

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

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		
RECOMMENDATION – Planning Committee to Review.		
APPLICATION TYPE - Outline		
REASON FOR REFERRAL TO COMMITTEE To obtain the position of the Planning Committee in light of submissions that have accompanied the appeal and a recent appeal decision at a nearby site which is capable of being a material consideration.		
Case Officer – Ian Harrison		
WARD Borden and Grove Park	PARISH/TOWN COUNCIL Borden	APPLICANT Aspire LPP APPEAL AGENT SLR Consulting Limited
DATE REGISTERED 06/08/24		TARGET DATE Application Determined.
BACKGROUND PAPERS AND INFORMATION: The full suite of documents submitted and representations received pursuant to the above application and appeal are available via the link below: - 24/502717/OUT Outline Application (with all matters reserved) for erection of a care home (Class C2), with associated parking, landscaping and substation. Land West Of Borden Lane Sittingbourne Kent ME9 8HR		

1. **INTRODUCTION**

- 1.1. This application was initially reported to Planning Committee on 17 July 2025, with a recommendation that permission be granted. The original Committee report is attached at Appendix A.

- 1.2. The Planning Committee resolved to refuse the application for the reasons set out below. The minutes from the 17 July 2025 Planning Committee meeting are attached at Appendix B of this report.
1. *The proposed development, by virtue of its position outside the built-up area boundaries of the Swale Borough would conflict with the Council's Settlement Strategy. Moreover, development at this site, however it is brought forward, would conflict with the purposes of the Important Local Countryside Gap. Furthermore, the proposal would result in the inadequately justified loss of Best and Most Versatile Agricultural Land. The proposal is, therefore, unacceptable and contrary to Policies ST1, ST3, DM25 and DM31 of Bearing Fruits 2031: The Swale Borough Council Local Plan 2017 and the National Planning Policy Framework.*
 2. *The proposed development would result in the loss of priority habitat and it has not been demonstrated to the satisfaction of the Local Planning Authority that the proposed development would not have a detrimental impact on protected species at and within the vicinity of the site. The proposal is, therefore, unacceptable and contrary to Policy CP7 and DM28 of Bearing Fruits 2031: The Swale Borough Council Local Plan 2017 and the National Planning Policy Framework.*
- 1.3. The applicant subsequently lodged an appeal (APP/V2255/W/25/3376221). This is to be determined through the hearing procedure. The Appeal Statement of the Council is due to be submitted by 9 March 2026. The hearing is scheduled for 10:00 on 31 March 2026.
- 1.4. For reasons that will be highlighted further below, it is considered relevant to highlight section 5.7, paragraphs 7.2.13 to 7.2.16 and section 7.8 of that Committee Report which provide a summary of the advice from the KCC Ecological Advice Service, an assessment of the effect on agricultural land and an assessment of the effect on protected species at and near the site.
- 1.5. Planning Practice Guidance states that a Council could be at risk of an award of costs where “*not reviewing their case promptly following the lodging of an appeal against refusal of planning permission (or non-determination), or an application to remove or vary one or more conditions, as part of sensible on-going case management.*”
- 1.6. The purpose of presenting this matter to the Planning Committee is, therefore, to undertake an exercise of sensible case management in light of a change in the context in which the appeal might be considered, particularly as a result of a recent appeal decision at a nearby site and submissions that have accompanied the appeal.
- 1.7. Given the Start Letter for the appeal was received on 02 February 2026, and noting the publication lead-in time for the Council's Planning Committee Meeting on 05 February 2026, the Planning Committee meeting of 05 March 2026 represents the first opportunity for the case to be reviewed by the body that made the decision that is the subject of the appeal.

2. APPEAL DECISION AT LAND OFF RIDDLES ROAD, BORDEN

Appeal Decision APP/V2255/W/25/3372645

- 2.1. At the same Planning Committee meeting of 17 July 2025, application 24/503677/FULL was considered. In summary, that application sought permission for 38 dwellings, open space and other works. That application was refused for three reasons, one of which being:
2. *The proposed development would have a detrimental and insufficiently mitigated impact on protected species at and within the vicinity of the site. The proposal is, therefore, unacceptable and contrary to policies CP7 and DM28 of Bearing Fruits 2031: The Swale Borough Council Local Plan 2017 and the National Planning Policy Framework.*
- 2.2. That decision was the subject of an appeal which was also considered through the hearing procedure. The appeal was dismissed. However, the Inspector found no harm in relation to protected species and an award of costs was made against the Council. By coincidence, that appeal decision is being reported to this same Planning Committee meeting and, as such, a copy of the appeal decision and the decision in relation to the application for an award of costs is available at Part 5 of the Committee Agenda. Key extracts of the appeal decision in relation to the planning merits of the case are as follows:
28. *Both parcels of the appeal site comprise predominantly grassland in part suppressed by horse grazing and adjoining mixed off-site hedgerows offering limited connectivity across the site itself. The application was accompanied by an Ecology Impact Assessment (ECIA) which included consideration of potential species on and near the appeal site following a site visit and an earlier preliminary ecological appraisal. In summary, its recommendations included precautionary and mitigation measures to address the potential effects of the development on species including bats, badgers, hedgehogs, reptiles and nesting birds which could reasonably have been secured by planning conditions. The ECIA did not suggest that further surveys of any protected species, or wider effects, were necessary given the site's characteristics and the findings of the associated site visit. As part of the appeal documentation the appellant's ecological specialist considered those earlier findings to remain correct. Those documents acknowledge Borden Nature Reserve and have regard to a 'zone of influence' as an area over which ecological features may be subject to significant effects. That document was reviewed by the County Council Biodiversity Officer who commented specifically on the adequacy of the document during the course of the application and raised no concerns.*
29. *It is not in dispute that badgers are active in the vicinity of the site, potentially using the appeal site for some commuting or foraging. However, there is very little substantive evidence to demonstrate that the appeal site has particular value for this purpose and the appellant's ecologist considers any use for foraging is unlikely to be significant based on their observations. While I note the comments of local residents, it remains that there is not substantive or convincing evidence before me which would lead me to doubt the findings of*

the appellant's technical evidence and the County Council's Biodiversity Officer.

30. *There would be a significant reduction in open space arising from the proposal and the site would undoubtedly be different in terms of how it derives its ecological value. However, in the absence of any detailed evidence to the contrary, I am not convinced that an unacceptable 'squeezing' of the corridor for wildlife would occur or amount to harm as a result of this proposal. Unlike the existing situation, future landscaping and open space would be managed to ensure it remains available for this purpose. Overall, I am satisfied that subject to appropriate planning conditions and landscape management provisions in the S106, the effects of the proposal on badgers and other species including bats and hedgehogs, would be acceptable. The proposal would comply with policies CP7 and DM28 of the LP which relate to biodiversity considerations and conservation of the natural environment.*

Relevance to Current Appeal Decision

- 2.3. Other appeal decisions are not binding on the determination of a subsequent application or an application at any other site. However, they are capable of being a material consideration.
- 2.4. As can be established from the above commentary, the two reasons for refusal are not identical.
- 2.5. The current appeal would involve the loss of Traditional Orchard which is a priority habitat and, whilst the applicant's submissions, the Council's ecology consultee and the Committee Report identified that the loss could be reduced through the definition of an area of on-site Traditional Orchard for retention and enhancement and compensated for by off-site provisions, it does represent a material difference to the application site.
- 2.6. Moreover, the relationship with the adjacent Borden Nature Reserve is different to the adjacent site, which is on the opposite side of Riddles Road. Whilst the applicant's submissions, the Council's ecology consultee and the Committee Report identified that any impact on the Borden Nature Reserve could be minimised and controlled, it remained the case that there would be some harm caused by the proposal. For this reason, it is the case that the relationship is different with the current appeal site as opposed to the nearby site that was the subject of the abovementioned appeal and the effect of the development is different.
- 2.7. Notwithstanding these points, there is an alignment between that part of the reason for refusal for the current appeal case which states "*it has not been demonstrated to the satisfaction of the Local Planning Authority that the proposed development would not have a detrimental impact on protected species at and within the vicinity of the site*" with the reason for refusal at the nearby site where the decision stated "*The proposed development would have a detrimental and insufficiently mitigated impact on protected species at and within the vicinity of the site.*"

3. APPEAL SUBMISSIONS - ECOLOGY

3.1. At Appendix A of the Appellant's appeal submissions include a Statement of Case relating to Ecological Matters. This sets out the following key points:

- The Traditional Orchard habitat present at this site is accepted to be a UK Biodiversity Action Plan 'priority habitat' and so the extent and value of this habitat has been carefully re-evaluated. Whilst the whole site is mapped as Traditional Orchard within the MAGIC Priority Habitat Inventory, that mapping is high-level and not detailed, such that it includes areas of garden where there are and have been no trees.
- The Traditional Orchard at the site is smaller in area, amounting to approximately 0.31 hectares at the frontage of the site. It was previously calculated more broadly, amounting to 0.797ha.
- The appellant's calculations suggested that there would be a loss of Traditional Orchard which would now amount to 0.037ha but there would be the creation of 0.022ha of Traditional Orchards and 0.0218ha of enhanced Traditional Orchard.
- The Traditional Orchard is nearing the end of its lifespan and has lacked appropriate management for many years. Aerial imagery indicates that at least 14 orchard trees have been lost over the last 16 years.
- The proposed parameter plan (PL105) would be secured as part of a permission granted and would have the effect of enabling the retention of that area of land to be landscaped as Traditional Orchard such that there would not be a loss of Traditional Orchard habitat units.
- The Swale Important Local Countryside Gap Review dated February 2025 has identified that small areas of priority habitat traditional orchard remain that are no longer intact, but highlights the opportunity for 'conservation, sensitive management and potential expansion to be explored'. The enhancements of the Traditional Orchards should therefore be viewed as being a benefit of the proposal. There would also be a benefit arising from the future monitoring and maintenance of the Traditional Orchard as BNG.
- Other management at the site and the introduction of grasslands would be able to enhance the biodiversity value of the site. As such, there would only be a small loss of habitat units overall.
- The previous findings in relation to protected species by the applicant's team and the Council's ecology consultee should remain applicable.
- The site has been re-surveyed for badgers and found none at the site but two active setts within the vicinity of the site which is consistent with other evidence.

- It is suggested that any effects on Borden Nature Reserve would be minimised through conditions and future site management and any impacts on functional link between the site and the Borden Nature Reserve would be addressed by the planting of new trees.

3.2. This additional documentation has been sent to KCC Ecology for their assessment and input. Any input they may have will be circulated to members of the Planning Committee in advance of the meeting.

4. APPEAL SUBMISSIONS – AGRICULTURAL LAND

4.1. Policy DM31 states that:

Development on agricultural land will only be permitted when there is an overriding need that cannot be met on land within the built-up area boundaries. Development on best and most versatile agricultural land (specifically Grades 1, 2 and 3a) will not be permitted unless:

- 1. The site is allocated for development by the Local Plan; or*
- 2. There is no alternative site on land of a lower grade than 3a or that use of land of a lower grade would significantly and demonstrably work against the achievement of sustainable development; and*
- 3. The development will not result in the remainder of the agricultural holding becoming not viable or lead to likely accumulated and significant losses of high quality agricultural land.*

4.2. The site is not allocated for development by the local plan and, within the 17 July 2025 Committee Report, it was identified that the proposal would not result in a wider agricultural holding becoming unviable. However, no assessment of the availability of other sites was provided. That Committee Report identified harm and policy conflict as a result of the loss of agricultural land.

4.3. At Appendix D of the Appeal Submissions, the appellant has provided a Agricultural Land Classification Statement. This states that:

- The site is mostly Grade 2 land, but includes small amounts of Grade 1 land. If reviewed, the land would probably be found to be Grade 2 agricultural land.
- The site represents 0.005% of the Best and Most Versatile Land within the Swale Borough.
- If converted back to being used for producing a cherry crop, it would contribute up to 0.185% of the UK's cherry crop value.

4.4. At Appendix E of the Appeal Submissions, the appellant has provided an Alternative Sites Assessment. This concludes that:

“there are no sequentially preferable or reasonably available alternative sites within the borough. When read alongside the Care Home Need Assessment (October 2025), it is demonstrated that there is an overriding need which cannot be met on

land of lower agricultural quality, in accordance with Policy DM31 of the Bearing Fruits 2031: The Swale Borough Local Plan (adopted 2017)."

- 4.5. The Care Home Need Assessment that has been referred to is provided at Appendix B of the appeal submissions.

5. SUMMARY AND CONCLUSION

- 5.1. To assist with the response to the appeal, Members are requested to make a resolution to advise whether the outcome of that decision in respect of the nearby site and the additional evidence submitted with the appeal effects their assessment of the reasons for refusal at the current appeal site. It is recommended that the Planning Committee advises how it would wish for the Council to proceed in respect of the appeal based on the following:

- 5.2. In relation to the 1st reason for refusal:

- a) The Planning Committee could maintain its position that *"the proposal would result in the inadequately justified loss of Best and Most Versatile Agricultural Land"* contrary to Policy DM31 of the Local Plan.

OR

- b) The Planning Committee could determine that the loss of Best and Most Versatile Agricultural Land has now been adequately justified and as such withdraw that element of the 1st reason for refusal.

OR

- c) Planning Committee could determine that the loss of Best and Most Versatile Agricultural Land has now been adequately justified and as such this alters the whole balance of the considerations within the 1st reason for refusal such that the whole reason for refusal is withdrawn.

- 5.3. In relation to the 2nd reason for refusal

- i) The Planning Committee could conclude that the circumstances of the two mentioned sites and the effects of the proposals are materially different and that the additional ecology submissions do not give reason to reach a different decision, such that there are not grounds to amend the position of the Council.

OR

- ii) The Planning Committee could conclude that the additional ecology submissions and the nearby appeal decision, separately or in combination, are grounds to review the 2nd reason for refusal and, upon doing so, the Planning Committee could conclude that only part of the reason for refusal should be defended. For example, in light of the commentary provided

above, this could be to reduce the scope of the reason for refusal to focus on the effect on the Borden Nature Reserve and/or the loss of the Traditional Orchard at the site but not the surrounding area more generally.

OR

- iii) The Planning Committee could conclude that the additional ecology submissions and the nearby appeal decision, separately or in combination, are grounds to review the 2nd reason for refusal and, upon doing so, the Planning Committee could advise that the 2nd reason for refusal can be withdrawn.

