



Agenda

Meeting: **Planning and Licensing Committee**
Date: **22 June 2021**
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.

Due to current social distancing guidelines, only 6 seats are available for members of the public at meetings in the Council Chamber. These seats will be reserved for those speaking or participating at the meeting, and the remaining available seats will be given on a first come, first served basis. Members of the public are encouraged to view the meeting online if they are not to address the meeting.

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1. **Apologies for Absence**
2. **Declarations of Interest (Pages 5 - 6)**

Members of the committee should declare any interests which fall under

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the following categories:

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

3. **Minutes (Pages 7 - 10)**

To consider and approve, as a correct record, the minutes of the meeting held on 25 May 2021.

4. **Minutes of the Licensing Sub-Committee (Pages 11 - 14)**

To receive and note the minutes of the meeting held on 20 May 2021.

5. **THIS APPLICATION HAS BEEN DEFERRED - 20/1212/FH - Land rear of 2 Willop Close, Dymchurch, TN29 0HU (Pages 15 - 60)**

Erection of 2 three-bedroom dwellings and associated parking.

Please note, this application has been deferred to allow for a tree survey to be carried out.

6. **20/1356/FH - Hillboro, Sunnyside Road, Sandgate, Folkestone, CT20 3DR (Pages 61 - 88)**

Proposed 4no new dwellings and associated external areas within the curtilage of Hillboro (proposed to be demolished) and accessed from Sunnyside Road via a new private shared drive.

7. **21/0581 - Hawkinge Cemetery (former horticultural nursery), Aerodrome Road, Hawkinge, CT18 7AG (Pages 89 - 100)**

Erection of a steel frame machinery store and partial demolishment of existing stores.

8. **Without Planning permission or Listed Building Consent the Installation of a New Shop front in the Listed Building 31 - 33 High Street, Hythe, Kent CT21 5AD (Pages 101 - 118)**

This report considers the appropriate action to be taken regarding the unauthorised installation of a new aluminium framed shop front on this Grade II listed building. No Listed Building Consent or planning permission has been granted for this. The new shopfront has a detrimental impact on the Listed Building and on the Hythe, High Street & Vicinity Conservation Area and streetscene. This report recommends that a Listed Building Enforcement Notice and a planning Enforcement Notice be served requiring the removal of the new shop front and its replacement with a shopfront to match the one removed.

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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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Minutes

Planning and Licensing Committee

Held at: Council Chamber - Civic Centre Folkestone

Date: Tuesday, 25 May 2021

Present: Councillors Danny Brook, John Collier, Gary Fuller, Clive Goddard (Chairman), Mrs Jennifer Hollingsbee, Nicola Keen, Jim Martin, Philip Martin (Vice-Chair), Jackie Meade, Ian Meyers, Georgina Treloar and David Wimble

Apologies for Absence

Officers Present: Rob Bailey (Development Management Lead Specialist), Kate Clark (Case Officer - Committee Services), Ewan Green (Director of Place), Sue Head (Strategic Development Manager (Interim)), Sue Lewis (Committee Services Officer), Llywelyn Lloyd (Chief Planning Officer) and Helena Payne (Development Management Team Leader)

Others Present:

1. **Declarations of Interest**

Mr Geoff Mills made a voluntary declaration as the applicant for Item 6 on the Agenda was a member of a school governing body, for which he undertook clerking duties.

2. **Minutes**

The minutes of the meeting held on 21 April 2021 were submitted and approved. The Chairman's signature would be added to these minutes as approved.

3. **Y19/1492/FH - Nickolls Quarry, Dymchurch Road, Hythe, Kent, CT21 4NE**

Outline planning application accompanied by an Environmental Statement for a mixed use development comprising up to 650 no. residential dwellings employment development (Class E (g) use (former B1 uses) up to 15,000 sqm,

and / or care/extra care facilities up to 18,000 sqm), local centre (E use (former A1/A2/A3/A4/A5 uses) up to 1,150sqm; community/sports and leisure uses (up to 3,650sqm E, F.1 or F.2 uses), 14.02ha open space and site restoration including raising land levels with all matters reserved.

Mr Mark Brophy, a local resident addressed the meeting and spoke in favour of the application. He emphasised the need to build the replacement swimming pool, which he said the residents of Hythe had been promised, and that in addition, it is essential that the full scope of the Martello Lakes agreement is kept.

Ms Kate Holland, representing the agents acting for the applicant, spoke about the planning history of the site and the benefits of the application.

Proposed by Councillor David Wimble
Seconded by Councillor Philip Martin and

RESOLVED: That planning permission be granted subject to the conditions recommended by the Chief Planning Officer in his report and the applicant entering into a S106 legal agreement securing the following: a. 22% affordable housing; b. 25% of the serviced employment land being made available at the occupation of the 500th dwelling (over the 1,050 total) and marketed alongside an Employment Land Masterplan to be produced in consultation with the Council; c. A marketing review to be carried out at the same time, to assess the future viability of the employment land; d. Travel Plan monitoring fee of £5k; e. Transfer of the Sports and Leisure site if required by the Council; f. 2 years bus service contribution; g. Railway halt contribution; h. If care uses come forward on part of the employment land, the following contributions will be secured: I. Secondary education; II. Waste management; III. Healthcare and that delegated authority be granted 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.

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

4. **20/1282/FH - 6 St Denys Road, Hawkinge, CT18 7BU**

Erection of 3-bedroom house and 2 parking spaces.

Mrs Sharon Paine, a local resident, addressed the meeting and set out her reasons to why the application should be refused.

Mr Casey Wilson, the applicant's agent, spoke in support of the application and why it should be granted.

Proposed by Councillor David Wimble
Seconded by Councillor John Collier; and

RESOLVED: That planning permission be granted subject to the conditions recommended by the Chief Planning Officer in his report and that he be granted delegated authority to agree and finalise the wording of the conditions and add any other conditions that he considers necessary.

(Voting: 7 For; 5 Against; 0 Abstentions)

5. **20/0658/FH - 9 Lower Blackhouse Hill, Hythe, CT21 5LS**

Section 73 application for the removal/variation of conditions 2 (submitted plans) & 5 (the dwelling shall be single storey and no habitable space provided at first floor) for planning application Y15/0988/SH (Erection of a detached bungalow with off street parking).

Mr Steve Blackwell, a local resident, addressed the meeting and set out concerns related to ensuring that the first-floor loft space can only be used for storage and maintenance, and never for residential purposes.

Proposed by Councillor Mrs Jenny Hollingsbee
Seconded by Councillor Philip Martin and

RESOLVED :

That planning permission be granted subject to the conditions recommended by the Chief Planning Officer, and that he be granted delegated authority to agree and finalise the wording of the conditions and add any other conditions that he considers necessary,

(Vote: 8 For; 2 Against; 2 Abstentions)

6. **Lobbying Forms**

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Minutes

Licensing Sub-Committee

Held at:	Council Chamber - Civic Centre Folkestone
Date	Thursday, 20 May 2021
Present	Councillors John Collier, Philip Martin and David Wimble
Apologies for Absence	None
Officers Present:	Kate Clark (Case Officer - Committee Services), Ewan Green (Director of Place), Tim Hixon (Legal Specialist), Sue Lewis (Committee Services Officer), Jack Pearce (Legal Trainee) and Briony Williamson (Licensing Specialist)
Others Present:	The licence holder, her son and representative in respect of the review of the Mace premise licence The applicant in respect of the Private Hire Driver's Licence

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

Proposed by Councillor John Collier
Seconded by Councillor Philip Martin and

Resolved: That Councillor David Wimble is Chairman for the meeting.

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

2. **Declarations of interest**

There were no declarations of interest.

3. **Exclusion of the public**

Proposed by Councillor Philip Martin
Seconded by Councillor John Collier and

Resolved:

To exclude the public for the following item of business on the grounds that it is likely to disclose exempt information, as defined in

paragraph 1 of Part 1 of Schedule 12A to the Local Government Act 1972 –

‘Information relating to any individual.’

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

4. An application for a Review of a Premises Licence in respect of: Mace, 129A Canterbury Road, Folkestone, Kent, CT19 5NR

This report outlines the application made by Kent Police, for a Review of the Premises Licence at a corner shop in Folkestone following enforcement action taken by them. The Licensing Sub-Committee must determine the outcome for the application.

Proposed by Councillor David Wimble
Seconded by Councillor John Collier and

Resolved:

Having given serious consideration to revoking the licence in accordance with the Home Office regulations and the Licensing Act 2003 and having heard the representation of PC Stephens and the Licence Holder the committee does not consider in these circumstances it to be a proportionate response to revoke the licence in its entirety and nor for it to be suspended.

The committee do however consider that the conditions proposed by PC Stephens in his report, with the exception of the suspension, are entirely proportionate and will serve to assist the police and the licensing authority in ensuring the licensing objectives are not undermined.

For these reasons the committee imposes the following conditions on the licence:

- **Pathman Maheswaran must not enter the premises at any time the premises are open to the public.**
- **A personal licence holder must always be working at any time the premises are open to the public.**
- **CCTV conditions to be added:**
 - i) **CCTV will cover exits, entrances, public areas of the premises, store room and till**
 - ii) **Lighting inside and out must be sufficient to compliment the quality of the camera images**
 - iii) **CCTV must provide good quality images and be capable of visually confirming the nature of the crime committed**
 - iv) **The premises licence holder/premises manager/designated premises supervisor will have a working knowledge of the**

operation of the CCTV system including how to download data when requested by Police, Local Authority Enforcement Officer or Trading Standards

- v) CCTV images which can identify individuals to be handed over to the police where it is necessary to do so for the prevention or detection of crime; for the prosecution or apprehension of offenders; or where the disclosure is required by law**
- vi) The system must be of a standard that image quality is not lost when making the copy. If the format is non-standard, software will be supplied to ensure that the data can be replayed by the police on a standard computer**
- vii) All equipment shall have constant time/date generation, which must be checked for accuracy daily**
- viii) In the event of a system malfunction, the Manager or Premise Licence Holder or Designated Premise Supervisor must immediately notify the Licensing Authority and the Police Licensing Department. Details of this malfunction must be recorded in the premises incident book. Arrangements for its repair must be made without delay. The Licensing Authority and Police Licensing Department must be notified when the system is again operational.**

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

5. 11am - Review of whether a licence should be granted to a new Private Hire driver.

Review of whether a licence should be granted to a new Private Hire driver.

Proposed by Councillor David Wimble
Seconded by Councillor Philip Martin and

Resolved: To grant a private hire driver's licence.

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

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Agenda Item 5

DCL/21/04

Application No: 20/1212/FH

Location of Site: Land rear of 2 Willop Close, Dymchurch, TN29 0HU

Development: Erection of 2 three-bedroom dwellings and associated parking.

Applicant: Mr J. Jones

Agent: RDA Architects, Evegate Park Barn, Smeeth, Kent, TN25 6SX.

Officer Contact: Ross McCardle

SUMMARY

This application seeks planning permission for the erection of two detached dwellings on land to the rear of existing houses at Willop Close, Dymchurch. Previous Planning applications at this site have been refused on the grounds of flood risk. However - due to the upgrading of the sea defence works, the site is now at lesser risk and considered to be safe under the exceptions test. In addition to this, additional information has been submitted to demonstrate that the sequential test can be passed. The development is not likely to give rise to any serious harm to local visual, residential, or highway amenity, and the provision of two well-designed houses would contribute towards meeting the Council's five-year housing land supply. The application is therefore recommended for approval.

RECOMMENDATION:

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.

1. INTRODUCTION

1.1. The application is reported back to the planning committee after having been presented to the 23rd March meeting, and deferred by Members for further information in regards site drainage. The printed minutes state:

RESOLVED

That consideration of this application be deferred in order to allow discussions to take place with the applicants on an additional planning condition being imposed, which would require the development to be served by pumped drainage, discharging to the Willop Basin.

(Vote: 7 For, 1 Against; 4 Abstentions)

1.2. The application was originally called-in to committee by Cllr. Treloar.

2. BACKGROUND

2.1. The application seeks planning permission for the erection of two dwellings on land to the rear of 1 and 2 Willop Close, Dymchurch. A detailed description of the proposed development (including drawing extracts) and the site and its surroundings (including photographs), the relevant planning history for the site, a list of consultation responses,

and a list of the relevant planning policies are set out in full within the original report to committee, attached here as **Appendix 1**.

- 2.2. As set out above, Members voted to defer determination of the application from the March meeting to enable officers to explore with the applicant the potential for additional conditions to be attached, securing pumped surface water drainage from the site to discharge within the Willop Basin. This matter is discussed in detail below.

3. FURTHER CONSULTATION RESPONSES

- 3.1 Five further letters of objection have been submitted since the application was deferred at the March committee meeting; including four from the same email address. They raise the following issues not already covered within the original committee report:

- The developer is being given unfair advantage;
- *“The developer and architect have constantly changed the measurements in this development...”* [Head of Planning comment: the drawings have not been amended throughout the course of the application];
- The planning committee previously visited the site and refused permission for a house on the site (presumably in 1984 or 1990, as set out in the planning history at section 4 of Appendix 1);
- The site is due a 1 in 100 year flood in approximately 20 years’ time [HoP comment: that is not how flood risk probability works. The likelihood of a serious flood in any one year is 1 in 100];
- This is a test case to allow wholesale development on the marsh;
- Boundary planting would interfere with underground water storage units;
- Overlooking and loss of privacy would be contrary to the Human Rights Act;
- Is Willop Close a private road?
- Development here would be contrary to footnote 6 of the NPPF [HoP comment: footnote 6 excludes areas at risk of flooding from the *automatic* presumption in favour of sustainable development];
- No contaminated land assessment has been provided [HoP comment: this is not a requirement of this application, and Members are directed to the contamination consultant comments at 5.1 of the original report, where it is noted they have no objection]; and
- A similar development at nearby 24 Hythe Road (ref. Y15/0774/SH) was refused permission earlier this year due to unacceptable flood risk.

- 3.2 Responses are available in full on the planning file on the Council’s website:

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

4. APPRAISAL

- 4.1 The principle of development, scale, design, highways, and local amenity are discussed within the original report attached at Appendix 1. Members voted that the item be deferred solely for the reason set out at 1.1 above.

4.2 Therefore, and in light of the above, the issues for consideration under this report are:

- a) Comparison to the recommendation for refusal at 24 Hythe Road;
- b) Flood risk;
- c) Site drainage; and
- d) A condition to require pumped drainage.

a) Comparison to the recommendation for refusal at 24 Hythe Road

4.3 Application ref. Y15/0774/SH sought planning permission for the erection of a detached two-storey house at 24 Hythe Road, approximately 1 mile to the west of the current application site. Along with reasons relating to design and impact on ecology that application was refused (in April this year) on the grounds of flood risk:

The application site is located in an area at moderate/significant risk of tidal flooding as identified in the Shepway District Council Strategic Flood Risk Assessment, taking into account climate change to year 2115 and flood zones 2 and 3. The application proposes to introduce one dwelling on the site, increasing the risk to harm to life in the event of a flood, placing life and emergency services at greater risk. As such the application is unacceptable in flood risk terms and fails the exceptions test as the provision of one additional dwelling would not provide any wider sustainability benefits and is therefore contrary to the NPPF and policy SS3(c) of the Shepway Core Strategy Local Plan 2013.

4.4 These are though two materially different sites and, perhaps crucially, the submitted Flood Risk Assessment for 24 Hythe Road identified that the development proposed there would *increase* flood risk off-site (i.e. increase the risk to surrounding properties), which is wholly contrary to the requirements of the NPPF, the Sequential Test, and the Council's adopted policies, as identified in the reason for refusal. The FRA for Willop Close sets out that there will be no increase to flood risk as a result of the proposed development.

4.5 A further difference is that the finished floor levels at Hythe Road would not have been able to meet the Environment Agency's minimum requirements for sleeping accommodation. The FFL needed to be raised by a minimum of 300mm from what was shown on the submitted drawings, but doing so would have given rise to unacceptable impacts upon the adjacent listed building. Sleeping accommodation would therefore have been at risk in the event of a flood.

4.6 The two developments are therefore not comparable, and the refusal of permission for a new dwelling at 24 Hythe Road should have no bearing on this application for development at Willop Close.

b) Flood risk

4.7 Additional objections have raised concern that the development would increase flood risk on neighbouring land.

- 4.8 The issue of flood risk was considered at paragraphs 7.2 to 7.12 (inclusive) of the original report, set out at Appendix 1. To address this particular concern, however: the submitted Flood Risk Assessment (prepared by Herrington Consulting), at paragraph 6.1, notes the potential for displacement of floodwater onto neighbouring land and sets out that *“where development is proposed in tidal floodplains such as is the case here, it is generally accepted by the Environment Agency that raising the ground or building on the floodplain is unlikely to impact on maximum tidal levels.”* I.e. where the source of flooding is tidal (wave overtopping in this instance) the act of raising the building will not affect the water levels on neighbouring land.
- 4.9 I would reiterate that the Environment Agency, as set out within the original report, do not object to this development on the grounds of flood risk and they have not identified this scheme as having potential to increase off-site flood risk.
- 4.10 I would also reiterate that, as set out at paras. 7.10 and 7.11 of the original report (appended), the Council’s Strategic Flood Risk Assessment does not show this site to be at “extreme” risk. (The SFRA is carried out for the three different character areas (marsh, downs, and urban areas) individually in recognition of the different circumstances each of these zones faces; a single District-wide SFRA would result in no development on the marsh at all, which is contrary to local and national policies in regards sustainable development, helping communities grow, and accommodating future growth/needs. The local-level SFRA which has been carried out and adopted within the Local Plan does not preclude residential development in this area as a blanket restriction.) Furthermore, and as set out at para. 7.5 of the original report, there are no other locally-available sites (i.e. within the specifically assessed character area) that officers can direct the applicant to instead of this site. The sequential and exceptions tests have been met, and I do not consider it would be reasonable to refuse permission on the basis of flood risk in this instance.
- 4.11 Finally I would note that the applicant and agent have confirmed the proposed dwellings will be set on raised “beam and block” foundations, which create a void below the ground floor level allowing any flood water to pass beneath the property without impedance. (This does not affect the overall height of the buildings as shown on the proposed drawings.) The agent has also stressed that this method of construction means that there is no need for any infill / backfill of the site, as has been suggested by local objectors.
- 4.12 I am therefore satisfied (further to my conclusions within the original report) that the development is acceptable in flood risk terms.

c) Site drainage

- 4.13 At the March committee meeting it was clear that Members were particularly concerned about surface water drainage within the site, and the impact of the proposed houses upon groundwater levels.
- 4.14 The applicant’s flood/drainage consultant has confirmed the existing surface water run-off rate for the site is 1.8 l/s/ha (5.8 l/s/ha during a 1 in 100 event). They also confirm that this will rise to 2 l/s/ha as a result of the development, and after connection to the public sewer (a connection point sits within the access road immediately to the south-east of the site); an increase of 200ml s/ha. The site extends to approximately 0.08ha, meaning a real terms increase of 16ml per second. This is not a significant amount, is

not likely to lead to significant on or off site impacts, and would in any case be addressed by conditions relating to flooding and drainage set out below.

- 4.15 Members also raised concern in regards the weight of the proposed houses and the impact thereof upon groundwater levels (“bulb pressure”). The applicant engaged a geotechnical engineer to review the plans, and they comment as follows (my emphasis in **bold**):

Based on online British Geological Survey records, the geology at Willop Close is indicated to be Tidal Flat Deposits (Sand) overlying Tunbridge Wells Sand Formation at depth, with storm beach deposits expected to the seaward side of the main road.

A 16m deep borehole log, with detailed descriptions of the expected soil profile, is available for the nearby Southern Water Pumping Station and it is reasonable to expect the ground conditions at Willop Close will be similar as the ground conditions are generally quite consistent in this area of the Romney Marsh.

A typical profile in this area, as demonstrated by the borehole at the pumping station, would be similar to the following sequence:

- *Ground Level - 0.55mbgl MADE GROUND consisting of re-worked silty fine to coarse SAND*
- *0.55m - 2.10m Stiff grading with depth to firm and becoming soft brownish grey silty sandy CLAY with some subrounded gravel of flint*
- *2.10m - 4.50m Soft or firm sandy silty CLAY with a little gravel of flint*
- *Below 4.50m Loose, gradually improving with depth, to medium dense silty fine and medium SAND*

A well-established approach to foundation construction for low-rise housing on the above profile, and in the overall Romney Marsh area in general, is to adopt either strip, pad or raft foundations with designs based on imposing low bearing pressures on the underlying strata.

Typically, the allowable bearing capacity assumed for such designs is assumed to be 50KN/m² and this agrees with commonly used geotechnical guidance for the design of foundations on soft or loose soils, including NHBC Chapter 4.4 Foundations: Strip & Trench Fill Foundations.

The construction approach on Romney Marsh is often further enhanced by ensuring that the underside of the foundations is placed at relatively shallow depth within the naturally occurring stiff or firm 'crust' commonly present across the marsh. This 'crust' overlies soft layers which are typically encountered at around 1.2m to 1.5m below existing ground level.

Final design of these foundations should be subject to review based upon the findings of a geotechnical site investigation. Ideally, the investigations would be carried out under the supervision of a geotechnical engineer with experience of the local conditions.

DCL/21/04

We are unaware of any sites on Romney Marsh where the foundation design approach described above has led to detrimental changes in the groundwater conditions. Nor would we expect any significant problems to occur because the foundations are bearing onto strata which is above the water table. In addition, the assumed low bearing capacity also ensures that the imposed load on the underlying soils is minimised. Furthermore, the load is effectively spread out with increasing depth so that it is reduced to negligible at relatively shallow depth.

A final point to add is that the uppermost 3m to 4m is also generally quite cohesive with relatively low permeability and this further helps to minimise any changes to the groundwater flow as a result of the nominal changes in pressure caused by new low-rise buildings imposing low bearing pressures.

- 4.16 I note that the geotechnical engineer refers to a need for final foundation design to be reviewed further to on-site investigations. This is secured by condition 3. below. I am satisfied, subject to the imposition of this condition, that the weight of the proposed buildings would not affect local groundwater levels.
- 4.17 Given the above, the development is not reliant on the importation of material to the site. They will be set upon block and beam foundations that require no infill, distribute the weight of the buildings appropriately (as above), and allow water to flow freely under the structure in the event of a flood.
- 4.18 I note local objection in regards new planting / soft landscaping interfering with below-ground cellular storage, but this can be prevented through the use of root barriers surrounding any storage cells. Roots can be directed downwards or around obstacles, and such methods are common on projects involving underground utility pipes.

d) A condition to require pumped drainage

- 4.19 As at 1.1 above: Members voted to defer the item for officers to explore whether the applicant would accept a condition to secure pumped drainage from the site, with a suggestion that this should discharge into the Willop Basin.
- 4.20 I consider that the above details demonstrate that a pumped drainage system will not be necessary; the site is not considered to be at unacceptable flood risk, surface water drainage rates will be affected by 0.2 l/s/ha, and the method of construction will not place an unacceptable degree of pressure on groundwater. It is therefore not evident that a pumped drainage system is **necessary** or **relevant to the development**.
- 4.21 A pumped drainage system discharging to the Willop Basin would require crossing third-party land, the most direct route being through the garden of 108 Hythe Road. It is not possible to secure works through third party land by condition, as this requires the applicant/developer to secure something that they have no right to do (i.e. works on someone else's land). Such a condition would therefore not be **reasonable**.
- 4.22 The NPPG (at para. Paragraph: 003 Reference ID: 21a-003-20190723) states:

Paragraph 55 of the National Planning Policy Framework makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

1. *necessary;*
2. *relevant to planning;*
3. *relevant to the development to be permitted;*
4. *enforceable;*
5. *precise; and*
6. *reasonable in all other respects.*

4.23 For the reasons above reasons the applicant has refused a condign to this affect and I consider that a condition requiring it would is unnecessary and therefore fails the tests.

Environmental Impact Assessment

4.24 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

4.25 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. There is no CIL requirement for this development.

4.26 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. *The CIL levy in the application area is charged at £x per square metre for new residential floor space with the exception of the x No. affordable / self-build housing units which are exempt. / For new business floor space the levy is charged at £x per square metre/This application is not liable for the CIL charge as it is a change of use and would not create any additional floor space.*amend/delete as appropriate.

Human Rights

4.27 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

4.28 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

4.29 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.

5. CONCLUSION

8.1 This application seeks planning permission for the erection of two houses on land to the rear of 1 and 2 Willop Close, Dymchurch. The site is considered to be a sustainable urban location within the defined built up area boundary, where the principle of residential development is generally acceptable. While local objections to the proposals are noted the scheme is considered to be acceptable in terms of scale, design, amenity impacts, and highway safety and convenience, and there have been no objections from any statutory consultees.

8.2 While Members deferred the item for further consideration in regards site drainage, I am satisfied that there is no evidence to suggest that the development would give rise to unacceptable impacts on either surface water, ground water, or flood risk either on- or off-site.

8.3 The development is considered to be acceptable, and is therefore recommended for approval subject to the conditions set out below (subject to the Chief Planning Officer's delegated authority to agree and finalise the wording of the conditions and add any other conditions that he considers necessary).

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 be granted subject to the following conditions 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.

Conditions:

Time limits

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.

Drawings

2. No development shall take place other than in complete accordance with drawings (all prefaced 20.128) 03 rev. P, 04, 05, 06, 07, and 08, and the submitted Herrington's Flood Risk Assessment.

Reason: For the avoidance of doubt.

Pre-commencement

3. No development shall take place until the design and specification for the foundations of the dwellings hereby approved has been submitted to and approved in writing by the Local Planning Authority. The development shall proceed wholly in accordance with the approved details.

Reason: In the interests of preventing groundwater flooding

4. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the District Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i. the parking of vehicles of site operatives and visitors
 - ii. loading and unloading of plant and materials
 - iii. storage of plant and materials used in constructing the development
 - iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v. wheel washing facilities
 - vi. measures to control the emission of dust and dirt during construction
 - vii. a scheme for recycling/disposing of waste resulting from demolition and construction works

Reason: In the interests of the amenities of the area and highway safety and convenience.

5. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved in writing by the District Planning Authority.

Reason: To ensure that features of archaeological interest are properly examined and recorded.

6. (1) 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.

(2) 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:

(i) 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).

(3) If investigation and risk assessment shows that remediation is necessary, 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 shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development. 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.

(4) Prior to commencement of development, a verification report demonstrating completion of the works set out in the approved remediation scheme and the effectiveness of the remediation shall be 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.

(5) In the event that, at any time while the development is being carried out, contamination is found that was not previously identified, it shall be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall be undertaken and where remediation is necessary a remediation scheme shall be prepared. The results shall be submitted to the Local Planning Authority. 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.

7. 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 District Planning Authority, and works shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity.

8. No development shall take place until a tree survey, carried out in accordance with BS5837:2012, and demonstrating how the TPO Ash trees close to the western site boundary will be accommodated within the scheme and protected during development (including a tree survey schedule, tree constraints plan, arboricultural assessment and method statement, tree protection plan, and shade pattern arcs), has been submitted to and approved in writing by the Local Planning Authority. Upon approval development shall be carried out in accordance with the agreed details.

Reason: To ensure the trees are adequately protected and retained.

9. 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 District 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, hard surfacing materials, and an implementation programme.

DCL/21/04

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

10. No development beyond laying of foundations shall take place until details have been submitted to and approved in writing by the Local Planning Authority for the installation of a High Speed wholly Fibre broadband To The Premises (FTTP) connection to the dwellings hereby permitted. Following approval the infrastructure shall be laid out in accordance with the approved details and at the same time as other services during the construction process, and be available for use on the first occupation of the dwellings unless otherwise agreed in writing by the Local Planning Authority (where supported by evidence detailing reasonable endeavours to secure the provision of FTTP and alternative provisions that been made in the absence of FTTP).

Reason: To ensure that the new development is provided with high quality broadband services.

11. No development beyond the construction of foundations shall take place until details of how the development as a whole will reduce carbon emissions by a minimum of 10 percent above the Target Emission Rate, as defined in the Building Regulation for England approved document L1A: Conservation of Fuel and Power in Dwellings, have been submitted to and approved in writing by the Local Planning Authority. Upon approval the measures shall be implemented as agreed and thereafter retained and maintained in perpetuity.

Reason: To support the transition to a low carbon future through the use of on-site renewable and low-carbon energy technologies.

During development

12. No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:

Monday to Friday 0730 – 1900 hours, Saturdays 0730 – 1300 hours unless in association with an emergency or with the prior written approval of the District Planning Authority.

Reason: In the interests of residential amenity.

Flooding and drainage

13. No development beyond the construction of foundations shall take place until full details of the method of disposal of foul and surface waters have been submitted to and approved by the District Planning Authority. The approved details shall be implemented before the first use of the development hereby permitted.

Reason: In order to prevent pollution of water supplies.

DCL/21/04

14. No development shall take place until a detailed surface water drainage / management strategy (including proposal for long-term maintenance and management of any on-site SUDS) has been submitted to and approved in writing by the Local Planning Authority. The strategy shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site. On approval the scheme shall be implemented as agreed and thereafter maintained in perpetuity.

Reason: To ensure the site is properly drained and to ensure the development does not exacerbate the risk of on/off site flooding.

15. The development shall be carried out in accordance with the submitted flood risk assessment (Herrington Consulting FRA updated September 2020) and the mitigation measures it details:

- Finished floor levels shall be set no lower than 3.44m above Ordnance Datum (AOD);
- All sleeping accommodation to be set on the first floor above 3.74m ODN;
- Flood risk resilience measures outlined in the FRA (section 7.3) shall be incorporated into the dwellings wherever practicable.

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: To minimise risk in the event of a flood.

Ecology and landscaping

16. Within six months of development commencing, details of how the development will enhance biodiversity will be submitted to, and approved in writing by, the local planning authority. This includes the planting of native species and the provision of bird/bat boxes. The approved details will be implemented as agreed and thereafter retained.

Reason: In the interest of enhancing biodiversity.

17. 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 District Planning Authority.

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

18. 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

DCL/21/04

and species as may be agreed in writing with the District Planning Authority, and within whatever planting season is agreed.

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

Highways and parking

19. The vehicle parking spaces shown on the approved drawings shall be kept available for such use at all times 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 so shown or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling(s) hereby permitted.

Reason: Development without adequate provision for the parking of cars is likely to lead to car parking inconvenient to other road users.

20. Prior to the first occupation of any dwelling hereby permitted suitable Electric Vehicle Charging ductwork capable of receiving the underlying infrastructure for a future Electric Vehicle Charging point to serve each dwelling shall have been installed, details of which shall have been submitted to and agreed in writing by the Local Planning Authority prior to installation. The ductwork channelling shall thereafter be made available to the individual or company responsible for the long term governance and maintenance of the car parking area, enabling the installation of Electric Vehicle Charging Infrastructure as and when demand from residents arises.

Following installation the charging points shall thereafter be retained available in a working order by the respective owners / individual or company responsible for long term governance.

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

Amenity

21. No additional windows, doors, voids or other openings shall be inserted, placed or formed at any time in the first floor flank walls of the dwellings hereby permitted.

Reason: To prevent the overlooking of adjoining properties and to safeguard the privacy of their occupiers.

22. Upon completion, no further development, whether permitted by Classes AA or B 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) or not, shall be carried out.

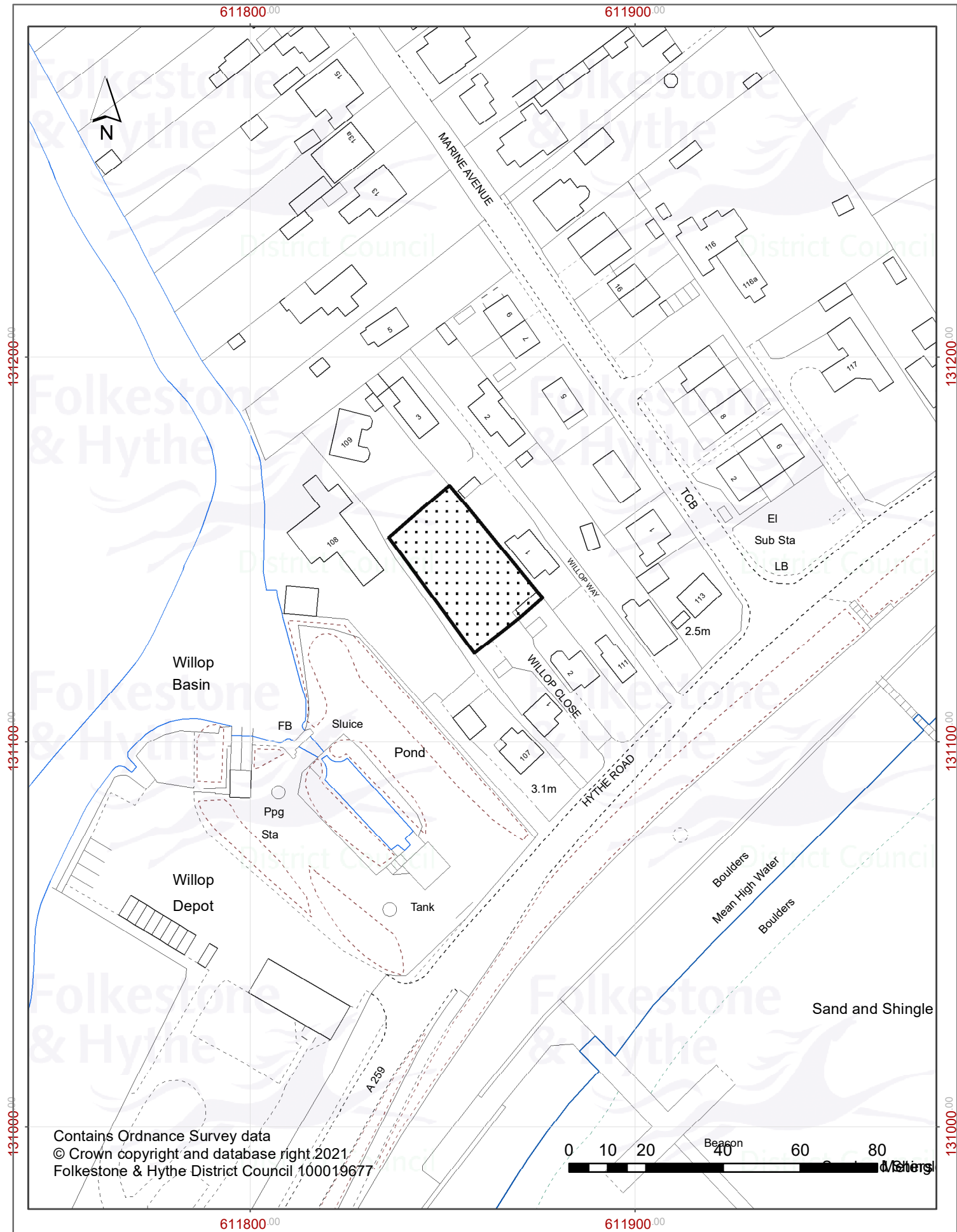
Reason: In the interests of the amenities of the area.

Informatives:

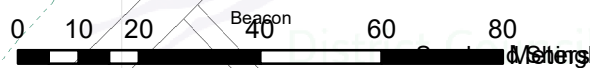
1. The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended (section 1), it is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this Act. Trees and scrub are present on the application site and are assumed to contain nesting birds between 1st March and 31st August, unless a recent survey has been undertaken by a competent ecologist and has shown that nesting birds are not present.

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20/1212/FH
Land rear 2 Willop Close
Dymchurch



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Folkestone & Hythe District Council 100019677



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Application No: 20/1212/FH

Location of Site: Land rear of 2 Willop Close, Dymchurch, TN29 0HU

Development: Erection of 2 three-bedroom dwellings and associated parking.

Applicant: Mr J. Jones

Agent: RDA Architects, Evegate Park Barn, Smeeth, Kent, TN25 6SX.

Officer Contact: Ross McCardle

SUMMARY

This application seeks planning permission for the erection of two detached dwellings on land to the rear of existing houses at Willop Close, Dymchurch. Planning permission was previously refused on the grounds of flood risk but, further to additional information being submitted to demonstrate that the sequential test can be passed and the upgrading of the sea defence works, the site is now at lesser risk as development and considered to be safe under the exceptions test. The development is not likely to give rise to any serious harm to local visual, residential, or highway amenity, and the provision of two well-designed houses would contribute towards meeting the Council's five-year housing land supply. The application is therefore recommended for approval.

RECOMMENDATION:

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.

1. INTRODUCTION

1.1. The application is reported to Committee because it has been called in by Cllr Treloar.

2. SITE AND SURROUNDINGS

2.1. The application site comprises a parcel of overgrown land to the rear of 1 and 2 Willop Close, Dymchurch.

2.2. The site is roughly rectangular, measures a maximum of approximately 38m deep x 22m wide, and is enclosed on all sides by the boundary fences of existing dwellings; 1 and 2 Willop Close to the southeast, 108 Hythe Road to the west and southwest, 109 Hythe Road to the north, and 1 and 3 Willop Way to the east and northeast. (A site location plan is attached to this report as **Appendix 1.**)

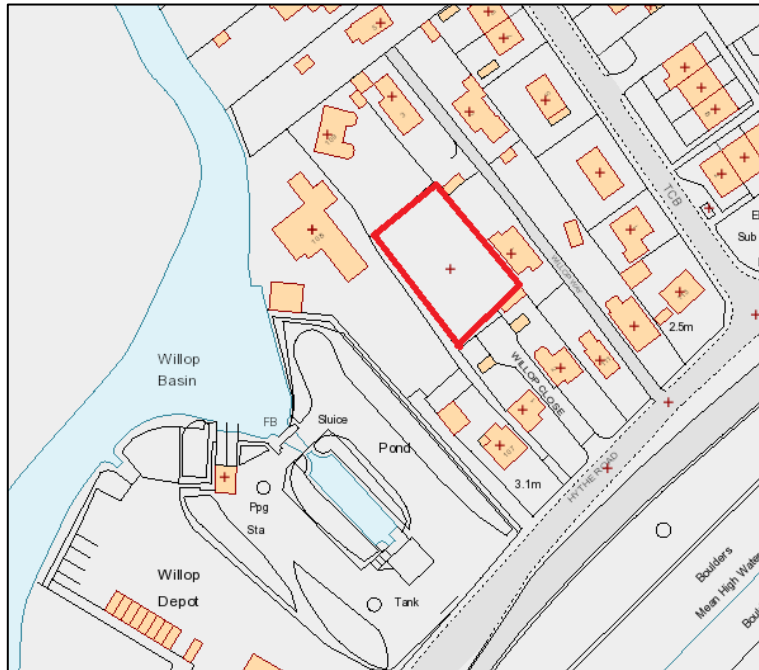


Fig. 1 – Map of local area with approximate outline of site

- 2.3. The land is enclosed by a close-boarded timber fence and has been left undisturbed for some time, with brambles, scrub growth, and a number of small (seemingly self-seeded) trees dotted across it. Land levels drop down from Hythe Road to the site, but then rise gently towards the centre of the site so that it forms a noticeable higher point within the immediate (generally low-lying) landscape.
- 2.4. The surrounding properties are of a mix of types and designs, including a small bungalow at 107 Hythe Road, contemporary detached houses at 1 and 2 Willop Close, and detached post-war prefab style bungalows on Willop Way. This very mixed character is reflective of this part of the district, and Marine Avenue (to the east) also shows a variety of house types, designs, and ages.
- 2.5. The Willop Sewer and Willop Basin run approximately southwest to northeast along the rear of neighbouring properties, and the Willop Depot and pumping station – to the west – are Environment Agency facilities associated with local drainage. It is therefore not surprising that the site lies within flood zone 3, and is marked as being at significant risk in the Council's Strategic Flood Risk Assessment to 2115.
- 2.6. As regards other designations: the site is within the defined built up area boundary; the beach (on the other side of the sea wall) is a Special Protection Area; 2 Ash trees within the garden of 108 Hythe Road (near to the western site boundary) are covered by TPO no.18 of 2020; the site is within an area of archaeological potential; close to a local landscape area (beyond no.108, to the northwest); and within CIL residential zone B (£56.99 per sqm).



Photo 1: 1 and 2 Willop Close with site access between.



Photo 2: Site access



Photo 3: Within the site (white bungalow is 1 Willop Way)



Photo 4: Rear of 1 and 2 Willop Close



Photo 5: Willop Way, facing towards road/ rear of 1 Willop Way.



Photo 6: Rear garden of 1 Willop Way, facing towards application site.



Photo 7: Rear garden of 118 Hythe Road, facing existing garage to rear of 1 Willop Close.

3. PROPOSAL

- 3.1 Full planning permission is sought for the erection of 2no. three-bed houses.
- 3.2 The properties would be set towards the rear of the plot, approximately 11.3m from the rear boundary fence, with a parking/turning area to the front accessed via the existing roadway running between 1 and 2 Willop Close. Each plot would be roughly 11m wide.
- 3.3 The houses would measure approximately 7.6m wide x 10m deep (maximum, including front porch) x 8.2m tall to the ridge, and would be of a relatively simple contemporary design featuring facing brick at ground floor and vertical cladding at first floor. The houses would be set on a high point within the site, and feature eaves that are lower at the front than the rear, with the rooms at the rear set into the roof space to keep overall ridge height low. This has the effect of the houses appearing two-storey from the front and 1.5 stories from the rear.
- 3.4 Internally the houses would provide a kitchen, utility room, WC, and open-plan living/dining room at ground floor; and three bedrooms, bathroom, and en-suite at first floor/within the roof space. Internal floor levels rise up three steps from the entrance hall to the living space (a flood risk mitigation measure) resulting in the kitchen window (within the front projecting bay) being taller than the utility room window (to the side of the front door).
- 3.5 Vehicle parking would be provided to the front of the units, with two spaces per dwelling positioned either side of a turning head within the centre of the site, and with soft landscaping surrounding this. Each property would have a rear garden measuring approximately 11m deep, there would be approximately 2m from the outer flank wall of each property to the side boundaries (with 1 Willop Close and 108 Hythe Road), and a 2m gap between the two proposed houses.



Fig.2 – Proposed front elevation



Fig. 3 – Proposed rear elevation

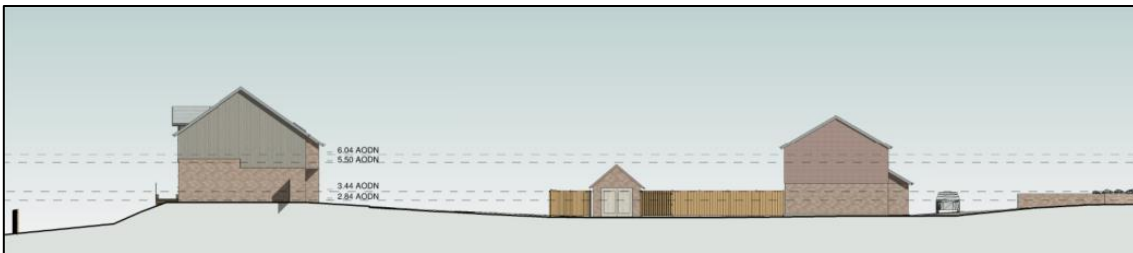


Fig. 4 – Proposed side elevation and site section (1/2 Willop Close to right, proposed house to left)

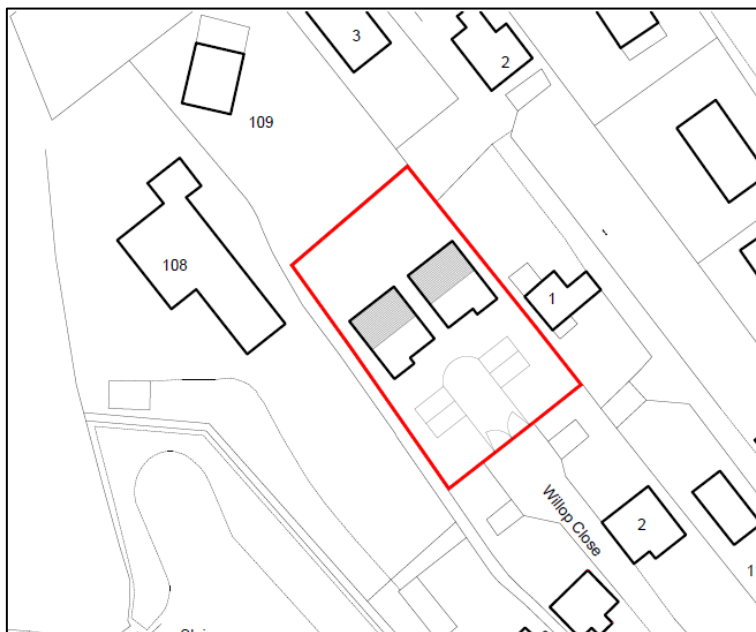


Fig. 5 – Proposed site layout

3.6 The following reports were submitted by the applicant in support of the proposals:

Design & Access Statement: sets out the planning history of the site, the design concepts, and key considerations that have gone into design such as flooding, sun path, etc. It concludes that the development would be appropriate in terms of its scale, design, and general impacts on the local area.

Flood Risk Assessment: this is a full technical assessment undertaken by Herrington’s Consulting. It sets out the physical and planning context of the site, explores the background of flood risk and flood protection in the area with a site-specific focus, and examines likely risks arising from the development and mitigation measures that can be put in place. It ultimately concludes that the development is acceptable in flood risk terms, with reference to the Council’s Strategic Flood Risk Assessment (SFRA), subject to the implementation of a suitable surface water drainage scheme and flood mitigation measures within the new dwellings (such as raised internal floor levels, and dry proofing / flood resistant construction).

Archaeological desktop assessment: evaluates the history and evolution of the area and concludes that there is probably low potential for any archaeological remains to be found on the site.

4. RELEVANT PLANNING HISTORY

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

84/0513/SH	Outline application for demolition of existing building and erection of three chalet bungalows, and alterations to access.	Refused
84/0852/SH	Outline application for demolition of existing building and erection of two dwellings and garages.	Approved
87/1111/SH	Erection of a house.	Approved
87/1112/SH	Erection of a house.	Approved
90/0660/SH	Outline application for erection of pair of semi-detached chalet bungalows.	Refused
90/1024/SH	Outline application for erection of a house.	Refused
Y16/1221/SH	Erection of 2no. two-storey dwellings and associated parking.	Refused

4.2 The most recent application, ref. Y16/1221/SH was refused on the grounds that the site was identified at being at extreme risk of flooding under the Council’s SFRA, and the sequential test identified that there were other sites available for development at lower risk of flooding, in preference to the application site.

5. CONSULTATION RESPONSES

5.1 The consultation responses are summarised below.

Consultees

Dymchurch Town/Parish Council: object to the application and request that it be determined at planning committee. They raise the following summarised concerns:

- Local flooding and drainage issues will be exacerbated by additional buildings;
- The site originally contained a pond which was filled in by the previous developer;
- There are historic issues of water waste and sewerage in the area, which additional dwellings will add to;

- Additional vehicle movements and impact upon highway safety and amenity;
- Little information regarding the height of the dwellings;
- Impact on privacy and amenity of neighbouring residents; and
- Overlooking of neighbouring properties.

KCC Ecology: no objection subject to a standard condition to secure ecological enhancements, and an informative regarding breeding birds.

KCC Archaeology: no objection subject to a standard condition to secure a programme of archaeological work.

Natural England: has no objection.

Environment Agency: the EA has no objection subject to a standard finished floor levels condition as set out below, which will ensure that the development passes the Exceptions Test. They note, however, that the site is within flood zone 3 and that the Council needs to be satisfied that the development passes the Sequential Test, which aims to steer development to areas at lowest probability of flooding, and the Agency accepts that the Hythe flood defences greatly reduce the risk of a breach.

Southern Water: suggest there are no public sewers in the area to drain surface water from the development, and suggest that alternative means need to be considered. CPO comment – the development would connect to main drainage.

Environmental Protection Officer: has no objection subject to the Council's standard land contamination condition, as set out below.

Contamination consultant: has no objection subject to the Council's standard land contamination condition, as set out below.

Arboricultural Manager: has no objection subject to submission of a pre-development tree survey indicating how the TPO Ash trees close to the site boundary will be protected during construction. This is secured by the condition below.

Local Residents Comments

5.2 16 neighbours directly consulted. 18 letters of objection and 1 letter of support received, but it must be noted that 9 of those letters are supplementary letters from the same households.

5.3 I have read all of the letters received. The key issues are summarised below:

Objections

- Rear elevations and block plan were not available for public view when the initial consultation letters were sent out [CPO comment: further consultation has been carried out, and these plans made available];
- Officer's site visit was too brief;
- Objector's property was not visited by planning officer;
- Request a site meeting;
- Request the application be determined by planning committee;
- The land is low-lying and prone to flooding;
- If sea defences are adequate the buildings shouldn't be set on raised levels;

- Local soil includes clay and does not drain well;
- Groundwater flooding is a local problem;
- Proposed flood/drainage mitigation is inadequate;
- Additional water run-off will affect neighbouring properties;
- Previous application was refused on flood risk, and further to EA objection;
- Inadequate water pressure in the area;
- Local sewage system isn't able to cope, extra dwellings will worsen problems;
- Applications and subsequent appeals to develop the site in the '90s were refused by the Council and the Planning Inspector due to the impact on neighbours;
- Site levels and drainage have not been investigated [CPO comment: a site section and FRA are provided];
- Loss of privacy and overlooking of existing properties;
- Cars accessing the rear will affect the amenity of 1 and 2 Willop Close;
- Noise and disturbance during construction;
- Proposed dwellings will be taller than existing properties and incongruous within the area;
- Impact on highway safety from additional vehicles;
- Visitors could park on the A259 and cause problems;
- Limited access for emergency vehicles;
- Additional wheelie bins etc. on collection day would cause visibility issues for drivers;
- Impact on local wildlife;
- No new housing needed on this plot further to larger-scale development elsewhere; and
- Asbestos has been dumped on the site and will need to be disposed of properly.

Support

- Has no objections to the proposals.

5.4 Ward Member

5.5 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 Local Plan 2013.

6.2 The Folkestone & Hythe District Council Core Strategy Review Submission Draft (2019) was published under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations (2012) for public consultation and has been subject to an Examination in Public in January 2021. As such its policies should be afforded weight where there are not significant unresolved objections.

6.3 The relevant development plan policies are as follows:-

Places and Policies Local Plan 2020

Policies HB1 (quality places through design)
 HB2 (cohesive design)
 HB3 (space standards)

HB8 (alterations and extensions)
HB11 (loss of residential care homes)
T2 (parking standards)
T5 (cycle parking)
NE2 (biodiversity)
C3 (Provision of Open Space)
C4 (Children's Play Space)
CC2 (sustainable design and construction)
HE2 (Archaeology)

Shepway Local Plan Core Strategy (2013)

DSD (Delivering Sustainable Development)
SS1 (District Spatial Strategy)
SS3 (Sustainable Settlement Strategy)
SS5 (District Infrastructure Planning)
CSD1 (Balanced Neighbourhoods)
CSD2 (District Residential Needs)
CSD5 (Water Efficiency)
CSD8 (New Romney Strategy)

Core Strategy Review Submission draft (2020)

SS1 (district spatial strategy)
SS2 (housing and economy growth)
SS3 (place-shaping and sustainable settlements)
SS5 (district infrastructure planning)
CSD1 (balanced neighbourhoods)
CSD2 (District Residential Needs)
CSD5 (Water Efficiency)
CSD8 (New Romney Strategy)

SS3 requires applications for development within flood risk areas to provide site-specific flood risk assessments, and sets out that no residential development (other than replacement dwellings) will be allowed in areas identified as being at "extreme" risk."

Dymchurch falls within the New Romney area, which policy CSD8 identifies as bringing forward approximately 300 new dwellings across the plan period.

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

Supplementary Planning Guidance/Documents

Government Advice

National Planning Policy Framework (NPPF) 2019

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 are relevant to this application:-

Para. 8 sets out the three main strands of sustainable development: economic, social, and environmental. Para. 11 then sets out that to achieve these aims development

proposals that accord with an up-to-date development plan should be approved “without delay” but excludes identified flood risk areas from the automatic presumption in favour of development. Para. 12 clearly sets out that the starting point for decision-making is the development plan.

Para. 20 requires Councils to have strategic policies that make sufficient provision for housing, infrastructure, and community facilities in appropriate locations, while ensuring conservation of natural and historic environments. Para. 22 then sets out that such strategic policies should look ahead over a minimum of 15 years (hence the lengthy span of the adopted and emerging Local Plans).

Section 5 of the NPPF requires Councils to deliver a sufficient supply of homes, of varying types and tenures, to meet an identifiable need. Para. 67 requires Councils to have an identifiable supply of specific and deliverable housing sites to meet demand for at least 5yrs hence, and para. 72 advises Councils to identify and allocate sites to meet this need.

Para. 109 states that *“development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”*

Para.117 encourages best, most productive use of land to meet the need for homes, while safeguarding the environment and ensuring safe and healthy living conditions. Para. 122 encourages development at appropriate densities, taking into account the character of the site and the need for different types of housing.

Section 12 aims to achieve well-designed developments and places.

Para. 170 requires planning decisions to protect and enhance the natural environment; to protect valued landscapes; minimise impact upon and provide net gain for biodiversity; and mitigate and remediate despoiled land and pollution. Para. 175 deals with biodiversity in particular, and sets out that developments which give rise to significant harm in this regard should be refused.

Section 14 seeks to ensure development meets the challenges of flooding and climate change.

Para. 150 requires developments to avoid increased vulnerability and to ensure risks can be managed through suitable adaption measures. Para. 155 directs “inappropriate” development away from areas of flood risk, but advises that where development is necessary in such areas it needs to be made safe for its lifetime without increasing risk elsewhere. Paras/. 157 to 159 require the sequential and exceptions tests to be applied to development within flood risk areas, and para. 161 stipulates that both parts of the exceptions test must be met for development to be permitted. Para. 163 requires submission of site-specific flood risk assessments, and incorporation of mitigation measures within new development.

National Planning Policy Guidance (NPPG)

The NPPG provides advice on how to determine, assess, and consider flood risk on applications for new development.

National Design Guide October 2019

7. APPRAISAL

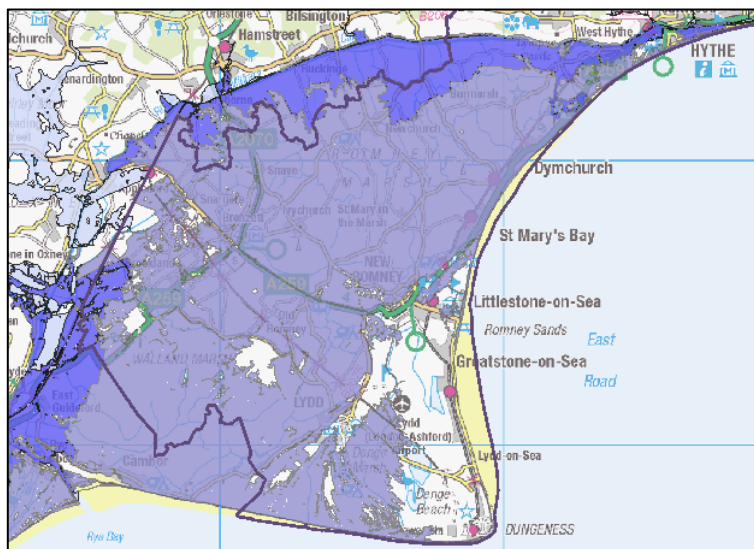
7.1 In light of the above the main issues for consideration are:

- a) Principle of development, flood risk, and sustainability
- b) Design/layout/visual amenity
- c) Residential amenity
- d) Ecology and biodiversity
- e) Protected trees
- f) Drainage
- g) Archaeology
- h) Highways and parking
- i) Other matters

a) Principle of development, flood risk, and sustainability

7.2 While the site lies within the defined built up area it also lies within flood zone 3, which is considered to be at highest risk from flooding. Paragraph 11 and footnote 6 of the NPPF make it clear that the presumption in favour of sustainable development does not automatically apply to sites in identified flood risk zones, and the risk of developing in this area needs to be fully considered against the sequential test, exceptions test, and adopted local and national policy.

7.3 The sequential test ensures that a sequential approach is followed to steer new development to areas with the lowest probability of flooding, and other potential sites need to be considered before progressing to develop those of lesser preference / greater risk (in flood risk terms). When considering other potential development sites the geographic range is limited to those within the same character area, which in this instance would be the Romney Marsh Character Area. Where other sites at no/lesser risk are not available within the character area local planning authorities can consider sites within identified flood risk areas, which cover substantial parts of the district due to land levels.



7.4 Fig. 6 – map of flood zone 3 within the Romney Marsh area

7.5 In this instance there is one site within the Romney Marsh character area with planning permission for similar scale of development, and which works are not thought to have yet been commenced; this site offers a *potential* alternative to developing on this land:

- 1) Application ref. Y18/0030/PA granted prior approval for conversion of a former agricultural building to two dwellings at Chittenden Lane, St Mary in the Marsh. This development is not considered to offer a suitable alternative to development as the dwellings are substantially bigger buildings (being converted barns) that would not be a direct comparison to the more modest properties proposed here.

7.6 I am therefore of the opinion that there are no other sites reasonably available within the local area that serve as somewhere to direct the applicant towards in preference to this location. This satisfies the sequential test which allows for consideration of development to proceed.

7.7 The next step is to consider the proposals under the exceptions test, which is a method to demonstrate and help ensure that flood risk to people and property will be managed satisfactorily while allowing necessary development to go ahead in situations where suitable sites at lower risk of flooding are not available.

7.8 In this instance the Environment Agency do not object, and have commented that the finished floor levels shown on the submitted drawings (secured by condition below) are sufficient for the proposals to pass the exceptions test. The Exceptions Test has two parts:

- a) *It must be demonstrated that the development provides wider sustainability benefits to the community that outweigh flood risks; and*
- b) *A site-specific FRA must demonstrate that the development will be safe for its lifetime taking into account the vulnerability of its users, without increasing flood risk elsewhere and, where possible, will reduce flood risk overall.*

7.9 In the case of the current proposal I consider that part a) – the wider sustainability benefits – is addressed through the inclusion of the site within the defined built up area boundary; the settlement hierarchy (core strategy policy SS3) identifying the wider area

for residential development; and policy CSD8 identifying the wider area as a priority centre for residential development to support New Romney as a primary local centre and Dymchurch as a key tourist location. Residential development here would contribute to the broader aim of sustainable development within the district and reduce any pressure on the Council to consider development proposals on greenfield sites elsewhere.

- 7.10 In regards part b of the exceptions test: while the previous application (ref. Y16/1221/SH) was refused on the site being identified as being at “extreme/significant” risk under the Council’s SFRA, the dwellings themselves are away from any part of the site at ‘extreme’ risk falling within an area as ‘significant’ risk and since the previous refusal on this site works to improve the sea defences at Hythe Ranges have been completed (<https://www.gov.uk/government/publications/hythe-ranges-sea-defences-renovation/hythe-ranges-sea-defences-renovation>) sets out that works were finished in December 2020 and that the improvements “*will better protect the area for the next 100 years, taking into account climate change and sea level rise*”). The submitted site-specific FRA takes these works into consideration and, as a result, concludes that the site will (upon future review of the SFRA) fall within an area of “low” risk. The development also includes a number of flood resilience measures (set out within the FRA (section 7.3 in particular) and secured by condition 14 below) such as raised internal floor levels, no sleeping accommodation at ground floor, and flood resilient construction methods.
- 7.11 The application today therefore has a different context in respect of flood risk compared to the 2016 scheme and, given no objection from the EA (unlike in 2016), the likely decrease in risk as a result of flood defence improvement works, and the lack of available alternative sites, I consider development here to be acceptable in principle.
- 7.12 The site is otherwise considered to be sustainable, falling as it does within a defined built up area within which the Council’s adopted and emerging policies have a general acceptance of new residential development. I am satisfied that the proposal passes the sequential and exceptions tests, and note that the EA does not object to the proposals.

b) Design, layout, and visual amenity

- 7.13 The existing development surrounding the site and along the main road is mixed and varied, with no uniform building typology and a mix of bungalows, ‘chalet’ bungalows, and two-storey dwellings surrounding the site. As such there is no distinct form of building style to conform to or contradict. It is acknowledged that traditionally this coastal stretch would have been characterised by low level bungalows, however new development (such as 1 & 2 Willop Close) has generally been two-stories high due to flood risk and the demands for larger properties (compared to the properties built 40 or 50 years ago, for example). Increasingly these areas of low level development are punctuated by higher new development, as with some of the surrounding and nearby properties, and the proposed development would therefore not be incongruous within the context of the area. A two-storey dwelling would also be safer in the event of a flood (as residents could seek refuge upstairs) and it’s therefore likely that all new housing development within this part of the district will need to be two-storey, going forward.
- 7.14 While I acknowledge that the proposed houses (at 8.2m high to the ridge and situated upon an area of raised ground – roughly 1.1m above ground level of 1 and 2 Willop Close, total height approximately 9.4m as shown in figure 7 below) would be taller than

the surrounding bungalows, they are designed to be read as being substantially lower, with lowered eaves and a partial catslide roof to the front. The design means that even accounting for the level change the buildings would not stand significantly taller than any other modern two-storey house. To ensure this remains the case I have recommended a conditions removing permitted development rights for roof extensions to ensure that the buildings remain as low as possible. The proposed designs are contemporary but feature traditional stock brick, horizontal cladding, and tiled roofs – precise materials are controlled by condition below to ensure they blend appropriately with the surrounding area. Therefore, while the proposed houses would be visible from the highway, the seawall, and from a public footpath across the fields to the north-west, I don't consider that they would be harmful to local visual amenity, or that planning permission could justifiably be refused on such grounds.

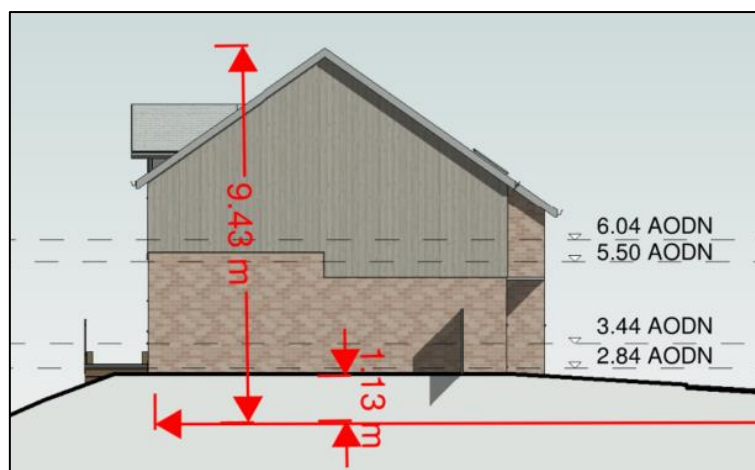


Fig. 7 – Level changes and height in relation to 1 and 2 Willop Close

7.15 The layout of the site is sensible, in my opinion. It allows space at the front of the site to accommodate parking and turning, sets the buildings away from the common boundaries, and allows for suitably-sized rear gardens. Layout is considered with regard to residential amenity in the following paragraphs.

7.16 Internally the buildings are well designed and would provide a good standard of amenity for future occupants, and would conform to the requirements of policy HB3 and the National Space Standards.

b) Residential amenity

7.17 1 Willop Way is the closest neighbouring property, and occupies a narrow plot running along the north-east side of the application site. The proposed houses have been positioned within the site to be set away from no.1 (see fig.9 below), prevent overshadowing or obscuring of the side windows, to minimise overshadowing of the rear garden and, in combination, prevent an unacceptably overbearing impact upon the outlook of those residents. There would be some late afternoon/early evening overshadowing as the sun sits directly west, but otherwise the property would continue to receive uninterrupted sunlight (see fig.8 below). As set out above the designed height of the buildings is such that they would not be overly tall or imposing in views from the neighbouring gardens, and while I do understand local concerns in regards new development near their properties I do not consider that this scheme would give rise to any impacts so significant as to justify a reason for refusal.



Fig. 8 – Sunlight and shadow study

7.18 Other than the above, and while I understand local objections, the proposed layout does not present any serious concerns in regards impacts upon neighbouring properties. The proposed houses are situated away from the common boundaries and other properties (see fig.9 below) such that no serious overshadowing, loss of light, or overlooking is likely. Fig. 9 below shows that the gardens would be 11m deep, there would be a minimum of 26m to the properties to the rear (in excess of the required 21m minimum), a minimum of 36m to the houses to the front, and reasonably-sized gaps maintained to the side. While I do very much understand local concern I do not consider there to be justifiable reasons for refusal in regards local residential amenity.



Fig. 9 – Separation distances to existing properties

d) Ecology and biodiversity

7.19 KCC Ecology and Natural England have no objections to the development; KCC are satisfied with the ecological investigation that has been carried out, no protected species have been identified on the site, and the works would be unlikely to affect the SSSI due to their relatively small scale and separation distances involved. Conditions below secure ecological enhancements within the site, and I have no serious concerns on this aspect.

e) Protected trees

7.20 The TPO trees to the west lie outside of the site and are unlikely to be affected by the proposed development. The condition below secures a pre-development tree investigation and protection measures, however, to ensure that they will be adequately protected during the course of construction and not affected in the long-term.

f) Drainage

7.21 I note that site drainage is a particular local concern, and residents have mentioned that the land drains slowly and may have contained a pond at some stage in the past (although this is not evident on the 2015 and 2018 aerial photos, after the site had been cleared of trees).

7.22 This matter is covered in detail within the submitted FRA, which calculates (on pg.30) that the total volume of water discharged from the site from the 100 year 6 hour event (including for a 40% increase for climate change), after construction of the proposed development, equates to 25 cubic metres. The FRA acknowledges that this will need to be mitigated in order to be discharged safely and sustainably.

7.23 The FRA sets out that Part H of the Building Regulations sets a preferred hierarchy for drainage of surface water: first via infiltration, then by discharge to a watercourse, and if neither of these options are possible then into the public sewer system.

7.24 Ground investigation indicates that the site has moderate to poor ground permeability (as evidenced by resident's claims of localised flooding), but sufficient for *some* infiltration drainage to be used, which can be enhanced through the use of purpose-made SUDS within the site. Section 8.6 of the FRA sets out the elements that will be included within a detailed surface water drainage scheme (secured by condition below), including permeable paving, infiltration blanket, or cellular storage (which would retain water and release it at a reduced rate to prevent water-logging. This would achieve sustainable drainage rates across the site, and on this basis I have no serious objections on this aspect. I also note that the calculations within the FRA include a 40% buffer to account for the effects of climate change, so in the short, immediate term the drainage scheme would exceed current requirements.

7.25 The FRA notes that long-term maintenance and management of any drainage system is crucial. I have included a requirement for a management scheme to be provided as part of the detailed drainage strategy condition set out below.

7.26 Foul sewage can be connected to the existing foul sewer crossing Willop Close to the south of the application site.

7.27 Taking the above into account, and while I understand and appreciate local concerns, I consider that drainage can be adequately controlled and mitigated such that a reason for refusal on this ground would not stand up to scrutiny at appeal.

g) Archaeology

7.28 The County archaeologist notes that there is potential for artefacts within the former pond on the site (particularly items associated with Romano-British salt-working), but has no objections subject to the condition below, which will ensure that any remains found during construction are appropriately examined and recorded. I therefore have no concerns on this matter.

h) Highways and parking

7.29 The development makes use of the existing access onto/off Hythe Road, which allows for suitable and safe access. The addition of two dwellings onto this access would not generate levels of vehicle activity that would overburden this access point or give rise to any serious highway safety or amenity concerns.

7.30 The site layout drawing shows that parking can be provided in accordance with the current adopted Kent Vehicle Parking Standards, and this can be secured by conditions as set out below.

7.31 There is sufficient space within the proposed gardens to provide cycle parking/ storage. Such facilities can be erected as necessary under permitted development rights.

i) Other matters

7.32 The development is liable for CIL at a rate of £56.99 per sqm. No other contributions are required.

7.33 The site lies outside of the Stodmarsh SSSI drainage catchment.

Environmental Impact Assessment

7.34 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

7.35 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.

7.36 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. The CIL levy in regards the application area is charged at £56.99 per square metre for new residential floor space.

Human Rights

7.37 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

7.38 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

7.39 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 application seeks planning permission for the erection of two detached houses on land to the rear of 1 and 2 Willop Close. The site is within a sustainable urban location and while local objections are noted and understood they do not contain or amount to a justifiable reason for refusal. The proposed development is considered to be acceptable in terms of scale, design, amenity, highways, parking, and flood risk, and is therefore 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 be granted subject to the following conditions 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.

Conditions:

Time limits

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.

Drawings

2. No development shall take place other than in complete accordance with drawings (all prefaced 20.128) 03 rev. P, 04, 05, 06, 07, and 08, and the submitted Herrington's Flood Risk Assessment.

Reason: For the avoidance of doubt.

Pre-commencement

3. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the District Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i. the parking of vehicles of site operatives and visitors
 - ii. loading and unloading of plant and materials
 - iii. storage of plant and materials used in constructing the development
 - iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v. wheel washing facilities
 - vi. measures to control the emission of dust and dirt during construction
 - vii. a scheme for recycling/disposing of waste resulting from demolition and construction works

Reason: In the interests of the amenities of the area and highway safety and convenience.

4. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved in writing by the District Planning Authority.

Reason: To ensure that features of archaeological interest are properly examined and recorded.

5. (1) 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.

(2) 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:

(i) 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).

(3) If investigation and risk assessment shows that remediation is necessary, 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 shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development. 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.

(4) Prior to commencement of development, a verification report demonstrating completion of the works set out in the approved remediation scheme and the effectiveness of the remediation shall be 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.

(5) In the event that, at any time while the development is being carried out, contamination is found that was not previously identified, it shall be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall be undertaken and where remediation is necessary a remediation scheme shall be prepared. The results shall be submitted to the Local Planning Authority. 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.

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 District Planning Authority, and works shall be implemented in accordance with the approved details.

Reason: In the interest of visual amenity.

7. No development shall take place until a tree survey, carried out in accordance with BS5837:2012, and demonstrating how the TPO Ash trees close to the western site boundary will be accommodated within the scheme and protected during development (including a tree survey schedule, tree constraints plan, arboricultural assessment and method statement, tree protection plan, and shade pattern arcs), has been submitted to and approved in writing by the Local Planning Authority. Upon approval development shall be carried out in accordance with the agreed details.

Reason: To ensure the trees are adequately protected and retained.

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 District 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, hard surfacing materials, and an implementation programme.

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

9. No development beyond laying of foundations shall take place until details have been submitted to and approved in writing by the Local Planning Authority for the installation of a High Speed wholly Fibre broadband To The Premises (FTTP) connection to the dwellings hereby permitted. Following approval the infrastructure shall be laid out in accordance with the approved details and at the

same time as other services during the construction process, and be available for use on the first occupation of the dwellings unless otherwise agreed in writing by the Local Planning Authority (where supported by evidence detailing reasonable endeavours to secure the provision of FTTP and alternative provisions that been made in the absence of FTTP).

Reason: To ensure that the new development is provided with high quality broadband services.

10. No development beyond the construction of foundations shall take place until details of how the development as a whole will reduce carbon emissions by a minimum of 10 percent above the Target Emission Rate, as defined in the Building Regulation for England approved document L1A: Conservation of Fuel and Power in Dwellings, have been submitted to and approved in writing by the Local Planning Authority. Upon approval the measures shall be implemented as agreed and thereafter retained and maintained in perpetuity.

Reason: To support the transition to a low carbon future through the use of on-site renewable and low-carbon energy technologies.

During development

11. No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:

Monday to Friday 0730 – 1900 hours, Saturdays 0730 – 1300 hours unless in association with an emergency or with the prior written approval of the District Planning Authority.

Reason: In the interests of residential amenity.

Flooding and drainage

12. No development beyond the construction of foundations shall take place until full details of the method of disposal of foul and surface waters have been submitted to and approved by the District Planning Authority. The approved details shall be implemented before the first use of the development hereby permitted.

Reason: In order to prevent pollution of water supplies.

13. No development shall take place until a detailed surface water drainage / management strategy (including proposal for long-term maintenance and management of any on-site SUDS) has been submitted to and approved in writing by the Local Planning Authority. The strategy shall demonstrate that the surface water generated by this development (for all rainfall durations and intensities up to and including the climate change adjusted critical 100 year storm) can be accommodated and disposed of without increase to flood risk on or off-site. On approval the scheme shall be implemented as agreed and thereafter maintained in perpetuity.

Reason: To ensure the site is properly drained and to ensure the development does not exacerbate the risk of on/off site flooding.

14. The development shall be carried out in accordance with the submitted flood risk assessment (Herrington Consulting FRA updated September 2020) and the mitigation measures it details:

- Finished floor levels shall be set no lower than 3.44m above Ordnance Datum (AOD);
- All sleeping accommodation to be set on the first floor above 3.74m ODN;
- Flood risk resilience measures outlined in the FRA (section 7.3) shall be incorporated into the dwellings wherever practicable.

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: To minimise risk in the event of a flood.

Ecology and landscaping

15. Within six months of development commencing, details of how the development will enhance biodiversity will be submitted to, and approved in writing by, the local planning authority. This includes the planting of native species and the provision of bird/bat boxes. The approved details will be implemented as agreed and thereafter retained.

Reason: In the interest of enhancing biodiversity.

16. 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 District Planning Authority.

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

17. 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 District Planning Authority, and within whatever planting season is agreed.

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

Highways and parking

18. The vehicle parking spaces shown on the approved drawings shall be kept available for such use at all times 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 so shown or in such a position as to preclude vehicular access thereto; such land and access thereto shall be provided prior to the occupation of the dwelling(s) hereby permitted.

Reason: Development without adequate provision for the parking of cars is likely to lead to car parking inconvenient to other road users.

19. Prior to the first occupation of any dwelling hereby permitted suitable Electric Vehicle Charging ductwork capable of receiving the underlying infrastructure for a future Electric Vehicle Charging point to serve each dwelling shall have been installed, details of which shall have been submitted to and agreed in writing by the Local Planning Authority prior to installation. The ductwork channelling shall thereafter be made available to the individual or company responsible for the long term governance and maintenance of the car parking area, enabling the installation of Electric Vehicle Charging Infrastructure as and when demand from residents arises.

Following installation the charging points shall thereafter be retained available in a working order by the respective owners / individual or company responsible for long term governance.

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

Amenity

20. No additional windows, doors, voids or other openings shall be inserted, placed or formed at any time in the first floor flank walls of the dwellings hereby permitted.

Reason: To prevent the overlooking of adjoining properties and to safeguard the privacy of their occupiers.

21. Upon completion, no further development, whether permitted by Classes AA or B 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) or not, shall be carried out.

Reason: In the interests of the amenities of the area.

Informatives:

1. The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended (section 1), it is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent for a development does not provide a defence against prosecution under this Act. Trees and scrub are present on the application site and are assumed to contain nesting birds between 1st March and 31st August, unless a recent survey has

been undertaken by a competent ecologist and has shown that nesting birds are not present.

Appendix 1 – Site Location Plan

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DCL/21/05

Application No:	20/1356/FH
Location of Site:	Hillboro, Sunnyside Road, Sandgate, Folkestone, CT20 3DR
Development:	Proposed 4no new dwellings and associated external areas within the curtilage of Hillboro (proposed to be demolished) and accessed from Sunnyside Road via a new private shared drive.
Applicant:	Mr S Pack
Agent:	Mr M Whitby Hollaway, The Tramway Stables, Rampart Road, Hythe CT21 5BG
Officer Contact:	Emma Hawthorne

SUMMARY

This report considers whether planning permission for the erection of four dwellings in place of Hillboro, Sandgate should be granted. The report assesses the principle of development and the net gain of three new dwellings in this locality, which lies within defined, built up area of Sandgate. The report recommends that planning permission be granted, subject to conditions, as it is considered that the proposal is acceptable in principle, and the design and layout of the dwellings would be appropriate in the context of the surrounding environment. The amenities of existing and future occupants are safeguarded. Flood risk would not be a constraint, and matters such as ecology and arboriculture can be dealt with by way of planning conditions. There are no highway safety concerns as the proposal seeks to mitigate these through design. Therefore, the proposal is considered to be sustainable development in accordance with the development plan policies.

RECOMMENDATION:

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.

1. INTRODUCTION

- 1.1. The application is reported to Committee because Sandgate Parish Council has objected to the proposal, and Councillor Fuller has 'called in' the application.

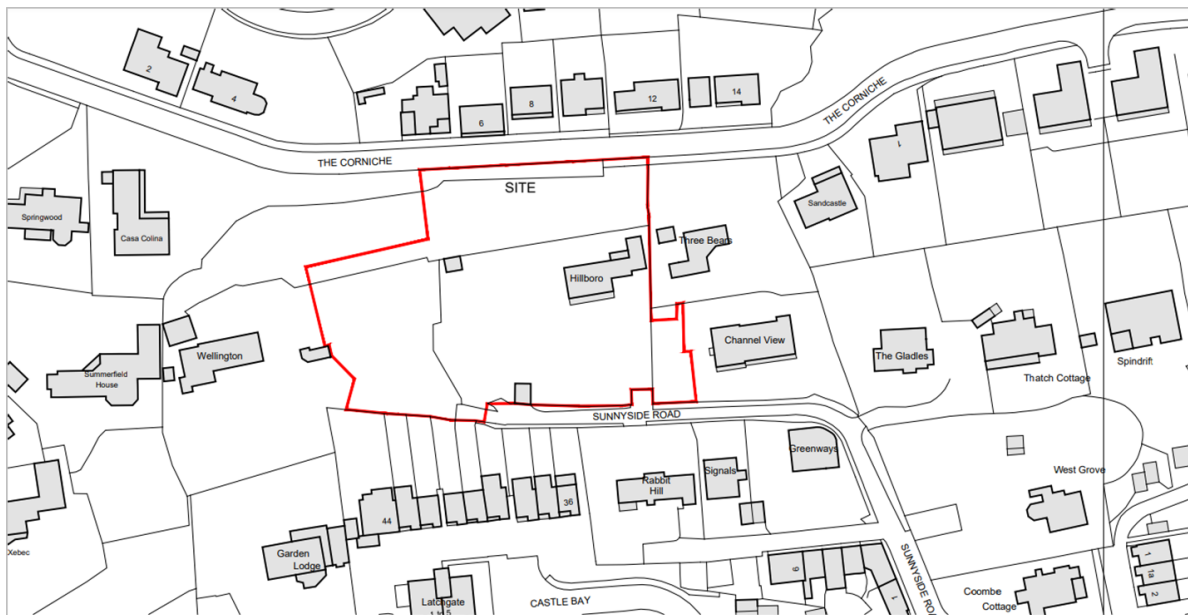
2. SITE AND SURROUNDINGS

- 2.1. Hillboro is a detached house situated within the defined, built up area of Sandgate. The property sits on a flat terrace on the otherwise very steep escarpment, and vehicle

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access is via a steep and narrow private road off Sunnyside Road. The front garden is very steep and largely given over to informal planting, while to the rear is a near-vertical rise up to The Corniche. As a result the house is situated towards the rear of an otherwise generous plot, which includes a tennis court towards the western boundary of the site.

- 2.2. The flat terraced area runs east and west to the neighbouring properties, Wellington, Three Bears, and Channel View. Three Bears lies close to the eastern common



boundary while there is a gap of approximately 78m between the flank of Hillboro and that of Wellington, to the west.

Figure 1 Location Plan

- 2.3. The site (and surroundings) are in land stability zone E – the highest risk zone – and it is noted that the property after which the Council's Latchgate land stability condition is named was (before it collapsed) nearby.
- 2.4. The wider area is a Special Character Area.
- 2.5. Hillboro, Wellington, and a large part of the escarpment to the rear are covered by TPO no.04 of 1975.
- 2.6. Part of the hill to the rear (and other similar parcels of land within the local area) are covered by an Article 4 Direction.
- 2.7. The site is not in the Stour Operational Catchment.
- 2.8. A site location plan is attached to this report as **Appendix 1**.

3. PROPOSAL

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- 3.1 Full planning permission is sought for the development of 4no 4 and 5 bedroomed new dwellings and associated external areas (gardens) within the curtilage of Hillboro (proposed to be demolished) and accessed from Sunnyside Road via a new private shared drive.
- 3.2 'Hillboro' as existing is circa 3.8m closer to Three Bears than the proposed footprint of Plot 4. Three of the proposed buildings are arranged on the footprints of the existing tennis court as well as the existing 'Hillboro' to reduce the impact of construction on the character of the area.
- 3.3 Due to the sloping nature of the application site all four houses are proposed to be three stories in height with the northern end of the lowest storey cut into the sloping ground. Therefore, the majority of the ground floor of each plot is partially underground with the utility and entertainment spaces having been located there (eg storage/gym/cinema). The floor above extends a little more in a northerly direction. The dwellings have been designed with a mix of dual pitched roof forms and flat roof forms with create a contemporary house design. All dwellings include a large amounts of glazing to the principle elevations, and the applicant states that the primary drive for the design of each house is the view out towards the sea. Proposed materials include Kentish ragstone, metal fascia, vertical timber louvres and concrete effect render and sedum flat roofs to enhance biodiversity.
- 3.4 Access to the site is proposed from the highest point of Sunnyside Road to mitigate the impact on existing trees and topography of the site. The access will take the form of a shared tarmacked bellmouth which leads to a new internal access road that provides access for each property. Each property is provided with its own private driveway and car port.
- 3.5 A small number of trees are proposed for removal within the application site. These are all C category trees, being small and easily replaced, or are in poor health. The majority of the existing mature hedgerows are to remain. The dwellings are proposed to be set back within the application site in order to allow for landscaping to the frontage.



Figure 2 Proposed Block Plan

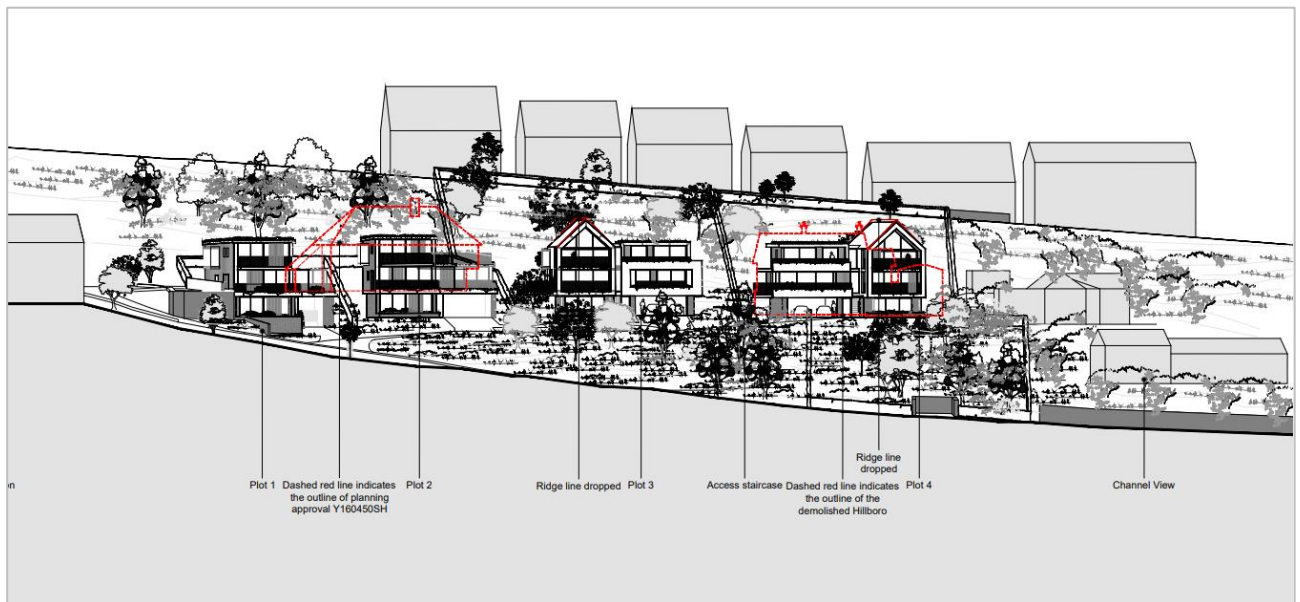


Figure 3 Proposed Street Scene

3.6 The following reports were submitted by the applicant in support of the proposals:

Design and Access Statement

The report confirms that the submitted design proposals have been developed with reference to the Sandgate Design Statement (2013), which forms a key document upon which the proposals have been designed. The design principles and concepts that have been applied to the development are discussed in detail. It is also demonstrated how the proposed development's context has influenced the design. The Statement also explains the applicant's approach to access and how relevant Local Plan policies have been taken into account.

Planning Statement

The statement provides an overview of the application site, its context and planning history; and a review of all applicable development plan documents and emerging policies. The merits of the proposed development are discussed having regards to its context and policy framework and subsequently concludes the proposal is acceptable in planning terms.

Arboricultural Impact Assessment and Method Statement

Greenspace Ecological Solutions (GES) was commissioned by Holloway Architects to undertake a tree survey at Sunnyside Road, Sandgate, in accordance with British Standard (BS) 5837:2012 "Trees in Relation to Design, Demolition and Construction - Recommendations". The report explains that works that are likely to affect retained trees include the excavations for retaining structures and the storage of materials.

The results of the survey indicate that the trees within the survey area vary considerably in terms of quality and contribution to the amenity value within the local area. A total of nine individual trees, one group of trees, part of two further groups of trees and one hedge will be removed to enable the proposed development. All trees to be removed fall within the 'C' category as they are small and easily replaced or are in poor health.

Through the specified construction methodologies and tree protection measures, it will be possible to minimise the impact of the proposed development on the retained trees. Overall, there are no known overriding arboricultural constraints which would prevent the proposed development from going ahead, subject to the protection measures and construction methodologies specified within this report being correctly implemented.

A Tree Protection Plan (TPP) has also been produced and accompanies this report.

Preliminary Ecological Appraisal

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The report states that the small localised scale of the development and the intervening habitats result in no detrimental impact upon designated sites, ancient woodland or BAP priority habitats resulting from the proposed. The proposed works requires the removal of trees. Of those to be removed, the trees denoted T5, T24 and T28 support features suitable for use by bats. Although no evidence if bats was recorded at the time of the survey, as a precautionary measure it is recommended that they be subject to further elevated inspections immediately prior to the start of work. The trees, scrub and bird boxes within the site have potential to support nesting birds and recommendations in regard to timings and methods of best practice have been provided. The site is heavily overgrown and subject to high level of shading. However, as a precautionary measure, phased habitat manipulation to displace reptiles should they be present, has been recommended.

The likelihood of other protected and notable species to occur within the site is considered negligible and no further surveys for other protected species are required. The Appraisal concludes that in accordance with the requirement of the NPPF, recommendations to enhance the site's suitability for wildlife have been provided.

KSI Latchgate Report (plus addendum)

The report concludes that the following works should be undertaken:

- Excavate and form temporary retaining walls in 1.5 metre lengths using suitably designed gabion baskets
- Form piled foundations incorporating permanent concrete retaining walls as required. A piled slab would appear to be the most suitable solution.
- Foul drainage as existing.
- Surface water disposal via positive drainage – no soakaways.

Provided the above are followed, it is considered that the proposed development works will not have an adverse effect on the site, surrounding land or property. Therefore, the report states that the proposed construction of four dwellings will have no significant adverse effect on the general stability of the site and surrounding land, extending down to the beach. The slight cutting into the slope will actually reduce head weighting at the backscar of the 1983 landslide.

Sunnyside Road – Sunlight and Daylight note

The report collates a number of images to demonstrate the location of existing and proposed dwellings in proximity to the neighbouring properties. Specialist advice has been sought from Herrington Consulting who have reviewed the planning information and applied the daylight and sunlight rules of thumb to the neighbouring properties. The report outline the impact of the proposed development on the Three Bears, Channel View and Wellington and confirms that the proposal accords with established principles in terms of daylight and sunlight.

4. RELEVANT PLANNING HISTORY

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

Y16/0450	Erection of a detached house adjacent to Wellington, on the former tennis court area.	Approved. This has not been implemented.
Y18/0308	Erection of two dwellings and a block of seven flats at West Grove, nearby.	Refused. Appeal dismissed with the Inspector considering the bulk and form of the development to be incongruous within the context of the area.

5. CONSULTATION RESPONSES

5.1 The consultation responses are summarised below.

Consultees

Sandgate Parish Council: objects on the following summarised grounds:

- Site access (both during construction and once occupied) due to the narrowness and instability of the unadopted section, and suggestion that access from The Corniche should be considered.

Environment Agency: No comment.

Natural England: No comment.

KCC Ecology: No objection subject to the conditions set out below.

KCC Highways and Transportation: No comments save for their standard “non protocol” response.

KCC LLFA: No comment other than to note this falls below their threshold for consideration.

KCC Fire and Rescue: No objection.

Arboricultural Officer: No objections subject to a condition regarding tree protection.

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Contamination Consultant: No objection subject to the standard land contamination condition.

Local Residents Comments

5.2 18 letters of objection and 1 letter of general comments received from local residents to the original submission. 1 letter of objection was withdrawn as a result of the amended scheme.

5.3 I have read all of the letters received. The key issues/areas of concern are summarised below:

Objections

- Inadequate public consultation;
- Land instability concerns;
- Land stability reports / building regs should be overseen by the Council rather than a third-party;
- The submitted land stability report makes little mention of groundwater;
- Over-development of the site;
- Scale and massing is too great;
- Impact on character and appearance of the area, and on the skyline;
- Height of plot 4 may impinge views of residents on The Corniche, and impact on views in general;
- The proposed post and rail fence on The Corniche will harm the character of the space, impact on historic use by local residents, and serve no real purpose;
- Overlooking and loss of privacy;
- There is a natural spring on the site which has historically caused water ingress problems for houses down the hill;
- Disturbance of the water table;
- Increased water run-off and potential for flooding of neighbouring properties;
- Inadequate drainage and sewerage facilities locally;
- Access should be via The Corniche rather than the narrow unadopted part of Sunnyside Road;
- Sunnyside Road is not suitable for construction vehicle access;
- Construction access will impact local parking pressures and inconvenience residents;
- Increased traffic as a result of development;
- The road should be formally adopted;
- The road to the front of Hillboro should be widened by cutting into the bank;
- Does not meet the Building Regulations as there is no access for fire engines, ambulances, refuse vehicles, etc.;

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- Tracking drawings show vehicles can turn once they access the site, but they will not be able to get to this point due to the tight bend and incline at the top of Sunnyside Road;
- Potential for vehicles to slip down the hill into neighbouring properties;
- Potential for property damage during construction;
- Loss of trees;
- Impact on neighbouring privacy;
- The proposed annex doesn't appear to be connected to any property;
- "The public footpath also seems to be have been deleted" [NB: I haven't found any record of an adopted public footpath within the site];
- Noise and disturbance during construction;
- There is badger activity on the site, local residents have been feeding badgers since the late '90s, and the ecological report needs to be reconsidered;
- What is the proposed annexe to be used for, and will it be converted into a separate dwelling in future?;
- Why demolish a usable existing dwelling, and how will it be recycled?.

A letter of objection has been submitted by the Sandgate Society, raising the following summarised issues:

- Inadequate consideration of relevant policies within the submitted supporting statements;
- The site is within an Area of Special Character;
- Question the validity of the approval at Wellington (ref. Y16/0450);
- Local authorities ignore resident's complaints about drainage, run-off and landslip;
- Does the Council have the resources to monitor/prevent removal of trees following occupation;
- The site is unsuitable for development;
- Nearby developments have resulted in debris and rubbish on the public highway; and
- Reference to the Council's adopted policies and guidance.

General Comments

- Plans not available to view on the website. (CPO comment: This has been checked and the plans are available to view on the website);
- Privacy concerns about drone photographs in the application; and
- Query land ownership / Title and whether the applicant owns the site.

5.4 Ward Member

No response.

5.5 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 Local Plan 2013.

6.2 The Folkestone & Hythe District Council Core Strategy Review Submission Draft (2019) was published under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations (2012) for public consultation and has been subject to an Examination in Public in January 2021. As such its policies should be afforded weight where there are not significant unresolved objections.

6.3 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 Landscape and Countryside
NE7 – Contaminated Land
CC2 – Sustainable design and construction
CC3 – Sustainable Drainage Systems
HE2 – Archaeology

Shepway Local Plan Core Strategy (2013)

DSD – Delivering Sustainable Development
SS1 – District Spatial Strategy
SS2 – Housing and economy
SS3 – Sustainable settlements
CSD2 – District Residential Needs
CSD5 – Water and Coastal Environmental Management in Shepway

Core Strategy Review Submission draft (2019)

SS1 – District Spatial Strategy
SS2 – Housing and the Economy Growth Strategy
SS3 – Place-Shaping and Sustainable Settlements Strategy
CSD1 – Balanced Neighbourhoods for Shepway
CSD2 – District Residential Needs
CSD5 – Water and Coastal Environmental Management in Shepway

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

Supplementary Planning Guidance/Documents

Sandgate Design Statement (2013)

Kent Design Guide (2006/2007)

Government Advice

National Planning Policy Framework (NPPF) 2019

6.5 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 are relevant to this application:-

Paragraph 11 - Presumption in favour of sustainable development.

Paragraph 47 - Applications for planning permission be determined in accordance with the development plan.

National Planning Policy Guidance (NPPG)

Design: process and tools

Climate Change

Flood Risk and Coastal Change

Natural Environment

National Design Guide October 2019

C1 - Understand and relate well to the site, its local and wider context

I2 - Well-designed, high quality and attractive

Paragraph 53 *'Well designed places are visually attractive and aim to delight their occupants and passers-by'*.

N3 - Support rich and varied biodiversity

7. APPRAISAL

7.1 In light of the above the main issues for consideration are:

a) Principle of development and sustainability

b) Design/layout/visual amenity

- c) Amenity of future occupants, including space standards
- d) Residential amenity
- e) Ecology and biodiversity
- f) Protected trees
- g) Contamination
- h) Land Stability and Drainage
- i) Archaeology
- j) Highway safety
- k) Other matters

a) Principle of development and sustainability

- 7.1 By way of background, the site was granted planning permission on 04.05.2017 for a detached dwelling (to be located on the footprint of the existing tennis court), as well as a new internal access road, garden and associated parking (Planning Reference: Y16/0450/SH). This permission has not been implemented.
- 7.2 The application site is situated within the defined, built up area of Sandgate. Core Strategy policy SS3 seeks to permit new residential infill development within the established settlement hierarchy subject to material planning considerations, which will be considered below in this report. Whilst it is acknowledged that the National Planning Policy Framework (NPPF) (2019) states that windfall housing sites should not include residential gardens, in the context of the support of sustainable development in existing settlements, garden development cannot be resisted in principle, unless significant harm is identified. The proposed development of additional housing in this location is therefore considered to be acceptable in principle.
- 7.3 Part of the site is residential garden land, the redevelopment of which is also supported by PPLP Policy HB10, subject to specific criteria which is considered below.

b) Design/layout/visual amenity

- 7.4 In order to facilitate the development, it is proposed to demolish the existing dwelling and outbuildings, which currently benefits from a large residential garden area. The site lies within a Special Character Area, and in this locality, the area is characterised by expanses of trees on the hillside falling down to the sea with dwellings apparent to a greater or lesser extent bedded against the trees on the wooded hillside.

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- 7.5 It is recognised that this part of Sandgate has been significantly redeveloped over time. Indeed, in terms of the established character of the surrounding area, it is noted that there is no common pattern of development and there has been substantial loss of green space and the infilling of larger plots. There are a variety of house types in this area including detached, semi-detached and terraced dwellings and flats with varying plot sizes and architectural styles. There are also significant level changes within the area, with properties being set at varying heights. In terms of the impact of the proposal on the character of the area, the site is of an appropriate size to accommodate 4no. detached dwellings and is comparable in terms of scale, layout and spacing to existing development in the surrounding area .
- 7.6 In terms of green space, it is considered that the 4 detached dwellings have been carefully designed to be set into and blend well with the vegetated slopes of the site. Whilst some green space has inevitably been lost through the placement of the dwellings themselves, significant openings between the buildings have been retained to ensure green views though the development towards the wooded escarpment are still visible. A high quality landscaping scheme is also proposed to enhance the existing trees with additional planting, including substantial landscape buffers to the north and south of the site, integrating the dwellings into the surroundings, and this would be secured by a planning condition. The incorporation of sedum roofs further greens the proposal scheme when viewed from public vantage points and retains the green character of the area in line with the requirements of the Sandgate Village Design SPD.
- 7.7 It is proposed that the new dwellings would respect the linear alignment to the east west of the site adhering to the building line of the established dwellings and maintaining a suitable set back from the highway to the rear of the site, The Corniche.
- 7.8 The proposed design and layout of the site is a result of negotiations with Officers, which has led to a revised design submission. The ridge heights of units 3 and 4 have been reduced by approximately 300mm as demonstrated in drawings 18.070 13A and 15A. This provides a significant reduction in overall mass and bulk of the units, creating a more compact form in the context of the escarpment. The proposed dwellings now sit below the height of the chimney stack on Hillboro (the existing dwelling on the site to be demolished) and in light of the height reduction it is considered that the proposed units would be comparable to existing development within the area and nestle into the hillside in a manner similar to existing development. Whilst the dwellings are proposed to be three storeys in height, the whole of the ground floor is sunk into the ground and they are therefore comparable with the heights of neighbouring dwellings and reflect the scale of built form within the area. The mass of the development is broken up by virtue of the large separation distances between the dwellings, allowing views through to the vegetated banks they are set into.
- 7.9 Although the dwellings are of a contemporary design, with expanses of glazing to the principle elevation, it is considered that they have taken cues from existing residential development in the locality. The use of Kentish stone on the ground floor of the proposed dwellings makes use of a local traditional material coupled with vertical timber. The vertical timber, a natural material, ensures that the buildings will blend more with the natural surroundings. Planters are proposed to be inset into balconies which will further enhance the green character of the area. Therefore it is considered

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that the development will blend into its surroundings and will not be appear visually intrusive or dominant from Sunnyside Road, Castle Bay or Sandgate Esplanade.

7.10 Overall, it is considered that the development can therefore be appropriately accommodated on the site without appearing cramped or causing harm to the character and appearance of the surrounding area, including the Special Character Area. The surrounding development in the area is characterised by irregular architectural styles and sizes. The design has therefore sought to reflect this through bespoke, high quality architecture. The proposal is considered to accord with policy HB1 and HB10 of the Local Plan (2020), the Sandgate Design Statement (2013) and section 12 of the NPPF.

c) Amenity of Future Occupants and Space Standards

7.11 With regard to future occupants of the proposed development, policies HB1 and HB3 of the Local Plan (2020), the Kent Design Standards and paragraph 127 of the NPPF, require that consideration be given to their residential amenity and space standards.

7.12 The proposed layout would provide suitably sized rooms with adequate light as well as outlook to all habitable spaces. The internal floorspace of all dwellings exceeds the minimum required by the national standard, and all dwellings would be square or rectangular proportioned and thus properly usable. All habitable rooms are served by full-size windows and would receive a good level of natural daylight.

7.13 The proposed dwellings would also benefit from a reasonable level of private outdoor amenity space for a family sized dwellings and the units have been generously spaced with similar distances to those found in the surrounding area. Therefore it is considered that residents will have good access to outdoor space. Further to this, the seafront and beach is roughly 0.1 miles to the south, and can be accessed on foot (4-5 minute walk).

d) Residential amenity

7.11 PPLP policy HB1 seeks to ensure that development does not lead to an adverse impact on the amenity of future occupiers, neighbours, or the surrounding area, taking account of loss of privacy, loss of light and poor outlook. In assessing the potential impacts of new build residential development on neighbouring dwellings, the Council will apply the same guidelines as for alterations and extensions set out in Policy HB8.

7.12 The proposed dwellings would be located approximately 17m from 'Wellington' to the west and 10m from 'Three Bears' to the east. Furthermore all proposed dwellings have been positioned and orientated with substantial separation distances (5- 9m) between them to ensure there would be no direct overlooking. In addition, landscaping and proposed boundary treatments would also reinforce separation between the properties, which would be secured by a planning condition.

- 7.13 Fenestration and balconies have also been carefully considered in order to maximise south seeking views, whilst reducing the impact of overlooking into neighbouring properties. This has been done through the use of angled window bays, timber vent windows concealed in a timber facade, smaller windows set in stone and balconies contained within protruding gables and side frames to prevent overlooking further. Any new fenestration details to the side elevations of the new dwellings at first floor level or above would require planning consent and as such could be controlled by the Council.
- 7.14 There would be no significant overbearing impacts due to the space separation between the proposed dwellings and nearest surrounding properties. Further, there would be no significant loss of light due to the orientation and positioning of the dwelling within the application site.
- 7.15 Overall, considering the position, orientation and distance to neighbouring dwellings, the proposal would not harm the amenity of these occupiers and therefore the proposal accords with policy HB1 of the Local Plan (2020) and paragraph 127 of the NPPF.

e) Ecology and biodiversity

- 7.16 In accordance with the EIA regulations, the site does not fall within a sensitive area and the development is below the thresholds for Schedule 2 10(b) urban development projects and therefore does not need to be screened under these regulations.
- 7.17 A Preliminary Ecology Appraisal was undertaken by Greenspace Ecological Solutions in August 2020. In summary, the survey found that the development resulted in no detrimental impact upon designated sites, ancient woodland, or Biodiversity Action Plan (BAP) priority habitats.
- 7.18 Whilst no evidence of bats was recorded, of the trees to be removed, three of these support features suitable for use by bats. Further elevated inspections prior to the first start of work are therefore recommended as a precautionary measure, and would be secured by a planning condition.
- 7.19 The trees, scrub and bird boxes within the site have potential to support nesting birds, and any works to these areas should be conducted outside of the core breeding period. To offset the loss of suitable breeding habitat, replacement nesting opportunities should be included within the design, either incorporated into the buildings or in suitable locations within retained trees.
- 7.20 The site was considered unsuitable for reptiles, however as a precautionary measure, it is recommended that vegetation within the site be cleared in a phased manner as set out in the Appraisal, which would be conditioned in the event of an approval.
- 7.21 KCC Ecology has confirmed that no further surveys for other protected species are required, and in accordance with the NPPF ecological enhancement

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recommendations are provided to enhance the site's suitability for wildlife. Again, this would be secured by a planning condition.

- 7.22 It is noted that two residents have referred to badgers living in the area, with one saying they watch them cross the site to be fed by locals. The ecological survey says no evidence of badgers was found on the site and although no ecology survey can express 100% confidence in the results, reasonable effort to determine the presence/ likely absence of badgers within and around the site was applied by the ecologist and no field signs or evidence of use by badgers or their setts were recorded. As a result of geological and topographical occurrences within and around the site's geographic location, the area is known to support a healthy badger population, and consequently it is not unexpected that visual observation of badgers passing through the site has been identified. It is, however, noted that current legislation protects badger setts from obstruction, destruction and obstruction, and the badgers themselves from injury, cruelty and disturbance.
- 7.23 Although evidence of use by badger was confirmed, as no evidence of badger presence was recorded it was considered disproportionate to include precautionary mitigation measures to ensure the welfare of badgers is maintained throughout the development. Furthermore, as development of the site would result in no direct impact to badgers or their setts, no sett closure licence from Natural England is required in this instance. As stated within the ecology reports, to account for the dynamic nature of ecological receptors, survey data should be reconsidered after a period of 12 months from the time of writing, and consequently it suggested that the applicant conducts an update walkover survey prior to commencement of any development.
- 7.24 Subject to the above mentioned planning conditions, no objection is raised on ecological or biodiversity grounds in accordance with PPLP policy NE2.

f) Protected trees

- 7.25 As noted above, trees covered by a TPO (no.04 of 1975) are located within the site at Hillboro, Wellington, and a large part of the escarpment to the rear. Section 197 of the Town and Country Planning Act 1990 (as amended) imposes a duty on the decision-maker to ensure that adequate provision is made for the preservation of trees.
- 7.26 An Arboricultural Impact Assessment and Method Statement have been submitted to support the proposal and the results of which indicate that the trees within the survey area vary considerably in terms of quality and contribution to the amenity value within the local area. A total of nine individual trees, one group of trees, part of two further groups of trees and one hedge will be removed to enable the proposed development. All trees to be removed fall within the 'C' category as they are small and easily replaced or are in poor health.
- 7.27 Through the specified construction methodologies and tree protection measures, it will be possible to minimise the impact of the proposed development on the retained trees. Additional drawings have been submitted to illustrate that the proposed

service runs (gas, water, etc.) wont have any impact on existing trees within the site.

- 7.28 Overall, there are no known overriding arboricultural constraints which would prevent the proposed development from going ahead, subject to the protection measures and construction methodologies specified within this report being correctly implemented, which has been confirmed by the Councils Arboricultural Officer.
- 7.29 Further to this, an appropriate and sensitive, high-quality landscaping scheme is proposed, in order to help the dwellings assimilate on site, and remain in-keeping with the character of the surrounding area. This would be secured by way of a planning condition.

g) Contamination

- 7.30 The application submission does not include any documents relevant to land contamination. Whilst the current land use is residential, and therefore the recent history of the site is unlikely to be significantly contaminative, it is considered prudent for some assessment of land contamination to be undertaken, given the history of adjacent land as the Shorncliffe Camp and hospital. As such the Councils Land Contamination consultant has no objection to the granting of planning permission, subject to the council's standard land contamination being applied to any consent.

h) Land Stability and Drainage

- 7.31 A Land Stability Report has been prepared by KSI Ltd. and accompanies this application. The report reviews the proposed development on site and assesses any potential impact the development may have on the surrounding stability of the area.
- 7.32 Overall, the report finds that the proposed construction of four dwellings will have no significant adverse effect on the general stability of the site and surrounding land, extending down to the beach. The report suggests that the proposed cutting into the slope will reduce the head weighting at the backscar of the 1983 landslip.
- 7.33 The report suggests that the development uses piled foundations incorporating permanent concrete retaining walls, and that surface water disposal should be through positive drainage rather than soakaways. If these recommendations are followed, the proposed works are not considered to have an adverse effect on the site, surrounding land or property. This can be secured by way of a planning condition.
- 7.34 Comments and objections made regarding land stability are noted, however the above submitted report is prepared by a suitably-qualified engineer and comes to the conclusion that the scheme is acceptable.

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- 7.35 KSI Consulting have prepared an Addendum to the Land Stability report submitted, in relation to the comments raised by neighbouring residents regarding the impacts of local ground water. To summarise, the report states that the proposed use of shallow piled slab foundations means that no barrier to ground water running down the slope is introduced. It is therefore considered that the proposed work will have a negligible effect on the ground water within the slope and therefore will not cause any concentrations of ground water within the slope which could have an adverse effect on slope stability. Surface water is proposed to be drained to the main sewer.
- 7.36 Further to this, the site lies within Flood Zone 1, and therefore has a low probability of flooding. Therefore flood risk would not be considered a constraint to the proposed development.

i) Archaeology

- 7.37 The site lies within an Archaeological Notification Area, however, as the works are limited and located on the site of existing development, it is unlikely that the works will have a significant archaeological impact. However, it is considered reasonable and necessary to add a condition to any permission granted to secure the implementation of a watching brief to be undertaken by an archaeologist, so that the excavation is observed and items of interest and finds are recorded.

j) Highway Safety

- 7.38 The proposed dwellings would be accessed from the highest point of Sunnyside Road to mitigate the impact on existing trees and topography of the site. The access will take the form of a shared tarmacked bellmouth which leads to a new internal access road that provides access for each property. The new access has suitable visibility splays on either side.
- 7.39 The number of additional vehicle movements generated as a result of the proposed dwelling would not be significant to intensify the use of the access, to the extent it would be considered harmful to highway safety. The proposed ground floor site plan (drawing 18.070 06B) has been amended to include proposed localised road widening that enables the provision of passing spaces on Sunnyside Road with a new turning head, which will help alleviate residents' concerns about access.
- 7.40 Whilst outside the remit of the planning application, the applicant has also stated they will repair and upgrade Sunnyside Road after completion of construction.
- 7.41 The proposed layouts illustrates three formal, vehicular parking spaces per dwelling, however some of these spaces are proposed within a garage and KCC Highways and Transportation no longer recognise garages as car parking spaces. However, the dwellings would also benefit from a generous forecourt area within their curtilage, which would allow for additional parking provision. As such, the required parking provision of 3 off street spaces for a dwelling of this size can be

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suitably accommodated, and it is considered that this provision would be adequate to serve the proposed dwellings.

- 7.42 A separate pedestrian staircase access is proposed from Sunnyside Road to link to the new internal road for ease of movement.
- 7.43 Cycle storage will be incorporated on plot and would be secured by way of a planning condition.
- 7.44 A refuse collection point is located close to the entrance of the site and tracking drawings have been submitted that demonstrate the safe access and egress of refuse and fire vehicles. Any deliveries on a regular basis would be undertaken by delivery van, with the refuse collection taking place as per present arrangements to serve the existing dwellings in the vicinity.
- 7.45 Access by fire appliance has been shown on drawing 45456/5501/004 (included as page 32 of the submitted DAS) that demonstrates that a fire appliance can access the site and turn to leave Sunnyside Road in forward gear. Provision is therefore made to meet the requirements of Building Regulations, and further details regarding this would be sought following the grant of any planning permission at Building Control stage.
- 7.46 Temporary construction access for materials deliveries will be managed by the site contractor, taking account of existing access constraints. The bend in the road, approximately halfway along Sunnyside Road, has a centre line radii of c.10m which accords with design guidance for residential estate roads set out in Kent Design Guide (Step 3, page 143), therefore this is not judged to be a constraint.
- 7.47 It is further noted that, planning permission has previously been granted for an additional dwelling on the site on the footprint of the existing tennis court (ref. Y16/1450/SH). Therefore matters relating to highways access and construction traffic have already been considered and found to be acceptable in the context of the development of the site.
- 7.48 Overall, it is concluded that the proposal would not give rise to unacceptable impacts in highway safety terms as the level of trips generated by two additional dwellings above and beyond the existing permission would be minimal.

k) Other Matters

- 7.49 The original submission under this application included an annexe and associated staircase to plot 4, however this has since been removed from the scheme under amended drawings and as such alleviates any resident concerns that this could become plot 5 in the future.

Environmental Impact Assessment

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7.2 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

7.3 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.

7.4 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. The CIL levy in the application area is charged at £115.71 per square metre (zone C) for new residential floor space.

Human Rights

7.5 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

7.6 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

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7.7 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 seeks planning permission for 4no new dwellings and associated external areas within the curtilage of Hillboro (proposed to be demolished) and access from Sunnyside Road via a new private shared drive. The site is considered to be a sustainable location within the defined built up area boundary, where the principle of residential development is generally acceptable. While local objections to the proposals are noted the scheme is considered to be acceptable in terms of scale, design, amenity impacts, highway safety and convenience and site drainage on either surface water, ground water, or flood risk either on or off-site. Further, there have been no objections from any statutory consultees.

8.2 In light of the above, it is considered that the proposal accords with the adopted Development Plan subject to appropriate conditions. As such it is recommended that planning permission be granted, subject to the conditions set out below (subject to the Chief Planning Officer's delegated authority to agree and finalise the wording of the conditions and add any other conditions that he considers necessary).

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 be granted subject to the following conditions 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.

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 details shown on the submitted plans;

- Drawing no. 14 – Plot 4 Floor plans and roof plan
- Drawing no. 04 Rev B – Proposed block plan
- Drawing no. 08 – Plot 1 elevations
- Drawing no. 09 – Plot 2 floor plans and roof plan
- Drawing no. 01 – Site Location Plan

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- Drawing no. 02 – plot 2 elevations
- Drawing no. 05 Rev B – Proposed roof plan, site plan and landscape plan
- Drawing no. 13 Rev A – Plot 3 elevations
- Drawing no. 12 – plot 3 floor plans and roof plan
- Drawing no. 11 – Plots 1 and 2 site and building sections
- Drawing no. 03 Rev A – Existing block plan
- Drawing no. 16 Rev A – Site and building sections
- Drawing no. 15 Rev A – Plot 4 elevations
- Drawing no. 02 – Existing Site Plan
- Drawing no. 06 Rev D – Proposed ground floor plan, site plan and landscape plan
- Drawing no. 07 – Plot 1 floor plans and roof plan
- Drawing no. 19 Rev C – Existing and proposed street scene
- Drawing no. 45456/5501/005 – Vehicle tracking fire vehicle

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

3. Prior to the commencement of the development hereby approved, details of all external materials shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in complete accordance with the details of materials as approved, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure the appropriate appearance of the completed development and in the interests of visual amenity.

4. All ground protection measures including all protective fencing measures shall be installed in accordance with the tree protection plan prior to the construction contractor's site occupation. All protective measures must be installed under the supervision of the project arboriculturalist with photos taken and sent to the LPA's arboricultural manager and planning case officer as proof of compliance with the condition. All protective measures shall be retained intact and in place until completion of the project and will not be removed until a post-development site meeting is held with the LPA's Arboricultural Manager and the project arboriculturalist.

Reason: To ensure the long term health and retention of the TPO trees within the site.

5. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the District Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i. the parking of vehicles of site operatives and visitors
 - ii. loading and unloading of plant and materials
 - iii. storage of plant and materials used in constructing the development
 - iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v. wheel washing facilities

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- vi. measures to control the emission of dust and dirt during construction
- vii. a scheme for recycling/disposing of waste resulting from demolition and construction works

Reason: In the interests of the amenities of the area and highway safety and convenience.

6. From commencement of works (including site clearance) precautionary mitigation measures for reptiles shall be carried out in accordance with the details in section 5.2.2.3 of Preliminary Ecological Appraisal (Greenspace Ecological Solutions September 2020).

Reason: In the interest of minimising potential for harm to protected species.

7. No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a watching brief to be undertaken by an archaeologist approved by the Local Planning Authority so that the excavation is observed and items of interest and finds are recorded. The watching brief shall be in accordance with a written programme and specification, which has been submitted to and approved by the Local Planning Authority.

Reason: To ensure that features of archaeological interest are properly examined and recorded.

8. The development hereby approved shall use piled foundations incorporating permanent concrete retaining walls, and surface water disposal should be through positive drainage rather than soakaways as set out within the hereby approved Land Stability report by KSI Consulting.

Reason: In the interest of land stability.

9. No construction work in connection with the development shall take place on any Sunday or Bank Holiday, nor on any other day except between the following times:

Monday to Friday 0800 – 1800 hours, Saturdays 0800 – 1300 hours unless in association with an emergency or with the prior written approval of the District Planning Authority.

Reason: In the interests of residential amenity.

10. Within six months of development commencing on site details of how the development will enhance biodiversity will be submitted to the local planning authority. This will include recommendations in section 7 of the Preliminary Ecological Appraisal (Greenspace Ecological Solutions September 2020). On written approval the agreed details shall be implemented on site and thereafter retained in perpetuity.

Reason: In the interest of minimising potential for harm to protected species.

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11. Construction shall not commence until written documentary evidence has been submitted to, and approved in writing by, the local planning authority proving the new dwellinghouses will achieve a maximum water use of 110 litres per person per day as defined in paragraph 36(2)(b) of the Building Regulations 2010 (as amended). Such evidence shall be in the form of a design stage water efficiency calculator.

The new dwellinghouses hereby permitted shall not be occupied until written documentary evidence has been submitted to, and approved by, the local planning authority, proving that the development has achieved a maximum water use of 110 litres per person per day as defined in paragraph 36(2)(b) of the Building Regulations 2010 (as amended). Such evidence shall be in the form of a post-construction stage water efficiency calculator.

Reason: In accordance with the requirements of policies CSD5 and SS3 of the Shepway Core Strategy Local Plan 2013 which identify Shepway as a water scarcity area and require all new dwellings to incorporate water efficiency measures.

Water efficiency calculations should be carried out using 'the water efficiency calculator for new dwellings' <https://www.gov.uk/government/publications/the-waterefficiency-calculator-for-new-dwellings>.

12. No construction work above slab level shall take place until full details of both hard and soft landscape works, including sedum roofs, have been submitted to the local planning authority including planting, an implementation programme and a maintenance schedule. No building shall be occupied until an approved landscaping scheme has been carried out in accordance with the approved details unless an alternative timescale has been agreed with the local planning authority. The soft landscape works shall be maintained in accordance with the agreed maintenance schedule.

Reason: In order to protect and enhance the appearance of the site, streetscene and wider area.

13. No construction work above slab level shall take place until full details of the screening provided to the terraces of each dwelling have been submitted to the local planning authority. No building shall be occupied until the approved screening has been carried out in accordance with the approved details unless an alternative timescale has been agreed with the local planning authority. The approved screening shall be thereafter maintained in accordance with the agreed details.

Reason: In order to protect the amenities of neighbouring occupiers.

14. Three domestic parking spaces per dwelling hereby approved shall be kept available for domestic parking purposes in connection with each dwelling hereby permitted at all times, with no obstruction thereto.

Reason: To ensure the permanent retention of the space for parking purposes within the curtilage of the site in order to avoid obstruction of the highway and

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safeguard the amenities of adjacent properties in accordance with the Development Plan.

15. Prior to the first occupation of the development hereby approved, space shall have been laid out within each site for 4no bicycles to be parked, and shall be retained as such thereafter.

Reason: To ensure that facilities are available for the parking of bicycles so as to encourage access to the site by means other than private motor car in accordance with policy T5 of the Local Plan.

16. The bin stores and refuse collection point as shown on the hereby approved plans shall be fully implemented prior to the first occupation of each dwelling hereby permitted and shall thereafter be retained and maintained.

Reason: To ensure adequate means of refuse collection in the interests of the amenities of residents in accordance with the Development Plan.

17. 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 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.

Reason: To ensure that the development does not contribute to, or is not put at unacceptable risk from, or adversely affected by, unacceptable levels of water pollution from previously unidentified contamination sources at the development site in line with paragraph 170 of the National Planning Policy Framework.

NOTE: any surface or fly-tipped waste materials should be removed to suitable permitted sites as part of any site clearance/preparation works.

18. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order) (with or without modification) no development falling within Classes A, D and E of Part 1 of Schedule 2 to the said Order shall be carried out without the prior consent in writing of the Local Planning Authority on Plot 1 nor Plot 2.

Reason: To enable the Local Planning Authority to retain control over future development.

Informatives:

1. The applicant is reminded that, under the Wildlife and Countryside Act 1981, as amended (section 1), it is an offence to remove, damage or destroy the nest of any wild bird while that nest is in use or being built. Planning consent for a

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development does not provide a defence against prosecution under this act. Trees and scrub are present on the application site and are to be assumed to contain nesting birds between 1st March and 31st August, unless a recent survey has been undertaken by a competent ecologist and has shown that nesting birds are not present.

2. It is the responsibility of the applicant to ensure, before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority.

Across the county there are pieces of land next to private homes and gardens that do not look like roads or pavements but are actually part of the road. This is called 'highway land'. Some of this land is owned by The Kent County Council (KCC) whilst some are owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil. Information about how to clarify the highway boundary can be found at <https://www.kent.gov.uk/roads-and-travel/what-we-look-after/highway-land/highway-boundary-enquiries>.

The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

3. Your attention is drawn to the requirements of the Building Regulations 2000 and the possibility of the need to obtain consent under such regulations.

Prior to implementing this permission, you should seek advice from Building Control as to whether or not to make an application. Advice and application forms are available from the Civic Centre, Folkestone (telephone numbers 01303 853538). Alternatively another building control body may be able to assist.

4. Please view the Considerate Constructors Scheme at <http://www.ccscheme.org.uk/index.php/company-registration/how-to-be-veryconsiderate/company-code-of-considerate-practice>.

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Martello Tower
(No 8)

UPPER CORNICHE

THE CORNICHE

THE CORNICHE

Casa Colina

Three Bears

Stone

Sandcastle

Stone

Channel View

The Gladies

Thatch Cottage

Wellington

Hillboro

Rabbit Hill

Signals

Greenway

Garden Lodge

Latchgate

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CASTLE BAY

SUNNYSIDE ROAD

Coombe Cottage

Saffrons

Frenches Cottage

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Heatherbank

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Contains Ordnance Survey data
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Agenda Item 7

DCL/21/06

Application No:	21/0581
Location of Site:	Hawkinge Cemetery (former horticultural nursery), Aerodrome Road, Hawkinge, CT18 7AG
Development:	Erection of a steel frame machinery store and partial demolition of existing stores
Applicant:	Folkestone & Hythe District Council
Agent:	None
Officer Contact:	Ross McCardle

SUMMARY

This application seeks planning permission for partial demolition of an existing storage building and erection of a steel-framed, corrugated steel sheeting barn for storage of machinery and equipment used in association with maintenance of the cemetery. The proposed building is unobjectionable in itself, and would not give rise to any significant harm to visual or local amenity. The proposal is therefore recommended for approval.

RECOMMENDATION:

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.

1. INTRODUCTION

1.1. The application is reported to Committee because it relates to a development by the Council and on Council-owned land.

2. SITE AND SURROUNDINGS

2.1. The application site forms part of a site compound in the northernmost corner of Hawkinge cemetery. It comprises a hard-surfaced area enclosed by a palisade fence, with boundary planting to on three sides (the western end being open to an area of open storage), an agricultural style barn workshop situated roughly centrally on the site, and a smaller storage building to the north. Space around the buildings is used for open storage of materials and equipment.

2.2. To the north and east of the site is open land, to the south and immediately to the west is the cemetery.

2.3. The site (and the cemetery) lie outside of the defined built up area boundary, within the AONB, and in an area of archaeological potential. It is not within a flood risk zone, or close to any conservation areas of listed buildings.

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



Fig. 1 – Existing workshop building



Fig. 2 – View from within cemetery



Fig. 3 – View from Pay Street

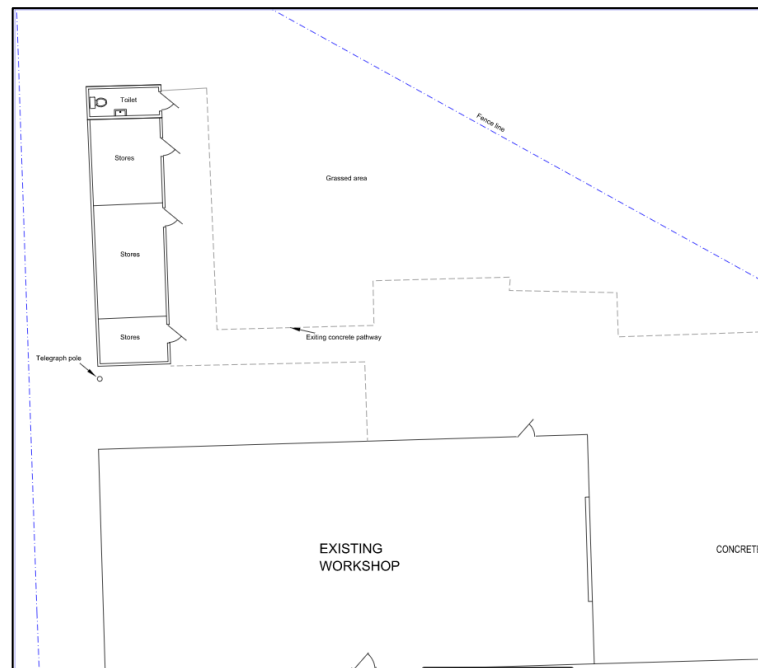


Fig. 4 – Existing site layout

3. PROPOSAL

- 3.1 Full planning permission is sought for the demolition of the existing storage building (small toilet cubicle to be left in-situ) and for the erection of a new steel-framed machinery store.
- 3.2 It is proposed to erect a second, agricultural style barn over the footprint of the existing store building, which is to be partly demolished. The proposed building would be an approximate copy of the existing barn, and have a pitched roof, roller shutter doors on the eastern elevation, personnel doors on each flank, and be constructed using a steel frame with corrugated steel sheeting attached. The proposed building would measure approximately 16m x 9m x 4.6m tall.
- 3.3 An existing toilet cubicle – part of the existing structure – would be retained as a separate building.
- 3.4 The new building would form part of the depot for maintenance of the cemetery, and the application has been submitted by the Council's engineering team. It would be used to house two large tractors, two small tractors, trailers, tractor attachments, a pick-up truck, ride-on mower, and assorted tools. These are all currently stored out in the open within the compound; the existing building is used for storage of other equipment and is not able to house further equipment.

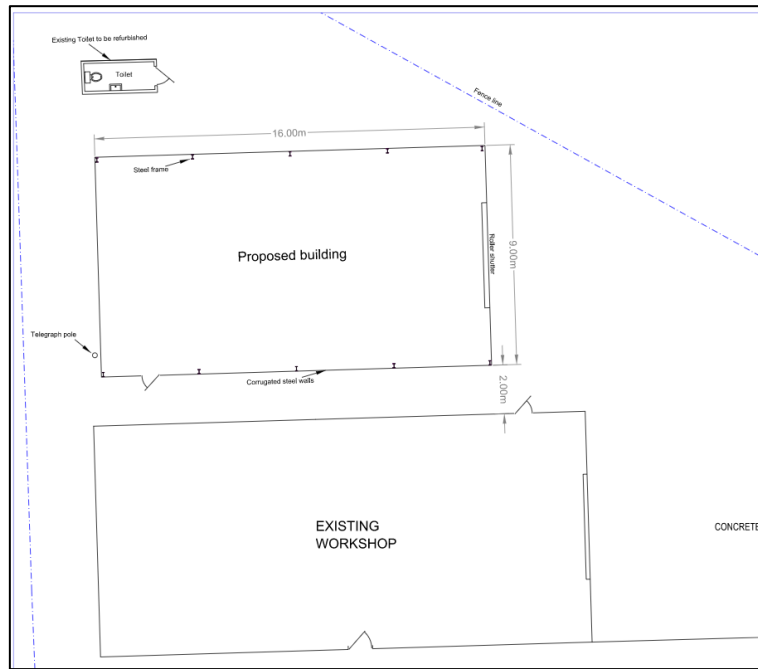


Fig. 5 – Proposed layout

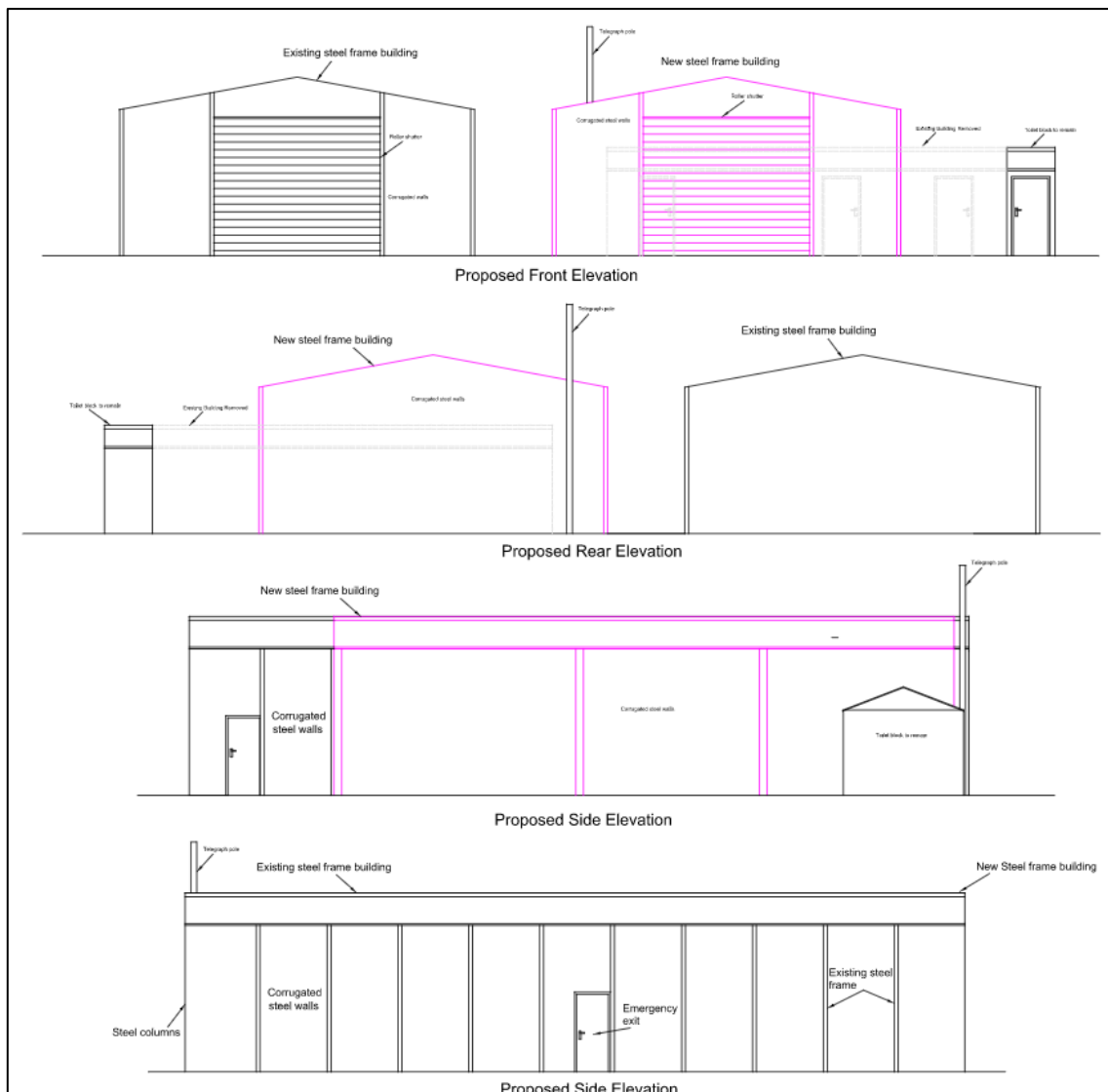


Fig. 6 – Proposed elevations

4. RELEVANT PLANNING HISTORY

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

Y18/0771/FH granted permission for an extension to the cemetery.

Y07/0772/SH granted permission for erection of the existing storage barn following demolition of a large horticultural glasshouse.

Y01/0048/SH granted permission for an extension to the cemetery.

97/1061/SH granted permission for an extension to the cemetery.

5. CONSULTATION RESPONSES

5.1 The consultation responses are summarised below.

Consultees

Hawkinge Town Council: has no objection.

KCC Archaeology: has no objection.

FHDC Building Control: note that Building Regulations approval is required.

Local Residents Comments

5.2 There are no immediately adjacent residential properties, and therefore no letters were sent to neighbours. A site notice was erected, however, in accordance with the regulations.

5.3 No representations have been received.

5.5 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 Local Plan 2013.

6.2 The Folkestone & Hythe District Council Core Strategy Review Submission Draft (2019) was published under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations (2012) for public consultation and as been subject to an Examination in Public in January 2021. As such its policies should be afforded weight where there are not significant unresolved objections.

6.3 The relevant development plan policies are as follows:-

Places and Policies Local Plan 2020

HB1 (quality places through design)
HB2 (cohesive design)
NE3 (protected landscapes)

Shepway Local Plan Core Strategy (2013)

DSD (delivering sustainable development)
SS1 (spatial strategy)
CSD3 (rural development)

Core Strategy Review Submission draft (2019)

SS1 (spatial strategy)
CSD3 (rural development)

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

Government Advice

National Planning Policy Framework (NPPF) 2019

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 are relevant to this application:-

Paragraph 11 - Presumption in favour of sustainable development.

Paragraph 47 - Applications for planning permission be determined in accordance with the development plan.

The NPPF generally seeks to protect the countryside and the AONB – paragraph 172 affording the AONB the *“highest degree of protection”* – but generally supports development where it is justified, necessary, and does not cause serious amenity harm.

7. APPRAISAL

7.1 In light of the above the main issues for consideration are:

- a) Principle of development
- b) Design/layout/visual amenity

- c) Residential amenity
- d) Archaeology
- e) Highways

a) Principle of development and sustainability

- 7.2 The application site lies outside the defined built up area and within the AONB, which is afforded the highest degree of protection by the NPPF. It would, however, comprise works to support an existing facility (the cemetery) and it therefore makes most sense to be located on site rather than elsewhere; in that regard the development requires a rural location within the AONB.
- 7.3 The applicant has set out that the barn is required in addition to the existing in order to securely store the plant and machinery that currently has to be stored in the open within the yard. This is a reasonable request and offers proper justification for the development in my opinion.
- 7.4 I therefore consider the scheme to be acceptable in principle.

b) Design / layout / visual amenity

- 7.5 The proposed barn would be similar in scale and design to both the existing barn on the site and to agricultural barns elsewhere within the county. In that regard it would not be an incongruous development within either the countryside or the AONB. The building would also be set between the existing barn and the boundary planting, and viewed in the context of the existing compound. The established boundary planting surrounding the site screens views from the north and east such that the compound is not overly prominent from public vantage points, and I therefore consider that the development would not be a significant or harmful feature within the wider landscape.
- 7.6 By consolidating the external storage into a single building which would be acceptable in terms of scale, design, and siting, I consider that the proposed development would conserve and enhance the natural beauty of the AONB.
- 7.7 A public right of way runs approximately north-south through the graveyard and continues northwards to Pay Street, but this is at such a distance that views therefore are unlikely to be seriously affected and, as above, any views would be against the context of the existing compound.

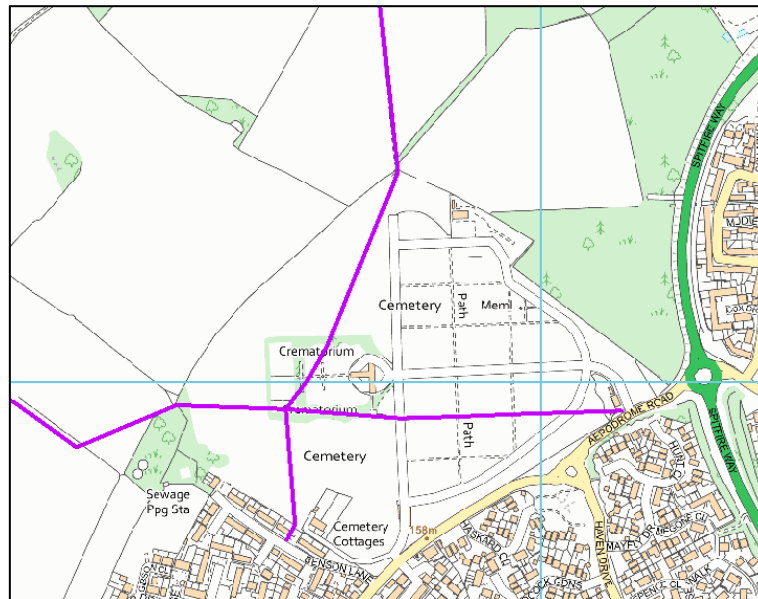


Fig. 7 – Public Rights of Way (purple)

- 7.8 I have recommended a condition requiring external materials to match those on the existing workshop barn so that the two buildings match, and sit comfortably together.
- 7.9 I have no concerns about retention of the existing toilet cubicle as part of the works. This would be a small and inconspicuous structure screened from view by the surrounding buildings and boundary planting.
- 7.10 I therefore have no material concerns in regards the design, layout, or visual impact of the proposed development.

c) Residential amenity

- 7.11 The site is remote from any residential properties and there are unlikely to be any residential amenity impacts as a result of this development.

d) Archaeology

- 7.12 The site lies within an area of archaeological potential but constitutes previously developed land; there was a large greenhouse across the site of both existing and proposed barns until approximately 2006, it is currently covered in hardstanding, and the site is shown as part of a quarry in the mid-1800s on historic maps. There is therefore little potential for the development to affect any historic features or remains, and I note KCC Archaeology has no objections.

e) Highways

- 7.13 The barn will house existing machinery and equipment used to maintain the cemetery, and therefore will not impact the local highway network. I have no concerns in this regard.

Environmental Impact Assessment

- 7.14 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

- 7.15 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. There is no CIL requirement for this development.
- 7.16 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 application is not liable for the CIL charge.

Human Rights

- 7.17 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

- 7.18 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

- 7.19 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 application seeks planning permission for the erection of a corrugated steel storage barn adjacent to an existing workshop building within the maintenance compound to the north of Hawkinge cemetery. The building would be functional in appearance but would not give rise to any significant harm to visual or residential amenity, or to highway safety and amenity.
- 8.2 No objections have been received from either statutory consultees or local residents.
- 8.3 The application is therefore recommended for approval subject to the conditions set out below.
- 8.4 The application relates to development by the Council on Council-owned land, and therefore must be publicly determined by the planning committee.

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 be granted subject to the following conditions 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.

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.

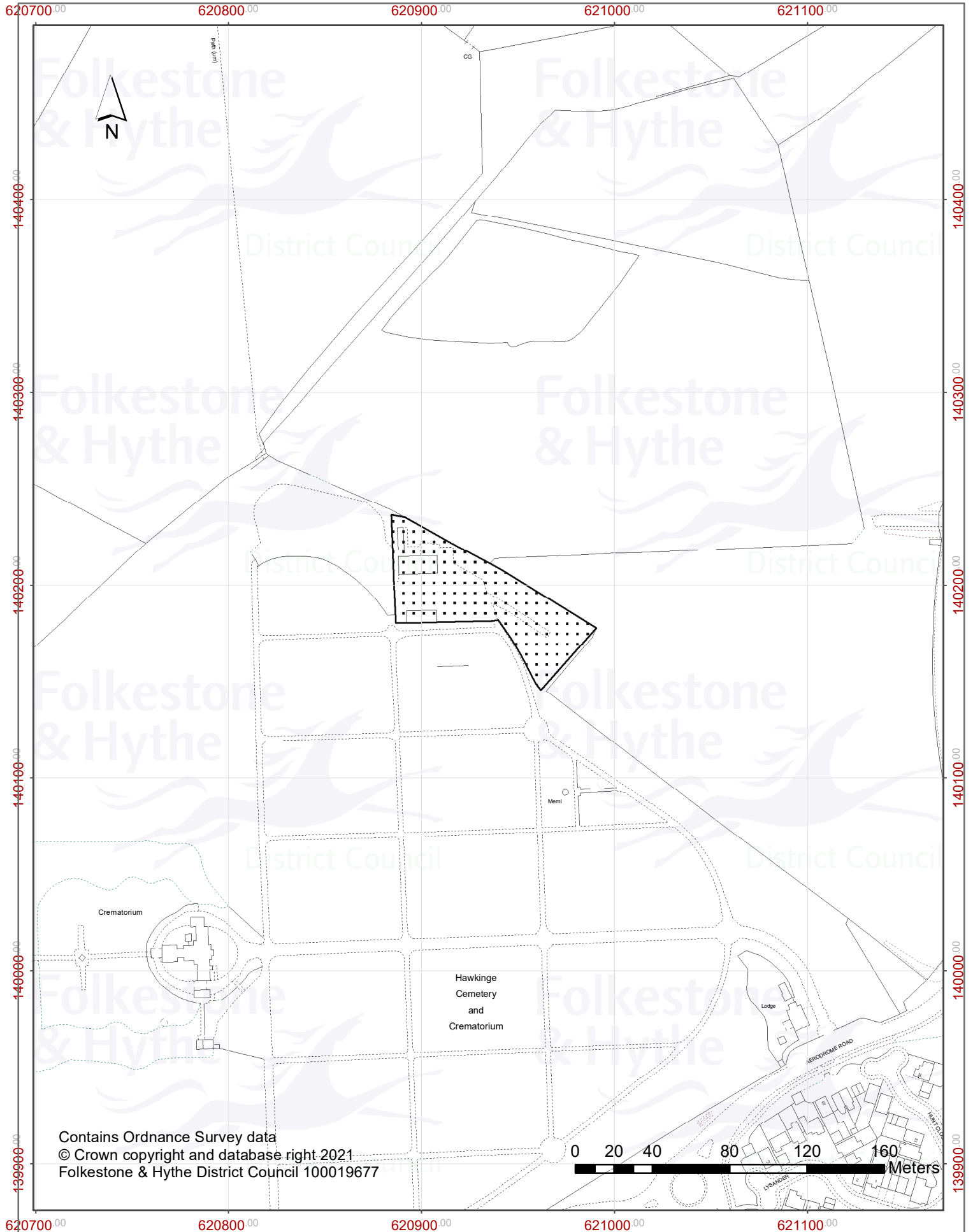
2. No development shall take place other than in complete accordance with drawings 2, 4, and 6.

Reason: For the avoidance of doubt.

3. External materials to be used on the building hereby permitted shall match those on the existing workshop/barn in terms of type, colour, and texture unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of visual amenity.

21/0581/FH
Horticultural Nursery
Hawkinge Cemetery & Crematorium
Aerodrome Road
Hawkinge



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This Report will be made
public on 14 June 2021

Report Number **DCL/21/07**

To: Planning and Licensing Committee
Date: 22 June 2021
Status: Non key Decision
Responsible Officer: Llywelyn Lloyd, Chief Planning Officer

SUBJECT: WITHOUT PLANNING PERMISSION OR LISTED BUILDING CONSENT THE INSTALLATION OF A NEW SHOPFRONT IN THE LISTED BUILDING 31 – 33 HIGH STREET, HYTHE, KENT, CT21 5AD

1. SUMMARY

1.1. This report considers the appropriate action to be taken regarding the unauthorised installation of a new aluminium framed shop front on this Grade II listed building. No Listed Building Consent or planning permission has been granted for this. The new shopfront has a detrimental impact on the Listed Building and on the Hythe, High Street & Vicinity Conservation Area and streetscene. This report recommends that a Listed Building Enforcement Notice and a planning Enforcement Notice be served requiring the removal of the new shop front and its replacement with a shopfront to match the one removed.

2. REASONS FOR RECOMMENDATIONS

2.1. The Committee is asked to agree the recommendations set out below because:

- a. The new shopfront adversely affects the special architectural and historic interest of the listed building and has a detrimental impact on the appearance of Nos. 31-33 High Street, Hythe and the street scene and conservation area. As such it is considered that the new shopfront is contrary to Paragraph 193 of the National Planning Policy Framework (NPPF) and policies HE1, HB1 and HB8 of the Places and Policies Local Plan Policy.
- b. Works to Listed Buildings, without consent do not become immune from enforcement action over any period of time, therefore they are not immune from enforcement action under the Listed Buildings Act. The work has been carried out within

the previous four years so it is not immune from enforcement action under S172 of the Town and Country Planning Act.

- c. It is considered in the public interest and expedient to issue the Enforcement Notices.

3. RECOMMENDATIONS:

- i. **To receive and note the report DCL/21/07.**
- ii. **That an Enforcement Notice be served under S38 of the Listed Buildings Act requiring the removal of the shopfront and the installation of a wooden framed shopfront of the same design and appearance as the one that has been removed and plate glass windows.**
- iii. **That an Enforcement Notice be served under S172 of the Town and Country Planning Act requiring the removal of the shopfront and the installation of a wooden framed shopfront of the same design an appearance as the one that has been removed and plate glass windows.**
- iv. **That the Chief Planning Officer be given delegated authority to determine the exact wording of the Notices.**
- v. **That the period of compliance with the Notices be (twelve) 12 months.**
- vi. **That the Assistant Director - Governance, Law & Regulatory Services be authorised to take such steps as are necessary, including legal proceedings, to secure compliance with the Notice.**

4. LOCATION AND DESCRIPTION OF BUILDING

- 4.1. 31 – 33 High Street, Hythe are located towards the western end of Hythe town centre, on the north side of the High Street, on a corner where a narrow alleyway cuts through to Bartholomew Street to the north. Nos. 31 and 33 form one commercial unit on the ground floor that for a number of years has been used as a post office and pharmacy. The building is a part of the continuous shopping frontage of the High Street which comprises traditional buildings of a variety of sizes, styles and periods. A number of the buildings are listed, including Nos. 31-33 which are Grade II listed and are located with within the Hythe High Street and Vicinity Conservation Area.
- 4.2. The building is C18th, possibly older at the rear, and is notable for having been the birthplace of Sir Francis Pettit Smith, inventor of the steam screw propeller. It was originally built as a house with the shopfronts added later. The shopfronts are probably either very late Victorian or Edwardian. The front upper storeys appear to have been rebuilt in brickwork in the mid-1980s but with 5 sash windows replicating the older arrangement.

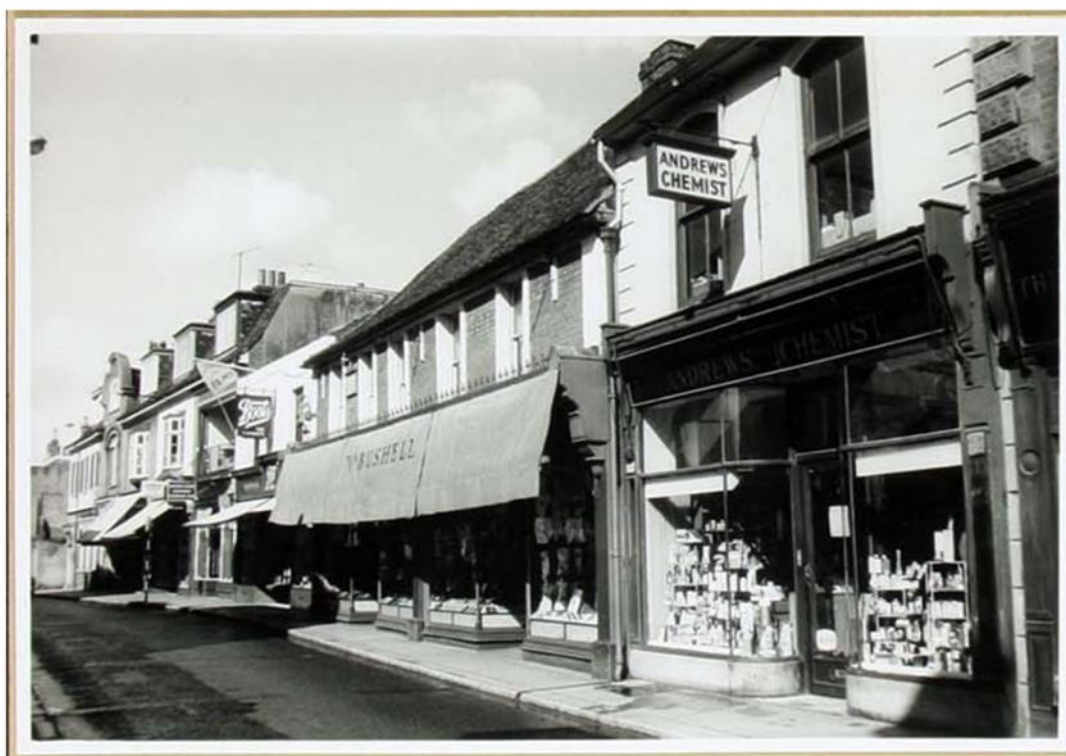


Figure 1 is a photograph held by Historic England (HE) of the shopfronts in 1962.

4.3. The shopfronts, as they were prior to the unauthorised works, appeared to have survived unchanged, despite the rebuilding of the upper storey above. The shopfronts were of a classic late Victorian design and comprised a pair of timber shopfronts divided by a central pilaster, each with a deeply recessed splayed ingo (deeply recessed doorway) and with large plate glass windows with 'mopstick' glazing bars at the ingo corners. The plate glass windows were set on a very low stallriser with subcill. The fascia projects forward and is capped by a moulded cornice and contained by enormous projecting trusses at each end. The shopfront returns around the corner into the alleyway for a short distance and here there are the same fascia details with enormous support trusses, these meeting at the corner in a distinctive fashion. Figures 2 and 3 are photographs of the shopfront prior to the unauthorised work.



Figure 2 - shopfront in 2018 (Google maps).



Figure 3 – shopfront prior to unauthorised work

5. RELEVANT PLANNING HISTORY

- 5.1. After the Council contacted the owners of the property in regard to the new shopfront the following applications were submitted:

20/1808/FH Listed Building consent for the retention of alterations to shop front. Refused 11th January 2021

20/1793/FH Retrospective application for alterations to shop front. Refused 11th January 2021

6. THE BREACHES OF PLANNING CONTROL

- 6.1. In October 2020 the Council received complaints about work being carried out to the shopfronts on the building. The shopfronts' glazing has all been stripped out, complete with the ingoes (deeply recessed doorways) and stallrisers. This has been replaced with a black aluminum shopfront with standard rectangular glazing sections set on a low aluminum stall riser panel. The right-hand unit is now arranged with a shallow, wide rectangular ingo recess with a sliding door, also of black aluminum, set, at the back of it. The left-hand unit has no doorway at all and is simply glazed in three large panes. The shopfronts' fascia and supporting pilasters have been retained, although the original fascia panel is, over-clad with a Perspex fascia sign which seems to have been there for some time and would also have required listed building consent. The photographs at Figures 4- 6 below show the shopfront now.

Fig. 4 Photograph of shopfront taken October 2020 after the unauthorised works had taken place.



Fig 5.

Photograph of shopfront taken October 2020 after the unauthorised works had taken place.



Fig 6. Photograph of shopfront taken October 2020 after the unauthorised works had taken place.



- 6.2. Any works to alter or extend a listed building in any manner which would affect its character as a building of special architectural or historic interest require consent. It is a criminal offence to carry out any such works without the necessary consent. The works that have been carried out to the shopfront affect the special architectural and historic interest of the building and required Listed Building Consent. Listed building consent was applied for after the works were carried out and has been refused on the following ground:

The new replacement windows to the front elevation by reason of their materiality and design have had a negative impact on Nos. 31-33 High Street, Hythe and detract from the historic character of surrounding area. The proposals are considered to be contrary to National and Local Policy, notably Places and Policies Local Plan Policy HE1.

- 6.3. As the works have resulted in a material change to the external appearance of the building, planning permission was also required. A retrospective planning application has been submitted and planning permission has been refused on the following ground:

The new replacement windows to the front elevation by reason of their materiality and design have had a negative impact on Nos. 31-33 High Street, Hythe and detract from the historic character of surrounding area. The proposals are considered to be contrary to National and Local Policy, notably Places and Policies Local Plan Policy HB1.

- 6.4. The Council was first made aware of the replacement shopfront in October 2020, at which time the Leaseholders were advised that the new works were unacceptable and that they should make applications for a suitable replacement. However, the Leaseholders opted to make applications to retain the newly installed shopfront. Following the refusal of planning permission and listed building consent on the 11th January 2021 the Senior Planning Enforcement Officer wrote to the Leaseholders of the property and advised them to make further applications for an appropriate shopfront to replace the recently installed shopfront. In that letter the Leaseholders were also advised to consult with a suitably qualified person who has knowledge of historic buildings to aid them in making the new applications. However, no response was received to that letter and no further applications have been submitted.

- 6.5. As the work that has been carried out to the listed building is a criminal offence and due to the seriousness of the impact of the work on the architectural and historic interest of the listed building and the failure of the leaseholders to take action to satisfactorily address the harm that has been caused, the Council is pursuing a prosecution against them, under section 9 of Planning (Listed Buildings and Conservation Areas) Act 1990.

7. RELEVANT PLANNING POLICY GUIDANCE

7.1. The following policies of the Places and Policies Local Plan 2020 apply:

Policy HE1 - Heritage Assets

Policy HB1 - Quality Places Through Design
Policy HB8 - Alterations and Extensions to Buildings
Policy DSD 9 (Delivering Sustainable development) of the Core Strategy Local Plan applies.

7.2. Paragraph 193 of the National Planning Policy Framework (NPPF) applies.

7.3. Government guidance on enforcement is set out in the National Planning Policy Guidance on Enforcement and post-permission matters. It advises that 'Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so having regard to the development plan and any other material considerations' and that 'In considering any enforcement action, the local planning authority should have regard to the National Planning Policy Framework (NPPF), particular paragraph 58.' Paragraph 58 of the NPPF states:

"Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control."

7.4. The discretion available to local planning authorities in relation serving an enforcement notice under the Planning Act also applies to serving an enforcement notice under the Listed Building Act

8. APPRAISAL

8.1. When deciding whether or not it is expedient to serve an enforcement notice it is necessary to consider whether planning permission and, in this case, listed building consent, would be granted for the work that has been carried out. In this case both planning permission and listed building consent have already been refused for the reasons set at paragraphs 6.2 and 6.3 above. The relevant main material planning considerations in this case are the impact of the works on the appearance of building itself, the streetscene and the Conservation Area. In terms of the listed building, S(16)2 of the Listed Buildings Act states that in considering whether to grant listed building consent the LPA shall have special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses.

8.2. Chapter 16 of the NPPF, Conserving and enhancing the historic environment, contains strategic guidance on development that affects the historic environment. Paragraph 193 provides guidance on how to consider the impact of a proposal on a heritage asset and reinforces the importance of conserving the asset. Paragraphs 194-196 require an assessment to be made of the harm to the designated heritage asset that would result from the works or development.

8.3. In addition to national policy there are local policies within the development plan that promote sensitive development for historic buildings. Places and Policies Local Plan Policy HB1 (Quality Places Through Design) is a general design policy that includes a generic range of design considerations that could be applied to most development proposals. These considerations can be applied to the design, materials and appearance of the new shopfront in relation to the building itself and in the context of the surrounding area. Policy HB1 relates to design, place making and the built environment and seeks to ensure high standards of design. The text in paragraph 1 is of particular importance; development should make a positive contribution to its surroundings, enhancing integration while also respecting existing buildings and uses, particularly with regard to layout, scale, proportions, massing, form, density, materiality and mix of uses so as to ensure all proposals create places of character; It is not considered that the design of the replacement windows of the new shopfront adheres to these criteria. The loss of period elements and the modern utilitarian appearance of the black aluminium framed windows is detrimental to the character of the building and incongruous in the street scene.

8.4. In his report on the new shopfront for both applications the Council's Heritage Consultant expressed significant concern about the negative impact the unauthorised works have had on the character of building; notably the loss of the ingoes, which were a prominent and historically important feature in the shop front prior to these works. The replacement windows might be functional but due to their design and materials they do not satisfy the requirements of national policy in the NPPF, or the strict tests of S16(2) of the Listed Buildings Act because their design is not sympathetic to the character of the listed building or the street scene or the aesthetics of the conservation area. A comparison of the before (Figure 7) and after (Figure 8) photographs below clearly shows that the historic detailing and layout of the shopfront has been lost:

- The stallriser at the bottom of the glazing is now much deeper and comprises a flat plain black aluminium panel;
- The inset entrance (ingo) nearest the alleyway has been removed and replaced with flat glazing across the whole length of the frontage
- The ingo on the right hand side, although retained, is now wider and shallower
- The wooden mopstick glazing bars to the edges of the ingoes have been replaced with flat metal bars, as has all of the white painted wooden framing to the glazing

Figure 7– shopfront prior to work being carried out



Figure 8 – new shopfront



8.5. Hythe High Street is characterised by the variety of historic buildings of all ages that, together, create the character of a traditional historic English small town High Street. A good number of traditional shopfronts also survive. These are of all periods from the mid-C 19th right through until the 1930s. The two shopfronts at Nos.31 – 33 had an attractive traditional appearance and the twin ingoes, in particular, formerly contributed to the lively traditional appearance of the street scene. The works that have been carried out have seen these replaced by a bland arrangement in standard black aluminium sections, and without the deep ingoes that gave the original shopfronts more visual interest. The loss of the left-hand ingo, in particular, is unacceptable as the new shopfront arrangement appears unbalanced, with an uncharacteristically wide recess to the right hand shopfront and no ingo at all to the left-hand side, this adding to the blandness of the current appearance. For these reasons, the works are considered contrary to the aim of national planning policy and listed building legislation. When assessing the level of harm that has resulted, as required by paragraphs 194-196 of the NPPF, it is considered that the works have resulted in less than substantial harm as they have not resulted in the loss of the heritage asset. However, this does not mean that the harm that has been caused is acceptable. Where a development will lead to less than substantial harm to the significance of the heritage asset, para. 196 advises that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. In this case the shop units have been in use for retail purposes continuously for a number of years and were in use at the time the works were carried out. The Planning Statement submitted with the applications provides justification for why the works were carried out. It is stated that:

- the timber elements were badly worn out and damaged due to weathering;
- the shopfront door was broken and damaged the previous year;
- the door was difficult for the elderly to negotiate as it would swing inwards towards them;
- the mailbox location was undesirable as it prevented customers from properly accessing the main entrance;
- this also caused people to come into very close contact which was seen as undesirable in the current pandemic.

8.6. With regard to state of repair of the timber elements, no justification has been provided as to why these couldn't have been replaced with new timber. With regard to the issues with the door and doorway, while these are understood, the shop units have been operating successfully for years with this arrangement since the previous shopfront was installed. Given there were two doorways it should have been possible to find an alternative solution which would have retained the existing shopfront arrangement. Pre application advice could have been sought as to how to address these issues in a manner which would have been acceptable in terms of its impact on the listed building and conservation area. Although the works that have been carried out may have resulted in some public benefit in respect of ease of entering and leaving the shop, these are minor benefits and not considered sufficient to outweigh the harm that has been caused to the heritage asset from loss of the old shopfront and the installation of the new one. It is also considered that similar benefits could have been achieved by more minor alterations that would not have resulted in harm to the historic and architectural character of the building.

8.7. The opening paragraph of Places and Policies Local Plan Policy HB8 Alterations and Extensions to buildings includes a range of general design considerations, which will mitigate or potentially eliminate any negative impacts arising from development. Paragraph 7 is important in terms of this application as it stresses the importance that any alterations which are made to a building respect its character and do not cause unacceptable harm. The changes that have already been made to No. 31 -33 High Street are considered to have resulted in unacceptable harm for the same reason that has been outlined for Places and Policies Policy HB1.

9. CONCLUSION

- 9.1. The new shop front that has been installed is unacceptable in terms of the streetscene and conservation area for the reasons explained above. Planning permission and listed building consent have been refused and its continued retention does not preserve or enhance the conservation area and actively detracts from it. For these reasons and it to ensure its removal and replacement it is recommended that a planning enforcement notice be served.
- 9.2. The replacement of the shopfront with the current poorly designed modern equivalent amounts to the removal of features of special architectural and historic interest that contributed to the historic importance of the building. Their replacement with a metal frame shopfront of different design further exacerbates the harm to the historic integrity of the building. It is considered that the harm that has been caused to the heritage asset outweighs any minor public benefits that may have been achieved in terms of ease of accessing the shop. For these reasons it is recommended that a Listed Building enforcement notice be served requiring the removal of the shopfront and its replacement with a wooden shopfront with layout and detailing and plate glass windows to match that which has been removed.

10. HUMAN RIGHTS

- 10.1. In reaching a decision on an enforcement matter 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.

11. PUBLIC SECTOR EQUALITY DUTY

- 11.1. In assessing this planning enforcement matter 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.

11.2. It is considered that the proposed enforcement action would not conflict with objectives of the Duty.

12. RISK MANAGEMENT ISSUES

12.1. Summary of the perceived risks follows:

Perceived risk	Seriousness	Likelihood	Preventative action
The continued negative impact of the shopfront on the listed building and conservation area. The shopfront will become immune from planning enforcement action	High	High	Serve planning and listed building enforcement notices

13. Legal, Financial and EQUALITY AND DIVERSITY Issues

Legal Officer Comments (TH)

13.1. There are no legal implications arising directly out of this report which are not already stated therein. For the information of the Committee, section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that;

1) Subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorized.

Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states that;

(1)Where it appears to the local planning authority—

(a)that any works have been or are being executed to a listed building in their area; and

(b)that the works are such as to involve a contravention of section 9(1) or (2),

they may, if they consider it expedient to do so having regard to the effect of the works on the character of the building as one of special architectural or historic interest, issue a notice under this section (in this Act referred to as a “listed building enforcement notice”). Where there have been unauthorised works to a listed building there are no time limits for issuing a listed building enforcement notice although the length of time that has elapsed since the apparent breach may be a relevant consideration when considering whether it is expedient to issue a listed building enforcement notice.

Finance Officer Comments (LK)

- 13.2. The financial implications regarding the issuing of the Listed Building Enforcement Notice are contained within the Council’s budget. However if further enforcement action is required then there may be additional legal costs which may require additional resource.

Equalities & Diversity Officer Comments (GE)

- 13.3. There are no equality and diversity implications directly arising from this report. Considerations to Human Rights and the Public Sector Equality Duty in relation to this issue have been set out in main body of the report within sections 10 and 11.

CONTACT OFFICER AND BACKGROUND DOCUMENTS

Councillors with any questions arising from this report should contact the following officer prior to the meeting.

Clive Satchell, Planning Enforcement Officer
Telephone: 01303 853414
Email: Clive.Satchell@folkestone-hythe.gov.uk

The following background documents have been used in the preparation of this report:

None.

**FOLKESTONE & HYTHE DISTRICT COUNCIL
PLANNING AND LICENSING COMMITTEE – 22 JUNE 2021**

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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