

Application No: Y17/0364/SH

Location of Site: Land Adjoining Walnut Tree Cottage, Rye Road, Brookland

Development: Erection of a detached dwelling (resubmission of application Y16/0704/SH).

Applicant: Mr John Burgoyne
New Building Farmhouse
Becketts Lane
Fairfield

Agent: Mr James Smith
Drawing Services Ltd
Hydene
Barrack Hill
Hythe
Kent
CT21 4BY

Date Valid: 24.03.17

Expiry Date: 19.05.17

Date of Committee: 27.06.17

Officer Contact: Louise Daniels

RECOMMENDATION: That planning permission be refused for the reasons set out at the end of the report as this is unsustainable development in the countryside outside an existing settlement and which would be visually intrusive and erode the rural character of the area.

1.0 THE PROPOSAL

- 1.1 The proposal seeks planning permission for the erection of a detached chalet style bungalow dwelling. The dwelling is proposed to be sited centrally within the plot, addressing the street scene of Rye Road and utilising an existing vehicular access off Rye Road.
- 1.2 The dwelling would have a footprint of approximately 133 sqm incorporating an integral double garage, entrance hall, study, lounge, kitchen/dining room and utility room. At first floor level, 4 bedrooms (two with en-suite bathrooms) and a family bathroom is proposed.
- 1.3 Externally, the dwelling would have a ridge height of 7.2 metres and an eaves level of 2.6 metres. It would be constructed in a traditional design with a half hipped roof form with pitched roof dormer windows. The external materials proposed would be facing brickwork, weatherboarding, plain clay roof tiles and upvc windows and doors.
- 1.4 The application is accompanied by a flood risk assessment.

2.0 LOCATION AND DESCRIPTION OF SITE

- 2.1 The site is within the rural parish of Brookland within the Romney Marsh. It is within the designated local landscape area and lies on the south western periphery of the village outside of, but immediately adjacent to, the defined settlement boundary of Brookland village. As such, the application site is in the countryside and has been advertised as a departure from the Local Plan.
- 2.2 It is within zones 2 and 3a of the Environment Agency's flood risk maps but is identified as being at no risk, should flooding occur, on the Council's Strategic Flood risk Assessment at 2115 taking into account climate change. The site is also in an area of archaeological interest.
- 2.3 The application site is accessed from Rye Road and has several single storey buildings on the site as well as some general items stored externally. To the front of the site are two mature trees the subject of TPO No. 9 of 2004. To the north east are the semi-detached residential dwellings of 11 and 12 East View, which are two storey flat roofed dwellinghouses. To the south west is the property known as Walnut Tree Cottage, which is a traditional style two storey dwellinghouse. To the front (south east) of the application site is the main A259 Rye Road Highway. To the north west, the application site borders open flat agricultural land.

3.0 RELEVANT PLANNING HISTORY

- 3.1
 - Y05/0634/SH - Outline application for the erection of a detached chalet bungalow and garage (re-submission of Y04/0977/SH). Refused. Appeal allowed.
 - Y08/0231/SH - Erection of a detached dwelling being details pursuant to outline planning permission Y05/0634/SH, (Details relating to siting, design, external appearance and landscaping). Approved with conditions.
 - Y12/0479/SH - Erection of a detached dwelling. Refused
 - Y12/1139/SH - Erection of a detached dwelling (resubmission of application Y12/0479/SH). Refused.
 - Y16/0704/SH – Erection of a detached dwelling. Refused.

4.0 CONSULTATION RESPONSES

4.1 Brookland Parish Council

No comment.

4.2 Highways England

No objection subject to conditions:

Highways England will be concerned with proposals that have the potential to impact on the safe and efficient operation of the Strategic Road Network (SRN), in this case the A259. Highways England were concerned that without necessary conditions attached to any permission the proposals may materially affect the safety and/or operation of the SRN and requested conditions be attached to any planning permission, as follows;

- Visibility splays
- Keeping the access free from obstruction
- No drainage onto the highway

4.3 Environmental Health

No objections however recommend the standard contamination condition be imposed for any grant of planning permission.

4.4 Southern Water

No objection. 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 foul sewerage system is required in order to service this development. Please contact Southern Water, Sparrowgrove House, Sparrowgrove, Otterbourne, Hampshire SO21 2SW.

4.5 Environment Agency

No objection subject to the following conditions:

- Ground finished floor levels for all living accommodation to be set a minimum of 3.0m ODN in accordance with the recommendations in the accompanying Flood Risk Assessment (FRA).
- All sleeping accommodation to be set on the first floor or above.

4.6 KCC Archaeology

No objection subject to a condition for a programme of archaeological work.

4.7 Arboricultural Manager

Unable to support without a pre-development tree survey. A pre-development tree survey and report, incorporating a tree survey schedule, tree constraints plan arboricultural impact assessment, arboricultural method statement and a tree protection plan will need to be submitted in support of this application in order to demonstrate how the two TPO's oak trees to the front of the application site will be retained and adequately protected.

5.0 PUBLICITY

- 5.1 Neighbours notified by letter: Expiry date 20.04.17
- 5.2 Site Notice: Expiry date 09.05.17
- 5.3 Press Notice: Expiry date 04.05.17

6.0 REPRESENTATIONS

6.1 Two representations were received objecting to the application on the following grounds:

- Unsafe entrance off the A259
- Flooding
- Would set a precedent for other development
- Noise impacts
- Lack of amenities
- Turned down previously and nothing has changed since that time

6.2 One representation was received supporting the application on the following grounds:

- Application site is currently being used as a builders yard;
- Residential use would be preferable to an active builders yard in terms of noise and also visually.
- Road access is considered acceptable.

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, BE16, BE17, HO1, CO1, CO5, CO11, U1, U4, U10a, TR11, TR12 and E6a

7.3 The following policies of the Shepway Local Plan Core Strategy apply: DSD, SS1, SS2, SS3 and CSD3.

- 7.4 The following Supplementary Planning Documents and Government Guidance apply:

National Planning Policy Framework (NPPF) – paragraphs 17, 49, 55, 60, 100, 109, 118
National Planning Policy Guidance
Kent Design Guide

8.0 APPRAISAL

Relevant Material Planning Considerations

- 8.1 The main considerations in the determination of this application are the principle of residential development in this location, visual impact/design, amenity, ecology, highways and parking, drainage, archaeology, loss of an employment site, ground contamination and arboriculture.

Background

- 8.2 The site has been the subject of several previous planning applications for residential development as can be seen in section 3.0 above. It is considered important to acknowledge and evaluate these in the determination of this application.
- 8.3 In 2005 outline planning permission for the erection of a dwellinghouse (reference Y05/0634/SH) was refused by the LPA on the basis of unacceptable development in the countryside outside the settlement boundary and visual harm to the Romney Marsh Local Landscape Area. This proposal was subsequently allowed at appeal and in 2008, the reserved matters application (reference Y08/0231/SH) was approved for a chalet style bungalow. This development was never implemented and has time-expired.
- 8.4 In 2012 the site became the subject of further development proposals under planning applications Y12/0479/SH and Y12/1139/SH with both refused on flood risk grounds and failure to pass the sequential and exceptions test as set out in the NPPF: 2012, which was, by then, a material consideration. Since the refusal of the 2012 applications, local planning policy and the flood risk data has been up-dated and changed and there have also been pertinent appeal decisions in the locality which require the development proposal at this site to be re-considered compared to previous applications.
- 8.5 In this regard the SDC Local Plan Core Strategy was adopted in 2013 including a settlement hierarchy and a restrictive approach to general housing development in the countryside.
- 8.6 Furthermore owing to new climate change and sea level rise data, the Strategic Flood Risk Assessment (SFRA) has been revised where the flood risk has been reduced in much of the Romney Marsh inclusive of this site, which is not considered to be at risk should flooding occur at predicted sea levels in 2115.

Principle of Development

- 8.7 This application is identical to the previously refused application; reference Y16/0704/SH. There have been no material changes in planning policy since that time.
- 8.8 While each application has to be considered on its merits, given the close proximity of recent appeal decisions Y15/0499/SH and Y15/1148/SH to this site they are relevant considerations in the determination of this application.

Acceptability of Development in the Countryside

- 8.9 The site lies beyond the settlement boundary for Brookland and, as such, within the countryside where national planning policy and Core Strategy policy seek to resist new residential development.. The previous appeal decision and opinion of the Inspector under Y05/0634/SH has been acknowledged. However it is considered that this is now out-of-date, as the NPPF: 2012 and Shepway Core Strategy Local Plan have been adopted since that decision and in accordance with sections 70(2) of the Town and Country Planning Act 1990 and 38(6) of the Planning and Compulsory Purchase Act 2004, decisions must be taken in accordance with the development plan unless there are material considerations that indicate otherwise.
- 8.10 In this regard, the recent Core Strategy policy SS1 seeks to focus additional development on the most sustainable towns and villages as set out in the strategies hierarchy table (table 4.3) to protect the open countryside and coastline, where the future spatial priority for the Romney Marsh is on accommodating development at the towns of New Romney and Lydd and at sustainable villages. Furthermore, this policy states development in the open countryside will only be allowed exceptionally. Policy SS3 directs development towards existing sustainable settlements in order to protect the open countryside and coastline and in particularly draws attention to the settlement hierarchy. In addition core strategy CSD3 similarly only defines exceptional circumstances in which development will be acceptable outside the settlement hierarchy such as affordable housing; agriculture, forestry or equine development; sustainable rural diversification and tourism enterprises) and a restrictive approach to general housing development applies.
- 8.11 It is acknowledged that Brookland is identified to be a primary village within the settlement hierarchy, where the purpose is to contribute to strategic aims and local needs. However the development of a single dwelling would not contribute to the strategic local needs of this village and notwithstanding this, the site is clearly outside of the village settlement boundary and in the countryside. No justification or case of exceptional need has been put to the Council and with a robust five year housing supply in place, it is therefore considered that the proposed development would constitute unnecessary development in the countryside contrary to Core Strategy policies SS1, SS3 and CSD3.

- 8.12 There are three dimensions to sustainable development: economic, social and environmental, which should not be undertaken in isolation, as they are mutually dependent. In terms of sustainability and the presumption in favour of sustainable development which the NPPF: 2012 (paragraph 14) requires, whilst it is accepted that the location could be argued to be sustainable in the social dimension, through supporting the existing community by being near to the settlement of Brookland, this consideration is outweighed by the failure to fulfil the remaining dimensions of sustainable development, the clear contravention of the core strategy development hierarchy and because there is no demonstrated overriding need for such development within this area, taking into account the LPA's five year housing supply.
- 8.13 Importantly, this view has also been reinforced at appeal by Planning Inspectors through two very recent appeal decisions - planning references Y15/0499/SH and Y15/1148/SH. Both of these sites are very close to this site (the subject of this application) and have similar characteristics, albeit both of the other sites were closer to the small range of facilities located within the village. Both appeals were dismissed where the Inspectors ruled out development on similar countryside issues, being outside of the settlement boundary and contrary to both the spatial strategy and the settlement hierarchy. Both these appeal decisions are recent, up-to-date and therefore considered to be relevant and significantly material to the determination of this case and thus should be given significant weight in the determination of this application.

Visual Impact

- 8.14 Closely associated to the above, is how the development will impact upon the character of the countryside. The site is within the Romney Marsh Local Landscape Area which is a landscape to be protected. Saved Local plan policy CO1 seeks to protect the landscape for its own sake and saved Local plan policy CO5 require that proposals should protect or enhance the landscape character and functioning of the Romney Marsh. The LPA is also mindful and takes into consideration the letter from Housing and Planning Minister (27.03.2015) confirming the importance of considering the impact of development upon landscapes beyond the most significant areas of nationally designated importance, such as local landscape areas.
- 8.15 In this instance, it is acknowledged that the site is within a linear form of ribbon development upon the periphery of the village. In this location, it is considered that the character of the area as you move out of the village and into the open countryside becomes more spacious and open creating a soft gradual transition from the tighter higher density of the core village area into the less developed countryside. In this regard, the gaps between houses and residential curtilages are more noticeable and a general leafy spacious character is apparent.
- 8.16 It is considered that at present the site, whilst untidy, sits fairly discretely within the landscape where landscaping screens the single storey buildings.

The untidiness of a site is not justification for granting planning permission for development that is contrary to policy.

- 8.17 The site lies on the main approach to Brookland with rural land directly bordering its rear boundary where it can be seen from many vantage points and as proposed, it is considered that the development of the site for a dwellinghouse will result in a detrimental visual change to the appearance of the street scene, which would also be harmful to the surrounding countryside.
- 8.18 The chalet style bungalow proposed would be noticeably taller (7.2 metres to ridge) and much bulkier in massing compared to the single storey buildings currently on site and the erection of a new house would create additional built development in this existing gap between dwellings. The site would become domesticated in character and appearance, with hard standing, parked cars, ancillary outbuildings (sheds) and other domestic paraphernalia likely to become more prevalent, thereby eroding its undeveloped character.
- 8.19 The scheme would result in an increased perception of built development that would fill and close an existing gap in the development in this area and be harmful to the established visual amenity. Furthermore it is considered that consolidating built development in this location would have an urbanising effect and would vitiate the rural character of the wider area.
- 8.20 In terms of general design, layout and scale, the proposed dwelling is of a traditional building style and materials, incorporating brick and weatherboarding, clay roof tiles, and upvc windows and doors. Whilst this is not considered to be of a high standard of design, notwithstanding the overall visual impact from the development of this site (as stated above), the design, layout and scale of the house is considered to be on balance acceptable on its own merits and would not present conflict with saved design policy BE1 of the Local Plan Review.
- 8.21 Consequently, it is therefore considered that the development proposes unacceptable visually harmful development within the countryside and is contrary to saved policies CO1 and CO5.

Flood Risk

- 8.22 The application site falls within the Environment Agency tidal flood zone 3a and therefore the flood risk must be considered in the determination of this application. It is acknowledged that the two previous applications Y12/1139/SH and Y12/0479/SH were refused on flooding grounds. However since the determination of those applications, new climate change and sea level rise data has required the Strategic Flood Risk Assessment (SFRA) to be revised, essentially reducing the flood risk on many areas of the Romney Marsh.
- 8.23 The NPPF: 2012 advocates a risk based approach to planning for development in such areas, reducing the adverse impacts of flooding by avoiding inappropriate development in areas at risk of flooding. In such flood

zones the NPPF: 2012 requires the sequential and exceptions test to be applied.

8.24 In accordance with the NPPF: 2012, the sequential test should be based on the SFRA. The SFRA identifies the site to no longer be at risk of flooding up until year 2115, and therefore sequentially the site is acceptable and passes the sequential test. Because of this, in accordance with the NPPF: 2012, there is no need to apply the exceptions test. The Environment Agency has also raised no objection, and therefore in flood risk terms the development is considered acceptable.

Residential Amenities

8.25 The impact upon the amenities of neighbouring residents has not formed a previous ground of refusal and was previously considered to be acceptable. It is considered that this remains the case and there would be no harmful impact upon the amenities of residents arising from the proposed building. It is considered that there is sufficient space separation to prevent an overbearing impact and with no side windows being proposed and good boundary treatment, there would be no significant loss of privacy or loss of light.

Highways and Transportation

8.26 This has not formed a ground of refusal previously. In terms of access, the development proposes to use the existing access for pedestrian and vehicular access off Rye Road which is considered acceptable. Kent Highway services have been consulted but have not commented.

8.27 Highways England have also been consulted (given the A259 trunk road) and raised no objection subject to standard conditions being imposed, should planning permission be granted, relating to visibility splays and drainage, which are considered reasonable and acceptable.

8.28 For parking, two garage spaces are proposed, yet the openings appear too narrow to allow for cars and would therefore be likely to primarily be used for storage. However, a driveway and turning area is proposed that is considered sufficient to park two cars, as well as allow access/egress in a forward gear. In highways terms the development is considered acceptable.

Arboriculture

8.29 Concerning trees, there are two prominent mature trees at the front of the site that are the subject of tree preservation Order No. 9 of 2004. These are proposed to be retained as part of the development and they were not identified as a barrier to development in previous applications.

8.30 The Arboricultural Manager has been consulted and he has requested further details regarding a pre-development tree survey and report, incorporating a tree survey schedule, tree constraints plan arboriculture impact assessment, arboriculture method statement and a tree protection

plan. This information would normally be required to be submitted with the application under the local validation checklist. However, given this is a re-submission and this was not requested previously and that the application is recommended for refusal, on balance it was considered unreasonable to request it. However, if members are minded to grant planning permission, it is recommended that a tree survey be required to ascertain that the development can be accommodated within the site without adverse impact upon the protected trees prior to planning permission being granted.

Archaeology

8.31 The site is in an area of archaeological interest, however KCC Archaeology have been consulted and raise no objection, subject to a condition requiring a programme of archaeological work prior to commencement of development, should permission be granted.

Loss of a Rural Employment Site

8.32 The application is vague in terms of the site's current use which in the application form states that the current use is a garden and part builders' yard. As set out in the planning history there has been no grant of planning permission for such a use and the site is not identified in the local plan as an employment site. It is considered that the site has been used for ancillary purposes in connection with the houses, most probably for the occupier's business. It is therefore not considered that the site has any formal use as a builder's yard and there would be no loss of a rural employment site.

Ground Contamination

8.33 With old out buildings and various items stored on the site, there is a possibility that ground contamination may be present. In the event that planning permission is granted, this can reasonably be addressed by planning condition.

Local Finance Consideration

8.34 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 and would be approximately £10,100 for the proposed dwelling.

Human Rights

- 8.35 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.
- 8.36 The application is reported to Committee at the request of Councillor Clive Goddard, as the proposal had been approved previously on appeal and he doesn't agree with the proposed refusal.

9.0 SUMMARY

- 9.1 The proposal is not considered to be sustainable development as the site is outside of the defined settlement boundary, within which new development is directed, and would erode the established rural character of the immediate locality, as well as that of the wider Local Landscape Area and as such the proposal conflicts with adopted Local Plan Policies and the NPPF. This application is identical to the previously refused application (reference Y16/0704/SH) and there have been no material changes in planning policy since that time. Significant weight has also been given to two recent appeal decisions that are located very close to the site and which were also outside any defined settlement boundary (references Y15/0499/SH and Y15/1148/SH). It is therefore considered that this application should be recommended for refusal.

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(s):

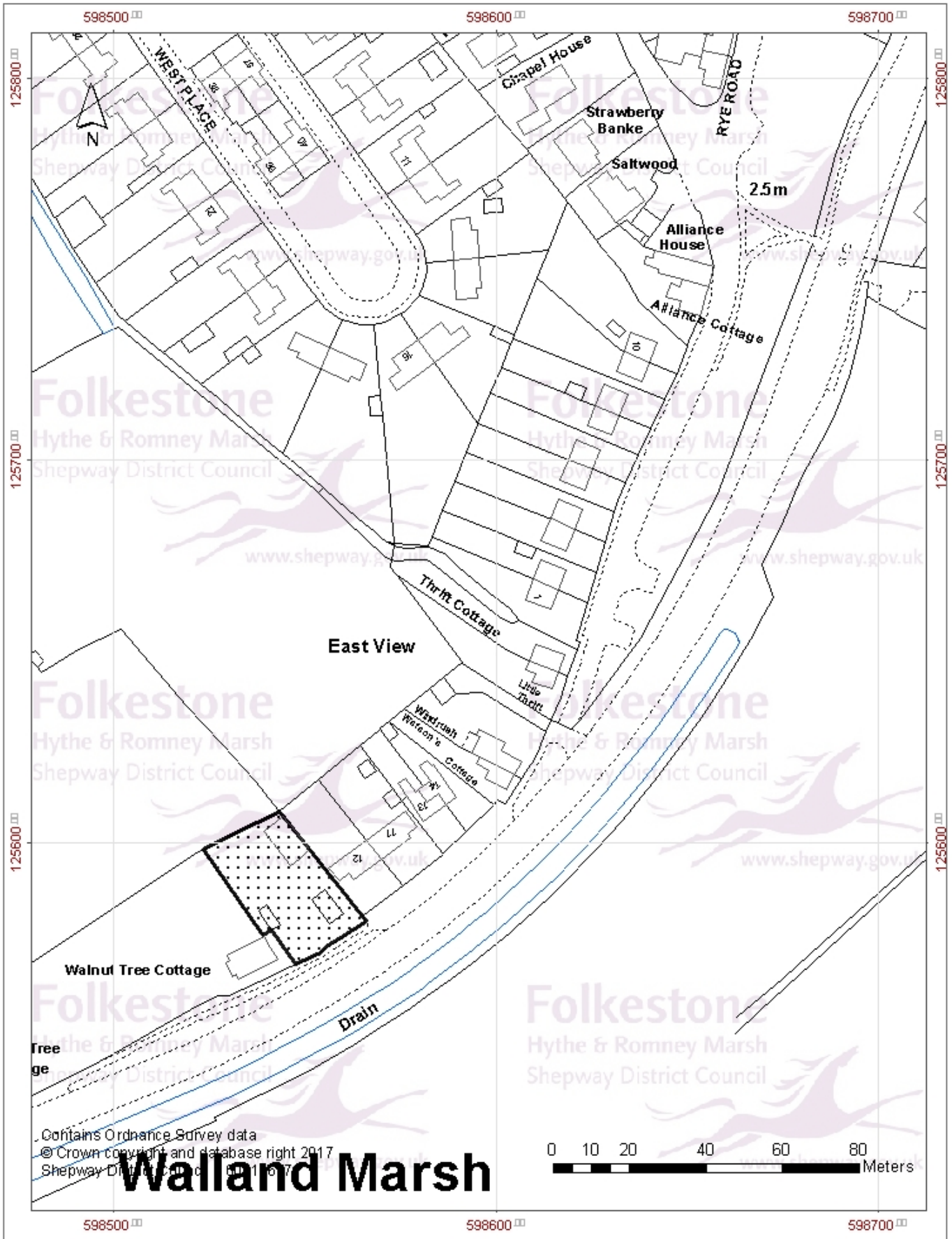
1. The proposal would result in unacceptable and unsustainable residential development in the countryside outside the confines of an existing village or rural settlement, without special justification or having proper consideration of sequentially preferential sites, contrary to saved policies SD1, HO1 and CO1 of the Shepway District Local Plan Review, policies SS1, SS3 and CSD3 of the Shepway Core Strategy Local Plan 2013 and Government guidance in the National Planning Policy Framework, which seek to protect the countryside for its own sake by directing development toward existing

sustainable settlements, in accordance with the adopted settlement hierarchy.

2. The proposed development would result in unnecessary development in the countryside and a visually prominent building that would open up the site and result in its domestication and the loss of space between buildings, eroding the rural character of the locality and the wider Local Landscape Area to the detriment of its spacious character. As such, the development would be contrary to saved policies CO1 and CO5 of the Shepway District Local Plan Review, policy SS3 of the Shepway Core Strategy Local Plan Review 2013 and paragraphs 17 and 55 of the National Planning Policy Framework, which seek to protect the intrinsic character of the countryside and wider landscape.

Decision of Committee

Y17/0364/SH
Land adjoining Walnut Tree Cottage
Rye Road
Brookland



Contains Ordnance Survey data
© Crown copyright and database right 2017
Shepway District Council 2017

Walland Marsh

0 10 20 40 60 80 Meters