

APPLICATION PROPOSAL		Ref No 24/504082/FULL
Erection of 3no. dwellings with associated access, parking and landscaping.		
ADDRESS Hawthorns Maidstone Road Borden Kent ME9 7QA		
RECOMMENDATION - Approve		
WARD Borden And Grove Park	PARISH/TOWN COUNCIL Borden	APPLICANT Mr T Akinbiyi AGENT MKA Architects LTD
DECISION DUE DATE 09/04/25	PUBLICITY EXPIRY DATE 25/12/24	

RELEVANT PLANNING HISTORY

SW/98/0216
EXTENSION AND INTERNAL ALTERATIONS
Grant of Conditional PP

SW/92/0324
APPLICATION UNDER SECTION 64 TO DETERMINE WHETHER PERMISSION IS
REQUIRED FOR USE OF WORKSHOP TO MAKE GARDEN FURNITURE AND OTHER
ITEMS FOR TIMBER
Planning Permission Required

DESCRIPTION OF SITE

The application site, approx. 3884m² in area (0.38 hectares), is an irregular shaped parcel of land situated on the eastern side of Maidstone Road, close to the M2 motorway, the A249 and Wormdale Hill. The site lies outside any Local Plan defined built-up area boundary and within the designated countryside.

The application site is an area of open and vegetated land that forms part of the property called 'Hawthorns', which contains a detached 2-storey dwelling and associated vehicular access and outbuildings to its rear. The existing dwelling, access and outbuildings are not included within the red line boundary of this application.

The properties along the eastern side of Maidstone Road are typically set back from the road with generously sized gardens to the rear. Maidstone Road sits at the bottom of a small valley with the land rising up either side, whilst the road itself slopes downwards towards the north-east.

The site is not within or adjoining a conservation area and does not contain or adjoin any listed buildings. The south-western corner of the site is included within the M2 Junction 5 Improvements Scheme Safeguarded Area. The site is also within a Groundwater Source Protection Zone. The Kent Downs National Landscape is located 500m to the south on the far side of the M2 motorway.

PROPOSAL

This application seeks planning permission for the erection of three detached dwellings with associated vehicular access, parking and landscaping. The dwellings would be 2-storeys in height with 4-bedrooms each on the first floor and the main living spaces located on ground floor. Materials consist of timber cladding with a brickwork base and tiled roofing.

A new 2-way vehicular access point is proposed at the northern end of the site's road frontage. The proposed access road then turns 90 degrees to run south, parallel to

Maidstone Road with a turning head proposed at the southern end. A pedestrian footway is provided alongside the access road to connect to the existing footway at the site frontage. Each dwelling is provided with 3 parking spaces located directly off the access road with areas of landscaping breaking up the spaces and providing a buffer between the dwellings and access road.

The proposed dwellings are provided with private rear gardens, bike sheds and bin stores. Retaining walls are proposed within the rear gardens to accommodate for the gradient of the land and to enable the building pad for each dwelling to be set into the hillside. An area of 'natural landscaping' is proposed at the southern end of the site.

The proposal was revised to align the red line boundary with the front property boundary where it meets public highway land. This was a very minor procedural change that did not require further consultation.

PLANNING CONSTRAINTS

- Outside of settlement boundaries;
- M2 Junction 5 Improvements Scheme Safeguarded Area;
- Groundwater Source Protection Zone.

POLICY AND OTHER CONSIDERATIONS

National Planning Policy Framework

Bearing Fruits 2031: The Swale Borough Local Plan 2017

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 transport)

CP3 (Delivering a wide choice of high quality homes)

CP4 (Design)

DM6 (Managing transport)

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)

DM29 Woodlands, trees, and hedges

DM31 Agricultural land

Swale Council Parking Standards 2020

The Swale Landscape Character and Biodiversity Appraisal 2011

LOCAL REPRESENTATIONS

No representations were received from neighbouring properties.

Borden Parish Council resolved to object to the application for the following reasons:

- Lack of sustainable travel links to the site.
- Absence of mains drainage, with the valley leading into an aquifer.
- No nearby shopping facilities.

- Inadequate biodiversity net gain calculations, showing significant biodiversity loss with insufficient mitigation at an undisclosed location.
- Confirmation from KCC Ecology is needed to verify the absence of badger setts, as the survey lacks sufficient detail.
- Request the removal of the badger survey from the portal.

Borden Parish Council did not request that the application be reported to Planning Committee.

The Borden Wildlife Group objected to the application on the following grounds:

- Considerable habitat loss in the area from recent highways works and the proposal will impact on the remaining habitat.
- Concerns with the quality of the submitted ecological surveys.
- The area is already overwhelmed by development.
- This site is not in the local plan, is not sustainable and has no public transport or other service links.
- No benefits to the Parish.

CONSULTATION RESPONSES

Environment Agency: Initially advised that while a small part of the northern corner of the site is located in Flood Zones 2 and 3, the proposed development lies entirely within Flood Zone 1. The application form submitted as part of this application ticks 'unknown' for foul drainage. The site also lies within a Source Protection Zone 1 and over a Principal Aquifer. No further comments made as the application falls outside their remit as a statutory planning consultee.

In response to queries from the applicant regarding the need for a sequential test, the EA advised the following:

"With regard to the Sequential Test, we would deem it appropriate to consider the site as FZ1, however, the LPA must be satisfied with this element."

National Highways: No objections – site is not affected by M2J5 junction works.

Natural England: The proposed development has the potential to have a harmful effect on terrestrial Sites of Special Scientific Interest (SSSIs). Swale Council has measures in place to manage these potential impacts through a strategic solution which Natural England considers will be effective in preventing adverse impacts on the integrity of the site(s). These measures should be formally checked and confirmed by your authority, as the competent authority, via an Appropriate Assessment. Providing the Appropriate Assessment concludes that the measures can be secured, it is likely that Natural England will be satisfied that there will be no adverse effect on the integrity of the European Site(s) (habitats site(s)) in relation to recreational disturbance.

Environmental Health: Noise - Initially requested a noise assessment be provided due to proximity of the A249 and M2 to demonstrate that an acceptable level of residential amenity can be achieved.

An acoustic assessment was provided, which estimates there may be potential for the part 0 noise limits to be exceeded. A condition is recommended to secure details of acoustic mitigation in compliance with the BS 8233:2014 and provide an increased level of comfort for

future occupants, along with conditions for details of ventilation and cooling to accommodate for the acoustic mitigation.

Air Quality and lighting - No concerns have been raised.

Land contamination - There is a disused quarry in close proximity and therefore there is a risk of localised contamination. Therefore, a suitable condition is recommended.

Construction - Request an informative regarding the Mid Kent Environmental Code of Development Practice.

Urban Design: Scheme appears to have responded well to advice given at the pre-app stage, with the reduction from 4 to 3 units and larger gaps created between properties, which is more reflective of the surrounding built form. Queried whether more details relating to the retaining walls in the rear gardens are required and noted that retaining walls will sit very close to Units 2 and 3, which could impact amenity of future occupiers.

Officer response: revised plans were submitted to provide a stepped / terraced arrangement to the retaining walls to provide a more gradual rise, which provides better outlook from the rear windows of the Units 2 and 3. Unit 2 has also been provided with access stairs to the back garden beyond retaining wall.

Trees: The application is accompanied by a tree survey and constraints plan, which appears to provide an accurate account of the existing trees and vegetation growing on the site. On balance the quality of the trees to be removed on the current plans are not sufficient to pose an arboricultural constraint on this scheme.

Initially requested revisions to the proposed landscaping to include native species and smaller sized trees at initial planting phase to ensure these would establish quicker and require less extensive aftercare. Amended landscape plans were provided and confirmed by the Tree Officer to address the previous concerns and that no objections are raised in principle subject to the tree report and landscaping being conditioned.

To ensure the trees to be retained are safely integrated within the scheme, a condition is recommended for the submission of a tree protection plan and arboricultural method statement both in accordance with BS5837:2012.

KCC Highways and Transportation: No objection subject to conditions to secure the following:

- Vehicle parking spaces.
- EV charging points.
- Cycle parking facilities.
- Visibility splays.
- Refuse storage facilities.

KCC Ecology: Initial response requested the relevant ecological surveys be submitted. Concerns were also raised regarding errors with the submitted BNG metric.

Following receipt of further information, including a reptile survey, badger survey and bat roost assessment, KCC Ecology advised that they have reviewed the submitted information and are satisfied with the conclusions. They further advise that they are satisfied that sufficient surveys have been submitted to inform the planning application and based on the current ecological information impacts can be avoided through a precautionary mitigation approach and the enhancement of retained habitat. Conditions to secure a detailed mitigation strategy and updated surveys is recommended.

Following receipt of an updated BNG metric, KCC Ecology confirmed that sufficient information has been provided with regard to mandated BNG. The metric has detailed that currently the proposal will result in a loss of over 45% BNG for habitats on site. However information has been provided detailing that off site habitat creation will be carried out in the Faversham area to achieve a BNG of over 10%.

Conditions also recommended regarding BNG management plan, on-site ecological enhancements and ecologically sensitive lighting.

KCC Flood and Water Management:

The guidance states that a sequential test is required for major and non-major development when:

- in flood zone 2 or 3
- in flood zone 1 and the LPA's SFRA shows it will be at increased risk of flooding during its lifetime
- subject to sources of flooding other than rivers or sea

From checking our information, it would appear that none of the factors above apply in that the site is not shown to be in FZs 2 or 3 and there appears to be no other sources of flooding present (having checked the Risk of Flooding from Surface Water mapping data that is available and general groundwater information).

Ultimately the requirement for the application of the sequential test rests with yourselves as the LPA but we would suggest that it is not required at this location.

APPRAISAL

Principle

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF seeks to pursue sustainable development, in a positive way through a presumption in favour of sustainable development, unless the policies within the NPPF provide clear reasons for refusing development, or any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits (paragraph 11).

The NPPF states, to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed.

Swale Settlement Strategy

Policy ST1 of the Local Plan requires that all development proposals will accord with the Local Plan settlement strategy.

Local Plan Policy ST3 sets out the Council's settlement strategy, which at Part 5 states the following: *"At locations in the open countryside, outside the built-up area boundaries shown on the Proposals Map, development will not be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities."*

The site is located outside of any built-up area boundary. The nearest settlements are Newington and Borden, which are approximately 1.7km away and 2.3km away in a direct line respectively.

The proposed development would result in three additional dwellings in the countryside. Due to its countryside location the proposal conflicts with the Borough's settlement strategy under Local Plan policy ST3 in a broad sense. However, careful consideration is required in respect of the sustainability of the location, impact on the character and appearance of the countryside and lack of a five year housing land supply. These matters are discussed below, including officer's consideration of national planning policies and conclusion on the overall planning balance.

Sustainability of the Location

Paragraph 7 of the NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development, including the provision of homes, commercial development, and supporting infrastructure in a sustainable manner.

Policy CP2 of the Local Plan seeks to locate development in areas which minimise the need to travel and to facilitate sustainable transport.

As established above, the site is located outside any built-up area boundary, and therefore falls within the lowest, least acceptable tier of the settlement hierarchy, as set out by Local Plan policy ST3.

The nearest school, church, community hall and shops are in Newington and Borden. Newington is on the far side of the A249 and whilst Wormdale Hill provides a bridge crossing over the motorway there are no pavements or street lighting beyond the bridge. There are also no direct walking routes towards Borden and the connecting roads are also unlit and don't have footways.

There are some sporadic farm shops closer by to the south, however these do not have pedestrian access connecting to the site. Further away is the town of Sittingbourne which includes a wide range of shops and services.

There are bus stops along Maidstone Road approximately 400m from the site, which provide connections to Sittingbourne, Maidstone and Sheerness, Newington, and Faversham as well as connections with train stations. As there is a pavement along Maidstone Road, future occupants of the proposed development would have suitable access to these bus stops. Officers therefore take the view that whilst future occupants would not be able to access services and facilities by foot, they would have access to public transport, which offers sustainable transport opportunities.

On this basis, the site is not located in a wholly unsustainable location due to the accessibility to public transport, but it is acknowledged that future occupiers will likely be reliant on private car journeys to a degree. On balance, however, it is considered that the development will broadly comply with policy CP2 as the new dwellings will have access to sustainable transport modes in the form of bus links to larger settlements.

These matters are considered further along with the overall planning balance at the end of this report.

Agricultural land

Policy DM31 of the Swale Borough Local Plan seeks to protect agricultural land and prevent the development of the best and most versatile (BMV) agricultural land (specifically Agricultural Land Classification Grades 1, 2 and 3a) unless the site is allocated for development by the Local Plan; or the following criteria are met:

- 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
- 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.

The application site is identified as Grade 3 land on the Agricultural Land Classification (ALC) maps, however this does not identify the subdivisions between Grade 3a or 3b, the former being classified as BMV agricultural land, which the policy seeks to protect, and the latter outside of this classification, which wouldn't be caught by the policy. The ALC maps also only represent a generalised pattern of land classification grades and do not identify site specific land uses outside of settlement boundaries, and therefore a more detailed survey would be required to identify the actual grade. Notwithstanding this, the site is part of a residential land parcel, not part of an agricultural holding, and has no history of being in agricultural use. As such, whilst the proposed development would potentially result in the loss of BMV land (if it was determined as being grade 3a), it is considered that this would only have a minimal impact on the Borough's stock of BMV land. Therefore, although there is potential conflict with policy DM31, the harm this causes is only be afforded limited weight. The overall planning balance is discussed at the end of this report.

Size and Type of Housing

The Local Plan requires the mix of tenures and sizes of homes provided in any particular development to reflect local needs. Local Plan policy CP3 requires developments to achieve a mix of housing types, which reflect that of the Strategic Housing Market Assessment (SHMA).

Given the small number of proposed dwellings it is not anticipated that the proposal would provide a range of housing types that reflects the ratios set out within the SHMA. The proposal provides 3 x 4-bedroom dwellings, which are considered to be reasonably sized dwellings for the rural location of the site, in addition the Borough has a need for all sizes of dwellings. As such, the proposal accords with policy CP3 of the Local Plan.

Character and Appearance

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.

The Local Plan reinforces this through policies CP4, DM14 and DM24, which require new proposals to be of high quality design including the form of the development in terms of the efficient use of land, layout, landscape, density and mix, scale, massing, materials, finish and architectural detail.

The Swale Landscape Character and Biodiversity Appraisal SPD designates the site within the Newington arable Farmlands. The overall condition of the landscape is rated poor and landscape sensitivity is rated low. The guidelines focus on creating the landscape structure where it has been lost. It suggests appropriate materials for buildings are black weatherboarding, timber frame and plaster infill, red or yellow stock, and a Kent peg tiled roof or the occasional slate roof. For new hedges and hedgerow trees – hawthorn, hazel, blackthorn, dog rose, crab apple, bullace, damson, field maple and dogwood.

The proposed dwellings are two storeys in height and well set back from the street behind the new access road. The proposed development provides a good level of separation from the existing dwelling at Hawthorns and provides suitable separation between the proposed dwellings to reflect the pattern and rhythm of existing residential development along the street. The southern part of the site is retained for natural landscaping, which is necessary to mitigate the development's impact on the rural character of the adjoining countryside.

The proposed built form of the dwellings includes orthogonal floorplans with pitched roofs containing a variety of hips and gables, which responds well to the character of the area. Features such as chimneys and porches further add to this character and provide visual interest. Materials include brickwork to the ground floor and chimneys with timber cladding to the first floor and tiled roofs, which is acceptable. A condition is recommended for further details of the materials to be submitted for approval to secure materials of acceptable quality in the interest of maintaining the character of the area.

The proposal retains the existing vegetation along the frontage apart from the location of the new entrance and landscaping is provided alongside the proposed access road in front of the new dwellings, which is appropriate to soften the appearance of the development from the public realm. The proposed landscaping shown on the revised planting plans are confirmed to be acceptable by the Council's Tree Officer and will positively contribute to the appearance of the development. A condition is recommended to secure the proposed landscaping.

The proposal was revised to provide stepped retaining walls to the rear of Unit 2 to provide a more gradual increase in ground level, which will improve the outlook and light received at the rear of this property. Steps were also included in the plans to provide access to the rear gardens beyond the retaining wall.

Overall, the design of the proposed development is acceptable and suitably mitigates its impact on the countryside location subject to the recommended conditions in accordance with the relevant policies.

Living Conditions

Existing occupiers

Local Plan policy DM14 requires that new development has sufficient regard for the living conditions of neighbouring occupiers.

The layout of the proposed development provides suitable setback between the proposed development and the existing dwelling at Hawthorns adjoining the north-eastern boundary of the site. Providing separation along this boundary in conjunction with limiting the scale of the proposed dwellings to 2-storeys would mitigate adverse impacts on neighbouring amenity from loss of light, outlook, overbearing and privacy impacts.

Given the site adjoins farmland to the south, and Maidstone Road separates the site from residential properties to the west, the proposal would not impact on the amenity of any other properties.

On the basis of the layout and the relationship of the site with nearby properties, it is considered that the proposed development would not result in unacceptable impacts on the neighbouring properties in accordance with policy DM14.

Future occupiers

The proposed dwellings are all well separated, suitably oriented and provided with spacious and functional layouts, which will provide occupants with good levels of light, outlook and privacy. The proposed dwellings all surpass the national standards for internal spaces requirements and are provided with generous back gardens.

An acoustic assessment was provided due to proximity of the site to the A249 and M2, which estimates there may be potential for the part 0 noise limits to be exceeded. The Environmental Protection Officer raise no objection subject to a condition to secure details of acoustic mitigation in compliance with the BS 8233:2014 and provide an increased level of comfort for future occupants, along with conditions for details of ventilation and cooling to accommodate for the acoustic mitigation.

The Environmental Protection Officer also advises that there is a disused quarry in close proximity and therefore there is a risk of localised contamination. As such, they recommend a condition for a watching brief, which will trigger a site investigation, remediation and verification in the event that contamination is encountered during construction. Subject to securing the recommended condition the application would accord with paragraph 189 of the NPPF.

Subject to the recommended conditions, the proposal is considered to provide an acceptable standard of living environment for future residents.

Highway Safety, Transportation and Parking

The National Planning Policy Framework promotes sustainable patterns of development and expects land use and transport planning to work in parallel in order to deliver such.

The proposed dwellings would be served by a newly created vehicular access from Maidstone Road, with the entrance located at the norther end of the frontage. A turning head is provided at the southern end of the access lane. The Swept Path Analysis adequately demonstrates that refuse vehicles will be able to safely access the site, turn around and exit in a forward gear. Bin stores are located at the front of each property for ease of access for servicing.

Each proposed dwelling is provided with 3 car parking spaces, including provision of electric vehicle charging points in accordance with the Council's SPD for parking. Each dwelling will also be provided with a garden shed to house 4 bicycles (1 for each bedroom), which complies with the SPD.

KCC Highways confirm that they raise no objection to the application subject to conditions for the following matters:

- Vehicle parking
- Electric Vehicle Charging facilities
- Cycle parking
- Provision and maintenance of visibility splays
- Provision and retention of refuse storage

The above conditions have been recommended and as a result the proposed development would have an acceptable impact on the transport network in accordance with policies DM6 and DM7 of the Local Plan.

Ecology

Local Plan policy DM 28 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 can not be mitigated.

The submitted ecological report has detailed there is potential for dormouse, reptiles, badgers, foraging/commuting/roosting bats, breeding birds and hedgehogs to be present within the site. A reptile survey, badger survey and bat roost assessment were also submitted during the application at the request of officers.

KCC Ecology have reviewed the submitted information and are satisfied with the conclusions, which have detailed the following:

- No reptiles were recorded during the survey
- Use of the site by foraging/commuting badgers but no evidence that currently there are active badger setts on the site.
- Trees have some suitable features to support roosting bats but emergence surveys are not required.

KCC Ecology confirm that they are satisfied that sufficient surveys have been submitted to inform the planning application and based on the current ecological information impacts can be avoided through a precautionary mitigation approach and the enhancement of retained habitat. A condition is recommended to secure a detailed ecological mitigation strategy, which has been included accordingly.

BNG

A Biodiversity Net Gain (BNG) report was submitted with the application and a BNG metric was also provided during the application. KCC Ecology advise that sufficient information has been provided with regard to mandated BNG. Previous concerns were raised that the BNG assessment had not included the area of traditional orchard and instead had been input as modified grassland and individual trees, however this error has been addressed.

The metric has detailed that currently the proposal will result in a loss of over 45% BNG for habitats on site. However, information has been provided detailing that the applicant has secured an offer to purchase offsite biodiversity credits from the GH Dean Site at Leaveland, which is in the same LPA as per the guidance provided by DEFRA. The site has a Traditional Orchard opportunity in sufficient volume on suitable soils to achieve an overall BNG of over 10%. No objection has been raised to this approach from KCC Ecology. The statutory condition is considered a satisfactory means to secure the offsite BNG credits.

Commented [BO2R1]: Updated

KCC Ecology also advise that there is a need to ensure that the open space within the site will be actively managed, and therefore a condition is recommended to secure an open space management plan.

Ecological Enhancements

Section 40 of the NERC Act 2006 requires public authorities to further the general biodiversity objective of the conservation and enhancement of biodiversity. Paragraphs 187 and 193 of the NPPF 2024 state that biodiversity should be maintained and enhanced through the planning system. In addition to BNG the ecological enhancement features must also be incorporated into the site. Therefore, a condition is included to secure an ecological enhancement plan. Enhancements include bat and bird boxes within the site and buildings, insect hotels or log piles within the site and the inclusion of planting to benefit pollinators with the residential gardens.

Lighting

Badgers are known to be present within the site and it is likely that other nocturnal species are present within the site and lighting can have a negative impact on bats (and other nocturnal species) and therefore any lighting must be designed to minimise light spill. As such, a condition to control external lighting has been included to mitigate impacts on nocturnal species.

Subject to the recommended conditions the proposed development is acceptable in accordance with policies CP 7 and DM 28 of the Local Plan.

Strategic Access Management and Monitoring Strategy (SAMMS) & Appropriate Assessment

The application site is located within 6km of The Medway Estuary and Marshes Special Protection Area (SPA) which is a European designated sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations).

SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

Residential development within 6km of any access point to the SPAs has the potential for negative impacts upon that protected area by virtue of increased public access and degradation of special features therein. The proposal therefore has potential to affect said site's features of interest, and an Appropriate Assessment is required to establish the likely impacts of the development.

The HRA carried out by the Council as part of the Local Plan process (at the publication stage in April 2015 and one at the Main Mods stage in June 2016) considered the imposition of a tariff system to mitigate impacts upon the SPA (£337.49 per dwelling) as ultimately agreed by the North Kent Environmental Planning Group and Natural England – these mitigation measures are ecologically sound.

In considering the European site interest, Natural England advises the Council that it should have regard to any potential impacts that the proposal may have. Regulations 63 and 64 of the Habitat Regulations require a Habitat Regulations Assessment.

The April 2018 judgement (*People Over Wind v Coillte Teoranta*, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, "it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site." The development therefore cannot be screened out of the need to provide an Appropriate Assessment solely on the basis of the mitigation measures agreed between Natural England and the North Kent Environmental Planning Group.

The proposal would have an impact upon the SPAs; however, the scale of the development (3 residential units) is such that it would not be considered, alongside the mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff, that the impacts would be significant or long-term.

Based on the potential of 3 residential units being accommodated on the site, a SAMMS contribution of £1,012.47 would be required prior to permission being granted. This contribution has been secured prior to the determination of the application and as such I consider this matter has been addressed. Therefore, considering the above it is considered that there will be no residual adverse effect on the integrity of the SPAs.

Finally, it can be noted that the required mitigation works will be carried out by Bird Wise, the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, which itself is a partnership of local authorities, developers and environmental organisations, including SBC, KCC, Medway Council, Canterbury Council, the RSPB, Kent Wildlife Trust, and others. (<https://birdwise.org.uk/>).

The County Ecologist has responded positively to the submission, raising no objection subject to a condition securing a Landscape and Ecological Management Plan, which is included accordingly.

Natural England have responded to the scheme with a standard no objection response and highlighting the potential requirement for SAMMS contributions.

As such it is considered that the proposals are in accordance with the requirements of Policy DM28 of the Local Plan.

Trees

Policy DM29 of the Local Plan seeks to protect trees and hedgerows that make an important contribution to visual amenity and the biodiversity of the site. Paragraph 136 of the NPPF also requires, amongst other matters, that trees are retained within developments wherever possible.

The application is accompanied by a tree survey and constraints plan, which appears to provide an accurate account of the existing trees and vegetation growing on the site. The proposed layout plan indicates the trees that are to be removed in order to implement the development layout. Based on this, a group of trees along the road frontage will need to be removed for the new road access and a small group towards the centre of the site for the new dwellings.

Based on the tree grading within the tree survey the majority of the trees to be removed are low quality with the exception of a Field Maple T2 towards the road frontage and a Walnut T22 towards the site centre, both of which have been graded moderate quality under BS5837:2012. The Tree Officer advises that the loss of the Walnut and other trees towards the site centre, which are hidden behind the trees that screen the site along the road boundary, will not compromise the sylvan character of the area.

The loss of the group of trees along the road frontage (including the Maple T2) will introduce a gap within the tree cover along this boundary and so will in part erode its visual character. Assuming no further tree loss is proposed along this boundary for highway sightlines, on balance the quality of the trees to be removed on the current plans are not considered sufficient to pose an arboricultural constraint on this scheme.

A landscaping scheme has also been submitted which has been considered by the Tree Officer to be acceptable.

Consequently, to ensure the trees to be retained are safely integrated within the scheme, a condition is recommended requiring the submission of a tree protection plan and arboricultural method statement both in accordance with BS5837:2012, along with the

requirement for the landscaping scheme to be carried out. Therefore, subject to the recommended conditions the proposal accords with policy DM29.

Drainage and Flood Risk

The NPPF states that Local Planning Authorities should ensure that flood risk is not increased elsewhere and that any residual risk can be safely managed. This is reflected in policy DM 21 of the Local Plan.

NPPF Paragraph 173 further states that a sequential risk-based approach should also be taken to individual applications in areas known to be at risk now or in future from any form of flooding. The Planning Guidance on flood risk states that a sequential test is required for major and non-major development when:

- in flood zone 2 or 3
- in flood zone 1 and the LPA's SFRA shows it will be at increased risk of flooding during its lifetime
- subject to sources of flooding other than rivers or sea

A Flood Risk Assessment (FRA) was submitted during the application. The FRA notes that the northern corner of the site is located partially within Flood Zone 2 and 3, however the majority of the site is located within Flood Zone 1 and concludes the risk of fluvial flooding to be low. The FRA also notes that the site is at very low risk of pluvial flooding, however Maidstone Road is subject to low, medium and high risk of surface water flooding.

The EA advised that the application falls outside of their remit, however note that while a small part of the northern corner of the site is located in Flood Zones 2 and 3, the proposed development lies entirely within Flood Zone 1. Further to these discussions, the EA maps have been updated and shows that the site now lies entirely within flood zone 1 in respect of flooding from rivers and seas.

In respect of surface water flooding, the FRA shows areas at medium and high risk of surface water flooding along Maidstone Road, this is consistent with the EA mapping available. The application site boundary runs up to the edge of Maidstone Road but only includes areas at low risk of surface water flooding. As a result, there is no requirement for a sequential test to be carried out.

The response from the EA mentions that the site lies within a Source Protection Zone 1 and over a Principal Aquifer, and notes that the application form ticks 'unknown' for foul drainage. Officers note that the EA have not requested any details in relation to this or suggested any conditions or informative. However, the matter was queried with the applicant, who responded with a suggested condition and informative wording as used in a recent decision nearby at Gleneagles (ref: 23/500258/OUT). The applicant further states that if they are unable to obtain the required permit to discharge via drainage fields they will simply have modern sealed cesspools installed which will be regularly emptied of sludge and effluents. It is considered that this matter could be dealt with by condition to enable the groundwater to be adequately protected and as such has been included accordingly.

Taking the above into account, the proposal is considered to be protected from adverse flooding and adequately deals with policy DM21 of the Local Plan and the NPPF.

Sustainable Design and Construction

Policy DM19 of the Local Plan requires development to include measures to address and adapt to climate change. No details have been submitted with the application of sustainable design measures. However, given the relatively small scale of the development officers

consider it appropriate to secure such measures by condition in this instance. As such, a condition is recommended to secure details to demonstrate the development will incorporate sustainable construction techniques. A separate condition is included related to water usage as required by policy DM21. Subject to the recommended conditions, it is considered that the proposal would comply with policies DM19 and DM21 of the Local Plan.

Conclusion and Planning Balance

Paragraph 11 of the NPPF states "Plans and decisions should apply a presumption in favour of sustainable Development". Paragraph 11(d) of the NPPF sets out that for decision taking this means "*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:* (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.*"

Footnote 8 of the NPPF, which clarifies what is meant by "out-of-date", states the following: "*This includes, for applications involving the provision of housing, situations where: the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer as set out in paragraph 78); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.*"

At the time of writing this report the Council can now demonstrate 3.98 years' worth of supply at a base date 1 April 2024 and therefore does not have a 5 year housing supply. The application is therefore considered using the "tilted balance" under paragraph 11(d) of the NPPF.

In addition to the development being outside of the settlement boundaries, the proposal would also result in the loss of BMV land. However, as discussed in the relevant section of this report, the site is part of a residential property and therefore not part of an existing agricultural holding. The site is also relatively small and therefore the loss of BMV would have a minimal impact. As such, only limited weight is afforded to the harm caused in this instance.

The proposal would make a modest contribution towards meeting housing needs within the Borough for which there is currently a shortfall against the housing requirement. Future occupiers would use the limited facilities and services within the immediate area, thus benefiting the social and economic health of the surrounding community. The proposal would therefore be supported by paragraph 83 of the NPPF, which require planning decisions to enhance or maintain the vitality of rural communities.

Whilst there would be some reliance on private car use for journeys to reach a majority of services and facilities in the area, there are bus services connecting to larger centres within reasonable walking distance. As such, officers acknowledge that the site is not wholly unsustainable.

The proposed development is well-designed and appropriately screened from the adjoining countryside through suitable new and retained existing landscaping. Therefore it would protect the intrinsic character and beauty of the countryside, consistent with NPPF paragraph 187.

Construction works, although limited to the construction of three dwellings, would also bring short-term economic benefits weighing positively in its favour. The proposed dwellings would make a positive contribution towards housing supply on a small site, which could be delivered quickly. As such it would accord with paragraphs 61 and 73 of the NPPF, which sets the Government's objective of significantly boosting the supply of homes where needed, including on small sites. Given the importance of boosting supply, this weighs strongly in its favour.

For these reasons, I consider the proposal's adverse impacts would not significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies in the NPPF taken as a whole. Consequently, the proposal constitutes the sustainable development for which the NPPF indicates a presumption in favour of. On the basis of the above, I consider planning permission should be granted.

RECOMMENDATION

Application Permitted subject to the conditions set out below:

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 the following approved drawings: 2470-10-B, 2470-11-B, 2470-15-B, 2470-16-A, 240820-RAP-XX-XX-DR-L-4001 P03, 240820-RAAP-XX-XX-DR-L-4002 P02.

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

- (3) No development beyond the construction of foundations shall take place until details have been submitted to the Local Planning Authority and approved in writing, which set out what measures have been 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 photo voltaic 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: In the interest of promoting energy efficiency and sustainable development.

Materials

- (4) No development beyond the construction of foundations shall take place until details of the external finishing materials to be used on the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The works shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity.

Hard Landscape Works

- (5) No development beyond the construction of foundations shall take place until details of hard landscaping works have been submitted to and approved in writing by the Local

Planning Authority. All hard landscaping works shall be carried out in accordance with the details approved prior to the occupation of any part of the development.

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

- (6) The soft landscape works detailed in approved drawings 240820-RAP-XX-XX-DR-L-4001 P03 and 240820-RAAP-XX-XX-DR-L-4002 P02 shall be carried out prior to the occupation of the development hereby approved. Upon completion of the approved soft landscape works, 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.

Contamination

- (7) If during construction/demolition works evidence of potential contamination is encountered, works shall cease and the site fully assessed to enable an appropriate remediation plan to be developed. Works shall not re-commence until an appropriate remediation scheme has been submitted to, and approved in writing by, the Local Planning Authority and the remediation has been completed. Upon completion of the building works, this condition shall not be discharged until a closure report has been submitted to and approved in writing by the Local Planning Authority. The closure report shall include details of:
- a) Details of any sampling and remediation works conducted and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology.
 - b) Details of any post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.
 - c) If no contamination has been discovered during the build then evidence (e.g. photos or letters from site manager) to show that no contamination was discovered should be included.

Reason: To reduce risk of contamination to the environment and residents.

- (8) Prior to commencement of development hereby approved (with the exception of site clearance and groundworks) details of noise mitigation measures shall be submitted to and approved in writing by the Local Planning Authority. The details shall have regard to the Noise Assessment prepared by Lustre Consulting dated 22/11/2024 (ref: 5182_AC_1.0) and demonstrate that future occupants will be provided with acceptable living environments and shall be in full compliance with the BS 8233:2014.

The development shall then be implemented in strict accordance with the approved details and retained for the lifetime of the development.

Reason: To safeguard the residential amenities of the future occupants of the dwellings hereby approved.

- (9) Prior to commencement of development hereby approved (with the exception of site

clearance and groundworks) details of thermal comfort measures shall be submitted to and approved in writing by the Local Planning Authority. The details shall be in accordance with Acoustic Ventilation and Overheating - Residential Design Guide by IOA and ANC. The details shall include alternative means of ventilation and air cooling and heating where necessary to demonstrate the following:

- The alternative means of ventilation and cooling will not compromise any noise protection measures
- The alternative means of ventilation and cooling will not present an adverse noise or odour impact on occupants
- The alternative means of ventilation and cooling will enable optimum living conditions in all weather and with reference to climate change predictions

Any means of ventilation must be in accordance with documents CIBSE Guide A: 2015 Environmental Design, CIBSE TM52:2013 The limits of thermal comfort: avoiding overheating in European buildings and CIBSE TM59:2017-Design methodology for the assessment of overheating risk in homes.

The development shall then be implemented in strict accordance with the approved details and retained for the lifetime of the development.

Reason: To safeguard the residential amenities of the future occupants of the dwellings hereby approved.

Tree protection and Arb Method Statement

- (10) Prior to any works commencing on the site a Tree Protection Plan and Arboricultural Method Statement shall be submitted to and approved in writing by the Local Planning Authority. The details shall accord with the British Standard (BS) 5837:2012 'Trees in Relation to Design, Demolition and Construction – Recommendations'.

The development shall then be implemented in strict accordance with the approved details.

Reason: To safeguard the existing trees to be retained and to ensure a satisfactory setting and external appearance to the development.

Ecology mitigation strategy

- (11) Prior to any works commencing on the site an ecological mitigation strategy shall be submitted to and approved in writing by the Local Planning Authority. The ecological mitigation strategy shall include the following:

- Preliminary ecological appraisal
- Badger Survey
- Recommended species surveys
- Overview of mitigation required
- Detailed methodology to implement mitigation.
- Plans demonstrating where works will be carried out.
- Plans demonstrating where habitat creation / enhancement works will be carried out. They must correspond with the landscaping plans.
- Details of who will carry out the works.
- Timings of works.
- Interim management plan for habitat creation / enhancement works.

The strategy must be implemented as approved. If works have not commenced within 18 months of the date of the mitigation strategy, the works shall be carried out under the supervision of a suitably qualified ecologist.

Reason: To protect habitats and species identified in the ecological surveys from adverse impacts during construction.

Landscape ecology management plan

(12) Prior to any landscaping works commencing on site a management plan for the landscaped areas (except for areas of private gardens) shall be submitted to and approved in writing by the Local Planning Authority. The management plan shall include the following:

- Aims and objectives of the plan
- Habitat Plans of the site
- Details of any constraints associated with the management
- Overview of management required
- Timetable of management works – capable of being a 5 year rolling plan.
- Details of how it will be funded.
- Details of who will carry out the works.
- Details of when the management plan will be reviewed.

The plan shall be implemented in accordance with the approved details.

Reason: To protect and the creation of habitats and species identified in the ecological surveys from adverse impacts during construction.

Enhancement Plan

(13) Within 3 months of works commencing on site an ecological enhancement plan shall be submitted to and approved in writing by the Local Planning Authority. The ecological enhancement plan shall demonstrate how the site will enhance biodiversity through planting which will benefit pollinators, and/or native species planting and ecological enhancement features within the buildings and site. The approved details shall be implemented and thereafter retained.

Reason: In the interests of biodiversity.

Lighting

(14) No external lighting shall be installed on site until a Lighting Design Strategy has been submitted to and approved in writing by the Local Planning Authority. The Lighting Design Strategy shall follow the recommendations within the Bats and artificial lighting in the UK document produced by the Bat Conservation Trust and Institution of Lighting Professionals. The details shall include a site plan showing the location and types of lighting and details of light spill to mitigate the impact on biodiversity and clearly demonstrated that areas to be lit will not disturb bats. The details shall also indicate that all external lighting will be downward facing and controlled by motion sensors.

All external lighting shall be installed in accordance with the approved details and retained for the lifetime of the development.

Reason: In the interests of protecting nocturnal species.

Parking

(15) Prior to the occupation of the dwellings hereby approved, the access road, turning head and vehicle parking spaces shown on the Site Layout Plan (drawing number:

2470/10/B) shall be completed and permanently retained for lifetime of the development.

Reason: In the interests of providing sufficient parking for residents and visitors and in the interest of highway safety.

EVCPs

- (16) Prior to the occupation of the dwellings hereby approved, the Electric Vehicle charging points, as shown on the Site Layout Plan (drawing number: 2470/10/B) shall be installed and permanently retained for lifetime of the development. All Electric Vehicle chargers provided for homeowners in residential developments must be provided to Mode 3 standard (providing a minimum 7kw output) and SMART (enabling Wifi connection). Approved models are shown on the Office for Low Emission Vehicles Homecharge Scheme approved chargepoint model list: <https://www.gov.uk/government/publications/electric-vehicle-homecharge-scheme-approved-chargepoint-model-list> .

Reason: In the interests of promoting sustainable transport methods and carbon reduction.

Cycle Parking

- (17) Prior to the occupation of the dwellings hereby approved, the cycle parking facilities shown on the Site Layout Plan (drawing number: 2470/10/B) shall be provided and permanently retained for lifetime of the development.

Reason: In the interests of promoting sustainable transport methods and carbon reduction.

Visibility Splays

- (18) Prior to the occupation of any dwellings hereby approved, the visibility splays shown on the Site Layout Plan (drawing number: 2470/10/B) shall be provided and permanently retained for lifetime of the development. The visibility splays shall have no 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.

Refuse Stores

- (19) Prior to the occupation of the dwellings hereby approved, the refuse storage facilities, as shown on the Site Layout Plan (drawing number: 2470/10/B) shall be provided and permanently retained for lifetime of the development.

Reason: In the interest of visual amenity and to facilitate efficient servicing of the development.

Foul Drainage

- (20) No development shall commence until a strategy to deal with foul water drainage is submitted to, and approved in writing by, the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.

Reason: To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution in line with paragraph 174 of the National Planning Policy Framework.

Water Consumption

(21) The development shall be designed to achieve a water consumption rate of no more than 110 litres per person per day, and 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.

INFORMATIVES

As the development involves demolition and / or construction, I recommend that the applicant be supplied with the Mid Kent Environmental Code of Development Practice. Broad compliance with this document is expected. This can be found at: <https://tunbridgewells.gov.uk/environmental-codeof-development-practice>

Foul Drainage

No details have been provided on foul drainage. Disposal of foul effluent to the sewer network should be the first choice for this development. The EA require full justification why a site is not proposing to connect to the foul sewer. The location of this site within a SPZ1 means certain activities, including the disposal of foul effluent to the environment, will require a permit. The granting of planning permission does not guarantee a discharge permit will be granted. If proposals include the discharge of effluent to the environment, it is recommended the applicant obtains pre-planning enquiries with the EA's permitting team to ensure a discharge permit could be granted at this location.

Any foul drainage discharges to the environment in this area may require an Environmental Permit, unless it meets the General Binding Rules for small sewage discharges:

Small sewage discharges in England: general binding rules - GOV.UK (www.gov.uk)
Discharges to surface water and groundwater: environmental permits - GOV.UK (www.gov.uk)

If a permit is required, the applicant should submit sufficient information to show that a permit could be achieved for this design of foul drainage in this locality. Discharges are not normally allowed in an SPZ1 or direct to groundwater in areas of shallow water tables. Discharges to ground via any other method than a British Standard drainage field (e.g. a soakaway or borehole) will require a permit. Foul proposals may have to involve modern sealed cesspools with regular emptying of sludge and effluents.

The Council's approach to the application

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), 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 applicant/agent was advised of minor changes required to the application and these were agreed.

Case Officer: Ben Oates

Case Officer Sign: BOates

Date: 09/04/2025

Delegated Authority Sign: P.Gregory

Date: 09.04.2025

PRINT NAME:

TL/DM Countersign:

Date: