

**Application No:** 21/0392/FH

**Location of Site:** Land adjacent to 43 Horn Street, Hythe, CT21 5SR.

**Development:** Erection of two dwellings (re-submission of 20/1156/FH).

**Applicant:** Sean and Nigel Buss.

**Agent:** CLArchitects, Lower Ground Floor Office, 127 Sandgate Road, Folkestone, CT20 2BH.

**Officer Contact:** Ross McCardle

## SUMMARY

Planning permission is sought for the erection of two dwellings on land outside of the defined settlement boundary. No justification is provided as to why the proposed development essentially requires a rural location, or could not be accommodated on other land within the settlement boundary. The scheme therefore amounts to unjustified residential development within the countryside in a manner harmful to its intrinsic character, appearance, and amenity value, and the application is therefore recommended for refusal.

## RECOMMENDATION:

<b>That planning permission be refused for the reasons set out at the end of the report.</b>
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## 1. INTRODUCTION

1.1. The application is reported to Committee by Cllr Peter Gane, and the recommendation is contrary to the stance of the Town Council.

## 2. SITE AND SURROUNDINGS

2.1. The application site is an undeveloped parcel of land situated to the south of the cluster of residential properties on Craythorne Close, which is a private road on the western side of Horn Street. The site is accessed off this private and unmade road, which also provides access to grazing land to the rear (west) of the site.

2.2. Horn Street runs approximately north-to-south within a valley with land levels rising relatively sharply to the east and west; as a result the site is situated at a higher level than the main road. It is bordered by mature trees which – along with mature planting on neighbouring land – shields it from view from the public highway. Land continues rising to the rear (west) of the site. A public right of way (ref. HB12) runs adjacent to the south-eastern site boundary. The site itself comprises mown grassland and tree planting, and appears to be in use as (unauthorised) residential garden area, with children's play equipment (swings etc.) placed on it.

2.3. The site lies outside of any defined settlement boundary; within an area of archaeological potential; within a Local Landscape Area; and within an area of open space as defined by policy C3 of the adopted Local Plan. It is not within a flood zone, nor within the Stour operational catchment.



Fig.1 – Site location



Fig.2 – Location of site in relation to the settlement boundary (red) and public right of way (purple)



Fig.3 – View from Horn Street



Fig.4 – Access track



Fig.5 – Looking northwards across site



Fig.6 – Field to rear (west)

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

## 3. PROPOSAL

- 3.1 Full planning permission is sought for the erection of two detached dwellings (resubmission of application ref. 20/1156/FH) on the application site.
- 3.2 The proposed houses would sit approximately in line with the existing property known as Millstones, roughly central on the plot with vehicle parking/turning to the front and generous gardens to the sides and rear. The houses would feature shallow-pitched “green” roofs and would be partially dug into the hillside to maintain levels. The drawings show a pair of contemporary houses with stone and timber-clad elevations, and areas of glazing to maximise views of the valley.
- 3.3 Internally the units would provide 4 (unit A) and 3 (unit B) beds respectively, with open-plan living accommodation. Unit B includes a rear balcony/terrace area at first floor.
- 3.4 The scheme includes the installation of a private wastewater treatment plant, which is intended to avoid the need for further services to be installed that may need to cross Craythorne Close (a private road), although no specific details of this have been provided.
- 3.5 The applicant suggests that the development should be allowed on sustainability grounds, commenting that “although the site has a history of several previous refusals, we believe that, with the approach respectful to the local landscaping and sustainable living, the site has a potential for residential development ascertaining maintaining of a modern countryside character. The right approach will ensure an enhancement of the character of the local area.” A Sustainability Statement is provided as part of the application, setting out measures that will be implemented on site such as SuDS, use of renewable materials, conservation of water, new planting, thermal efficiency, and solar gain, for example.



Fig.7 – Proposed site layout



Fig.8 – Proposed front (east) elevations and level change to existing houses

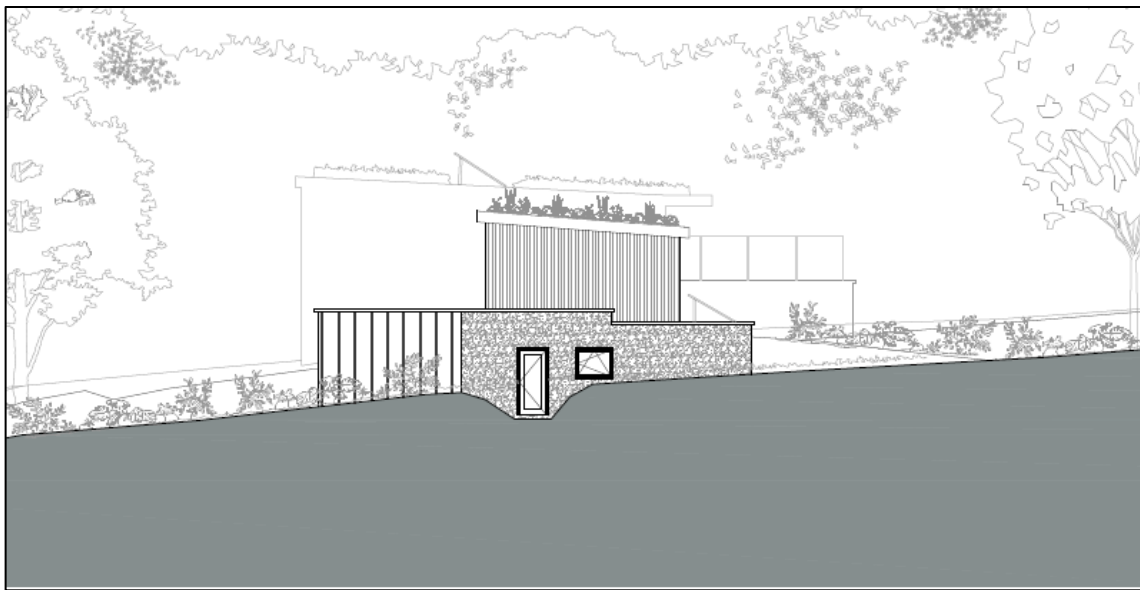


Fig.9 – proposed north elevation (unit A)

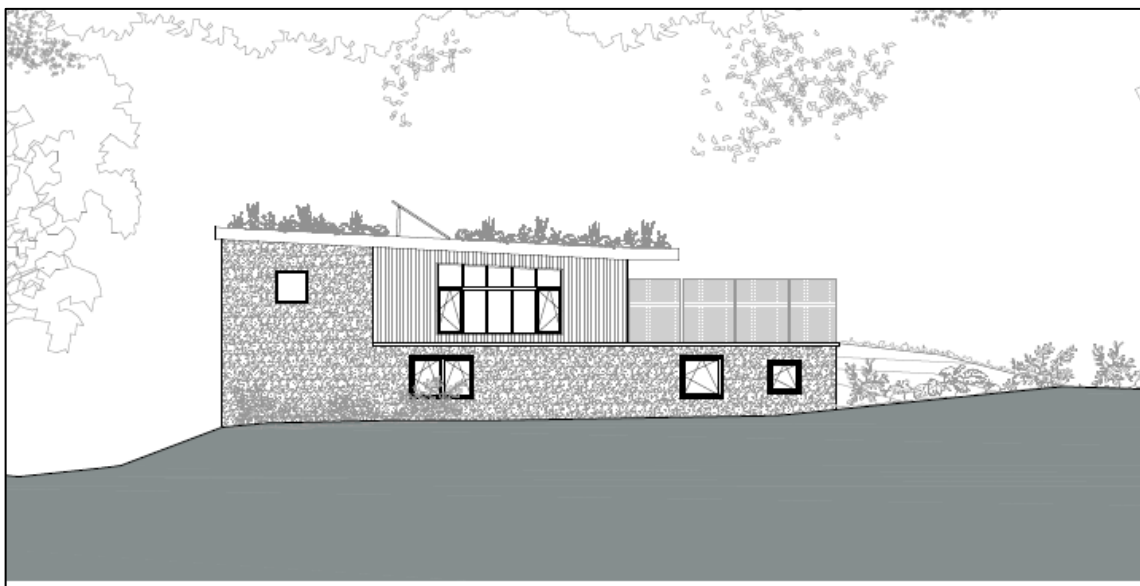


Fig.10 – Proposed south elevation (unit B)

- 3.6 The application is accompanied by a Design & Access Statement, Sustainability Statement, arboricultural impact assessment and method statement, and preliminary ecological appraisal.

## 4. RELEVANT PLANNING HISTORY

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

20/1156/FH	Erection of two dwellings.	Withdrawn.
Y16/0981	Outline permission for two dwellings.	Refused.
99/0219/SH	Erection of a dwelling.	Refused and dismissed at appeal.
97/0844/SH	Erection of a chalet bungalow.	Refused.
97/0154/SH	Erection of a chalet bungalow.	Refused.
89/1030/SH	Outline permission for two bungalows.	Refused.
CH/74/73/97	Erection of 8 houses.	Refused.
CH/4/71/147	Erection of 8 houses.	Refused.

- 4.2 The first planning history entry for the site dates from 1961 for the layout of a chick-rearing unit, and a history relating to poultry farming is shown for at least 10 years after this date. Poultry farming seems to have ceased in the mid 1970's. In 1982 permission was sought to change the use to light industrial which was refused and from 1982 onwards history shows that the owners sought applications for various residential and light industrial / workshop schemes which have all been refused.

- 4.3 With regards planning history solely relating to residential development (as set out in the table above) the planning history shows the site has had applications for the erection of dwellings refused in 1971, 1973, 1989, 1997, 1999 and 2017, with the 1999 application also being dismissed at appeal. The most recent refusal (ref. Y16/0981/SH) was an outline application for the erection of 2 houses, refused on the grounds of being outside of any defined settlement boundary and harmful to the amenity value of the countryside, and was objected to by the Town Council on the grounds that the site was outside the settlement boundary.

## 5. CONSULTATION RESPONSES

- 5.1 The consultation responses are summarised below.

### Consultees

**Hythe Town Council:** support the application subject to strict adherence to the arboricultural impact assessment and contamination survey.

**KCC Highways and Transportation:** no comments, falls below their protocol response threshold.

**KCC Ecology:** set out that further information is required to investigate the potential for Great Crested Newts (GCN). Such information is required *prior* to the grant of any permission for development of the site, in accordance with the stipulations of the Wildlife & Countryside Act. The officers also advise that, if permission is granted, conditions and informatives need to be attached to the decision notice to appropriately protect reptiles and bats within the site.

**Southern Water:** comment that they would not support proposals for a private treatment plant in such close proximity to the public sewer, and the scheme should be connected to the public sewer network. They also suggest that maintenance details for rainwater harvesting should be required by condition.

**Contamination Consultant:** recommends a standard condition is imposed to ensure any contamination encountered during construction is adequately mitigated.

**Arboricultural Manager:** has no objection subject to conditions to secure tree protection measures as set out within the submitted arboricultural survey.

## Local Residents Comments

5.2 14 neighbours directly consulted. 16 letters of objection and 3 letters of support received (some of which are duplicates following re-consultation on receipt of a corrected application form).

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

### Objections

- Impact on existing retaining wall at neighbouring property;
- Highway safety and amenity;
- Craythorne Close is a private road;
- Impact on PRow;
- Damage to existing stream culvert adjacent to highway during construction;
- Will add to existing local drainage issues;
- Noise, disturbance, and property damage during construction;
- Impact on character and appearance of the AONB;
- Erosion of / intrusion into the countryside;
- Impact on ecology;
- Trees have already been removed from the site;
- Out of scale and character with the existing neighbouring dwellings;
- Has never been any permanent structures on the site, only lightweight chicken runs;
- Long history of refusals for development of the site; and
- Previous reasons for refusal remain valid.

### Support

- The Hythe Civic Society supports the application in principle.
- Applicants are local, aware of local issues, and will avoid adding to them.

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

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

## **6. RELEVANT PLANNING POLICY**

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

6.2 The relevant development plan policies are as follows:-

## Places and Policies Local Plan 2020

HB1 (quality places through design)  
HB3 (space standards)  
HB8 (alterations and extensions)  
E8 (FTTP)  
C1 (creating a sense of place)  
C3 (open space)  
T2 (parking standards)  
T5 (cycle parking)  
NE1 (enhancing and managing access to the natural environment)  
NE2 (biodiversity)  
NE3 (protecting landscapes)  
NE7 (contaminated land)  
CC1 (reducing carbon emissions)  
HE2 (archaeology)

Policy NE3 sets out that *“proposals should protect or enhance the landscape character and functioning of Local Landscape Areas. The Council will not permit development proposals that are inconsistent with this objective, unless the need to secure economic and social wellbeing outweighs the need to protect the area’s local landscape importance.”*

## Core Strategy Review (2022)

SS1 (spatial strategy)  
SS2 (housing and economy growth)  
SS3 (sustainable settlements)  
CSD1 (balanced neighbourhoods)  
CSD2 (District residential needs)  
CSD3 (rural and tourism development)

SS1 sets out that *“housing will be delivered through a new sustainable, landscape-led settlement, with supporting town centre and community uses, based on garden town principles in the North Downs Area... Elsewhere in the district, priority will continue to be given to previously developed land in the Urban Area in Folkestone.”* It then states that *“remaining development needs should be focused on the most sustainable towns and villages as set out in policy SS3. Development outside the new settlement and identified centres in the open countryside and on the coast (defined as anywhere outside settlements within Table 4.3 Settlement Hierarchy) will only be allowed exceptionally, where a rural or coastal location is essential (policy CSD3).”* SS1 also lays out the strategy for the North Downs area, noting that *“within the Kent Downs AONB development will be limited to consolidating Hawkinge's growth and sensitively meeting the needs of communities at better-served settlements.”*

Policy SS3 sets out that development in the District *“is directed towards existing sustainable settlements to protect the open countryside and the coastline.”*

CSD3 then states that *“proposals for new development in locations outside of the Settlement Hierarchy may only be allowed if a rural or coastal location is essential,”*



or it is development to meet certain specific needs (such as rural exceptions housing, agricultural development, or tourism enterprises “as set out below.” In regards tourist development the policy states that *“tourist, recreation and rural economic uses will be appropriately protected and new development allowed within defined settlements in the Settlement Network. Where sites are unavailable within settlements – and development is proportionate in scale/impact and also accessible by a choice of means of transport – it may also be acceptable on the edge of Strategic Towns and Service Centres, and failing that, Rural Centres and Primary Villages. Rural economic development must be consistent with green infrastructure (GI) and coastal/water environment principles.”*

CSD4 sets out that *“planning decisions will have close regard to the need for conservation and enhancement of natural beauty in the AONB and its setting, which will take priority over other planning considerations.”*

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

## **Government Advice**

### National Planning Policy Framework (NPPF) 2021

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. 68 requires LPA’s to have an identifiable five-year supply of housing land, and para. 69 notes that small-to-medium sized sites can make a good contribution to meeting this target.

Para. 119 encourages making effective use of land in meeting the need for homes (and other development). However, para. 120 b) sets out that planning policies and decisions should *“recognise that some undeveloped land can perform many functions, such as for wildlife, recreation, flood risk mitigation, cooling/shading, carbon storage or food production.”*

Para. 130 requires developments to be well-designed, establish a strong sense of place, and be appropriate to the character and setting of the locality.

Para. 174 requires protection and enhancement of valued landscapes

### National Design Guide October 2019

The National Design Guide seeks to ensure a high-standard of design and high-quality for all new development, and for it to contribute positively to the setting and context of the site and area in which it sits.

## **FHDC Authority Monitoring Report 2021**

The most recent annual monitoring report identifies that the Council can currently demonstrate either a 5.3 or 5.7 year supply of housing land (depending on which calculation method is used). This supply is (as per the above policies) being met

through strategic, allocated sites which have been assessed and adopted within the Local Plan and Core Strategy, and which will meet NPPF requirements across the Local Plan period. While it is recognised that windfall sites can provide a buffer to this supply the Council is under no pressure to approve development at less-than-ideal sites outside of the defined settlement boundaries and identified sustainable towns and villages.

## 7. APPRAISAL

7.1 Whilst the site lies in an archaeological notification area, KCC have stipulated that they do not wish to be consulted on minor development such as this proposal. The proposed dwellings meet the nationally prescribed space standards and have appropriately sized private amenity space. As such, it is considered that they would provide an adequate level of residential amenity for future occupiers.

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

- a) Principle of development and sustainability
- b) Design/layout/visual amenity
- c) Residential amenity
- d) Ecology and biodiversity
- e) Contamination
- f) Drainage
- g) Highway safety and amenity

### **a) Principle of development and sustainability**

7.3 The application site lies outside of the defined settlement boundary and within a designated Local Landscape Area. In accordance with the adopted local and national policies set out above (which seek to protect the countryside for its own intrinsic beauty and amenity value) it is within one of the least desirable locations for the provision of new housing.

7.4 While the site lies close to the settlement boundary that boundary is drawn very precisely, and establishes a clear demarcation between the village and the countryside. Given the close proximity to the settlement boundary it could not be reasonably argued that the site is within an unsustainable location, but development here would extend the built form beyond the existing, tightly constrained confines of the village and represent piecemeal encroachment into the countryside and Local Landscape Area without any justification.

7.5 It should also be noted that the layout of the site, its heavy enclosure with mature planting, and its raised and set-back position (from the road) isolate it from the existing neighbouring houses such that it has no obvious natural relationship with the

surrounding built form, and any development contained within the site would appear at odds with the adjacent settlement boundary.

- 7.6 As set out above: the applicant suggests that the scheme should be approved because of the sustainable construction/design measures included within the proposals. However, officers would expect this *as a matter of course* on *all* applications for new dwellings and these requirements are set out in Local Plan policies CC1, CC2, NE2, and HB1, for example. Use of such methods/practices is encouraged does not in itself justify otherwise unacceptable development.
- 7.7 The proposal is entirely contrary to the thrust of several fundamental Council policies (as set out above), no evidence has been provided to justify the development contrary to the requirements of these policies, and the development is therefore unacceptable in principle.

## **b) Design, layout, and visual amenity**

- 7.8 The proposed dwellings feature contemporary flat-roofed designs with sedum roofing, stone and timber-clad elevations, and would on the whole settle relatively well into the context of the site and the wider area. Members will also be aware that contemporary design is increasingly a feature of the District. The layout relates well to the surrounding context and makes good use of the space available.
- 7.9 However, the site lies outside of the defined settlement boundary, where the established policies of rural restraint must be considered in regards the visual impact of any new development upon the countryside. In that regard one of the key issues to be considered here is visual amenity in terms of the impact upon the character and appearance of the countryside and the AONB designation. The NPPF affords “*the highest degree of protection*” to the AONB in recognition of its special character and intrinsic unspoiled natural beauty. Any unjustified or unnecessary development is an unwarranted intrusion into that unspoiled character. No evidence has been submitted to demonstrate that this development essentially requires a rural location and the proposal therefore constitutes an unjustified development within the countryside.
- 7.10 The intrusion of unjustified residential development into the countryside and the AONB is intrinsically harmful to its character and appearance through additional built form and associated trappings of residential life (vehicles, garden furniture, outbuildings, etc.). The proposed dwellings would therefore be harmful to the visual amenity by reason of intruding into the otherwise undeveloped and unspoiled countryside outside of the tight confines of the defined settlement boundary.

## **c) Residential amenity**

- 7.11 Due to the siting, scale, and relationship to neighbouring properties, the proposed development would not give rise to any harmful impact on the residential amenity of the occupiers of neighbouring dwellings in terms of overshadowing, overbearing, loss of light, or other intrusions.

## **d) Ecology and biodiversity**

- 7.12 Introduction of built form onto this site has the potential to harm protected species, most notably GCN and bats. The submitted ecological appraisal highlights the

potential for these protected species to be on the site and full consideration by way of further ecological surveys is required before planning permission could be granted. These surveys can only be carried out at certain times of year and (as of September) the survey season reopened in April/May this year.

- 7.13 Adopted Policy NE2 requires all new development to conserve and enhance species and habitats; the application site has the potential to contain protected species and therefore information to demonstrate protected species would not be affected is required prior to any decision to grant planning permission. In the absence of this information it is not possible to determine whether the design would be harmful or consider relevant mitigation measures that could be incorporated.
- 7.14 Had the proposed development been otherwise acceptable, this information would have been requested. As the proposals are unacceptable as a matter of principle, no such requests have been made.
- 7.15 In light of the above the proposed development is considered to not fully protect ecology or biodiversity and is therefore considered harmful.

## **e) Contamination**

- 7.16 The Council's contamination consultant has no objections to the application, but highlights the previous use of the site (as a chicken farm) and recommends a standard condition to ensure any contamination encountered during construction is appropriately remediated. On this basis officers have no particular concerns on this matter.

## **f) Drainage**

- 7.17 Southern Water have expressed an objection to the installation of a private wastewater treatment plant as part of the development. However, as the applicant can apply to connect to the existing public sewer which runs near to the site, officers do not believe this would be a reason to refuse permission. Officers note local objection in this regard, particularly comments setting out that Craythorne Close is a private road and consent will not be given for the applicant to carry out any works thereto. However, private legal disputes are not a planning consideration and it remains the fact that a public sewer exists to which the development can (pending private discussions between the applicant and their neighbours) connect to. Any planning permission granted would need to be subject to the condition that proper foul drainage provision is secured prior to commencement of development.
- 7.18 There is space within the site to accommodate surface water drainage in the form of SuDS.
- 7.19 The site is not within the Stour operational catchment.

## **g) Highway safety and amenity**

- 7.20 The site benefits from an existing access track which connects to the public highway (pending private legal agreements over use of the private road). Erection of two dwellings would not give rise to significant additional vehicle movements such that the

development could be considered harmful to highway safety or amenity, and while officers understand local concern they do not consider there to be any justifiable reasons for refusal on these grounds.

- 7.21 There is space within the site to accommodate parking and turning in accordance with adopted Kent Vehicle Parking Standards.

## **Environmental Impact Assessment**

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

## **Local Finance Considerations**

- 7.23 Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a local finance consideration as far as it is material. Section 70(4) of the Act defines a local finance consideration as a grant or other financial assistance that has been, that will, or that could be provided to a relevant authority by a Minister of the Crown (such as New Homes Bonus payments), or sums that a relevant authority has received, or will or could receive, in payment of the Community Infrastructure Levy. There is no CIL requirement for this development.
- 7.24 In accordance with policy SS5 of the Core Strategy Local Plan the Council has introduced a Community Infrastructure Levy (CIL) scheme, which in part replaces planning obligations for infrastructure improvements in the area. The CIL levy in the application area is charged at £118.08 per square metre for new residential floor space.

## **Human Rights**

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

## **Public Sector Equality Duty**

- 7.26 In determining this application, regard has been had to the Public Sector Equality Duty (PSED) as set down in section 149 of the Equality Act 2010, in particular with regard to the need to:
- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
  - Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
  - Foster good relations between persons who share a relevant protected characteristic and persons who do not share it. It is considered that the application proposals would not undermine objectives of the Duty.

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

## **Working with the applicant**

- 7.27 In accordance with paragraphs 38 of the NPPF, Folkestone and Hythe District Council (F&HDC) takes a positive and creative approach to development proposals focused on solutions. F&HDC works with applicants/agents in a positive and creative manner. In this instance the proposal is fundamentally contrary to the provisions of the development plan such that amendment would not resolve the in-principle concerns.

## **8. CONCLUSION**

The application proposes the erection of two dwellings on land outside of the defined settlement boundary. No justification is provided as to why the proposed development essentially requires a rural location, or could not be accommodated on other land within the settlement boundary. The scheme therefore amounts to unjustified residential development within the countryside in a manner harmful to its intrinsic character, appearance, and amenity value, and the application is therefore recommended for refusal.

## **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 refused for the following reason(s):**

### Reasons:

1. The application site lies outside of the defined settlement boundary and within the Area of Outstanding Natural Beauty and Special Landscape Area, where adopted local and national policies aim to prevent new residential development in order to protect and conserve the inherent natural beauty and amenity value of the countryside. The proposed development would represent an unnecessary and unjustified intrusion of residential development into the countryside, the AONB, and the Special Landscape Area in a manner harmful to the character, appearance, and amenity thereof, and contrary to the aims of policies DSD, SS1, SS2, SS3, and CSD3 of the adopted Core Strategy; SS1, SS2, SS3, and CSD3 of the emerging Core Strategy (February 2020 Submission Draft); HB1, HB2, C1, and NE3 of the adopted Places and Policies Local Plan 2020; policy SD9 of the Kent Downs AONB Management Plan; and the advice of paragraphs 11 (including footnote 6), 174, and 176 of the National Planning Policy Framework.
2. The application fails to properly assess the impact of the development upon ecology, and therefore has the potential to negatively affect protected species (Great Crested Newts and bats) in a manner contrary to policies HB1 and NE2

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of the adopted Places and Policies Local Plan, and the advice of paragraphs 174 and 180 of the National Planning Policy Framework.

## Informatives:

1. This application was determined on the basis of drawings PL15, rev B, PL20 rev B, PL21 rev B, PL22 rev B, PL23 rev B, and PL24 rev B.

