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Application No: 20/2091/FH

Location of Site: Land adjoining Casebourne Cottage, Underhill Rd, Folkestone

Development: Retrospective application for the change of use of an agricultural field to a dog walking facility and associated field shelters

Applicant: Ms P Suddens & Ms C Goodchild

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Officer Contact: Katy Claw

SUMMARY

This application seeks permission for the change of use from agricultural land/field to a dog walking facility with associated field shelters, including access to the land and parking provision on the driveway of Casebourne Cottage for customers. Whilst there is an argument that the site is not wholly unsustainable due to its proximity to a settlement boundary and the nearby sustainable transport links, the application has failed to justify that this business essentially requires a rural location and that there are no other alternative locations within a defined settlement for this type of non-rural business. Furthermore, the fences, gates, means of enclosure and wooden shelters would give rise to a significant change in the rural character of the area that would fail to protect or enhance the landscape character and functioning of Local Landscape Areas, contrary to policy NE3 PPLP.

RECOMMENDATION:

- A) That planning permission be refused for the reasons set out at the end of the report.**
- B)**
- 1. That an Enforcement Notice be served requiring the cessation of the use of the land for all activities associated with the dog walking business; the removal of the field shelters, fencing and all other paraphernalia associated with the authorised use of the land.**
 - 2. That the Chief Planning Officer be given delegated authority to determine the exact wording of the Notice.**
 - 3. That the period of compliance with the Notice be 6 months.**

4. That the Assistant Director – Governance, Law and Regulatory Services be authorised to take such steps as are necessary including legal proceedings to secure compliance with the Notice.

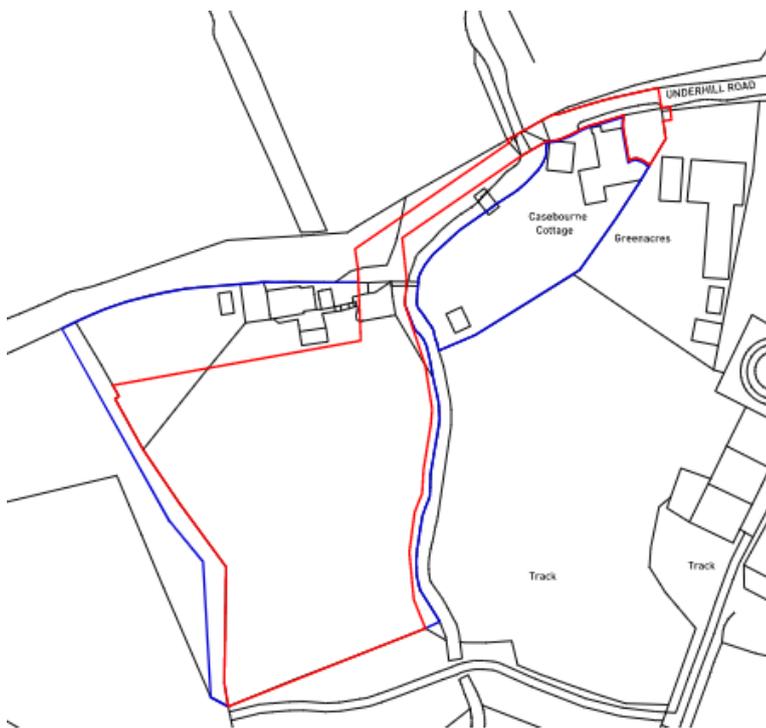
1. INTRODUCTION

1.1. The application is reported to Committee at the request of the Chief Planning Officer. The Chief Planning Officer believes the application raises issues which should be considered by the Planning and Licensing Committee, in accordance with point 10.2.1e) of the Folkestone and Hythe District Council Scheme of Delegation.

2. SITE AND SURROUNDINGS

2.1 The application site is a field of approximately 0.25Ha, which lies to the southwest of an established detached dwelling house currently owned by the applicants. The dwelling itself is sited at the end of Underhill Road, an unclassified, single track 'no-through-road', which itself exists onto the western side of Horn Street in Folkestone. Horn Street is a designated here as a primary 'C' road.

FIGURE 1 – Application site in red, other land owned by the applicant in blue



2.2 The land the subject of this application is shown from the Council's aerial photography to be laid with grass and tree/shrub-lined with mostly deciduous trees. There is little evidential change since at least 2006. Land to the immediate north (edged in blue) has been subject to some additional buildings over that time but the main field remains as agricultural/pasture land.

FIGURE 2 – Land in 2006 and 2018



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

3. PROPOSAL

3.1 Planning permission is sought for the change of use of the land from pasture/agricultural land to land for the walking of dogs. The application is retrospective and the business has been operating since October 2019.

3.2 The supporting statement dated December 2020 says that the business would operate a 'meet and greet' policy where the owners meet new clients and direct them to the parking facilities, therefore all returning clients know exactly where to park. It is understood from the transport statement that the new clients would then walk to the field access where they are then left to exercise their dogs on the field.

3.3 The supporting statement sets out that the operating hours would vary seasonally, GMT opening will be 08:00-16:30 and BST will be 08:00-19:30.

3.4 The booking process is online and allows for half hour or hour slots to be booked by customers and that a maximum of 8 booking slots are available per day. The business managers allow at least a 30 minute changeover period between booking slots to allow customers to pack up cars and exit the site before the next clients arrive. The business does not offer a 'drop in' usage, bookings must be made in order to use the site.

3.5 Customer (pedestrian/dog) access to the field itself is only possible by foot, and access from the associated parking/driveway area situated next to (east of) Casebourne Cottage would be via an existing wooden 5-bar gated entrance that leads round to a further set of wooden gates that allows access into the main dog walking area. This equates to around a 50 metre walk from car to field.

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- 3.6 Vehicular parking for the business use is located immediately adjacent to the east of the main dwelling of Casebourne Cottage, on the existing driveway. The submitted statement and block plan indicate 3 parking spaces, although applying KCC vehicle parking space standards reduces this to 2 parking spaces.
- 3.7 Supporting information accompanying the application has confirmed that the site would accommodate up to 4 dogs at any one time over the 30 minute or 60 minute booked slots.
- 3.8 The statement sets out that the majority of bookings only require one car, but a second parking space is available for a second car should an additional driver need to attend the booking, but this is not typical. It is understood from supporting comments that some people meet friends/family at the site which explains the occasional requirement for two spaces. The applicants have sole use of their garage for parking of their personal vehicles.
- 3.9 In addition to the change of use of the land the applicant is seeking the retention of two field shelters, erected in association with the business. These are wooden in construction and open on one side. The field shelter located at the northern end of the field is of lean-to design and measures approximately 2150mm x 1900mm with a maximum height of 2100mm. The field shelter located at the bottom end of the field is of pitched roof design and measures approximately 1850mm x 1200mm with a maximum height of 2250mm.

FIGURE 3 – Field shelter 1 and 2



- 3.10 Members' attention is directed to the presence of other fences/gates erected on the site in association with the dog walking business. However, the applicant has not included these within the application submission as they consider that as the fences/gates are under 2m in height (1.8m) they do not require planning permission in their own right.
- 3.11 In addition to the submitted plans, the application has been accompanied by the following reports:
- 3.12 Planning Statement (produced by Pegasus Group, received December 2020)
This document sets out the site and its location description, planning history, the proposed development, an assessment against relevant policy and a conclusion. The statement concludes that the use is appropriate within the location in which it is set and provides opportunities for safe, outdoor recreation, of significant value to the local community whilst meeting ambitions for exercise and welfare and is supported by the

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NPPF for rural-based leisure recreation. The site provides sufficient parking and there is no adverse impact on road capacity, with the site accessible by public transport. The change of use adheres to relevant development plan policies and will assist dog owners in meeting their legal obligations under the Animal Welfare Act 2006. It concludes that planning permission should be granted to support a vibrant small business.

3.14 Transport Statement (produced by Pegasus Group, received January 2021)

This document sets out key transportation issues setting out the site and context, the existing access and parking arrangements, the local highway network, including public rights of way. With regards to the junction of Underhill Road/Horn Street it identifies any highway safety issues including by the use of 'crashmap', which the report states did not note any recorded incidents within the vicinity of Horn Street/Underhill Road junction. The report concludes in that regard that the local highway network in the vicinity of the site operates safely and there is no material existing accident pattern or problem.

With regards to on-site parking, the transport assessment sets out that vehicular parking arrangements will remain as per the existing situation.

3.15 Acoustic Assessment of Casebourne Cottage Dog Walking Site (produced by ACA acoustics, received January 2021)

The statement sets out that a sound level survey was carried out between Monday 7th to Thursday 10th December 2020 at the edge of the main dog walking area and that 14 dog walking sessions were captured in that time period, along with residual levels during periods without any walking activity taking place. The statement sets out that 15 minute averages were taken and these averages equated to levels deemed to be "negligible" to "slight" when assessed in accordance with the guidelines. The report concludes that the site is suitable for use as the proposed dog walking site and should not result in adverse impact on nearby occupants.

An assessment of the customer vehicle activity was also carried out within the same survey, resulting in "slight" impact when assessed in accordance with the guidelines and that sounds of customer vehicles is comparable to other activity of similar nature in the vicinity of the relevant noise receptor. The report sets out that each vehicle movement has been evaluated to take around 2 minutes and that the noise assessment was taken over an hour period. In this regard the report concluded that the traffic movements (2 movements per hour, up to 14 movements per day) would be heard but would not result in any change in the behaviour or attitude of adjoining occupants.

4. RELEVANT PLANNING HISTORY

- 4.1 There is no planning history associated with the site as outlined in red on the submitted site location plan.

5. CONSULTATION RESPONSES

- 5.1 The consultation responses are summarised below.

Consultees

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Hythe Town Council: Object on the grounds that there are health and safety issues, access and egress issues, drainage issues, a detrimental effect on wildlife, the location is not suitable for this sort of business and the effect of traffic and noise would have an adverse effect on the neighbours.

KCC Highways and Transportation: KCC Highways has commented on the proposal and initially did not intend to comment on the application but sought to clarify their position on this matter further in regards to the junction of Underhill Road and Horn Street. They confirm that this particular section of Underhill Road is unclassified and publicly maintainable by KCC. They set out that under NPPF guidance, they are only allowed to object on highway grounds if the impact of the proposal is severe in nature. They have checked personal injury records, which indicates there have been no accidents on Underhill Road at the junction with Horn Street. They have set out that the applicant's Transport Statement explains that they plan to limit the number of bookings per day (with a maximum of 6 bookings per day during GMT and 8 bookings per day during BST), limit to one car (unless one additional car is authorised at the time of booking), and include an additional gap half an hour between bookings to allow for one person to leave before the next person arrives. This is acceptable and reasonable, with very low resulting traffic movements. As such, they do not consider the proposals will have a severe impact on the junction of Underhill Road and Horn Street.

KCC Ecology: No ecological information has been submitted with this retrospective application. If planning permission is granted they advise a condition to ensure that no net-loss of biodiversity occurs and that enhancement measures are implemented. The condition would include the planting of native vegetation.

Environment Agency: The Environment Agency raised no objection on the understanding that where a channel had been dug, it should not be carrying any pollution, such as dog excrement laden runoff into the river. They have included an 'environmental permit' informative which refers to the applicant needing to obtain a permit for any activities which will take place on or near the Seabrook Stream.

Environmental Protection Officer: Initial comments from the Environmental Health Officer received February raised concerns around assumptions made in the Acoustic report (due to variables such as weather conditions/seasons/number and size of dogs etc). The Environmental Health Officer suggested conditions, including hours of operation, limit of 6 dogs on site at one time, any external lighting to be switched off by 18:00hrs, no over-night boarding and that a 2.0m high solid timber fence/wall should be erected. Following the submission further information and clarity on the assumptions made in the initial Acoustic report (from agent dated 10 March) the Environmental Health Officer has submitted revised comments dated 31 March confirming that Environmental Health department cannot reasonably request the 2.0m high acoustic fence and they withdraw this proposed condition, they would however welcome the proposed reduction in maximum number of dogs, from 6 to 4. The other suggested conditions should remain. In addition to the suggested conditions the

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Environmental Health Officer advised that it would not be reasonable for clients to self-regulate themselves regarding excessively barking dogs and therefore advise the site to be appropriately staffed, while in operation.

Local Residents Comments

5.2 2 neighbours directly consulted. 167 individuals/interested parties have commented on this proposal, some in support and some in objection. There are instances of several comments on file from the same individuals/interested parties.

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

Objections

- Underhill Road isn't suitable for the increase of traffic movements
- Impact on Horn Street due to increase of traffic
- Noise generated from increased traffic movements, numerous dogs, shouting and noisy training aids/dog toys
- Excessive operating hours
- Hazard. Surrounding fields either have sheep, cattle or equine which spook easily
- Nature of business attracts dogs that are antisocial and cannot be let off in public places with other animals/people
- Danger of dogs escaping
- Access point not owned by applicant but gate has been installed
- Flooding issued caused by new drainage system

Support

- No other comparable sites nearby, willing to travel from outside the district to use facilities
- Good place for dogs who are not good with other dogs or humans
- Good for persons and/or dogs with disabilities and mental health disorders
- Nothing similar within close proximity/locally. Most fields contain other dogs or livestock
- Dogs have freedom to run off-lead in a safe and enclosed area
- Booking system ensures no crossover of persons or dogs resulting in minimal congestion and noise
- Sheltered with seating and dog toy/training aids and other provisions (including water/wash area and dog waste bins) are on site, unlike public dog runs
- Fences/enclosures are high and screened, unlike that found in local authority dog runs
- Will not impact upon neighbours

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 Local Plan 2013.
- 6.2 The Folkestone & Hythe District Council Core Strategy Review Submission Draft (2019) was published under Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations (2012) for public consultation and has been subject to an Examination in Public in January 2021. As such its policies should be afforded weight where there are not significant unresolved objections.
- 6.3 The relevant development plan policies are as follows:-

Places and Policies Local Plan 2020

Policy HB1 – Quality Places through Design

Policy T2 – Parking Standards

Policy NE2 – Biodiversity

Policy NE3 – Protecting the District's Landscapes and Countryside

Policy HE2 – Archaeology

Shepway Local Plan Core Strategy (2013)

Policy DSD – Delivering Sustainable Development

Policy SS1 – District Spatial Strategy

Policy SS3 – Place Shaping and Sustainable Settlements Strategy

Policy CSD3 – Rural and Tourism Development of Shepway

Policy CSD4 – Green Infrastructure of Natural Networks, Open Spaces and Recreation

Core Strategy Review Submission draft (2019)

Policy SS1 – District Spatial Strategy

Policy SS3 – Place Shaping and Sustainable Settlements Strategy

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

Government Advice

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National Planning Policy Framework (NPPF) 2019

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

Paragraph 11 - Presumption in favour of sustainable development.

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

Paragraph 48 – Local planning authorities may give weight to relevant policies in emerging plans.

Paragraph 54 - Whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.

Paragraph 83 – Supporting a prosperous rural economy. Sustainable growth and expansion of all types of business in rural areas and sustainable rural tourism and leisure developments which respect the character of the countryside.

Paragraph 84 - Decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. Important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable.

Paragraph 109 - Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Paragraph 170 - Decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, recognising the intrinsic character and beauty of the countryside, minimising impacts on and providing net gains for biodiversity, preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability.

National Planning Policy Guidance (NPPG)

Design: process and tools

Effective Use of Land

Natural Environment

Noise

Use of Planning Conditions

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

7. APPRAISAL

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

- a) Principle of development
- b) Impact upon the countryside / Local Landscape Area
- c) Neighbouring amenity
- d) Parking provision and highway implications
- e) Other issues

a) Principle of Development

7.2 The general thrust of national and local plan policy is to secure the sustainable patterns of development through the efficient reuse of previously developed land, concentrating development at accessible locations. At a basic principle, policies SS1, SS3 and CSD3 of the Council's Core Strategy restrict development in the countryside and direct residential development towards existing settlement patterns to protect the open countryside. Policy SS3 Core Strategy says that the principle of development is likely to be acceptable on previously developed land, within defined settlements.

7.3 The NPPF defines previously developed land as "land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure". In this case, from reviewing aerial photography and without evidence to the contrary from the applicant, it would appear that the parcel of land outlined in red has been used as pasture land (and is located within an area of classified Grade 4 Agricultural land) with very little alteration for a period spanning at least 10 years, until the change of use occurred in 2019. As such the land cannot be considered as 'previously developed land' as defined within the NPPF. Notwithstanding this the site is itself located outside a defined settlement and so this policy principle could not apply.

7.4 Policy SS1 states that additional development should be focused on the most sustainable towns and villages as set out in Policy SS3. Policy SS1 also says that development in the open countryside (defined as anywhere outside of the settlements) will only be allowed in exceptional circumstances, where a rural/coastal location is essential. 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.

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- 7.5 Whilst the application site is outside of an established settlement, it is considered to be in reasonably close proximity to a settlement boundary (approximately 148m from the southeast corner of the site to settlement along Horn Street). The land in question is not considered to be poorly connected by sustainable transport modes. There are bus stop along Horn Street and Horn Street is a main road connecting the site to Hythe and Cheriton with the M20 motorway and high-speed train links available in Folkestone. Taking the above in to consideration it cannot therefore be argued that the site is in a totally unsustainable location although given the nature of the business, as somewhere to go to specifically walk dogs, the number of customers who would walk here to walk their dogs would be likely to be low.
- 7.6 There are cases where development in the countryside is permitted by local plan policy and this is set out within policy CSD3 Core Strategy. Policy CSD3 refers to the District's 'Rural and Tourism Development'. The policy says that proposals for new development in locations outside of the Settlement Hierarchy may only be allowed if a rural or coastal location is essential, and to meet green infrastructure requirements. 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

The policy goes on to say 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.

- 7.7 In this case, a business as a 'dog walking facility' cannot reasonably be considered as a rural enterprise, essentially requiring a rural location, unlike equine development for example. This is supported by the fact that most (if not all) purpose-built dog runs in the district are sited within urban built-up areas, easily accessible to all by various modes of transport. Given that the policy does not support new non-rural development in locations outside of the settlement hierarchy, it is not considered that policy CSD3 can be used to support this use, which does not have to be located in the rural area.
- 7.8 At a national level paragraph 83 NPPF refers to 'Supporting a prosperous rural economy' and states that:
- Planning policies and decisions should enable:
- a) the sustainable growth and expansion of all types of business in rural areas, both through conversion of existing buildings and well-designed new buildings;

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- b) the development and diversification of agricultural and other land-based rural businesses;
- c) sustainable rural tourism and leisure developments which respect the character of the countryside; and
- d) the retention and development of accessible local services and community facilities, such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.

- 7.9 Paragraphs 83 and 84 of the NPPF have been used by the applicant in support of their submission. However, it is considered that paragraph 83 has been misinterpreted as whilst it does lend support to the 'sustainable *growth* and *expansion* of *all types* of business in rural areas', it does not actively support 'new development' in rural areas. As such, this should not hold significant weight in the support of this application.
- 7.10 Paragraph 84 of the NPPF says 'planning policies and decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development is sensitive to its surroundings, does not have an unacceptable impact on local roads and exploits any opportunities to make a location more sustainable (for example by improving the scope of access on foot, by cycling or by public transport). The use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist'.
- 7.11 The requirements of Paragraph 84 appears to offer more support to the applicant's proposal than local policy or paragraph 83 of the NPPF however, this support is caveated by a set of criteria that need to be met. It is considered that the proposal would not meet all the necessary criterion of this principle policy for reasons which are covered elsewhere in the report under their relevant sub-headings below.
- 7.12 Where development is proposed outside of any defined settlement and the business use is not covered by policy CSD3 then the onus falls to the applicant to justify its rural location. It is considered that the application has failed to satisfy the planning policy requirements of only allowing development 'in exceptional circumstances, where a rural location is essential', as required by policies SS1, SS3 and CSD3 of the Council's Core Strategy.
- 7.13 Based on the evidence submitted, there is no demonstration that alternative locations have been considered within a defined settlement. It is reasonable to assume that the business in this location relates to the fact that the site is within the applicant's ownership, which is adjacent to their residential property but which does not form part of the residential garden.
- 7.14 It is accepted that the proximity of the business to the applicant's residential property would be of convenience to the applicant, certainly where a 'meet and greet' facility is being offered for first-time visitors. However, a planning permission runs with the land and Casebourne Cottage does not fall within the application red line boundary. The argument for allowing this use here because of the link to Casebourne Cottage is therefore not justified because they are not within the same planning unit and could

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not be connected through conditions attached to any planning permission. In certain circumstances a personal permission may be granted, but a grant of planning permission based solely on the grounds of an individual's personal circumstances will scarcely be justified.

7.15 In this case it is noted that operating a business in close proximity to personal property offers opportunities for 'home working' or to permit operations for a 'home business'. Whilst personal need is not a material planning consideration in itself, it can form part of a balanced argument. In this case the applicant has not put forward an argument as to why the business can only operate from the proposed site and why a more appropriate location for such a business is not feasible.

7.16 On balance, it is concluded that whilst there is an argument that the site is not wholly unsustainable due to its proximity to a settlement boundary and the nearby sustainable transport links, the application has failed to justify that this business essentially requires a rural location and that there is no other alternative locations within a defined settlement for this type of non-rural business.

b) Impact upon the Countryside / Local Landscape Area

7.17 The application includes details of the two wooden shelters that have been erected on the site. As part of the retrospective operations at the site the applicant has also erected fences/gates/enclosures, but the agent is of the view that as they are all under 2m in height, they do not in themselves require planning permission. As such they have not been included as part of the application submission, and the applicant wishes for the application to be determined on that basis. It is not considered that this is correct.

7.18 Given the proximity to other residential properties and the need to contain dogs within the application site, it is reasonable to assume that gates, fences or other means of enclosure would be required as part of that use. The installation of such structures would be essential to the operations of the change of use application being sought. Such structures, whilst not necessarily needing planning permission in their own right, are a material part of the proposals and they are only necessary as a result of the intended use. It is therefore considered that the gates, fences and other means of enclosure that have been erected on site form part and parcel of the change of use, and the impact the fencing/gates would have of the visual character and appearance of the site and on the wider countryside should be considered as part of the application.

7.19 The erection of boundary treatments, including fences and gates is to be expected in the rural area, used a way to demarcate one parcel of land from another and to contain any associated livestock, especially where there is a difference in ownership on adjoining parcels. As such, the erection of boundary treatments under 2m in height, separating one parcel of land from another, is not uncommon and not objectionable in this case. Concern arises not from the boundary fences but from the need for other fences/gates and enclosures within the site itself, such as the various entry gates along with the separate enclosures for the dog washing area.

7.20 In addition to the number of fences/gates/enclosures, the two shelters that are in situ on the land are domestic in nature, more akin to the kind of structure you would find

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in a residential garden. As such they appear alien and out of character within the wider countryside setting and are not suitable structures for this particular rural location.

- 7.21 The site itself is set within a valley but there is a public footpath to the north of the site which runs northwest of the site, across open fields from which the associated dog walking paraphernalia would be visible. In addition the associated shelters, fencing/enclosures and their accompanying screening would visible from other locations outside of the site.

It is accepted that the screening used here would be dark green in colour (a type of netting) but this not does not entirely negate the visual harm caused to the area due to the excessive amounts of fencing/enclosures required on a relatively small parcel of land.

- 7.22 With regards to impact upon the countryside and LLA, it is considered that the resulting works would give rise to a significant change in the rural character of the area, a physical change which would, due to the non-rural nature/amount of structures, fail to protect or enhance the landscape character and functioning of Local Landscape Areas, contrary to policy NE3 PPLP. It is considered that as the fences/gates and other means of enclosure are required in association with the business operations, they form a material consideration in the determination of this application.

c) Neighbouring Amenity

- 7.23 The criteria set out under PPLP Policy HB1 addresses neighbouring amenity considerations. The policy states, amongst other things, that planning permission will be granted where the proposal does not lead to an adverse impact on the amenity of neighbours, or the surrounding area. The main concern in the determination of this application with regards neighbouring amenity centres around resulting noise and disturbance.

- 7.24 The nearest neighbouring property to the application site is Greenacres, approximately 60m east from the house, and approximately 34m from the garden. To the east of Greenaces is Casebourne Farm. The application site is approximately 84.6m from the house and 55m from the garden. Other nearby neighbouring properties are within Craythorne Close to the southeast of the site, the nearest being 1 Craythorne Close, 162m from the site.

- 7.25 There have been some concerns raised by neighbours with regards to the time/days that the submitted Acoustic Assessment (produced by ACA Acoustics) was undertaken. Concerns relate to the survey being carried out during a Covid-19 lockdown period, when the site was not operational during this period and as a result the report findings would not be accurate. Notwithstanding these concerns, it must also be considered that there has been no evidence to demonstrate that the site was not operating during this time. As the assessment has been carried out by a competent and suitably qualified 3rd party, it would not be appropriate for the findings reported to be dismissed and there is no evidence that the Report is in anyway misleading.

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- 7.26 The Acoustic Assessment has been broken down into two parts, the first assesses the noise of dogs/persons on the site and the other assesses the traffic movements. The report states that the survey was carried out between Monday 7th to Thursday 10th December 2020 and that 14 dog walking sessions were captured along with residual levels during periods without any walking activity taking place. The report concluded that the levels captured equated to an increase of noise level rated as “negligible” to “slight”. The report concludes that noise impacts are low and no further mitigation measures will be required.
- 7.27 An assessment of the customer vehicle activity resulted in a “slight” noise impact and the report concludes that the noise impact of the customer vehicle movements should not be detrimental to the amenity of nearby residential occupants.
- 7.28 In conclusion the report found that, in accordance with relevant policies, standards, and guidance, it is the author’s opinion that the site is suitable for the use as the proposed dog walking site and should not result in adverse impact on nearby occupants.
- 7.29 It is accepted that there is a degree of assumption made as they survey was carried out during one season with its own particular seasonal conditions and that in the summer for example, when the trees are in leaf, or considering changes in wind direction etc, would all play a role in noise levels on any given day. However, the Acoustic Survey has made clear that the impacts from noise, be that from dogs/persons or traffic movements would be “negligible” to “slight” and as such any mitigating weather factors on any given day is unlikely to raise noise levels beyond acceptable levels. The report concludes that no further mitigation measures will be required.
- 7.30 It is noted that the Council’s Environment Health Officer (EHO) had originally requested that an acoustic fence be secured by condition in their initial response but upon further consideration, given that the report concludes that no further mitigation is required, this requirement would be unreasonable and so would no longer form a conditional requirement should Members be minded to permit.
- 7.31 Taking into account the findings of the Acoustic Assessment, undertaken by suitably qualified persons, it is considered that there are no reasonable grounds for refusal on the basis of noise impacts from dogs/persons or vehicular traffic.
- 7.32 The hours of operation are set to daylight hours only and as such no floodlighting would be required. The applicant has noted that there is existing lighting on the site but this is existing and does not form part of the application submission.
- 7.33 Concern had been raised with regard to the impact of odour from the dog excrement bins. Following discussion with the applicant’s agent and the Council’s Environmental Health Officer, the applicant intends to employ the services of a regulated commercial waste disposal company.

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- 7.34 Concern has been raised about the type of dog using the site and the fact that there are horses and livestock in the near vicinity. This is duly noted but it is for the applicant to ensure the protection of any nearby livestock.
- 7.35 Environmental Health and other interested parties have raised concerns with regards to the management of the site. The Environmental Health Officer suggests that it would not be reasonable for customers to self-regulate themselves regarding noise mitigation from any dogs barking excessively and they advise that the site should be appropriately staffed, while in operation.

d) Parking Provision and Highway Implications

- 7.36 The application has been supported by a Transport Assessment. It is noted that some concern has been raised by neighbours about the assessment as it has been produced by the agent and not a suitably qualified 3rd party. However, given that KCC Highways and Transport has not objected to the survey or to the application itself it is considered that the submission is valid and acceptable.
- 7.37 Underhill Road is an un-adopted road and as such KCC Highways and Transportation department has only commented on the traffic at the junction of Horn Street with Underhill Road. KCC has confirmed that their records show there have been no accidents on Underhill Road at the junction with Horn Street. They conclude that based on the number of traffic movements associated with the proposal (maximum of 8 bookings per day BST) limited to one car (unless one additional car is authorised at the time of the booking), and to include an additional gap of half an hour between bookings to allow for one person to leave before the next person arrives, that this is acceptable and reasonable, with very low resulting traffic movements.
- 7.38 Given these conclusions, it is considered that there would not be a reasonable grounds for refusal on the basis of traffic increase at the junction of Underhill Road and Horn Street.
- 7.39 With regards to vehicular traffic along Underhill Road itself, it is accepted that this is a single lane and as such, any increase in traffic may give rise to minor inconvenience of highway users should paths cross when using the road. Single track lanes are commonplace in the countryside and reversing or giving way for other road users is to be expected. The applicant has attempted to alleviate highway issues by highlighting the road capacity and requesting customers to consider other road users from information set out on their website and also in the way of apparent information sent out via their digital booking confirmations (noted from reading comments).
- 7.40 It is accepted that not all road users are courteous but that is not a material reason to withhold planning permission. Underhill Road is a public road and applications can only be refused on highway grounds in line with NPPF guidance. Paragraph 109 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 7.41 Whilst concerns have been raised about speed of traffic/number of traffic on the road there is no definitive evidence which supports that this is as a direct result of the business operations at the site and, in line with advise from KCC Highways, the highway implications upon the existing highway network as a result of this proposal would not be severe enough to warrant a reason for refusal on highway grounds.

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- 7.42 Parking for the customers would be upon privately owned land within the residential curtilage of Casebourne Cottage. The application submission shows 3 parking spaces but in reality, taking into account KCC IGN3 minimum parking size space standards (adopted by the LPA under policy T2 PPLP), the site can only accommodate 2 cars. The 2 car maximum is in line with the applicant's intended operations of only permitting up to 2 cars at any one time and in this regard there are no objections raised to the parking provision.
- 7.43 The proposal would reduce the amount of available parking for Casebourne Cottage. The applicant's currently use a garage located to the west of the main house to park their own vehicles. Garage spaces do not usually count towards parking provision but it is understood that this is an existing situation and no objections are raised. It would be imperative that a degree of parking provision was retained at all times in connection with the business use in the interests of highway safety.

e) Other Issues

- 7.44 There is a requirement under local and national planning policy to seek a biodiversity gain. As such KCC Ecology department has requested a condition to ensure that no net-loss of biodiversity occurs and that enhancement measures are implemented. This is reasonable and should Members be minded to grant planning permission then a condition would include the planting of native vegetation to be carried out within a set time frame, usually to coincide with the next planting season given that the works are retrospective.
- 7.45 Concern has been raised regarding the fact that the applicant does not own all the land to which the application relates. The applicant has completed Certificate D of section 25 of the application form which certifies that all reasonable steps have been taken to find out the names and addresses of everyone else who was the owner of any part of the land to which the application relates. They have confirmed that a land registry search was undertaken and that a notice was placed in the Folkestone Herald Express. For the purposes of applying for planning permission the applicant has carried out the necessary steps and the issue of land ownership would not preclude planning permission from being granted.
- 7.46 The MoD has raised concerns in response to the planning application, however this relates to the potential impact on the access to their land and not to the change of use itself. It is understood that the MoD can still access their land, albeit through a gate that the applicant has erected. This in itself is not a planning consideration as access can be made and the MoD has not formally objected on the grounds of lack of access. Retaining rights of access would require resolving with the applicant and is a civil matter rather than one for planning to consider.
- 7.47 Drainage ditches have been dug and the Environment Agency offered no objection on the understanding that where a channel had been dug, it should not be carrying any pollution, such as dog excrement laden runoff into the river. The agent has confirmed that the drainage channels have been piped, and topped with gravel membrane and soil as they are not open and it is not possible for dog waste to be placed in them. Any other works regarding drainage and flooding issues resulting in impact to the Seabrook Stream are being addressed between the applicant and the EA, they do not form part of this application for change of use of the land and so falls outside the remits of consideration under this application.

Environmental Impact Assessment

7.48 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

7.49 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.

Human Rights

7.50 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

7.51 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

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

8. CONCLUSION

- 8.1 The application site seeks planning permission for a non-rural use within the open countryside without justification for its rural location. The LPA is of the opinion that whilst there is an argument that the site is not wholly unsustainable due to its proximity to a settlement boundary and the nearby sustainable transport links, the application has failed to justify that this business essentially requires a rural location and that there are no other alternative locations within a defined settlement for this type of non-rural business. The application has failed to satisfy the planning policy requirement of only allowing development 'in exceptional circumstances, where a rural location is essential', as required by policies SS1, SS3 and CSD3 of the Council's Core Strategy.
- 8.2 The resulting physical development that would be required (fences/gates/means of enclosures) along with the physical development proposed under this application submission (wooden shelters) in order to facilitate this change of use to a dog walking facility would give rise to a significant change in the rural character of the area that would, fail to protect or enhance the landscape character and functioning of Local Landscape Areas, contrary to policy NE3 PPLP.

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. RECOMMENDATION

A) That planning permission be refused/for the following reasons:

1. The site is located outside of any settlement boundary and within the open countryside. The application submission has not provided robust justification to support exceptional circumstances, where a rural location is essential for a proposal that seeks to operate a non-rural business in a rural location, outside the confined of the settlement boundary, contrary to policies SS1, SS3 and CSD3 Shepway Core Strategy Local Plan and the NPPF.
2. The proposed paraphernalia required with the dog walking business (including any necessary fences/gates/means of enclosure, together with the proposed retention of the wooden shelters) would result in harm to the character of the countryside setting, which is afforded additional protection by virtue of local designation as a Local Landscape Area and the application has failed to demonstrate that this location is the most sequentially preferable location and that the need to secure economic and social wellbeing outweighs the need to protect the area's local landscape importance as required by policy NE3 of the PPLP.

B)

1. That an Enforcement Notice be served requiring the cessation of the use of the land for all activities associated with the dog walking business; the removal of the field shelters, fencing and all other paraphernalia associated with the authorised use of the land.
2. That the Chief Planning Officer be given delegated authority to determine the exact wording of the Notice.

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- 3. That the period of compliance with the Notice be 6 months.**
- 4. That the Assistant Director – Governance, Law and Regulatory Services be authorised to take such steps as are necessary including legal proceedings to secure compliance with the Notice.**