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Agenda

Meeting: **Planning and Licensing Committee**
Date: **16 January 2024**
Time: **7.00 pm**
Place: **Council Chamber, Civic Centre, Folkestone**

To: **All members of the Planning and Licensing Committee**

The committee will consider the matters, listed below, at the date, time and place shown above. The meeting will be open to the press and public.

Members of the committee, who wish to have information on any matter arising on the agenda, which is not fully covered in these papers, are requested to give notice, prior to the meeting, to the Chairman or appropriate officer.

This meeting will be webcast live to the council's website at https://folkestone-hythe.public-i.tv/core/portal/home.

Although unlikely, no guarantee can be made that Members of the public in attendance will not appear in the webcast footage. It is therefore recommended that anyone with an objection to being filmed does not enter the council chamber.

Please note there will be 37 seats available for members of the public, which will be reserved for those speaking or participating at the meeting. The remaining available seats will be given on a first come, first served basis.

1. **Apologies for Absence**

2. **Declarations of Interest (Pages 3 - 4)**

Queries about the agenda? Need a different format?

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Date of Publication: Monday, 8 January 2024

Members of the committee should declare any interests which fall under the following categories:

a) disclosable pecuniary interests (DPI);
b) other significant interests (OSI);
c) voluntary announcements of other interests.

3. **Minutes (Pages 5 - 8)**

To consider and approve, as a correct record, the minutes of the meeting held on 12 December 2023.

4. **Minutes of the Licensing Sub-Committee (Pages 9 - 14)**

To approve and sign the minutes of the meeting held on 5 December 2023.

5. **23/1096/FH - Land Adjoining Karibu, Coombe Wood Lane, Hawkinge, ct18 7BZ (Pages 15 - 30)**

New single dwelling.

6. **23/1554/FH - 29 Lancaster Drive, Hawkinge, Folkestone, CT18 7SW (Pages 31 - 42)**

Incorporate the landscape buffer zone adjacent to property into a residential garden.

7. **23/1526/FH - 31 Lancaster Drive, Hawkinge, Folkestone, CT18 7SW (Pages 43 - 54)**

Incorporate the landscape buffer zone adjacent to property into a residential garden.

8. **Appeals Monitoring Report January 2020 to December 2023 (Pages 55 - 120)**

This report is for information only. It sets out the number and decisions on appeals determined since the previous monitoring report was presented to Members in 2019, together with commentary on a number of notable appeal decisions made by the Planning Inspectorate.

9. **Supplementary Information (Pages 121 - 122)**

Declarations of Interest

Disclosable Pecuniary Interest (DPI)

Where a Member has a new or registered DPI in a matter under consideration they must disclose that they have an interest and, unless the Monitoring Officer has agreed in advance that the DPI is a 'Sensitive Interest', explain the nature of that interest at the meeting. The Member must withdraw from the meeting at the commencement of the consideration of any matter in which they have declared a DPI and must not participate in any discussion of, or vote taken on, the matter unless they have been granted a dispensation permitting them to do so. If during the consideration of any item a Member becomes aware that they have a DPI in the matter they should declare the interest immediately and, subject to any dispensations, withdraw from the meeting.

Other Significant Interest (OSI)

Where a Member is declaring an OSI they must also disclose the interest and explain the nature of the interest at the meeting. The Member must withdraw from the meeting at the commencement of the consideration of any matter in which they have declared a OSI and must not participate in any discussion of, or vote taken on, the matter unless they have been granted a dispensation to do so or the meeting is one at which members of the public are permitted to speak for the purpose of making representations, answering questions or giving evidence relating to the matter. In the latter case, the Member may only participate on the same basis as a member of the public and cannot participate in any discussion of, or vote taken on, the matter and must withdraw from the meeting in accordance with the Council's procedure rules.

Voluntary Announcement of Other Interests (VAOI)

Where a Member does not have either a DPI or OSI but is of the opinion that for transparency reasons alone s/he should make an announcement in respect of a matter under consideration, they can make a VAOI. A Member declaring a VAOI may still remain at the meeting and vote on the matter under consideration.

Note to the Code:
Situations in which a Member may wish to make a VAOI include membership of outside bodies that have made representations on agenda items; where a Member knows a person involved, but does not have a close association with that person; or where an item would affect the well-being of a Member, relative, close associate, employer, etc. but not his/her financial position. It should be emphasised that an effect on the financial position of a Member, relative, close associate, employer, etc OR an application made by a Member, relative, close associate, employer, etc would both probably constitute either an OSI or in some cases a DPI.

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Folkestone & Hythe District Council

Minutes

Planning and Licensing Committee

Held at:	Council Chamber, Civic Centre, Folkestone
Date	Tuesday, 12 December 2023
Present	Councillors Mike Blakemore, Polly Blakemore, Tony Cooper, Gary Fuller, Clive Goddard, Mrs Jennifer Hollingsbee, Anita Jones, Nicola Keen (Vice-Chair), Jackie Meade (Chair), Rebecca Shoob, Paul Thomas and Belinda Walker
Apologies for Absence	
Officers Present:	Robert Allan (Principal Planning Officer), Rob Bailey (Development Enforcement Manager), David Campbell (Development Management Team Leader), Ellen Joyce (Democratic Services Trainee) and Sue Lewis (Committee Services Officer)
Others Present:	

48. **Declarations of Interest**

Councillor Anita Jones declared voluntary announcement in respect of application 23/1172/FH – 120 High Street, Hythe in that she used to sit on the Plans and Works Committee, Hythe Town Council. She remained in the meeting but did not take part in the discussions or voting on the item.

Councillor Paul Thomas declared a other significant interest in respect of application 23/1208/FH – Maude Pavilion & Community Hall, New Romney in that he is chair of the Project Steering Group, New Romney Town Council. He left the meeting during discussion and voting on this item.

49. **Minutes**

The minutes of the meeting held on 7 November 2023 were submitted, approved and signed by the Chairman.

50. **21/2035/FH - Fairfield Court Farm, Brack Lane, Brookland, TN29 9RX**

Demolition of existing buildings, removal of soil business and areas of hardstanding and construction of 3 dwellings, together with gardens, parking and use of existing accesses to Brack Lane., reconfigured larger garden area and associated strategic landscaping and biodiversity enhancements.

The Development Management Team Leader informed that the drawings in condition 2 would be updated to reflect the amended plans and that a further comment had been received re an existing objection but the main issues raised were covered in the report. He also clarified that the development would be CIL liable although the proposed floorspace would be less that the existing.

George Staple, local resident, spoke against the application.
Scott Balcomb, applicant, spoke on the application.

Proposed by Councillor Mrs Jenny Hollingsbee
Seconded by Councillor Nicola Keen and

Resolved: That planning permission be granted subject to the conditions set out at the end of this report and the applicant entering into a S106 legal agreement securing contributions towards education and a requirement to extinguish the current lawful use of the site and that delegated authority be given to the Chief Planning Officer to agree and finalise the wording of the conditions and the legal agreement and add any other conditions that he considers necessary.

(Voting: For 10; Against 1; Abstentions 1)

51. **23/1208/FH - Maude Pavilion & Community Hall, Station Road, New Romney, TN28 8BB**

Demolition of the existing Maude Pavilion and adjacent Community Hall. Erection of a new sports pavilion, with community hall above. New nursery building and associated external works.

The Development Management Team Leader updated the committee informing that KCC highways had asked for conditions to be added in respect of a construction and environmental management plan, wheel washing and parking on site. He also clarified that the new nursery would be closer to neighbours that the existing although because it is single storey and the existing use on site, this was not considered to be a reason to refuse.

He also informed that KCC ecology had provided some updated comments and had requested further information with regards to water voles. This would need to be addressed with the applicants prior to the application being approved.

Cllr Rivers spoke on behalf of New Romney Town Council
Cllr David Wimble, Ward Councillor, spoke on the application.
Alex Richards, agent, spoke on the application.

Proposed by Councillor Nicola Keen
Seconded by Councillor Jackie Meade and

Resolved:

1. **That delegated authority be given to the Chief Planning Officer to approve the application, subject to no objection being raised by KCC Ecology, to the conditions set out at the end of the report and to an additional condition requiring two electric vehicle charging points to be installed at the site.**

2. **That delegated authority be given to the Chief Planning Officer to agree and finalise the wording of the conditions and add any other conditions that he considers necessary,**

(Voting: For 11; Against 0; Abstentions 0)

52. **23/1172/FH - 120 High Street, Hythe, Folkestone, CT21 5LE**

Internal alterations & alterations to fenestration to provide 2 no. holiday lets. Amendment to existing approved single holiday let as approved as per applications 22/0497/FH & 22/0498/FH.

Proposed by Councillor Mrs Jenny Hollingsbee
Seconded by Clive Goddard and

Resolved: That planning permission be granted subject to the conditions set out at the end of the report and that delegated authority be given to the Chief Planning Officer to agree and finalise the wording of the conditions and add any other conditions that he considers necessary.

(Voting: For 11; Against 0; Abstentions 0)

53. **23/1375/FH - 118 Cheriton Road, Folkestone, CT19 5HQ**

Erection of first floor and single storey rear extensions, together with other external alterations to form an additional, self-contained dwelling.

Proposed by Councillor Paul Thomas
Seconded by Councillor Tony Cooper and

Resolved: That planning permission be granted subject to the conditions set out at the end of the report.

(Voting: For 12; Against 0; Abstentions 0)

Folkestone & Hythe District Council

Minutes

Licensing Sub-Committee

Held at:	Council Chamber - Civic Centre Folkestone
Date	Tuesday, 5 December 2023
Present	Councillors Tony Cooper, Gary Fuller and Paul Thomas
Apologies for Absence	
Officers Present:	John Bickel (Licensing Specialist), Tim Hixon (Legal Specialist), Rhys Hughes (Legal Trainee), Sue Lewis (Committee Services Officer), Dan Stone (Environmental Protection Specialist), Wai Tse (Environmental Protection Officer), Briony Williamson (Licensing Specialist) and Nicola Wilson (Environmental Health and Licensing Senior Specialist)
Others Present:	Mr Dunlop, the applicant.

71. **Election of Chairman for the meeting**

Proposed by Councillor Tony Cooper
Seconded by Councillor Gary Fuller and

Resolved: To appoint Councillor Paul Thomas as Chair for the meeting.

(Voting: For 3; Against 0; Abstentions 0)

72. **Declarations of Interest**

There were no declarations of interest.

73. **An application for a Premises Licence in respect of: IOH Deli, 17-19 High Street, Hythe CT21 5AD**

This report outlines the application made by Mr William Dunlop for a Premises Licence for this premises.

In determining the application the Sub-Committee has carefully considered and given the appropriate weight to the evidence before it today including:-

(i) The report presented by Licensing Specialist Briony Williamson.
(ii) The submissions made by the applicant, including an additional written statement circulated to members in advance of the meeting.
(iii) The representations received.

The applicant, Mr Dunlop answered members questions relating to the following:

- Additional hours for outside will help with dispersal of patrons.
- Disabled access – this is from the rear of the building and is suitable for wheelchair users.
- Music – the applicant is happy to turn the music off at 9pm and the background music can be set to a particular level that Environmental Health agree is suitable. It was noted that a noise limiter cannot be fixed for outside, but the applicant agreed to limit live music to twice a month.
- Garden area – the applicant explained that this area is needed to sustain his business.
- Complaints – a few complaints had been received due to the noise outside, but the applicant explained that he was not the only business in the high street that had issues with noise dispersal.
- Door management – no staff are on duty at the door as the business is predominantly for food sales.

Two further comments were received and read out by the Licensing Specialist with the agreement of the applicant. These are attached to the minutes for information.

Proposed by Councillor Tony Cooper
Seconded by Councillor Gary Fuller and

Resolved: The decision of the Sub-Committee is to grant the licence as presented for the hours identified in the licence, subject to the adoption of the 4 conditions recommended by the Environmental Health:

- **Garden rear exit to be closed at 21:00hrs**
- **Clear signage (inside and out) to remind patrons to be respectful to the neighbours whilst on and leaving the premises.**
- **Staff to assist the quiet dispersal of patrons from the front of the premises.**
- **Staff to monitor smoking areas to ensure patrons are not causing a disturbance to nearby residential properties.**

These support the licensing objective of the prevention of public nuisance.

(Voting: For 3; Against 0; Abstentions 0)

A full decision notice will be issued within 5 days.

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I have read through this and can see no real effort at mitigation on behalf of Mr Dunlop. The application in essence is asking for the same hours outside with an extension inside. As I have noted previously if Ivy's gets the same garden licence and an extension to the hours requested the council is merely rewarding Ivy's for the previous transgressions they have called out and Ivy's failed to deal with.

On a couple of the points, he makes I would comment as follows.

Point 12: I am sorry to hear that the objections have caused MR Dunlop "significant stress and detriment to my mental health". Perhaps he now gets a better idea of what it is like living next to Ivy's and the "significant stress and detriment to the mental health of the neighbours" that has occurred.

Points 13 and 14: If the team at Ivy's has been working so closely with the Environmental Team how have the team noted on four separate occasions excessive noise when they have attended his acoustic music session? I am sure they would have provided recommendations on the noise levels so to be called Ivy's out on four separate makes this claim sound slightly disingenuous. Other venues in the High Street, Remedies, Henry's, and The Kings Head to name but a few all offer live music but don't seem to have issues around noise complaints as their music is all inside. The issue of music in the garden is still not being addressed if music is allowed up until 9:00 PM

I reiterate I want a vibrant diverse High St. but the delivery of that vibrancy must consider all involved including the neighbourhood and not just those who enjoy the amenities and then leave the area once their evening is over.

Mr Dunlop writes:
All of the people that have visited IOH deli over the last two years have commented on how nice the venue is and how much they have enjoyed their experience there. I have customers that travel from all over Kent and sometimes further afield in addition to my regular customers that live in Hythe.

Not entirely true - plenty of comments on Trust Pilot to the contrary. -

Mr Dunlop writes:
In order to clarify that the provision of late-night refreshment is to provide hot drinks and food and does not include alcohol.

Unless I am missing something he is applying for a licence to sell alcohol until 11.00 and 11.30.
If the garden must empty earlier and he only has a small amount of covers inside, where is everyone going to go to continue drinking?

Mr Dunlop writes:
The garden will be closed by 10pm and I have agreed to limit live music to twice per month at weekends only and any live/acoustic music will be finished by 9pm and will be at an acceptable level. There will be no dancing and the music is soft guitar or jazz acoustic music to be enjoyed whilst eating food.

I am sure that I and my neighbours will welcome the reduction to live music just twice per month, and soft guitar and jazz acoustic (ie not amplified) is absolutely fine at a reasonable level.
If this proves to be the case I'm looking forward to a visit in the summer.

Note that we also welcome the reduction in the volume of the recorded music.

Mr Dunlop states that if the music is too loud, we can ask for it to be turned down, but you can't walk in and do that during someone's "live set", and to be frank, Mr Dunlop is not someone you can have reasonable conversation with.
The incidents of intimidation including being told to "f**k off", calling us "snakes" and having our photos, names and addresses posted on his FB page have been previously documented elsewhere, but are still relevant.
I understand that running a business is stressful (after 37 years as a managing director) but being offensive is not the way to carry on, especially in a small community setting.

In conclusion, none of us want Mr Dunlop's business to suffer and we welcome good food and ambience.
What we don't like is excessive noise and being bullied when we stand up for ourselves.
Unless Ivy's do as they say and control the level of noise we will carry on calling out the Response Team, and I would agree with Environment that the garden should close at 9.

Application No: 23/1096/FH

Location of Site: Land Adjoining Karibu, Coombe Wood Lane, Hawkinge

Development: New single dwelling.

Applicant: Mr Christopher Saunders

Agent: Mr Jonathan Burlow

Officer Contact: Robert Allan

SUMMARY

This report considers whether planning permission should be granted for the erection of a single residential dwelling. The report assesses the principle of development alongside its impact on the. Kent Downs National Landscape and Special Landscape Area (SLA). The proposal is considered to represent acceptable residential development in accordance with Development Plan Policy. The impacts upon the designated landscape of the Kent downs AONB and Special Landscape Area are considered to be acceptable, alongside those upon the ecological constraints at the site, subject to appropriate mitigation being secured via condition.

RECOMMENDATION:

That planning permission be granted subject to the conditions set out at the end of the report.

1. INTRODUCTION

1.1. The application is reported to Committee due to the views of Hawkinge Town Council.

2. SITE AND SURROUNDINGS

2.1. The application site is partially within the defined settlement boundary of Hawkinge, within the Kent Downs national Landscape and North Downs Special Landscape Area (SLA). To the west is residential development, in the form of the wider settlement of Hawkinge and, more immediately, to the east and south, is the residential development fronting onto Coombe Wood Lane, a private road. To the north is open countryside, given over to arable farming. The eastern boundary with Longacre is made of well-established vegetation, whilst to the southern boundary, there is an evergreen hedge, whilst to the southeastern boundary to the rear of Karibu, there is also an evergreen hedge and a close-boarded fence.

2.2. The front portion of the application site is composed of land that would have formed part of the residential curtilage of Karibu and which falls inside the defined settlement

boundary of Hawkinge, whilst the rear was used as agricultural land and is outside of this definition.

2.3. A site location plan is attached to this report as **Appendix 1**.

3. PROPOSAL

3.1 This application seeks planning permission for the erection of a one-bedroom bungalow style building, with off-street parking for two vehicles. The proposed structure would be finished in brick, with slate-coloured, diamond aluminium interlocking tiles, aluminium windows and doors, cobbles for the off-street parking areas and planting to the boundaries.

3.2 The proposed dwelling would be set into the sloping site, presenting a single storey elevation to Coombe Wood Lane, but with the use of internal levels creating additional space for a lower ground bathroom area. The rear amenity space is accessed through the property and alongside the proposed side access way. The gross internal floor area of the proposed dwelling would be 72.1sqm.

3.3 The proposed location and wider context can be seen in image 1 below, while the proposed layout can be seen in image 2.

Image 1: site plan

3.4 In addition to relevant plans and drawings, the applicant has submitted a design and access statement in support of the proposal. This provides details of the proposal including use, size and layout, scale, landscaping and appearance, as well as access and parking for the development. A description of the site, its context, and its constraints is also provided.

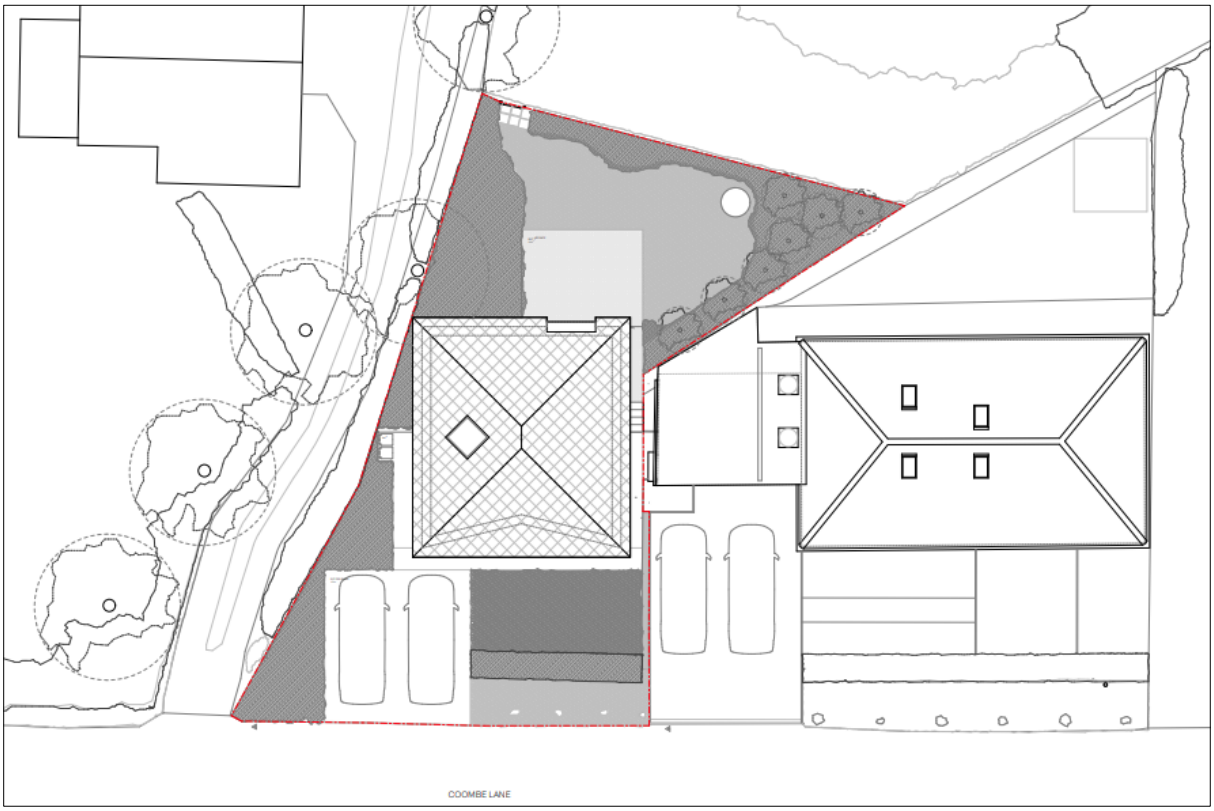


Image 2: Proposed site layout

3.5 Images 3 shows the proposed street scene and image 4 the view and section from the rear.

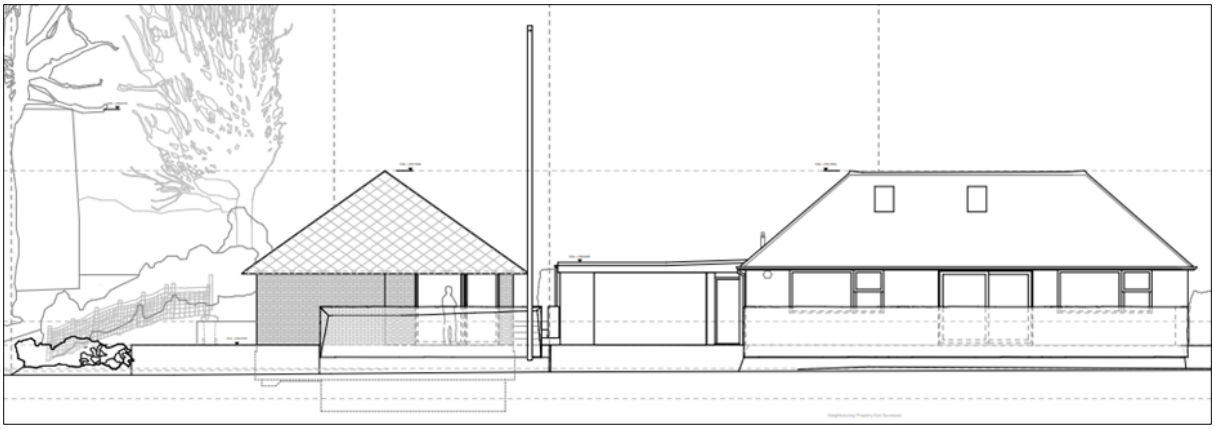


Image 3: Street scene from Coombe Wood Lane (front)

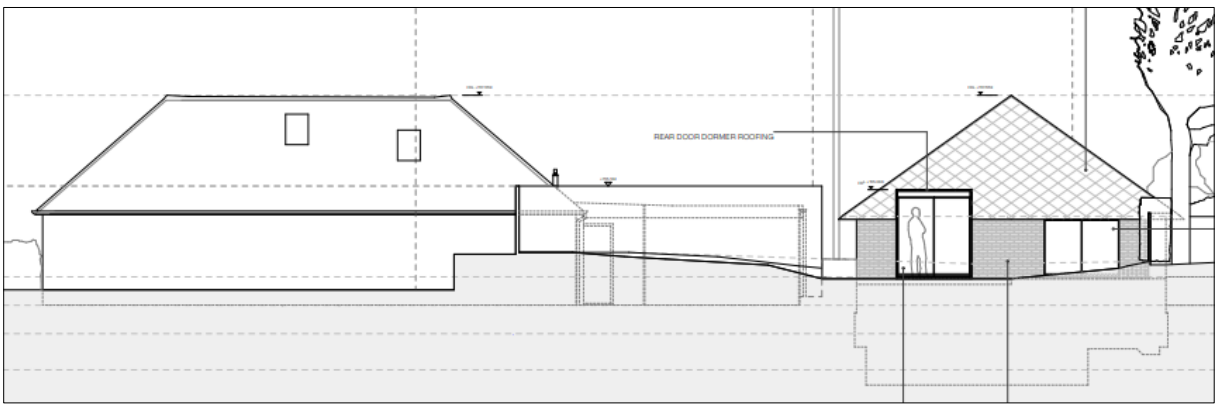


Image 4: View and section from north (rear)

4. RELEVANT PLANNING HISTORY

4.1 The relevant planning history for the site is as follows:

CH/8/60/175	Residential development.	Refused
SH/78/367	Outline application erection of a dwelling.	Refused

5. CONSULTATION RESPONSES

5.1 The consultation responses are summarised below.

Consultees

Hawkinge Town Council: Object – over-development of site

KCC Ecological Advice Service: No objection subject to condition

KCC Archaeology: No objection subject to condition

KCC Highways & Transportation: Outside of consultation protocol

Environmental Health: No objection subject to condition

Southern Water: No objection

Local Residents Comments

5.2 Fourteen neighbours have been notified of the development. One representation has been received, supporting the application on grounds of:

- Within keeping of the lane
- Design and scale well thought out
- Retention of privacy, light, and does not encroach on others
- New addition would site perfectly on site and blend into surroundings

5.3 Responses are available in full on the planning file on the Council's website:

https://searchplanapps.folkestone-hythe.gov.uk/online-applications/

6. RELEVANT PLANNING POLICY

6.1 The Development Plan comprises the Places and Policies Local Plan 2020 and the Core Strategy Review 2022.

6.2 The relevant development plan policies are as follows:-

Places and Policies Local Plan 2020

HB1	Quality Places Through Design
HB3	Internal and External Space Standards
HB10	Development of Residential Gardens
T2	Parking Standards
T5	Cycle Parking
NE2	Biodiversity
NE3	Protecting the District's Landscapes and Countryside
CC2	Sustainable Design and Construction
HE2	Archaeology

Core Strategy Review 2022

SS1	District Spatial Strategy
SS3	Place-Shaping and Sustainable Settlement Strategy
CSD3	Rural and Tourism Development
CSD4	Green Infrastructure of Natural Networks, Open Spaces and Recreation

6.3 The following are also material considerations to the determination of this application.

Government Advice

National Planning Policy Framework (NPPF) 2023

Members should note that the determination must be made in accordance with the Development Plan unless material considerations indicate otherwise. A significant material consideration is the National Planning Policy Framework (NPPF). The NPPF says that less weight should be given to the policies above if they are in conflict with the NPPF. The following sections of the NPPF 2023 are relevant to this application: -

11	Presumption in favour of sustainable development
47	Applications for planning permission be determined in accordance with the development plan
136	Achieving well-designed places
182	Conserving and enhancing the natural environment

6.4 The Kent Downs AONB has been renamed as Kent Downs National Landscape. The relevant legislation and national and local policies have not though been amended. Any reference to the Kent Downs National Landscape in this report should be taken as referring to the Kent Downs AONB.

7. APPRAISAL

7.1 The report will set out the background for the site with the main issues for consideration following this, considered to be:

a) Principle

b) Visual impact

c) Residential amenity

d) Ecology

e) Highways & Parking

f) Archaeology

a) Principle

7.2 The front of the application site is within the defined settlement boundary of Hawkinge, which is identified within the Core Strategy as a Service Centre in the North Downs Area capable of accommodating development appropriate to the district and the centre's own needs, in order to grow and consolidate its position as a centre serving the local hinterland with shops, employment and public services.

7.3 The rear of the site falls outside of the defined settlement boundary and this part of the application site is grade 3 agricultural land which is not considered to be the best and most versatile. Additionally, the area proposed for development is small in scale and its loss would not impact detrimentally upon the farming activity in the area.

7.4 Core Strategy policy SS1 states that development should be focused on the most sustainable towns and villages as set out in policy SS3, also of the Core Strategy, with policy CSD3 setting out that where sites are unavailable within settlements, the development is proportionate in scale/impact, and accessible by a choice of means of transport, it may be acceptable on the edge of Strategic Towns and Service Centres

7.5 As the site is immediately adjacent to existing residential development, which extends further away to the east, and partially within the defined settlement boundary, it is in a sustainable location, and the locational principle of residential development at this site is accepted, subject to all other material planning considerations.

b) Visual impact

7.6 There would be an additional visual impact from the built form and associated development of the proposed dwelling, but it would not be a significant change in character for the area, which has a regular pattern of development along this road, and a suburban-rural character. Views to the countryside beyond are limited by the narrow nature of this gap in development and as a consequence of the change in land levels, so there would be very limited change in character in this regard.

7.7 The predominant form of development in the immediate area, especially on the northern side of Coombe Wood Lane, is single-storey, bungalow-style dwellings, with pitched roofs. The proposed building would follow this form and maintain the existing

building line, with frontage parking, also a feature of the properties in the area, considered appropriate and acceptable.

7.8 The materiality proposed is a mix of traditional brick for the walls, coupled with contemporary roofing materials in the form of slate grey aluminium tiles. The use of slate (artificial and real), concrete, and clay tiles is noted on surrounding properties and it is considered that the proposed roof material would have no detrimental impact upon the character of the area. Final details of all materials can be secured via conditions.

7.9 Turning to landscaping, the proposal would retain part of the existing hedgerow to the front of the property, with additional planting shown to the eastern boundary and also the rear garden boundary. Full details of the landscaping can reasonably be secured by condition.

7.10 Overall, the proposal infills a small gap in the existing street scene where there is a limited view of the open countryside beyond and the character of the area, which is a suburban rural street, would not be detrimentally impacted whether by the additional development, or the appearance of the dwelling. The proposal responds to the character and appearance of the area, the layout and pattern of the existing built development, and the plot is of an appropriate size and shape to accommodate the proposal. In conjunction with the control of materials and landscaping via condition, it is considered that the character and appearance of the street scene, as well as the landscape and scenic beauty of the designated National Landscape and SLA would be preserved.

7.11 There are no objections to the proposed development in accordance with the provisions set out under PPLP Policies HB1, HB10 and NE3

c) Residential amenity

Existing

7.12 It is noted that part of the application site occupies what was previously some of the garden area of Karibu. However, this land has already been transferred to the applicant prior to the application and the rear garden area of Karibu adjusted accordingly, with a boundary treatment of close board fence and hedgerow having been erected. Consequently, the rear garden area has already been lost and cannot be a material consideration in this regard.

7.13 The use of the application site as land for residential purposes would be unlikely to introduce an unacceptable level of additional noise as a consequence of normal domestic use, whilst the scale, location, design and layout of the dwelling, together with the existing and proposed boundary treatments, means that there would be no detrimental overbearing or overshadowing presence, or loss of privacy for the occupiers of the neighbouring property in accordance with Places and Policies Local Plan policy HB1.

Proposed

7.14 The proposed dwelling would exceed the adopted standards for gross internal floor area for a single bedroom dwelling, with all the habitable rooms considered to have an acceptable level of daylight and therefore amenity.

7.15 The proposed garden area does not have a 10-metre depth across the width of the dwelling as a consequence of its irregular shape. However, the total area of the garden would significantly exceed that required by policy (10m depth x 8.9m width of dwelling), being approximately 120sqm, so would provide an acceptable level of amenity for future occupiers.

7.16 Overall, the proposed development would have an acceptable impact upon both existing and future occupiers in accordance with Places and Policy Local Plan policies HB1, HB3 and HB10.

d) Ecology

7.17 The comments of KCC Ecological Advice Service identify that the proposed development has limited potential to result in significant ecological impacts, given the site is a regularly mown/managed grassland which limits the opportunities for protected/notable species to be present, with no requirement for ecological surveys to be undertaken at this time.

7.18 The submitted information has detailed that one bird box, one bat box and a hedgehog house will be incorporated into the site. However, it is recommend that enhancement features should also be incorporated in to the building, hedgehog highways in all fencing and native species planting incorporated in to the planting scheme. The detail associated with such ecological enhancement can reasonably be secured via condition.

7.19 There are no objections to the development on ecological grounds, subject to the above-mentioned condition.

e) Highways & Parking

7.20 The off-street parking shown would exceed the requirements of adopted policy T2 for development in this location and can be secured via condition, whilst an adequate amount of off-street parking to serve the existing dwelling would also be maintained. Secure, covered cycle storage to serve the development could be located within a garden shed and detail of this can also reasonably be secured via condition to meet the requirement of policy T5.

f) Archaeology

7.21 The application site is within an area of multi-period archaeological potential and groundworks associated with the proposed development may impact on any below-ground archaeological remains at the site. KCC Archaeology have reviewed the proposal and recommend that to mitigate development impacts, a condition covering archaeological field evaluation works is secured via condition.

Environmental Impact Assessment

7.22 In accordance with the EIA Regulations 2017, this development has been considered in light of Schedules 1& 2 of the Regulations and it is not considered to fall within either

category and as such does not require screening for likely significant environmental effects.

Local Finance Considerations

7.23 Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the Act defines a local finance consideration as a grant or other financial assistance that has been, that will, or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy.

7.24 In accordance with policy SS5 of the Core Strategy Local Plan the Council has introduced a Community Infrastructure Levy (CIL) scheme, which in part replaces planning obligations for infrastructure improvements in the area. This proposal is CIL liable at a rate of £62.94 per sqm.

Human Rights

7.25 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the Council needs to balance the rights of the individual against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.

Public Sector Equality Duty

7.26 In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

It is considered that the application proposals would not conflict with objectives of the Duty.

Working with the applicant

7.27 In accordance with paragraphs 38 of the NPPF, Folkestone and Hythe District Council (F&HDC) takes a positive and creative approach to development proposals focused on solutions. F&HDC works with applicants/agents in a positive and creative manner.

8. CONCLUSION

8.1 The proposal would result in the change of use and development of a site that was formerly domestic curtilage and agricultural land, for use as a residential dwelling. The principle of development in this location is considered acceptable, alongside the visual impact upon the character and appearance of the street scene and the Kent Downs National Landscape and Special Landscape Area (SLA). The impacts upon neighbouring residential uses are considered to be acceptable, with amenities of future occupants also considered safeguarded. Considerations relating to parking, sustainable modes of transport and ecological constraints at the site have all been made and found to be acceptable, subject to appropriate mitigation being secured via condition.

8.2 Overall, it is considered that the proposal would result in a sustainable development, in line with adopted policy and is recommended for approval.

9. BACKGROUND DOCUMENTS

9.1 The consultation responses set out at Section 5.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

10. RECOMMENDATIONS

That planning permission is granted subject to the following 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 not be carried out except in complete accordance with the following approved drawings and documents:

   P-001 Proposed Location Plan
   P-003 Proposed Site Plan
   P-004 Proposed Ground Plan
   P-005 Proposed Basement Plan
   P-006 Proposed Front Elevation
   P-007 Proposed Rear Elevation
   P-010-Proposed Section AA

   Reason: For the avoidance of doubt and in order to ensure the satisfactory implementation of the development in accordance with the aims of Places and Policies Local Plan.

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.

4. No development beyond the construction of foundations shall take place until details to demonstrate that the dwellings hereby permitted shall use no more than 110 litres of water per person per day have been submitted to and approved in writing by the Local Planning Authority. The details shall be implemented as agreed.

   Reason: In the interest of sustainable development and minimising water consumption.

5. Prior to the first occupation of the dwelling hereby permitted, one electric vehicle charging point shall be provided, in accordance with specifications and a in location that have been submitted to and approved in writing by the Local Planning Authority.

   Reason: In the interest of sustainable development and reducing carbon emissions.

6. 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 development shall be implemented in accordance with the approved details.

   Reason: In the interest of visual amenity.

7. (A) No development shall take place until a desk top study has been undertaken and submitted to and approved in writing by the Local Planning Authority. The study shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and any other relevant information. Using this information, a diagrammatical representation (Conceptual Model) for the site of all potential contaminant sources, pathways and receptors shall also be included.

   (B) If the desk top study shows that further investigation is necessary, an investigation and risk assessment shall be undertaken by competent persons and a written report of the findings shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development. It shall include an assessment of the nature and extent of any contamination on the site, whether or not it originates on the site. The report of the findings shall include:

A survey of the extent, scale and nature of contamination;

(ii) An assessment of the potential risks to:

- Human health;
- Property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- Adjoining land,
- Ground waters and surface waters,
- Ecological systems,
- Archaeological sites and ancient monuments; and

(iii) An appraisal of remedial options and identification of the preferred option(s).

All work pursuant to this condition shall be conducted in accordance with the DEFRA and Environment Agency document Model Procedures for the Management of Land Contamination (Contamination Report 11).

(C) If investigation and risk assessment shows that remediation is necessary, no development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works, site management procedures and a verification plan. The scheme shall ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The approved remediation scheme shall be carried out in accordance with the approved terms including the timetable, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority shall be given two weeks written notification of commencement of the remediation scheme works.

(D) No development shall take place until a verification report demonstrating completion of the works set out in the approved remediation scheme and the effectiveness of the remediation has been submitted to and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include details of longer-term monitoring of pollutant linkages and maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority.

(E) If during development, contamination not previously identified is found to be present at the site, then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted and obtained written approval from the Local Planning Authority, details of how this unsuspected contamination shall be dealt with. Following completion of

measures identified in the approved remediation scheme a verification report shall be prepared and submitted to the Local Planning Authority.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land, together with those to controlled waters, property and ecological systems, are minimised and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off-site receptors.

8. No development beyond the construction of foundations shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. These details shall include existing trees, shrubs and other features, planting schedules of plants, noting species (which shall be native species and of a type that will encourage wildlife and biodiversity), plant sizes and numbers where appropriate, means of enclosure (boundary treatments), hard surfacing materials, and an implementation programme.

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

9. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the Local Planning Authority.

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

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

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

11. No development beyond the construction of foundations shall take place until details of how the development will enhance biodiversity have been submitted to, and approved in writing by, the local planning authority. The approved details will be implemented and thereafter retained.

    Reason: In the interest of enhancing ecology and biodiversity.

12. The area to the front of the dwelling shown as parking on the approved plans shall be kept available for the parking and turning of vehicles and no permanent development, whether permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order

revoking or re-enacting that Order) or not, shall be carried out on the land or in such a position as to preclude vehicular access thereto.

Reason: In the interests of highway safety and convenience.

13. Prior to first occupation, secure, covered cycle storage for one bicycle shall be provided within the curtilage of the dwelling hereby permitted and thereafter retained in association with that dwelling.

    Reason: In the interests of encouraging sustainable modes of transport other than private motor vehicle.

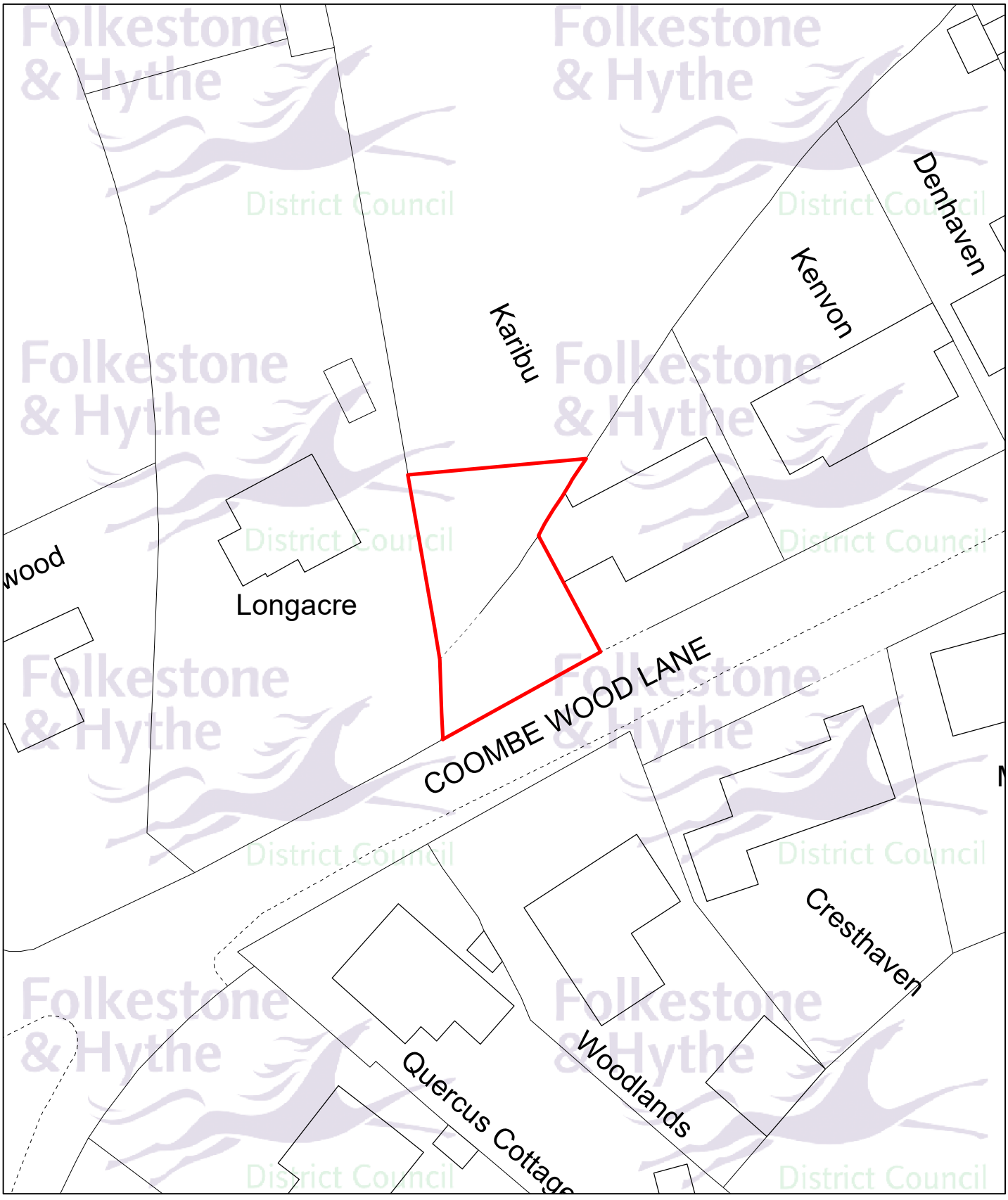
14. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of:

    i. archaeological field evaluation works in accordance with a Written Scheme of Investigation and timetable which has been submitted to and approved in writing by the Local Planning Authority; and
    ii. following on from the evaluation, any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a Written Scheme of Investigation and timetable which has been submitted to and approved in writing by the Local Planning Authority.

    Reason: To ensure appropriate assessment of the archaeological implications of any development proposals and the subsequent mitigation of adverse impacts through preservation in situ or by record

Appendix 1 – Site Location Plan

23/1096/FH - Land Adjoining Karibu, Coombe Wood Lane, Hawkinge, CT18 7BZ



Planning Application:	23/1096/FH
Drawn date:	04 Jan 2024
Drawn by:	Holly Bradbury
Drawing ref:	2239/PL/LS

Llywelyn Lloyd
Chief Planning Officer

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Meters
0 4 8 16 24 32 40

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Application No:	23/1554/FH
Location of Site:	29 Lancaster Drive, Hawkinge, Folkestone, CT18 7SW
Development:	Incorporate the landscape buffer zone adjacent to property into a residential garden.
Applicant:	Miss Rachel Green
Agent:	N/A
Officer Contact:	Robert Allan

SUMMARY

This report considers whether planning permission should be granted for the incorporation of land into the residential curtilage of 29 Lancaster Drive. The report reviews the history of the site, as well as the visual impact, amenity concerns, ecological impact and drainage concerns that may be associated with the proposal, finding that it would be considered acceptable, in accordance with adopted policy.

RECOMMENDATION:

That planning permission be granted subject to the conditions set out at the end of the report.

1. INTRODUCTION

1.1. The application is reported to Committee due to the views of Hawkinge Town Council.

2. SITE AND SURROUNDINGS

2.1. The application site is within the defined settlement boundary of Hawkinge, within the Kent Downs National Landscape and North Downs Special Landscape Area (SLA). To the east is residential development, in the form of the wider settlement of Hawkinge and, more immediately, the residential development fronting onto Lancaster Drive, Siskin Close and Gibson Close. To the west is a field given over to horse grazing with open countryside, given over to arable farming, beyond that. The field for horse grazing has well-established boundaries to the eastern and western boundaries, made up of hedging and mature trees.

2.2. The area of land the subject of the application is a piece of land that would, originally, have fallen outside of the residential curtilage of the properties fronting Gibson Close to the east. The applicant has asserted that the incorporation of the land took place on 31/12/2013.

2.3. A site location plan is attached to this report as **Appendix 1**.

3. PROPOSAL

3.1 This application seeks planning permission for the incorporation of the land into the residential curtilage of the dwelling, which has already been carried out. There are no changes proposed to the building. Aerial photos show that it occurred at some point between 2015 and 2018.

3.2 The layout can be seen in image 1 below.

Image 1: site plan

4. RELEVANT PLANNING HISTORY

4.1 The relevant planning history for the site is as follows:

Y10/0531/SH	Erection of 50 dwellings together with associated access roads, car parking, woodland open space and landscaped buffer strips.	Approved with conditions
Y12/0011/NMC	Non-material change to application Y10/0531/SH - Erection of 50 dwellings together with associated access roads, car parking, woodland open space and landscaped buffer strips.	Approved

23/0048/FH	Retrospective application for incorporation of landscape buffer zone into the residential garden of 1 Gibson Close.	Approved
23/0170/FH	Retrospective application for incorporation of landscape buffer zone into the residential garden of 2 Gibson Close.	Approved
23/1526/FH	Incorporate the landscape buffer zone adjacent to property into a residential garden	Under consideration

5. CONSULTATION RESPONSES

5.1 The consultation responses are summarised below.

Consultees

Hawkinge Town Council: Object – Destruction of natural amenity, loss of cover, detrimental to sightline from AONB; applicants do not own land; obstruction to road drainage ditch.

KCC Ecological Advice Service: No objection.

Local Residents Comments

5.2 Five neighbours have been notified of the development. Three representations have been received, objecting on grounds of:

- Buffer strip should be reinstated as original permission
- Landscaped strip protects rural area from impact of development
- Land is not owned by applicant – owned by Lancaster Drive West Ltd
- Drainage ditch is incorporated into landscape buffer zone
- Welfare of horses in adjacent field in question from disturbance
- Kent Downs AONB should not be disturbed
- Pentland development has to incorporate landscape buffer zone – should apply to Lancaster Drive
- Planning laws state that a buffer zone must be incorporated on all new developments
- Enforcement has not been maintained
- Grant of permission previously does not set a precedent
- Original planting removed with screen no longer in place

5.3 Responses are available in full on the planning file on the Council's website:

https://searchplanapps.folkestone-hythe.gov.uk/online-applications/

6. RELEVANT PLANNING POLICY

6.1 The Development Plan comprises the Places and Policies Local Plan 2020 and the Core Strategy Review 2022.

6.2 The relevant development plan policies are as follows:-

Places and Policies Local Plan 2020

HB1	Quality Places Through Design
NE3	Protecting the District's Landscapes and Countryside

Core Strategy Review 2022

SS1	District Spatial Strategy
CSD4	Green Infrastructure of Natural Networks, Open Spaces and Recreation

6.3 The following are also material considerations to the determination of this application.

Government Advice

National Planning Policy Framework (NPPF) 2023

Members should note that the determination must be made in accordance with the Development Plan unless material considerations indicate otherwise. A significant material consideration is the National Planning Policy Framework (NPPF). The NPPF says that less weight should be given to the policies above if they are in conflict with the NPPF. The following sections of the NPPF 2023 are relevant to this application: -

11	Presumption in favour of sustainable development
47	Applications for planning permission be determined in accordance with the development plan
136	Achieving well-designed places
182	Conserving and enhancing the natural environment

6.4 The Kent Downs AONB has been renamed as Kent Downs National Landscape. The relevant legislation and national and local policies have not though been amended. Any reference to the Kent Downs National Landscape in this report should be taken as referring to the Kent Downs AONB.

7. APPRAISAL

7.1 The report will set out the background for the site with the main issues for consideration following this, considered to be:

a) Background

b) Visual impact

c) Residential amenity

d) Ecology

e) Drainage

a) Background

7.2 The site is within the defined settlement boundary of Hawkinge and was part of a larger area of buffer strip granted alongside an application for fifty dwellings under planning permission (Y10/0531/SH). This development was built, and the landscape buffer provided, which ran down the western edge of the development before turning east to follow the line of Paddlesworth Lane along the southern boundary of the development.

7.3 The planning permission was accompanied by a planning obligation (s.106) which whilst identifying the location of the buffer strip on the approved plans, did not require the buffer strip to be provided or maintained or retained.

7.4 The permission was also subject to conditions – the conditions relevant to the determination of this application are condition 13, which required details of surface water drainage at the site to be submitted including a maintenance plan for the lifetime of the permission, and condition 22, which required a schedule of landscape maintenance and management for the communal/buffer areas for a minimum period of 10 years.

7.5 The details submitted for condition 22 in relation to landscape maintenance identified a period of 120 months management (10 years) and these were approved on 27 April 2012. This requirement to comply with this condition and maintenance has now expired. The approved details also set out that a management company would be set up. The management company was set up and named the Lancaster Drive Management Company (LDMC).

7.6 The details that were submitted for condition 13 set out that surface water drainage would be handled via deep bore soakaways and an existing ditch for the roofs and adoptable areas, with the details approved following consultation with the Environment Agency. The ditch falls within the landscape buffer area and consequently, the scope of the LDMC. This condition required that the details submitted included a maintenance plan for the lifetime of the permission.

7.7 The drainage strategy supporting the original planning application for the residential development initially proposed to extend the existing ditch along the full length of the western boundary. However, this proposal was amended to instead keep the ditch at its existing length, finishing approximately where the southern edge of the garden of 29 Lancaster Drive now is. This version of the drainage strategy was accepted by consultees and the Local Planning Authority.

7.8 To summarise, there are no planning controls on the original permission to require the retention of the buffer strip. However, any decision must ensure that the drainage details, as approved, can continue to be complied with. In respect of the latter point, a condition is recommended to ensure that no building works can take place within the application site.

b) Visual impact

7.9 The incorporation of the land into the residential curtilage has resulted in an un-screened boundary to the west, which faces into the horse field. This is not readily visible from the surrounding area, either from Lancaster Drive/Gibson Close, or from Paddlesworth Lane, and in the context of the designated landscape (National Landscape and SLA), the application site sits among a larger housing development, with vegetation running along roadways and the adjacent field boundaries. The loss of the landscaping buffer strip has not had any significant detrimental impact upon the visual character of the area and would conserve the landscape and scenic beauty of the National Landscape even when considered cumulatively with the pending application at 31 Lancaster Drive, (23/1526/FH).

7.10 As before, it must be noted that this proposal does not indicate a precedent being set for the wider area, as the loss of further areas of vegetation, with differing makeup etc. may be considered more harmful in their own context. The application is being considered on its own merits and in the context that there has been no change to the degree of landscaping present along the western boundary of the application site within the time frame of the positive consideration of applications 23/0048/FH & 23/0170/FH at 1 and 2 Gibson Close respectively, by Members.

7.11 Overall, although the proposal occupies space originally intended for landscaping that resulted in a buffer between the open countryside and the (then) emerging housing development, it is considered that the existing boundaries to fields and the vegetation therein provides a significant and effective screen, which together with the location of this site well away from public vantage points, means that the landscape and scenic beauty of the National Landscape and SLA are preserved.

7.12 It is considered that the proposal would result in an acceptable standard of amenity for existing and future occupiers in accordance with Places and Policies Local Plan policies HB1 and HB3.

c) Residential amenity

7.13 The use of this area of land as domestic curtilage would not introduce any detrimental overbearing or overshadowing presence, loss of privacy or additional noise and disturbance, so there would be no detrimental impact upon residential amenity and there would be an acceptable standard of amenity in accordance with Places and Policies Local Plan policy HB1.

d) Ecology

7.14 The retained records associated with the original planning permission indicate that the buffer strip was not secured initially for its ecological value and as it has been lost a significant time previously, it is not possible to assess the value it may have had.

7.15 The comments of KCC Ecological Advice Service identify that the application site is relatively small and therefore the acceptance of the proposal is unlikely to have a significant impact on biodiversity, with no requirement for any surveys to be carried out..

7.16 Overall, the proposal would have no detrimental impact upon biodiversity at the site, in accordance with Places and Policies Local Plan policy NE2.

e) Drainage

7.17 The surface water drainage of the site from roofs relies partially upon the existing ditch in the western portion of the landscape buffer, based upon the details in historic records. As set out in paragraph 7.7, the drainage strategy supporting the original planning application for the residential development initially proposed to extend the existing ditch along the full length of the western boundary. However, this proposal was amended to instead keep the ditch at its existing length, finishing approximately where the southern edge of the garden of 29 Lancaster Drive now is, with this version of the drainage strategy accepted by consultees and the Local Planning Authority.

7.18 Consequently, the retention of the application site as residential garden area would not materially impact upon the operation of the ditch as required by the approved drainage strategy, given that it falls outside the extent of the pre-existing ditch.

7.19 Condition 13 of Y10/0531/SH secured the implementation of this surface water drainage scheme and the arrangements to secure its operation for the lifetime of the development, which falls to the owner of the land and is not a planning matter, rather a civil matter to be resolved. However, for the application site, this is a moot point, as it is outside of the area required to serve the drainage strategy.

7.20 Should members resolve to approve the application, a condition is recommended to ensure that no building works can take place within the application site to ensure that the drainage details as approved can continue to be complied with.

Environmental Impact Assessment

7.21 In accordance with the EIA Regulations 2017, this development has been considered in light of Schedules 1& 2 of the Regulations and it is not considered to fall within either category and as such does not require screening for likely significant environmental effects.

Local Finance Considerations

7.22 Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the Act defines a local finance consideration as a grant or other financial assistance that has been, that will, or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy.

7.23 In accordance with policy SS5 of the Core Strategy Local Plan the Council has introduced a Community Infrastructure Levy (CIL) scheme, which in part replaces

planning obligations for infrastructure improvements in the area. This proposal is not CIL liable.

Human Rights

7.24 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the Council needs to balance the rights of the individual against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.

Public Sector Equality Duty

7.25 In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

It is considered that the application proposals would not conflict with objectives of the Duty.

Working with the applicant

7.26 In accordance with paragraphs 38 of the NPPF, Folkestone and Hythe District Council (F&HDC) takes a positive and creative approach to development proposals focused on solutions. F&HDC works with applicants/agents in a positive and creative manner.

8. CONCLUSION

8.1 The proposal would result in the incorporation of a former landscape buffer zone into the residential curtilage of 29 Lancaster Drive. Because of the location and existing landscaping in the surrounding area, there is considered to be no significant detrimental visual impact, or any identified harm upon residential amenity, ecological value, or drainage as a consequence of the proposal, with due consideration given to the cumulative effects of the adjacent application at 31 Lancaster Drive. The acceptance of this proposal would not indicate a precedent being set for the wider area, with each case considered on its own merits.

8.2 Overall, it is considered that the proposal would result in a sustainable development, in line with adopted policy and is recommended for approval.

9. BACKGROUND DOCUMENTS

9.1 The consultation responses set out at Section 5.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

10. RECOMMENDATIONS

That planning permission is granted subject to the following conditions:

1. No further development permitted by Class E or F of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order), shall be carried out.

   Reason: In the interests of the visual amenities of the area and to ensure existing drainage arrangements can continue to operate.

Appendix 1 – Site Location Plan

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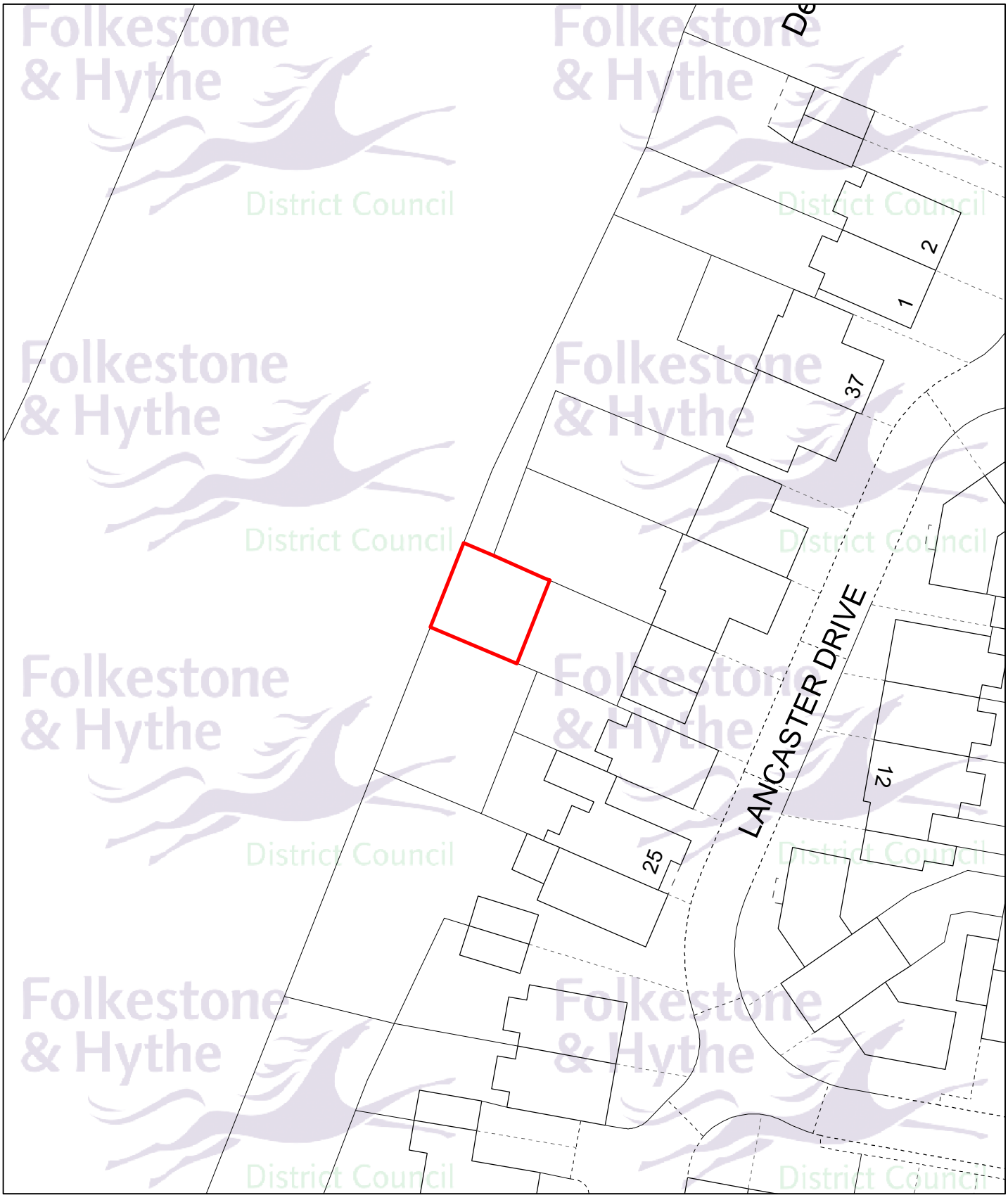
23/1554/FH - 29 Lancaster Drive, Hawkinge, Folkestone, CT18 7SW



Planning Application:	23/1554/FH
Drawn date:	04 Jan 2024
Drawn by:	Holly Bradbury
Drawing ref:	2039/PL/LS

Llywelyn Lloyd
Chief Planning Officer

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0 4 8 16 24 32 40

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Application No:	23/1526/FH
Location of Site:	31 Lancaster Drive, Hawkinge, Folkestone, CT18 7SW
Development:	Incorporate the landscape buffer zone adjacent to property into a residential garden.
Applicant:	Mr Robert Steer
Agent:	N/A
Officer Contact:	Robert Allan

SUMMARY

This report considers whether planning permission should be granted for the incorporation of land into the residential curtilage of 31 Lancaster Drive. The report reviews the history of the site, as well as the visual impact, amenity concerns, ecological impact and drainage concerns that may be associated with the proposal, finding that it would be considered acceptable, in accordance with adopted policy.

RECOMMENDATION:

That planning permission be granted subject to the conditions set out at the end of the report.

1. INTRODUCTION

1.1. The application is reported to Committee due to the views of Hawkinge Town Council.

2. SITE AND SURROUNDINGS

2.1. The application site is within the defined settlement boundary of Hawkinge, within the Kent Downs National Landscape and North Downs Special Landscape Area (SLA). To the east is residential development, in the form of the wider settlement of Hawkinge and, more immediately, the residential development fronting onto Lancaster Drive, Siskin Close and Gibson Close. To the west is a field given over to horse grazing with open countryside, given over to arable farming, beyond that. The field for horse grazing has well-established boundaries to the eastern and western boundaries, made up of hedging and mature trees.

2.2. The area of land the subject of the application is a piece of land that would, originally, have fallen outside of the residential curtilage of the properties fronting Gibson Close to the east. The applicant has asserted that the incorporation of the land took place on 29.08.2016.

2.3. A site location plan is attached to this report as **Appendix 1**.

3. PROPOSAL

3.1 This application seeks planning permission for the incorporation of the land into the residential curtilage of the dwelling, which has already been carried out. There are no changes proposed to the building. Aerial photos show that it occurred at some point between 2015 and 2018.

3.2 The layout can be seen in image 1 below.

Image 1: site plan

4. RELEVANT PLANNING HISTORY

4.1 The relevant planning history for the site is as follows:

Y10/0531/SH	Erection of 50 dwellings together with associated access roads, car parking, woodland open space and landscaped buffer strips.	Approved with conditions
Y12/0011/NMC	Non-material change to application Y10/0531/SH - Erection of 50 dwellings together with associated access roads, car parking, woodland open space and landscaped buffer strips.	Approved
23/0048/FH	Retrospective application for incorporation of landscape buffer zone into the residential garden of 1 Gibson Close.	Approved

23/0170/FH	Retrospective application for incorporation of landscape buffer zone into the residential garden of 2 Gibson Close.	Approved
23/1554/FH	Incorporate the landscape buffer zone adjacent to property into a residential garden	Under consideration

5. CONSULTATION RESPONSES

5.1 The consultation responses are summarised below.

Consultees

Hawkinge Town Council: Object – Destruction of natural amenity, loss of cover, detrimental to sightline from AONB; applicants do not own land; obstruction to road drainage ditch.

KCC Ecological Advice Service: No objection.

Local Residents Comments

5.2 Six neighbours have been notified of the development. Three representations have been received, objecting on grounds of:

- Buffer strip should be reinstated as original permission
- Landscaped strip protects rural area from impact of development
- Land is not owned by applicant – owned by Lancaster Drive West Ltd
- Drainage ditch is incorporated into landscape buffer zone
- Welfare of horses in adjacent field in question from disturbance
- Kent Downs AONB should not be disturbed
- Pentland development has to incorporate landscape buffer zone – should apply to Lancaster Drive
- Planning laws state that a buffer zone must be incorporated on all new developments
- Enforcement has not been maintained
- Grant of permission previously does not set a precedent
- Original planting removed with screen no longer in place

5.3 Responses are available in full on the planning file on the Council's website:

https://searchplanapps.folkestone-hythe.gov.uk/online-applications/

6. RELEVANT PLANNING POLICY

6.1 The Development Plan comprises the Places and Policies Local Plan 2020 and the Core Strategy Review 2022.

6.2 The relevant development plan policies are as follows:-

Places and Policies Local Plan 2020

HB1	Quality Places Through Design
NE3	Protecting the District's Landscapes and Countryside

Core Strategy Review 2022

SS1	District Spatial Strategy
CSD4	Green Infrastructure of Natural Networks, Open Spaces and Recreation

6.3 The following are also material considerations to the determination of this application.

Government Advice

National Planning Policy Framework (NPPF) 2023

Members should note that the determination must be made in accordance with the Development Plan unless material considerations indicate otherwise. A significant material consideration is the National Planning Policy Framework (NPPF). The NPPF says that less weight should be given to the policies above if they are in conflict with the NPPF. The following sections of the NPPF 2023 are relevant to this application: -

11	Presumption in favour of sustainable development
47	Applications for planning permission be determined in accordance with the development plan
136	Achieving well-designed places
182	Conserving and enhancing the natural environment

6.4 The Kent Downs AONB has been renamed as Kent Downs National Landscape. The relevant legislation and national and local policies have not though been amended. Any reference to the Kent Downs National Landscape in this report should be taken as referring to the Kent Downs AONB.

7. APPRAISAL

7.1 The report will set out the background for the site with the main issues for consideration following this, considered to be:

a) Background

b) Visual impact

c) Residential amenity

d) Ecology

e) Drainage

a) Background

7.2 The site is within the defined settlement boundary of Hawkinge and was part of a larger area of buffer strip granted alongside an application for fifty dwellings under planning permission (Y10/0531/SH). This development was built, and the landscape buffer provided, which ran down the western edge of the development before turning east to follow the line of Paddlesworth Lane along the southern boundary of the development.

7.3 The planning permission was accompanied by a planning obligation (s.106) which whilst identifying the location of the buffer strip on the approved plans, did not require the buffer strip to be provided or maintained or retained.

7.4 The permission was also subject to conditions – the conditions relevant to the determination of this application are condition 13, which required details of surface water drainage at the site to be submitted including a maintenance plan for the lifetime of the permission, and condition 22, which required a schedule of landscape maintenance and management for the communal/buffer areas for a minimum period of 10 years.

7.5 The details submitted for condition 22 in relation to landscape maintenance identified a period of 120 months management (10 years) and these were approved on 27 April 2012. This requirement to comply with this condition and maintenance has now expired. The approved details also set out that a management company would be set up. The management company was set up and named the Lancaster Drive Management Company (LDMC).

7.6 The details that were submitted for condition 13 set out that surface water drainage would be handled via deep bore soakaways and an existing ditch for the roofs and adoptable areas, with the details approved following consultation with the Environment Agency. The ditch falls within the landscape buffer area and consequently, the scope of the LDMC. This condition required that the details submitted included a maintenance plan for the lifetime of the permission.

7.7 The drainage strategy supporting the original planning application for the residential development initially proposed to extend the existing ditch along the full length of the western boundary. However, this proposal was amended to instead keep the ditch at its existing length, finishing approximately where the southern edge of the garden of 29 Lancaster Drive now is. This version of the drainage strategy was accepted by consultees and the Local Planning Authority.

7.8 To summarise, there are no planning controls on the original permission to require the retention of the buffer strip. However, any decision must ensure that the drainage details, as approved, can continue to be complied with. In respect of the latter point, a

condition is recommended to ensure that no building works can take place within the application site.

b) Visual impact

7.9 The incorporation of the land into the residential curtilage has resulted in an un-screened boundary to the west, which faces into the horse field. This is not readily visible from the surrounding area, either from Lancaster Drive/Gibson Close, or from Paddlesworth Lane, and in the context of the designated landscape (National Landscape and SLA), the application site sits among a larger housing development, with vegetation running along roadways and the adjacent field boundaries. The loss of the landscaping buffer strip has not had any significant detrimental impact upon the visual character of the area and would conserve the landscape and scenic beauty of the National Landscape even when considered cumulatively with the pending application at 29 Lancaster Drive, (23/1554/FH).

7.10 As before, it must be noted that this proposal does not indicate a precedent being set for the wider area, as the loss of further areas of vegetation, with differing makeup etc. may be considered more harmful in their own context. The application is being considered on its own merits and in the context that there has been no change to the degree of landscaping present along the western boundary of the application site within the time frame of the positive consideration of applications 23/0048/FH & 23/0170/FH at 1 and 2 Gibson Close respectively, by Members.

7.11 Overall, although the proposal occupies space originally intended for landscaping that resulted in a buffer between the open countryside and the (then) emerging housing development, it is considered that the existing boundaries to fields and the vegetation therein provides a significant and effective screen, which together with the location of this site well away from public vantage points, means that the landscape and scenic beauty of the National Landscape and SLA are preserved.

7.12 It is considered that the proposal would result in an acceptable standard of amenity for existing and future occupiers in accordance with Places and Policies Local Plan policies HB1 and HB3.

c) Residential amenity

7.13 The use of this area of land as domestic curtilage would not introduce any detrimental overbearing or overshadowing presence, loss of privacy or additional noise and disturbance, so there would be no detrimental impact upon residential amenity and there would be an acceptable standard of amenity in accordance with Places and Policies Local Plan policy HB1.

d) Ecology

7.14 The retained records associated with the original planning permission indicate that the buffer strip was not secured initially for its ecological value and as it has been lost a significant time previously, it is not possible to assess the value it may have had.

7.15 The comments of KCC Ecological Advice Service identify that the application site is relatively small and therefore the acceptance of the proposal is unlikely to have a significant impact on biodiversity, with no requirement for any surveys to be carried out..

7.16 Overall, the proposal would have no detrimental impact upon biodiversity at the site, in accordance with Places and Policies Local Plan policy NE2.

e) Drainage

7.17 The surface water drainage of the site from roofs relies partially upon the existing ditch in the western portion of the landscape buffer, based upon the details in historic records. As set out in paragraph 7.7, the drainage strategy supporting the original planning application for the residential development initially proposed to extend the existing ditch along the full length of the western boundary. However, this proposal was amended to instead keep the ditch at its existing length, finishing approximately where the southern edge of the garden of 29 Lancaster Drive now is, with this version of the drainage strategy accepted by consultees and the Local Planning Authority.

7.18 Consequently, the retention of the application site as residential garden area would not materially impact upon the operation of the ditch as required by the approved drainage strategy, given that it falls outside the extent of the pre-existing ditch.

7.19 Condition 13 of Y10/0531/SH secured the implementation of this surface water drainage scheme and the arrangements to secure its operation for the lifetime of the development, which falls to the owner of the land and is not a planning matter, rather a civil matter to be resolved. However, for the application site, this is a moot point, as it is outside of the area required to serve the drainage strategy.

7.20 Should members resolve to approve the application, a condition is recommended to ensure that no building works can take place within the application site to ensure that the drainage details as approved can continue to be complied with.

Environmental Impact Assessment

7.21 In accordance with the EIA Regulations 2017, this development has been considered in light of Schedules 1& 2 of the Regulations and it is not considered to fall within either category and as such does not require screening for likely significant environmental effects.

Local Finance Considerations

7.22 Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the Act defines a local finance consideration as a grant or other financial assistance that has been, that will, or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy.

7.23 In accordance with policy SS5 of the Core Strategy Local Plan the Council has introduced a Community Infrastructure Levy (CIL) scheme, which in part replaces planning obligations for infrastructure improvements in the area. This proposal is not CIL liable.

Human Rights

7.24 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 8 and Article 1 of the first protocol. The proposed course of action is in accordance with domestic law. As the rights in these two articles are qualified, the Council needs to balance the rights of the individual against the interests of society and must be satisfied that any interference with an individual's rights is no more than necessary. Having regard to the previous paragraphs of this report, it is not considered that there is any infringement of the relevant Convention rights.

Public Sector Equality Duty

7.25 In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

It is considered that the application proposals would not conflict with objectives of the Duty.

Working with the applicant

7.26 In accordance with paragraphs 38 of the NPPF, Folkestone and Hythe District Council (F&HDC) takes a positive and creative approach to development proposals focused on solutions. F&HDC works with applicants/agents in a positive and creative manner.

8. CONCLUSION

8.1 The proposal would result in the incorporation of a former landscape buffer zone into the residential curtilage of 31 Lancaster Drive. Because of the location and existing landscaping in the surrounding area, there is considered to be no significant detrimental visual impact, or any identified harm upon residential amenity, ecological value, or drainage as a consequence of the proposal, with due consideration given to the cumulative effects of the adjacent application at 29 Lancaster Drive. The acceptance of this proposal would not indicate a precedent being set for the wider area, with each case considered on its own merits.

8.2 Overall, it is considered that the proposal would result in a sustainable development, in line with adopted policy and is recommended for approval.

9. BACKGROUND DOCUMENTS

9.1 The consultation responses set out at Section 5.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

10. RECOMMENDATIONS

That planning permission is granted subject to the following conditions:

1. No further development permitted by Class E or F of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order), shall be carried out.

   Reason: In the interests of the visual amenities of the area and to ensure existing drainage arrangements can continue to operate.

Appendix 1 – Site Location Plan

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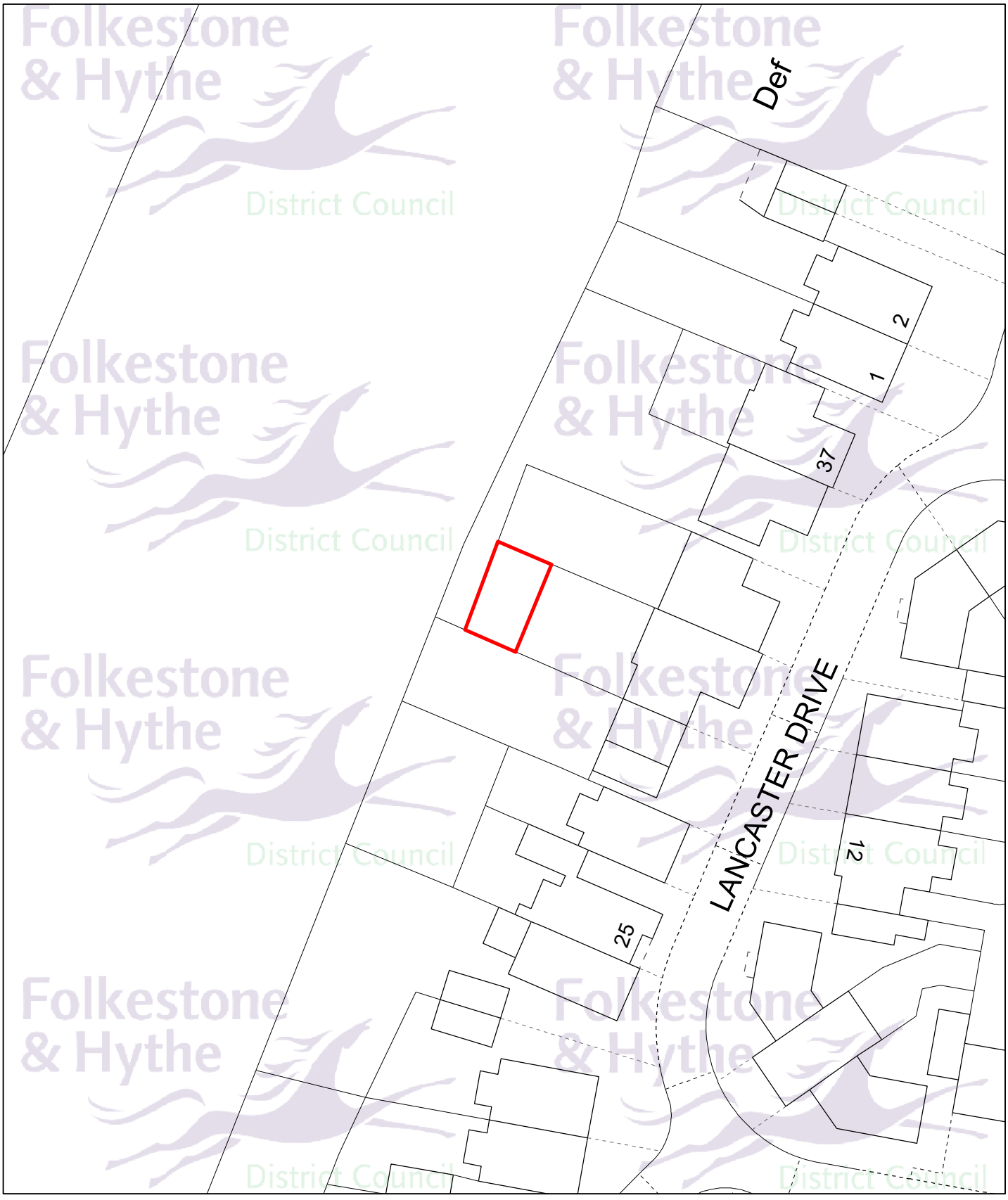
23/1526/FH - 31 Lancaster Drive, Hawkinge, Folkestone, CT18 7SW



Planning Application: 23/1526/FH Drawn date: 04 Jan 2024 Drawn by: Holly Bradbury Drawing ref: 2039/PL/LS	Llywelyn Lloyd Chief Planning Officer	 0 4 8 16 24 32 40 Meters	Drawn at 1:500 on A4

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This report will be made public on 08 January 2024.

Folkestone & Hythe District Council

Report number: DCL/23/35

To: **Planning and Licensing Committee**

Date: **16th January 2024**

Status: **Non key Decision**

Responsible Officer: **Llywelyn Lloyd, Chief Planning Officer**

Subject: **Appeals Monitoring Report January 2020 to December 2023**

SUMMARY: This report is for information only. It sets out the number and decisions on appeals determined since the previous monitoring report was presented to Members in 2019, together with commentary on a number of notable appeal decisions made by the Planning Inspectorate.

RECOMMENDATION:

That Members note the report.

1. INTRODUCTION

1.1. Some Members may recall that, prior to 2020, information relating to appeal decisions was presented on a quarterly basis to the Planning and Licencing Committee. This practice ceased during the pandemic and the remote Committee Meetings which took place, and as such, Members have not received updates on appeal decisions for some time. Given the length of time that has elapsed since appeal monitoring information was last reported to Members, a significant number of appeals have been determined, and as such this report will set out broad trends in decisions received together with detailed commentary on a number of decisions which may be of interested to Members.

2. PERFORMANCE

2.1. Over the period January 2020 to December 2023, 133 appeals were determined. Of these, 94 were dismissed and 39 were allowed – 71% dismissed, 29% allowed..

2.2. These figures are broadly in line with the national average – over the period October 2020 to September 2022, 71% of appeals for non-major applications nationally were dismissed.

2.3. The performance by calendar year is shown in the table below:

Year	Total Decisions	Dismissed	Allowed
2020	35	30 (86%)	5 (14%)
2021	41	33 (69%)	13 (31%)
2022	41	25 (64%)	15 (36%)
2023	16	11 (69%)	5 (31%)

3. NOTABLE APPEAL DECISIONS

3.1 The appeal decisions referred to below (and where applicable any associated cost decisions) are attached as Appendices A – E to this report.

Appendix A - APP/L2250/W/21/3272712 & APP/L2250/X/19/324203 - 87 Coast Drive, Greatstone

3.2 This site saw enforcement action being taken and two appeals submitted in relation to the unauthorised construction of a dwelling in the rear garden.

3.3 The appellant initially sought to argue that the new dwelling did not require the grant of planning permission due to the lawful use of the site. The Inspector carefully considered this argument and concluded, having regard to the history of the site and the fact that the building was the subject of an enforcement notice, that the building was not lawful and dismissed the appeal accordingly.

3.4 The appellant subsequently sought to argue, on a separatee appeal, that planning permission should be granted for the building. In a comparatively short decision, the Inspector concluded that the building harmed the character and appearance of the area, and dismissed the appeal.

Appendix B - APP/L2250/C/19/3221881 - Land adjoining 76-78 High Street, Dymchurch

3.5 This appeal relates to the service of an enforcement notice in respect of car sales, storage of cars, storage of touring caravans and trailers. This was a complicated case, which was the subject of a public inquiry with evidence being given under oath and both the Council 's witnesses and the appellants being cross examined. The appellants sought to argue simultaneously that the land had never been used for these purposes and such a use had taken place "at all times" and that it had the benefit of planning permission.

3.6 The Inspector considered the complex historical use of the site, the nature of the uses the subject of the notice and evidence from the appellants and the Council and dismissed the appeal, concluding that the use was not lawful, and that it required the express grant of planning permission.

Appendix C - APP/L2250/W/21/3275546 – Tesco Car Park, Cheriton High Street, Folkstone

3.7 The application, subject of this appeal, sought planning permission for the erection of a fast food drive thru restaurant. A particularly controversial scheme, it was reported to the Council's Planning and Licencing Committee recommended for approval. The Committee resolved to refuse the application on the basis that the development would harm residential amenity due to increased vehicle movements to and from the site, that the proposal harmed highway safety and that the use of the car by customers made the development inherently unsustainable.

3.8 The Inspector concluded that, due to the design of the proposed restaurant, the layout of the site and screening, the proposal would not give rise to a harmful increase in light pollution. It was noted, in respect of noise and disturbance, that the Council's Environmental Health Officer did not raise objection to the scheme, and that the appellant had provided substantial evidence relating to noise and disturbance, demonstrating that the proposal would not be harmful in this respect. Finally, the Inspector noted that KCC Highways and Transportation considered the proposed development acceptable both in terms of highway safety and capacity.

3.9 The Inspector allowed the appeal and made an award of costs against the Council in relation to the issue of noise and disturbance. In defending the appeal, noting that the Council's own expert advisor considered the scheme acceptable in respect of noise generation, officers were unable to present evidence to the Inspector which effectively countered that submitted by the appellant. The Inspector concluded that the refusal of permission on this basis was unreasonable, and had resulted in wasted expense for the appellants in producing further information to address the reason for refusal.

Appendix D - APP/L2250/W/22/3290982 - 11 Clifton Crescent, Folkestone

3.10 These appeals related to the installation of uPVC windows in a listed building. The works had already been carried out, and the Inspector fully supported the Council's refusal of planning permission and listed building consent, setting out in detail the harm that such materials can and do cause to the historic and architectural importance of listed buildings, and that the limited benefits arising from the development did not outweigh this harm.

Appendix E - APP/L2250/21/3285174 - Land adjacent to A259, Old Romney, Romney Marsh

3.11 This appeal relates to an unauthorised gypsy and traveller caravan site adjacent to the A259 in Old Romney. As well as assessing the impact of such development on visual and residential amenity, highway safety and other common material considerations, applications and appeals for gypsy and traveller accommodation also must include detailed consideration of any unmet need for pitches within the District, the supply of available alternative sites for the appellants, together with their personal circumstances.

3.12 In this instance, the Inspector considered that there was minimal evidence of unmet need within the District, and that the personal circumstances of the appellants were not sufficient to warrant the grant of planning permission. The appeal was, accordingly, dismissed, with the Inspector supporting the decision of the Council.

The Planning Inspectorate

Appeal Decision

by Chris Hoult BA(Hons) BPhil MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 October 2020

Appeal Ref: APP/L2250/X/19/3242030
87 Coast Drive, Greatstone, New Romney, TN28 8NR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development ("LDC").
- The appeal is made by Mr Ian Smith against Folkestone & Hythe District Council.
- The application (Ref. Y19/0843/FH) is dated 23 July 2019.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").
- The use for which a LDC is sought is described as follows: "Use of a building to the rear of the residential curtilage of 87 Coast Drive, Greatstone, New Romney, TN28 8NR as an annex to the aforementioned property. Variously described since 1997 as a Beach Chalet, Chalet, Annex and Building."

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the appellant's name from the name given on the appeal form. I note that, in statements and statutory declarations submitted as evidence, including by him, his name is given as Michael Thomas Smith.

3. In an appeal of this kind the planning merits of the use are not for me to consider. My decision will turn on the legislative provisions, relevant planning case law and the submitted evidence. Given therefore that it was not necessary in order to reach a decision to see the appeal site and its surroundings, a site visit was not carried out

Background and Main Issue

4. The background to the appeal requires some explanation. The appeal property is a detached house in the village of Greatstone with a rear garden which backs on to dunes and the beach. The building subject of the appeal appears to have been demolished and in its place there has been erected a detached building of significantly increased footprint. Photographs forming part of the Council's evidence show the works taking place. The building which has been replaced is described by the appellant as an annex or chalet and looks like an outbuilding. An aerial photograph from 2015 shows its location in the rear part of the

garden and gives an indication of its footprint. It may be contrasted with a photograph from 2018 which shows the footprint of the replacement building.

5. The new building is to all intents and purposes a detached dwelling. The main dwelling at the front of the plot appears to have been rented out for a number of years and the appellant's intention is that it will continue to be tenanted and that he will live in the new dwelling. A swimming pool which was built in the rear garden has been infilled to create a terrace for the dwelling.

6. The origins of the building, to which I shall hereafter refer using the more neutral term "the outbuilding", appear (to coin a phrase) to be lost in the mists of time. The Council's records refer to a planning application from 1964 for the use of an existing domestic building at the appeal property for the sale of teas and provision of dressing facilities for bathers. In 2002, an application was received for the erection of a replacement chalet for holiday accommodation.

7. The appellant has submitted evidence which seeks to demonstrate that the outbuilding has been used over time, in the period of his ownership of the property, as residential accommodation in connection with/ancillary to the main house. There are indications in the evidence that it was also used as holiday accommodation. His evidence points to the building providing self-contained facilities for day-to-day living. It was in existence when he purchased the property in 1997 and he understands that it dates from the 1940s. It has its own separately-connected services – gas, electricity and water – and separate access to the rear directly on to the beach.

8. The Council's account of the events which led to the outbuilding being replaced by a detached dwelling derive mainly from an officers' report to its Planning and Licensing Committee meeting of 29 October 2019 which recommended taking enforcement action against the new dwelling. An enforcement notice was issued on 3 December 2019 and came into force on 17 January 2020. No appeal has been submitted against it although the appellant now questions whether it was correctly served. The notice alleges the unlawful construction of a dwellinghouse and requires it to be demolished and the site restored to its original levels, citing a period of 12 months for compliance.

9. Following delays in validating and then determining the LDC application, the appellant has appealed directly to the Secretary of State for an outcome, so it has become what is known as a "failure case". The Council subsequently prepared an officers' report on the application which reached a decision to refuse to grant a LDC, and issued a decision notice, but jurisdiction over the application had been taken out of its hands following the appeal. The officers' report and notice are helpful in providing evidence of the decision that the Council would have taken but neither represent a formal determination and decision notice for purposes of the appeal.

10. Accordingly, my strict remit in this appeal is governed by the provisions of s195(2)(b) of the 1990 Act and is to decide, in the case of a failure to determine, whether, if the Council had refused the application, their refusal would have been well-founded. However, I am mindful of the appellant's purpose in submitting the application, which is to establish the replacement dwelling as lawful (see below), and the evidence in relation to it, including the enforcement notice now in force. It is therefore appropriate to go on to consider, in the circumstances of its erection, whether, in relation to its proposed use, it would be lawful. These are the main issues for this appeal.

Reasons

Introduction

11. My understanding of the appellant's case is as follows. It is premised on the existence of an outbuilding when he purchased the property which has been subsequently maintained and used as part of the residential use of the main dwelling, as a residential annexe to it. It was provided with services and formed self-contained living accommodation, albeit not used independently. The LDC application seeks to demonstrate that it had a lawful use to that effect. In 2015, works were carried out to repair it but it was necessary for it to be demolished. A replacement annexe was erected in which the appellant intends to live, much as occupiers of the main dwelling over the years would have done in the former annexe, while continuing to rent out the main house. This building would continue the former annexe's lawful use.

12. In the light of this, it is incumbent on me to consider the evidence in relation to the claim that the outbuilding had a continuing lawful use as a residential annexe. If I find that it did not, or that any previous lawful use on that account has been abandoned, the new dwelling now erected could not have a continuing lawful use as a residential annexe. If, in the alternative, a view were taken that a continuing lawful use as a residential annexe was not abandoned, I need to examine the circumstances of the erection of new dwelling.

13. There is an enforcement notice in force which alleges that the dwelling is unlawful as a building whose validity, given the provisions of s285(1) of the 1990 Act, cannot be questioned. However, the appellant has questioned whether it was correctly served as a possible precursor to legal proceedings against it. I am aware of the relevant case law on the interface between LDCs and enforcement notices which come into force[1]. Notwithstanding that, it is pertinent to consider whether the new dwelling would nevertheless have been lawful as a residential annexe continuing a lawful use of the land as such.

14. It is helpful to begin by setting out the legislative provisions in relation to the use of outbuildings as part and parcel of a wider residential use. S55(2)(d) of the 1990 Act says that the use of any buildings or other land within the curtilage of a dwellinghouse for purposes incidental to the enjoyment of the dwellinghouse shall be taken not to involve development. The building was plainly within the curtilage of the main dwelling. The use of an outbuilding as a residential annexe would form part and parcel of the residential use itself, not incidental to it. Any change to that use from a use incidental to the enjoyment of the dwelling would not necessarily amount to development. A fact and degree assessment would be required to ascertain whether, if a building came to be used in this way, that would amount to a material change of use and therefore to development for which planning permission would be required.

Evidence of building's history

15. There is some anecdotal evidence of the outbuilding having had a variety of previous uses but the appellant's case rests on the period from 1997 onwards where he says that it was always understood to be maintained and available, and was used, as a residential annexe. No clear account of its history prior to the time is given by him. That said, if, say, any use as an annexe had involved

[1] See *Staffordshire CC v Challinor* [2007] EWCA Civ 864

a material change of use from a use incidental to the enjoyment of the main dwelling or from a use unconnected with the residential use of the plot, the use could have become lawful through the passage of time, in this case, 10 years. It would therefore help the appellant to be able to demonstrate an unbroken period of 10 years' use as a residential annex. However, it would not be necessary for him to do so if the building's history prior to 1997 could be demonstrated. Its use as a residential annexe could have been lawful in 1997.

16. Given these uncertainties, and the basis on which lawfulness is claimed, it is therefore for the appellant to furnish the Council with sufficient evidence to explain reliably the building's history or, alternatively, to demonstrate an unbroken period of at least 10 years when it was used as a residential annexe. His evidence focuses on the latter route in establishing lawfulness. His contention is that it has been used for a period of at least 10 years and in reality, very much longer as a residential annexe. I shall go on therefore to examine the evidence in support of that claim.

17. Before I do so, I should for clarity reiterate the Government's Planning Practice Guidance (PPG) in relation to the evidential burden in cases of this type. The onus in demonstrating his case is firmly upon the appellant. The PPG goes on to say that, if a local planning authority has no evidence itself or from others to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application provided that the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability[2].

18. The evidence from the main parties in relation to the outbuilding's history is sketchy. For the appellant, it consists of statements from himself and his agent (in his case, a statutory declaration) as to its history since 1997. The evidence is lacking in any precision. The appellant says that there has always been an element of residential accommodation centring on the occupancy of the main dwelling but that is a vague assertion and no further details are provided. The outbuilding appears on the aerial photographs to be of modest size but no details are provided of its internal layout. Having services connected would not of themselves demonstrate that as that could equally apply to a building used, for example, as a workshop or for storage.

19. The appellant's agent, Mr Kendrick, goes further and asserts in his (unsworn) statement that it is a self-contained unit used as separate accommodation. He comments on its internal layout and refers to it having had a self-contained bedroom and living room, bathroom and kitchen area but no evidence is submitted to support this description. Further evidence is provided from a Mr Wallis, in the form of a letter to the Council. He maintains that he and his family used the appeal property and its annex for enjoyment of the beach and also as accommodation but no further details are given.

20. The appellant will have been familiar with the building since 1997 and his agent says he started to act for him in the late 1990s so will have been involved with it for about as long. Given that the lawfulness of the new dwelling will have depended on demonstrating the outbuilding's lawful use as an annexe, he will have been familiar with the evidential burden. He is professionally represented, as Mr Kendrick is keen to demonstrate. In spite of that, and in the totality of their evidence, there are no details, say, in the form of plans, photographs or

[2] PPG paragraph 006 Reference ID: 17c-006-20140306

records of maintenance works, that give any indication of its appearance, dimensions, internal layout or condition at any point in its history. This is in spite of repeated reference to it as an "annex" in the appellant's evidence as a whole. Given the case they are required to make, I find that surprising.

21. For what appears to be a more reliable account of the outbuilding, I turn to the evidence of Mr Barnes who lives at no. 89 Coast Drive. He is one of a number of third-party objectors to the detached dwelling which has been built as a replacement for the outbuilding, as he indicates at the outset. However, he also explains that his family has owned no. 89 since 1964. His account of events is endorsed by two other objectors – Mrs Hakes, who lives at no. 83, and Mr Jones, who says his family have owned a property close by since 1966.

22. Included in his representation is a photograph of the outbuilding in 2015, showing it to be both modest in size and in a very dilapidated condition. He explains that, prior to 1964, the building was used a summer house by the then owners of the property who lived in it in the summer months when renting out the main dwelling as a summer let. He describes it as very basic and quite small. He says it deteriorated in condition from 1964 to 1982, when he knew it, before being abandoned. He investigated it in 1983 but was of the view that too much was required to bring it to a safe condition to rent out. From 1997, after the appellant purchased it, it became totally derelict and uninhabitable and was used by vagrants and vandals. From this time until 2013, the property was rented out to a taxi driver while it remained derelict and abandoned.

23. He says that the outbuilding was at no time used by tenants as a summer house and that, in 2015, it was demolished and the site cleared. He then goes on to rebut various statements made on behalf of the appellant, saying that the building was never repaired, as is asserted, and that it was demolished and the site cleared prior to construction of the swimming pool. He describes Mr Wallis as the main builder responsible for the renovation of the main dwelling who may have slept there during its renovation but who could never have used the outbuilding as accommodation owing to its derelict condition. He gives some insight into the various items of anecdotal evidence regarding the outbuilding's previous history, saying it was never a tearoom nor was it ever used for the sale of seafood, both of which are suggested in the appellant's evidence.

24. I acknowledge that Mr Barnes' evidence is plainly that of an objector to the replacement dwelling, a matter which he does not seek to hide. That said, his knowledge of the appeal property and of the outbuilding itself over a lengthy period of time enable him to furnish more detailed evidence of its use, size, appearance, condition and history. Such evidence is conspicuously lacking in the appellant's account. Moreover, he has been able to support his written account with at least one photograph of the building, which shows it to have been unlikely to have (according to Mr Kendrick) afforded all the facilities to support day-to-day living. Its appearance in this photograph lends support to the view expressed by him that it was in a derelict and abandoned state.

25. This evidence must cast significant doubt on the appellant's evidence of its availability and use as a residential annexe from 1997 onwards. The appellant has been able to consider it. In response, he accuses Mr Barnes of making defamatory comments and refers to "the potential for defamation proceedings", requesting that his evidence should be "struck from the record". However, he does not contradict his account with evidence of his own with regard to the

descriptions given on such matters as layout, appearance and state of repair. One obvious conclusion to draw from this is that there is no evidence available that would support his alternative version of events in relation to the building's maintenance and pattern of use.

26. In the light of this, I go back to the test set out in paragraph 17 above. In this case, the appellant's evidence is both lacking in precision and ambiguous and also contradicted by evidence from others. This serves to raise significant doubts as to its reliability and render his account of events less than probable, on the available evidence and on the balance of probabilities. The claimed lawfulness of the use of the outbuilding as a residential annexe for any reasonably substantial period of time has not been demonstrated. The third-party evidence relating to its history indicates that it has not actively been used for that purpose since 1982 and that, probably since 1997 and most likely since before that time, the indications are that any use it did have was abandoned. There is no evidence of any substance on the appellant's behalf to counter that version of events. I therefore go on to consider abandonment in more detail.

Whether residential use abandoned

27. I am mindful that Mr Barnes' evidence, for all that it casts doubt on claims as to the outbuilding's more recent history, nevertheless indicates that it was used for some time in the 1960s to the 1980s as a summer house and that it remained in situ up to 2015 when it was demolished. I do not rule out that it might have been possible to carry out refurbishments to it, within the footprint it then occupied, in order to resume a use as a residential annexe. It is therefore necessary to consider relevant planning case law in relation to abandonment in greater detail.

28. The broad principle established by *Hartley*[3] is that (in the words of Lord Denning) where a building or land *"remains unused for a considerable time, in such circumstances that a reasonable man might conclude that the previous use had been abandoned"*, the concept of abandonment applies. The courts have held subsequently that four tests are relevant: (1) the period of non-use; (2) the physical condition of the land or building; (3) whether there had been any other use; and (4) the owner's intention as to whether to suspend the use or cease it permanently. Application of these tests is a matter for judgement on the part of the decision-maker.

29. In this case, the available evidence indicates that any use as a residential annexe last occurred prior to 1982. Since then, the building's condition seems to have deteriorated, with no evidence of any ongoing maintenance. Its poor condition is borne out by the photograph of it in 2015. These factors point towards any use as a residential annexe having been abandoned. Countering that is the lack of evidence as to any other use to which the building was put and the lack of clarity in the evidence relating to the owner's intentions for it.

30. That said, there is no evidence before me to indicate that it had been maintained at any point with a view to an intended resumption of the use, if the intention had been merely to suspend it. The evidence is that, rather than being refurbished within its footprint, the outbuilding was demolished in its entirety and a significantly different new building erected in its place. The case

[3] *Hartley v MHLG* [1970] 1QB 413

of *Iddenden*[4] is authority for the view that a use cannot survive the destruction of buildings and installations necessary for it to be carried on.

31. In my view the weight of the evidence points to any intermittent use as a residential annexe from before 1982 having been abandoned rather than suspended pending an intended resumption of the use, notwithstanding how the appellant now portrays his intentions. The complete demolition of the building and its replacement with a significantly different new building amount to persuasive evidence that any remaining use rights as an annexe vested in the outbuilding as it then existed were in effect abandoned. Accordingly, on an objective fact and degree assessment, including in respect of evidence of the appellant's intentions, I conclude that any lawful use that the outbuilding might have had as a residential annexe has been abandoned.

Whether new dwelling would have been lawful

32. Given the presence of an enforcement notice in force and being mindful of the provisions of s285(1) of the 1990 Act, I accept that the question is to a large degree academic. The new dwelling is unlawful as a building. It was open to the appellant to appeal the notice and he has not done so. S285(1) provides that there is no other way under the 1990 Act to challenge a notice. He may seek to challenge the service of the notice but that is normally in any event a ground of appeal (s174(2)(e)) under the Act.

33. It is nevertheless pertinent to ask whether the new dwelling would have been lawful in so far as it may have continued a lawful use of the former outbuilding as a residential annexe. This is the premise under which it was erected and I deal with it on the basis that an alternative view might be taken that the use of the outbuilding as a residential annexe has somehow survived. If that were the case, it would be necessary to go back to the legislative provisions and consider the circumstances of its construction and size, layout etc. I go on to examine the evidence in relation to these matters.

34. The evidence shows that what has replaced the outbuilding is a detached bungalow of reasonably conventional internal layout, of significantly increased footprint (63 sq m as opposed to 22 sq m). In terms of its footprint, materials and appearance, it is a different building altogether from that which it has replaced. The dwelling has, on the Council's evidence, from the start been conceived and erected as a dwelling, for all that it is called an annexe, as opposed to having initially accommodated a use incidental to the enjoyment of the main dwelling. Permitted development rights under the provisions of Class E of Part 1 of Schedule 2 to the GPDO[5] do not apply to it nor do questions as to whether any change of use from a previous incidental use might not be material and therefore not amount to development.

35. Moreover, the evidence also indicates that a new plot has been formed in the rear garden of the original plot for the main dwelling. A clear plot boundary has been established across the former rear garden and access from the main dwelling to the newly created plot is now restricted. A separate pedestrian access has been created from the new dwelling to Coast Drive. In the circumstances, this would appear to amount to the creation of a new planning unit involving the subdivision of the main dwelling's original plot. The new

[4] *Iddenden v SSE* [1972] 26 P&CR 553
[5] The Town and Country Planning (General Permitted Development)(England) Order 2015 as amended.

dwelling would be used as living accommodation independently of and in addition to the residential use of the former main dwelling at no. 87. The appellant would live in the dwelling independently of any tenant in the main dwelling. There would be no functional link between the two.

36. By any measure, a material change of use of the appeal site has therefore occurred involving a new independent residential use on a separate plot. This amounts to development for which planning permission is required but has not been sought. Accordingly, in the circumstances of its erection, the replacement dwelling would be unlawful as any purported continuation of the use of the land as a residential annexe. The appellant could not benefit from an alternative view that the use had not been abandoned, given what has occurred.

Other Matters

37. I note the appellant's comments regarding his family circumstances, as well as other comments made regarding the planning merits of the development and in relation to the Parish Council's support for his case. A number of the objections against the replacement dwelling also raise planning merits considerations. However, for the reasons given above, these are not matters that I can take into account in an appeal of this kind.

Conclusions

38. I have concluded that any lawful use of the outbuilding as a residential annexe has been abandoned. For that reason, the new dwelling, if it purports to be a residential annexe continuing the lawful use of the land, cannot be lawful. An enforcement notice is in force in respect of the new dwelling, under which it is unlawful as a building, whose validity cannot be questioned. I have examined the circumstances of the erection of the new dwelling and I have concluded that it could not be lawful as a continuation of use of the land as a residential annexe even if a different view is taken on the question of abandonment.

39. In the light of this, I conclude that, had the Council refused to grant a LDC for the use of a building to the rear of the residential curtilage of 87 Coast Drive, Greatstone, New Romney, TN28 8NR as an annexe to the aforementioned property, that decision would have been well-founded. I conclude also that the new dwelling which replaced the building would have been unlawful even if a different view had been taken on this issue. I shall exercise accordingly the powers transferred to me under s195(3) of the 1990 Act.

C M Hoult

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 13 October 2021

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd October 2021

Appeal Ref: APP/L2250/W/21/3272712
87 Coast Drive, Greatstone, TN28 8NR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Michael Smith against the decision of Folkestone and Hythe District Council.
- The application Ref 20/0971/FH, dated 12 July 2020, was refused by notice dated 13 October 2020.
- The development proposed is described as retention of renovated beach chalet/hut.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal building is located to the rear of the dwelling at No 87 which backs onto the dunes and beach at Greatstone. It is the subject of an enforcement notice which alleges that a dwellinghouse has been constructed and which requires its removal by February 2021. An appeal in respect of a lawful development certificate for use of the appeal building as an annex to No 87 has been dismissed (Ref: APP/L2250/X/19/3242030). Access to it can be gained separately from No 87.

3. Various uses have been attributed to the building. The Design and Access Statement says that it will essentially be used by the appellant and members of his family. His appeal statement maintains that it is used in association with No 87 but not as any form of ancillary accommodation. It is also said that it is not an annex. For the purposes of this appeal it should be considered as described in the planning application form.

Main Issue

4. The effect of the building on the character and appearance of the area.

Reasons

Character and appearance

5. The building is finished in weatherboard cladding with a tiled roof and a central flat section. The Design and Access Statement refers to the chalet being restored from its previous dilapidated condition. However, the weight of evidence indicates that this structure was a small shack and that the proposal is a new building that is much larger and on a different footprint.

6. The rear gardens of the properties along Coast Drive that face towards the sea are not free of buildings. However, these are generally modest and ephemeral outbuildings or summerhouses. By contrast, the building at No 87 and the associated works occupy over half of the original garden. It is not the kind of subservient structure that would be expected here and is therefore not well integrated with the prevailing pattern of development.

7. The appellant claims that the building has been reduced from a more elevated position by around one metre. However, the floor level of the building is well above that of the frontage house and the road. This is due to the topography but the visual impact of the building has been accentuated by the works to create the extensive terrace around it. This raised 'table' is surrounded by retaining walls and fencing and gives rise to a harsh and jarring appearance. This is clearly seen from the path that runs alongside the site between Coast Drive and the beach as well as from the road. Overall the building is intrusive and does not respond sympathetically to its surroundings.

8. Therefore the building harms the character and appearance of the area. It is also contrary to Policies HB1 and HB10 of the Places and People Local Plan which are concerned with quality places through design and the development of residential gardens. There is no obvious way to overcome the harm to the locality by means of conditions.

Other considerations

9. It is understandable if the Council is promoting the restoration of beach huts but that is not what this development entails. Indeed, the size and facilities of the building are larger and greater than those typically found in a seaside beach hut. From the information provided it is not clear how the building would function in relation to No 87 and no planning obligation regarding the use of the building has been put forward. There is no specific evidence as to how the building benefits the tourism sector or the economy generally or how it contributes to well-being.

10. Permitted development rights exist for buildings incidental to the enjoyment of a dwellinghouse. However, these do not apply if the building operations involved in the construction of that building are unlawful.

11. Concerns are raised about parking along Coast Drive and overlooking of surrounding gardens. However, use as a beach hut would be unlikely to be all year round. Therefore based on the use proposed these considerations do not add to the objections to the building. Comments are also made about the sequence of events since 2015 and the way that the works were undertaken but they have little bearing on the planning assessment of this development.

Conclusion

12. The appeal building conflicts with the development plan and there are no material considerations that warrant departing from it. Therefore, for the reasons given, the proposal is unacceptable and the appeal should fail.

David Smith

INSPECTOR

The Planning Inspectorate

Appeal Decisions

Inquiry Held on 2 February 2021, 24 and 25 February 2022
Site visit made on 23 February 2022

by K R Saward Solicitor

an Inspector appointed by the Secretary of State

Decision date: 14 March 2022

Land Adjoining 76-78 High Street, Dymchurch, Kent

Appeal A: APP/L2250/C/19/3221881
Appeal B: APP/L2250/C/19/3221765
Appeal C: APP/L2250/C/19/3222221
Appeal D: APP/L2250/C/19/3221711

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made against an enforcement notice issued by Folkestone & Hythe District Council.
- Appeal A is made by Mr Graham Checksfield.
- Appeal B is made by Mr Terence Peters.
- Appeal C is made by Andrew David Checksfield.
- Appeal D is made by John Puttock.
- The enforcement notice was issued on 21 December 2018.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the land shown outlined in red on the plan attached to the notice to use for car sales, storage of cars, storage of touring caravans and trailers.
- The requirements of the notice are:
  1) Permanently cease the use of the land shown outlined in red on the plan attached to the notice for car sales, storage of cars, storage of touring caravans and trailers.
  2) Permanently remove all vehicles, caravans and trailers from the land.
  3) Excavate to a depth of 30cm all hard standing within the approximate area hatched red on the plan attached to the notice.
  4) Permanently remove the excavated hard standing material from the land.
  5) Replace the excavated hardstanding material with topsoil.
  6) Leave the topsoil so that is [sic] at the same height as the land level immediately adjacent to the site boundaries.
  7) Reseed the levelled land with grass seed.
- The period for compliance with all the requirements is 6 months
- Appeal A is proceeding on the grounds set out in section 174(2)(b),(c)&(f) of the Town and Country Planning Act 1990 as amended.
- Appeal B is proceeding on the grounds set out in section 174(2)(b),(c),(d)&(f) of the Town and Country Planning Act 1990 as amended.
- Appeal C is proceeding on the grounds set out in section 174(2),(c),(d)&(f) of the Town and Country Planning Act 1990 as amended.
- Appeal D is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Decisions

Appeals A,B and C

1. It is directed that the enforcement notice be corrected by:

- deleting the words "from authorised signature" in paragraph 7.
- in step 2) of paragraph 5, deleting the word "vehicles" and substituting "cars" and inserting the word "touring" before "caravans".
- substituting the plan attached to the enforcement notice with the plan annexed to these decisions.

And varied by:

- deleting the requirements in steps 3), 5), 6) and 7) of paragraph 5. and inserting a new step 3) to read: "Remove the hard standing laid to facilitate the material change of use and restore the land to its previous condition before the breach took place as a grass area".

2. Subject to those corrections and variations, the appeals are dismissed and the enforcement notice is upheld.

Appeal D

3. Upon substitution of the enforcement notice plan, Appellant D no longer has an interest in the land enforced against and his appeal falls away.

Preliminary Matters

4. All four appeals are brought against the same enforcement notice.

5. Due to restrictions arising from the coronavirus global pandemic, the Inquiry was opened on 2 February 2021 as a virtual event. With the agreement of all parties, it became necessary to adjourn the Inquiry during my opening announcements due to poor quality audio and visuals for some participants. The Inquiry was set to resume as a face-to-face event on 9 November 2021. At the Council's request and with the agreement of the appellants, the adjournment was extended as a result of exceptional circumstances arising from a Council witness with first-hand knowledge of the site being unable to attend.

6. At the Inquiry, Appellant A represented himself plus Appellant's C and D having also made written submissions on their behalf. Appellant B instructed his own agent who appeared at the Inquiry to participate in discussion on the validity of the enforcement notice and to make submissions in this regard. No oral witness evidence was tendered on behalf Appellant B although his agent took the opportunity to cross-examine Ms Patching, the Council's witness. I have disregarded new points raised for the first time by Appellant B's agent during closing submissions and alerted him to this at the time.

7. In arriving at my decisions, I have taken into account all written submissions submitted in the course of these appeals insofar as relevant to the grounds of appeal and matters pertaining to the notice.

8. A few days before the Inquiry resumed on 24 February 2022, the Council submitted a supplementary proof of evidence. This was stated to be in response to my Inquiry note of 2 November 2021 in which I had queried whether there was agreement over the planning unit. Whilst insisting that the alleged activities were taking place within a single planning unit, the Council accepted that the area outlined on the enforcement notice plan is "wider than intended". The plan corresponds with the area outlined by Appellant B when seeking

planning permission for use of the land for vehicles sales in 2017. However, it includes a roughly triangular shaped area falling within the lease held by Appellant D. The Council produced a revised plan excluding this area.

9. The new plan omitted the red hatching shown on the original plan intended to denote an area of hardstanding. There is a requirement within the notice to excavate and replace the red hatched area and this is the subject of the ground (f) appeals. Therefore, the hatched area can only be omitted if these requirements are struck out otherwise there would be inconsistency between the wording in the notice and plan thereby introducing ambiguity.

10. Having realised the disparity between the revised plan and notice, the Council produced another plan on the day of the resumed Inquiry outlining the same reduced appeal site but this time including red hatching. The appellants were given opportunity to make submissions on the revised plan and to identify any injustice from its use. The appellants were understandably aggrieved at the lateness in production of this plan and the waste of time in making submissions in connection with the newly omitted area but they raised no objection.

11. As the revision reduces the area enforced against, no injustice would arise to the parties by substituting the plan. In fact, none of the land leased to Appellant D would be affected by the terms of the notice and his appeal falls away.

The grounds of appeal

12. Appeal B was originally brought on grounds (b),(c) and (f). Some of the arguments raised under ground (c) concern the longevity of use for car sales and storage. Such arguments are more pertinent to ground (d) which applies, where at the time the notice was issued, it was too late to take enforcement action. This hidden ground (d) was brought to the attention of Appellant B and the Council prior to the Inquiry. Appellant B confirmed he wishes to pursue an appeal on ground (d). During the Inquiry process, the Council was given opportunity to respond. Therefore, no prejudice arises if I deal with those arguments as though they were brought on ground (d).

13. It was clarified at the start of the resumed Inquiry that none of the appellants assert, as a matter of fact, that the appeal site was not in use for car sales, storage of cars, storage of touring caravans and trailers at the time of issue of the enforcement notice, as alleged. Indeed, in relation to the ground (c) appeal, Appellant A says that "*At all times the site has been used for the storage and retail of vehicles (caravan, car or otherwise)*…". Therefore, the ground (b) appeals would be bound to fail.

14. Despite confirming that the use alleged had occurred, the appellants referred in closing to caravans and trailers being a minor part of the activity. However, it was not contested in evidence that their storage had taken place as part of a primary use within the mixed use. Where there is a mixed use, the allegation should refer to all the components of the mixed use taking place at the time of issue of the notice. The Council's photographic evidence from October 2016 reveals several caravans among the cars stored and displayed. There is no suggestion that the use changed materially after that time. For the avoidance of doubt, I find that the allegation accurately reflects the factual position as it existed when the notice was issued.

15. The arguments raised under ground (b), to the effect that there has not been a material change in use of the land, more properly fall to be considered under ground (c). The appeals proceed on that basis.

16. No appeal was brought on ground (a) to give rise to a deemed planning application to allow the planning merits to be considered. This includes arguments over matters such as the site access, boundary treatments and the proximity of the appeal site to the Conservation Area. Similarly, third party complaint about cars being driven by a juvenile within the site and associated noise/risks, are outside the remit of these decisions.

17. Grounds (c) and (d) are referred to as legal grounds of appeal. When making an appeal on legal grounds the burden of proof is on the appellants bringing the argument and the test of the evidence is the balance of probabilities.

18. The appellants pointed out that the Council's Statement of Case refers to an enforcement notice issued on 21 December 2019. This is obviously a typographical error intended to mean the one which is the subject of these appeals, issued on 21 December 2018.

Whether the enforcement notice is a nullity or invalid

19. Enforcement action is discretionary and it is for the Council to decide if enforcement action is expedient. Under section 172(1) of the Town and Country Planning Act 1990, as amended ('the Act'), it need only appear to the local planning authority that there has been a breach of planning control and that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations. The appellants cite the former PPG 18 which identified relevant considerations going to expediency, but this is no longer current policy.

20. Criticism is also levied at the Council for failing to engage with the occupiers prior to issuing the notice. That particular issue may give rise to complaint but it is not a matter affecting the validity of the notice or for my determination.

21. Ultimately, whether the Council complied with its duty under section 172(1) falls outside my jurisdiction. Whether it was expedient to issue the notice is a matter for the courts upon an application for judicial review (*Britannia Assets v SSCLG & Medway Council EWHC* 1908 (Admin)).

22. The appellants consider the enforcement notice to be defective in how it is drafted. Where a notice is a nullity there is in effect no notice at all. In those circumstances nothing can be done to correct it or, indeed, form the basis of an appeal. Other defects may make a notice invalid. They may be capable of being corrected under the Inspector's powers in section 176(1)(a) or they may be too fundamental to be corrected without causing injustice and lead to the notice being quashed.

23. It is a well-established and well known principle of the judgment in *Miller-Mead v Minister of Housing and Local Government* [1963] 1 A11 ER 4592 that a notice must tell a recipient of it fairly what he has done wrong and what he must do to remedy it.

24. Section 173 of the Act sets out provisions for the content and effect of an enforcement notice. The notice must, under section 173(8), specify the date on

which it is to take effect. The appellants claim non-compliance with this section because the notice says it "*takes effect on the 7th February 2019 from authorised signature unless an appeal is made against it beforehand*". They argue the effective date is uncertain because it could be 7 February 2019 or some other indeterminable date after the notice was signed. The appellants invite me to find the notice so flawed that it is not an enforcement notice. They contend it is a nullity or should otherwise be quashed for invalidity.

25. A notice must be clear on its face. In this instance, it does specify an effective date of 7 February 2019 which post-dates the issue of the notice on 21 December 2018 and leaves not less than 28 days for service in accordance with section 172(3). No other date is given and it is obvious that inclusion of the words "from authorised signature" was erroneous as the sentence makes no sense unless they are omitted. Those words require deletion but I do not find them to be misleading or to have misled.

26. I am satisfied that I can make the correction utilising my powers within section 176(1) without injustice being caused to either party as the appellants must have realised the only date given in the notice was the one that applied. That is particularly so as the statutory accompanying notes also identify the effective date as 7 February 2019 and the date by which an appeal must be made. The appellants exercised that right. The notice was sufficiently clear to a recipient.

27. Under Regulation 4 of The Town and Country Planning (Enforcement Notice and Appeals)(England) Regulations 2002 an enforcement notice must also specify- (a) the reasons why the local planning authority consider it expedient to issue the notice, and (b) all policies and proposals in the development plan which are relevant to the decision to issue an enforcement notice. The notice identifies two main reasons for its issue which the Council considers cannot be overcome by planning conditions.

28. The first reason describes visual harm from the use and, the failure to meet tests in statute and local/national policies for the protection of heritage assets, such as conservation areas, and the significance of their setting. Attention is drawn by the appellants to the fact that section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as quoted in the notice, applies "to any buildings or other land *in* a conservation area" whereas the appeal site is not in, but immediately adjacent to, the Dymchurch Conservation Area. Therefore, section 72(1) is not applicable which the Council conceded at the start of the resumed Inquiry.

29. The notice further cites Policy BE4 of the Shepway District Local Plan Review, 2006. It has since been replaced upon adoption of a new local plan in September 2020 but was a current policy when the notice was issued. Policy BE4 related to development affecting conservation areas. It did not explicitly refer to the setting of a conservation area except in the context of trees, verges, and hedgerows. However, the policy required the materials of new development to respect the character of conservation areas and sought to retain open spaces which are essential to the character and appearance of conservation areas. Arguably, those provisions were engaged.

30. It was not wrong for the notice to cite Paragraph 192 of the National Planning

Policy Framework[1] which contained provisions to be taken into account when determining applications relating to heritage assets, albeit there were other paragraphs which could also have been relevant. They included Paragraph 194 which extended protection from development within the setting of designated heritage assets. A conservation area is a designated heritage asset and its significance can be affected by development of land outside that area. Contrary to the appellants' assertions, the Framework is an important material consideration in the determination of planning applications.

31. The second reason for issue of the notice concerns the impact on highway safety from vehicles entering and leaving the site in the absence of boundary treatment. The appellants suggest that it is unclear on the face of the notice whether the complaint is a theoretical possibility should a boundary treatment not exist or based on factual knowledge. To my mind, the language of the notice is plain in referring to the absence of a boundary treatment resulting in an unacceptable and detrimental impact on highway safety.

32. The appellants assert that this reason is wrong because a row of steel bars is located along the appeal site frontage preventing vehicular access to/from the highway. The Council disputes the barriers existed when the notice was issued.

33. Had the appellants wished to take issue with the substance of the reasons given in the notice, then an appeal should have been brought on ground (a) and payment of the requisite fee to allow the planning merits to be considered. None of the appellants availed themselves of this option.

34. The third paragraph within the reasons for issue of the notice identifies that the Council's objections in its first two reasons cannot be overcome by planning conditions. Whilst this is not a separate ground upon which planning permission would be refused in itself, it forms part of the reasons why the Council resorted to enforcement action rather than inviting a planning application for the development enforced against. It would be relevant in the event of a ground (a) appeal. It is not a defect with the notice.

35. The appellants rely upon the Court of Appeal decision in *R v Shayler* [2005] All ER to support the contention that the notice is null. That case concerned criminal proceedings brought for an offence under section 179(2) of the Act for breach of an enforcement notice requiring removal, or reduction in size, of a fence. Read as whole, it was clear the notice referred to only one fence whereas there were two fences enclosing the property. The Court found that if it was intended to apply to two fences, it did not, and accordingly the notice failed to comply with section 173 of the Act.

36. It is difficult to draw comparisons with *Shayler*. These are not criminal proceedings and in *Shayler* there had been no appeal against the enforcement notice in which the drafting might have been addressed. For the purposes of section 173(1), an enforcement notice must state the matters which the local planning authority consider to constitute the breach of planning control. Section 173(1) is fulfilled if it enables any person on whom it is served to know what those matters are (section 173(2)). Unlike *Shayler*, it has been established in this case that the notice correctly describes the development alleged to be

[1] As applicable in 2018. The Framework has since been updated on two subsequent occasions, most recently on 20 July 2021.

taking place in breach of planning control. The appellants also clearly knew the nature of development under attack from their submissions.

37. It was erroneous of the Council to cite section 72(1) in the reasons but there were potentially relevant local and national planning policy considerations relating to the setting of conservation areas. Ultimately, reasons have been provided whether or not they are well founded. The requirements of section 173 and the 2002 Regulations are met. Inadequate or incorrect reasons are unlikely to result in the nullity or invalidity of a notice in any event.

38. There are other matters with the enforcement notice to be addressed. For consistency, the allegation and requirements should match. Therefore, the second requirement within the notice should require removal of "cars" instead of "vehicles" and "touring" caravans. Without those changes the requirements would be wider than the allegation which cannot be correct.

39. There is a minor typographical error in step 6) of paragraph 5. where the word "it" is omitted after the words "Level the topsoil so that". The sentence can still be understood and given my findings on ground (f), no correction arises.

40. The Council confirmed at the Inquiry that the allegation is directed at a mixed use of the land. This was plain from the number of primary uses listed in the allegation. For precision, the words "mixed use" should be added to the allegation and the corresponding requirement and this was agreed at the Inquiry. Such correction does not alter the substance of the notice.

41. Having considered the matters raised and other typographical points, I am not satisfied that there is any matter or matters either singularly or collectively that render the notice null or invalid. Where corrections are due, I am satisfied that they can be made without injustice to any party.

Reasons

Appeals A, B and C - ground (c)

42. A ground (c) appeal is that the matters alleged in the notice do not constitute a breach of planning control. In essence, the appellants must demonstrate that either development has not occurred for the purposes of section 55(1) of the Act because there has been no material change of use from the lawful use or that the use benefits from planning permission. The appellants argue both.

Whether the use benefits from planning permission

43. The appeal site is owned by Appellants A and C. Their land ownership extends to the neighbouring garage where a vehicle sales and repair business is operated at Nos 76/78 High Street. It includes buildings and a forecourt at the front where there were petrol pumps at one time. Historically, an area of hardstanding between the garage buildings and the appeal site has been used for the parking of cars. This land is leased to Appellant D, part of which had fallen within the appeal site as shown on the enforcement notice plan prior to its revision. The appeal site is occupied by Appellant B under the terms of a lease with Appellants A and C.

44. In his written submission Appellant A explains that the land which is the subject of the enforcement notice forms part of a larger area that has been used as a

garage site for around 60 years and "the primary purpose of this part of the site is the storage and retail of vehicles". It is maintained that the appeal site benefits from express planning permission which has not been lost.

45. Reliance is placed on *Pioneer Aggregates (UK) Ltd v SSE* [1984] 2 All ER 358 as authority that a planning permission which is capable of being implemented cannot be abandoned. That does not mean rights acquired through a planning permission cannot be lost in a number of other ways. *Panton & Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461 provides authority that lawful use rights can only be lost by evidence of abandonment; by the formation of a new planning unit; or by being superseded by a further change of use. A use which was merely dormant or inactive could still be considered as 'existing', so long as it had already become lawful and not been extinguished in one of those three ways. *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226 confirms that the principle only applies when lawful use rights have been accrued. That position differs from the scenario where there is a grant of planning permission.

46. Historically, a repair workshop and petrol filling station were erected with the benefit of planning permission granted in 1950. A further planning permission was granted in 1964 for "the erection of a new car showroom and wash bay with additional pump island and facilities for car parking and storage". This information is known because of references made within an appeal decision letter of the Ministry of Housing and Local Government dated 21 May 1969.

47. The appeal had followed the issue of an enforcement notice relating to the use of the land at The Dymchurch Garage, 76/78 High Street as a public car park. In allowing the appeal on one ground, it was found that "the [1964] permission was unqualified in relation to car parking" and on its true construction the words "facilities for car parking and storage" included public car parking. Thus, planning permission had been granted for such development.

48. The 1969 decision is not a grant of permission but it records how the land under consideration at that time had previously been used for staff parking or cars for repair which was merely ancillary to the main use of the premises as a garage. A material change of use had taken place when a row of cottages was demolished in 1966 and 'most of the site' was filled and levelled and used for the parking of about 60 vehicles unconnected with the garage.

49. However, there is no plan identifying the extent of the land covered by the 1964 permission and neither the application nor decision itself is available[2]. Indeed, the 1969 decision letter records how the Council at the time of the Inquiry appeared to have doubts over the extent of the land which was the subject of the application. An OS map produced by the applicant's agent in July 1964 showing the whole of the landholding could not be looked at in construing the 1964 permission. The decision letter notes that the enforcement notice plan was incorrect and intended to relate only to that part of the site north of the garage buildings. Whether that area extended as far as the current appeal site cannot be ascertained.

50. When permission was granted in 1964 for "the erection of a new car showroom" it would implicitly include use of the building for the purpose for which it was built i.e., car sales. The 1964 permission is recorded as including "facilities for

[2] The Council says its records go back to 1974 only.

car parking and storage" but it does not mention car sales on the land in question (wherever that might be). Although car sales and the storage of cars are part of the mixed use enforced against, there was no express grant of permission for the storage of touring caravans and trailers. Without a copy of the 1964 permission, it is not only unclear what land was included but it is also unknown whether any conditions restricted the type and extent of use. The position is far too uncertain for reliance to be placed upon the 1964 permission in relation to the appeal site. It is plain that the current use cannot be ancillary to the garage which is operated as a wholly separate business.

51. An application for a 'proposed car sales display area' was refused planning permission on 12 January 1967. The accompanying application plan shows the 'car display/sales area' as a rectangular area including part of the hardstanding now leased to Appellant B along with part of the appeal site fronting High Street. How that area relates, if at all, to the public car park is unknown.

52. In any event, the 1964 permission can only be of significance if there was no further development affecting the appeal site or change in the planning unit. Even if a lawful use existed which included the appeal site for car sales and storage authorised by the 1964 permission, it was capable nonetheless of being extinguished by the creation of a new planning unit in respect of the land in question.

53. In *Jennings Motors Ltd v SSE & New Forest DC* [1982] 2 WLR 131 it was held that the erection of a new building did not necessarily create a new planning unit or give rise to a new chapter in the planning history. Whether a change in the physical nature of the premises or its planning status gave rise to an inference that reliance on a prior use was being abandoned and a new planning history was about to begin was a question of fact and degree in each case. The decision is authority that the opening of a new chapter in planning history may occur when there is a radical change in the nature of the buildings on site or the uses to which they are put—so radical that it can be looked on as a fresh start altogether in the character of the site. If there is such a change and the occupier applies for permission and gets it subject to conditions, and acts on that permission, he cannot afterwards revert to any previous existing use rights.

54. A grant of permission for a use of land authorises that use but it does not continue for all time if there is a further material change of use. Once the change of use has been made, the first permission is spent.

55. Whilst the appellants seek to make comparisons with development permitted in 1964, there has been a long planning history since then which warrants consideration. In May 1979, planning permission was granted (Council ref: SH/79/0228) for the use of land covering the appeal site as a caravan display area. It was subject to a planning condition restricting the number of caravans to no more than 15. There is consensus this permission was implemented. The Council flags up that the caravan display area was a grassed area separate and distinct from the hardstanding used for car parking. The Council submits that this 1979 permission is the lawful use of the appeal site.

56. Upon commencement of development pursuant to the 1979 permission there would have been a new chapter in the planning history. Once the material

change of use was made the 1964 permission was spent[3] in relation to that land (if it did apply in the first place). The lawful use of the land in question, including the appeal site, became a caravan display area.

57. The limit on the number of caravans was subsequently increased in 1986 by variation of the condition for a time limited period until 31 July 1988. By 1986 the caravan business was run by Bryants Caravans, being a separate business from Checksfields Garage and there would have been separate planning units. An application made in 1992 for the use of the caravan display area (including the appeal site) for the sale of cars, caravans and boats was refused. The application indicated that 'previous permission for car sales has now lapsed'. As permission had only ever been granted for caravan sales the reference to car sales is presumably a typographical error.

58. There followed the grant of permission for the 'change of use of land to display and retail use for the sale of sheds' under Council ref: Y10/0238/SH on 29 October 2010. It is agreed that this permission was never implemented.

59. Temporary permission was granted retrospectively on 5 January 2012 (under planning ref: Y11/1010/SH) for a car sales use over a 2-year period which expired on 5 January 2014. It was a condition of that permission that the use cease on or before that end date and the land returned to its former condition. This permission corresponded with the current appeal site.

60. A further retrospective application for a change of use for car sales was made by Appellant B on 1 August 2017 (planning ref: Y17/0944/SH) over an extended area including the triangular shaped area leased to Appellant D. That application was refused by the Council on 8 December 2017.

61. Thus, the 2012 permission for use of the appeal site for car sales expired and the 2017 application for a car sales use on that land (and beyond) had failed.

62. Upon expiry of the limited period permission in January 2014, section 57(2) of the Act allowed reversion of the land to its use for the purpose for which it was normally used before the permission was granted. In determining the normal use, no account can be taken of any use begun in breach of planning control (section 57(5)). The normal use does not encompass uses which have become lawful through immunity from enforcement due to the passage of time under section 171B. Therefore, the use could not lawfully revert to a car sales and storage use as the appellants argue even if one had become established over time. Further, the normal use cannot have been that authorised by the 1964 permission when there was an intervening grant of permission in 1979.

The planning unit

63. According to the appellants, there is a single planning unit composed of the whole landholding belonging to Appellants A and C which encompasses the garage building and forecourt together with the land to the north, up to and including the appeal site. The Council, on other hand, contend that the appeal site is a single planning unit.

64. It is consistent with case law including the judgment in *Burdle v Secretary of State for the Environment* (1972) 1 WLR 1207 that the planning unit should be

[3] *Cynon Valley BC v SSW* [1986] JPL 760

determined by identifying the unit of occupation and whether there is physical and/or functional separation of primary uses as a matter of fact and degree. There is no dispute on those principles.

65. Three broad categories of distinction were identified in *Burdle*: 1) a single planning unit where the whole unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary; 2) a single planning unit that is in a mixed use because the land is put to two or more activities and it is not possible to say whether one is incidental to another; and 3) the unit of occupation comprises two or more physically separate areas that are occupied for substantially different and unrelated purposes. In such a case, each area used for a different main purpose, together with its incidental activities, ought to be considered as a separate planning unit.

66. At the Inquiry submissions were made by both sides regarding the significance or otherwise of a row of used tyres along the southern boundary of the appeal site which denote the boundary between the areas of land leased to Mr Peters and Mr Puttock. The appellants say the tyres are a temporary feature and do not suffice to create physical separation.

67. The Council drew my attention to the High Court judgment of *Searle v SSE & East Hampshire DC* [2006] EWHC 1908 (Admin) where it was held that the reference in *Burdle* to physical and functional separation does not mean that there has to be a physical barrier between the two areas of land. It is a question of deciding whether there is in fact such a physical separation. Of course, the existence of some sort of barrier will help to determine if that is indeed the case but the absence of such a barrier is not fatal.

68. Official Copies of the title from HM Land Registry confirm the appeal site is subject to a Lease granted by Appellants A and C for a term of years from September 2012 to September 2027. The tenant is Mr Peters (Appellant B). Mr Puttock (Appellant D) produced his Lease, for the same term, of the land immediately to the south of the appeal site.

69. Companies House records reveal that Mr Puttock is director of Fairways Garages Ltd at 76-78 High Street, Dymchurch. The nature of the business is described as 'maintenance and repair of motor vehicles'. Mr Peters is registered as the director of Dymchurch Car Centre Limited, the nature of the business being 'sale of used cars and light motor vehicles'. Thus, they are separate legal entities albeit Mr Peters advertises his business at the same address.

70. The documents provide firm evidence Appellants B and D are entirely different occupiers operating separate businesses from their respective areas of land leased.

71. The appellants say that the position on site is fluid with levels of cars displayed and stored fluctuating and the use spreading into the area south of the appeal site. Whilst on site I observed a row of cars displayed for sale along the highway frontage extending into the adjacent land leased to Mr Puttock (Appellant D). I also noted a single vehicular access point. They otherwise appeared distinct. Cars were formally displayed for sale on the appeal site with a static caravan advertising 'Dymchurch Car Centre' operating as a sales office. This was distinguishable from the neighbouring land lying next to the building with 'Fairways Garage' on the fascia. The few cars parked (behind those on

display on Appellant D's land) appeared to relate to the vehicle repair business with its prominent advertising of a tyre fitting service.

72. If there were inter-related activities in the use of areas there might be a larger planning unit despite different occupants. However, there is little evidence that this is how the land has been used. Neither Mr Peters nor Mr Puttock attended the Inquiry to give evidence of their use of the land and arrangements in place. As the landowners do not have first-hand knowledge of the arrangements between their tenants or how it has been occupied in practice, they were unable to provide any meaningful substantiation of their claim of a single planning unit covering the entirety of their landholding.

73. The appeal site is clearly in separate occupation from the garage to the south. They function separately and differently. The land to the south is a vehicle repairs business with what appears to be ancillary parking whereas the appeal site is a mixed use of primary uses for car sales and storage and storage of caravans and trailers. Measures have been put in place to define the boundary between the different occupants and it does not matter that the means of physical division is piles of tyres. Both physical and functional separation exist.

74. On the information presented, I am satisfied that the appeal site is a single planning unit separate from the remainder of the land holding. It follows that the land cannot benefit from permission granted in respect of the garage use. Based on the planning history, the last authorised use which had taken place on the whole appeal site was for the display of caravans pursuant to the 1979 permission. The question turns to whether there has been a material change of use from the last lawful use constituting development for the purposes of section 55 of the Act.

Materiality

75. A permission for the display of caravans does not permit car sales or a storage use whether for caravans or cars. That does not automatically mean the change of use is 'material' so as to amount to development. As set out in *East Barnet UDC v British Transport Commission* [1962] 2 QB 484 whether there is a material change of use of land is a matter of fact and degree in every case.

76. Both sides cite *Hertfordshire CC v SSCLG* [2012] EWCA Civ 1473, a case involving intensification of a use which constituted a material change of use. The Court confirmed that the right test for deciding whether there has been a material change of use was whether there had been a change in the character of the use. In making that assessment, the impact of the use on other premises was a relevant factor. It was necessary to consider both what was happening on the land and its impact off the land.

77. The Council points out that a use for the sale or display of motor vehicles is explicitly identified as having no use class specified within the Town and Country Planning (Use Classes) Order 1987, as amended. That is so, but it is a mixed use of the land which has taken place and is enforced against rather than a use limited to the sale and display of cars. More pertinently, it is the single mixed use composed of the identified primary uses which is *sui generis* (i.e., outside of any use class).

78. The appellants argue there is no material difference between caravans and

motor vehicles in terms of land use. They cite *Marshall v Nottingham Corporation* [1960] 1 WLR 7071; All ER 659; P & CR 270, where there was found to be no material change of use of a site used for the sale and small scale manufacture of garden sheds after it was hard surfaced and used for the sale of caravans not manufactured on the premises. The judgment is authority that the mere fact that a dealer in the course of his business begins to deal in goods in which he had not dealt with before does not necessarily involve a change, still less a material change in his use of the land.

79. In response, the Council highlights how 'caravans' have a specific definition in law as set out in the Caravan Site and Control of Development Act 1960 and the Caravan Sites Act 1968 and 'cars' do not fulfil that definition. Even so, it is the way that the land is used that must be considered and its effect on the character of the site and its surroundings.

80. The appeal site is not used for caravan display but storage of caravans and trailers along with car sales and storage. Such a mixed use has different planning consequences. Storage is not the same as sales; it involves caravans, trailers and cars remaining in situ, perhaps indefinitely. In contrast, sales will invariably see cars/caravans being regularly moved on and off site and likely to be displayed more prominently and attracting potential customers visiting the site. Visually, there is a difference between bulky caravans compared with the size of cars and this has relevance in the context of the adjoining conservation area. The impacts do not need to be worse to be materially different.

81. Notably, the caravan display was controlled by condition in the 1979 permission in terms of the spacious layout of the site and the number of caravans screened by planting to the frontage. That differs appreciably from the unlimited numbers of cars being displayed prominently for sale with other cars, caravans and trailers also stored across the site.

82. Not only is there a sufficient difference between the display of caravans and the single mixed use that has occurred to give rise to a material change of use, but there is also a far greater intensity of use than authorised by the 1979 permission which would in itself represent a material change of use.

83. I conclude that as a matter of fact and degree the matters alleged in the notice constitute a breach of planning control.

Appeals B and C - ground (d)

84. In cases such as this where there is a material change of use of land, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach of planning control (section 171B(3)).

85. To succeed on this ground the appellants must demonstrate that the change of use to a mixed use for car sales and the storage of cars, touring caravans and trailers occurred at least 10 years prior to the date of the issue of the enforcement notice on 21 December 2018 and continued without material interruption for a period of 10 years after the date of such change.

86. The period need not necessarily be that immediately preceding the issue of the notice so long as there has not been reversion to the lawful use or another material change of use in the intervening period.

87. An appellant's evidence should not be rejected simply because it is not corroborated but the onus is on the appellant to produce sufficient evidence which meets the balance of probabilities test.

88. In evidence, Mr A Checksfield (Appellant C) maintained that a car sales use had gained immunity by 2000. This cannot be so because the site was stated to be vacant when a planning application was submitted by Nortons Dymchurch (Ltd) in 1998 and so the requisite 10 year period could not have accrued by the year 2000. Under cross-examination, Mr Checksfield suggested the applicants may have meant that they were not using the land but others were. I find that to be a strained interpretation of the word 'vacant' and without foundation.

89. Mr G Checksfield (Appellant A) submitted that the site has been in its current use since at least 2001. A statement dated 26 February 2020 is produced from Mr Peters (Appellant B) which says he started trading from the show room in 1998 along with the display areas, including the grass area. He vacated the showroom in 2015 but continued to trade on the grass area "until the present time". The unsworn statement is signed but Mr Peters fails to identify where he means by "the grass area" and the statement is lacking in any real detail. For instance, it does not specify the level or type of use, if the use was continuous and no mention is made of caravans or trailers. It carries limited weight only.

90. A letter from Fairways (Dymchurch) Ltd sent to the Checksfield family solicitors on 8 November 2007 explains that the premises at 76-78 High Street were under lease to Nortons (Dymchurch) Ltd from 1994-2004. In June 1998 the director of Nortons sub-let the car sales area to Mr Peters but "it appears that no formal agreement was put in place". A Licence agreement was produced during the Inquiry between Messrs A and G Checksfield and Mr Peters for land to the east of Fairways Garage commencing on 23 March 2011. As there is no plan with either the letter or Licence it cannot be gleaned which land is being referenced and Mr Peters did not attend the Inquiry to provide clarification.

91. A valuation of Norton's Garage was undertaken by chartered surveyors whose letter of 29 April 2002 describes the property as comprising "*a garage, fuel service station and car showroom plus parking and spare land*". It describes how "*the demised area includes two areas of open ground. Part is surfaced and used for parking and car cleaning. The remainder is laid to grass*". The permitted use under the lease is stated to be "*to use as a garage and petrol filling station repairing and service station and sale of motor cars*". The plan appended to the letter outlines the entire garage building, adjacent show room, forecourt and land to the north including the appeal site.

92. When read in conjunction with photographic material, the most likely conclusion is that the appeal site is the area of open ground laid to grass. The letter does not state when the valuation was carried out but it would serve no purpose if it were not recent. However, the letter does not assist the appellants as it does not identify a mixed use of the appeal site including storage.

93. Much Inquiry time was spent examining a series of aerial and other photographs, including street view images produced by both sides.

94. The Council's aerial photographs illustrate that the caravan display use had ceased by the start of 1990 and the appeal site is a vacant grassed site.

95. Several of the appellants earliest aerial photographs have the date typed on the sheet beneath the image rather than printed on it. Taken at face value, they start from 2001 when the appeal site appears grassed with only a couple of vehicles evident although there are patches in the grass where others might have been. A row of vehicles has appeared along the appeal site frontage in the Council's aerial image of 2003 continuing in an unbroken line across the adjacent site frontage. Behind the vehicles, the appeal site is open grassed land with a small number of other vehicles around the southern boundary.

96. The layout has changed in 2005 where the appellants aerial image shows as a long row of cars along the northern boundary with a shorter row along the southern boundary. The cars are parked side-on rather than facing towards the highway in a typical arrangement utilised for vehicles being displayed for sale.

97. The following year, the 2006 image shows a single parked car on the grass. Vehicles are parked on or near to the southern boundary but which side of it is unclear. The site otherwise appears vacant. That remains the position in 2007. In 2008, about 4 cars are positioned along the appeal site frontage with the remaining land vacant.

98. In April 2011, the aerial image shows the first signs of greater activity on the site which appears far less green and vehicles can be seen on the western half. Whether they are parked or being displayed for sale cannot be ascertained. A photograph from September 2011 shows part of the site with some cars which could be for sale but the whole site is not in view. Perhaps a couple of vehicles, at most, are present in the aerial image of 2013 although the surface looks patchy. What appears to be a static caravan is sited in the south-western corner. The position remains very similar in July 2014.

99. The major change comes about in April 2017 where rows of vehicles are positioned in formal rows pointing towards the road deep into the site. The land is now a different colour consistent with hard surfacing. The site looks similar in August 2018 with caravans also visible.

100. In terms of the street view images produced by the Council, in March 2009 a row of cars is displayed for sale on the adjacent land but not on the appeal site which is a grassed open area. Later that year in August 2009, the land has high overgrown grass with a single vehicle parked in the middle. The adjacent hard surfaced area next to the garage (now leased to Appellant D) is covered with numerous cars for sale.

101. In August 2015, the street view again shows a row of cars lined up for sale along the adjacent site frontage. A static caravan is behind the cars advertising a hand car wash. Only a touring caravan can be seen on the appeal site which remains grassed at the front at least. In sharp contrast, the street view image of August 2016 shows the appeal site full of vehicles including a row lined up along the frontage with prices on the windscreens. Caravans and a trailer can also be seen and the ground is hard surfaced.

102. Of course, photographs are only a snapshot of that moment in time. What they indicate is a vacant grassed site in 1990 which remained largely unused until signs of activity from around 2011 when more vehicles can be seen. This tallies with the retrospective planning application for car sales being granted for 2 years from 5 January 2012. The images suggest that the presence of cars had

largely ceased by 2013/2014 and started to resume again in 2015. The appellants suggested that this simply reflected the nature of the business with cars being sold and deliveries awaited. That may be so or it may demonstrate an intermittent and low level use. However, it was not until 2016 when activity can be seen from the photographs to have noticeably increased.

103. It was the sworn evidence of Mrs Checksfield that for 50 years she has parked her car over the whole site, including the grass within the appeal site, for various purposes including to go to church. She acknowledged there were 'probably' times when only some cars were present. Ad hoc parking on the grass does not verify the mixed use (but it may account for the small number of cars evident in some aerial images). Parking is not the same as storage as confirmed in *Crawley BC v Hickmet Limited* [1997] 75 P. & C.R. which held that the two concepts are distinct and mutually exclusive, nor is parking the same as sales. A car is still in use when parked whereas storage takes place when something is put away for a period of time because it is not needed or its use is not contemplated in the short term.

104. Whilst Mrs Checksfield's proof of evidence refers to the site being used for car sales, storage of cars for sales, storage of touring caravans and trailers, she confirmed this meant Mr Puttock's land.

105. The photographic material needs to be considered in the context of other documentary material. The planning history is of particular note. Starting with the most recent, planning permission was refused on 8 December 2017 for the use of land (including the appeal site) for car sales in connection with the existing business at Nos 76-78 High Street. The application was made in August 2017. The Council's reasons for refusal refer to the "*continued use of the site for the storage and sale of vehicles*." This is clear evidence the land was already in use for car sales and storage at that time.

106. There was no breach of planning control for a car sales use when planning permission (ref. Y/11/1010/SH) was granted for such use of the appeal site for a temporary period between 5 January 2012 to 5 January 2014. If car sales had begun on the site in 2002 as the appellants claim and continued thereafter to gain immunity from enforcement action then there would have been no need for the 2012 permission. Clearly, Mr Peters (as applicant) must have thought that planning permission was required. There would also be no reason to apply retrospectively for a car sales use only if, in fact, the site was also being used for primary storage purposes.

107. During the Inquiry Mr G Checksfield suggested that the Council had pressurised Mr Peters to make the 2012 application by threatening enforcement action. That is no more than supposition as Mr Peters did not attend to give his own account and it was denied by the Council.

108. The appellants' position is also contradicted by the street view images of August 2009 where the site is overgrown and vacant grassland. Either the mixed use had not begun or there was a break in continuity.

109. Moreover, there is firm documentary evidence that car sales had only just begun on the appeal site when the planning application was made in October 2011. The application was "*For change of use to the grass area from caravan sales to car sales*". The box is ticked on the form to say that the change of use

has been completed with a handwritten note alongside saying "*car sales on grass from now*". At the date of the application, the existing use is described as "*grass area to one side of existing sales area for motor vehicles, area was vacant. However, car sales now in use*." The application site encompassed what is now the appeal site. On a plain reading of that language, it is evident that car sales had only recently begun.

110. The accompanying design, flood risk and access statement described the application site as an area next to the garage *"once used for caravan sales, it now provides temporary and informal parking for the garage*." It explains that the site will be managed from the existing car show room on the adjoining site.

111. A retrospective planning application was made in July 2017 for use of the entire appeal site 'for vehicle sales' stating that the use began 5 January 2012. That tallies with the grant of temporary permission with effect from that date.

112. The use now enforced against is not confined to car sales but extends to the *storage* of cars, caravans and trailers. What is now alleged is a single mixed use composed of all the uses identified. They are not the same uses. Having gone to the trouble of making a planning application, the use being applied for in late 2011 and 2017 was logically the one taking place at those times indicating that the mixed use began later. The addition of another primary use would constitute a further material change of use from when the 10 year immunity period would start afresh.

113. Even if the mixed use began in late 2011 around the time of the planning application and the use undertaken did not correspond with that authorised by the subsequent grant of temporary permission because it included a primary storage use, a period of 10 years continuous use in breach of planning control still cannot be shown.

114. As it is, in October 2010 the Council's Development Control Committee was presented with a report for an application (ref Y10/0238/SH) for the change of use of the appeal site to the display and retail use for sale of sheds. Some car sales were taking place as the report records that "*During one visit to the site, it was noted that some of the cars from the sales were spilling over onto the application site."* However, there is nothing to indicate that this was more than *de minimis,* or more significantly, that the alleged mixed use was taking place. In fact, the report indicates to the contrary describing the application site as "*an open space of grassed land*" and "*The site has been unused for some time*".

115. Mr Williams gave evidence in support of Mr Peters but as a neighbour living opposite the site since March 2010, his evidence did not extend over a full 10 year period required to demonstrate immunity.

116. Having regard to the totality of evidence before me, the appellants have failed to discharge the burden of proof to demonstrate that the use enforced against commenced more than 10 years prior to the issue of the enforcement notice and continued uninterrupted thereafter in breach of planning control so as to become immune from enforcement action.

117. The ground (d) appeals fail.

Appeals A,B and C - ground (f)

118. A ground (f) appeal is that the steps required by the notice to be taken are excessive.

119. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)). It is not explicit in the enforcement notice which of these purposes the Council seeks to achieve. By requiring the permanent cessation of the unauthorised use and restoration of the land, it is evident that the notice must seek to remedy the breach. The Council confirmed that was its intention.

120. The appellants take issue with the requirement to excavate to a depth of 30cm all hardstanding within the area hatched red on the enforcement notice plan. The hardstanding has not been attacked in the allegation but is required to be removed and the land reinstated to grass.

121. It was the sworn evidence of Mr A Checksfield that he had been tasked with spreading hardcore across the appeal site and wider area during the 1960's. That clearly did not prevent grass growing across the appeal site and the appellants suggest that grass had grown up through the hardcore. Mr Miles, the landscape contractor who had undertaken works at the site for the landowners, confirmed that was possible and had occurred. Council Officers had not dug down or examined the surface in any detail. The evidence of Mr Allan was that the presence of hardcore beneath the grass was not visually obvious in 2012. That corresponds with numerous photographs, including aerial images which show the appeal site as a green area. The earlier photographs from August 2009 show what appears to be dense and overgrown grass. In one, a figure is walking across the grass carrying a lawnmower.

122. Section 173(5) gives power to require the removal of works for the purposes of remedying the breach. Therefore, the notice can require removal of the hardstanding if the works for its formation were solely undertaken for the purpose of facilitating the material change of use. Case law further confirms that the works must be integral to or part and parcel of the making of the material change of use. In those circumstances there is no need for the works to be referred to in the allegation.

123. It was held in *Murfitt v SSE* [1980] JPL 598 that where an enforcement notice is directed as a material change of use and works were carried out to facilitate the material change of use then the notice may require that the works are removed in order that the site is restored to its previous condition and the breach is thereby remedied.

124. In *Kestrel Hydro v SSCLG & Spelthorne BC* [2015] 1654 (Admin), [2016] EWCA Civ 784, the requirement in an enforcement notice that a hardstanding and various structures erected to serve the unauthorized use of the land be removed was held to be a requirement the Council could properly impose under section 173(4)(a). They were all integral to the unauthorized use and ancillary to it. These were the physical manifestation of the unauthorized change of use. The judgment endorsed the principle that an enforcement notice directed at an

unauthorised material change of use may lawfully require the removal of integral operational development.

125. When planning permission was sought in 2011 for car sales use on the appeal site in connection with the existing business, the application documents described the land as "grassed". This is reflected in the description of development applied for which is the "*change of use to the grass area from caravan sales to car sales*".

126. The application makes clear that the hardstanding on the appeal site had not yet been laid or at least not in the form that now exists. Furthermore, the submitted Design, Flood Risk and Access Statement stated that a layer of road chippings would be spread where necessary to protect the existing surface and "*the land which is grassed will be regularly maintained*".

127. Therefore, the hardstanding which now exists and the appellants say is 60cm deep, cannot have been laid pursuant to the temporary car sales permission which was granted permission in January 2012 as that permission entailed no more than a spreading of road chippings to protect the grass.

128. Mr Miles gave sworn evidence of works undertaken by his business across the appeal site in 2011 and 2012. Those works included digging to install new fence posts and laying drainage pipes. In undertaking those works he said it was obvious the ground was made up of hardcore with infill across the whole site. This supports Mr A Checksfield account of the historic laying of hardcore during the 1960s. Mr Miles' invoice of 7 February 2012 (paid 12 February 2012) includes the supply and laying of 20 tonnes of crushed hardcore. The total sum of works was £666.00. The position of the hardcore to be laid is hatched on a hand-drawn sketch, also dated February 2012. This covered only a portion of the appeal site and not the much larger area of hardstanding illustrated on the revised enforcement notice plan.

129. Mr Miles confirmed that he is one of the two workers undertaking ground works at the appeal site in a photograph taken by the Council in February 2012. There are a couple of small piles of crushed hardcore which Mr Miles confirmed was being used to make good and repair potholes. At this point there was still grass shown in the photograph across the wider site. Mr Miles called it "rough grass self-sown on top of the hardcore".

130. The aerial images dated September 2012 do not show hard core topping in the location illustrated on Mr Miles' drawing. There are a couple of lighter patches but they were present in the 2008 and earlier images. It might be anticipated that if 20 tonnes of hardcore had been laid as per the drawing that it would be evident in aerial images. It appears more likely that the distribution of hardcore was no more than filling potholes and making good after installing drainage pipes or the minor works to protect the grass as envisaged by the temporary 2012 permission. Even if some hard surfacing was laid at that time in accordance with Mr Miles' drawing, it was a limited area and nowhere near as large as the hardstanding that now exists.

131. Mr A Checksfield states that additional works were carried out late 2012 and in 2013 to improve conditions during the winter months by adding a top dressing of road scalpings. He produced a handwritten invoice from a building contractor dated 10 October 2012 "*To prepare ground at Dymchurch Car Sales*

and supply and lay 20 ton [sic] of road scalpings at the sum of £20.00 per ton and erect fence" at a total cost of £3,500. It is endorsed "*paid in full*". If correct, it would mean 40 tonnes of road scalpings had by this time been laid in total. A further invoice from the same contractor is dated 14 November 2013 "*To supply and lay road scalpings at rear of land at Dymchurch Car Sales at the cost of £1700*".

132. The Council flagged up the disparity in costings between the invoices where the supply and laying of 20 tonnes of hardcore was £666 in one invoice and £3,500 in another a matter of months later. The reason is unknown and I do not draw inferences.

133. Mr Allan was the Council's Case Officer at the time of an application for the use of the land to car sales in connection with the existing garage business in 2011-2012. His oral evidence was that he clearly recollected seeing grass on the appeal site on 12 October 2012 (as appears in his photograph of that date) only two days after the additional hardcore was invoiced. Mr G Checksfield sought to suggest that the invoice could have been paid before the works were undertaken. If that was so, it does not explain why such a large quantity of hardcore was not apparent either to the Officer or in aerial images in 2013 when the land is still a largely green expanse with some perimeter foliage.

134. In April 2015 the surface appeared very patchy with grass centrally and at the edges. Hard surfacing had clearly been laid by August 2016 when the appeal site is shown on the street view image full of cars and caravans. The evidence points firmly to new hardstanding having been laid across a large part of the appeal site to accommodate the unauthorised use now enforced against.

135. Given that the notice does no more than seek to achieve the purposes of section 173(4)(a), it is not excessive to require reinstatement of the land. The question is whether the requirements go beyond what is reasonably necessary to remedy the breach.

136. There is no power to require improvements or restoration beyond its previous condition before the breach of planning control occurred. According to the Council, the works now required would result in the land being brought to the same height as the land immediately adjacent to the site boundaries which it considers to be the original land level. The appellants on the other hand say that the neighbouring public footpath was always at a different level to the appeal site.

137. If the appellants are right and the hardstanding is 60cm deep because of pre-existing hardcore laid historically, the notice does not require its total removal. It requires excavation to a depth of 30cm with replacement topsoil to that depth. When I asked the Council's Enforcement Officer how the depth of 30cm had been arrived at, I was informed that advice was taken on however much was needed to reinstate the grass and allow it to grow. This indicates that the Council has prescribed measures to secure conditions for grass to grow rather than achieving a return of the land to its condition before the breach occurred. They are not necessarily one and the same. It is not known if the hardstanding which was laid to facilitate the mixed use is 30cm deep and there is little evidence of previous land levels. Therefore, the requirements state measures which are capable of going beyond a remedying of the breach.

138. I note that upon cessation of the car sales use under the temporary 2012 permission, it was a condition that the land be returned to its former condition or before 5 January 2014. This would have been as a 'grass area' as described in the application. By 2015 the land appeared to be grass. It was not wrong for the Council to require the return of the appeal site to grass. However, it has been overly prescriptive in how this should be achieved and identifying the resultant land levels when the full extent of works required to remedy the breach cannot be readily ascertained or the Council be expected to know.

139. The correct approach should be to require removal of the hardstanding which facilitated the unauthorised material change of use and reinstatement of the land to its former condition before the breach took place as a grass area.

140. I shall vary the notice accordingly. To this limited extent the ground (f) appeals succeed.

KR Saward

INSPECTOR

APPEARANCES

FOR APPELLANTS A,C & D:

Graham Checksfield	Appellant A, also acting for Appellants C & D
He called:	
Andrew Checksfield	Appellant C
Pamela Checksfield	Witness
Colin Miles	Witness
John Williams	Witness

FOR APPELLANT B

Thomas Quaye	Planning agent

FOR THE LOCAL PLANNING AUTHORITY:

Emmaline Lambert	Of Counsel, instructed by Chief Planning Officer
She called:	
Lisette Patching BA (Hons) PGDIP TP	Enforcement and CIL Team Leader
Robert Allan BSc (Hons)	Principal Planning Officer

DOCUMENTS submitted at the Inquiry

1	Revised enforcement notice plan with red hatching
2	Copies of streetview images produced by the Council on 23 February 2022
3	Copies of aerial photographs produced by the Council on 23 February 2022
4	Supplementary proof of evidence of Robert Allan
5	Summary *R v Shayler* [2005] All ER
6	Graham Checksfield opening statement
7	Council's opening submissions
8	Report of *Cynon Valley Borough Council v SoS for Wales* 1986 53 P. & C.R.
9	Report of *Crawley Borough Council v Hickmet Limited* 1997 75 P. & C.R.
10	Case digest of *Koumis v SSCLG and Enfield LBC* 2015
11	Case digest of *Britannia Assets (UK) Ltd v SSCLG* 2011
12	Colour copies of photographs annotated Appendices 8 & 9 to Robert Allan Supplementary Proof of Evidence
13	Fell Reynolds, Chartered Surveyor's report of Norton's Garage dated 29 April 2002
14	Policy BE4 of the Shepway District Local Plan Review, adopted 16 March 2006
15	Copy Licence agreement to Mr Terence Peters commencing 23 March 2011
16	Closing submissions for the Council
17	Closing submissions for Terence Peters (Appellant B)
18	Closing submissions for Graham & Andrew Checksfield (Appellants A & C)

Plan

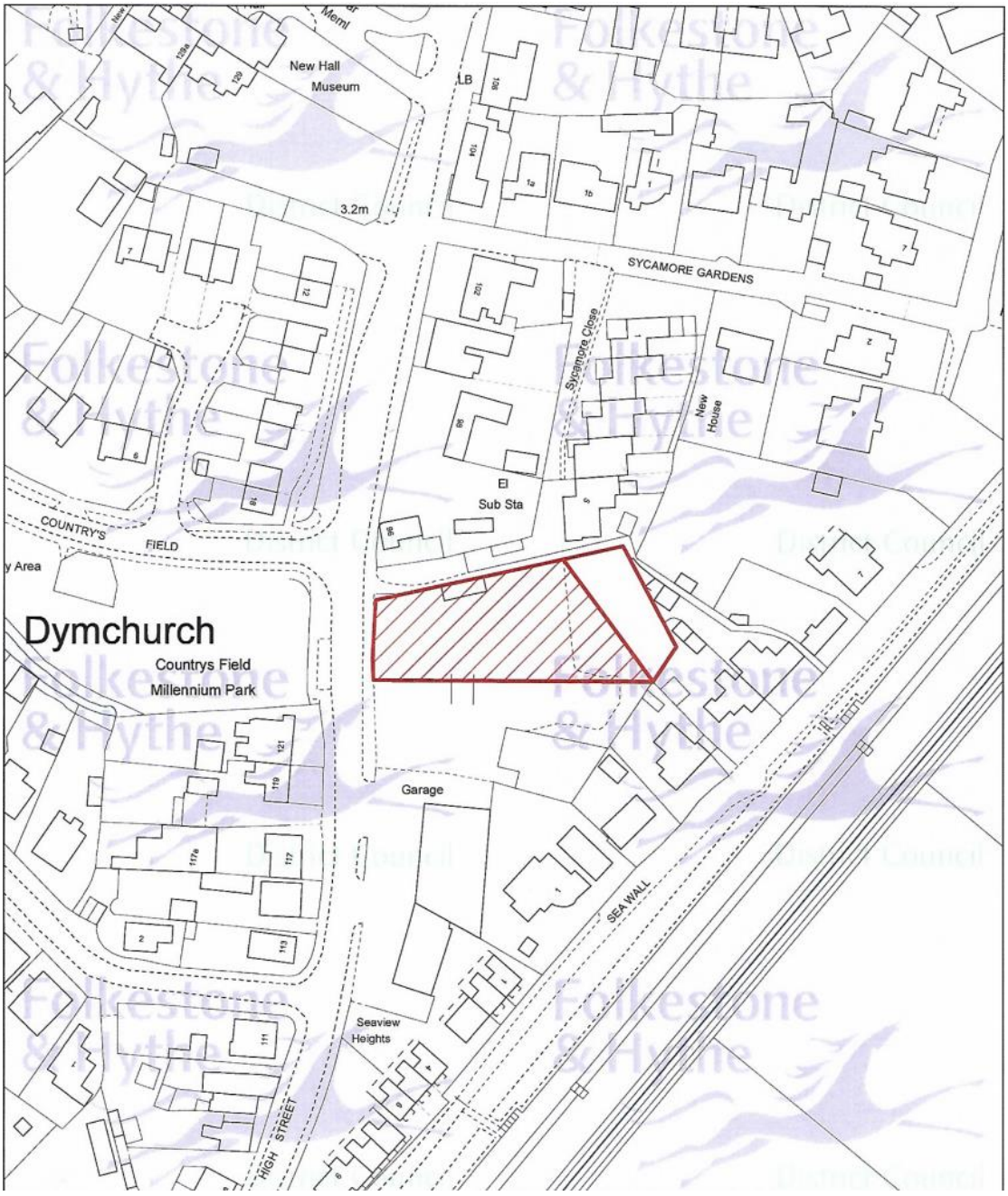
This is the plan referred to in my decision dated: 14 March 2022

by K R Saward Solicitor

Land Adjoining 76-78 High Street, Dymchurch, Kent

References: APP/L2250/C/19/3221881, APP/L2250/C/19/3221765, APP/L2250/C/19/3222221, APP/L2250/C/19/3221711

Scale: **DO NOT SCALE**



The Planning Inspectorate

Costs Decision

Site visit made on 24 November 2021

by Elizabeth Lawrence BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20th December 2021

Costs application in relation to Appeal Ref: APP/L2250/W/21/3275546
Tesco Car Park, Cheriton High Street, Folkstone, CT19 4QJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by McDonald's Restaurants Ltd for a full award of costs against Folkestone & Hythe District Council.
- The appeal was against the refusal of planning permission for a freestanding restaurant with drive-thru facility, car parking, landscaping and associated works, including Customer Order Displays (COD), goal post high restrictor and play frame. Relocation of the existing recycling area, click and collect and trolley bays.

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Examples of potentially unreasonable behaviour by a local authority include preventing or delaying development which should clearly be permitted; failing to produce evidence to substantiate reasons for refusal; and making vague, generalised or inaccurate assertions about a proposals impact, which are unsupported by objective analysis.

3. Planning committees do have to take into account any valid planning concerns raised by local residents and are not bound to accept the advice and recommendations of their officers. However, their assertions do need to be based on objective analysis and at appeal councils need to produce evidence to substantiate each reason for refusal.

4. The Planning committee refused the planning application against their officer's recommendation and the advice of professional consultees relating to the impact of the proposal resulting from additional lighting, vehicle movements and hours of operation. As a consequence, the Council considered the proposal to be contrary to policies HB1 & RL8 of the Places and Policies Local Plan and paragraph 127 (f) of the National Planning Policy Framework. Whilst highway safety and sustainability were also included in the reasons for refusal, before the appeal was lodged the council confirmed that it would not be contesting these issues, or presenting evidence in relation to air quality, or climate change.

5. Noise, disturbance and fumes are not specifically referred to in the Council's reasons for refusal, although they are factors typically associated with the effect that vehicle movements and hours of operation can have on the living conditions of local residents. Hence, whilst the reason for refusal could have been clearer, I do not find it to be misleading or unacceptable.

6. Whilst the Council does refer to highway matters in its statement, they relate to their impact on the living conditions of local residents. The Council's statement clearly states that the appeal proposal would not prejudice highway safety or amenity, but would cause harm to residential amenity.

7. The appellant company submitted an Acoustic Assessment with the application. It concluded that the sources of noise associated with the drive-thru and restaurant, including accessing the site, revving engines, customers ordering through the intercom system, associated plant and slamming doors would comply with the World Health Organisations (WHO) guidelines, both during the day and at night. Also, that that the noise from the plant would be imperceptible and could be conditioned.

8. Notwithstanding this, in their appeal statement the Council asserts that the noise and associated disturbance likely to be generated by these same activities during the evening and overnight would be more prominent and noticeable than at present and therefore more intrusive and harmful for local residents. Little evidence was submitted to support this assertion. There was a lack of objective analysis and some reliance was placed on an appeal decision where a formal acoustic assessment was not available to the Inspector. In this respect I find that the Council behaved unreasonably, resulting in unnecessary and wasted expense for the appellant company.

9. In their letter dated 19 February 2021 the Council clearly states that it would not be presenting evidence on air quality and / or climate change. It was therefore unreasonable of the Council to refer to traffic fumes in its statement. Notwithstanding this the Council did not provide any evidence on this matter for the appellants to address. Notwithstanding this, as it was a matter that had been referred to by local residents, I needed to address it in my decision. Accordingly, whilst this amounted to unreasonable behaviour by the Council it did not result in the need for the appellant to submit additional evidence.

10. An outdoor lighting scheme was submitted with the planning application, although no formal lighting assessment was included. In view of the proximity of the dwellings along Samian Crescent, I consider that the concerns of the Council regarding light pollution were not unreasonable. I found that the subsequent formal lighting assessment submitted with the appellants statement of case fully, objectively and satisfactorily addressed this concern.

11. The Council referred to the appellants lighting assessment and advised that the visibility of the lighting within the site was the source of their concern. Whilst I found in favour of the appellant on this point, I consider that the evidence provided by the Council, in this respect, was objective and sufficient to substantiate their concerns. Conversely, I do not consider that it was reasonable for the Council to then refer to the impact of any possible illuminated signage. As this was readily and simply addressed by the appellants it did not result in the need to prepare any unnecessary additional evidence.

12. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that a partial ward of costs is justified.

Costs Order

13. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Folkestone & Hythe District Council shall pay to McDonald's Restaurants Ltd, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in relation to addressing noise and associated disturbance; such costs to be assessed in the Senior Courts Costs Office if not agreed.

14. The applicant is now invited to submit to Folkestone & Hythe District Council, to whose agents a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Elizabeth Lawrence

INSPECTOR

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The Planning Inspectorate

Appeal Decision

Site visit made on 24 November 2021

by Elizabeth Lawrence BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th December 2021

Appeal Ref: APP/L2250/W/21/3275546
Tesco Car Park, Cheriton High Street, Folkstone, CT19 4QJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by McDonald's Restaurants Ltd against the decision of Folkestone & Hythe District Council.
- The application Ref 20/0983/FH, dated 10 July 2020, was refused by notice dated 24 December 2020.
- The development proposed is described as erection of a freestanding restaurant with drive-thru facility, car parking, landscaping and associated works, including Customer Order Displays (COD), goal post high restrictor and play frame. Relocation of the existing recycling area, click and collect and trolley bays.

Decision

1. The appeal is allowed and planning permission is granted for the erection of a freestanding restaurant with drive-thru facility, car parking, landscaping and associated works, including Customer Order Displays (COD), goal post high restrictor and play frame. Relocation of the existing recycling area, click and collect and trolley bays at Tesco Car Park, Cheriton High Street, Folkstone, CT19 4QJ in accordance with the terms of the application, Ref 20/0983/FH, dated 10 July 2020, and the plans submitted with it or as substituted during the processing of the application, subject to the conditions set out in a schedule attached to this decision.

Application for Costs

2. An application for costs was made by the Appellant against Folkestone & Hythe District Council. This application is the subject of a separate decision.

Preliminary matters

3. Since the appeal application was refused the National Planning Policy Framework 2019 (2019 Framework) has been replaced by the National Planning Policy Framework 2021 (The Framework). Within The Framework paragraph 127 (f), which is referred to in the Council's decision notice, has been renumbered 130, although its content is unchanged.

4. During the processing of the appeal application a number of the drawings submitted with the application were superseded. As indicated on the decision notice the Council's decision is based upon drawing Nos: 7584-SA-8869-P002N, 7584-SA-8869-AL03B, 7584-SA-8869-P004N, 7584-SA-8869-P005D, 7584-SA-8869-P006D, 7584-SA-8869-P014E, 16987-VL-McD_L01 Rev D, 16987-VL-

McD_L02 Rev A, DWG 00, DWG 01, Goal Post Height Restrictor and COD/Canopy Digital Drive Thru Lane and E11-003-V01.

5. On 12 February 2021 the Council confirmed that it would not be contesting highway safety or that the proposal amounts to unsustainable development. Also, that the council would not be presenting evidence relating to air quality or climate change.

6. I confirm that this decision is based upon the information set out in paragraphs 3, 4, 5 and 6 above.

Main issue

7. The main issue is the effect of the proposal on the living conditions of the occupiers of nearby dwellings, with particular regard to noise and light pollution.

Reasons

8. The appeal site occupies a prominent position in the street scene, adjacent to the junction of Cheriton High Street and Cheriton Approach. The Cheriton Interchange and the M20 occupy an elevated position a short distance from the appeal site, with the Eurotunnel UK Terminal beyond the M20. The triangular parcel of land bordered by these roads is currently occupied by a Tesco superstore, petrol filling station and associated parking.

9. The appeal site comprises the eastern end of Tesco's car park, which abuts the embankment between Cheriton Approach and the M20 junction to the north and a small area of scrub, grass verges and occasional trees to the south. To the west is the car parking with the supermarket beyond. Other than highway and rail infrastructure the surrounding area is characterised by a combination of estate housing and commercial developments, as well as a number of educational, training and leisure/recreational facilities.

10. The site is located close to the strategic road network and the Eurotunnel terminal. There are bus stops on both sides of the road outside the Tesco store and the site is within easy walking and cycling distance of local housing developments and businesses. Overall, the site is located in an accessible and convenient location for the proposed facility.

11. The proposed two storey building would be located in the southern part of the appeal site, with the restaurant entrance and parking area to the north of it, adjacent to the existing car park and motorway embankment. There would be an outside play area and seating to the north and west of the building and the drive thru opening would be located along the southern elevation.

12. The proposed restaurant and drive thru facility would operate 24 hours a day. This differs from the Tesco supermarket, which is currently open between 0600 – 0000 hours Monday to Saturday and 1000 -1600 hours on Sundays, although it has the ability to open 24 hours a day. The petrol filling station on the site opens the same hours during the week and 0700 – 0000 hours on Sundays.

13. With the proposal the appeal site would be separated from Cheriton High Street by a hedge, wide verge and tree planting. Access to the deliveries area would be in the northeast corner of the building and the associated yard area would be enclosed and located to the east of the proposed building.

14. Customer access to the facility would be from the existing vehicle access which serves the Tesco supermarket. Vehicles would follow the existing car park layout and would turn into the McDonald's parking area at the northern end of the appeal site. Access to the drive thru would be directed along the northeast side of the site and then between the southern elevation of the building and the southern boundary of the site. A soft landscaped area would be formed within the southern and south-eastern boundaries of the site.

15. To facilitate the proposal the Tesco superstore would lose some of its existing parking spaces and the existing click and collect vehicles spaces and recycling centre would be relocated elsewhere on the site.

16. Amongst other things Policy HB1 of the Folkstone & Hythe Places and Policies Local Plan 2020 (LP), state that new development should not have an adverse impact on the living conditions of existing residents. Similarly, Section 8 and paragraph 130 f) of The Framework seek to ensure that new developments promote health and well-being. LP Policy RL8 3) & 5) relates to development outside of designated town centres. It requires new facilities to be located in accessible locations, with acceptable vehicular access and which can be provided without harm to the living conditions of local residents.

17. The closest dwellings to the proposed restaurant and drive thru are located within Samian Crescent. These dwellings are elevated above and separated from the proposed restaurant and drive thru facility by Cheriton High Street and Samian Crescent. The embankment, hedge and trees adjacent to Samian Crescent form a physical barrier and provide a screen between the dwellings in Samian Crescent and the proposed development. Whilst the proposed building would be visible from these dwellings, particularly from their first-floor windows, it would be seen within the context of its commercial setting, as well as beyond and against the backcloth of roads, hedges, trees, embankments, Cheriton interchange and the M20.

18. The dwellings in Star Lane are located in excess of 50 metres from the appeal site. They are separated from the appeal site by Cheriton approach, embankments and associated mature planting.

19. There are high level street lights along both sides of Cheriton High Street and Cheriton Approach, as well as adjacent to the Cheriton interchange, the M20 and within the Eurotunnel site. There is lower-level lighting within the highway, Tesco car park, Samian Crescent, the surrounding roads and within residential and commercial properties. For these reasons I agree with the lighting assessment prepared by Herrington Consulting Limited, that the area falls within a suburban environmental zone (E3), which has a medium brightness lighting environment.

20. The outside lighting scheme has been prepared by a lighting specialist and can be secured through the imposition of a condition.

21. There is no fenestration in the eastern elevation of the proposed building, which faces towards Star Lane and limited fenestration in the southern elevation, which faces towards the closest dwellings in Samian Crescent. The only areas of large expanses of glazing are on the north elevation which faces the embankment and Cheriton interchange and on the north side of the western elevation which faces into the Tesco supermarket access road.

22. It is reasonable to assume that most people visiting the proposed restaurant and drive-thru will do so by car. This will include a combination of visits solely to the facility and shared visits by those travelling to or from the channel tunnel terminal, going to or returning from work, shopping, etc. As illustrated in the appellant's highway statement relatively few visits to the proposed restaurant and drive-thru would likely take place between the hours of 1200 and 0600, when traffic is light and some street and other lighting may not be in use. At other times there is likely to be significantly more traffic activity in the locality. It is also possible that the proposed facility would reduce traffic elsewhere in Folkstone, by providing a restaurant and drive thru close to the M20 and the Eurotunnel terminal.

23. For these reasons the light pollution from vehicles accessing and exiting the proposed facility would be minimal.

24. Whilst the proposal would add to light pollution in the locality, there is a considerable level of illumination in the area. The majority of the proposed glazing is orientated into the Tesco site and away from local dwellings. The dwellings in Samian Crescent and Star Lane are separated from the appeal site by roads with high and low-level street and other lighting and are screened from the appeal site to varying degrees by embankments and planting. The proposed lighting scheme has been assessed against ILP Guidance Criteria and the appellants External Lighting Assessment concludes that the proposed lighting would not harm the living conditions of local residents.

25. The appeal proposal does not include any signage. Any proposal to install illuminated signage would need to be assessed on its individual merits having regard to potential light pollution and its impact on the living conditions of local residents.

26. For these reasons and notwithstanding the fact that the proposed facility would be able to operate 24 hours a day, I am satisfied that the additional light pollution generated by the proposal would not have a material impact on the living conditions of local residents.

27. The appellant has submitted an environmental noise assessment, which has regard to the aims of National and Local policies, current British Standards and various publications by the World Health Organisation (WHO). The assessment includes day and night time measurements of existing background noise levels, together with an assessment of the predicted noise levels adjacent to 30 Samian Crescent, which is the closest dwelling to the proposed restaurant and drive-thru.

28. Noise levels relating to the drive thru facility were based upon noise generated by other similar facilities and on forecasted customer arrival data provided by ADL Traffic and Highways Engineering. The noise assessment included calculated Friday and Saturday drive thru flows and took account of arrival, ordering, collection and departure associated with comparable drive-thru facilities. With regard to the use of the restaurant the assessment focused on parking and included car door slam events, which are associated with peak noise levels in car parks. Noise levels for the proposed fixed plant were also taken into account. The assessment concluded that all three sources of noise would comply with the WHO daytime and night time noise values, with noise limits associated with fixed plant being controlled through the imposition of a condition. This fixed plant should also deal with matters relating to odour.

29. The proposed restaurant would attract people on foot and those arriving by car would need to walk to the restaurant from their vehicles. Should it occur, shouting and other forms of loud anti-social behaviour could have the potential to be noticeable and intrusive for some local residents, particularly during the night and early morning hours.

30. The appellant has advised that Anti-social behaviour impacts on customer experience and staff safety and that the company understands that it has a responsibility to the local community. The company already has policies and measures in place to mitigate and minimise such anti-social behaviour. They include a combination of training, staffing levels, physical security equipment and partnership working with all responsible authorities.

31. In addition, as pointed out by the appellant's agent, the operation of 24 hour restaurants supplying hot food and drink are regulated under other legislation. Accordingly, the local authority has the ability to keep the restaurant's opening hours under review. I also note that the Council's Environmental Health Officer has raised no concerns, subject to the imposition of a noise condition which sets out maximum rating levels of the sound emitted from the site, when measured from the nearest residential premises.

32. I note and understand the concerns raised by the Council and third parties regarding possible noise and disturbance. The appellant has addressed these concerns in detail and I find their submitted evidence to be objective and robust. It is supported by my observations at a comparable sized McDonalds restaurant and "Drive-thru", on a busy Friday evening. The outside areas were quiet and there was no Anti-social behaviour or obvious litter.

33. For these reasons, subject to the suggested noise condition, I consider that the noise from all sources likely to be generated by the proposal would not have a material impact on the living conditions of local residents.

34. Regarding vehicle fumes, little evidence has been provided by either of the main parties. Having regard to the accessibility of the site, the projected and nature of customer trips and the potential of the proposal to reduce trips from the strategic road network, into the main settlement, I am far from convinced that the proposal would materially add to air pollution in the locality and in Folkstone as a whole.

35. Overall, I find that both individually and collectively, the effect of the likely noise generated by vehicles and guests, traffic fumes and the increased light pollution within the local area would be modest.

36. I conclude on the main issue that the proposal would not have a materially adverse impact on the living conditions of local residents due to noise, light or other pollution. Accordingly, it would comply with LP Policies HB1 & RL8 3) 5) and section 8 & paragraph 130 f) of The Framework.

Other matters

37. Concerning highway capacity and safety, the proposal uses the existing supermarket access. Kent highways has confirmed that the proposal would not impact negatively on the revised layout for the Cheriton Interchange junction. That the proposed visibility splays, and cycle and vehicle parking provision is acceptable and that the agreed maximum queue for the Drive-Thru could be accommodated within the McDonald's site. They have raised no objections to

the proposal and the local planning authority has confirmed that it would not be contesting highway safety. Little evidence has been submitted to demonstrate that the predicted traffic levels are inaccurate, or that parking provision would be inadequate.

38. Consequently, I am satisfied that the proposal would comply with LP Policies HB1 & RL8 and paragraph 111 of the Framework, which together seek to ensure that new development is safe and would not have a significant detrimental impact on the highway network in terms of congestion and road safety.

39. Regarding litter the appellant company has advised that they would conduct at least three daily litter patrols both on and off site. Litter bins would be provided outside the premises and customers would be encouraged to dispose of litter responsibly, both through signage and promoting Anti-littering within local communities and nationally.

40. I note the comments made regarding need, proximity to schools and health and well-being. However, no policies which seek to restrict the number or siting of 'fast food' outlets have been brought to my attention. The appellants conducted a sequential test and retail impact assessment at the application stage, which concluded that there are no sequentially preferrable sites and that the proposal would not impact on the neighbouring centre.

41. Finally, with regard to the impact of the proposal on wildlife, the site is currently hard surfaced and used for parking and whilst some existing boundary planting would be lost the proposal includes new tree planting within and around the site and a soft planting strip around the southeast corner of the site. For these reasons I find that the proposal would not have an adverse impact on wildlife.

Conditions

42. The Council has suggested the imposition of conditions relating to the provision and maintenance of soft landscaping; the provision of the proposed parking spaces; refuse and recycling facilities, cycle storage facilities; the provision of visibility splays; details of the relocated click and collect facilities; the undertaking of an archaeological evaluation; maximum noise levels; , adherence to the submitted lighting scheme, any on-site contamination; adherence to the submitted drainage strategy and adherence to the approved plans and associated details.

43. I agree that these conditions are all necessary to protect the living conditions of local residents; for reasons relating to highway safety; to ensure the proposal respects the character and appearance of its surroundings; to ensure the site is suitably drained; to record and where necessary preserve any archaeological remains; to ensure the site is not put at risk from unacceptable levels of contamination; and in the interests of certainty. I have however amalgamated the two proposed landscape conditions to avoid duplication and have made minor changes to the wording of some conditions in the interests of precision and enforceability.

Conclusion

44. Having regard to the conclusion on the main issue and having regard to all other matters the appeal is allowed.

Elizabeth Lawrence

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
2) The development hereby permitted shall be carried out in complete accordance with the details shown on the following approved plans: 7584-SA-8869-P002N, 7584-SA-8869-AL03B, 7584-SA-8869-P004N, 7584-SA-8869-P005D, 7584-SA-8869-P006D, 7584-SA-8869-P014E, 16987-VL-McD_L01 Rev D, 16987-VL-McD_L02 Rev A, DWG 00, DWG 01, Goal Post Height Restrictor and COD/Canopy Digital Drive Thru Lane and E11-003-V01.
3) No development shall take place until the applicant, or their agents or successors in title, have secured the implementation of:

   i) archaeological field evaluation works in accordance with a specification and written timetable which has been submitted to and approved in writing by the local planning authority; and

   ii) Following on from the evaluation, any safeguarding measures to preserve in situ of important archaeological remains and/or further archaeological investigation and recording in accordance with a specification and timetable which has been submitted to and approved in writing by the local planning authority.
4) A landscape management plan, including details of the type of maintenance proposed for all planting including the planters, replacement planting and trees, including tree pits, and proposals for long term tree management shall be submitted to and approved in writing by the local planning authority prior to the first use of the development and the landscaping shall thereafter be maintained in accordance with the approved details for the lifetime of the development unless previously agreed otherwise in writing by the local planning authority.
5) No fixed plant and/or machinery shall come into operation until details of the fixed plant and machinery serving the development hereby permitted, and any mitigation measures to achieve this condition, have been submitted to and approved in writing by the local planning authority. The rating level of the sound emitted from the site shall not exceed 50dBA between 0700 and 2300 hours and 35dBA at all other times. The sound levels shall be determined by measurement or calculation at the nearest residential premises. The measurements and assessment shall be made according to BS 4142:2014 as stated within the Noise Assessment report dated 16 December 2019 – Project 199336.
6) Prior to the first use of the building hereby permitted the parking spaces shown on the approved plans shall be made available and thereafter retained and maintained.

7) Prior to the first use of the building hereby permitted the cycle parking shown on the approved plans shall be made available and thereafter retained and maintained.

8) The visibility splays as shown on the approved plans, with no obstructions over 1.05 metres above the carriageway level within the splays, shall be provided prior to the first use of the development, and thereafter be maintained and retained.

9) Details of the facilities for the storage and collection of refuse and recyclables shall be submitted to and approved in writing by the local planning authority and the approved facilities provided before the development is first occupied. Thereafter the approved facilities shall be kept available for such use by the development.

10) Details of the allocated Click and Collect Facility serving the Tesco Supermarket shall be submitted to and approved in writing by the local planning authority prior to being constructed. The development shall be carried out in accordance with the approved details unless previously agreed in writing by the local planning authority and permanently retained thereafter.

11) The lighting scheme hereby approved shall be carried out in accordance with the guidelines provided by the Institution of Lighting Professionals 2011 and shall be maintained as such unless otherwise agreed in writing by the local planning authority.

12) If, during development, contamination is found to be present at the site then no further development (unless otherwise agreed in writing by the local planning authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to and approved in writing by the local planning authority. The remediation strategy shall be implemented as approved.

13) The development hereby approved shall be carried out in complete accordance with the information and details provided in the Drainage Statement report (NB8869) produced by Granville and the Drainage Maintenance Plan (NB8170) produced by Glanville received 13.07.2020.

Appeal Decisions

Site visit made on 25 October 2022

by Mr C Parker BA(Hons) PGCert MA MRTPI MCMI IHBC

an Inspector appointed by the Secretary of State

Decision date: 27 October 2022

Appeal A Ref: APP/L2250/W/22/3290982
Garden Flat, 11 Clifton Crescent, Folkestone CT20 2EL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Ms Sue Peake against the decision of Shepway District Council.
- The application Ref 21/1991/FH, dated 27 September 2021, was refused by notice dated 18 November 2021.
- The development is described as 'retention of replacement windows and doors'.

Appeal B Ref: APP/L2250/Y/22/3290985
Garden Flat, 11 Clifton Crescent, Folkestone CT20 2EL

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Ms Sue Peake against the decision of Shepway District Council.
- The application Ref 21/2004FH, dated 27 September 2021, was refused by notice dated 18 November 2021.
- The works are described as 'retention of replacement windows and doors'.

Decisions

1. Both appeals are dismissed.

Procedural Matters

2. This decision letter considers two appeals; Appeal A for planning permission and Appeal B for listed building consent. The scheme is the same for both. Whilst subject to different legislative considerations, given the similarities I have assessed and determined both in this single decision letter.

3. The works for which permission and consent are sought have already taken place. It is unclear from the evidence when such activity took place, whether this was secured through consent or permission at that time if required, or what existed before the uPVC material openings were inserted. Nonetheless, applications for planning permission and listed building consent have now been made. Following their refusal, the Appellant has exercised their right to appeal the local planning authority's decisions. I have proceeded on this basis for determining the appeals.

4. There is are separate appeals (ref 3290974 and 3290973) for the same building; albeit a separate flat contained therein. Whilst the agent acting for both is the same and subsequently there is some cross over within the evidence submitted by the main parties, I have considered each on its own planning merits.

Main Issue

5. The main issue for both appeals is whether the works would preserve the special architectural or historical features of the listed building, and whether they would preserve or enhance the character or appearance of the conservation area.

Reasons

6. The appeal scheme relates to a basement-level garden flat of 11 Clifton Crescent; at Grade II listed building located within the Folkestone Leas & Bayle Conservation Area. Clifton Crescent comprises a number of buildings arranged in a shallow crescent facing out towards The Leas. The significance of the listed building and this part of the conservation area derives from the fact that Clifton Crescent is one of the centrepiece compositions of the formally planned suburb of West Folkestone, laid out during the end of the 19th Century. The building is part of a Victorian villa[1] in a grand Italiante style with cream painted stucco elevations enriched with detailing such as cornicing pediment over the first floor windows and rusticated quoin blocks at the corners.

7. The works sought seek permission and consent for replacement windows and doors to the front, side and rear of the Garden Flat using uPVC. Whilst there is a paucity of evidence as to what was present before these at the Garden Flat, given the age of the building from the late C19th it is likely that these were originally timber painted frames and casements. Indeed, within the photos of Clifton Crescent supplied by the Appellant, it is possible to see many examples of timber framed windows, including sliding sash windows along and throughout the crescent.

8. This point is important: the frames of timber windows and doors tend to be considerably thinner than uPVC alternatives. This can be seen from drawing 20220 002 'Existing South Elevation', where the Garden Flat windows labelled W06 to W09 have considerably thicker frames to those at ground (with iron work balconies), first (with tympanum features above some windows) and the second floor, where the windows appear to be principally timber framed vertically sliding sashes. I note that the attic level contains uPVC openings, notwithstanding that this is subject to a separate appeal (ref 3290974), it is clear that timber framing is the most likely original material for this building.

9. This visual incongruity is further compounded through the use of single glass panes rather than a two-over-two over meeting rail form created through the use of glazing bar. An example of this at basement level is found in the bottom right-handside photo for the adjoining building called 'Westward Ho!'. The effect of the windows installed – for example W09 – is a considerably thick and heavy central glazing bar with chunky architrave and frame.

10. This visual oddness, compared to other openings in the same elevation, would be compounded through the use of uPVC, which tends to have a considerably shinier and smooth appearance compared to painted timber. For similar reasons, the use of uPVC for the basement door labelled D01, as shown on drawing 20220 004 'East Elevation as Existing' has a given the door a bulky appearance.

[1] The list description, from 1975, suggests the building to be mid-19th Century

11. Another important consideration is the style of window. The casement windows shown on drawing 20220 002 are single paned with top hung opening casement windows. Visually, when opened in particular, these would project outwards from the building interrupting the vertical façade of the elevation. Examples of this in practice are evidenced in the Appellants document *Photos of Clifton Crescent* at Numbers 5 and 13 for example (top hung fan light open in the mansard window or dormer of the attic). This contrasts with those found at Nos 21 and 23, where vertical sliding openings retain the vertical emphasis of the façade; especially when the windows are open.

12. I therefore find that the windows and door have a negative impact on the listed building and fail to preserve its special interest. For similar reasons, it fails to preserve or enhance the Folkestone Leas & Bayle Conservation Area. This harm would be no greater than 'less than substantial harm', as set out in Section 16 of the *National Planning Policy Framework* (the Framework).

13. Nonetheless, considerable importance and weight needs to be given to the desirability to preserve certain heritage assets as set out in s16(2), s66(1) and s72(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990*, as amended.

14. Paragraph 202 of the Framework sets out that where a development proposal will lead to less than substantial harm, this harm should be weighed against the public benefits. No specific public benefits have been set out by the Appellant. I note the point raised with respect of the 'harsh marine' environment in which the building is situated in, based on The Leas and overlooking the English Channel, and the durability of timber windows in such locations. Also noted is the fact that uPVC windows are likely to provide greater levels of thermal efficiency; though there is little evidence before me which indicates to what degree this would be better. These are both factors which provide environmental public benefits. However, I do not find that these outweigh the harm arising to the listed building or the conservation area in this case.

15. As such, I find that the works for which permission and consent is sought would fail to preserve the special architectural or historical features of the listed building, and would fail to preserve or enhance the character or appearance of the conservation area. Accordingly, the appeal schemes conflict with Policies HB1, HB8 and HE1 of the *Places and Polices Local Plan Adopted September 2020* (LP) which, amongst other aims, seek to grant permission for proposals which are consistent with their conservation and their significance. It would also conflict with the Policies of the Framework, including Paragraph 199 which sets out that great weight should be given to an asset's conservation.

Other Matters

16. The Appellant has suggested that the personal circumstances of the occupiers should justify allowing the appeal. They also point to the arbitrary nature of the Council's enforcement (or potential formal enforcement) in this case when other examples exist of uPVC windows. In terms of the latter, and how the local planning authority exercises its powers, is a separate matter for the Council to consider. I also note the various changes that have occurred to the crescent as identified in the Appellant's spreadsheet. Nonetheless my remit is to consider the schemes before me, which I have done.

17. In terms of other matters raised, I have considered the effect of the works in light of local and national planning policies and legislation and found that harm would arise which cannot be mitigated. I do not find that these matters provide justification for the approval of the scheme before me.

Conclusion

18. Appeal A conflicts with the adopted development plan and there are no material considerations that indicate a decision otherwise than in accordance with it. Appeal B would fail to preserve the special architectural and historical features of the listed building.

19. For the reasons given above in this decision letter, I conclude that both appeals should be dismissed.

C Parker

INSPECTOR

The Planning Inspectorate

Appeal Decision

Hearing held on 8 March 2023

Site visit made on 8 March 2023

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 April 2023

Appeal Ref: APP/L2250/W/21/3285174
Land adjacent to A259, Old Romney, Romney Marsh

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by C Delaney against the decision of Folkestone and Hythe District Council.
- The application Ref 21/0585/FH, dated 18 March 2021, was refused by notice dated 6 August 2021.
- The development proposed is change of use of land for 4no pitch Gypsy & Traveller site with associated operational development including 2no new entrances, installation of 2no water treatment plants, hardstanding and landscaping.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site has been previously used for the purposes proposed but this was unauthorised. The Council became aware of development on the site and the stationing of motorhomes on the land in June 2020. An injunction was served on the appellant on 28 August 2020 forbidding further development and the stationing of additional caravans on the site. A further injunction was granted prohibiting the works in the August injunction until 27 January 2024. The use has temporarily ceased, pending the outcome of this appeal and following the court action. The site is currently unoccupied with some evidence of the previous occupation of the site remaining.

3. The appellant submitted a revised plan alongside her statement of case. It was agreed at the Hearing that due to discrepancies between this plan and those submitted as part of the original planning application, this plan would be for illustrative purposes only. I have proceeded on that basis.

4. Since the appeal was lodged, the Folkestone & Hythe District Core Strategy Review (the CSR) was adopted on 30 March 2022. Both parties were given the opportunity to comment on the implications of this plan for the appeal.

Main Issues

5. The main issues are:

   - the effect of the proposed development on the character and appearance of the area;

- whether the proposal would result in an unacceptable loss of the best and most versatile agricultural land; and
- whether there are any material considerations which mean that the decision should be made otherwise than in accordance with the development plan.

Reasons

Character and appearance

6. The appeal site is a relatively open, rectangular plot of land adjacent to the A259. It forms part of a much larger field from which it has been separated by a post and wire fence. A short distance to the west of the site, and separated by an area of open land, there is a small cluster of three residential dwellings with a gypsy site, Willow Springs, immediately to the west of these. There are fields on the opposite side of the A259. The area has a strong rural character.

7. Whilst the appeal site does not lie within a nationally designated or protected landscape, it is within the locally designated Romney Marsh Landscape Area (the RMLA). Local Landscape Areas are described in the Places and Policies Local Plan 2020 (the PPLP) as areas which are of particular local landscape value, contributing to local environmental quality and identity.

8. The surrounding area within eh RMLA comprises an area of marsh with fields separated from each by ditches rather than boundary vegetation which gives this rural landscape a distinctive open and spacious character. Along the A259, which sits in a slightly elevated position to the surrounding landscape, there is sporadic vegetation comprising trees and hedgerows. There is none between the appeal site and the road. Prior to the unauthorised use of the site with associated development, the appeal site would have made a positive contribution to the landscape in much the same way as the adjacent parcel of land does.

9. The appeal site is highly visible from the road. Although there are only some limited remnants of caravans that were previously stationed on the site, the hardstanding, two access points, the fencing and some immature planting are visible. These appear incongruous against the backdrop of the field that surrounds the site. With four pitches including both static and touring caravans and other domestic paraphernalia on the site, the interruption of the rural landscape would be significant and adverse in its effect, detracting from the openness and rural character of the landscape.

10. I appreciate that the site is a short distance from some existing development, however, it is separated from this by the adjacent open land. I also recognise that the Council has allocated the nearby gypsy site for the same purpose as the appeal proposal. Arguably, this indicates that such development is acceptable in this location. However, the allocated site is not comparable to the appeal site, being directly adjacent to existing development. It also extends further back from the road, thereby the caravans and other paraphernalia on the site are less prominent in public views from the highway.

11. Development along the A259 is limited and dispersed between settlements. Although close to a small cluster of development, the appeal proposal would extend the amount of development along the A259 away from any defined settlements and would be harmful.

12. The appellant has suggested that landscaping planting could be planted to soften the appearance of the development and provide some screening to reduce its visual impact. This could be native planting to better integrate with the surroundings. However, the area and wider landscape is not characterised by boundary planting. I appreciate there is some associated with the nearby residential properties, including a substantial evergreen hedge between the westernmost property and Willow Springs. However, this is not a typical feature of the area.

13. There was some discussion at the Hearing about the required planting for Willow Springs and that a landscaping scheme had yet to be submitted and approved. I have not been provided with the full details of this as part of the appeal submissions but it was suggested to me that this planting would most likely run along the site's boundary with the road. I recognise that this would not be dissimilar to what the appeal scheme proposes. However, the cumulative effect of this type of landscaping would begin to change the character along this stretch of the A259 in a manner unsympathetic to the open landscape.

14. I have been referred to a number of appeal decisions where it is suggested that similar proposals to the appeal scheme have been allowed, notably with regards to their position in close proximity to a road frontage and planning gains being achieved through landscaping. This includes appeals[1] at Ash Gardens, Pudsey Hall Lane and Birchanger Lane. None of these are within the same local authority area as the appeal site.

15. The Ash Gardens decision refers to significant roadside hedges and mature tree planting, which do not exist at the appeal site. In both the Pudsey Hall Lane and Birchanger Lane decisions, the Inspectors were considering the effect on Green Belt and openness and not specifically character and appearance. Furthermore, in both these cases there are references to the sites being screened by hedges and mature trees, which do not exist in the case of the appeal scheme. These appeals have therefore been considered in their own context and are not directly comparable to the scheme before me. They do not lead me to a different finding in respect of the effect of the appeal proposal on the character and appearance of the locality.

16. Various other appeal decisions have been brought to my attention in support of the appellant's case but no specific parallels with the appeal scheme highlighted. I note that these decisions have dealt with matters in respect of character and appearance. However, my conclusions remain as above that these sites will have been assessed in their own context. I recognise that soft landscaping a site can, in some circumstances, mitigate harm that arises but that needs to be considered within the context of the site itself which I have done.

17. I conclude that the proposal would significantly harm the character and appearance of the area. It would therefore conflict with Policies SS3 of the CSR, NE3 and HB14 of the PPLP which together seek to protect or enhance the landscape character and functioning landscape character areas and require new gypsy and traveller sites to not result in an adverse effect on the landscape. It would also not accord with the National Planning Policy Framework (the Framework) which requires development to add to the overall quality of the

[1] APP/U2235/W/18/3199316, APP/B1550/C/18/3209438, APP/C1570/C/18/3219384

area and should contribute to the local environment, recognising the intrinsic character and beauty of the countryside.

Best and most versatile agricultural land

18. Policy HW3 of the PPLP sets out, amongst other things, that to reduce the environmental impact of importing food, development proposal should not result in the loss of the best and most versatile agricultural land (BMV agricultural land) unless there is a compelling and overriding planning reason to do so and mitigation is provided through the provision of productive landscapes on-site or in the locality.

19. The Framework sets out in paragraph 174 that planning decisions should contribute to and enhance the local environment, recognising the economic and other benefits of the BMV agricultural land. Footnote 58 goes on to explain that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

20. The appeal site lies on an area of land which is classified as Grade 1 under the Agricultural Land Classification. This is excellent quality and the highest grade of agricultural land. This is a national and scarce resource. There is no dispute that it falls within this classification although the appellant disagrees with its value. Nevertheless, the proposal would result in the loss of BMV agricultural land.

21. The Framework does not define what is meant by 'significant'. It is not disputed that in terms of scale, the area of land that would be lost through the proposal would not be significant. However, the Council has argued that significant should also relate to the need required to justify development on BMV agricultural land.

22. In support of its position, the Council has referred me to an appeal decision[2] at land at Spade Lane, Hartlip where the Inspector set this out, explaining that to discount that loss on the grounds of scale would be to accept the possibility of continual marginal accretion of our best agricultural land that might eventually result in a major depredation of this major national resource. I accept and understand both the Council's and the Inspector's concerns that the incremental development of BMV agricultural land would, over time, deplete this resource. However, I have no evidence before me that this is a particular issue in this case.

23. The appellant has drawn my attention to historic aerial images of the area indicating the position of the appeal site and the adjacent vacant parcel of land as being separate from the active agricultural use adjoining these to the south. The appellant has argued that this diminishes the value of the site.

24. The photographic evidence supports the appellant's view that this area of land has been used differently to the larger field which it adjoins. However, the fact that there is limited evidence that it has been actively farmed or grazed, does not mean it is not capable of such use and could be put to that use in the future. For this reason, I do not accept that the overall value of appeal site as BMV agricultural land is diminished.

[2] APP/V2255/A/14/2220447

25. No evidence has been put forward to demonstrate that poorer quality land has been considered as part of the justification for the use of this high quality BMV agricultural land. However, as I have not concluded that this is a significant development, there is no requirement to do so.

26. In terms of the requirements of Policy HW3, I shall come onto whether other considerations would outweigh the harm that would arise from the loss of BMV agricultural land in my overall planning balance. However, no mitigation is proposed as required by policy. The proposal would therefore conflict with it.

Other considerations

27. As I have found that the proposal conflicts with the development plan, I now turn to whether other considerations put forward by the appellant outweigh that conflict. These are that the proposal is compliant with criteria set out under Policy HB14, there is a need for more gypsy and traveller pitches in the district, the inevitability of these pitches being located in the countryside and the personal circumstances of the appellant and her family. I deal with each in turn.

Compliance with Policy HB14

28. Policy HB14 of the PPLP deals with accommodation for gypsies and travellers. It is a criteria based policy, dealing with living conditions of future occupants and nearby neighbours, the sustainability of the location, highway safety matters, justification for the loss of land allocated for another purpose and matters in respect of landscape and the environment. The Council has confirmed that apart from conflict with the landscape criterion, the proposal is not in conflict with this policy.

Unmet need

29. The Council published a Gypsy and Traveller Accommodation Assessment[3] (GTAA) in 2018. This formed the evidence base to the PPLP. It identified that there is a need for five permanent residential pitches during the plan period to 2037. The Council has met and exceeded this target within the first three years of the plan period. This is not disputed.

30. The GTAA was drawn up in the context of the PPTS 2015 Annex 1 definition. A recent judgment of the Court of Appeal in *Smith v SSLUCH & Ors*[4] has found the PPTS 2015 Annex 1 definition of gypsies and travellers to be unlawful on the basis that it discriminates against those gypsies and travellers who have permanently ceased to travel due to age and / or disability.

31. The Council explained that the GTAA took into account the needs of cultural gypsies and travellers. This includes those gypsies and travellers who do not meet the now unlawful definition. The needs of cultural gypsies are included within the pitch requirement identified within the PPLP. As I understand it, the same need applied to both those who met the definition and those who did not.

32. The appellant has argued that since the GTAA is over five years old, it is out of date. It should be refreshed every five years so it can properly assess current need. It has been argued that the appellant and her family should be taken as part of that need given that they were recently residing in the district.

[3] Folkestone & Hythe Gypsy and Traveller and Travelling Showpersons Accommodation Assessment 2018
[4] Smith v SSLUHC & Ors [2022] EWCA Civ 1391

33. I accept that the GTAA should be refreshed given its age. However, as highlighted by the Council, there are few symptoms of unmet need which normally manifest themselves as temporary permissions, unauthorised encampments, doubling up, appeals and outstanding applications. In respect of these, the Council told me that there have been one or two encampments but these have been temporary in nature and there are two appeals, including this one, and one undetermined application.

34. This does not indicate a high level of unmet need. I recognise that the appellant and her family are seeking accommodation within the district and could be considered to contribute to need.

35. I shall come on to the personal circumstances of the appellant and her family later in my decision. However, whilst I recognise that the appellant and her family moved onto the site during 2020 and within the current period covered by the GTAA, I am cautious in accepting that this group represents unmet need in the district. This is because they are not currently residing on site, nor indeed, within the district itself. From the submissions and what I heard, they have chosen to live in this area, relocating from another part of the county. If I were to accept this argument, it seems to me that any such household moving into an area could argue that the Council's evidence base is out of date, as is being argued here, because their needs have not been taken into account.

36. This, to my mind, is unreasonable as such households would not have been known to the Council at the time it undertook its GTAA. In such circumstances, I consider it reasonable that the plan makes provision for that identified unmet need and policies are sufficiently flexible to allow for any additional need to be accommodated should it arise. This is the approach the Council has adopted.

37. The appellant agreed that the policy itself is not out of date and that, theoretically it is flexible to meet needs. However, it is argued that the policy sets too high a bar in respect of its final criterion in respect of landscape and environmental impacts, I have not been pointed to any evidence to substantiate this claim that the policy is unduly onerous and preventing development from going ahead.

38. I therefore find that although the appellant and her family wish to reside in the district, there is limited evidence to support the argument that there is unmet need within the district.

Location of sites

39. The appellant has argued that traveller sites will inevitably be located within the countryside and outside defined settlement boundaries on the basis that land in and around settlements is reserved for housing for the settled population. Consequently, the traveller community is forced to seek land beyond this area and therefore within the countryside. The affordability of land within or close to settlements is recognised. However, this in itself, does not justify the location of the pitch in such a prominent and visible countryside location.

Personal circumstances

40. The appellant and her family group comprise two related families, Ms Delaney and her children and the Molloy family. The status of the families as gypsies and travellers is not disputed by the Council.

41. From the submissions and discussion at the Hearing, it appears the families had been living at the site for around 4 months in 2020 but vacated it following the issuing of the injunction.

42. There are children within both families. Currently, Ms Delaney's children are attending a local school in the Gravesend area where the family is currently living. One of her children also has a limiting health condition that requires regular access to hospital. The family is registered at an address in Gravesend, through this the family is able to access both education and health services.

43. The children from the Molloy family are being home schooled as they have been unable to access school places in the area in which they are staying. I was told this was due to a combination of lack of school spaces and the family having no fixed address. There is also some evidence from 2019 of health issues affecting adults within the Molloy family but nothing to indicate that these are ongoing matters requiring regular hospital access.

44. In view of the circumstances of both families, it would clearly be beneficial for them to have a permanent base from which to access education and healthcare. This is not disputed by the Council. Evidently, in their current circumstances the children within the Molloy family are not currently accessing education and it would be in their best interests for them to do so.

45. I heard that during the time the families were residing at the appeal site, the children were attending the local school. However, the details of this were somewhat vague, particularly given the short period during which the families were living at the site.

46. It is not disputed that there are no available, suitable, acceptable and affordable alternative sites for the appellant and her family to resort within the district. Under paragraph 24 of the PPTS, there is no requirement for a local connection in order to justify an application for a site. However, there is no compelling evidence that the family group needs to reside at either the appeal site nor within the district area other than a desire to live close to the sea for health reasons.

47. In the event the appeal was dismissed, the appellant and her family group would not be able to return to the site to live. It would not provide them with the permanent base they require. However, they have not lived on the site since 2020 having stayed with friends. There is no firm evidence that a dismissal will lead to a roadside existence or cause them to move from where they are currently staying. However, the lack of a permanent base would not be in the best interests of the children, particularly the Molloy children who currently have no access to formal education.

Intentional Unauthorised Development

48. The Written Ministerial Statement (WMS) of December 2015 introduced a planning policy to make intentional unauthorised development a material consideration that would be weighed in the determination of planning applications and appeals. The Council has indicated that the use of the site, without the benefit of planning permission, amounts to intentional unauthorised development of the site. The appellant has not disputed that this is not the case.

49. The appellant has however argued that the WMS should be disregarded. In support of this position, I have been referred to an appeal decision[5] at Land rear of Kenwood, Green Lane, Chessington where an Inspector concluded that the WMSs should be disregarded given that the revised Framework is now the Government's statement of national planning policy.

50. Whilst the requirements of the WMS have not been incorporated into the latest revisions of the National Planning Policy Framework, the WMS has not been cancelled by the publication of either the 2018 or 2021 Framework nor has it been withdrawn. For this reason, whilst I acknowledge the Inspector's conclusions in the appeal to which I have been referred, I do not concur with that view. The WMS remains a relevant policy consideration. The unauthorised development of the site therefore weighs against the proposal.

Planning Balance

51. At the start of considering the issues in the planning balance I have borne in mind the duty placed on me within the Public Sector Equality Duty under section 149 of the Equality Act 2010. I have also considered the best interests of the children in the family group that intend to occupy the site as a primary consideration.

52. The proposal would cause significant harm to the character and appearance of the area and would lead to the loss of a modest area of the highest quality BMV agricultural land. The other considerations do not amount to compelling and overriding planning reasons to justify the loss of the BMV. Together, I give these harms significant weight in the planning balance. The intentional unauthorised development of the site additionally weighs against the proposal.

53. In favour of the appeal, the appellant and her family group have a personal need for a settled base. The appellant's children are currently attending school and accessing health care although not from a permanent base. The Molloy family children, on the other hand, are not attending school. A permanent settled base would enable this to happen. The proposal would help advance equality of opportunity for these families. I attach significant weight to these considerations.

54. On balance, I am satisfied that the harm which would be caused by the development outweighs the other considerations to the extent that permanent planning permission should not be granted. A personal permission would give rise to similar harms that would be long-term in their effect and would also not justify the proposal.

55. However, it is also necessary to consider whether a time-limited permission could be granted. There is a case to do so in order that all the children have a secure and stable upbringing and education. However, both families are and have been residing elsewhere for a number of years, albeit the Molloy family stated they have moved around. I see no advantage in the appellant and her children relocating to the appeal site for a temporary period when her children are already in school.

56. It is not clear what the implications would be for the Molloy children if they were to move back to the appeal site for a temporary period. It may be possible for them to be enrolled in local schools. Nevertheless, I find that a

[5] APP/Z5630/W/17/3191630

temporary permission would not give them the permanent settled base nor the certainty they require.

57. I have had regard to the rights of the appellant under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998. Article 8 affords the right to respect for private and family life and home and the best interests of the children. It is a qualified right, and interference may be justified where that is lawful and in the public interest. The concept of proportionality is crucial.

58. On the basis that the family group has not been residing on the site since 2020, dismissing the appeal or granting a time-limited permission would not render them homeless. Nevertheless, they would not be able to form the stable family environment that they are seeking, which I recognise would amount to an interference with home and family life. However, the interference would be in accordance with the law and in pursuance of a well-established and legitimate aim: the protection of the character and appearance of the countryside and the BMV agricultural land.

59. I consider that the protection of the public interest cannot be achieved by means which are less interfering of the proposed occupants' rights. They are proportionate and necessary and hence would not result in a violation of rights under Article 8.

Conclusion

60. For the reasons set out above, I conclude that the appeal should be dismissed.

Rachael Pipkin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Brian Woods	Agent for the appellant, WS Planning & Architecture
Mr Peter Brownjohn	Agent for the appellant, WS Planning & Architecture
Ms C Delaney	Appellant
Mr J Molloy	Member of the appellant's family group
Mr Michael Francis	Member of the appellant's family group

FOR THE LOCAL PLANNING AUTHORITY:

Mr Rob Bailey	Development & Enforcement Manager
Ms Lisette Patching	Enforcement and CIL Team Leader

HEARING DOCUMENTS

HD1 Appeal Decision, New Acres, Spade Lane, Hartlip, Kent ME9 7TT (Ref: APP/V2255/W/20/3254539 & 3244340)

FOLKESTONE & HYTHE DISTRICT COUNCIL
PLANNING AND LICENSING COMMITTEE – 16 JANUARY 2024

Declarations of Lobbying

Members of the Committee are asked to indicate if they have been lobbied, and if so, how they have been (i.e. letter, telephone call, etc.) in respect of the planning applications below:

Application No:	**Type of Lobbying**
	.....
	.....
	.....
	.....
	.....
	.....
	.....
	.....

SIGNED: .....

Councillor Name (in CAPS) .....

When completed, please return this form to the Committee Administrator prior to the meeting.

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PLANNING AND LICENSING COMMITTEE

16th JANUARY 2024

SUPPLEMENTARY INFORMATION TO SCHEDULE OF APPLICATIONS

NO SPEAKERS

1. 23/1096/FH Land Adjoining Karibu, Coombe Wood Lane, Hawkinge, (Pages 15 - 30) CT18 7BZ

New single dwelling.

2. 23/1554/FH 29 Lancaster Drive, Hawkinge, Folkestone, CT18 7SW (Pages 31 - 42)

Incorporate the landscape buffer zone adjacent to property into a residential garden.

3. 23/1526/FH 31 Lancaster Drive, Hawkinge, Folkestone, CT18 7SW (Pages 43 - 54)

Incorporate the landscape buffer zone adjacent to property into a residential garden.

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