

Delegated Report

Planning Application

Planning Application No: 20241166

Location: Shorne Mead, Pear Tree Lane, Shorne, Gravesend DA12 3JT

Description: Demolition of existing dwelling, garage and outbuilding. Erection of a self-build detached two storey dwelling with submersed basement for parking and entertainment facilities.

Applicant: Mr Gavin Coward

Site Visit Date: Various

Submitted Documents/Plans

Application form
Covering letter
Arboricultural Impact Assessment by Silva Arboriculture Ltd
Preliminary Ecological Appraisal by Calumma Ecological Services (Bats)
Design and Access Statement
Biodiversity Net Gain Assessment Report by Tunley Environmental
Preliminary Ecological Appraisal by Calumma Ecological Services
Drawing no. 3316-026 (existing plans)
Drawing no. 3316-020 rev H (site plan)
Drawing no. 3316-023 rev C (street scene)
Drawing no. 3316-027 (location and block plans)
Drawing no. 3316-028 rev C (existing site plan)
Drawing no. 3316-029 (existing site plan)
Drawing no. 3316-025 rev I (proposed elevations)
Drawing no. 3316-024 rev J (proposed floor plans)

Relevant Planning History

20230514	Demolition of the existing dwelling and garage and the erection of a replacement dwelling with associated access and landscaping works.	Refused, appeal dismissed	17.07.2023
20221114	Alterations to existing garage to provide garage and annex accommodation incorporating increase in roof height, two dormer windows in the front roof slope and Juliette balcony on the north-west elevation to provide for ancillary accommodation, including a garden room with tea point at ground level and gym and games	Permitted	07.12.2022

	room accommodation above		
20221105	Application for approval of condition 3(i)(ii)(iii)(iv)(v)(vi) and (vii) attached to planning permission reference number 20220543 relating to details of landscaping to new gabion basket constructed walls.	Refusal of details	06.02.2023
20220788	Single storey rear extension with a depth of 8.00 metres, maximum height of 3.75 metres and eaves height of 2.35 metres.	Permitted	22.08.2022
20220593	Single storey rear extension with a depth of 8.00 metres, maximum height of 3.75 metres and eaves height of 2.35 metres.	Refused	12.07.2022
20220543	Proposed engineering works to rear garden creating retaining walls to sloping site.	Permitted	20.07.2022
20181314	**REVISED PLAN** Alterations to existing garage to provide garage and annex accommodation incorporating increase in roof height, two dormer windows in the front roof slope and Juliette balcony on the north-west elevation to provide for ancillary accommodation, including a garden room with tea point at ground level and gym and games room accommodation above	Permitted	27.02.2019
20170496	Demolition of existing garage and erection of a detached two storey annex and garage incorporating a dormer window in the front roof slope and juliette balconies on the north-west and south-east elevations.	Refused	20.03.2018
20140811	Construction of a new roof over existing garage incorporating an increase in the height of the building, two dormer windows in the front roof slope and a juliet balcony on the north-west side elevation to provide for gym, games room and w.c./changing facilities in the proposed roof space.	Permitted	14.10.2014
20060164	Erection of single storey rear infill	Permitted	07.04.2006

	extension to form enlarged kitchen/diner.		
19970317	Construction of new pitched roofs over existing garages/boat port, incorporating dormer window in proposed front roof slope and infilling of central boat port to form garage.	Permitted	21.08.1997
19840557	Erection of a two storey extension at the side to form a dining room with bathroom over	Permitted	10.08.1984
19830673	Change of use of land from woodland to residential garden and alterations to vehicular access	Permitted	19.12.1983
19780438	Erection of a single storey extension to form an enlarged kitchen childrens playroom and a new boiler room at the side of dwelling	Permitted	21.06.1978
19590307	Erection of loose box and tack room	Permitted	10.11.1959
19560253	Extension to lounge	Permitted	09.01.1957
19510230	Additions	Permitted	01.02.1952
19510046	Erection of a private garage	Permitted	09.05.1951
19480125	Erection of a garage	Permitted	04.03.1949

Development Plan

Gravesham Local Plan Core Strategy (September 2014):

- CS01 – Sustainable Development
- CS02 – Scale & Distribution of Development
- CS11 - Transport
- CS12 – Green Infrastructure
- CS18 – Climate Change
- CS19 - Development & Design Principles
- CS20 – Heritage and the Historic Environment

Gravesham Local Plan: First Review (1994)

- P3 – Vehicle Parking Standards
- T1 – Impact of Development on the Highway Network
- TC7 – Other Archaeological Sites
- C12 – Policy for Replacement Dwellings in the Countryside

Paragraph 34 of the NPPF (2024) sets out that policies within adopted local plans should be reviewed to assess whether they need updating at least once every five years, and should then be updated as necessary. Such reviews are also a legal requirement as set out in Regulation 10A of the Town and

Country Planning (Local Planning) England Regulations 2012.

The Council undertook such a review in September 2019 and found that the adopted Local Plan Core Strategy is in need of a partial review in terms of Policy CS02, due to the increased need for housing since the Local Plan Core Strategy was adopted and the need to ensure that a sufficient land supply exists to meet this need. Whilst saved policies from the Local Plan 1st Review (1994) generally conform with the NPPF (2024), the Council will also seek to replace these.

National Planning Policy Framework (2024)

- Section 2 – Achieving sustainable development
- Section 4 – Decision-making
- Section 12 – Achieving well-designed places
- Section 13 – Protecting Green Belt land
- Section 15 – Conserving and enhancing the natural environment

Supplementary Planning Guidance

- SPG 2 - Residential layout guidelines including Housing Standards Policy Statement October 2015 Adopted 1996 – amended June 2020;
- Technical Housing Standards – nationally described space standard (2015);
- Design for Gravesham: Design Code (2024);
- SPG 4 - KCC Parking Standards (2006); and
- Gravesham Landscape Character Assessment (2009)

Consultations, Publicity and Representations

Consultees

Shorne Parish Council

This property and site has a long and complicated recent planning history. The present proposal is to demolish and replace the existing house, effectively a re-application further to the refusal of Application ref 20230514, which was also Dismissed at Appeal.

We note that there has been pre-application discussion and a site visit to which we were not party so do not know what GBC advised the applicant except as stated on page 13 of the Design and Access statement.

There are some improvements to the design, which is now of a more traditional appearance from the roadway however the Parish Council still has considerable concerns, as follows:

Application issues:

- The application is referred to as “self-build” but we do not consider that the proposal meets self-build criteria, being merely replacement of an existing dwelling, or differs from other property alterations/rebuilds where the design is naturally specified by the owner.
- The red line boundary is incorrectly represented in all the submitted plans, documents and reports as it does not encompass the whole of the site in the ownership of the applicant.
- The application refers to a “submersed basement” (hopefully not) but, as with the previous application, the description as basement is incorrect as the lower ground floor becomes ground level at the rear.
- A “tree-house” is noted on various of the plans, located close to the western boundary at the bottom of the site. This could require planning permission.
- Drawing 3316-020 and others show a circular structure at the rear of the upper terrace (also seen on page 27 of the Design and Access statement) that would interrupt the line of the “green wall”, this needs clarification as it does not match the “basement” design and is not shown on elevation plans.
- There are labelling discrepancies throughout with proposed features labelled to be existing, for

example in plan 3316-029.

Size issues:

- The proposed house is much greater in floor area than the existing dwelling (315sqm from the applicant's figures), having a proposed total gross floor area of 477sqm (applicant's figure), but that figure does not include the basement of approximately 975sqm.
- The proposed dwelling has greater mass than the existing dwelling, especially when viewed from the sides.
- The ridge height of the proposed house is shown on plan 3316-023 to be higher than the tallest part of the existing house. As the roadway falls away here the ridge should instead be at an average between the neighbouring houses.
- The proposed property will have a very dominating appearance to the properties on either side which are at lower ground levels.

Design issues:

- Even if the lower ground floor (not a basement) is disguised with green walling, the house will still be three floors at the back, will require considerable land excavation and will have impact on the landscape and same-height views, and particularly on the amenity of neighbouring dwellings.
- For the "basement"/lower ground floor:
 - o None of the areas have any natural light, which does not provide a good environment for even occasional use. Flat, walk-on, glazed ceiling panels could be considered.
 - o There are no fire escape routes, which is a safety concern for users, especially as flammable materials will be stored in the garage.
 - o The subterranean parking area is electro-mechanically dependent as there is no other vehicular access. This could lead to vehicles being trapped underground and/or additional pressure on open parking on the site.
- The car lift is shown on the cover of the Design and Access statement and is noted to have a fixed above ground structure and to be in front of the building line.
- Being much deeper than the existing house, the first floor balcony could lead to overlooking of private amenity areas of neighbouring properties.
- First floor side windows should be of permanently obscured glass and only openable above 2m height.
- No chimney is shown for the lounge fireplace.

Engineering works:

- As shown on plan 3316-029 the proposal includes very considerable engineering and excavation works, further carving away the original topography of the site. We question whether this is appropriate in the Green Belt and wooded Shorne Woodlands landscape area, and immediately adjacent to the Court Woods SSSI.
- The additional terracing presently proposed extends much further back from the house than currently.
- It is unclear whether the ground level of the house will be raised above that existing.
- No spoil should be re-deposited on the site and particularly not into the Court Woods SSSI.
- There is a considerable increase in hardstanding and other hard surfaces around the proposed house which could reduce permeability (especially with the basement underneath) and increase water runoff. Rainwater must be prevented from running off onto the roadway.
- The materials to be used for the "lower terrace" require clarification (note pictured as grassed on page 27 of the Design and Access statement.)

Environmental issues:

- We note the Preliminary Ecological Appraisal (PEA) report but the site has already been largely destroyed by the massive landscaping activities previously undertaken by the applicant. The photographs on page 25 detail the original highly vegetated situation.
- The Arboricultural report faces the same problem.

Landscaping and lighting:

- Although the Design and Access statement tries to say otherwise, it is our understanding that Application ref 20221105 (Approval of condition 3(i)(ii)(iii)(iv)(v)(vi) and (vii) attached to planning permission reference number 20220543 relating to details of landscaping to new gabion basket constructed walls) is still outstanding. The Condition has not been satisfied as it requires the provision of full details of the proposed plantings on both side boundaries and on the gabioned slope as a whole (only the northern boundary was previously submitted). The plans should include trees/larger bushes so as to conceal and soften the appearance of the extensive gabion walls. This omission needs to be addressed prior to the granting of any further permissions and otherwise further enforcement action should be taken in order to achieve compliance.
- A detailed landscaping and planting plan should also be required and provided in connection with the present planning application, for the area around the house and any new terracing of the upper slope.
- A detailed exterior lighting plan is needed defining the amount and type of exterior lighting on the whole site, which should be minimal, including how it is directed and to be controlled.

Other points:

- EV charging points, a bin store and cycle storage need to be added and shown on the plans.
- Sewerage arrangements require clarification.
- A Condition should be included that prevents the basement/lower ground floor from being opened up to the outside at the rear wall, it should perpetually remain windowless.
- Materials to be used require more detail, including of the green wall, which should be Conditioned to be permanent. A planted earth bank might be preferable as less visually intrusive.
- Screening plantings to Pear Tree Lane must be permanent by Condition.
- Permitted development rights should be withdrawn for the whole site due to the great increase in built form that has taken place on the site
- We mention again that there is a cave structure with a chimney that has been built into the rear garden slope but is not shown clearly on the plans. The applicant should be reminded that this and the other outbuildings on the property, including the garage building, are not residential in terms of being permitted to be used as living accommodation.

Dickens' Country Protection Society

The Society notes the site is in an area within which Green Belt Policies apply. The proposal is viewed as a replacement dwelling in the Green Belt and the reference to self-build is irrelevant. Most rebuilds in the Green Belt are for a specific client.

The Society is concerned that even when the basement is excluded, the proposed dwelling is significantly larger than the existing. The one-third rule should apply.

The landscaping issue has not been resolved, and more detail is needed. The Society would like to see a landscaping scheme with significant tree planting to mask the building. If consent is granted the south east facing basement should be masked by an embankment, not a hedge.

KCC Heritage

The application site lies within an area of multi-period archaeological potential with evidence for prehistoric, Romano-British and medieval settlement in the surrounding area. Despite the presence of an existing building, the proposed development groundworks including and basement, have the potential to impact on any below-ground archaeological remains at the site and I recommend that if planning permission is granted the following condition is applied to any forthcoming consent:

To ensure that heritage assets with archaeological interest are properly examined and recorded during development works:

A) Prior to any development works the applicant (or their agents or successors in title) shall secure the implementation of an archaeological watching brief so that excavations and other development works are

observed and items of interest and finds are recorded. The archaeological watching brief shall be undertaken by an archaeologist approved by the Local Planning Authority and in accordance with a Written Scheme of Investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority.

B) The archaeological watching brief, recording, post excavation assessment, analysis and reporting shall be carried out in accordance with the approved Written Scheme of Investigation.

C) Within 6 months of the completion of the watching brief a Report shall be submitted to and approved in writing by the local planning authority.

REASON: To ensure that features of archaeological interest are properly examined and recorded.

KCC Biodiversity

SUMMARY – SUFFICIENT INFORMATION PROVIDED

We have reviewed the information submitted by the applicant and advise that sufficient ecological information has been provided.

A preliminary ecological appraisal has been conducted with follow up bat surveys. These identified two bats day roosts and a Natural England mitigation licence will be required, prior to demolition works commencing.

This application states it is exempt from biodiversity net gain as it is a custom and self-build application and Gravesham Borough Council need to be satisfied it meets this exemption.

Bats

Bats are fully protected through the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2017 (as amended).

The submitted Ecological Assessment indicates that roosting bats are present on-site, using the main building which is proposed for demolition. This includes two day roosts, for common pipistrelle and soprano pipistrelle respectively. As this building is proposed for demolition, it will therefore need a Natural England mitigation licence in place prior to works proceeding. Gravesham Borough Council must also have regard to the requirements of the Conservation of Habitats and Species Regulations in the exercise of its functions.

The applicant has provided an outline mitigation/compensation strategy for roosting bats including

- A tree mounted bat box prior to works commencing
- Two integrated bat tubes in the SE elevation of the new building

We agree with the mitigation proposed but highlight that the outline mitigation has the installation of a temporary roost box prior to demolition, for locating bats found during demolition, listed as the last item within the proposed mitigation. We highlight that this needs to be reordered to ensure it is the first action to avoid any errors in implementing mitigation.

The mitigation strategy will help Gravesham Borough Council decide prior to determination whether a Natural England mitigation licence is likely to be granted^{1,2}. As Gravesham Borough Council must consider whether it is likely that a Natural England mitigation licence will be granted, in so doing it must address the three tests when deciding whether to grant planning permission for the proposed development. The three tests are:

1. Regulation 55(2)(e) states: a licence can be granted for the purposes of “preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment”.

2. Regulation 55(9)(a) states: the appropriate authority shall not grant a licence unless they are satisfied “that there is no satisfactory alternative”.

3. Regulation 55(9)(b) states: the appropriate authority shall not grant a licence unless they are satisfied “that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.”

KCC EAS is only able to comment on test three: favourable conservation status^{3,4}. Based on the ecological information submitted we are satisfied that favourable conservation status can be maintained for the local population of bats, provided the submitted mitigation/compensation strategy is effectively implemented.

In accordance with the February 2020 Natural England explanatory note for local planning authorities on Clause 9.3 and Annex D6.1 of BS42020:2013, planning conditions and European Protected Species licences⁵, to help ensure the full implementation of the submitted mitigation/compensation strategy and the applicant's obtention of a mitigation licence from Natural England in advance of works, if planning permission is granted, we advise a condition is included and wording is suggested below.

Prior to and during construction, the bat mitigation strategy will be implemented as per the Preliminary Ecological Appraisal, Calumma, Jul 24. If works have not commenced within 2 years a review of the mitigation must be completed. It will be implemented as detailed.

A sensitive lighting strategy will be required and is detailed further below.

Other Protected Species

The preliminary ecological appraisal has considered other protected species. The landscape works within the garden, are being conducted under a separate permission, with grass management have made the area unsuitable for many species, including reptiles. A new large pond is within the garden but has been stocked with fish and is therefore unsuitable for great crested newts, and no other ponds exist within 250m. The information provided has stated that little disturbance will occur to existing woodland and boundary vegetation, so any suitable habitat for dormice will not be impacted and mobile species such as badgers and hedgehogs have been considered, with precautionary mitigation suggested. We therefore agree with the survey effort conducted but if changes are made to the proposals, regarding the vegetation on site, further surveys may be required.

The building, due for demolition, was noted within the PEA to have features being used by breeding birds and will be impacted. We recommend that any works to buildings and vegetation are conducted outside the breeding bird season (1st March to 31st Aug) to avoid risk of impacts or if within the breeding bird season, a survey by a suitably qualified person needs to be conducted to confirm absence, prior to commencing works. This precautionary mitigation should be included in the construction environment management plan (CEMP), detailed below.

Trees and Woodland

Adjacent to the northern site boundary is Peartree Wood ancient woodland and within 100m of the site is Great Crabbles Wood SSSI. An arboricultural impact assessment was conducted and states that no trees are to be removed or root protection areas impacted on the site by the proposed development. A tree protection plan has been proposed. This is not our area of expertise and suggest that the tree officer is consulted. The proposed precautionary mitigation to prevent impacts to trees and hedgerows should be included in the CEMP.

Lighting

Nocturnal animals (including bats) are likely to be using the site and surrounding area for foraging and commuting and any lighting associated with the proposal may have a negative impact, especially any light spill to hedgerow boundaries and trees on the site. We advise that a condition will be required for the external lighting and will require the following requirements:

- *Plan showing location of lighting, light fittings and light spill*
- *Downward facing*
- *On a motion sensor (where possible)*
- *Follow the recommendations within Bat Conservation Trust/Institute of Lighting Professional's 'Guidance Note 08/23 Bats and Artificial Lighting at Night'*

<https://www.bats.org.uk/news/2023/08/bats-and-artificial-lighting-at-night-ilp-guidance-note-update-released>

Construction Environmental Management Plan

We suggest that the below wording is included as a condition for a Construction Environmental Management Plan (CEMP – biodiversity) if planning permission is granted. This will mitigate for impacts to biodiversity and help ensure compliance with relevant legislation. The plan will include mitigation as outlined in the PEA and bat mitigation strategy.

Prior to commencement of works (including site clearance), a construction environmental management plan (CEMP) will be submitted to and approved in writing by the local planning authority. The CEMP will be based on the recommendations in section 8.6 of the Preliminary ecological appraisal, Calumma, Oct 24 and Bat report, Calumma 30/4/24 and include the following:

- a) Risk assessment of potentially damaging construction activities;*
- b) The identification of biodiversity protection zones and the use of protective fences, exclusion barriers and warning signs;*
- c) Reference to the relevant, granted, protected species licences (e.g., bats) obtained in advance of site clearance/construction and any relevant mitigation measures required;*
- d) Practical measures (both physical measures and sensitive working practises) to avoid or reduce impacts during construction for bats, badgers, birds, dormice and hedgehogs (may be provided as a set of species or habitat-specific method statements);*
- e) The location and timing of sensitive works to avoid harm to biodiversity features;*
- f) The times during construction when specialist ecologists need to be present on site to oversee works;*
- g) Responsible persons and lines of communication;*
- h) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person, and;*

The approved CEMP will be adhered to and implemented throughout the construction period in accordance with the approved details.

Reason: To protect habitats and species identified in the ecological surveys from adverse impacts during construction.

Biodiversity Net Gain

Under the Environment Act 2021 and the Town and Country Planning Act 1990 (as amended), all planning applications received in England (with a few exemptions) must deliver at least a 10% biodiversity net gain (BNG) from the 12th February 2024 and all minor applications from the 2nd April 2024.

As this is a self and custom build for occupation by the applicant and family the applicant is claiming it is exempt from BNG under the self and custom build exemption. Gravesham Borough Council need to be satisfied it meets this exemption.

Enhancements

Under section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 and paragraphs 187 and 193 of the National Planning Policy Framework (NPPF) 2024, biodiversity should be maintained and enhanced through the planning system. Enhancement refers to providing net benefits for biodiversity

over and above requirements for BNG, avoidance, mitigation and compensation. As such, we advise that an enhancement plan is provided that includes the actions proposed and a condition wording is suggested below.

Within three months of works commencement, a detailed plan(s) showing how the development will enhance biodiversity, will be submitted to, and approved in writing by, the local planning authority. This will include a detailed landscaping plan, outlined management measures to achieve the proposed habitat target conditions, native and wildlife-friendly planting, and integrated durable bat and bird boxes aimed at species of conservation concern. The approved measures will be implemented and retained thereafter.

- 1 Contractors letter template (alge.org.uk)
- 2 Dealing with protected species
- 3 WML-G24 EPS Licensing and the Three Tests March2011 (3).pdf
- 4 Microsoft Word - Morge v Hampshire County Council.doc (supremecourt.uk)
- 5 Natural England Explanatory Note

GBC Environmental Protection

No objection to this application. As with previous applications on this site, the following is recommended.

Code of Practice on Construction and Demolition

Please apply as appropriate to minimise the impact to neighbouring premises during the demolition, groundworks and construction.

Lighting

Artificial lighting can cause a statutory nuisance under the Environmental Protection Act 1990. It is important that the applicants are not permitted to install external lighting that illuminate anything other than the ground within the curtilage of the new properties in order to assist in preventing a nuisance from occurring (which would be most likely if the bedrooms on neighbouring properties are illuminated).

Watching Brief

The applicant shall undertake a watching brief during construction in case any contamination issue is encountered. If during development any contamination is found, the local planning authority should be informed as soon as practical and the work shall not continue until written agreement is provided by the LPA as to the appropriate measures to be taken to resolve the matter and they are satisfied that those measures have been carried out.

Drainage/sewerage informative

The foul sewage shall be removed by means of the mains drainage system and not by the use of non-mains sewerage systems, unless connection to the drainage system is not reasonably practicable.

Neighbouring properties

The application has been advertised by site notice and individual letters to five neighbouring properties.

Three letters of support:

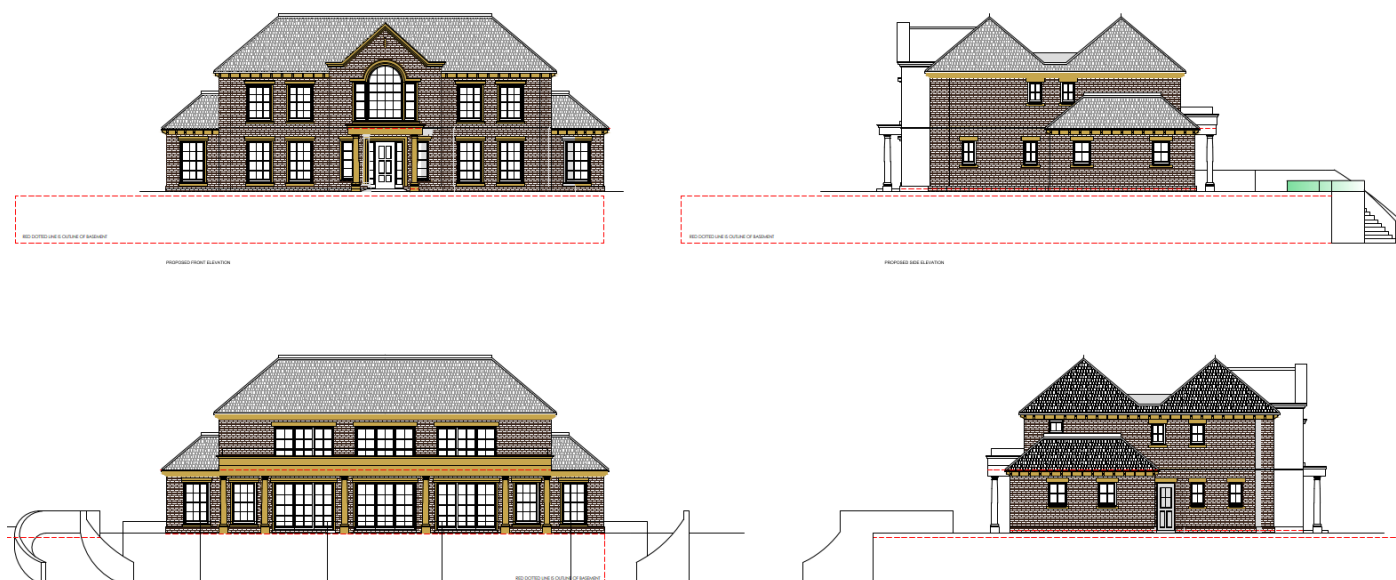
- Good to have a variety of houses
- Design has been carefully thought through
- Disagree with the parish council comments

Officer's Analysis

Proposal

This application seeks planning permission for the demolition of existing dwelling, garage and outbuilding and erection of a self-build detached two storey dwelling with submersed basement for parking and entertainment facilities.

The plans show a two storey detached dwelling of a mock Georgian design with pillars to the front and rear as shown below:



The proposed dwelling will be approx. 22.3m wide, 17m deep and 9m high with a dual pitched roof. Internally there will be underground parking, cinema, gym, pool, wine room, sauna, steam room, changing rooms and entertainment room at basement level; lounge, study, utility, kitchen, WC and family room at ground floor; and four bedrooms, two with dressing rooms and all with en-suite bathrooms.

Principle

The application site lies within the Metropolitan Green Belt and Shorne Woodland Landscape Character Area.

Policy CS02 of the Gravesham Core Strategy 2014 allows development in the rural area within those rural settlements inset from the Green Belt and defined on the Policies Map. The application site is outside of the rural settlement and therefore development will only be supported where it is compatible with national policies for protecting the Green Belt and policies in the plan.

The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.

Green Belt serves five purposes:

- a) to check the unrestricted sprawl of large built-up areas;
- b) to prevent neighbouring towns merging into one another;
- c) to assist in safeguarding the countryside from encroachment;
- d) to preserve the setting and special character of historic towns; and
- e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

Paragraph 153 of the National Planning Policy Framework 2024 states:

When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt, including harm to its openness⁵⁵. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

⁵⁵ Other than in the case of development on previously developed land or grey belt land, where development is not inappropriate.

Paragraph 154 states:

Development in the Green Belt is inappropriate unless one of the following exceptions applies:

- a) buildings for agriculture and forestry;
- b) the provision of appropriate facilities (in connection with the existing use of land or a change of use), including buildings, for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;
- c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;
- d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;
- e) limited infilling in villages;
- f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and
- g) limited infilling or the partial or complete redevelopment of previously developed land (including a material change of use to residential or mixed use including residential), whether redundant or in continuing use (excluding temporary buildings), which would not cause substantial harm to the openness of the Green Belt.
- h) Other forms of development provided they preserve its openness and do not conflict with the purposes of including land within it. These are:
 - i. mineral extraction;
 - ii. engineering operations;
 - iii. local transport infrastructure which can demonstrate a requirement for a Green Belt location;
 - iv. the re-use of buildings provided that the buildings are of permanent and substantial construction;
 - v. material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds); and
 - vi. development, including buildings, brought forward under a Community Right to Build Order or Neighbourhood Development Order.

Paragraph 155 states:

The development of homes, commercial and other development in the Green Belt should also not be regarded as inappropriate where all the following apply:

- a. The development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan;
- b. There is a demonstrable unmet need for the type of development proposed⁵⁶;
- c. The development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of this Framework⁵⁷; and
- d. Where applicable the development proposed meets the 'Golden Rules' requirements set out in paragraphs 156-157 below.

⁵⁶ Which, in the case of applications involving the provision of housing, means the lack of a five year supply of deliverable housing sites, including the relevant buffer where applicable, or where the Housing Delivery Tests was below 75% of the housing requirement over the previous three years; and in the case of traveller sites means the lack of a five year supply of deliverable traveller sites assessed in line with Planning Policy for Traveller sites.

⁵⁷ In the case of development involving the provision of traveller sites, particular reference should be made to Planning Policy for Traveller Sites paragraph 13.

The proposed rebuild of the dwelling could fall under exception (d) provided the new building is in the same use and not materially larger than the one it replaces.

The building as it currently stands has a floor area measured externally of 315sqm. The existing garage has an internal floor area of 88sqm and an existing outbuilding has a floor area of 13sqm. The total built form including the outbuildings, which are close enough to the property to be considered domestic adjunct, is approx. 416sqm.

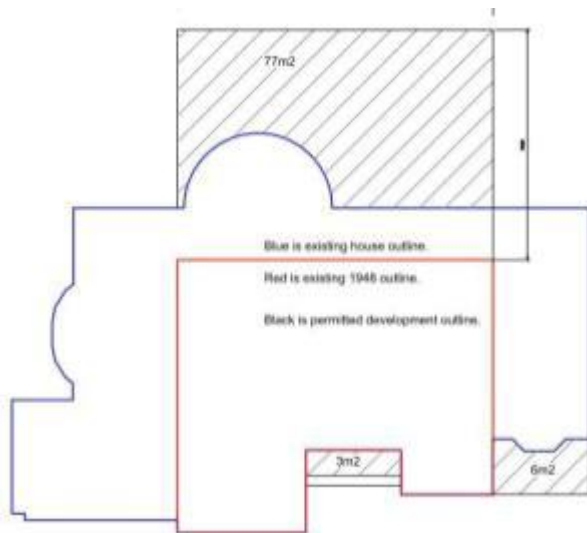
The proposed dwelling has a floor area measured externally of 963sqm at basement level, 297sqm at ground floor and 214sqm at first floor. In total the floor area measured externally is 1,474sqm.

Previously, case law has determined that fully submerged basements do not have an impact on openness of the Green Belt and therefore it would be unreasonable to include this in the calculations. It is noted that the Planning Inspector for the appeal (APP/K2230/W/24/3336638) did include the basement in their calculations however that proposed basement was not fully submerged. On this basis the floor area measured externally would be approx. 511sqm. This is 23% larger than the existing dwelling.

It is noted that Shorne Parish Council have raised concerns that windows might be added to the basement however these are not shown on the plans and any planning approval will require the development to be built in accordance with the plans. As the basement is shown to be fully submerged it would not be possible to insert windows anyway.

Fall back

The applicant has provided details of various extensions that would fall within permitted development as it has gained consent through the prior approval procedure (20220788). If these were built it would add a further approx. 87sqm):



They have also provided details of the existing garage and that approved under reference 20221114 which added a first floor increasing the floor area by approx. 65sqm.

In order to be considered as a “fall back”, the alleged fall back development has to be a use or development that is possible/can be implemented without the need for further planning permission, for example a current lawful use or change of use (i.e. does not fall within the definition of development in the Planning Act or permission has already been granted but not yet implemented) and/or development permitted by way of permitted development rights (i.e. the GPDO or a development order).

If there is a genuine “fall back” then they must be a possibility that this development will be implemented if the current application is not permitted.

If both these factors are evidenced, then the fall back can be a material consideration in determining an application. The weight to be attached to it is a matter for the planning authority.

The case of Mansell v Tonbridge and Malling BC [2017] EWCA Civ 1314; [2019] PTSR 1452 (highlighted in bold are most important parts) explains this issue:

“27. The status of a fallback development as a material consideration in a planning decision is not a novel concept. It is very familiar. Three things can be said about it:

- (1) *Here, as in other aspects of the law of planning, the court must resist a prescriptive or formulaic approach, and must keep in mind the scope for a **lawful exercise of planning judgment by a decision-maker.***

- (2) *The relevant law as to a “real prospect” of a fallback development being implemented was applied by this court in Samuel Smith Old Brewery (see, in particular, paragraphs 17 to 30 of Sullivan L.J.’s judgment, with which the Master of the Rolls and Toulson L.J. agreed; and the judgment of Supperstone J. in R. (on the application of Kverndal) v London Borough of Hounslow Council [2015] EWHC 3084 (Admin), at paragraphs 17 and 42 to 53). As Sullivan L.J. said in his judgment in Samuel Smith Old Brewery, in this context a “real” prospect is the antithesis of one that is “merely theoretical” (paragraph 20). The **basic principle is that “... for a prospect to be a real prospect, it does not have to be probable or likely: a possibility will suffice”** (paragraph 21). Previous decisions at first instance, including Ahern and Brentwood Borough Council v Secretary of State for the Environment [1996] 72 P. & C.R. 61 must be read with care in the light of that statement of the law, and bearing in mind, as Sullivan L.J. emphasized, “... **“fallback” cases tend to be very fact-specific**” (*ibid.*). The role of planning judgment is vital. And “[it] is important ... not to constrain what is, or should be, in each case the exercise of a broad planning discretion, based on the individual circumstances of that case, by seeking to constrain appeal*

decisions within judicial formulations that are not enactments of general application but are themselves simply the judge's response to the facts of the case before the court" (paragraph 22).

• (3) *Therefore, when the court is considering whether a decision-maker has properly identified a "real prospect" of a fallback development being carried out should planning permission for the proposed development be refused, there is no rule of law that, in every case, the "real prospect" will depend, for example, on the site having been allocated for the alternative development in the development plan or planning permission having been granted for that development, or on there being a firm design for the alternative scheme, or on the landowner or developer having said precisely how he would make use of any permitted development rights available to him under the GPDO. In some cases that degree of clarity and commitment may be necessary; in others, not. **This will always be a matter for the decision-maker's planning judgment in the particular circumstances of the case in hand.***"

So, taking this into account, the factors in the determination of the fallback are:

1. *It is a genuine lawful fall back development?*

The development in question benefits from confirmations including planning permission and prior notification approval.

2. *Is there a "possibility" that the fallback would be implemented?*

In this case the applicants have stated that they would implement the prior notification application and the planning permission for the garage, however it is important to note that no works have commenced on site in relation to these previous permissions.

3. *If it is accepted that there is a genuine lawful fallback, which in this case based on the information available, it appears that there is, then the current proposal needs to be assessed against the benefits or harm of that fall back being implemented.*

This is a matter of planning judgement based on the facts of the case. It is considered that the fall back position of a large single storey extension and extensions to the current garage would, on balance, be more harmful than the proposed dwelling.

4. *If a fall-back argument is not to prevail, reasons for rejecting it should be given:*

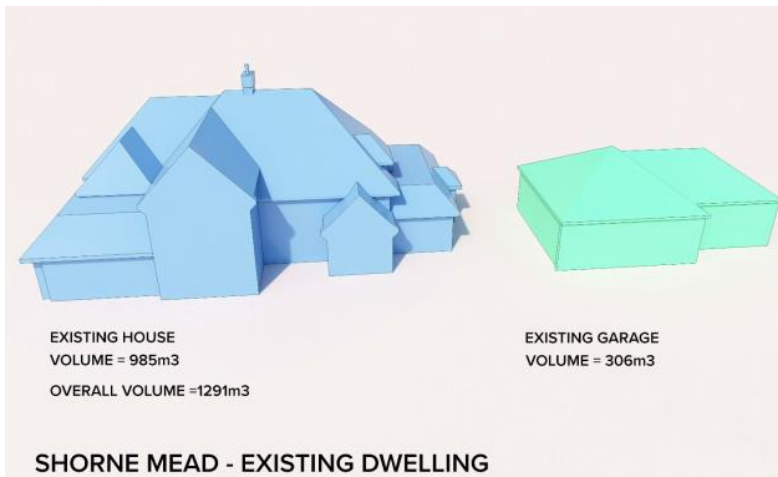
Coln Park LLP v Secretary of State for Communities and Local Government [2011] EWHC 2282 (Admin)

Appeal decisions have provided details of case law that show there is a relatively low bar to demonstrate a realistic prospect of a fallback. In summary they consider the basic principle is that for a prospect to be a 'real prospect' it does not have to be probable, or likely; a possibility will suffice.

Notwithstanding the above, the weight that should be attributed to the fall-back position is a matter of judgement relative to the specific development in question.

If the rear extension and garage extensions were built the resultant floor area measured externally would equate to approx. 568sqm which is larger than the proposed building when not taking into account the basement.

In terms of volume the applicant's agent has provided the following visuals:



The applicant states that the volume of the proposed dwelling is 1712 cubic metres and the volume of the existing dwelling with all permitted development would be 1732 cubic metres.

The Planning Inspector for the previous appeal said the following in relation to the fall-back:

The appellant points out that the main house and garage could be extended based on a permission and lawful development certificate granted in 2022². Having regard to *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314, I acknowledge this fallback position is a material consideration and I am satisfied there is a real prospect the extensions would be built if this appeal were dismissed.

On this basis a genuine fall-back position has been evidenced and, if built, would have a greater impact on the Green Belt than the proposed scheme. The proposed replacement dwelling therefore meets exception 154 (d) of the National Planning Policy Framework 2024 and accords with Policy CS02 of the Gravesham Core Strategy 2014.

Openness

As the proposal meets exception 154 (d) it is not necessary to consider 154 (g) and therefore openness does not need to be considered. However it is worth noting that the demolition of the garage and outbuilding and their incorporation into the main dwelling would improve the openness of the site. The proposed dwelling, due to being a more cohesive development, would have less of an impact on the openness of the Green Belt than the fall-back position.

Paragraph 155

As the proposed development has been found to meet exception 154 (g) it is not a requirement to assess the application against this policy in the National Planning Policy Framework 2024.

Saved Policy CS12

Saved Policy C12 of the Gravesham Local Plan First Review 2014 (GLP) requires replacement dwellings to be no larger than the existing dwelling, unless it can be demonstrated that modest enlargement is required to allow the provision of basic amenities. This policy is not fully consistent with the Framework and therefore full weight is given to the Framework as a material consideration and limited weight to Policy C12.

Design, Character and Appearance

The appeal site is within the Shorne Wooded Downs Landscape Character Area. Having regard to the Gravesham Landscape Character Assessment, the landscape has an undulating landform with significant areas of woodland providing a strong sense of enclosure. Traditional properties within Shorne and Shorne Ridgeway are distinct and promote a strong sense of place. Guidelines for the landscape seek to reinforce the distinctive features of the landscape and reinforce character through the use of vernacular elements.

Pear Tree Lane extends from Shorne Ridgeway to form a ribbon of mainly large, detached houses surrounded by woodland and open countryside. Most dwellings have a traditional appearance with hipped and gabled roofs, although some are of relatively recent construction and there is a variety of architectural styles. Notwithstanding this diversity, the generally conventional appearance of the houses gives Pear Tree Lane an understated and coherent character.

The proposed replacement dwelling is the result of many iterations including the recently dismissed dwelling. In the appeal much weight was given to the striking contemporary design diverging starkly from the understated and traditional forms and materials prevalent in Pear Tree Lane. The proposed dwelling is far more symmetrical and reinforces local distinctive features such as the scale and height of dwellings as well as the choice of more traditional brick work and fenestration features. Whilst it is acknowledged there is an element of two storey flat roof, the dual pitch will be the more prevalent roof type and therefore the flat roof will not be readily visible. Previously the amount of glazing has been a concern however the fenestration now proposed is balanced and not out of proportion. The applicant has provided a list of proposed materials which include rustic brickwork, slate roof tiles and precast stone. The principle of these is acceptable however full details of materials and samples shall be submitted as a condition of any permission granted.

In terms of landscaping very limited details have been provided. It is noted that the red line for the site only includes the area of land the dwelling will occupy and a relatively small area of garden and the remainder of the site is outlined in blue. The whole site should be landscaped appropriately and therefore a planning condition is recommended to ensure full details of this are submitted. The landscaping for the remainder of the site is required under planning reference 20220543.

Subject to a materials and landscaping condition, the proposed dwelling is considered to accord with Policy CS19 of the Gravesham Core Strategy 2014 and paragraph 135 of the National Planning Policy Framework 2024.

Amenity

Future Occupiers

The internal measurements of the rooms and the garden area all meet the requirements of the adopted residential standards and all rooms will received adequate daylight. No concerns are therefore raised with regards to the amenities of future occupiers.

Neighbouring Amenity

There are windows proposed in the side elevations of the dwelling at first floor level however these are to serve non-habitable rooms and a condition can be imposed to ensure these are fitted with obscure glass and contain non-opening windows to avoid any direct or perceived overlooking. A balcony is proposed to the rear of the property. This is approx. 20m away from the closest building to the west and east of the site. Due to the distances involved, the angle of view and presence of boundary treatment in the form of fencing and hedging there will be no loss of privacy from this element of the proposal.

The proposed replacement dwelling will have no significant impact on the amenities of future occupiers of the dwelling or neighbouring properties and therefore accords with Policy CS19 of the Gravesham Core Strategy 2014 and paragraph 135f of the National Planning Policy Framework 2024.

Ecology and Biodiversity

Bats are fully protected through the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2017 (as amended).

The submitted Ecological Assessment indicates that roosting bats are present on-site, using the main building which is proposed for demolition. This includes two day roosts, for common pipistrelle and soprano pipistrelle respectively. As this building is proposed for demolition, it will therefore need a Natural England mitigation licence in place prior to works proceeding. The Council must also have regard to the requirements of the Conservation of Habitats and Species Regulations in the exercise of its functions.

The applicant has provided an outline mitigation/compensation strategy for roosting bats including

- A tree mounted bat box prior to works commencing
- Two integrated bat tubes in the SE elevation of the new building

The mitigation proposed is accepted however the outline mitigation has the installation of a temporary roost box prior to demolition, for locating bats found during demolition, listed as the last item within the proposed mitigation. This needs to be reordered to ensure it is the first action to avoid any errors in implementing mitigation. A condition is recommended to ensure this document is updated to re-order the list of mitigation.

The Council must decide whether a Natural England mitigation licence is likely to be granted and in doing so must address the three tests written in regulation 55 of the Conservation of Habitats and Species Regulations 2017. The three tests are:

1. Regulation 55(2)(e) states: *a licence can be granted for the purposes of “preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment”.*
2. Regulation 55(9)(a) states: the appropriate authority shall not grant a licence unless they are satisfied *“that there is no satisfactory alternative”.*
3. Regulation 55(9)(b) states: the appropriate authority shall not grant a licence unless they are satisfied *“that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range.”*

The submitted Preliminary Ecological Appraisal by Calumma Ecological Services states that the proposed development is considered to fit the criteria for a Bat Mitigation Class Licence (BMCL) from Natural England which can be used for small numbers of roosts of low conservation significance.

It is the LPA's view that there are no imperative reasons of overriding public interest why a licence would not be granted and there is no satisfactory alternative. The Council's ecologist is satisfied that the demolition of the building will not be detrimental to the maintenance of the population of the species concerned and therefore all three tests can be met.

In accordance with the February 2020 Natural England explanatory note for local planning authorities on Clause 9.3 and Annex D6.1 of BS42020:2013, planning conditions and European Protected Species licences, to help ensure the full implementation of the submitted mitigation/compensation strategy and the applicant's obtention of a mitigation licence from Natural England in advance of works, if planning permission is granted, the following condition shall be imposed on any forthcoming permission:

Prior to and during construction, the bat mitigation strategy will be implemented as per the Preliminary Ecological Appraisal, Calumma, Jul 24. If works have not commenced within 2 years a review of the mitigation must be completed. It will be implemented as detailed.

In addition to this a condition is required to ensure a sensitive lighting strategy is provided and implemented.

The preliminary ecological appraisal has considered other protected species. The landscape works within the garden, are being conducted under a separate permission, with grass management have made the area unsuitable for many species, including reptiles. A new large pond is within the garden but has been stocked with fish and is therefore unsuitable for great crested newts, and no other ponds exist within 250m. The information provided has stated that little disturbance will occur to existing woodland and boundary vegetation, so any suitable habitat for dormice will not be impacted and mobile species such as badgers and hedgehogs have been considered, with precautionary mitigation suggested.

The building, due for demolition, was noted within the PEA to have features being used by breeding birds and will be impacted. Any works to buildings and vegetation shall be conducted outside the breeding bird season (1st March to 31st Aug) to avoid risk of impacts or if within the breeding bird season, a survey by a suitably qualified person needs to be conducted to confirm absence, prior to commencing works. This precautionary mitigation should be included in the construction environment management plan (CEMP), detailed below.

Adjacent to the northern site boundary is Peartree Wood ancient woodland and within 100m of the site is Great Crabbles Wood SSSI. An arboricultural impact assessment was conducted and states that no trees are to be removed or root protection areas impacted on the site by the proposed development. A condition is recommended to ensure trees are protected during the construction process.

Nocturnal animals (including bats) are likely to be using the site and surrounding area for foraging and commuting and any lighting associated with the proposal may have a negative impact, especially any light spill to hedgerow boundaries and trees on the site. A condition is required for the external lighting and will require the following requirements:

- *Plan showing location of lighting, light fittings and light spill*
- *Downward facing*
- *On a motion sensor (where possible)*
- *Follow the recommendations within Bat Conservation Trust/Institute of Lighting Professional's 'Guidance Note 08/23 Bats and Artificial Lighting at Night'*

A condition for a Construction Environmental Management Plan is required to mitigate for impacts to biodiversity and help ensure compliance with relevant legislation:

Prior to commencement of works (including site clearance), a construction environmental management plan (CEMP) will be submitted to and approved in writing by the local planning authority. The CEMP will be based on the recommendations in section 8.6 of the Preliminary ecological appraisal, Calumma, Oct 24 and Bat report, Calumma 30/4/24 and include the following:

- a) Risk assessment of potentially damaging construction activities:*
- b) The identification of biodiversity protection zones and the use of protective fences, exclusion barriers and warning signs;*
- c) Reference to the relevant, granted, protected species licences (e.g., bats) obtained in advance of site*

clearance/construction and any relevant mitigation measures required;

d) Practical measures (both physical measures and sensitive working practises) to avoid or reduce impacts during construction for bats, badgers, birds, dormice and hedgehogs (may be provided as a set of species or habitat-specific method statements);

e) The location and timing of sensitive works to avoid harm to biodiversity features;

f) The times during construction when specialist ecologists need to be present on site to oversee works;

g) Responsible persons and lines of communication;

h) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person, and;

The approved CEMP will be adhered to and implemented throughout the construction period in accordance with the approved details.

Reason: To protect habitats and species identified in the ecological surveys from adverse impacts during construction.

Biodiversity Net Gain and self build.

The application is for a replacement dwelling which falls under the category of 'self-build' and is therefore exempt from the requirement to provide 10% biodiversity net gain. The NPPF definition of self-build is housing built by an individual, a group of individuals, or persons working with or for them, to be occupied by that individual. It is therefore the case that this development is self build. A condition is recommended to ensure that the new building is a 'self-build'.

Parking and Highways

The proposed plans show parking to the front of the dwelling and an underground garage with space for four cars. The space available in the basement would also be sufficient for cycle storage. As there is a dwelling on site already and there would already be provision for bins (and the number of bins will not change) it is not considered necessary to require a scheme for waste storage/collection. The access to the site remains unchanged. The parking is sufficient and therefore no objection is raised on highways grounds.

Conclusion

The proposed replacement dwelling will not be significantly larger than that which could be built under a fall-back position and will have no detrimental impact on the Green Belt, character and appearance of the surrounding landscape, amenities, ecology, parking and highway safety and therefore accords with the abovementioned policies and is recommended for approval.

Recommendation:

Permit

(For detailed conditions / reasons for refusal and informatives, see draft Decision)

Case Officer:	Mrs Alison Webster	Team Leader:	Richard Hart
Signed:		Signed:	<i>R Hart</i>
Dated:	12 February 2025	Dated:	12th February 2025