

Application No: Y16/1221/SH

Location of Site: Land Rear 2 Willop Close Dymchurch Kent

Development: Erection of 2 two storey dwellings and associated parking.

Applicant: J Jones
Saltwood Estates Ltd
Hogs Green
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Sandling
Hythe
Kent

Agent: Mr James Reuther
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Date Valid: 11.11.16

Expiry Date: 06.01.17

Date of Committee: 27.06.17

Officer Contact: Mr Paul Howson

RECOMMENDATION: That planning permission be refused for the reason set out at the end of the report, on the grounds of flood risk and that the application has failed the sequential test.

1.0 THE PROPOSAL

- 1.1 The application is for the erection of 2 two storey dwellings and associated parking. Submitted with the application in support of the proposal, are an Ecological Scoping Survey, a Flood Risk Assessment and an Archaeological Desktop Assessment. Following the initial submission Density and Intensity Plans have also been submitted. The proposal would provide two detached dwellings roughly in the centre of the site, side by side, with parking and turning areas to the front of the properties and rear garden space. Both properties would provide a ground floor living room, kitchen, utility and cloakroom. At first floor level they would have 3 bedrooms (1 ensuite) and a bathroom.
- 1.2 The proposed houses would be approximately 9.45m high and would have a mix of brick, render and weatherboarding on the external finishes. The proposed houses would be separated by an approximate 3m gap, and have approximately 1.5m space separation from each of the site side perimeters; there would be no windows on the flank wall. There would be 11m space from the back of the houses to the rear boundary and 16m from the

frontages to the front boundary. There are neighbouring dwellings and gardens surrounding the site on all sides.

2.0 LOCATION AND DESCRIPTION OF SITE

2.1 The site is a roughly rectangular in shape and has an existing vehicular access onto the A259. It is located within an established settlement boundary as defined on the local plan proposals map and is in a site of Archaeological potential. Willop Close is a private road, which has access from the A259 which is a classified road. The site was the former rear gardens of 110 and 110A Hythe Road which were previously demolished and has been replaced with 2 two storey dwellings fronting the A259 with an access located between the two properties, which would provide the access to this site. The application plot has been severed from the two houses at the front. The site is within Flood Zone 3a on the Environment Agency maps and the Council's Strategic Flood Risk Assessment (SFRA) shows that when allowing for climate change up to 2115, the site is at significant risk of flooding (with a small section of the rear gardens of the site being at extreme risk).

2.2 The site is on the fringes of a largely residential area, but remains an undeveloped plot containing vegetation, which has recently been cut back. The site is enclosed by 8 residential properties that surround the site, with further residential properties beyond this to the east and north. To the west is the Environment Agency Willop Depot, with fields beyond. To the south is the coastal frontage. The site is to the rear of the established building line along the A259, and there is an assortment of properties around the site in a 'backland' style arrangement.

3.0 RELEVANT PLANNING HISTORY

3.1 Outline application for the erection of a pair of semi detached chalet bungalows was refused (planning reference 90/0660/SH).

3.2 Outline application for the erection of a house was refused (planning reference 90/1024/SH) (appeal dismissed).

3.3 The two applications were refused for residential development of the site in the 1990s due to being deemed undesirable backland development that would be detrimental to residential amenity of neighbouring occupiers; and due to intensification of a sub-standard access (now upgraded to serve the two dwellings).

4.0 CONSULTATION RESPONSES (full comments available on the case file)

4.1 Dymchurch Parish Council

Objection be raised on the grounds that:

Willop Way is at a blind spot on the A259 (travelling from Dymchurch to Hythe) and current vehicles using this access already create a dangerous situation. Additional cars using this access will enhance danger on this stretch of the road. There is insufficient access for emergency vehicles to turn in Willop Way and it appears ordinary and emergency access to 109 is greatly restricted. The application is considered over intensive development. Voting: Unanimous.

4.2 KCC Highways And Transportation

After examining the proposals, I can confirm that the access benefits from adequate visibility splays for the speed of the road. The access is wide enough to accommodate the increased vehicle movements and two cars are able to pass one another. The proposed access is wide enough for an emergency vehicle to access the site if required. Shepway's Refuse Team should be contacted regarding the refuse regime here, as it is a private driveway and the site is over 30 metres from the highway. Therefore I do not wish to oppose this application.

4.3 Arboricultural Manager

I can confirm that I have no objections to the proposed development. There are no significant arboricultural constraints present.

4.4 Environment Agency

Following on from our objection to the above application dated 21st February, we would like to offer the additional comments.

Since our objection we have met with the applicant's consultants to discuss in detail the risk to the proposed properties. Whilst we still have some concerns, we can confirm that that we now accept that the proposed mitigation measures will ensure the property itself is safe and that floor levels will be raised above the residual risk flood level. We therefore remove the objection in terms of the Exception Test.

Our concerns remain in respect of the depth of flooding that could occur on this site in the event of a breach of the defences at Hythe Ranges and the implications for safe access and egress.

The NPPF Practice Guide states

"Access considerations should include the voluntary and free movement of people during a 'design flood', as well as the potential for evacuation before a more extreme flood".

Whilst we accept that in the design flood event for overtopping the flooding on this site is relatively shallow should there be a breach in the defences at Hythe Ranges, which currently only have an approximate standard of 1 in 50 year, the flood risk is more significant. The FRA does not confirm a hazard rating in terms of UK Flood Hazard Rating (FD230) however, it does confirm that the depth of flooding could be up to 1.3m and that there would be no safe access in the 0.5% breach event.

The standard of defence at Hythe Ranges is currently considered as low and there has been a breach here as recently as 2014. There is a proposed scheme to improve the standard of defence which is likely to be

undertaken within the next 2-3 years but it is too early in the scheme's progress for it to be considered relevant for current applications.

There is no statutory requirement on the Environment Agency to approve evacuation plans and it is therefore the LPA's decision as to whether the proposed access and egress arrangements are safe. We would therefore expect your Authority's own emergency planners and the emergency services to demonstrate that they are content with the lack of safe, dry access during extreme flood conditions.

Sequential Test

We would also expect your Authority to be content that this site has passed the Sequential Test. The site is situated within an area which is considered to be at significant risk from tidal flooding and is depicted as lying within Flood Zone 3a by our flood risk mapping. In light of the nature of the proposed development and this site's location within an area of flood-risk, this proposal will be initially subject to the Sequential Test (as stipulated within paragraphs 100 — 103 of the NPPF). This risk based test is applied at all stages of planning and its aim is to steer new development to areas at the lowest probability of flooding. Given the significant hazard rating, the depth of flooding that could be experienced on site and the current poor standard of defence at Hythe Ranges, it must be considered whether the applicant has adequately demonstrated that there are no alternative sites available in a lower flood risk zone where a development of this nature may be preferably located.

4.5 KCC Ecology

We have reviewed the ecological information which has been submitted with the planning application and we are satisfied that there is limited potential for protected/notable species to be present.

We require no ecological information to be submitted prior to determination of the planning application but the detailed mitigation/enhancement requirements must be implemented as a condition of planning permission if granted.

We are happy with the conclusion of the report which states that protected species were unlikely present on site.

However, we note that the site was recently cut down before the Ecological Scoping Survey was undertaken. Notable/protected species could have been present and works may have resulted in a breach of wildlife legislation. All ecological surveys must be carried out prior to any site clearance to ensure that any necessary mitigation can be implemented prior to works commencing if planning permission is granted.

In addition, we note that the ecology report submitted in support of this application has not sought for existing biological record data from the Kent and Medway Biological Records Centre and as such the report is not based on the most comprehensive and up-to-date biodiversity information.

Following our records, bats and reptiles have been located at proximity of the development site at less than 140 metres away.

On this occasion, as we are satisfied with the conclusions of the report we will not request to update the ecological report with the biological records. However in the future, we advise to always seek for biological record data from the Kent and Medway Biological Records Centre in order to have accurate biodiversity information on the surroundings of the development site.

Lighting can be detrimental to roosting, foraging and commuting bats. We advise that the Bat Conservation Trust's *Bats and Lighting in the UK* guidance is adhered to in the lighting design of the new dwellings built and associated parking (see end of this note for a summary of key requirements).

Enhancements

One of the principles of the National Planning Policy Framework is that *"opportunities to incorporate biodiversity in and around developments should be encouraged"*.

Consideration should be given to these enhancement measures:

- Hedgerows and trees should be planted and managed for the benefit of wildlife (native and local provenance species);
- Bird and bat boxes should be put up at suitable locations on the site;

Details of all of those ecological enhancements to be incorporated in to the proposed development must be detailed within the site and soft landscape plans.

We advise to secure this by a condition if planning permission is granted.

4.6 Southern Water

Please find attached a plan of the sewer records showing the approximate position of a public foul sewer within the access to the site. The exact position of the public sewers must be determined on site by the applicant before the layout of the proposed development is finalised. Please note:

No development or new tree planting should be located within 3 metres either side of the centreline of the public sewer and all existing infrastructure should be protected during the course of construction works.

No new soakaways should be located within 5 metres of a public sewer.

Furthermore, due to changes in legislation that came in to force on 1st October 2011 regarding the future ownership of sewers it is possible that a sewer now deemed to be public could be crossing the above property. Therefore, should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its condition, the number of properties served, and potential means of access before any further works commence on site.

The applicant is advised to discuss the matter further with Southern Water. The applicant has not stated details of means of disposal of foul drainage from the site.

Southern Water requires a formal application for a connection to the public sewer to be made by the applicant or developer.

We request that should this application receive planning approval, the following informative is attached to the consent:

"A formal application for connection to the public sewerage system is required in order to service this development, please contact Southern Water, Sparrowgrove House Sparrowgrove, Otterbourne, Hampshire S021 2SW (Tel: 0330 303 0119) or www.southernwater.co.uk".

The Council's Building Control officers or technical staff should be asked to comment on the adequacy of soakaways to dispose of surface water from the proposed development.

- 4.7 Affinity Water - No comments received
- 4.8 K.C.C. Archaeology - No comments received
- 4.9 Romney Marshes Internal Drainage Board - No comments received
- 4.10 Environmental Health Recommend standard contamination condition.

5.0 PUBLICITY

- 5.1 Neighbours notified by letter. Expiry date 6th December 2016

6.0 REPRESENTATIONS

- 6.1 11 letters/emails received objecting on the following grounds:
 - Unsafe over-intensive access onto A259
 - Insufficient off road parking
 - Issues with services such as bin collection
 - Noise from traffic using the access between houses
 - Concerns relating to flooding/drainage
 - Concerns about subsidence
 - Noise and disturbance during construction
 - Protected species on the site
 - Asbestos on the site
 - Overbearing to neighbouring properties
 - Loss of sunlight to neighbouring properties
 - Loss of privacy for surrounding properties
 - Would look incongruous in the streetscene due to height
 - Historic planning refusals

7.0 RELEVANT POLICY GUIDANCE

- 7.1 The full headings for the policies are attached to the schedule of planning matters at Appendix 1.
- 7.2 The following policies of the Shepway District Local Plan Review apply:

SD1, BE1, HO1, TR11, U1

7.3 The following policies of the Shepway Local Plan Core Strategy apply:

DSD, SS1, SS2, SS3, SS5, CSD5

7.4 The following Supplementary Planning Documents and Government Guidance apply:

National Planning Policy Framework: Paragraphs 7, 49, 100 - 103

8.0 APPRAISAL

Background

8.1 An earlier pre-application proposal for three dwellings on the site with garaging was considered to be overdevelopment, resulting in most of the site covered either in buildings and hard surfacing, with limited amenity space left to serve the proposed development, which would have been out of keeping with the surrounding area. Following discussions with Council Officers this revised proposal of a pair of 'handed' houses has been submitted to address this concern, and mirrors the form of development forward of the site (1 and 2 Willop Close) granted planning permission in 1988.

Relevant Material Planning Considerations

8.2 The main considerations in determining this application are the principle of development, design and the visual impact, impact on neighbour amenity, impact on highways, archaeology, ecological impacts, and flood risk.

Policy

8.3 The principle of new development in this location is supported by saved local plan policy HO1 and Core Strategy policy SS3, which direct residential infill within existing built up areas. However, this is subject to the scheme's impact on environmental, highways, flooding and other material planning considerations also being deemed acceptable. Saved policy BE1 seeks amongst other things that development should accord with existing development in the locality, where the site and surrounding development are physically and visually interrelated. Saved policy TR11 seeks that where proposals involve intensification of an existing access the access would not be detrimental to highway safety. Further to this paragraph 49 of the NPPF states that 'housing applications should be considered in the context of the presumption in favour of sustainable development'.

Principle

8.4 The NPPF states that windfall housing sites should not include residential gardens (paragraph 48). However in the context of the support of sustainable development in existing settlements, backland development cannot be resisted in principle, unless significant harm is identified. In this

case it is noted that existing developments around the application site include established backland development within the settlement boundary and as such the proposal needs to be assessed on its own merits.

Visual Amenity/Design

8.5 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. It is acknowledged that traditionally this coastal stretch would have been characterised by low level bungalows, however new development has often been two storeys high, due to flood risk and the demands for 'family' housing. Increasingly these areas of low level development are punctuated by higher new development and as such the proposed development would not be adjudged to be incongruous. Therefore, whilst acknowledging that the proposed pair of houses at 9-10m in height are larger than the surrounding properties, they are designed to be read as being lower at the front when viewed from the public domain. This is due to the change in levels across the site and their context of being surrounded by existing dwellings, with particular regard to the pair of detached two storey dwellings directly in front of them. Whilst the proposed development would be visible from the highway, the seawall and from the public footpath across the open fields to the north west, it is not considered the proposed dwellings would be harmful to visual amenity. The proposed design has a mix of external finishes, articulation and features that would add interest and positively to the variety of built form in the immediate area. As such it is considered there would be no conflict with saved policy BE1 in this regard; or saved policy SD1 which seek to maintain and improve the character and vitality of the built environment and promote high quality design.

8.6 Saved policy SD1 also seeks to ensure development density is appropriate to its location. The Parish Council have an objection to the application on the grounds that it is over intensive development. However, the application site is significantly larger than the average plot size in the surrounding area, and its division to accommodate two dwellings would result in both equal sized plots being equivalent with other residential plots in the vicinity. These are sufficient to provide good sized gardens and decent separation from properties to the front and rear. The applicant has submitted density drawings to demonstrate this. Therefore, the development is not considered to be cramped or over intensive and would not be considered to conflict with saved policy SD1.

Neighbouring Amenity

8.7 1 Willop Way is the closest neighbouring property which has a narrow plot along the north east side of the application site. The proposed houses have been designed to be set back from this neighbouring bungalow to allow sunlight to reach the south west facing windows. There would only be some late afternoon/evening shadow, with the flank elevation of this neighbouring property continuing to enjoy uninterrupted sunlight during the greater part of the day. There would be some overshadowing introduced on the northern

section of the neighbouring garden, however this is a mix of a heavily vegetated garden and the parking area for the property. It does not appear to be primary amenity space and therefore afternoon shadow on this area would not be considered to be significantly harmful. The north elevation of this neighbouring property would have limited sunlight, and therefore on balance preserving sunlight to the primary flank wall and southern elevation conservatory referred to above. This is a better outcome for the occupiers of this dwelling than the alternative of moving it in line with the neighbouring property. Furthermore with regard to overlooking, the proposed window configuration at the front and the position of the two houses in relation to each other would avoid significant overlooking of the amenity garden area. 111 Hythe Road would have 40m of space separation and as such there would be no significantly harmful overlooking in relation to the garden area.

8.8 Turning to 108 Hythe Road to the west/north west of the application site, the house would be screened from a very large tree and the outlook from the proposed rear dormers would be onto a roofslope and blank gable wall. The open space forward (south) of the neighbouring house is presumably private garden, but the siting of the proposed dwellings would not impact significantly on this in terms of overlooking as there are no side elevation window. The narrow garden space to the east of this neighbouring building appears to be heavily vegetated and not a main amenity area. Therefore, it is considered that the tree cover and the site layout would mean the residential amenity of the occupiers of 108 Hythe Road would not be significantly affected by the proposed development.

8.9 The properties to the rear of the site (109 Hythe Road and 3 Willop Way) benefit from space separation from the proposed development, however there would be some overlooking of the garden areas from the proposed dormer windows. However, there would be 35m and 30m respectively back to back between these buildings and approximately 25m to the middle section of the neighbouring gardens; therefore given the space separation, it is considered overlooking would not be unacceptably intrusive and there would not be significant loss of light. Any harm could be mitigated by enhanced planting along the rear boundary and secured by condition. The properties to the front (1 and 2 Willop Close, and 107 Hythe Road) also benefit from approximately 35m space separation from the front of the proposed houses and the neighbouring back garden areas. Further to this, it is considered the noise from cars accessing and leaving the site would not significantly exacerbate the existing ambient traffic noise from the classified road. Overall, whilst there would inevitably be some loss of privacy through the introduction of two additional dwellings and the consequent potential overlooking, it is considered that due to the siting of the proposed development, to maximise the space separation both ends of the plot, this would not be so severe to warrant refusing planning permission. After careful consideration it is not considered that the living conditions of any neighbouring property would be harmed and that the scheme is policy compliant in this respect.

Highways

8.10 The proposal would provide 2 parking spaces per property, with associated turning area. It is considered this meets vehicle parking standards for three bedroom properties. Access to the site from the public highway would utilise the existing private drive (Willop Close) which runs between the properties 1 and 2 Willop Close. It is considered the site is a sustainable location within walking distance of bus routes to local service centres. Concern has been expressed by the Parish Council and in representations submitted regarding the suitability of the access for a more intensive use and the potential for highway safety issues. However, Highways Officers have confirmed that the existing access benefits from adequate visibility splays for the speed of the road and that the access is wide enough for vehicle movements to and from the site. Further to this, existing refuse collection is from the side of the A259 and as such refuse vehicles would not need to access the site. Wheelie bins would be only 'put out' on collection days, as is the case for the existing properties on Willop Close. As such, the moderate intensification of use that would be generated by a further 2 dwellings on the existing access would not be considered to pose a significantly detrimental highway safety issue in accordance with saved policy TR11. As such, highways matters are not considered to be a constraint to the proposed development.

Flood Risk

8.11 The development lies in a low lying area and is at risk to tidal flooding should major breaches or prolonged overtopping of the sea defences occur, and is identified as being in Flood Zone 3a on the EA maps. As shown in the Council's Strategic Flood Risk Assessment (SFRA), when allowing for climate change up to 2115 the site is at significant risk of flooding (with a small section of the rear of the site being at extreme risk). The National Planning Policy Framework (NPPF) (paragraphs 100 - 103) advocates a risk based approach to planning for development in such areas. This includes reducing the adverse impacts of flooding by avoiding inappropriate development in areas at risk of flooding and directing it to lower risk areas.

8.12 The SFRA was reviewed by specialist consultants in 2015 and the hazard maps revised following the construction on the new sea defences at Dymchurch and St Mary's Bay, together with new climate change and sea level rise data. The breach scenarios have also been reconsidered and updated. In this regard, the revised SFRA has significantly changed the level of flood risk within the Romney Marsh Character Area, generally lowering the flood risk areas and identifying many sites to now be safe from flood risk. However, the flood risk for the current site remains at a significant / extreme flood risk under the 2115 scenario when allowing for climate change. It is acknowledged that the Hythe Ranges sea defences are due to be upgraded, however, until these works are completed and the SFRA updated accordingly (as was the case after the Dymchurch sea defences were upgraded), it is not possible to predict how this would affect the application site in terms of flood risk. In the current modelling it is predicted that a breach in the defences at Hythe Ranges would result in a significant flood risk of greater severity than a predicted flood event through overtopping. It is noted that the standard of defence at Hythe Ranges is currently considered

as low (they have been breached as recently as 2014), and as such the application needs to be assessed on the current sea defences in situ.

- 8.13 Government guidance in the National Planning Policy Framework (NPPF) (paragraph 100) states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere. The NPPF advocates a sequential risk-based approach in determining the suitability of land for development in flood risk areas which should be applied at all levels of the planning process. For developments within a flood risk area, the NPPF requires the sequential and exceptions tests to be applied, with the Council's Strategic Flood Risk Assessment being the starting point for the application of the sequential test. Only if a development passes the Sequential Test should the Exceptions Test be applied. In this regard given the location of the application site within a significant / extreme flood risk area, sequentially, development should be directed away from such sites, and other sites of a lower risk should be considered first. Furthermore, the Council's Core Strategy Local Plan Policy SS3 (c) also requires the sequential test to be applied in conjunction with the Strategic Flood Risk Assessment, taking into account climate change. The policy aim of the sequential test is to steer new development to areas with the lowest probability of flooding, and to consider whether alternative sites are available in the character area (the Romney Marsh Character area in this instance). In particular, the policy requires that the sequential test is applied to the location of new dwellings within the three identified character areas of Shepway and that no residential development, other than replacement dwellings should take place within areas identified at extreme risk as shown on the SFRA 2115.
- 8.14 The three character areas in the district are the Folkestone and Hythe area, the Romney Marsh area and the North Downs area. For this application in Dymchurch, the application should therefore be sequentially tested within the Romney Marsh character area. There are a number of sites with planning permission or emerging allocated strategic housing sites within the Romney Marsh character area, which are located in areas of lower flood hazard which are at a much lower risk of flooding. Sequentially these are considered to be safer to develop first and have the benefit of extant planning permissions or allocations. As such, there is no need to allow new dwellings on unallocated sites at higher levels of flood risk. Therefore it is not possible to reach a conclusion that the sequential test can be passed for this site. The FRA submitted with the application only applies the sequential test within Dymchurch, but this is a flawed approach in terms of adopted planning policy as it should be applied to the whole Romney Marsh character area, as required by Core Strategy policy SS3.
- 8.15 Therefore, it would not be advisable to locate additional vulnerable residential development on the proposed application site. As such, it is considered that the proposal fails to meet with the requirements of the sequential test as set out in the NPPF and Core Strategy policy SS3, as there are other sites within the defined character area that are available, feasible and at a lower flood risk. It is acknowledged that the application has been accompanied by an independent flood risk assessment which

proposes mitigation measures including a raised slab level, locating all sleeping accommodation at first floor level and flood protection measures incorporated into the construction of the dwellings. However this is not relevant to the sequential test and the risk based approach of directing development away from the areas at highest risk, to lower risk areas across the entire character area. It should be noted that it is the responsibility of the LPA to ascertain whether the sequential test has been passed and not the EA.

- 8.16 In accordance with the requirements set out in the NPPF, the exception test is not required to be applied as the sequential test has not been passed. Whether the site itself is safe or not is irrelevant as this is only to be considered if the sequential test is passed. Therefore, it is considered that the development is unacceptable in flood risk terms and as it would fail the sequential test is contrary to policy SS3 of the Shepway Core Strategy and paragraph 100 of the NPPF in this regard, which is the reason for the recommendation of refusal.

Ecology

- 8.17 In terms of the ecological impact of the proposed development, an Ecological Scoping Survey has been submitted with the application. KCC Ecologists have looked at the submitted information and are satisfied there is limited potential for notable or protected species to be present on the site. However, it is disappointing that the site was cleared prior the Ecological Scoping Survey being undertaken, nevertheless, in this instance they are satisfied with the conclusions of the report and do not require the report to be updated to include the most up-to-date biological records.

Arboriculture

- 8.18 The site has recently been cleared of trees and vegetation, and as such the Arboriculture Manager has no objection as there are no arboriculture constraints on the site.

Archaeology

- 8.19 An archaeological desktop assessment has been submitted as part of the application acknowledging local historical significance. No comments from KCC Archaeology have been received.

Local finance consideration

- 8.20 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. New Homes Bonus payments are not considered to be a material consideration in the determination of this application. In accordance

with policy SS5 of the Shepway Core Strategy Local Plan the Council has introduced a CIL scheme, which in part replaces planning obligations for infrastructure improvements in the area. The CIL levy in the application area is charged at £50 per square metre for new dwellings.

Other Issues

8.21 Neighbours have highlighted the potential of buried asbestos being present on the site. This has been passed on to Environment Health officers, who recommend a standard contamination condition is applied.

Human Rights

8.22 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.

8.23 This application is reported to Committee due to the views of Cllr Alan Ewart-James, as a result of the Environment Agency's late intervention.

9.0 SUMMARY

9.1 The proposal would introduce new dwellings in an area of high risk of flooding, in Flood Zone 3a as identified on the Environment Agency flood hazard maps, and in an area of significant / extreme risk of flooding on the Shepway Strategic Flood Risk Assessment 2115 when allowing for climate change. Having applied the sequential test as required by the NPPF and in accordance with Core Strategy policy SS3 there are other sites within the Romney Marsh Character Area that have planning permission or are allocated for housing that are at lower risk of flooding. Therefore, the sequential test is failed and planning permission should be refused. The proposal is therefore contrary to policy SS3 of the Shepway Core Strategy and the National Planning Policy Framework paragraphs 100 and 103.

10.0 BACKGROUND DOCUMENTS

10.1 The consultation responses set out at Section 4.0 and any representations at Section 6.0 are background documents for the purposes of the Local Government Act 1972 (as amended).

RECOMMENDATION – That planning permission be refused for the following reason:

The application site is located in an area at significant / extreme risk of tidal flooding as identified in the Shepway District Council Strategic Flood Risk Assessment, taking into account climate change. Government guidance set out in the National Planning Policy Framework states that new development should be directed first to sites at the lowest probability of flooding. It is considered that there are suitable sites capable of accommodating this scale of development in the identified character area within which the application site falls that are at lower flood risk, some of which already have planning permission. As such, it is therefore considered that the proposed development fails the sequential test and is contrary to policy SS3 of the Core Strategy Local Plan and the NPPF paragraphs 100 -103.

Decision of Committee

Y16/1221/SH
Land rear 2 Willop Close
Dymchurch

