

# DCL/20/44

**Application No:** 20/1660/FH

**Location of Site:** Shepway Lympne Hill Lympne Hythe Kent CT21 4NX

**Development:** Erection of a 4 bedroom (plus ground floor study/5th bedroom) two storey part chalet style house of 233m2 with basement of 35m2.

**Applicant:** Mr Martin Bryer

**Agent:** N/A

**Officer Contact:** Robert Allan

## SUMMARY

This application is a resubmission of an identical planning application that was refused (planning reference Y19/0080/FH) and seeks planning permission for the erection of a two-storey detached dwelling with basement within the grounds of the existing property known as 'Shepway'. The application site is located outside of the defined settlement boundary within the open countryside and is also within the designated North Downs Special Landscape Area and Kent Downs Area of Outstanding Natural Beauty. Given that the proposed dwelling would be set away from local amenities, without easy access to sustainable transport modes, the site is considered to be unsuitable and an unsustainable location for a new dwelling as future occupiers would be reliant on private motor vehicle use to carry out day to day activities. In addition, the erection of a two-storey dwelling in this location would result in the erosion of the undeveloped rural character of the area, detracting from the tranquil beauty of the wider North Downs Special Landscape Area and Kent Downs Area of Outstanding Natural Beauty. It is considered that there are no significant public benefits to the application that would outweigh these concerns and on balance it is considered that the scheme would be unacceptable with regard to local and national planning policy. The application is therefore recommended for refusal.

## RECOMMENDATION:

**That planning permission be refused for the reasons set out at the end of the report.**

### 1. INTRODUCTION

The application is reported to Planning & Licensing Committee at the request of Cllr Philip Martin who is a member of the Planning & Licensing Committee.

### 2. SITE AND SURROUNDINGS

2.1. The application site falls within the grounds of an existing property known as 'Shepway', a large Edwardian dwelling in spacious grounds surrounded by open fields, accessed via Lympne Hill to the west. The site is located outside of any defined

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settlement boundary and is therefore considered to be in the countryside in planning policy terms. The nearest settlement is Lympne located approximately 0.8 miles to the north-west.

- 2.2. The site is located in a rural location within the Kent Downs Area of Outstanding Natural Beauty (AONB) and the North Downs Special Landscape Areas. To the east of the site, beyond the application site is Lympne Escarpment SSSI. The site is also identified as an Area of Archaeological Potential.
- 2.3. The application site is located to the north of the driveway leading to the existing dwelling. The application site is set higher than the existing house due to the rising nature of the topography and is currently set to grass, with hedgerows, shrubs and mature trees. Shepway is a substantial detached house set in large grounds and is set back from the road, accessed by a gravel drive. It is surrounded on three sides by open countryside/paddock areas.
- 2.4. The submitted Design and Access Statement states that the original house and gardens were divided into two separate units in the 1970s (forming 'Shepway' and 'East Shepway'). For the case of this application, the address is given as Shepway.
- 2.5. The total site area would be 0.1 hectares. 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 a detached two-storey dwelling house, with basement, to the north of the existing dwelling. The building would have a two-storey red/brown brickwork façade with a Kent peg clay tiled pitched roof with solar panels on the south west facing roof slope and would measure a maximum of 8.4m in height. The building would also have an attached double garage with attic space above, as can be seen in figure 1, below.



Figure 1

3.2 Internally, the property would comprise of three floors of living accommodation at basement, ground and first floor level containing a total of 5 bedrooms. The total internal floor space of the property would be approximately 268m<sup>2</sup>, inclusive of the basement area, as can be seen in figure 2 below. A garden area surrounding the development site, with a patio and driveway leading to the garage, is also proposed.

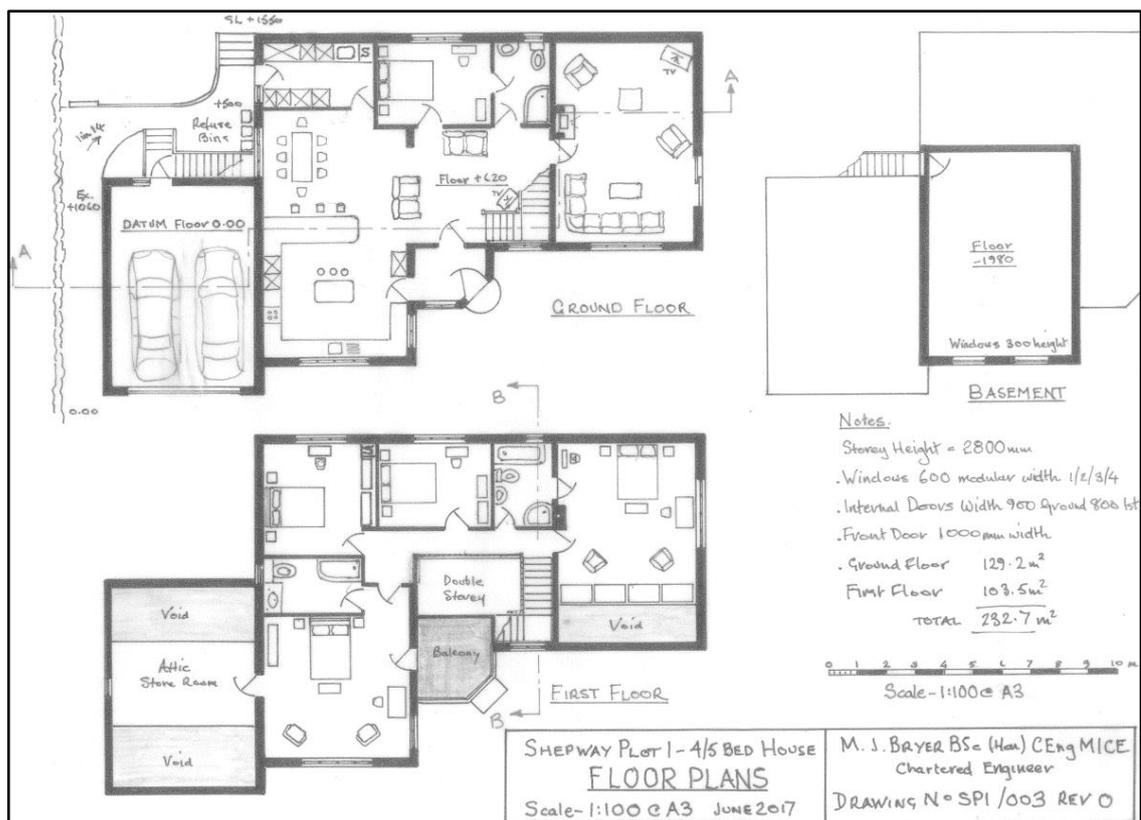


Figure 2

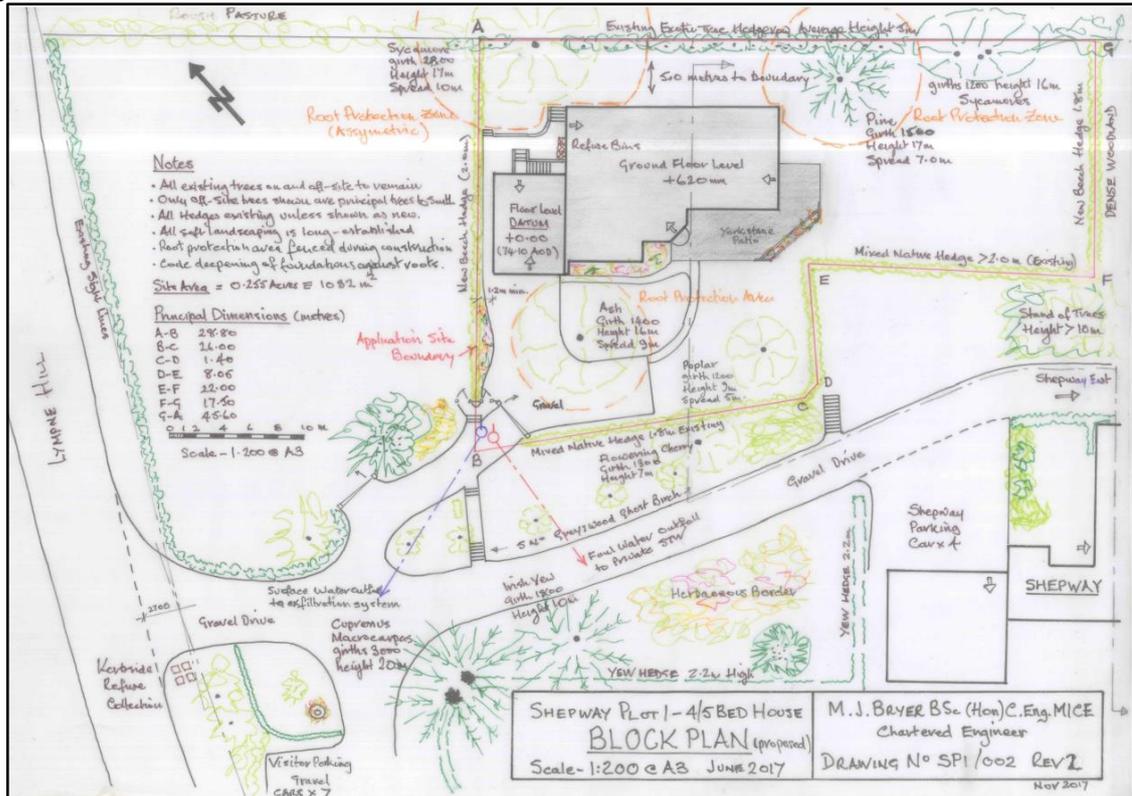


Figure 3

3.3 As well as the submitted drawings, the application is accompanied by several reports that also accompanied the previous two submissions:

Design and Access Statement

This document sets out the reasoning behind the proposal, explores the principle of development at this location, looks at archaeology, visual impact, slope stability, contaminated land, biodiversity, arboricultural impact, sets out the approach to access, scale, appearance, landscaping, layout and sustainability and considers how relevant National and Local Plan policies have been taken into account. It concludes that the proposal would provide an affordable dwelling for the applicant's son and family and help keep 10 local jobs in Lympne, given the location of the applicant's son's business, whilst meeting the tests of sustainable development and protecting the AONB.

Archaeological Investigation

This document identifies that the property is within an area as having Archaeological Potential, but following a Phase 1 desk study and fieldwork, concludes that there is almost zero possibility of there being anything of archaeological interest on the application site.

Contaminated Land Report

This details the history of the site through a desk top study and identifies that there is low risk of any requirement for remediation, with no historic contaminative uses recorded. It concludes that remedial measures are not required and no further investigative work considered necessary, other than care being taken during excavation.

Preliminary Ecological Appraisal

This reports no habitats of conservation concern present within the site, with no evidence of or significant potential for protected species within or immediately adjacent

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to the application site. No further ecology surveys are required, with the enhancement measures proposed considered appropriate.

## Soil stability Report

This report identifies that the site is in a known area of instability, but the ground is considered stable due to the natural slope angles being less than the 9 degree natural angle of repose prevalent elsewhere. A two storey domestic dwelling constructed on a reinforced concrete raft or piled foundations would be feasible and will have no detrimental effect upon the stability of adjoining land. No special measures other than those within the report are considered necessary to ensure stability of soils during the construction phase.

## 4. RELEVANT PLANNING HISTORY

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

Y19/0080/FH	<p>Erection of a single new dwellinghouse including basement, garden and parking (resubmission of Y17/1155/SH). <b>Refused.</b></p> <p><b>Reasons for refusal:</b></p> <p>The proposal fails to conserve, protect or enhance the landscape and scenic beauty of the Kent Downs Area of Outstanding Natural Beauty, the Kent Downs as a Special Landscape Area and the countryside in which the site is located. The proposal would result in significant harm to the local character and distinctiveness of the AONB, SLA and this part of the countryside by introducing built development into the garden area of an existing dwelling, unrelated to any existing settlement, and would be very apparent from the street, harming the sporadic residential development in the locality and increasing urbanisation of the rural area and further intrusion into the Hythe Escarpment local character area. The proposal is contrary to saved policies SD1 and CO4 of the Shepway District Council Local Plan Review, policies DSD and CSD4 of the Shepway Core strategy and paragraph 170 of the National Planning Policy Framework.</p> <p>The application site, being a significant distance from an existing settlement boundary or local amenities, in the absence of access to sustainable transport modes, or safe routes for pedestrians represents an unsustainable location for a new dwelling. As a result the occupiers of the proposed dwelling would rely on car movements to access all amenities. No demonstration of an essential need for the dwelling within the countryside has been submitted and as such the proposal is contrary to saved policies SD1 and CO1 of the Shepway District Council Local Plan Review, policies DSD, SS1, SS3 and CSD3 of the Shepway Core strategy and the NPPF which seek to direct new residential development towards existing settlements and sustainable locations.</p>
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	<b>The scheme was identical to that proposed under this application</b>
Y17/1155/SH	Erection of a two storey house, part chalet style, (4 bedroom with study/5th bedroom) including basement, garden and parking. <b>Withdrawn.</b>  <b>Application was withdrawn after the report was drafted for refusal.</b>
Y02/0353/SH	Installation of 3 no. dormer windows to the south elevation. <b>Approved.</b>
mdSH/77/226	Conversion of house into two and garage. <b>Approved.</b>
SH/76/991	Conversion of house into two living units. <b>Approved.</b>
CH/4/62/17/276	Alterations to form units living accommodation. <b>Approved.</b>

## 5. CONSULTATION RESPONSES

5.1 The consultation responses are summarised below.

### Consultees

**Hythe Town Council:** Object on the grounds highlighted in the report from Kent Downs

**KCC Ecology:** No further ecological information necessary at this time, subject to condition

Sufficient ecological information has been provided to determine the planning application. The majority of the site is regularly managed amenity grassland and there is limited potential for protected/notable species to be impacted by the proposed construction works. The existing management of the proposed development site must continue to ensure that no suitable habitats for protected/notable species establish prior to works commencing. Conditions are recommended to be attached to any permission granted.

**Southern Water:** Make the following comment

The applicant is advised to consult the Environment Agency directly regarding the use of a sewerage treatment plant which disposes of effluent to sub-soil irrigation.

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The applicant will need to ensure that arrangements exist for the long-term maintenance of the SUDS facilities

**Environment Agency:** No comments made.

No comments to make on this planning application as it falls outside our remit as a statutory planning consultee.

**Contamination Consultant:** Raises no objection subject to condition.

**Arboricultural Manager:** Makes the following comment

A full pre-development tree survey and report prepared in accordance with BS5837:2012 will need to be submitted in support of this application. The accompanying drawing (SPI/002) is not adequate enough to demonstrate what constraints are posed by existing trees and does not provide any information as to how trees will be protected against the effects of the proposed development.

**Kent Downs AONB Unit:** Object for the following reasons

- Comments are as per the previous application Y19/0080/FH and Y17/1155/SH
- The existing property lies in open countryside unrelated to any existing settlement
- Would have urbanisation effect on this rural area
- Result in further intrusion onto the Hythe escarpment contrary to the objectives for the local character area
- It would neither conserve nor enhance the local character and distinctiveness of the AONB.

## **Local Residents Comments**

5.2 Four neighbours directly consulted. No responses received.

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

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

## **6. RELEVANT PLANNING POLICY**

6.1 The Development Plan comprises the Shepway Core Strategy Local Plan (2013) and the Places and Policies Local Plan (2020) which has now been adopted.

6.2 The relevant development plan policies are as follows:-

Shepway Local Plan Core Strategy (2013)

DSD - Delivering Sustainable Development

SS1 - District Spatial Strategy

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SS3 - Place-Shaping and Sustainable Settlements Strategy

CSD4 - Green Infrastructure of Natural Networks, Open Spaces and Recreation

## Places and Policies Local Plan (2020)

HB1 - Quality Places through Design

HB3 - Internal and External Space Standards

HB6 - Local Housing Needs in Rural Areas

HB10 - Development of Residential Gardens

T2 - Parking Standards

T5 - Cycle Parking

NE2 - Biodiversity

NE3 - Protecting the District's Landscapes and Countryside

NE7 - Contaminated Land

CC2 - Sustainable Design and Construction

CC3 - Sustainable Drainage Systems (SuDS)

HE2 - Archaeology

## Core Strategy Review Submission draft (2019)

The Submission draft of the Core Strategy Review was published under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations (2012) for public consultation between January and March 2019. Following changes to national policy, a further consultation was undertaken from 20 December 2019 to 20 January 2020 on proposed changes to policies and text related to housing supply. The Core Strategy Review was then submitted to the Secretary of State for independent examination on 10 March 2020.

Accordingly, it is a material consideration in the assessment of planning applications in accordance with the NPPF, which states that the more advanced the stage that an emerging plan has reached, the greater the weight that may be given to it (paragraph 48). Based on the current stage of preparation, the policies within the Core Strategy Review Submission Draft may be afforded weight where there has not been significant objection. The following draft policies apply:

SS1 - District Spatial Strategy

SS3 - Place-Shaping and Sustainable Settlements Strategy

CSD4 - Green Infrastructure of Natural Networks, Open Spaces and Recreation

## **Supplementary Planning Guidance/Documents**

KCC: Kent Design Guide

Kent Downs AONB Landscape Design Handbook – Key extracts as follows;

2.2 New Built Development- seeks to ensure development respects and complements rural settlement form, pattern, character and landscape setting, reinforcing local distinctiveness;

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2.7 Woodlands, Hedges and Trees- seeks to encourage increase in new trees by planting new native trees appropriate to local character.

## National Planning Policy Framework (NPPF) 2019

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

Paragraph 11 - Presumption in favour of sustainable development.

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

Paragraph 48 - Weight to be applied to emerging policies

Paragraph 79 - Avoid development of isolated homes in the countryside

Paragraphs 108-110 - Transport and access

Paragraphs 124, 127- Design

Paragraphs 170-173 - Conserving and enhancing the natural environment

Paragraph 175 – Habitats and biodiversity

Paragraph 178 – Ground conditions and pollution

## National Planning Policy Guidance (NPPG)

Design: process and tools

Climate Change

Flood Risk and Coastal Change

Natural Environment

## National Design Guide October 2019

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

I2 - Well-designed, high quality and attractive

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

N3 - Support rich and varied biodiversity

## **7. APPRAISAL**

### **Background**

- 7.1 As referred to in the submitted Design and Access Statement, the applicant has previously undertaken discussions with Officers and managers within the planning department over a significant period of time, as to the likely outcome of a planning application for a new dwelling on this site.

- 7.2 In 2017 following pre-application discussions highlighting policy objections to such a proposal, the applicant submitted a formal planning application for a dwelling under

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planning reference Y17/1155/SH. The applicant withdrew the application following it being drafted for refusal. The application drawings that were submitted for that application are the same as those submitted for the subsequent application reference Y19/0080/FH and also the current planning application.

7.3 Application Y19/0080/FH was determined and refused on two grounds:

1. The application site, being a significant distance from an existing settlement boundary or local amenities, in the absence of access to sustainable transport modes, or safe routes for pedestrians represents an unsustainable location for a new dwelling. As a result the occupiers of the proposed dwelling would rely on car movements to access all amenities. No demonstration of an essential need for the dwelling within the countryside has been submitted and as such the proposal is contrary to saved policies SD1 and CO1 of the Shepway District Council Local Plan Review, policies DSD, SS1, SS3 and CSD3 of the Shepway Core strategy and the NPPF which seek to direct new residential development towards existing settlements and sustainable locations.
2. The proposal fails to conserve, protect or enhance the landscape and scenic beauty of the Kent Downs Area of Outstanding Natural Beauty, the Kent Downs as a Special Landscape Area and the countryside in which the site is located. The proposal would result in significant harm to the local character and distinctiveness of the AONB, SLA and this part of the countryside by introducing built development into the garden area of an existing dwelling, unrelated to any existing settlement, and would be very apparent from the street, consolidating the sporadic residential development in the locality and increasing urbanisation of the rural area and further intrusion into the Hythe Escarpment local character area. The proposal is contrary to saved policies SD1 and CO4 of the Shepway District Council Local Plan Review, policies DSD and CSD4 of the Shepway Core strategy and paragraph 170 of the National Planning Policy Framework.

7.4 The main issues for consideration are:

- a) Principle of development and sustainability
- b) Design/layout/visual amenity
- c) Residential amenity
- d) Parking and transport
- e) Ecology and biodiversity
- f) Trees and landscaping
- g) Land stability
- h) Drainage

**a) Principle of development and sustainability**

7.5 The spatial strategy for the district is set out in the 2013 Core Strategy Local Plan. The Core Strategy establishes the overarching development requirements and strategic

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policies for the district as well as strategic allocations and broad locations for development. The Places and Policies Local Plan allocates sites to meet the remaining Core Strategy requirement, taking into account development that has already taken place since the start of the plan period in 2006.

- 7.6 The Core Strategy establishes the quantities of key types of development that will be delivered in the district from 2006 to 2026 and beyond to 2031. These quantities have been derived from a combination of national policy and local evidence of need. Some of the figures have been updated in light of continued monitoring (for example, annual monitoring of housing completions) and also from new studies and evidence (such as updated evidence on retail and employment needs). The Places and Policies Local Plan identifies sites to meet the needs identified in the Core Strategy (or updated needs) with the allocations primarily relating to the provision of new housing, employment, retail and mixed-use development.
- 7.7 Core Strategy policy SS3 directs development toward existing sustainable settlements to protect the open countryside and the coastline, with the principle of development likely to be acceptable on previously developed land, within defined settlements, provided it is not of high environmental value. Development in the open countryside and on the coast (defined as anywhere outside of settlements within Table 4.3 Shepway Settlement Hierarchy) will only be allowed in exceptional circumstances, where a rural/ coastal location is essential (policy CSD3). Development in these locations will only be acceptable in principle if forming a site for:
- a. affordable housing (rural exceptions as per CSD1, or allocated sites)
  - b. agriculture, forestry or equine development
  - c. sustainable rural diversification, and tourism enterprises as set out below
  - d. local public/essential services and community facilities in line with policies SS3/4
  - e. replacement buildings (on a like for like basis)
  - f. conversions of buildings that contribute to the character of their location
  - g. sustainable rural transport improvements
  - h. essential flood defences or strategic coastal recreation.
- 7.8 Core Strategy policy CSD3 goes on to state that where sites are unavailable within settlements and the development is proportionate in scale/impact and accessible by a choice of means of transport, it may be acceptable on the edge of Strategic Towns and Service Centres, and failing that, Rural Centres and Primary Villages. Lympne (the nearest settlement) is classified as a Primary Village and has a role to contribute to strategic aims and local needs and as a settlement with the potential to grow and serve residents, visitors and neighbourhoods in the locality with rural business and community facilities. Focusing attention on existing centres underpins not only the protection of the District's open countryside, but also seeks the achievement of sustainable places.
- 7.9 The application site is located within a Special Landscape Area and the Kent Downs AONB. Paragraph 172 of the NPPF states that great weight should be given to conserving and enhancing landscape and scenic beauty in AONB, which have the highest status of protection in relation to these issues, with policy NE3 of the Places and Policies Local Plan echoing this position. Paragraphs 11 and 12 of the NPPF set out that there is a presumption in favour of sustainable development, approving development proposals that accord with an up-to-date development plan without delay. This presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making and where a

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planning application conflicts with an up-to-date development plan, permission should not usually be granted. Paragraph 48 of the NPPF sets out that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

- 7.10 The applicant has stated in their submission that no harm would be caused to the setting of the SLA or AONB as the dwelling would be located close to an existing dwelling, and would not be visible in the wider area. This position is not accepted. The construction of a dwelling would be readily visible from various positions in the wider landscape and the adjoining highway. The development would therefore fail to conserve or enhance the local landscape or scenic beauty of the wider AONB. Both the Parish Council and the Kent Downs AONB unit object to the principle of development in this location.
- 7.11 The site is considered to be part of the garden area of the main residence, (Shepway) a rural dwelling. Through case law it has been established that gardens of rural dwellings are 'previously developed land' by reason that gardens of rural dwellings have not been specifically referred to as being excluded, as gardens in urban areas are, in the NPPF definition of 'previously developed land'. However even if land does meet the definition of being 'previously developed' it does not necessarily mean that development is acceptable in principle on such a site.
- 7.12 The NPPF states that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Paragraph 11 of the NPPF 2019 presumes in favour of 'sustainable development', which has a number of facets, but states that, in relation to decision-taking, development proposals that accord with an up-to-date development plan should be approved without delay. The Local Plan is considered to be up-to-date and the policies therein apply.
- 7.13 In relation to Core Strategy policy CSD3, no evidence has been provided that supports an overriding need for a new house in this location in relation to the listed criteria, other than the applicant's personal circumstances. The claim of affordability is not reinforced by any mechanism to secure this status in perpetuity and in any case, the provision within the policy relates to affordable housing where it has been demonstrated that there is a requirement in terms of local need. In relation to self-build, as with all residential development, self-build development should be directed towards existing settlements and sustainable locations in the first instance. The desire for the applicant's family to reside near to their business and place of work is noted, but no specific locational requirement, other than that stated desire, has been submitted for consideration. In relation to the location being sustainable, as the intended occupants work and attend school in the local area, this position is not supported, as the occupancy of the dwelling by specific individuals cannot reasonably be secured by planning condition; subsequent occupants could work in alternative areas.
- 7.14 Overall, it has not been demonstrated that the need for a new dwelling cannot be practicably located within an existing settlement or that it requires a countryside location. The development is therefore unacceptable in principle. The benefit of the proposal in providing a net gain of one new dwelling that would contribute to the housing stock in the District would not outweigh the significant harm associated with this proposal. The application site is, in planning terms, considered to be in an unsustainable location where future occupants would be reliant upon private motor vehicle use to carry out day to day activities including accessing local amenities and

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schools. Whilst some regard is had to the rural nature of the location, where such circumstances are relatively common, this is not considered sufficient justification to condone the introduction of a new residential dwelling in a countryside location set away from established settlements and amenities. The application scheme has not demonstrated that it would deliver any wider sustainability benefits or social benefits to outweigh the harm.

## **b) Design/layout/visual amenity**

- 7.15 The proposal would result in a two-storey structure with associated driveway, patio and domestic paraphernalia within a nationally-protected landscape. In design terms, it is not considered to be chalet-style, as it appears from the supplied sections and floor plans that all upper floor rooms are within full-height areas, with only the more subservient element above the proposed garage utilising space in the roof for storage.
- 7.16 The applicant claims in their submission that the house would not be seen from outside of the site and that views from all directions would be “substantially the same with or without the development of a new dwelling”. However, the development would be readily visible from Lypne Hill, from multiple vantage points such as land south of the site, and from the northern part of Lypne Hill. Indeed the proposed house would sit closer to Lypne Hill than the existing houses Shepway and Shepway East, and would be elevated above the ground level of Shepway by approximately 4m.
- 7.17 Policy NE3 of the Shepway Local Plan identifies that the natural beauty and locally distinctive features of the AONB and its setting are conserved and enhanced and that proposals should 'protect or enhance the natural beauty of the SLA'. The introduction of a new dwelling into the rural area and the SLA/AONB, where new development is specifically restricted to protect the visual amenity of the landscape, would harm the character and visual amenity of the area.
- 7.18 The primary objective of planning policy in respect of the Kent Downs AONB is to conserve and enhance the landscape and the natural Beauty of the Kent Downs AONB. The site lies within the wider 'Lypne Local Character Area' as defined with the 'Landscape Character Assessment' of the Kent Downs AONB and within the 'Hythe Escarpment' local character area, wherein policy seeks to conserve the open views and ensuring any new development avoids further intrusion on the scarp, along with avoiding further suburbanisation of existing properties.
- 7.19 The proposed development would introduce a new dwelling that is unrelated to the existing settlement pattern and would further expand and continue existing sporadic residential development in the locality, increasing urbanisation of this rural area and introduce further intrusion onto the Hythe Escarpment, contrary to the management objectives for this local character area.
- 7.20 In light of the above it is considered that the proposal would cause significant harm to the AONB, SLA and the countryside and would neither conserve nor enhance the local character and distinctiveness of the AONB, contrary to aims and objectives of Policies HB1 and NE3 of the Places and Policies Local Plan, Policy SS3 of the Core Strategy and the NPPF.

## **c) Residential amenity**

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7.21 There would be a sufficient separation distance between the proposed dwelling and the neighbouring property Shepway to ensure that no significant adverse impact would occur in terms of overbearing or increased sense of enclosure. The orientation of the property in addition to the separation distance and boundary treatments would ensure that no perceived or actual overlooking would occur to neighbouring properties. The additional activity associated with one dwelling is also considered unlikely to result in any significant noise and disturbance as to impact detrimentally upon residential amenity.

7.22 The proposal exceeds the Council's space standards (internal and external) and as such Officers are satisfied that the development complies with policy HB3 of the Places and Policies Local Plan.

## **d) Parking and transport**

7.23 The site would be accessed via Lypne Hill to the west, an existing residential access, with the proposed garage set well back from the highway. As such it is not considered the proposal would result in highway safety concerns. Kent Design Guide Review: Interim Guidance Note 3 Residential Parking states that a minimum of 2 car parking spaces should be allocated for a 4+ bedroom house in a rural location which would be met under this proposal. As such, the parking provision meets the Council's requirements as set out in policy T2 of the Places and Policies Local Plan.

7.24 As such, Officers are satisfied that the development would not result in harm to highway safety or convenience.

## **e) Ecology and biodiversity**

7.25 The applicant has submitted a preliminary ecological appraisal in support of the application that concludes there is limited potential for protected/notable species to be impacted by the proposed development, due to the fact that the area within the curtilage of Shepway is managed grassland. The application site is adjacent to an area of calcareous grassland – a UK Biodiversity Action Plan habitat – and within 150m of Lypne Escarpment SSSI and an area of Ancient Woodland, but as the proposed development is not directly impacting these nearby sites, no further surveys or mitigation is required, however any construction compound must not be located within the adjacent area of calcareous grassland and measures must be implemented during construction to ensure that works will not negatively impact it and the nearby SSSI.

7.26 KCC Ecological Advice Service are satisfied that no further ecological information is necessary at this time and that there would be no negative impact upon wildlife or diversity on the site subject to a condition secure biodiversity enhancement measures on the site in accordance with policy CSD4 of the Core Strategy, as well as a condition covering lighting design in relation to bats and a construction management plan to demonstrate how impact upon the adjacent SSSI and priority habitats will be avoided during construction.

7.27 The suggested conditions are considered appropriate and will ensure that the development would not result in harm to the biodiversity of the site.

## **f) Trees and landscaping**

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7.28 The proposed siting of the new dwelling would be in close proximity to several mature trees. These trees are not covered by a Tree Protection Order albeit their presence forms part of the rural character of the area and contributes to the wider Special Landscape Area and AONB. The Council's Arboricultural Manager considers that the information submitted with the application in relation to these trees is insufficient, and no detail has been provided as to how the trees would be protected during construction work on the site. In the absence of this information, it is considered highly likely that the trees surrounding the site would be affected by the development. Given that the potential loss of such trees in this location would cause harm to the setting of the wider Special Landscape Area and AONB, if Members were minded to grant planning permission for the proposal, it would be advisable to require a tree survey to be provided ahead of any grant of planning permission. This would enable Officers to assess whether it is possible to construct the development in the proposed location without damaging or needing to remove the trees in question.

## **h) Land stability**

7.29 Policy NE6 of the Places and Policies Local Plan requires that development in areas of land instability only if investigation and analysis is undertaken by a competent accredited authority which clearly demonstrates that the site can be safely developed. This analysis should also demonstrate that the proposed development will not have an adverse effect on the slip area in part or as a whole.

7.30 With respect to the matter of land stability the NPPF advises in paragraphs 170 and 178 that 'responsibility for securing a safe site rests with the developer and/or landowner' and that planning decisions should ensure that the site is suitable for its new use taking account of various matter including ground conditions and land stability.

7.31 The report refers to geological and geomorphological conditions in the area, historic investigations (archaeological) and historical known land slips. Using these sources it concludes that the application site is within an area influenced more by periglacial action than the retreating escarpment and ground conditions can be established by a trial trench prior to the foundation design being finalised. Groundwater seepage in the area will need to be intercepted using an appropriate foundation design (piled or raft foundations) the land stability of adjoining land will not be affected and no special measures (other than those already discussed in the report) are necessary to ensure stability of soils during the construction phase.

7.32 Given that the exploratory trenching to confirm the anticipated land conditions have not yet taken place and the design of the foundation has not been finalised, this matter can be dealt with via planning condition. With the use of such a condition no objection is raised in respect to land stability.

## **i) Drainage**

7.33 The application submission includes reference to drainage using Sustainable Urban Drainage Systems (SUDS). Under current legislation and guidance SUDS rely upon facilities which are not adoptable by sewerage undertakers. Therefore, in the event that the application was approved the onus would be on the applicant to ensure that arrangements exist for the long-term maintenance of SUDS facilities. Southern Water have stated that it is critical that the effectiveness of these systems is maintained in perpetuity. A detailed drainage plan for the dwelling could be secured by planning

condition. As such, it is considered that if this application were to be approved, this matter could be dealt with by condition.

## 7.34 Environmental Impact Assessment

7.35 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

7.36 In accordance with policy SS5 of the Core Strategy Local Plan the Council has introduced a Community Infrastructure Levy (CIL) scheme, which in part replaces planning obligations for infrastructure improvements in the area. The CIL levy in the application area is charged at £115.71 per square metre for new residential floor space.

## Human Rights

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

## Public Sector Equality Duty

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

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

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

## Working with the applicant

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

## 8. CONCLUSION

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- 8.1 The application site, away from established settlements and local amenities, is not a suitable or sustainable location for new residential development. Furthermore, the proposed development would have a harmful impact upon the setting and character of the surrounding countryside, SLA and AONB. For these reasons, overall it is considered that the harm which the development would cause outweighs the very limited personal benefits it would deliver, 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):**

1. The application site, being a significant distance from an existing settlement boundary or local amenities, in the absence of access to sustainable transport modes, or safe routes for pedestrians represents an unsustainable location for a new dwelling. As a result the occupiers of the proposed dwelling would rely on car movements to access all amenities. No demonstration of an essential need for the dwelling within the countryside has been submitted and as such the proposal is contrary to policies DSD, SS1, SS3 and CSD3 of the Shepway Core strategy and the NPPF which seek to direct new residential development towards existing settlements and sustainable locations.
2. The proposal fails to conserve, protect or enhance the landscape and scenic beauty of the Kent Downs Area of Outstanding Natural Beauty, the Kent Downs as a Special Landscape Area and the countryside in which the site is located. The proposal would result in significant harm to the local character and distinctiveness of the AONB, SLA and this part of the countryside by introducing built development into the garden area of an existing dwelling, unrelated to any existing settlement, and would be very apparent from the street, consolidating the sporadic residential development in the locality and increasing urbanisation of the rural area and further intrusion into the Hythe Escarpment local character area. The proposal is contrary to policies DSD and CSD4 of the Shepway Core strategy and paragraph 170 of the National Planning Policy Framework.