduce the overall physical separation between Sittingbourne and Borden, nor would it result in their merging or actual coalescence. The development would be contained within the site and would be seen in the context of an existing buffer of vegetation and woodland provided by the Borden Nature Reserve to the north and west of the appeal site. The development would also feature frontage landscaping within a retained orchard area, which would provide a degree of enclosure and limit wider visibility.
15. The ILCG Review recommends that the gap is largely retained at its current extent to avoid the coalescence of Sittingbourne, Chestnut Street, Borden and Tunstall. The proposal would not result in coalescence but would still contribute to the erosion of the gap. Whilst the site's enclosed character would temper the visual impact of the development, it would still be noticeable and read as an encroachment given its proposed scale.
16. Drawing these matters together, I find that the proposal would have an adverse effect on the ILCG. It would conflict with the objectives of Policy DM25 of the LP insofar as it seeks to ensure that the individual character and setting of settlements is retained and that development does not undermine the purposes of ILCGs.

Location

17. The appeal site lies adjacent to, but outside the defined built-up area boundary of Borden and is therefore within the countryside for the purposes of the development plan. Given the relationship to Borden, the site contributes to its rural setting.
18. Policies ST 1 and ST 3 of the LP seek to direct development to the most sustainable locations within the defined settlement hierarchy, whilst protecting the intrinsic character, beauty and tranquillity of the countryside. Policy ST 1 sets out overarching principles for sustainable development, including supporting the provision of community facilities and meeting identified needs. However, it is clear

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that such development is to be delivered in accordance with the spatial strategy established by Policy ST 3.

19. LP Policy ST 3 establishes that development may take place within built-up area boundaries, including Borden which is classed as an 'other village with built-up area boundaries in the settlement hierarchy'. It also establishes that within the countryside, development will not be permitted unless it is supported by national planning policy and is 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.
20. The National Planning Policy Framework (the 'Framework') states that planning decisions should contribute to the local and natural environment by recognising the intrinsic character and beauty of the countryside. It also seeks to support a prosperous rural economy and seeks to maintain the vitality of rural communities. It also recognises the need to provide housing for different groups in the community, including older people with diverse needs. In those respects, the proposal would make a positive contribution through the provision of specialist accommodation and associated employment opportunities.
21. Although the design and layout of the proposal is not before me at this outline stage, there is a high probability that the development of the appeal site with a care home and associated development would be likely to result in a considerable part of the site being occupied by buildings and hard surfacing. This would diminish the sense of openness and disrupt the transitional rural qualities of the landscape, and the open, countryside setting to Borden thereby harming the intrinsic character and visual qualities of the countryside in this location.
22. However, the appeal site is well contained to the north-east and north-west by mature woodland and is also well related to the built form of the village. Moreover, subject to the detailed design and layout of the development, I am satisfied given the size of the site and the likely scale of development that a high-quality design could be secured with suitable landscaping, providing a vegetated buffer to the road as part of a subsequent planning application. Consequently, these matters would limit the harm that would be caused by the proposal, and the resultant harm would be localised and limited.
23. Whilst Borden has a range of services and facilities, it does not have a shop for day-to-day goods. Although the site lies relatively close to Sittingbourne, the evidence indicates that it is not particularly well served by public transport, with no direct bus routes or stops within easy walking distance of the site. Access to services would therefore be reliant, at least in part, on private vehicles or organised transport. Whilst the nature of the proposed use means that residents themselves may have limited mobility, the operation of the facility would still generate staff, visitor and service trips. These would be spread throughout the day rather than concentrated during traditional commuter peak periods. The evidence indicates that the overall level of traffic generated would be relatively modest.
24. Moreover, the day-to-day operation of the care home would not be dependent upon convenient access to local shops and services. Staff would typically travel directly to and from the site as part of their daily journeys, whilst residents' needs would largely be met on site. Paragraph 117 of the Framework recognises that opportunities to promote sustainable transport solutions vary between urban and

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rural areas. Having regard to the nature of the proposed use, the likely vehicle movements associated with use, its location and relationship to the built forms of Borden and Sittingbourne and the public highway, I am satisfied the site is reasonably accessible and that the proposal would not harm the tranquillity of the countryside.

25. Given my findings and acknowledging that any harm would be localised and limited, it is clear that the proposal would not maintain the setting of settlements, or protect and, where appropriate, enhance the intrinsic value, landscape setting, and beauty of the countryside. Accordingly, the proposal is therefore not suitably located having regard to the Council's spatial strategy because of the conflict with Policies ST 1 and ST 3 of the LP. These seek to direct development to the most sustainable locations within the defined settlement hierarchy, whilst protecting the intrinsic character, beauty and tranquillity of the countryside, and meeting identified needs.

Agricultural Land

26. The appeal site comprises Best and Most Versatile (BMV) agricultural land. During the hearing, it was agreed that the land is a combination of Grade 1 and Grade 2 agricultural land, representing a high-quality and finite resource. Policy DM31 of the LP seeks to protect such land and is consistent with national policy which recognises the economic and other benefits of BMV agricultural land.
27. The proposal would result in the permanent loss of this land to built development. That loss would arise irrespective of the current condition or level of agricultural activity on the site. In considering whether that loss is justified, I have had regard to the availability of alternative sites for the proposed development on lower grade land and within built-up area boundaries.
28. The Council identified a number of sites within the appellant's Alternative Sites Assessment which it considered may have been unsuitably discounted, including land at 152 Staplehurst Road (A20.2), the Foundry (A20.11), the Nil Desperandum site (A21.6), the Iwade Fruit and Produce site (A20.13), and land off Colonel's Lane (A21.11).
29. The land at 152 Staplehurst Road may have some potential, however, the appellant indicated that even if it were to come forward for a care home, there would remain a residual unmet need for care home beds within the borough. The Foundry and Nil Desperandum sites are identified as being within areas of flood risk. Although it was suggested that flood risk would not necessarily preclude development, there was no clear evidence before me to demonstrate that such sites would be suitable or capable of being developed for this more vulnerable use in terms of flood risk vulnerability. The Iwade Fruit site is identified within the HELAA but is also allocated for housing, and there is no substantive evidence that it would be available for a care home. Similarly, land off Colonel's Lane is allocated for residential development, which would materially constrain its availability for the proposed use.
30. An interested party also referred to a site on Lynsted Lane previously used as a care home. However, no evidence was provided as to its current availability, suitability or capacity to accommodate a comparable development.

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31. In those circumstances, I am not persuaded that the proposal has failed on the basis of available alternatives. Nonetheless, the loss of BMV land remains a matter which weighs against the development, as the policy objective of safeguarding such land continues to apply. Indeed, the development would contribute to the gradual and piecemeal erosion of the overall stock of high-quality agricultural land.
32. In terms of the extent of harm, the site is relatively small in the context of the borough's overall agricultural land resource, and there is no evidence that its loss would have wider implications for agricultural productivity or the viability of any holding. Notwithstanding this, the proposal would reduce the amount of BMV land and would therefore conflict with Policy DM31 of the LP insofar as it seeks to limit development on BMV agricultural land.

Ecology

33. The appeal site includes areas identified as traditional orchard, which is a priority habitat. The Council places significant weight on the ecological value of this habitat, emphasising its age, structural complexity and its role in supporting a range of species, including invertebrates, birds and foraging bats. It also highlights that such habitats are difficult to recreate, with replacement planting requiring a considerable period of time before comparable ecological value is established. I have had regard to these points and accept that the traditional orchard is an important and, in many respects, irreplaceable habitat, the loss of which weighs against the proposal.
34. However, the evidence also indicates that the orchard within the appeal site is not uniform in its quality or distribution. The appellant's ecological assessment identifies that much of the site comprises grassland with only limited clusters of orchard trees, primarily concentrated within part of the site. The evidence also points to a degree of decline, including the loss of trees over time and a lack of active management. Whilst this does not diminish the status of the habitat, it is relevant to the weight that can be given to its current ecological function across the entirety of the site. Importantly, the proposal could retain the principal area of orchard and incorporate measures for its management and enhancement, alongside additional planting.
35. I recognise that there would be a temporal lag before newly established planting could provide equivalent ecological benefits and that biodiversity net gain, whether delivered on-site or supplemented off-site, does not in itself negate that loss. The biodiversity net gain assessment indicates that off-site measures would be required to achieve the necessary uplift, which reinforces that some loss of habitat value would occur. Whilst the development would not avoid harm to the habitat, I am satisfied in this case that the mitigation and compensation measures proposed would be sufficient to address the impacts when considered against the scale and condition of the habitat affected.
36. The appellant has undertaken ecological surveys which have informed the assessment of the site, identifying the presence or potential presence of certain protected species and setting out a number of recommendations including habitat retention, translocation where necessary, and ecological management which could be secured by condition. I note the concerns raised by interested parties in respect of the survey work undertaken, however some of the information is confidential because of the species involved and it is noteworthy that the Council's ecological

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advisor, Kent County Council (KCC) Ecology, were satisfied that they provide an adequate understanding of the site's ecological interest.

37. Whilst I have had regard to concerns raised regarding specific species, including badgers, Fiery Clearwing moths and other fauna, there is no substantive technical evidence before me to demonstrate that the proposal would give rise to unacceptable impacts in this respect.
38. Concerns are also raised regarding the proximity of the site to the Borden Nature Reserve and the potential for adverse effects, including through habitat loss, disturbance and lighting. The Council considers that some residual harm would remain even with mitigation. I acknowledge that the development would introduce built form and associated activity adjacent to the reserve, and that mitigation would not entirely remove all effects. However, the proposal includes measures to mitigate such impacts, including the retention of vegetation, the provision of a buffer along the site boundaries, and the control of lighting and activity. The submitted lighting strategy demonstrates that light spill could be minimised and that areas of ecological sensitivity, including the reserve, could be maintained in relative darkness through appropriate design and control measures. With such measures secured by condition, I am satisfied that any impacts on the nature reserve would be limited and would not undermine its overall ecological function.
39. I have also had regard to concerns raised by interested parties regarding cumulative habitat loss in the wider area, including the loss of orchard associated with other developments. Whilst such concerns are noted, the appeal must be determined on the basis of the evidence before me in respect of this proposal. There is insufficient evidence to demonstrate that the cumulative effects, when taken together with this development, would give rise to unacceptable ecological harm that could not be adequately mitigated.
40. Third party concerns regarding the reliance on off-site biodiversity mitigation, its location, and the effectiveness of its long-term management have also been considered. However, biodiversity net gain could be secured through a combination of on-site and, where necessary, off-site measures, and there is no requirement that all gains be delivered within the appeal site itself. Similarly, whilst concerns have been raised regarding the enforceability of such measures, there is no substantive evidence before me to demonstrate that appropriate mitigation and management secured through planning conditions and legal agreement would not be effective in this case.
41. A completed and signed Unilateral Undertaking has been submitted which secures the delivery and long-term management of biodiversity net gain associated with the development. This includes habitat creation and enhancement measures, together with their monitoring and maintenance over a 30-year period. I am satisfied that this provides a robust mechanism to secure the proposed biodiversity enhancements and mitigation in the long term.
42. Drawing these matters together, the proposal would result in the loss of part of a priority habitat and some ecological impact, including potential effects on the adjacent nature reserve. However, having regard to the condition and extent of the existing habitat, the retention and enhancement measures proposed, the findings of the ecological surveys, and the mitigation and provisions secured through the

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Unilateral Undertaking, I find that the impacts would be appropriately mitigated and would not result in unacceptable harm to biodiversity or protected species.

43. Accordingly, the proposal accords with Policies DM28 and DM34 of the LP insofar as they seek to ensure that proposals conserve and enhance biodiversity and the natural environment, minimise any adverse impacts and compensate where impacts cannot be mitigated. Furthermore, the proposal would not conflict with the duties set out within Section 40 the National Environment and Rural Communities Act 2006, would not adversely affect species protected under the Conservation of Habitats and Species Regulations 2017 (as amended), and the Wildlife and Countryside Act 1981 (as amended), subject to the implementation of mitigation and any necessary protected species licenses.

Other Matters

Housing Land Supply

44. It is common ground that the Council cannot demonstrate a five-year supply of deliverable housing sites. It stood at 3.97 years in November 2025. Consequently, the most important policies for determining the application are out of date, including LP Policy ST 3 since the strategy has failed to provide for the minimum number of homes over the plan period, and by association Policy ST 1.
45. Care homes are recognised within national policy and guidance as a form of housing and, as such, the proposal would contribute towards meeting the Borough's housing needs through the provision of specialist accommodation. The proposal would also support the Government's objective of significantly boosting the supply of homes.

Living Conditions

46. Concerns were raised regarding the effect of the proposal on the living conditions of nearby residents, including the occupiers of No. 124 adjacent to the site. Objections relate to the scale of the development, uncertainty over the final design at this outline stage, and the potential for adverse effects on health and wellbeing, with reference made to paragraph 92 of the Framework which seeks to support healthy and inclusive communities. Particular concern was expressed by one resident with existing serious health conditions, who considered that the proposal would exacerbate stress and negatively affect their wellbeing.
47. I have had regard to these concerns and to the Public Sector Equality Duty (PSED). I recognise that the proposal would introduce a larger and more intensive form of development than currently exists, and that the outline nature of the application gives rise to some uncertainty at this stage. However, matters of layout, scale, appearance and landscaping are reserved for future consideration, and these provide a clear mechanism to secure a form of development that responds appropriately to neighbouring properties, including through separation distances, building disposition and screening.
48. In terms of noise and disturbance, the operation of a care home could generate activity on a 24-hour basis, including staff movements, servicing and visitor trips. However, such uses are not typically characterised by high levels of noise or late-night disturbance when compared to other forms of institutional or commercial development. Noise associated with plant, deliveries and general activity can be

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controlled through detailed design and the imposition of appropriate conditions. Whilst I acknowledge that construction activity would give rise to temporary disturbance, this would be limited in duration.

49. Having regard to these factors, I am not persuaded that the proposal would give rise to unacceptable effects on the living conditions of nearby occupiers, including in respect of outlook, privacy, noise or disturbance. Whilst I recognise the personal concerns expressed, the impacts identified would not be of such a degree as to conflict with the objectives of paragraph 92 of the Framework.

Highway Safety and Parking

50. Interested parties raised concerns regarding the position of the access, the nature of Borden Lane, and the adequacy of parking provision, with suggestions that the number of spaces proposed would be insufficient to accommodate staff, visitors and servicing, leading to overspill parking and potential highway safety issues.
51. The proposal has been considered by the highway authority, which did not raise an objection. The appellant states that staffing patterns would operate on a shift basis, with staggered arrival and departure times, meaning that not all staff would be present on site at any one time. This reduces peak parking demand. Visitor numbers are also likely to be spread throughout the day rather than concentrated at specific times. On this basis, and in the absence of technical evidence to the contrary, I am satisfied that the level of parking provision would be adequate to serve the development without resulting in unacceptable overspill or harm to highway safety.
52. Whilst I acknowledge concerns regarding the access, the bend of the road and pedestrian conditions, there is no substantive evidence before me to demonstrate that safe and suitable access cannot be achieved or that the proposal would result in an unacceptable impact on highway safety.

Heritage

53. Concerns are raised regarding the effect of the proposal on nearby listed buildings along Borden Lane. These include the Grade II listed building known as Posiers at 201 Borden Lane whose significance is derived primarily from its 15th Century historic fabric and architectural interest. To the north-east of the site is the listed building at Riddles Cottage which is part timber-framed and weatherboarded. The listing states its West wing probably dates from the 17th Century. Its significance derives similarly from its historic rural architecture.
54. I have had regard to the statutory duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the setting of listed buildings. Whilst the appeal site forms part of the wider rural context in which these assets are experienced, the evidence indicates that their significance is not heavily dependent on the appeal site itself, given the presence of intervening development.
55. The proposal would introduce built development on land that is currently open. However, given the separation distances, the limited visual interrelationship, and the ability to secure a sensitive layout and landscaping at the reserved matters stage, I find that the proposal would preserve the setting of nearby listed buildings. Accordingly, no harm to the significance of designated heritage assets would arise.

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Need for the Development

56. The need for the proposed care home is disputed by an interested party who questioned both the level of need for additional provision in the locality and the reliability and objectivity of the submitted needs assessment. They contended that care home provision within Borden is already high and that future care needs should be met through support within the home and community rather than institutional accommodation. It is also suggested that the needs assessment overstates demand by relying on demographic projections, and that increased population age does not necessarily translate into increased demand for care home places. Concerns were also raised regarding potential pressure on local healthcare services.
57. In terms of methodology, the appellant's evidence is based on an assessment of supply and demand across the borough, drawing on established sector methodologies, including prevalence rates for care home occupancy by age cohort. This approach is widely used within the sector and has been accepted in previous appeal decisions. The evidence explains that demand is derived from demographic projections, particularly the growth in older age groups, and compares this against the supply of appropriate accommodation, with a particular focus on modern, ensuite provision.
58. The criticism that the assessment lacks objectivity is not borne out by the evidence before me. The report is prepared by a suitably qualified expert who confirms compliance with professional standards and an overriding duty to the appeal process. Moreover, its conclusions broadly align with other sources of evidence, including the Council's own position, which acknowledges that existing provision is insufficient to meet current and future needs.
59. As to the level of need, the evidence demonstrates a substantial and increasing shortfall in suitable care home accommodation across the borough. This arises not only from population growth, particularly in the older age cohorts, but also from the condition and suitability of the existing care home stock, much of which comprises older or converted buildings that do not meet modern expectations, particularly in terms of ensuite provision and the ability to cater for higher dependency and dementia-related care needs. The assessment identifies a significant gap between demand and the supply of suitable ensuite accommodation, with that gap projected to widen over time.
60. Whilst I acknowledge the point that some care provision is increasingly delivered within the home or community, the evidence indicates that there remains a clear and continuing need for residential care facilities to meet more complex needs that cannot be accommodated in those settings. The suggestion that existing provision within Borden is sufficient is not supported by the wider evidence base, which points to a borough-wide shortfall.
61. In respect of healthcare impacts, there is no substantive evidence before me to demonstrate that the proposal would place unacceptable pressure on primary or secondary healthcare services. The provision of a care home is materially different from general healthcare services. Care homes provide residential and nursing care for individuals with significant and often complex needs, including those associated with advanced age and conditions such as dementia. The evidence indicates that

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demand for such accommodation is driven by demographic change and increasing care needs, rather than the availability of primary healthcare facilities.

62. Drawing these matters together, I am satisfied that there is a clear and compelling need for additional care home accommodation within the Borough. The proposal would provide purpose-built accommodation designed to meet these needs, thereby addressing both the quantity and quality of provision.

Habitats

63. The site lies within the zone of influence of the Swale Special Protection Area (SPA) and Ramsar site, which is designated for its internationally important bird populations. I have a duty under the Conservation of Habitats and Species Regulations 2017 to assess any impact the proposed development would have upon the SPA, which is a designated European site. The potential for effects arises primarily through increased recreational pressure associated with new residential development. However, the proposed use is a care home, where future occupiers would have limited mobility and are unlikely to generate recreational trips to the SPA. In addition, staff and visitor trips would not be of a nature or scale that would give rise to material increases in recreational pressure on the designated site.
64. Both main parties agree that the proposal would not give rise to a likely significant effect on the SPA, either alone or in combination with other plans or projects. Having regard to the nature of the development and the characteristics of its likely occupants, I see no reason to disagree. Accordingly, the proposal would comply with the Conservation of Habitats and Species Regulations 2017.

Contamination

65. Concerns were also raised by an interested party regarding potential methane leakages and contamination associated with the former landfill within the adjacent nature reserve. The evidence before me does not demonstrate that such risks could not be appropriately investigated and managed. Appropriate conditions could be implemented requiring detailed site investigations and risk assessments to be undertaken, together with any necessary remediation strategy and subsequent verification reports. These mechanisms would ensure that any contamination risks, including those associated with landfill gas, are properly assessed and addressed prior to occupation of the development. I am therefore satisfied that the matter does not weigh against the proposal.

Outline nature of proposal

66. It is also suggested that insufficient detail has been provided to properly assess the proposal. However, the submission of an outline application is an established procedure. The principle of development can be considered at this stage, with detailed matters reserved for subsequent approval. I am satisfied that sufficient information has been provided to enable a proper assessment of the proposal.

Planning Balance

67. I have found that the proposal would conflict with the spatial strategy by introducing built development in the countryside, and that it would result in erosion of the ILCG between Sittingbourne and Borden. Whilst the scheme would not lead to coalescence of settlements, it would nonetheless reduce the rural open character of the gap and contribute to incremental encroachment. What's more, accessibility

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to services and facilities is not strong. Although Sittingbourne is relatively close, the absence of convenient public transport options means that the site would be reliant to a degree on private vehicles or organised transport. That said, given the proximity to a main urban centre and the nature of the use, the site can be regarded as an acceptable location in accessibility terms. In addition, the site comprises best and most versatile agricultural land, the loss of which weighs against the proposal. These issues bring the scheme into conflict with the development plan taken as a whole.

68. However, given the Council's housing land supply position, the most important policies for determining the application are out of date and the presumption in favour of sustainable development set out in paragraph 11d) of the Framework is engaged. I have found no harm to designated heritage assets, or indeed any areas or assets of particular importance, as set out in footnote 7 to paragraph 11 of the Framework. Accordingly, planning permission should therefore be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the 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.
69. The parties provided differing views on how much weight to afford to Policy DM25, and reference was made to the Wises Lane appeal decision² and the appeal decision for the development at land off Riddles Road³. The appellant considered that any conflict with Policy DM25 should be given limited weight because the policy is out-of-date by virtue of the housing land supply position, as well as its inconsistency with the Framework. The Council maintains that Policy DM25 is still relevant and that other inspectors gave it significant weight.
70. It is acknowledged that Policy DM25 is not a landscape policy. It is more of a strategic spatial policy. However, the preamble to the policy states that the purposes of the ILCGs include maintaining the character of settlements and preventing changes to the rural open character of these areas. Therefore, I find that the policy still aligns with paragraph 187 of the Framework which requires development to recognise the intrinsic character and beauty of the countryside. As suggested by the Council, it would also align with paragraph 129 of the Framework which sets out that policies and decision making on the efficient use of land should take into account the desirability of maintaining an area's prevailing character and setting.
71. Policy DM25 is out of date in light of the housing land supply position but can be considered to be consistent with the aims of the Framework. I have therefore attached moderate weight to the harm arising from the conflict with the development plan.
72. I have found that the proposal conflicts with Policies ST1 and ST3 in respect of the settlement strategy, Policy DM25 relating to the ILCG, and Policy DM31 concerning the loss of BMV agricultural land. These policies seek, in broad terms, to direct development to sustainable locations, protect the character of the countryside, preserve the ILCG from encroachment, maintain separation between settlements, and safeguard higher quality agricultural land. Those objectives are consistent with

² Appeal Ref. APP/V2255/W/19/3233606

³ Appeal Ref. APP/V2255/W/25/3372645

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the Framework, including securing sustainable patterns of development, the recognition of the intrinsic character and beauty of the countryside, the desirability of maintaining an area's prevailing character and setting, and safeguarding the best and most versatile agricultural land.

73. As such, notwithstanding their out-of-date status in the context of housing land supply, the LP policies continue to attract weight according to their consistency with national policy. However, the weight to be attributed to the harm is curbed by the fact that the relevant development plan policies are being applied in the context of an acknowledged shortfall in housing land supply. Moreover, the Framework places significant emphasis on boosting the supply of homes and meeting the needs of groups with specific housing requirements, including older people and specialist accommodation. Whilst the identified harms remain important considerations, these factors reduce the overall weight that can be attributed to the policy conflicts. Taken together, I attribute moderate weight to the identified harm arising from the proposal.
74. I have also had regard to the Riddles Road appeal decision referred to by the Council and interested parties. However, the circumstances of that case were materially different. In particular, the extent of development proposed there would have resulted in a substantially greater erosion of the ILCG and a more significant alteration to the settlement pattern. Whilst the present proposal would nonetheless give rise to harm in respect of the settlement strategy and the ILCG, I do not find the scale or extent of that harm to be comparable. Consequently, I attribute more moderate weight to those harms in this case.
75. Turning to the benefits, the proposal would deliver a modern, purpose-built care home providing up to 70 bedrooms, contributing towards an identified shortfall in care provision within the Borough. The need for such provision is not disputed between the main parties, and the evidence indicates that there is both a quantitative and qualitative deficiency in existing stock. This is a matter to which I attach significant weight. The proposal would also contribute towards housing land supply through the provision of C2 accommodation, which is agreed between the parties to form part of housing delivery. In the context of a shortfall in deliverable housing sites, this is a material benefit which also attracts significant weight, albeit recognising that it is not equivalent to the delivery of conventional housing.
76. The scheme would generate employment during both the construction and operational phases, with a substantial number of permanent jobs associated with the operation of the care home, alongside wider economic activity. Taken together, these economic benefits carry moderate weight. The provision of on-site care also has the potential to reduce pressure on health and social care services. Whilst such effects are not determinative and must be treated with some caution, they nonetheless attract moderate weight. More general social benefits, including improvements to residents' quality of life and a reduction in the burden on unpaid carers, are inherent to such development and are therefore afforded limited weight.
77. I have not treated the design of the proposal or the provision of landscaping and screening as benefits. These are matters of policy compliance and mitigation which can be secured at the reserved matters stage and do not weigh positively in favour of the development.

78. Drawing these matters together, the proposal would result in moderate harm arising from conflict with the development plan. However, the benefits of the scheme, most notably the delivery of a much-needed care home and its contribution to housing supply, are substantial and attract significant weight. When assessed against the policies in the Framework taken as a whole, I find that these benefits clearly outweigh the identified harms. The adverse impacts would not significantly and demonstrably outweigh the benefits. Accordingly, the presumption in favour of sustainable development applies.

Conditions

79. The standard time limit and reserved matters conditions are necessary because the application was submitted in outline form with all matters reserved for subsequent approval. Conditions specifying the approved plans and limiting the development to a maximum of 70 bedrooms and two storeys are also necessary in the interests of certainty and to ensure that the development proceeds on the basis assessed within this decision.

80. Given the ecological sensitivity of the site and its relationship with the Borden Nature Reserve, conditions relating to landscaping, lighting, tree protection, biodiversity enhancement, ecological mitigation, the Construction Environmental Management Plan are necessary to ensure that ecological impacts are appropriately mitigated and managed. In particular, Condition 13 is necessary because it secures the necessary ecological mitigation strategy, including species mitigation measures where required. Consequently, a separate condition specifically relating to reptile mitigation would unnecessarily duplicate those requirements and has therefore not been imposed. Archaeological investigation and contamination conditions are also necessary given the site's characteristics and potential constraints.

81. Conditions relating to drainage and foul water disposal are reasonable and necessary in the interests of flood risk management. The condition relating to construction management is necessary to safeguard the character of the area and the living conditions of neighbouring occupiers.

82. In response to concerns raised by neighbouring residents regarding construction disturbance, I have restricted construction and demolition works to commencing no earlier than 0800 hours on weekdays, this being necessary to protect living conditions of nearby occupiers.

83. Some of the conditions have been imposed as pre-commencement conditions because they relate to matters, including ecology, contamination, archaeology, drainage and construction management, which must be properly investigated and addressed before development begins. This is necessary to ensure that the development proceeds in an acceptable manner and to avoid unacceptable impacts that could not be satisfactorily remedied once works have commenced.

84. I have not imposed all of the suggested conditions. In particular, conditions relating to parking provision, electric vehicle charging, cycle parking, the detailed design of roads, footways, visibility splays and boundary treatments are matters which relate to the layout and detailed design of the development and can be appropriately considered at the reserved matters stage. Similarly, conditions requiring details of external materials and compliance with Secured by Design principles relate to

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matters of appearance and detailed design which are reserved for subsequent approval.

85. I have also not imposed the suggested conditions requiring detailed acoustic assessments, internal noise standards and schemes for the extraction and treatment of fumes and odours. Such matters are dependent upon the detailed design and layout of the development, which are not before me at this outline stage. The suggested Biodiversity Net Gain (BNG) condition has not been imposed because BNG is a statutory requirement and is secured through separate legislative provisions. Furthermore, I have omitted the suggested condition relating to the infiltration of surface water drainage into the ground as this would duplicate the requirements of Condition 16.
86. The Council suggested a condition removing permitted development rights. However, no substantive evidence has been provided to demonstrate that such restrictions would be necessary to make the development acceptable in planning terms, and national guidance is clear that permitted development rights should not be removed without clear justification. I have therefore not imposed such a condition.

Conclusion

87. For the above reasons, there are material considerations in this case which outweigh the identified harm and conflict with the development plan particularly those associated with specialist housing when assessed against the key policies of the Framework set out in footnote 9, and the policies of the Framework taken as a whole.
88. For the reasons given above the appeal should be allowed.

Thomas Courtney

INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with drawing nos PL001, PL103, PL105.
- 5) As part of the landscaping reserved matters details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - a statement setting out the design objectives and how these will be delivered;
 - earthworks showing existing and proposed finished levels or contours;
 - means of enclosure and retaining structures;
 - boundary treatments;
 - vehicle parking layouts;
 - other vehicle and pedestrian access and circulation areas;
 - hard surfacing materials;
 - minor artefacts and structures e.g. furniture, refuse or other storage units, signs, etc.;
 - proposed and existing functional services above and below ground e.g. drainage, power, communications cables, pipelines etc. indicating alignments, levels, access points, supports as relevant;
 - retained historic or other landscape features and proposals for restoration, where relevant;
 - renewable energy installations where relevant;
 - CCTV;
 - water features;
 - an implementation programme, including phasing of work where relevant.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is brought into use in accordance with the agreed implementation programme. The completed scheme shall be

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managed in accordance with an approved scheme of management and maintenance.

- 6) Any reserved matters application for landscaping shall include details of how the construction buffer zone will be enhanced through tree and shrub planting to provide a natural screening barrier to mitigate the anticipated increased noise and visual disturbance from the development hereby permitted to the Borden Nature Reserve. The landscaping within the construction buffer zone shall be implemented prior to the building becoming operational and retained thereafter.
- 7) Any reserved matters application for scale and layout shall show no more than a total of 70 bedrooms and the building shall be no more than 2 storeys in height.
- 8) Any reserved matters application for layout and landscaping shall include a detailed scheme of lighting to minimise impacts on residential amenity and biodiversity.

This scheme shall take note of and refer to the broad parameters set out in the Lighting Strategy Report (SLR Consulting Ltd, 7th November 2025 Rev 01) and the Institute of ILP Guidance Note 01/21 The Reduction Of Obtrusive Light (and any subsequent revisions) and shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles) and an ISO lux plan showing light spill. The plan shall demonstrate that areas to be lit shall not adversely impact biodiversity. All external and internal lighting shall be installed in accordance with the specifications and locations set out in the approved scheme and shall be maintained thereafter.

- 9) No development including demolition shall take place until:
 - (i) An archaeological field evaluation has been carried out in accordance with a specification and timetable that shall first have been submitted to and approved in writing by the local planning authority; and
 - (ii) Safeguarding measures to ensure the preservation in situ of important archaeological remains and/or further archaeological investigation and recording identified in the archaeological field evaluation have been undertaken in accordance with a specification and timetable that shall first have been submitted to and approved in writing by the local planning authority.
- 10) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;

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- vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- viii) lighting measures
- ix) details of approach route;
- x) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 11) No site clearance, preparatory work or development shall take place until an updated Tree Protection Plan that is in general accordance with the tree protection measures as identified in Appendix 2 – Drawing number TPP01, Tree Protection Plan contained within the Arboricultural Implications Assessment, dated August 2024, has been submitted to and approved in writing by the local planning authority. The tree protection measures shall be implemented prior to the commencement of development and thereafter remain in place throughout the construction phase.
- 12) No development approved by this permission shall take place until a Construction Environmental Management Plan (CEMP), incorporating the construction buffer zone plan and details of pollution prevention measures, and lighting measures along with a timetable for implementation, has been submitted to and approved in writing by the Local Planning Authority. The development shall subsequently be implemented in accordance with the approved CEMP and approved timetable.
- 13) No site clearance or development shall take place until an Ecological Mitigation Strategy and Enhancement Plan has been submitted to and approved in writing by the Local Planning Authority. It must include the following:
 - Preliminary ecological appraisal (if existing survey data is over 18 months old)
 - Recommended species surveys (as set out in the Preliminary Ecological Assessment PJC/5619E/24-01 - 5 April 2024 AMENDED and mapping of relevant findings)
 - Details of locations of off-site mitigation sites (e.g. for reptiles)
 - Overview of the mitigation required
 - Detailed methodology to implement the mitigation
 - Details of habitat enhancement/creation works required for the species mitigation
 - Details of management required for the mitigation areas
 - Timings of the works
 - Details of who will implement the mitigation

The plan must be implemented as detailed. All ecological enhancement features must be implemented in accordance with the approved Ecological Enhancement Plan and follow an approved timetable for implementation.

- 14) No development shall commence until a strategy to deal with the potential risks associated with any contamination of the site has been submitted to and

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approved in writing by the Local Planning Authority. This strategy will include the following components:

1. A preliminary risk assessment as set out in Phase 1 Desk Study and Risk Assessment Report (Ref: J15790, dated 13th August 2024) which has identified:

- all previous uses;
- potential contaminants associated with those uses;
- a conceptual model of the site indicating sources, pathways and receptors; and
- potentially unacceptable risks arising from contamination at the site.

2. A site investigation scheme, 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. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) 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 written consent of the local planning authority.

Subsequently, all remediation detailed within the approved strategy shall be implemented and a verification report based upon the verification plan shall be submitted to and approved by the Local Planning Authority prior to the first occupation of the development hereby approved.

15) Any contamination that is found during the course of construction of the development hereby permitted that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended until a risk assessment has been carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, the development or relevant phase of development shall not resume or continue until remediation and verification schemes have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.

16) No development shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority.

The submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged

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from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;

- ii) include a timetable for its implementation; and,
- iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The development shall be carried out in accordance with the approved details. The sustainable drainage system shall be managed and maintained thereafter in accordance with the approved management and maintenance plan.

- 17) No building shall be occupied 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.
- 18) No development shall take place until a foul drainage strategy, detailing how the developer intends to ensure that appropriate foul drainage is implemented with a connection to foul sewer, has been submitted to and approved by the local planning authority in consultation with the water undertaker and EA. The development shall be constructed in line with the agreed detailed design and recommendations of the strategy.
- 19) No building shall be occupied until details of a Commercial Waste Disposal Strategy which includes details of private commercial waste disposal contract(s) is submitted to and approved in writing by the Local Planning Authority. The waste collection and disposal shall be implemented in accordance with the approved details upon first occupation and a private commercial waste disposal contract shall thereafter be in place.
- 20) Demolition or construction works shall take place only between 0800 - 1800 hours on Monday to Friday, and 0800 - 1300 hours on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays unless in association with an emergency or with the prior written approval of the Local Planning Authority.
- 21) Details of piling or any other foundation designs using penetrative methods shall be submitted and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

End of Schedule

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Planning Inspectorate

Costs Decision

Hearing held on 31 March 2026

Site visit made on 31 March 2026

by Thomas Courtney BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th July 2026

Costs application in relation to Appeal Ref: APP/V2255/W/25/3376221

Land West of Borden Lane, Sittingbourne, Kent, ME9 8HR

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Aspire LPP for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of planning permission for an Outline Application (with all matters reserved) for the erection of a care home (Class C2), with associated parking, landscaping and substation.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant's concerns relate to the Council's second reason for refusal concerning ecology, priority habitat and protected species. The applicant argues that the Council acted unreasonably by pursuing this reason despite the advice of its officers and Kent County Council (KCC) Ecology, who raised no objection subject to mitigation and conditions. The applicant also states that the Council failed to identify which protected species impacts remained in dispute, failed to substantiate those concerns with objective evidence, and caused the applicant to incur unnecessary expense in preparing additional ecological evidence and securing expert attendance at the hearing.
4. The Council states that members of the Planning Committee were entitled to depart from officer and consultee advice and that genuine ecological concerns remained regarding the loss of traditional orchard habitat, effects on Borden Nature Reserve, biodiversity impacts and mitigation. The Council also points to additional ecological material submitted during the appeal process, including revised biodiversity net gain figures and habitat assessment work.
5. Members are entitled to depart from officer and consultee advice, provided their conclusions are capable of being supported by appropriate evidence. The fact that officers recommended approval, and that KCC Ecology did not object subject to conditions, does not in itself demonstrate unreasonable behaviour. Nor does the fact that the appeal has succeeded.

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6. The applicant argues that the Council failed to properly substantiate its reasons for refusal and failed to adequately undertake the balancing exercise required by paragraph 11d) of the Framework. I acknowledge that the Committee's reasoning, particularly in relation to the protected species component of the ecology reason, lacked precision and could have been more clearly articulated. However, the Committee report clearly identified the housing land supply position, the tilted balance, the officer recommendation, and the principal benefits and harms associated with the proposal. Members were therefore aware of the relevant policy considerations before reaching a different planning judgement.
7. The Council had legitimate planning concerns regarding the loss of traditional orchard habitat, ecological effects on Borden Nature Reserve, habitat replacement, biodiversity impacts and mitigation. Those matters formed part of a genuine planning dispute, notwithstanding that I have ultimately reached a different conclusion in the appeal decision.
8. However, the protected species element of the second reason for refusal was expressed in broad terms and was not refined with sufficient precision during the appeal process. The Council did not clearly identify which specific protected species impacts remained unacceptable, nor did it provide detailed technical evidence directly contradicting the appellant's ecological surveys. Greater precision through the Statement of Common Ground and appeal process would have assisted in narrowing the dispute.
9. Nevertheless, the protected species concerns were closely linked to the wider ecological issues which remained genuinely disputed throughout the appeal, including habitat loss, biodiversity impacts and effects on the adjacent nature reserve. Furthermore, some of the additional ecological work undertaken by the applicant related to revised habitat and biodiversity net gain assessment work, rather than solely to protected species matters. Whilst updated ecological evidence was prepared and an ecological consultant attended the hearing, given that wider ecological matters remained in dispute, I am not persuaded that those associated costs arose solely, or even primarily, from unreasonable behaviour on the part of the Council.
10. Whilst the Council could have articulated and narrowed the protected species component of its case more clearly, I do not find that its conduct, viewed in the context of the wider ecological dispute, reached the threshold of unreasonable behaviour as described within the Planning Practice Guidance. Nor am I satisfied that unnecessary or wasted expense has been demonstrated.
11. Therefore, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Thomas Courtney

INSPECTOR

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Planning Inspectorate

Appeal Decision

Site visit made on 26 May 2026

by Andrew Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2026

Appeal Ref: 6002253

Land East of Holywell Primary School, Forge Lane, Upchurch ME9 7AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Cantium Land and Development Ltd against Swale Borough Council.
 - The application Ref is 24/504410/OUT.
 - The development proposed was originally described as the erection of 16 dwellings with associated parking and gardens and formation of additional dual purpose fenced and gated car park/ playground for Holywell Primary School, with creation of new access and egress points onto Forge Lane.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by Cantium Land and Development Ltd against Swale Borough Council. That application is the subject of a separate decision.

Preliminary Matters

3. The application was submitted in outline form with matters of access and layout to be considered at this stage, and matters of scale, appearance and landscaping reserved for later consideration. I have determined the appeal on the same basis and so I have considered any details on the plans relating to the reserved matters as indicative only.
4. During the consideration of the application, the description of the proposal was amended insofar as the reference to a fenced and gated car park/playground for Holywell Primary School, was changed to overflow community parking. This is a minor change and I have considered the proposal on this basis.

Main Issues

5. The appeal is against the failure of the Council to determine the application. However, in their appeal statement, the Council have provided a putative reason for refusal. Based on that, the main issues are:
 - i) whether the development would be acceptably located with regard to the Council's settlement strategy;
 - ii) the effect of the development on the character and appearance of the area;

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- iii) whether there is an appropriate mechanism to secure affordable housing on site; and
- iv) whether the development would result in the loss of Best and Most Versatile (BMV) agricultural land.

Reasons

Spatial strategy

6. It is not disputed by the parties that the site lies outside the built-up area boundary of Upchurch. Policy ST 3 of the Swale Borough Local Plan (2017) states that development outside the built-up area boundaries in the open countryside will not be permitted unless, among other things, it is supported by national planning policy. The parties agree there is no five years supply of housing land. However, whilst there are national policies that support housing development in that scenario, notably paragraph 11 d) of the National Planning Policy Framework (the 'Framework'), I consider this provides broader support to housing generally rather than specifically to development beyond settlement boundaries. There is therefore no national planning policy that would necessarily support a different approach to policy ST 3, and therefore there would be conflict with that policy.
7. The site is a Tier 5 settlement, and the parties agree that the site provides good access to the services and facilities within Upchurch, which includes bus connections to larger towns nearby. Paragraphs 4.3.21 and 4.3.22 of the explanatory text to policy ST 3 relate to Tier 5 settlements and set out that some development in such settlements may be acceptable. However, these paragraphs are concerned with development in or at the edge of built-up area boundaries. By being separated from the Upchurch boundary by the adjacent primary school, the appeal site is not in or at the edge of the built-up area boundary. I recognise the reference to adopting a flexible approach, in paragraph 4.3.18, but given the substantial separation from the Upchurch boundary, that does not lead me to a different view.
8. Paragraph 4.3.14 of the explanatory text states that the line between consolidated areas of built development and open countryside may not always be clear cut, and that judgements on a case-by-case basis may need to be made. However, to my mind 'consolidated areas of built development' refer to areas of development beyond built up areas. Indeed, the next sentence reaffirms that land beyond built-up area boundaries is regarded as open countryside. In any event, in this case, it is clear cut that the appeal site is separated from the built-up boundary and from any other consolidated area of built development. In particular, when approaching the site from the public footpath to the south it is seen to be flanked to either side by undeveloped land.
9. Overall, there is nothing in the explanatory text that would lead me to consider the proposal would accord with the policy, notwithstanding that the policy itself carries more weight than the explanatory text. The development would therefore not be appropriately located, and the failure to comply with the settlement strategy in policy ST 3 means there is a consequential conflict with Local Plan policy ST 1, which requires development to accord with the settlement strategy.

Character and appearance

10. The appeal site currently comprises an undeveloped field, roughly triangular in shape. There is an arable field opposite the site, open grassed land to the south and east interspersed with a few dwellings, and the primary school to the east. A public footpath runs along the south east boundary of the site. This footpath is flanked by low post and wire fences and so the fields to either side are clearly visible from the footpath. The site is also clearly visible from another public footpath, which runs south east from Chaffes Lane across another field on slightly higher land, and is clearly visible in the Forge Lane street scene above the low hedge along the roadside. Due to this openness, the site is prominent in its setting and its undeveloped character makes a strong contribution to the open, rural character of the area on this eastern side of Upchurch.
11. The Swale Landscape Sensitivity Assessment specifically considers a large area of land to the east of Upchurch. It finds that the east settlement edge of Upchurch is not well defined, and that there is an opportunity to create a better settlement edge by small scale development not more than one or two fields to the east of the village. The development would provide such an opportunity, and the provision of landscaping alongside the public footpath on the south east boundary could reflect the use of shelterbelts elsewhere locally, including opposite the site.
12. Conversely, although matters of scale, landscaping and appearance are reserved, the development would inevitably result in the loss of this small field, which is characteristic of the local landscape. This would compromise the open character of the site and disrupt the openness of the wider area.
13. Visually, this effect would be most starkly apparent in close distance views from the footpaths to the south of the site, and also from Forges Lane. The appellant's Landscape and Visual Impact Assessment considers that there would be a significant impact on these viewpoints. However I consider there would also be a significant impact when seen from viewpoints 16, 17, 19 and 20. From 16 and 17 the row of dwellings proposed for the eastern part of the site would be visible, and from 19 and 20 all of the houses would be visible, albeit from a greater distance. From these positions, the open views across the site to the landscape and estuary beyond would be interrupted as, although the site is on lower land, the gradient is not so steep that views would be over the top of the houses, even if single storey. Moreover, landscaping would be unlikely to mitigate this fully. In addition, from closer positions, the boundary treatment which would be necessary along the southeast boundary of the site to separate and screen the gardens from the public footpath, would also disrupt the open views.
14. In addition, the density of the scheme, whilst less than the residential development on Church Farm Road, would represent a more intensive form of development than the primary school. At present the school and its playing field, provides a transition between the dwellings to the west and the undeveloped land at the appeal site to its east. The proposal would therefore disrupt the pattern of development locally.
15. The parking proposed at the front of the site would be fairly well contained by planting along the frontage. This aspect of the proposal would reflect the parking at the front of the school, which is itself behind mature vegetation. In that context the parking would not be incongruous. Furthermore, there would be room between

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some of the parking spaces for additional planting to assist in breaking up the hardstanding.

16. The garden for plot one would be wholly behind that for plot two. However, whilst this arrangement differs from that elsewhere in the scheme, and most likely elsewhere locally, I do not consider this would have any material effect on the character or appearance of the area given the relatively small size of the gardens and their limited visibility in the wider context.
17. Nonetheless, notwithstanding the parking arrangement and the garden of plot one, the development would harm the character and appearance of the area. It would therefore conflict with Local Plan policies DM 24, DM 14 and CP 4 which together seek to protect the landscape and minimise adverse impacts on the landscape and the natural environment. Policy DM 24 adds that where significant adverse impacts remain, the social or economic benefits must significantly and demonstrably outweigh the harm. I consider this later as part of the planning balance.

Affordable housing

18. A completed Unilateral Undertaking (UU) dated 1 March 2026 has been provided. This purports to secure affordable housing, in addition to a number of other items including biodiversity net gain, the overflow parking and numerous other contributions. Both the Council and Kent County Council provided comments on that, and in response a Supplemental Unilateral Undertaking, dated 26 March 2026, was provided. This includes a supplemental agreement which contains within it a list of variations to the principal UU, i.e. that dated 1 March.
19. Under s106A(1), a planning obligation may only be modified or discharged by agreement between the enforcing authority and the person against whom the obligation is enforceable, or via an application or appeal if the authority refuses to agree. It could not be modified by a supplemental agreement. In addition, although clause 4 of the Supplementary Unilateral Undertaking requires the execution of the supplemental agreement, it is, itself, not a planning obligation as it does not constitute any of the forms an obligation can take as identified in s106(1). Moreover, whilst it may be binding on the interested party, a covenant of this nature would not be enforceable against successors in title. As such, I cannot take this Supplementary Unilateral Undertaking into account, and can only consider the principal UU.
20. Schedule 2 of the UU refers to the provision of affordable housing. Paragraph 2.1 of part one states that no development shall commence until an Affordable Housing Scheme has been approved in writing by the Council. There is no other part of the UU that states this requirement can be dispensed with. Furthermore, as the document is unilateral, the Council are not obliged to accept the affordable housing contribution set out in Part Two. If that were the case, it would still be necessary for an Affordable Housing Scheme to be agreed before development commenced. In either case, the UU provides the Council with the ability to decline to approve the Affordable Housing Scheme and so ensure that only development that they consider to be acceptable could be commenced.
21. Policy DM 8 of the Local Plan requires, on developments of this size in this location, that 40% of the units should be affordable. The parties agree the six affordable homes would represent a proportion of 37.5%. However, the policy also allows for a commuted financial contribution to be provided instead. I see no reason

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why, if affordable housing is agreed to be unachievable on site, an equivalent commuted contribution could not be agreed; or if affordable units were provided on site, why a figure equivalent to the 2.5% shortfall could not be agreed. All final details could be secured by the Affordable Housing Scheme.

22. Ultimately, it is likely that an acceptable provision of affordable housing could be secured. The proposal would therefore not conflict with policy DM 8 as set out above, and Local Plan policy CP 3, which says affordable housing should be provided in accordance with policy DM 8.

BMV

23. There is disagreement between the parties over the classification of the land, with the Council considering it is Grade 1 agricultural land, and the appellant suggesting it is Grade 3b. Local Plan policy DM 31 states that the development of Grade 1, 2 and 3a agricultural land will not be permitted unless certain criteria apply, none of which, it is suggested, would apply here.
24. The Council acknowledge their assessment is high level and so accept it may not be truly reflective, but raise concerns with the methodology used in the appellant's Agricultural Quality (AQ) assessment. Natural England advise that every hectare, boreholes should be made 1.2m deep using an auger supported by 1m deep inspection pits. The AQ assessment demonstrates that over the 0.8ha site, four auger holes and an inspection pit were dug. Due to the stoniness of the soil, the auger holes were not 1.2m depth, but they ranged between 60 and 80cm. In any case as the inspection pit did reach 1.2m deep and as this would equate to one per hectare, the advice from Natural England was met.
25. Separate DEFRA guidance relates to how data should be interpreted, advising that for soil to be considered grade 3a, no more than 15% of the top 25cm should have stones larger than 2cm. At one investigation point, stoniness was 17%, the others being recorded as 15%. Although this could suggest part of the site is Grade 3a, the appellant confirms it is the droughtiness of the site that is the more significant factor. In this respect the assessment calculates that the moisture balance for potatoes would render the site Grade 3b, but for wheat would render it 3a. This is recognised by the Council. However as set out in the DEFRA guidance, both the minimum moisture balance values must be met. As they are not, the land could not be graded any higher than 3b.
26. As a result, I consider the land has been appropriately assessed and the conclusion that it is Grade 3b is robust. Consequently, in this regard, the development would not conflict with Local Plan policy DM 31 as set out above. There would also be no conflict with Local Plan policy DM 3, which seeks to ensure the potential for rural employment is not reduced.

Other Matters

27. It is not disputed that the Council cannot demonstrate a five years supply of housing. The appellant suggests it is just shy of four years, though may be even lower. I consider this to be a modest shortfall which carries modest weight. Nonetheless, this triggers the application of paragraph 11 d) of the Framework which states that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Particular

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- regard should be had to policies relating to development in sustainable locations, making effective use of land, design and the provision of affordable homes.
28. Although the site is beyond the built-up area boundary, future residents would have reasonable access to the facilities in the village including bus stops served by buses accessing larger towns nearby. Also, as set out above, it is likely that an appropriate amount of affordable housing, or a suitable commuted sum, could be provided. These count in favour of the proposal, though not substantially, given all development should have good access to services and facilities and the affordable housing would be that required by policy.
29. In terms of making an effective use of land, the Framework highlights paragraph 129 which requires development to achieve appropriate densities taking into account an area's prevailing character. As set out earlier, I consider the development would not represent an appropriate density to reflect its position beyond the settlement boundary. Also, although the design of the individual houses is a reserved matter, the design of the development as a whole would not be sympathetic to local character or reflect the surrounding landscape setting as described in paragraph 135 of the Framework. I give these conflicts with the Framework substantial weight.
30. In terms of other policies of the Framework, the proposal would be supported by the need to boost the supply of housing, particularly at a time when the Council cannot demonstrate a sufficient supply. This benefit is of significant weight. The economic benefits of a development of this scale would be moderate. The provision of additional parking at the front of the site which could be available to the wider community, particularly during school drop off and collection times, would be a modest social benefit. The provision of the required Biodiversity Net Gain would be a modest environmental benefit.
31. Given the Council's spatial strategy is not achieving the necessary housing delivery, it is out of date and the development's conflict with it should be given limited weight. Nonetheless, the conflict with Local Plan policies relating to the character and appearance of the area can still be given substantial weight as they are consistent with the Framework.
32. Overall, it is considered the adverse effects resulting from the development, would significantly and demonstrably outweigh the benefits of the development.
33. The other obligations set out in the UU would mitigate the effects of the development. Therefore, I need not consider them further as such mitigation would only neutralise effects of the proposal and so would be of no positive benefit that would need to be accounted for in the planning balance.
34. I note the recent allowed appeal relating to a small development on Chaffes Lane. Whilst that site was also outside the built-up area boundary and provided housing at a time when the Council could not demonstrate a sufficient housing land supply, and indeed the supply is marginally worse now, it is markedly different from this current appeal. This is largely because in that case the Inspector found very little harm aside from its position in the open countryside. I have found greater and more significant harms in this appeal.

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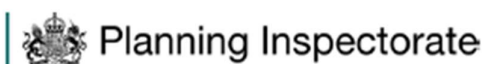
35. A number of other concerns have been raised by local residents. However as I am dismissing the appeal I need not give them further consideration as they could have no determinative effect on my decision.

Conclusion

36. Although I consider there would be no loss of BMV and the scheme would be likely to provide the appropriate amount of affordable housing, the proposal would harm the character and appearance of the area and would conflict with the Council's spatial strategy. It would therefore conflict with the development plan taken as a whole and there are no other considerations, including the provisions of the Framework, than indicate a decision other than in accordance with the development plan. Therefore the appeal is dismissed.

Andrew Owen

INSPECTOR



Costs Decision

Site visit made on 26 May 2026

by Andrew Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2026

Costs application in relation to Appeal Ref: 6002253

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

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Cantium Land and Development Ltd for a full award of costs against Swale Borough Council.
 - The appeal was against the refusal of outline planning permission for overflow community parking, erection of 16no. dwellings, with associated parking and gardens, and formation of new access and egress points onto Forge Lane.
-

Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. It goes onto add that local planning authorities are at risk of an award of costs if they behave unreasonably with regard to the substance of the matter under appeal, such as by delaying or preventing development which should clearly be permitted having regard to its accordance with development plan policies, or in relation to procedural matters at the appeal, such as by introducing fresh and substantial evidence at a late stage.
4. It is clear that the application was under consideration by the Council for an excessive length of time which can be partly, though not wholly, explained by a change in the case officer dealing with the application. However it is also apparent that there were still unresolved objections, namely from the County Council ecologist, which were not resolved until the week before the appeal was submitted. So although I understand this was beyond the expiry of the extensions previously agreed by the parties, it does not demonstrate that the Council were unreasonably delaying the development.
5. When taken to committee, with a recommendation that the Council raise no objection to the development, Members came to a contrary view. This is fundamentally their right and this could not have avoided the applicant's expense of the appeal as that had already been submitted by this time.
6. The putative reason for refusal refers to the effect on the character and appearance of the area, the spatial strategy, loss of Best and Most Versatile (BMV) agricultural

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land, and the mix of market and affordable housing. The harms resulting from its effect on the character and appearance of the area, the spatial strategy, and affordable housing were raised in the officer's report, so were not fresh issues. In my appeal decision I broadly agree with those.

7. With regard to BMV, the officer report confirms that they were not in a position to question the applicant's evidence on that matter. However Members found this position unsatisfactory, and in the Council's appeal statement reasonable concerns were explained, albeit ones I disagree with. Essentially, the Members position was not unreasonable and so neither was the reference to policy DM 31 in the Council statement.
8. The applicant raises a number of other matters stemming from the Council's appeal statement. I address these briefly below:
 - The fact that the appeal statement reaches different conclusions to the officer report is plainly due to the need to defend the Council's putative reason for refusal. This is common practice and is not unreasonable. Moreover, the conclusions were not unfounded.
 - Local Plan policy CP 3 is referred to in the putative reason for refusal and the Council's statement of case. The conflict with Local Plan policy CP 8 would inevitably lead to a conflict with policy CP 3 as that says that development should provide affordable housing in accordance with policy CP 8.
 - The conclusion that the proposal would conflict with Local Plan policy DM 24 is not unreasonable and is a matter of judgment. The fact that the officer report found the harm to not be significantly adverse, and the appeal statement found it to be significant is, again, a reflection of Member's view.
 - No matters of design were included in the putative reason for refusal or appeal statement, other than matters that relate to the layout of the scheme and its effect on the character and appearance of the area.
 - Addressing queries the County Council's legal officer had over land ownership, and the applicant's rebuttals to the value of contributions sought by the County Council's Education team, are part and parcel of resolving issues. I do not consider this represents unnecessary expense. In any case, the County Council is a separate entity to the Borough Council, against whom the costs application is made.
9. Overall, it is considered that unreasonable behaviour resulting in unnecessary or wasted expense as set out in the PPG has not occurred and an award of costs is not warranted.

Andrew Owen

INSPECTOR

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