

PLANNING COMMITTEE – 5th February 2026**PART 3****Report of the Head of Planning****PART 3****Applications for which REFUSAL is recommended**

3.1 REFERENCE NO - 25/504706/OUT		
PROPOSAL - Outline application (with all matters reserved except access) for demolition of existing brick outbuilding and erection of 3no. detached custom-build dwellings.		
SITE LOCATION - Ten Acres Breach Lane Lower Halstow Kent ME9 7DD		
RECOMMENDATION - Delegate to the Head of Place to refuse planning permission, with further delegation to the Head of Place to negotiate the precise wording of reasons of refusal, including adding or amending such reasons as may be necessary and appropriate.		
APPLICATION TYPE - Minor		
REASON FOR REFERRAL TO COMMITTEE - Cllr Hunt requested that the application be determined by Committee if the recommendation is to refuse planning permission due to the involvement of the Committee in the consideration of previous applications at the site.		
Case Officer - Matt Duigan		
WARD Bobbing, Iwade and Lower Halstow	PARISH/TOWN COUNCIL Lower Halstow	APPLICANT Mr & Mrs Keith & Glenda Tress AGENT Benchmark Design Build LTD
DATE REGISTERED 24/11/2025		TARGET DATE 19/01/2026
BACKGROUND PAPERS AND INFORMATION: The full suite of documents submitted, and representations received pursuant to the above application are available via the link below: - 25/504706/OUT Outline application (with all matters reserved except access) for demolition of existing brick outbuilding and erection of 3no. detached custom-build dwellings. Ten Acres Breach Lane Lower Halstow Kent ME9 7DD		

1. SITE LOCATION AND DESCRIPTION

- 1.1. The application site relates to a parcel of land on the west side of Breach Lane, to the north of an existing dwelling, known as Westfield House.
- 1.2. The site is roughly rectangular in shape. It has a site area of approximately 0.18ha. There is a derelict outbuilding within the northwest corner of the site. The land is generally clear of vegetation.
- 1.3. The site is bordered to the north by a vacant plot which gained outline planning permission for a single dwelling under application ref: 22/502340/OUT. Reserved Matters approval has subsequently been granted. Further afield to the north and west is open countryside. Westfield House is located to the south, beyond which is more open land. There are residential dwellings to the east situated on the opposite side of Breach Lane.
- 1.4. Access to the site is via Breach Lane, with the entrance located toward the northern part of the plot, directly opposite The Club House and Club Cottages, which sit at the northern end of the terrace of dwellings along the eastern side of Breach Lane.
- 1.5. The site is located approx. 150m to the south of Lower Halstow and falls outside of the built confines of the village.
- 1.6. There is a public right of way (footpath, ZR43) situated to the north of the site (noting that the development would not encroach in any way on the PROW network).

2. PLANNING HISTORY

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

Refused – 07.11.2025

- 2.2. 19/500764/OUT - Outline application (all matters reserved except access) for the demolition of former farm building/garage and erection of 10 no. 2, 3- and 4-bedroom dwellings with garages, associated landscaping and parking, together with new access and part widening of Breach Lane.

Refused - 19.08.2019.

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

- 2.3. 17/502046/OUT – Outline application (some matters reserved) for the erection of 9 dwellings and garages, new access with associated landscaping and parking – access to be sought at this stage.

Refused - 11.07.2017.

Immediately adjoining parcel of land to the north

- 2.4. 25/503549/FULL - Section 73 - Application for minor material amendment to approved plans condition 1 (to allow alterations to internal layout and change of detached garage to an attached garage with utility to rear) pursuant to 24/502764/REM for - Approval of Reserved Matters (appearance, landscaping, layout and scale) for the erection of a single detached self-build dwellinghouse and carport/garage pursuant to 22/502340/OUT.

Application Permitted – 12.12.2025

- 2.5. 24/502764/REM - Approval of Reserved Matters (appearance, landscaping, layout and scale) for the erection of a single detached self-build dwellinghouse and carport/garage pursuant to 22/502340/OUT.

Application Permitted - 10.10.2024

- 2.6. 22/502340/OUT – Outline application (all matters reserved except access) for the erection of a single detached self-build dwellinghouse and carport/garage.

Application Permitted - 06.12.2022

3. PROPOSED DEVELOPMENT

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

4. REPRESENTATIONS

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

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

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

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

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

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

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

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

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

5. CONSULTATIONS

5.1. Set out below is a summary of matters raised in representations, with the comments reflecting the final position of the consultee.

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

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

- 5.4. **KCC Ecological Advice Service (KCC EAS)** – No objection subject to conditions.
- 5.5. **KCC Public Rights of Way (PROW)** – No objection.
- 5.6. **Mid-Kent Environmental Protection** – No objection subject to conditions.
- 5.7. **Health and Safety Executive (HSE)** - The proposed development falls within the SD3 distance of the nearby licensed explosives site, but outside SD2 distance. HSE therefore has no comment to make on the planning application provided that the development is not a vulnerable building.

[The proposed buildings do not meet the criteria to be vulnerable buildings].
- 5.8. **Environment Agency** - No objection.
- 5.9. **Swale Footpath Group** - No objection.
- 5.10. **Natural England (NE)** – Require recreational impacts (from future residents) to protected sites to be mitigated.

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

6. DEVELOPMENT PLAN POLICIES

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

- ST1 Delivering sustainable development in swale
- ST2 Development targets for jobs and homes 2014-2031
- ST3 The Swale settlement strategy
- ST4 Meeting the Local Plan development targets
- ST5 The Sittingbourne area strategy
- CP2 Promoting sustainable development
- CP3 Delivering a wide choice of high quality homes
- CP4 Requiring good design
- DM6 Managing transport demand and impact
- DM7 Vehicle parking
- DM14 General development criteria

DM19 Sustainable design and construction

DM21 Water, flooding and drainage

DM24 Conserving and enhancing valued landscapes

DM28 Biodiversity and geological conservation

DM31 Agricultural land

Supplementary Planning Guidance/Documents -

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

Parking Standard Supplementary Planning Document, 2020.

National Planning Policy Framework (the NPPF)

National Planning Practice Guidance (NPPG)

7. ASSESSMENT

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

- Principle
- Landscape and Visual
- Ecology
- Transport and Highways
- Flood Risk, Drainage and Surface Water
- Living Conditions
- Sustainability / Energy

7.2. Principle

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

7.2.2. The NPPF provides the national policy context for the proposed development and is a material consideration in the determination of the application. The NPPF states that any proposed development that accords with an up-to-date local plan should be approved without delay. At the heart of the NPPF is a presumption in favour of sustainable development and for decision-taking this means approving development that accords with the development plan.

Location of Development

- 7.2.3. The proposed housing is set in the open countryside and is not within the designated built-up boundary of the Local Plan.
- 7.2.4. Local Plan Policy ST1 (4) requires development proposals to accord with the Local Plan settlement strategy. In terms of conformity with the NPPF Policy ST1 aligns with many of the NPPF topics and objectives.
- 7.2.5. Local Plan Policy ST3 (5) relates to the settlement strategy and states that at locations in the open countryside, outside the built-up area boundaries development will not be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside. The primary objective of the strategy is to protect the countryside from isolated development (as is proposed).
- 7.2.6. The location of the site is remote from the Lower Halstow village which is some 150m to the north. Access to the village is possible via a footpath on the east side, although this is largely unlit. Given the limited services available in the village, the remote location of the site away from the village, and the unlit nature of the footway along the road, the occupants of the development would be likely to rely on car-borne journeys.
- 7.2.7. Local Plan Policy ST5 (part 4) directs development proposals to Sittingbourne or at other sites within urban and village confines, or as extensions to settlements, where indicated by proposed allocations. The site is outside of the areas stated and nor is it allocated for development. The application is in conflict with Policy ST5 which conforms with much of the NPPF. Given the location, the proposals for housing are contrary to Local Plan policies ST1, ST3 and ST5.
- 7.2.8. It is also material to highlight an appeal decision for 10 dwellings which included the land subject to this application (following the Council's decision to refuse permission under 19/500764/OUT). The appeal Inspector stated in paragraph 11:
- I conclude that the appeal site would not be a suitable location for the proposed development having regard to the settlement strategy and its poor access to local services and facilities and would conflict with policies ST1, ST3 and DM9 of the LP and paragraphs 8,11,79,and 170 of the National Planning Policy Framework (2019) (the Framework), which when read together seek to deliver sustainable development consistent with the settlement strategy by restricting development in the open countryside.*
- 7.2.9. The site and its surroundings retain the same overall characteristics in terms of limited access to services, facilities, and footpaths as they did at the time of the previous appeal (19/500764/OUT).
- 7.2.10. Whilst the current application is now for three dwellings, it remains the case that the site is not in a suitable location for the proposed development, and the scheme continues to perform poorly against the requirements of Policy ST3 of the Local Plan.

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

- 7.2.18. There is a conflict with Development Plan policies and whether the harm caused by the proposal is outweighed by other material considerations (the benefits of the proposal) is considered in a planning balance section at the end of this report.
- 7.2.19. Comments have been received raising concern that the site had been used as allotments at some point in the past. The site is clearly not currently being used as allotments. It is noted that there are existing allotments to the south of Westfield Cottages (approximately 125m south of the application site), given the situation, no concern is raised that the proposal might reduce the provision of allotments in Swale.
- 7.2.20. Self / Custom Build
- 7.2.21. The application has been submitted on the basis that it would deliver three self-build/custom build dwellings. Under the Self-build and Custom Housebuilding Act 2015 (as amended) (the Act), local planning authorities are required to keep a register of individuals and associations seeking to acquire serviced plots of land in the Borough for their own self-build and custom housebuilding projects.
- 7.2.22. The Council's Self-Build Register, as of the 30/10/2025 Base Period, the Council has 130 individuals seeking 131 plots and 5 associations seeking 32 plots for Self-Build Custom Housing building.
- 7.2.23. The Act places a duty on local authorities to grant sufficient development permissions to meet the demand for self-build and custom housebuilding in their area arising in each statutory Base Period within the three years after the end of a Base Period.
- 7.2.24. The Council is not currently meeting its statutory duty under the Act in respect of granting permissions for Self -Custom Build plots.
- 7.2.25. The Applicant has provided a Unilateral Undertaking which would bind the applicant to ensuring the plots are sold for self-build/custom build purposes in accordance with the Act. The application is in outline form with all matters reserved, which would allow the initial owner of each plot to have primary input into the design and layout of the dwelling.
- 7.2.26. There is sufficient evidence to conclude that the application for the three dwellings meets the definition of Custom – Self Build dwellings. The weight to afford this will be considered further below.
- 7.2.27. Previously developed land
- 7.2.28. The applicant asserts that the site qualifies as brownfield land. It contains a small brick structure and remnants of hardstanding. According to the NPPF, there is a strong emphasis on redeveloping brownfield (previously developed) land, especially for housing.
- 7.2.29. The planning history of the site is also a material consideration. In the appeal decision for application 19/500764/OUT, the Inspector acknowledged that part of the site constitutes previously developed land. This appeal decision confirms that whilst the partial brownfield status of the site and the presence of existing development in the

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

7.2.30. Loss of Best and Most Versatile Agricultural Land

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

7.2.32. The application site comprises Grade 1 agricultural land, which is classified as being of the highest quality. However, based on the available evidence, the land does not appear to have been previously farmed and, due to its limited size, would not constitute a viable agricultural unit. Whilst the proposal would result in the loss of land designated as best and most versatile, the scale and nature of the site significantly limits its agricultural potential.

7.2.33. As such, although a degree of conflict with Policy DM31 of the Local Plan is acknowledged, the weight attributed to this harm within the overall planning balance is considered to be minimal.

7.3. **Landscape and Visual**

7.3.1. Policy DM24 of the Local Plan states the value, character, amenity and tranquillity of the Borough's landscapes will be protected, enhanced and, where appropriate, managed. The NPPF requires decisions to ensure that development is 'sympathetic to... landscape setting'.

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

7.3.3. The site is also part of the Upchurch and Lower Halstow Fruit Belt as designated in the Swale Landscape Character and Biodiversity Appraisal 2011 (SLCBA). The key characteristics of the area are of an undulating landscape with occasional long views to north and south, small to medium-scale rural landscapes with a strong sense of enclosure and small villages with historic centres and modern urban expansion on the periphery, amongst others. The SLCBA notes that the landscape is in 'moderate' condition and moderately visually sensitive. Guidelines for this character area include conserving the remaining enclosed landscape structure and look for opportunities to create features to restore a strong landscape structure with trees, shelterbelt, hedge planting and wetland features.

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

- 7.3.5. Policy DM14 (5) requires development to reflect the positive characteristics and features of the site and locality, the proposed housing would reflect the openness of the area in which it would be set (which is considered to be a positive characteristic of the locality).
- 7.3.6. In terms of visual impact, the Inspector's comments in relation to 19/500764/OUT, highlight that the site's partial brownfield status and its relationship to existing built form are material, but the proposal must still be assessed against the need to protect the character and appearance of the countryside. The site is in a non-designated landscape and on this basis Policy DM24 of the Local Plan states:
- "Non-designated landscapes will be protected and enhanced and planning permission will be granted subject to:*
- 1. the minimisation and mitigation of adverse landscape impacts; and*
 - 2. when significant adverse impacts remain, that the social and or economic benefits of the proposal significantly and demonstrably outweigh the harm to the landscape character and value of the area."*
- 7.3.7. While scale and appearance are reserved matters, it is inevitable that the introduction of dwellings on the site together with any associated hardstanding or parking areas to the front, would detract from the rural landscape character and erode the visual quality of the surrounding area. The development is highly likely to appear as visually prominent in what is currently (with the exception of a single outbuilding) open land.
- 7.3.8. The proposal would extend beyond the established pattern of development and, due to its prominent position in the landscape, would result in harm to the character and appearance of the open countryside. It would appear as a residential intrusion in a rural setting. For these reasons, it is concluded that the development would have a detrimental impact on the character and visual quality of the site and its surroundings.
- 7.3.9. The landscape and visual impacts across the site would be permanent and are considered contrary to policies ST3, ST5, DM14 of the Local Plan, and weigh against the scheme in the planning balance.
- 7.3.10. In terms of DM24, whether the social and or economic benefits of the proposal significantly and demonstrably outweigh the harm to the landscape is a matter considered in the planning balance section at the end of this report.

7.4. **Ecology**

7.4.1. Policy / legislative context

- 7.4.2. The Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') affords protection to certain species or species groups, commonly known as European Protected Species (EPS), which are also protected by the Wildlife and Countryside Act 1981. This is endorsed by Policies CP7 and DM28 of the Local Plan, which relates to the protection of sites of international conservation importance

including Special Areas of Conservation (SAC), Special Protection Areas (SPA) or Ramsar Sites.

- 7.4.3. Section 40 of the Natural Environment and Rural Communities Act (2006) states “*For the purposes of this section “the general biodiversity objective” is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England*” and “*A public authority which has any functions exercisable in relation to England must from time to time consider what action the authority can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective.*” Furthermore, the NPPF states that ‘the planning system should contribute to and enhance the natural environment by minimising impacts on and providing net gains for biodiversity.’ The NPPF states that ‘if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.’
- 7.4.4. In terms of the Local Plan, Policy DM28 sets out that development proposals will conserve, enhance, and extend biodiversity, provide for net gains where possible, minimise any adverse impacts and compensate where impacts cannot be mitigated.
- 7.4.5. The Swale/Medway SPA and Ramsar sites
- 7.4.6. The application site is located within 6km of The Swale/Medway Special Protection Areas (SPA) and Ramsar which are European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).
- 7.4.7. As the application site is within 6km of the North Kent SPA/Ramsar Sites, the proposed development is likely to have a significant effect, either alone or in-combination, on the coastal Special Protection Areas (SPAs)/Ramsar sites from recreational disturbance on the over-wintering bird interest.
- 7.4.8. Natural England has advised that an appropriate tariff of £337.49 per dwelling (excluding any legal and monitoring officer’s costs) should be collected to fund strategic measures across the Thames, Medway and Swale Estuaries. The necessary contribution (3 x £337.49) has been paid by the applicant in this case.
- 7.4.9. These strategic SAMMS mitigation measures are being delivered through Bird Wise North Kent, which is the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, and the mitigation measures have been informed by the Category A measures identified in the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMM) produced by Footprint Ecology in July 2014.
- 7.4.10. A decision from the Court of Justice of the European Union (*People Over Wind v Coillte Teoranta*, ref. C-323/17) detailed that mitigation measures cannot be taken into account when carrying out a screening assessment to decide whether a full ‘appropriate assessment’ is needed under the Habitats Directive. Given the need for

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

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

Appropriate Assessment under the Conservation of Habitats and Species Regulations 2017

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

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

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

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

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

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

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

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

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

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

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

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

7.4.21. Site Specific Ecology / Protected Species

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

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

determined to be of negligible potential for supporting roosting bats, though there is some potential for nesting birds. The site as a whole is of overall low-negligible for supporting protected species (e.g. reptiles/amphibian/dormice), and therefore it is considered that adverse impacts to these species may be avoided through the implementation of precautionary practices. Any ecological impacts arising are therefore considered to be acceptable subject to conditions securing a biodiversity enhancement plan, details of precautionary working practices and details of external lighting in the event of an approval.

7.4.24. Biodiversity Net Gain (BNG)

7.4.25. Paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990 (TCPA) (as inserted by the Environment Act 2021) introduces a general condition requiring most developments to achieve a minimum 10% biodiversity net gain. This requirement does not apply where an exemption is engaged, including for self-build and custom housebuilding developments that meet the criteria set out in the Biodiversity Gain Requirements (Exemptions) Regulations 2024.

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

7.5. **Transport and Highways**

7.5.1. Local Plan Policies CP2 and DM6 promotes sustainable transport through utilising good design principles. It sets out that where highway capacity is exceeded and/ or safety standards are compromised proposals will need to mitigate harm. Policy DM7 of the Local Plan requires parking provision to be in accordance with the Council's Parking SPD.

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

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

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

7.5.4. Several representations have been received raising concerns that the development would increase road safety risks in an area already affected by traffic and ineffective speed limits. Objectors also highlight that the proposed access points are located near a blind corner, which they consider would exacerbate highway safety issues. KCC Highways have considered the issue and raised no objection to the proposals from a

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

- 7.5.5. In terms of traffic volumes, the proposal is for 3 dwellings, KCC Highways are not of the view that the vehicle movements associated with three dwellings would give rise to any severe impacts upon the surrounding highway network. The scheme is therefore acceptable in this regard.
- 7.5.6. Assuming the dwellings could accommodate 4 bedrooms, based on the Council's Parking Standards SPD, four-bedroom dwellings in this location require three spaces each, plus an additional 0.2 spaces per dwelling for visitors, equating to a total requirement of 10 spaces.
- 7.5.7. The plots are generous in size, and KCC Highways consider that there would be sufficient space on site to accommodate the required parking, if approved conditions would need to be imposed on any consent to ensure adequate provision is made for onsite parking and vehicles manoeuvring areas. A condition could also be applied to ensure sufficient parking space during construction. In view of the above, the parking proposals are considered to comply with Policy DM7 of the Swale Local Plan and the relevant provisions of the NPPF.
- 7.5.8. Policies CP2 and DM6 of the Local Plan require proposals to minimise the need to travel for employment and services, facilitate sustainable transport and requires priority to be given to pedestrians and cyclists. As set out above when considering the location of development, there is an unlit footpath which would provide access to Lower Halstow. However, Lower Halstow itself only has a very limited number of services and facilities, which is reflected in its position low down in the settlement hierarchy as set out in Policy ST3. Therefore, due to the distance of the site from higher order centres which contain services and facilities necessary for day-to-day living, the scheme would not minimise the need to travel. In addition, due to the unlit footpath, it is not considered that sustainable travel methods would be prioritised. On this basis, the scheme would conflict with those elements of Policy DM6 and CP2 which relate to these specific matters, this weighs against the scheme in the planning balance.

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

- 7.6.1. Policy DM21 of the Local Plan and the NPPF requires that Local Planning Authorities should ensure that flood risk is not increased elsewhere and that any residual risk can be safely managed.
- 7.6.2. The site is not located within Flood Zone 2 or 3; however, the Council's Strategic Flood Risk Assessment and Environment Agency maps indicate that a section to the west of the site (rear garden) is at medium/high risk of surface water flooding.
- 7.6.3. On 17 September 2025, the Government updated the Planning Practice Guidance (PPG) on flood risk. The revised guidance introduces a more pragmatic and proportionate approach to surface water flood risk. Specifically, where a site-specific

Flood Risk Assessment (FRA) clearly demonstrates that the proposed layout, design, and mitigation measures will ensure that occupiers and users remain safe from current and future surface water flood risk for the lifetime of the development without increasing flood risk elsewhere the sequential test does not need to be applied.

- 7.6.4. Although a site-specific Flood Risk Assessment has not been submitted, the location and design of the development would ensure that no built elements are at risk from any form of flooding. Surface water management would be achieved through soakaways and permeable driveways, as detailed in the submitted Drainage Strategy Report and supported by site-specific infiltration tests. The Environment Agency, having reviewed the supporting information, assessed the proposal as low risk and had no specific comments.
- 7.6.5. Concerns have been raised in representations regarding the potential impact of the development on sewage disposal, as well as reference to an existing manhole overflow and the potential for associated health and safety risks. While these concerns are noted, matters relating to foul drainage is addressed through separate legislation and regulatory regimes, including the Building Regulations. As such, these matters are not material planning considerations in the determination of this application.
- 7.6.6. Overall, the proposal aligns with the objectives of Policy DM21 of the Local Plan and the NPPF and is considered acceptable.

7.7. **Living Conditions**

- 7.7.1. Policy DM14 of the Local Plan and the NPPF requires that new development has sufficient regard for the living conditions of neighbouring occupiers.
- 7.7.2. The nearest property to the site is Westfield House, located to the south. It is set back within its plot, with its main amenity space situated to the north and front of the dwelling. Although the proposed new dwellings would extend further forward than Westfield House, a separation distance of 18 meters would be maintained between the main house and the side boundary. This ensures that there would be no unacceptable loss of light to the existing property. Furthermore, given the orientation of the site where the new development would be positioned to the north, any overshadowing would be minimal.
- 7.7.3. Regarding privacy, as the scheme is in outline form, no detailed design has been presented, at the detailed design stage the housing could be designed in such a way as to avoid any unacceptable overlooking impacts to neighbours.
- 7.7.4. Directly opposite the site lie Breach Cottages. While the proposed dwellings are likely to be larger in scale and introduce elevated views, the layout, set back and positioning of the development would avoid any unacceptable impact on the privacy or living conditions of neighbouring occupiers. There is no reason why, at reserved matters stage, the detailed design and layout of the proposed buildings could not have an acceptable relationship with existing properties (in terms of overlooking, overshadowing, and loss of light). Therefore, no objection is raised.

- 7.7.5. New development is expected to offer future occupiers a sufficient standard of accommodation and to have regard to the Government's minimum internal space standards for new dwellings. Given the size of the plots, there is no reason to assume that dwellings with acceptable internal floor areas could not be accommodated on the site at the reserved matters stage. It is also considered that the proposals could be laid out in such a way so as to prevent any unacceptable overbearing, overlooking, loss of privacy, overshadowing or enclosing impacts on the occupiers of the three plots themselves.

7.8. Sustainability / Energy

- 7.8.1. Policy DM19 of the Local Plan requires development proposals to include measures to address climate change.
- 7.8.2. If the application was approved a condition would need to be imposed on any planning permission to control excessive water consumption and to require the future development to include details of energy efficiency and/or renewable energy generation. Subject to conditions securing this detail, the application would comply with Policy DM19 of the Local Plan and the NPPF.

7.9. Other matters

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

7.10. Planning Balance – Benefits and Harm

- 7.10.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. Section 70(2) of the Town and Country Planning Act 1990 outlines that the decision-maker needs to have regard to the provisions of the development plan and any other material considerations.
- 7.10.2. In this case conflict with policies in the development plan have been identified as set out above.
- 7.10.3. The NPPF is a material consideration and as the Council are unable to demonstrate a 5-year supply of housing land, paragraph 11.d of the NPPF is engaged. This states the following:

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

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

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

7.10.4. In this case, the application of policies that protect areas or assets of particular importance do not provide a reason for refusing the development. Therefore, it is necessary to consider if any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This assessment is carried out below.

7.10.5. Benefits

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

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

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

7.10.9. Compliance with the development plan

7.10.10. The site is also identified as Grade 1 agricultural land, the application site lies within the open countryside for the purposes of the Local Plan. The proposals would give rise to a harmful urbanising effect on the rural landscape character of the site, conflicting with the settlement strategy.

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

Local Plan

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

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

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

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

7.10.15. Balance

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

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

7.10.18. Notwithstanding the engagement of the tilted balance, it is still considered that the harm arising from the unsustainable location and harmful impact upon the rural

character, results in conflict with the NPPF which would significantly and demonstrably outweigh the benefits of the proposal.

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

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

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

7.11. **Conclusion**

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

7.11.2. The development plan indicates that planning permission should be refused and there are no other material considerations, including the NPPF, which indicate that a different decision should be reached. Consequently, it is recommended that the application is refused.

7.12. **Recommendation**

7.12.1. Refuse for the following reason.

The proposed dwellings, by virtue of their location outside of any identified built-up settlement boundary, would give rise to unacceptable urbanisation of the site and intensification of sporadic development, representing an unsustainable and harmful form of development in a rural location, poorly related to day-to-day services and facilities. The adverse impacts of the proposal would significantly and demonstrably outweigh the benefits arising. The application is therefore contrary to Policies ST1, ST3, ST5, CP2, CP4, DM6, DM14 and DM24 of Bearing Fruits 2031: The Swale Borough Council Local Plan 2017 and the National Planning Policy Framework.

