

**Application No:** 21/0792/FH

**Location of Site:** Brattle Lodge  
Kennards Lane  
Brookland TN29 9FH

**Development:** Retrospective application for the erection of a two storey dwelling, including rooms in the roofspace, following demolition of an agricultural barn

**Applicant:** Mr. & Mrs. Tompkins

**Agent:** Caroline Wilberforce  
Verve Planning Ltd  
60 High Street  
Wimbledon  
London SW19 5EE

**Officer Contact:** Lisette Patching

## **SUMMARY**

This application seeks retrospective planning permission for a dwelling that is required to be demolished by an Enforcement Notice. A previous appeal against the enforcement notice, on the grounds that planning permission should be granted, was dismissed. The applicants argue that there has been a material change in circumstances since that decision and that there are overriding factors not made clear to the Inspector at the time, such that planning permission should now be granted. It is considered that the dwelling is contrary to policy due to its location outside the settlement boundary in an unsustainable location and due to its impact on the local landscape area. It is not considered that there has been a material change in planning circumstances since the appeal was dismissed, nor that reasons put forward by the applicants are sufficient to overcome the policy objection.

## **RECOMMENDATION:**

<b>That planning permission be refused for the reasons set out at the end of the report and that delegated authority be given to the Chief Planning Officer to agree a new compliance date for the Enforcement Notice with the applicants.</b>
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## **1. INTRODUCTION**

1.1. The application is reported to Committee because Brookland Parish Council supports the application.

## **2. SITE AND SURROUNDINGS**

2.1. The application site is located on the corner of King Street and Kennards Lane. It comprises a detached two storey dwelling located on former agricultural land that was

previously within the ownership of the neighbouring property, Brattle House, when that house was owned by the applicants. The first floor accommodation is within the roofspace. The elevations comprise weathered timber boarding on a red brick plinth with plain clay tiles to the roof. It is of a simple design. Pedestrian access is off King Street via a footbridge over a drainage ditch, maintained by the Romney Marshes Area Internal Drainage Board. Vehicular access is off Kennards Lane, close to the junction, via a double gated drive. The drive is surfaced in a grey subbase and there is parking for 3-4 cars and a turning area. The location of the site is shown in Figure 1 below.

*Figure 1 – Site location plan*



- 2.2. There are two paddocks adjacent to the drive, between the dwelling and Kennards Lane. These are the green areas within the red line boundary at Figure 1. At the time of the officer's site visit these contained several goats and a pony. There is a well stocked and well maintained garden to the side and rear of the dwelling. Both the paddocks and garden contain various outbuildings, mainly animal shelters and none of which has planning permission. One of the outbuildings is ramshackle and unfinished in appearance and is located in the paddock close to Kennards Lane. It appears to have been constructed from parts of other buildings and the ground floor is used as an animal shelter. It appears unfinished with wooden support posts at first floor level indicating that the intention was/is to add a second storey. This does not have planning permission
- 2.3. The boundary to Kennards Lane comprises dense hedging approximately 1.5m high. The site is separated from King Street by a drainage ditch with 2m high dense hedging along the residential boundary with the drainage ditch. The dwelling is visible from King Street. See Figure 2 below.

*Figure 2 – View from King Street*



The dwelling and outbuildings are clearly visible in views from Kennards Lane which runs at right angles to King Street and then curves around a neighbouring field to run parallel to King Street for several hundred yards before heading north again. See Figure 3 below. Views of house are lost on this second bend as it is screened by trees to the side/rear of the house. However, the outbuildings are still clearly visible. The site is also visible across the flat landscape from parts of Brack Lane to the north –east but there are limited views of the house from here due to the trees to the side/rear.

*Figure 3 – View from Kennards Lane*



- 2.4. The nearest dwellings are Meelick (Brookland Place) which is opposite the site on the other side of King Street and Brattle House, which adjoins the site to the east. Brattle House is a Grade 2 listed building. It was formerly owned by the current applicants and the application site was within their ownership at that time.
- 2.5. The site is within the countryside and outside of the settlement boundary of Brookland. Access from the village is via single carriageway, unlit rural lanes with no footpaths. Sections of the roads are breaking up and uneven. See Figure 4 below.

*Figure 4 – Road from Brookland Village to site*



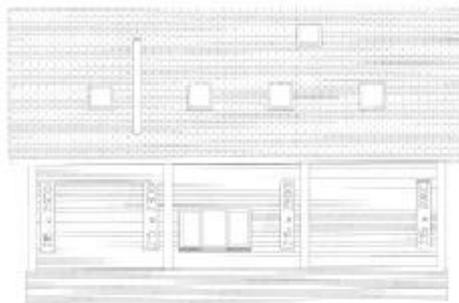
- 2.6. The following constraints apply to the site:
- Grade 1 agricultural land
  - Romney Marsh Local Landscape Area (RMLLA)
  - Flood zones 2 and 3
  - Within 8m of a watercourse
  - CIL residential Zone B

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

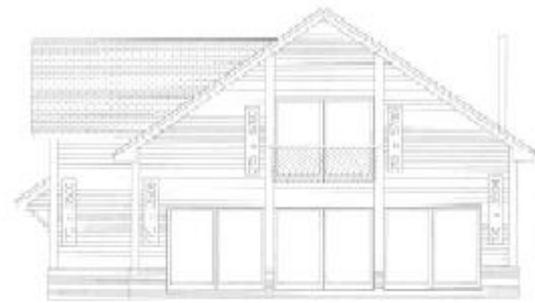
### 3. PROPOSAL

- 3.1 Full retrospective planning permission is sought for erection of the dwelling as constructed and the demolition of an agricultural barn on the site that has taken place to accommodate the dwelling. The dwelling comprises living room, dining area, bedroom with ensuite, kitchen and boot room on the ground floor and, on the first floor, master bedroom with dressing room and ensuite and a third bedroom with dressing room and ensuite. The master bedroom has a small balcony area. Elevation plans of the dwelling are at Figure 5 below.

*Figure 5 – Elevations of dwelling*



SIDE ELEVATION



FRONT ELEVATION



- 3.2 The area covered by the redline boundary on the submitted site location plan at Figure 1 above includes the two paddocks as well as the garden area adjacent to the house.
- 3.3 The following reports were submitted by the applicant in support of the application:

Design and Access Statement

This briefly describes the size and scale of the dwelling, appearance, access and existing landscaping.

Planning and Heritage Statement

This statement sets out the site and surroundings; planning policy context; planning history; change in relevant considerations since the appeal decision on the Enforcement Notice (EN); community support for the scheme; and a planning assessment of the development. It seeks to set out that since the appeal decision there has been a material change in circumstances such that the Council should not decline to determine the application under Section 70A and that the Council should grant planning permission. This a 52 page document plus appendices and a summary of the sections is set out below:

### **1. Introduction**

The application is not similar to the deemed application as it advances very different material considerations against which the operational development must be properly considered.

Other material considerations have since arisen as to require the Council to determine the application, meaning that there has been a significant change in the relevant considerations since the date of the refusal by the Inspector. This includes the adoption of the Places and Policies Local Plan and other material considerations.

Even if the Council considers that there has not be a significant change in relevant considerations, there has been a change of circumstances nonetheless.

The Council has never determined an application, only the Inspector, meaning that members have never been afforded the opportunity of determination.

The Council and Inspector were not adequately appraised of various, key planning circumstances.

The Council and Inspector could not have foreseen and taken account of the relevant material considerations now being put forward

This is the only home of the applicants who are aged, retired, co-dependent owners who endure poor health and who will be unable to live locally and face financial ruin if the EN is complied with.

The owners' human rights give strong legal effect to the significance of their home and family life.

The development does not give rise to any ascertainable local community concerns or objections.

### **2. Site and Surroundings**

This section describes the application site and its surroundings including landscape designation, Environment Agency Flood Zone.

### **3. Planning Policy Context**

Section 3 sets out the planning policy context and states that there has been a significant change in the development plan since the previous decision to serve the EN and the determination of the appeal. At the time of the serving of the EN and the appeal the adopted Development Plan comprised the Shepway Core Strategy 2013 and the Shepway District Local Plan Review 2006. There were also emerging local plans – The Shepway Core Strategy Review (CSR) and the Places and Policies Local Plan (PPLP). The Inspector gave the emerging documents limited weight and did not cite any

emerging policies in his decision letter. Since the appeal decision the Places and Policies Local Plan has been adopted and the Local Plan Review policies no longer apply. The Core Strategy Review has been subject to an Examination in Public in January 2021.

#### 4. Site Planning History

This section makes reference a large double storey hay barn that, it is stated, was on the site until it was damaged in high winds in late 2013 due to falling trees. It is stated that the repairs resulted in the lower building with a mono pitched roof that was the subject of the prior approval for conversion to a dwelling. It is argued that the information in respect of this two storey building was not included in the previously submitted invalid planning application and was not available to the Inspector at the time of her consideration of the appeal. There are no measured architects drawings of the barn but sketch drawings of the barn (based on what it is claimed it looked like) are included with estimated dimensions, which are corroborated by local people in witness statements, also submitted. Details of the smaller barn that remained on site until its demolition are also provided. A comparison between the dimensions of the alleged dimensions of the two story barn and the dwelling now on site has been provided. The conclusion drawn is that the footprint of the house is approximately 8sqm more, the eaves are approximately 0.36m lower than those of the original barn and the ridge of the dwelling is approximately 0.89m higher.

#### 5. Change in Relevant Considerations

This section of the supporting statement lists what the agent considers to be significant changes in material considerations since the Inspector's decision on the appeal against the EN in April 2020.

- Positive invitation by the Council, enquiring of updating circumstances;
- Very serious health implications for the owners;
- Loss of only home and suffering acute financial hardship;
- A suite of technical reports supporting the retention of the dwelling;
- Confirmation of the owners' acceptance of a personal occupancy condition, if considered necessary;
- Confirmation that the owners would accept a condition requiring further biodiversity enhancements;
- Evidence of a double height hay barn previously on the site of similar dimensions to the house now built;
- Invitation for removal of larger field shelter in paddock;
- Avoidance of sterilised site;
- Benefit of regularisation;
- Overall betterment;
- Considerable local support;

#### 6. Community Support for the Scheme;

It is stated that there is considerable support for the retention of Brattle Lodge with over 50% of supporting letters being from residents of Brookland. Also referred to is the support of Brookland Parish Council.

## 7. Planning Assessment

This section of the statement focusses on the location of the development and its effect on the character and appearance of the Romney Marsh Landscape. It argues that Brattle Lodge is not 'isolated' and contributes socially and economically to the local community. Also that it is accessible to amenities and public transport on foot and cycle.

It argues that the dwelling contributes to the housing supply and satisfies a local housing need in accordance with PPLP Policy HB6 and also meets the criteria of policy HB4.

In terms of transport accessibility it is argued that the Inspector was not made fully aware of the proximity of the site to all of the local facilities and public transport services.

In terms of contribution to rural community and economy, it is stated that the paddock area is a registered agricultural holding and that the applicants operated an adult learning facility 2010-2015. It is stated that this has stopped due to the current planning problem but the applicants still keep animals in the paddock. At present they have 4 sheep, 3 goats, 1 pony and 9 chickens. They also take in sock lambs, as a business arrangement with local farmers, and can manage 10-20 lambs at one time. It is argued that the applicants have an extensive knowledge of animal husbandry, and that the paddock space and this rural service would be lost if they had to sell and move home.

In respect of Landscape and Visual Impact, this section concludes that Brattle Lodge is a high quality and unobtrusive building; that due to its sensitive siting, scale, design and materials it sits comfortably on the site against a backdrop of trees and also within the wider landscape; and that it is appropriate for its setting

The Heritage section of the Planning Statement assesses the impact of Brattle Lodge on listed Brattle House and concludes there is no harm to its setting.

In terms of standard of accommodation, reference is made to the fact that it has a high thermal specification and is of high quality craftsmanship. It provides a high quality of accommodation for the occupiers, such as complying with the national technical housing space standards; main rooms have good levels of daylight and sunlight; it promotes high levels of sustainability; extensive private garden space; dedicated space for bins and cycles; no overlooking or noise disturbance from other properties.

It is stated that the dwelling has no adverse impacts on nearest neighbours and there have been no ecological impacts identified; the risk of tidal and ground water flooding is relatively low.

In terms of transport and highways, it is concluded that there are no technical highways or transportation grounds to refuse the application.

With regard to contamination the findings of the submitted report indicate the site represents a very low environmental risk.

## 8. Material considerations

This section sets out what the agent considers to be the material considerations, summarised below:

- Positive invitation by the Council, enquiring of updating personal circumstances. The agent was sent an email by the council officer stating that if they are unable to comply with the EN by the required date they should submit a case setting out why, which would be considered;
- Very serious health implications for the owners, much exacerbated by having to move home, and to a considerable distance from appointed specialist care and medical centre provision. It is stated that the owners both suffer from highly specific, complex and ongoing poor health complications. Letters are provided from their GPs at Rye Medical Centre and from a specialist nurse at the dermatology unit at Conquest Hospital, Hastings. Mr. Tompkins suffered a stroke and heart attack in 2016 and is on permanent medication. He also has a pre-existing chronic medical condition, partly triggered by stress. The treatment he receives at the Conquest Hospital is specialist and effective and maintains his quality of life. Mrs. Tompkins is registered disabled with osteoporosis and ongoing back problems, having suffered a fractured spine requiring full spinal fusion. She requires daily pain relief. It is argued that if Mr. Tompkins has to move away from the area and surgery he most likely would not receive the equivalent follow up for his medical conditions and lack of continuity of treatment would almost certainly exacerbate his condition. It is stated that any disruption to Mr. and Mrs. Tompkins health care is potentially life threatening and that substantial weight should be attached to this;
- Loss of only home. They could only afford another home by renting a small property. Financially they would not be able to afford to rent locally and would be forced to move outside the medical centre catchment area.
- Financial hardship for the owners, including the value of the home, which cost £372,000 to build. Demolition would cost in the region of £77,000. This would be well beyond their disposable means and it is argued to be disproportionate to the planning harm caused by the breach of planning control. Annual income is given at approximately £23,000. Average monthly rent within catchment of medical centre ranges from £750-£950 a month. Their outgoings would be in the region of £20,000, total annual estimated expenditure is given at £29,000 - £31,400 (rent plus living costs), leaving a shortfall that would have to come from their savings. The demolition costs would have to come from their savings and would reduce their savings to around £55,000. This would not cover the expenditure shortfall over the lifetime of the applicants and still enable them to retain some savings for emergencies;
- It is stated that the applicants would be unable to buy/obtain a mortgage for a new home, regardless of location; they would be unable to rent within the local area; they would be forced to move to a cheaper area; they would fall outside the catchment area of their healthcare providers with potentially life threatening consequences; they would lose important social and economic links to Brookland; they would be unable to keep animals, an important part of their lives.
- Demolition of Brattle Lodge would make applicants homeless. This would be very damaging and detrimental to their health and wellbeing.
- Demolition would cause adverse environmental impacts for the site and surroundings.

- Application is accompanied by a suite of technical reports comprehensively supporting retention of dwelling. Had this been available previously the Council/Inspector may have found differently;
- It is not clear that the totality of the private interests of the owners are properly balanced when considering the wider public interest;
- Confirmation of owners' acceptance (if necessary) of an imposed personal occupancy condition. After the occupants'/owners' lifetime the building would be demolished;
- Confirmation that owners will accept a condition requiring further biodiversity enhancements;
- Evidence of a previously sited, double height hay barn located in the same position as Brattle Lodge, of similar overall dimensions to the house
- Invitation for the removal of the larger, unfinished field shelter in the NW corner of the site, thereby opening up and improving the view from the west, if the Council considers this necessary and off-setting in impact terms
- Compliance with the EN will lead to a sterilised site
- Benefit of regularisation – granting planning permission will avoid further, protracted and costly proceedings for the Council in connection with the ongoing enforcement. The Council has limited resources. Due to the level of local support it is envisaged that council tax payers would object to further spending on the site when the development causes no harm;
- Overall betterment – the applicants remaining in the dwelling will ensure the site is carefully managed and maintained and its biodiversity value is increased by the owners providing additional planting and wildlife habitat;
- Considerable local support for retention by local residents and parish council.

### Phase 1 Environmental Assessment

This concludes that there were no expected contaminants on the site before construction of the dwelling and that the company were not contacted during the development to investigate any unforeseen contamination. The risks to human health; the new buildings and below ground services and; controlled waters is classed as very low.

### Transport Accessibility Report

The report identifies distances to nearest bus stop and train station and the services available from these. It also identifies that amenities that are within a 30 minute walking distance/8 minute cycle time.

The report concludes that the accessibility to amenities and public transport in the area is considered to be good, given the rural nature of the area; and that the development should not be refused on transport accessibility grounds.

### Landscape Appraisal

This considers the visual aspects of the dwelling, including its impact on the setting of the listed Brattle House. Comparison is also made between the footprint and height of the dwelling and that of the barn previously on the site. The footprint of the dwelling is said to be 8sqm more than the barn, the main eaves 0.36m lower and the ridge 0.89m higher than that of the barn.

The effect on the setting of Brattle House is considered to be negligible.

The report concludes that on balance there are only negligible landscape and visual effects when comparing the existing dwelling to the previous barn and that these are limited and positive as well as negative. The limited change, contained nature of the site and quality of the new building is not considered to result in any significant adverse residual landscape or visual effects on the local or wider landscape character. If further planting along the northern boundary is carried out, the residual effects would be even less.

#### Ecology Assessment

This identifies no notable habitats on the site or habitats suitable for protected species. No ecological impacts are identified.

#### Stage 1 Flood Risk Technical Advice Note

This concludes that the site has a low probability of tidal flooding of less than 1 in 1000 in any year. No specific mitigation measures are required but it is recommended that flood resilience measures are retrofitted, where possible, to the existing building, plus adequate warning procedures.

#### Odour Assessment

This has been submitted in response to the initial comments from Southern Water in respect of the potential for odour nuisance to the dwelling from the nearby Brookland Waste Water Treatment Works (WWTW).

The report concludes that overall Brookland WWTW will land to insignificant odour effects. This judgement is based on an odour risk assessment, which suggest the WWTW will have a negligible effect on Brattle Lodge, and the lack of any odour complaints received about the site in the last 10 years, with the presence of other residential dwellings closer to the site.

## **4. RELEVANT PLANNING HISTORY**

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

Y15/0013/PA	Determination as to whether the prior approval of the LPA is required under Class Q of the GPDO for change of use and conversion from agricultural to single residential dwelling	Approved
Y16/1107/SH	Retrospective application for the erection of an agricultural building (field shelter/barn)	Withdrawn
Y16/1118/SH	Retrospective application for the erection of a pedestrian footbridge	Approved
Y16/1192/SH	Revised dwelling in place of a prior notification approve dwelling - Approval Y15/0013/PA	Invalid
Y17/0390/SH	Retrospective application for a new agricultural shelter/barn	Invalid

4.2 Prior approval was given for the conversion and change of use of an agricultural building to a dwelling in 2015. It was subsequently identified that the building was not capable of conversion and it was demolished and a two storey dwelling the subject of this application was built in its place without planning permission. An application for the

dwelling as built was submitted but was invalid. An Enforcement Notice (EN) was served requiring the removal of the dwelling.

- 4.3 The main reason for serving the EN dated 12/08/2019 was that the dwelling was considered to be unacceptable in principle due to its location outside of any settlement boundaries and therefore results in an isolated dwelling in an unsustainable location in the countryside without sufficient policy justification. A further reason was that, in the absence of a planning application and accompanying documents, the full impact of the development in respect of protected species and contamination could not be assessed or any required mitigation carried out.
- 4.4 An appeal (APP/L2250/C/19/3237169) was submitted against the EN on ground (a) that planning permission should be granted for what is alleged in the Notice. The appeal was dismissed, planning permission refused and the EN upheld, with the compliance period being 12 months. The Inspector considered it to be unacceptable development for the following reasons:

*Principle of development*

*“The appeal site is not in a suitable location for new housing, given its location outside any established built up boundary. Consequently, it is contrary to saved policies SS1, SS3, CDS3 and CSD4 of the CS, and saved policies SD1 and CO1 of the Shepway District Local Plan Review (2006) (LP). These policies when taken together seek to provide new homes in accordance with the settlement hierarchy and reduce the need for travel by car unless they cannot be practicably located within an existing settlement and require a countryside location.”*

*Character and appearance*

*“Overall the dwelling, as a result of its height and design, results in a significantly more developed and urban appearance of the site, when compared with the previous position. The development in this prominent location affects the prevailing character of the landscape by introducing a dwelling and associated formal planting, domestic paraphernalia and parking, into what is essentially open countryside. This urbanising effect is also apparent from the surrounding fields, which form part of the RMLCA. Consequently, the dwelling appears incongruous, given the countryside setting of the site.*

*For the above reasons I find that the dwelling has introduced an incongruous form of development into this predominately rural area, which fails to protect or enhance the landscape character and functioning of the Local Character Area. Consequently, it has caused significant harm to the character and appearance of the RMLCA and the wider countryside. It therefore conflicts with policies SS1, SS3, CSD3 and CDS4 of the CS, and saved policies SD1, CO1 and CO5 of the Shepway District Local Plan Review (2006) (LP). These policies seek to protect the countryside for its own sake, with new development permitted where it protects or enhances the landscape character and functioning of Local Landscape Areas.”*

The Inspector’s decision letter is attached to this report at **Appendix 2**.

- 4.5 The owners then submitted a S289 application to the Court seeking permission to challenge the legality of the Inspector’s decision and seeking the quashing of the decision. Permission to appeal was refused.
- 4.6 The compliance date for the enforcement notice was 10<sup>th</sup> June 2021.

**5. CONSULTATION RESPONSES**

5.1 The consultation responses are summarised below.

**Consultees****Brookland Parish Council:** Support

Having looked at the submission the Councillors are supportive of the application and note that many of the neighbours has also expressed their support. The Councillors feel that the property is in keeping with those in the local area and have no concerns with the application being approved.

**KCC Ecology:** No objection

Wildlife legislation could have been breached in demolition of the barn and construction of the new dwelling. For some protected species, such as barn owl and great crested newt, we cannot be assured that there were no adverse impacts.

If planning permission is granted, we advise that an enhancement condition is attached. This should include a native species only landscaping scheme (including boundary hedgerow), provision of bird/bat boxes and native wildflower grassland establishment (with associated management prescriptions). Condition wording suggested.

**Environment Agency:** No objection

No objection on flood risk grounds.

No objection to discharge of foul drainage via package treatment plant into local watercourse, or discharge of surface water to soakaway.

Advise that foul system draining into ground may require a permit. Due to shallow groundwater depth only clean uncontaminated water should drain to the surface system. Roof drainage to go through pollution prevention measures before entering surface water drainage system. Appropriate pollution control methods (such as trapped gullies and interceptors) should be used for drainage from access roads and car parking areas to prevent hydrocarbons from entering surface water system.

**Southern Water:** Additional information requested

We apply a precautionary buffer zone for any development located within 500metres from the Brooklands Wastewater Treatment Works (WWTW), and as such we have applied this requirement.

Due to potential odour nuisance from a WWTW, no sensitive development should be located within the 1.5OdU odour contour of the WWTW. An odour assessment will need to be carried out by a specialist consultant employed by the developer to a specification that will need to be agreed in advance with Southern Water to identify and the agree the 1.5OdU contour.

**Contamination Consultant:** No objection

Information provided in reports is of suitable scope and standard and agree with conclusion that risks from land contamination are not significant. No objection to granting retrospective planning consent and no land contamination conditions are necessary.

**Environmental Protection Officer:** No objection

Accepts findings of the Odour Assessment dated July 2021. The report suggests the WwTW will have a negligible effect on Brattle Lodge due to the distance of the site and the site has not received odour complaints in the last 10 years. There also appears to be receptors closer to the site than Brattle Lodge. Report has concluded it will lead to insignificant odour effects at Brattle Lodge.

EH supports the comments made by its contaminated land consultants and has no objection to the granting of this application.

**Local Residents Comments**

5.2 Standard letter of support received from 41 members of the public, of whom 13 live in Brookland.

7 non-standard letters of support received from members of the public, of which 4 live in Brookland

1 letter of objection and one neither supporting nor objecting received from members of the public who live in Brookland.

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

Objections

- No big barn previously on site

Support

- Well designed, attractive house
- Sits comfortably in landscape
- Causes no harm
- Close to other houses
- Within walking distance of Brookland
- Demolition would be a waste of resources
- Applicants lived in Brookland since 2006 and are part of local community
- Both suffer from serious health issues
- Stress of losing home and having to move away from specialist medical care could have life threatening consequences
- Would result in serious financial hardship
- Footprint of house is same as old barn
- Barn built about 30 years ago was big enough to house a couple of elephants
- Barn consisted of hay loft, storage area, central corridor and two stables

General Comments

- New house is bigger than barn

**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 Core Strategy Review Submission Draft was submitted to the Secretary of State on 10 March 2020. Inspectors were appointed to examine the plan on 19<sup>th</sup> March 2020 and public hearings were held from 15<sup>th</sup> to 18<sup>th</sup> December 2020, from 5<sup>th</sup> to 12<sup>th</sup> January 2021 and from 29<sup>th</sup> June to 1<sup>st</sup> July 2021. The Inspectors wrote to the council on 1<sup>st</sup> July 2021 to state that the Core Strategy Review complies with the duty to cooperate and can be made 'sound' by amendment through main modifications. The Inspectors followed up their initial assessment by letter on 16<sup>th</sup> July 2021, stating that, subject to main modifications concerning detailed policy wording, they consider that the plan's spatial strategy and overall approach to the district's character areas and settlements is sound. The Inspectors find that the housing requirement is justified and that the Core Strategy Review will provide an adequate supply of housing over the plan period and at least a five year supply of housing land at the point of adoption. In accordance with National Planning Policy Framework (2021) paragraph 48, the policies in the Core Strategy Review should therefore be afforded significant weight, having regard to the Inspectors' outline of main modifications required.
- 6.3 The relevant development plan policies are as follows:-

Places and Policies Local Plan 2020

Policy HB1 - Quality Places Through Design

Policy HB3 - Internal and External Space Standards

Policy NE1 - Enhancing and Managing Access to the Natural Environment

Policy NE2 - Biodiversity

Policy NE3 - Protecting the District's Landscapes and Countryside

Policy HW3 - Development That Supports Healthy, Fulfilling and Active Lifestyles

Core Strategy Local Plan (2013)

Policy SS1 - District Spatial Strategy

Policy SS3 - Place-Shaping and Sustainable Settlements Strategy

Policy CSD2 - District Residential Needs

Policy CSD3 - Rural and Tourism Development of district

Core Strategy Review Submission draft (2019)

Policy SS1 - District Spatial Strategy

Policy SS3 - Place-Shaping and Sustainable Settlements Strategy

Policy CSD2 - District Residential Needs

Policy CSD3 - Rural and Tourism Development of district

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

**Government Advice**

National Planning Policy Framework (NPPF) 2021

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

Paragraph 11 - Presumption in favour of sustainable development.

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

Paragraph 69 – In terms of windfall sites, giving great weight to supporting windfall sites within existing settlements for homes

Paragraph 80 – Planning decisions should avoid development of isolated homes in the countryside.

Paragraphs 166 & 167 – Planning applications and flood risk.

Paragraph 174 – Protect and enhance valued landscapes; recognising benefits of best and most versatile agricultural land

Paragraph 194 – Heritage assets and their settings

National Planning Policy Guidance (NPPG)

Flood Risk and Coastal Change

Natural Environment

**7. APPRAISAL**

7.1 The applicants have submitted a retrospective application for the erection of the dwelling that is the subject of an EN requiring it to be demolished. When the Council made the decision to serve the EN, it was on the grounds that planning permission was unlikely to be granted for the dwelling if an application were to be submitted. The main reason for serving the enforcement notice was that the dwelling was considered to be unacceptable in principle due to its location outside of any of the settlement boundaries, resulting in an isolated dwelling in an unsustainable location in the countryside without sufficient policy justification. Secondary reasons were that, in the absence of a planning application and accompanying documents, the full impact of the development (and the need for appropriate mitigation) in relation to any protected species and contamination could not be satisfactorily assessed.

7.2 The subsequent appeal against the EN was on ground (a) that planning permission should be granted for what is alleged in the Notice. The appeal was dismissed, planning permission refused and the EN upheld.

7.3 In light of the above, the main issues for consideration are whether or not there has been a material change in planning policy or other material considerations since the appeal decision dated 1<sup>st</sup> April 2020, such that planning permission should now be granted. The Inspector's grounds of refusal were the principal of the development and the character and appearance of the development. In addition the applicant has submitted a number of reports, as outlined in section 3.0 above that provide supporting information that was missing from the previous invalid application and the applicants' appeal statement. The agent argues that this additional information, plus the financial and medical circumstance of the applicant, the change in local plan policy following the adoption of the PPLP and the previous existence on the site of a two storey barn constitute a material change in planning circumstances such that planning permission should now been granted. In addition the agent has put forward additional mitigation in the form offering the removal of the barn/field shelter structure and additional planting and biodiversity habitat, as well as the applicants offering to accept a personal permission so they can live in the dwelling for the remainder of their lifetimes.

**a) Principle of development and sustainability**

7.4 At the time of the appeal the PPLP had not been formally adopted by the Council and the Inspector gave it and the Core Strategy Review limited weight. Her decision was made on the basis of the Local Plan Review and Core Strategy Policies. The relevant policies in the CS are SS1, SS3, CSD3 and CSD4. These policies have been carried forward in the CS Review Submission Draft and there have been no relevant changes in the wording of these policies since the Inspector's decision. Therefore there has been no material change in the strategic policy stance.

7.5 There has been no change in the overall aims and objectives of the NPPF regarding development in the countryside outside of settlement boundaries since the Inspector's decision. The emphasis is still on sustainable development, avoiding isolated dwellings in the countryside and directing development to sustainable towns and villages. To this end CS policy SS1 seeks to direct development in the Romney Marsh area to sustainable villages and to prevent development in the open countryside except where a rural location is essential. This is reinforced further in policies SS3 and CSD3. The latter policy lists the circumstances in which new development in locations outside the settlement hierarchy will be acceptable in principle and none of these apply in this case. This is not an affordable housing scheme, nor is it necessary for agriculture. Although the Planning Statement refers to the paddock area being a registered agricultural holding, this is not sufficient to justify a dwelling as an exception to planning policy. There has been no evidence put forward that this is a viable agricultural business that requires someone to live on site. Therefore the location of the site, in open countryside, in an unsustainable location remote from a settlement and day to day services and facilities is still unacceptable in principle.

7.6 As the application site comprised Grade 1 agricultural land, the dwelling is also contrary to policy HW3 which seeks to resist the loss of the best and most versatile agricultural land, unless there is a compelling or overriding planning reason to do so. For the reasons that will be set out later in this report, there are not considered to be such reasons.

7.7 The application is accompanied by a Transport Assessment that seeks to demonstrate Brattle Lodge is in a sustainable location. This was not available to the Inspector at the time of her decision and is a material consideration. However, the Inspector did assess the sustainability of the location. She identified that the village of Brookland lies some

distance to the south of the site and that the roads leading to it (together with other surrounding roads) do not have pedestrian footpaths, are very narrow with large drainage ditches and are unlit. This has not changed and the surface of the road leading from the village to the site is also breaking up and has a very uneven surface. Therefore walking and cycling along it could be hazardous and unlikely to be attempted after dark.

- 7.8 The closest bus stop is outside the Church in Brookland Village, a walk of approximately 760m along narrow unlit roads, without no footpath and across the A259 Brookland Bypass. Buses go from here to the towns of Lydd, New Romney and Ashford, where the nearest supermarkets and other services are located. Buses also go to Appledore Station which is the nearest mainline railway station. This is approximately 5.8km from the site along narrow rural roads and the B2080, which are all unlit and have no footpaths. Although there is a farm shop within easy walking distance of Brattle Lodge this sells a limited range of foods such as milk, meat, fruit and vegetables, jams, pies and cakes. This is the only food outlet that is accessible by foot or bicycle. The only means of accessing anything else other than by car, involves walking along unlit roads with no footpaths to a bus stop or cycling to Appledore Station along similar roads. Therefore it is not considered that the site is in a sustainable location and there has not been any improvement in the sustainability of the location since the Planning Inspector's decision.

#### **b) Character and appearance**

- 7.9 The Planning Inspector considered that the development results in a significantly more developed and urban appearance of the site, when compared with the previous position. The development in this prominent location affects the prevailing character of the landscape by introducing a dwelling and associated formal planting, domestic paraphernalia and parking, into what is essentially open countryside. This urbanising effect is apparent from the surrounding roads and fields. In an attempt to address this the application is accompanied by information on a two storey barn that is stated to have been on the site previously and a Landscape Appraisal.
- 7.10 From the information submitted with the application and the comments of local residents it does appear likely that there was a barn on the site that was taller than the building on the site that was the subject of the previous prior approval application. However, it had not been present on the site in its taller form since at least 2013, some three years prior to work on the dwelling commencing. The sketch plans of what it looked like are, at best, a best guess based on the recollections of the applicant and cannot be considered as evidence of its scale and appearance. Notwithstanding this, barns of varying shapes and sizes are part of the rural landscape and reflect the farming nature and character and appearance of the countryside. Barn structures can often be acceptable in the countryside on planning grounds, when new dwellings are not because they serve a functional purpose, necessary to the use of the land. The impact of a new dwelling in the countryside goes beyond the visual impact of the building, as it also changes the character of the countryside to that of a more domesticated character, with more formal planting and landscaping, opening up of sites to create views and access, associated buildings, structures and domestic paraphernalia such as washing lines etc. Therefore, the existence of two storey barn on the site some three years prior to the work commencing on the dwelling is not an overriding material planning reason for now granting planning permission for a dwelling which is otherwise considered unacceptable.

- 7.11 The Landscape Appraisal submitted with the application considers the visual aspects of the dwelling. Comparison is also made between the footprint and height of the dwelling and that of the barn alleged to have previously been on the site. This is addressed at paragraph 7.11 above. It also assesses the impact of the dwelling in views from surrounding roads and public rights of way. The report concludes that on balance there are only negligible landscape and visual effects when comparing the existing dwelling to the previous barn and that these are limited and positive as well as negative. The Appraisal concludes that the limited change, contained nature of the site and quality of the new building is not considered to result in any significant adverse residual landscape or visual effects on the local or wider landscape character.
- 7.12 For the reasons set out a paragraph 7.11 it is not considered a valid planning argument to compare the visual impact of the current dwelling to that of a barn of an unsubstantiated size which has not been on the site for at least 7 years (and at least 3 years prior to the dwelling being built). The conclusion that the impact of the dwelling is acceptable because of the limited change due to that barn is considered to be flawed.
- 7.13 The visual impact of the dwelling from King Street is mitigated to some degree by the hedging along this boundary. However, a new footbridge has been installed across the drainage ditch to gain pedestrian access from King Street (see Figure 3 above) and this has resulted in a change in character of this part of King Street to that of a residential nature. The dwelling driveway and curtilage are clearly visible in views from Kennards Lane to the north west and it appears as an established dwelling and garden, clearly distinct from the surrounding agricultural land and from the former agricultural appearance of the site.
- 7.14 Countryside protection policy NE3, of the PPLP seeks to protect or enhance the landscape character and functioning of Local Landscape Areas, of which the Romney Marsh is one. This reflects the wording of former Local Plan Review policy CO5, which the Planning Inspector considered the development to be in conflict with. The dwelling is clearly visible in the landscape both from King Street and Kennards Lane and has resulted in the spread of domestic built form and associated curtilage paraphernalia into the relatively unspoilt rural landscape. As such it has resulted in a significant change in the character and appearance of the land from an undeveloped agricultural appearance in keeping with the surrounding landscape to that of a domestic urbanised appearance resulting not only from the dwelling itself but the changes to the remainder of the land surrounding it due to the cultivated garden, driveway, double gates, driveway and greenhouse type structure in the garden. This has eroded and had a detrimental impact on the rural undeveloped character of the Local Landscape Area, without any acceptable justification. There has been no material change in policy stance in relevant change in material planning circumstances such planning permission should now be granted.
- 7.15 Importantly there have been no significant changes to the visual appearance and views of the dwelling in the landscape since the Planning Inspector carried out her site visit in March 2020 and concluded that the visual impact on the landscape is unacceptable. The only difference is the additional information provided in respect of the taller barn structure that was on the site previously but for the reasons previously stated this is not considered to carry sufficient weight to now reach a different decision.

**c) Residential Amenity**

7.16 The dwelling does not result in any unacceptable impact on the residential amenities of the occupiers of the closest neighbouring dwelling, Brattle House. Although there are windows in the rear elevation of Brattle Lodge at ground and first floor level there is sufficient separation distance and boundary screening to avoid loss of privacy of Brattle House or any overbearing or loss of light impacts. The internal floorspace and garden size meet the spaces standards set out in policy HB3 of the PPLP.

### **c) Personal circumstances**

7.17 Personal circumstances, including medical and financial circumstances, are capable of being material planning considerations. The supporting Planning Statement argues that it is particularly important that the applicants remain within the catchment area of Rye GP surgery in order to ensure continuing treatment; that if they have to demolish Brattle Lodge they would not be able to afford anywhere else within the catchment area and this, together with the stress and loss of their home, would be detrimental to their health. It is also argued that due to the demolition costs the applicants would suffer financial hardship.

7.18 From the information provided the applicants' medical conditions have been ongoing for a number of years before they built Brattle Lodge and this is not a recent change in circumstances. Their GP Surgery in Rye has a large catchment area and there appear to be no medical reasons why they have to remain in this dwelling in this particular location. It is accepted that the cost of demolishing the dwelling and of finding alternative accommodation for themselves and their animals is likely to be considerable, but the financial hardship that is claimed would result does not appear to be borne out by the financial information provided. Whilst there is some sympathy with their situation it is not considered that the medical and financial arguments put forward override the harm that is caused by the dwelling in this location. The applicants have indicated that they would accept a personal condition on a planning permission to allow them to stay in the property for the remainder of their lives. A temporary or personal permission is not considered to be an acceptable mechanism for dealing with a permanently constructed building that is unacceptable in principal and constitutes unsustainable and harmful development. In addition, if a temporary, personal permission were to be granted, which required the demolition of the building at a future point, the condition itself could be deleted by way of an application. The Council would be unable, on appeal, to defend the imposition of such a condition, as it would be contrary to government guidance, and a Planning Inspector would be very likely to delete the condition, considering it unreasonable. The result of this would be the permanent retention of this dwelling.

7.19 The same outcome could be achieved by the Committee resolving not to enforce the requirements of the enforcement notice until such time as the current occupants no longer reside in the dwelling. This would avoid granting planning permission for an unacceptable development with a potentially challengeable planning condition.

### **d) Compensatory mitigation**

7.13 The applicants have offered compensatory mitigation of biodiversity enhancements and the removal of the larger field shelter in the paddock, if it is considered that this would overcome the harm caused by the dwelling. KCC Ecology has suggested a biodiversity enhancement condition if planning permission is granted but has also pointed out that the demolition of the barn may have been in breach of wildlife

legislation and the suggested compensation would be in respect of that. Any benefit accrued from such biodiversity enhancements that the applicants may be required to carry out would not balance out the harm caused by this additional dwelling in an unsustainable location. With regard to the field shelter, this could be required to be removed by an enforcement notice. The agent has stated verbally that the current structure has been in place for at least 4 years. Even if this is the case there is a strong argument that it has not become lawful as it has not been finished. It has been referred to as unfinished by the applicant's agent and appears unfinished as the supporting posts at first floor level indicate the intention for a first floor. The relevant period for gaining immunity from enforcement action only commences when a building is substantially complete. The offer to remove an unauthorised and unlawful structure as mitigation for approving an otherwise unacceptable proposal in my view carries no weight as a material consideration.

### **e) Housing delivery**

- 7.14 It is argued in the supporting Planning Statement that the Council has not been delivering enough housing over the last three years as evidenced in the latest Housing Delivery Test (HDT) figures for 2020. It is stated that those figures were not available when the appeal was determined in April 2020.
- 7.15 The Council's Housing Delivery Test is now in its third year of publication. For the previous two years the Council was in a strong position with 139% in 2017/18 and 127% in 2018/19. Whilst the 2019/20 year has resulted in a figure of 91% in the Housing Delivery Test, the actual number of homes being completed in the district has increased compared to the previous year. The lower percentage is a result of the Government's requirement increasing significantly for the 2019-20 year.
- 7.20 It should be noted that the requirement for the 2019-20 year could change. The Core Strategy Review has just been through Examination in Public at which the Inspectors were asked to consider a 'stepped' housing requirement due to the housing delivery strategy outlined in the local plan. The stepped housing requirement would essentially ensure that the total number of dwellings over the plan period would be met but the yearly requirement would reflect when development is coming forward rather than using an average yearly amount. This would result in the earlier years meeting a lower figure with later years increasing. The Inspectors have sent a letter to the Council indicating that 'The phasing proposed by the Council during the examination is appropriate' and that they '...are satisfied that the Core Strategy Review will provide for an adequate supply of housing over the plan period and at least a five year supply of housing land at the point of adoption...'. They have also set out in the accompanying 'Outline of main modifications required' that the housing requirement will be phased from the 2019/20 year, as proposed in the Council's suggested modifications. Following consultation on the modifications, and after the Council has adopted the Core Strategy Review, the Housing Delivery Test for the 2019/20 year will be recalculated to reflect the stepped trajectory.
- 7.21 The District Council can demonstrate a Five Year Housing Supply (for 2018/19 this was 5.17 years and for 2019/20 this was 5 years' worth), which indicates that land for new homes is coming forward. The applicant has indicated that this year's Housing Delivery Test was not available at the time of the Appeal in 2020. The results are always published in January for the previous financial year so the appeal used the correct figures at that time.

7.22 As the dwelling was constructed in 2016 and, as such, has already come forward, it would not contribute to the Council's current or future housing delivery targets. However, regardless of the Council's position in respect of housing delivery, it is not considered that the delivery of one additional dwelling on this site is sufficient grounds to overcome the harm that is caused by the dwelling in other respects, or that the loss of a single dwelling here would be so harmful in terms of housing land supply as to sufficiently mitigate the harm identified above.

#### **f) Impact on setting of listed building**

7.18 In terms of the impact of the dwelling on the setting of the listed Brattle House, the paddock on which Brattle Lodge has been constructed was formerly agricultural land and did not form part of the curtilage of Brattle House, either functionally or visually. It is physically and visually separated from the garden of Brattle House by close boarded fencing and planting. Given this it is not considered that Brattle Lodge has any impact on the setting of Brattle House.

#### **g) Ecology**

7.19 There demolition of the barn and erection of this dwelling may have caused harm to protected species. KCC Ecology has recommended that a biodiversity enhancement condition if planning permission is granted. If members resolve to grant planning permission it is recommended that such a condition be imposed. The applicants have offered biodiversity enhancements as planning gain for planning permission being granted. However, the enhancements would in effect compensate for the harm done by carrying out the development without planning permission, so it is not considered that there would be any overall biodiversity gain sufficient to justify granting planning permission for an otherwise unacceptable dwelling.

#### **h) Highway safety**

7.20 There is adequate off street parking to serve the dwelling and good visibility from the driveway entrance when entering and leaving the site. It is not considered that there are any highway safety issues.

#### **i) Flooding/drainage**

7.21 The site is located in Flood Zone 1 on the Environment Agency's flood zone maps and is also shown as not being at risk of flooding either now or in 2115 in the Council's Strategic Flood Risk Assessment. The Flood Risk Technical Advice Note submitted with the application concludes that the site has a low probability of tidal flooding of less than 1 in 1000 in any year. The Advice Note recommends that flood resilience measures are retrofitted, where possible, to the existing building, plus adequate warning procedures. These could be the subject of a condition if Members resolve to grant planning permission. The EA has raised no objection on flooding grounds.

7.22 The package treatment plant and trapped soakaways that have been installed are considered acceptable and the driveway and parking areas are permeable. The Romney Marshes Area Internal Drainage Board has granted consent for discharge from the package treatment plant into the Brenzett Petty Sewer.

#### **j) Odour**

- 7.23 The Brooklands Waste Water Treatment Works (WWTW) is approximately 38m from the application site. Southern Water has advised that they apply a precautionary buffer zone for any development located within 500metres of (WWTW) and have requested an odour assessment will need to be carried out by a specialist consultant. An assessment has been carried out and submitted to Southern Water.
- 7.24 The Council's Environmental Protection Officer has been consulted on the report submitted by the applicant and accepts the findings that the WWTW will have a negligible effect due to the distance from the site. In addition there are dwellings closer to the WWTW than the application site and the Environmental Protection Team has not received any odour complaints regarding the WWTW in the last 10 years. It is considered, therefore, that the risk of odour nuisance to the application dwelling from the WWTW is low and that the dwelling is acceptable in this particular regard.

### **k) Loss of best & most versatile agricultural land**

- 7.25 Paragraph 174 of the NPPF requires planning decisions to recognise the economic and other benefits of the best and most versatile agricultural land and policy HW3 of the PPLP seeks to resist the loss of such land unless there is a compelling and overriding planning reason and unless mitigation is provided through the provision of productive landscapes on site or in the locality. The application site is categorised as Grade 1 agricultural land which is land of the highest agricultural quality. For all the reasons set out above it is not considered that there is a compelling and overriding planning reason for granting planning permission that overrides the loss of the agricultural land.

### **l) Other considerations**

- 7.26 The Council's Contamination Consultant is satisfied with the contamination report submitted and has not recommended the need for any further contamination work.
- 7.27 The Planning Statement submitted with the application refers to a positive invitation by the Council to update the applicants' personal circumstances. This is a misrepresentation of the correspondence with the applicants' previous agent. In responses to correspondence from the agent, he was advised that if the applicants were not going to be able to comply with the EN by the compliance date they should contact the Council setting out why they could not comply, any relevant personal circumstances preventing them from complying by the date and providing an alternative timeframe for complying and the Council would consider this. It was not in any way an invitation to submit a planning application to retain the dwelling.
- 7.28 An argument is put forward by the applicants that they make a positive contribution to the rural community and economy as they were previously registered with KCC as an adult learning facility and take in sock lambs for local farmers and that they have extensive knowledge of animal husbandry and available paddock space. It is stated in the submitted documents that the operation of the adult learning facility ceased in 2015 and that this was due to the current planning problem. However, the dwelling was not constructed until 2016, so this could not have been the reason for the facility ceasing. The taking in of sock lambs and animal husbandry knowledge are not considered to be overriding material considerations that would justify granting planning permission for an unacceptable and unsustainable dwelling in the countryside. If planning permission is refused and the EN complied with the paddock land would still be available for agricultural use.

- 7.29 It is argued in the Planning Statement that compliance with the EN would lead to a sterilised site. This is not considered to be a valid argument. The use of the site would revert back to agriculture and it could be used for agricultural purposes as it was before the dwelling was constructed and the change of use of the land took place. This is not sufficient justification for granting planning permission for an otherwise unacceptable development. Such an argument also appears to seek to use the simple existence of the unauthorised dwelling to justify granting planning permission for its retention. This does not stand up to scrutiny.
- 7.30 It is also argued in the Planning Statement that regularising the development by granting planning permission would avoid further, protracted and costly proceedings arising in connection with ongoing enforcement. This is not a material consideration when determining whether or not planning permission should be granted for existing development and is not relevant in the determination of the application.
- 7.31 A high level of community support for the applicants and the retention of this dwelling, including from the parish council, is given as a material change in circumstances since the appeal was considered and a reason for granting planning permission. Members should be clear that the popularity or otherwise of any proposed development is not a material consideration in the determination of any application and cannot be taken into account here.

### **Environmental Impact Assessment**

- 7.32 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**

- 7.33 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.
- 7.34 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 £59.04 per square metre for new residential floor space.

### **Human Rights**

- 7.35 In reaching a decision on a planning application the European Convention on Human Rights must be considered. The Convention Rights that are relevant are Article 1 and Article 8 of the first protocol. Under Article 1 is the right to peaceful enjoyment of possessions and protection of property. Article 8 provides the right to respect for private and family life. 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. The rights are not absolute but are subject to limitations, and interference with Articles 1 and 8 can be outweighed by other interests and considerations. They are a material consideration in planning decisions and have to be balanced against all other material considerations and a planning judgement made. In this case the wider public harm caused by the dwelling in terms of landscape, countryside and sustainability impacts, for the reasons set out in the previous paragraphs of this report, are considered to override the private rights of the occupants under Articles 1 and 8 and for these reasons it is not considered that a refusal of planning permission would result in any infringement of the relevant Convention rights.

### **Public Sector Equality Duty**

- 7.36 In considering this application regard has been had to the Public Sector Equality Duty (PSED), as set out in Section 149 of the Equality Act 2010 in relation to the age and disability of the applicants. Refusing planning permission would result in a risk of negative impacts on a protected group as it would result in the loss of their current home. However, if a further period of time is allowed for compliance with the EN so as to enable the occupants to find alternative accommodation, I am satisfied that the PSED will not be undermined.

### **Working with the applicant**

- 7.37 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 Planning permission has previously been refused and an enforcement notice, requiring the demolition of the dwelling upheld at appeal. The date for compliance with the EN has passed. This retrospective application for the dwelling to remain has been accompanied by supporting information setting out why the applicants consider there has been a material change in planning circumstances since March 2020 and that there are material overriding planning reasons as to why planning permission should be granted. It is not considered that there has been a material change in planning circumstances since that decision as the overall thrust of the relevant national and local planning policies has not changed, nor does the information now provided by the applicants demonstrate that there has been a material change in other planning circumstances. The arguments put forward as to why planning permission should be granted, including in respect of the age, medical and financial situation, of the applicants, is not considered sufficient justification in this case for overriding the significant harm caused due to the unsustainable location and significant impact of the development on the Local Landscape Area and countryside or the loss of the Grade 1 agricultural land.

## **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 reasons and that the Chief Planning Officer be given delegated authority to agree a new compliance date for the enforcement notice with the applicants:**

1. The dwelling constitutes unsustainable development due to its location outside any established built up boundary, remote from local services. Consequently, it is contrary to saved policies SS1, SS3, CDS3 and CSD4 of the Core Strategy and Core Strategy Review Submission Draft. These policies when taken together seek to provide new homes in accordance with the settlement hierarchy and reduce the need for travel by car unless they cannot be practicably located within an existing settlement and require a countryside location.
2. Overall the dwelling, as a result of its height and design, together with the associated residential curtilage and associated domestic paraphernalia results in a significantly more developed and urbanised appearance to the site. The development in this prominent location detrimentally affects the prevailing character of the landscape by introducing a dwelling and associated formal planting, domestic paraphernalia and parking, into what is essentially open countryside. The dwelling appears incongruous, given the countryside setting of the site and causes significant harm to the character and appearance of Local Landscape Area and the wider countryside in conflict with policies SS1, SS3, CSD3 and CDS4 of the Core Strategy and Core Strategy Review Submission Draft and policy NE3 of the Places and Policies Local Plan.
3. The site comprises Grade 1 agricultural land and its loss from agriculture is contrary to policy HW3 of the Places and Policies Local Plan and paragraph 174 of the National Planning Policy Framework. Policy HW3 seeks to resist the loss of the best and most versatile agricultural land unless there is a compelling and overriding planning reason to do so and mitigation is provided through the provision of productive landscapes on-site or in the locality.

Informatives:

1. This refusal of planning permission is in respect of the following submitted plans:  
SLP 01 April 2021 – Site location plan  
BL-BP-2021-01.A – Block plan/site layout plan  
1566/38886 – Elevations  
GFT/1566/38886 Rev C – Ground floor layout  
FTT/1566/18886 Rev B – First floor layout  
BL-RP-2021-01 – Roof plan

**Appendix 1 – Site Location Plan**  
**Appendix 2 – Inspector’s Decision Letter**