



Delegated Report

Application No: 20240680

Location: Rear Garden Of 40 Cross Lane East Gravesend Kent DA12 5HB

Description: Erection of a building to form 2no. 1 bedroom units.

Applicant: Mr Singh

Submitted Documents/Plans

The application comprises the following documents and plans:

- Planning application forms.
- Planning Statement (July 2024).
- Drawing no. 001 Rev A – Location Plan Existing Block Plan Proposed Block Plan.
- Drawing no. 002 Rev A – Proposed Floor Plans.
- Drawing no. 003 Rev A – Proposed Elevations.
- Drawing no. 004 Rev A – Street Scenes.
- Drawing no. 005 Rev A – 25 Degree Diagram.

Relevant Planning History

Reference	Description	Decision	Decision Date
19870391	Erection of single storey side extension to form garage	Permitted	01.07.1987
19860841	Erection of a two storey side extension to form a garage workshop with bedroom over	Permitted	22.12.1986
19750523	Erection of single storey rear extension for shower room and wc and covered walkway at rear and alterations to garage	Permitted	25.09.1975

Development Plan

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. The Courts have held that it is a matter of planning judgement as to whether a proposal is in accordance with the development plan when 'read as a whole' and conflict with a particular

policy or policies may not pass that threshold.

Where there are other material considerations, the development plan should be the starting point, and other material considerations should be taken into account in reaching a decision. One such consideration will be whether the plan policies are relevant and up to date.

In this instance the development plan for Gravesham currently comprises: -

- The Gravesham Local Plan Core Strategy (September 2014);
- Remaining Saved Policies of the Local Plan First Review (1994); and
- The Kent Minerals and Waste Local Plan 2013 - 2030 (2016, revised 2020).

Gravesham Local Plan Core Strategy (September 2014):

- CS01 – Sustainable Development.
- CS02 – Scale & Distribution of Development.
- CS11 – Transport.
- CS12 – Green Infrastructure.
- CS14 – Housing Type and Size.
- CS15 – Housing Density.
- CS18 – Climate Change.
- CS19 – Design & Development Principles.

Saved Policies in the Gravesham Local Plan First Review (November 1994):

- P3 – Vehicle Parking Standards.
- T1 – Impact of Development on the Highway Network.

Paragraph 33 of the NPPF (2023) 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 First Review (1994) generally conform with the NPPF (2023), the Council will also seek to replace these.

National Planning Policy Framework (2023)

- Section 2 – Achieving sustainable development.
- Section 5 – Delivering a sufficient supply of homes.
- Section 9 – Promoting sustainable transport.
- Section 11 – Making effective use of land.
- Section 12 – Achieving well-designed and beautiful places.
- Section 15 – Conserving and enhancing the natural environment.

Supplementary Planning Guidance

- Residential layout guidelines including Housing Standards Policy Statement October 2015 Adopted 1996 – amended June 2020.
- Technical Housing Standards – nationally described space standard (2015).

- SPG 4 - KCC Parking Standards (2006).
- Design for Gravesham (2024).

Consultations, Publicity and Representations

External

KCC Biodiversity Officer

SUMMARY – FURTHER INFORMATION REQUESTED

We have reviewed the ecological information submitted in support of this application and advise that additional information is sought from the applicant prior to determination of the planning application:

- a Biodiversity Net Gain (BNG) metric detailing the pre-development (baseline) value of the site.

No ecological surveys are requested but the application will be subject to the North Kent SAMMS tariff. Full comments below.

ECOLOGICAL CONSTRAINTS AND MITIGATIONS

No direct ecological impacts are anticipated given the urban setting of the proposals and the inherently low biodiversity interest of the application site. No ecological surveys are requested.

The application falls within the 6km zone of influence of the Thames Estuary and Marshes SPA and Ramsar. As such, the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) applies and the applicant will be required to make a tariff payment based on the net number of additional dwellings proposed to mitigate additional recreational effects on the designated sites.

A recent decision from the CJEU (C-323/17) has detailed that mitigation measures cannot be considered when carrying out a screening assessment to decide whether a full 'appropriate assessment' is needed under the Habitats Directive. Therefore, we advise that there is a need for Gravesham Borough Council to carry out an appropriate assessment as part of a full HRA.

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. Where required, the Defra Statutory Metric will need to be used to demonstrate a minimum 10% biodiversity net gain. Local policy may require a higher level of net gain. Habitats created/enhanced to achieve net gain will need to be secured for at least 30 years.

The applicant has claimed an exemption from BNG (de minimis). This exemption does not apply as the proposals will result in the loss/degradation of over 25m² of onsite habitat that has biodiversity value greater than zero (vegetated garden/introduced shrub).

The development will currently be required to demonstrate a 10% biodiversity net gain (either onsite, offsite or via purchase of biodiversity credits) with the submission of a precommencement Biodiversity Gain Plan as required by the Town and Country Planning Act 1990 Schedule 7A (13). At present, only baseline BNG calculations are required for the application to be determined. A Small Sites Metric can be used as we believe this is a minor application. The Small Sites Metric can be completed by anyone familiar with BS 8683:2021 'Process for designing and implementing Biodiversity Net Gain'. It must be accompanied by clear photographs of the site to justify habitat classifications.

KCC Highways and Transportation

Referring to the above description, it would appear that this development proposal does not meet the criteria to warrant involvement from the Highway Authority in accordance with the current consultation protocol arrangements. If there are any material highway safety concerns that you consider should be brought to the attention of the HA, then please contact us again with your specific concerns for our consideration.

The proposed properties front Central Avenue not Cross Road East and is an unclassified road therefore not appropriate for a response from the Highway Authority.

It is important to note that Local Planning Authority (LPA) permission does not convey any approval to carry out works on or affecting the public highway.

Any changes to or affecting the public highway in Kent require the formal agreement of the Highway Authority, Kent County Council (KCC), and it should not be assumed that this will be a given because LPA planning permission has been granted

For this reason, anyone considering works which may affect the public highway, including any highway-owned street furniture or landscape assets such as grass, shrubs and trees, is advised to engage with KCC Highways and Transportation at an early stage in the design process.

Across the county there are pieces of land next to private homes and gardens and near the highway that do not look like roads or pavements but are actually part of the public highway.

Some of this highway land is owned by Kent County Council whilst some is owned by third party owners. Irrespective of the ownership, this land may have 'highway rights' over the topsoil.

Works on private land may also affect the public highway. These include works to cellars, to retaining walls which support the highway or land above the highway, and to balconies, signs or other structures which project over the highway. Such works also require the approval of the Highway Authority.

Kent County Council has now introduced a pre-application advice service in addition to a full formal technical approval process for new or altered highway assets, with the aim of improving future maintainability. Further details are available on our website below:

<https://www.kent.gov.uk/roads-and-travel/highway-permits-and-licences/highways-permissions-and-technical-guidance>.

This process applies to all development works affecting the public highway other than applications for vehicle crossings, which are covered by a separate approval process. Further details on this are available on our website below:

<https://www.kent.gov.uk/roads-and-travel/highway-permits-and-licences/apply-for-a-dropped-kerb/dropped-kerb-contractor-information>

Once planning approval for any development has been granted by the LPA, it is the responsibility of the applicant to ensure that before development commences, all necessary highway approvals and consents have been obtained, and that the limits of the highway boundary have been clearly established, since failure to do so may result in enforcement action being taken by the Highway Authority.

The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under the relevant legislation and common law. It is therefore

important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site.

Further guidance for applicants, including information about how to clarify the highway boundary and links to application forms for vehicular crossings and other highway matters, may be found on Kent County Council's website:

<https://www.kent.gov.uk/roads-and-travel/highway-permits-and-licences/highways-permissions-and-technical-guidance>

Alternatively, KCC Highways and Transportation may be contacted by telephone: 03000 418181.

Internal

GBC Environmental Protection

The property falls within a buffer zone for a Historic Landfill Site. To address this and other matters, the following conditions and informatives are recommended.

Contaminated Land 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.

Code of Practice on Construction and Demolition

Please apply as appropriate to minimise any impact on nearby dwellings during the construction.

Smoke Control Informative

The proposed development is situated in a smoke control area. As such, only authorised smokeless fuels as listed in the Smoke Control Areas (Authorised Fuels) Regulations 1991 shall be burnt or fireplaces/appliances exempted by Smoke Control (Exempted Fireplaces) Orders shall be utilised. Exempt appliances are appliances (ovens including pizza and tandoori ovens, wood burners and stoves) which have been exempted by Statutory Instruments (Orders) under the Clean Air Act 1993. These have passed tests to confirm that they are capable of burning an unauthorised or inherently smoky solid fuel without emitting smoke. They must be fitted and used according to manufacturer's instructions and they can only be used for the fuel for which they are designed. When purchasing fuels and fireplaces the applicant should clarify with the vendor their suitability with respect to use in Smoke Control Areas. For further information, including confirmation that an appliance and/or fuel is suitable for use in a smoke control area, the applicant should contact the Council's Regulatory Services air.quality@gravesham.gov.uk

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

Nine surrounding properties were consulted and a site notice displayed. Seven representations have been received raising objection to the application. These are summarised as follows:

- The two new properties would make access to Central Avenue even more difficult than it already is.

- It would ruin the local character and tradition of our town
- To fit 2 x 1 bedroom properties on this land is excessive and should be immediately refused.
- The proposed building is far too big and tall to fit the end of a garden.
- The drawings show the building level with the path but the garden is at least 2 feet lower which would mean the back of the property would be too high and overlook existing properties.
- The units will potentially be an invasion of privacy for the surrounding private gardens.
- This proposal is for poor quality, small housing with undersized outdoor space.
- Parking restrictions have had to be put in recently on the corner of Portland Avenue and Central Avenue due to parking problems. Building works will make this situation untenable.
- These units will presumably have no parking allocated which will add to the parking pressures.
- Parking in the area is at full capacity.
- Squashing dwellings in spaces like this exacerbates parking issues (parking is already at a premium in that section of road with cars frequently parking up on the pavement).
- Reduces the openness and amount of green space.
- No outdoor space for potential occupier.
- Negative impact on local wildlife.
- Allowing this to proceed would set a worrying precedent.
- It takes away a large proportion of the garden of the existing dwelling.
- This will add further strain to limited amenities in the area.

One representation has been received in support of the application, which is summarised as follows:

- The development poses no harm to neighbouring properties.
- No upper floor windows are proposed on any side or rear of the building, ensuring the privacy of adjacent homes is maintained.
- 25 degree angles have been demonstrated to confirm that sunlight to neighbouring properties will not be adversely affected.
- The design is respectful of local character and integrates well within the local area.
- The proposal offers two high-quality flats while retaining sufficient amenity space for the existing house. This meets the requirements outlined in the Gravesham Supplementary Planning Guidance.

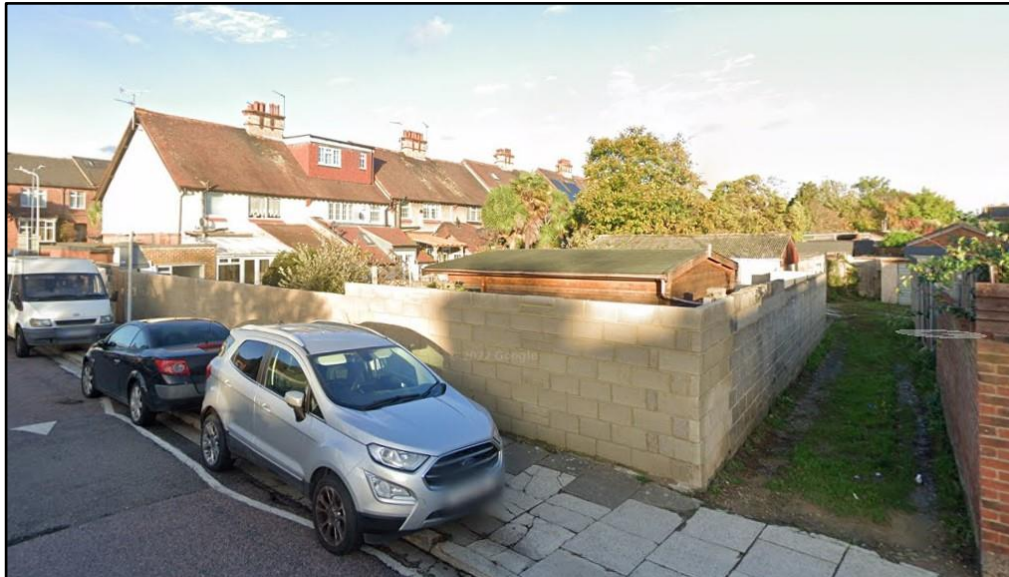
Analysis

The application site is defined on the Core Strategy Policies Map as lying within the urban area. It lies on the southern side of Cross Street East at its junction with Central Avenue. It comprises a two-storey end of terrace dwelling which can be seen in the following photograph:



This proposal involves the erection of a building within the rear garden of this property to provide two self-contained residential dwellings. Each dwelling would accommodate one bedroom.

The following photograph shows the rear garden area as viewed from Central Avenue:



Housing Need

Hopkins Homes Ltd v Secretary of State for Communities and Local Government [2017] 1 W.L.R. 1865, Lord Carnwath reemphasised that the National Planning Policy Framework is only a material consideration in planning decisions and that that planning applications should be determined in accordance with the development plan. Paragraph 12 of the NPPF expressly states that the starting point for decision-making is the development plan. Lord Carnwath as part of the Supreme Court decision stated,

It is important, however, in assessing the effect of the Framework, not to overstate the scope of this policy-making role. The Framework itself makes clear that as respects the determination of planning applications (by contrast with plan-making in which it has statutory recognition), it is no more than "guidance" and as such a "material consideration" for the purposes of section 70(2) of the 1990 Act... It cannot, and does not purport to, displace the primacy given by the statute and policy to the statutory development plan. It must be exercised consistently with, and not so as to displace or distort, the statutory scheme.

It is a matter of law that all planning applications need to be considered in accordance with the legislation and relevant policy that applies at the point a decision is taken. The Council published a revised 5-year housing land supply statement in March 2023. It demonstrates that based on data for the period 2022-2027, the Council can only demonstrate a land supply of 2.9 years.

Given the Council's current inability to demonstrate a 5-year housing land supply, and as the delivery of housing was substantially below (less than 75%) that required by the Housing Delivery Test, the housing delivery element of Gravesham's Local Plan Core Strategy (LPCS) (2014) Policy CS02 must be regarded to be out of date, as required by the Paragraph 11(d) of the National Planning Policy Framework (NPPF) (2023). This requires that in regard to housing development, planning permission should be granted unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole

The policies referred to in paragraph 11(d)(i) above are those set out in the NPPF at footnote 7 (rather than those in development plans) relating to:

...habitats sites (and those sites listed in paragraph 187) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 72); and areas at risk of flooding or coastal change.

In determining applications for planning permission involving housing, the Council will therefore apply a weighted balance in favour of granting planning permission in accordance with relevant case law and guidance, having regard to the acceptability or otherwise of the proposals when evaluated against development plan policy, the need to make efficient use of land, the relative contribution the proposal makes towards the alleviation of any shortfall in housing delivery at that time and any other considerations material to the proposed development.

Notwithstanding the Council's shortages in housing delivery and the consequent weight to be given in favour of the proposed development it is necessary to assess the proposals against the policies in the NPPF and established local planning policy taken as a whole.

Principle of residential development

The broad principle of the proposed residential development finds support in the NPPF. Paragraph 60 is particularly relevant:

To support the government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed,

that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. The overall aim should be to meet as much of an area's identified housing need as possible, including with an appropriate mix of housing types for the local community.

In addition, paragraph 70 requires that in order to promote the development of a good mix of sites local planning authorities should, *inter alia*, “support the development of windfall sites through their policies and decisions – giving great weight to the benefits of using suitable sites within existing settlements for homes”.

The application site is defined on the Policies Map of the Gravesham Local Plan Core Strategy as lying within the urban area. Policy CS02 of the Core Strategy “prioritises development in the urban area as a sustainable location for development”.

In light of these considerations, there is no objection to the broad principle of residential development subject to the proposal being appropriate in terms of other planning issues.

Design, Character and Appearance

Section 12 of the NPPF relates to “achieving well-designed and beautiful places” and sets out the Government’s requirements in relation to design issues. Paragraph 131 is particularly relevant:

The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

The aims set out in paragraph 131 of the NPPF are reflected in Policy CS19 of the Council’s Core Strategy. This requires new development to be “visually attractive, fit for purpose and locally distinctive” and to “conserve and enhance the character of the local built, historic and natural environment”. It also requires new development to “integrate well with the surrounding local area”. In addition, Policy CS19 requires the following:

....the design, layout and form of new development will be derived from a robust analysis of local context and character and will make a positive contribution to the street scene, the quality of the public realm and the character of the area. Account will be taken of the scale, height, building lines, layout, materials and other architectural features of adjoining buildings.

Design for Gravesham (2024) expands on the Core Strategy, and Policy CS19 in particular to provide additional clarity on what is expected of applicants when submitting design proposals, setting out the minimum requirements to achieve design quality.

This locality is residential in character. It comprises a mixture of detached, semi-detached and terraced properties which are predominantly two storey and of a broadly similar scale. They sit on comparable sized plots. This provides a general uniformity to the character of development within this area. The proposed development needs to be assessed in the context of this character.

The proposed new dwellings would be located within the rear garden area of the property at no. 40 Cross Lane East. The existing and proposed new dwellings would therefore be located on significantly smaller plots than existing dwellings in this locality. The plot sizes for the proposed two new dwellings would be exceptionally small. The small plot sizes would form a cramped and contrived form of overdevelopment that would be totally out of keeping with the more spacious character of the immediate locality.

The amenity space for the two proposed dwellings would be extremely limited in size, measuring just over 2.0m in depth. This is discussed in more detail below under the heading Residential Amenity. The tiny size of the proposed garden areas would not provide suitable amenity space for these dwellings and provides a further strong indicator that this proposal comprises an overdevelopment of the site.

In addition, the proposed layout would represent a substantial and harmful variation to the existing pattern of development within this immediate locality. It would be unreflective of the arrangement of buildings within the surrounding area.

It remains important that account is taken “of the scale, height, building lines, layout, materials and other architectural features of adjoining buildings” as required by Policy CS19 of the Core Strategy. In this particular case, it is considered that the development would fail to meet this requirement. Existing residential properties in the immediate locality are of a similar scale with comparable ridge heights. By contrast, the proposed new dwellings have ridge heights that are significantly lower than those of nearby properties. This is clearly demonstrated in the following extract from the submitted drawings:



This does not reflect or complement the appearance of other dwellings in the immediate locality. Indeed, the proposed properties would lack any connection in architectural terms to existing properties. As such, they would appear visually incongruous and harmful to the character and appearance of the area.

In light of the above, it is considered that this proposal would fail to meet the tests set out in Section 12 of the NPPF, Policy CS19 of the Core Strategy and Design for Gravesham (2024).

Residential Amenity

Paragraph 135 of the NPPF requires planning decisions to, *inter alia*, provide “a high standard of amenity for existing and future users”. In addition, Policy CS19 of the Core Strategy requires new development to be located, designed and constructed to “safeguard the amenity, including privacy, daylight and sunlight, of its occupants and those of neighbouring properties and land”.

Sunlight and daylight

As a result of the siting and orientation of the proposed new dwellings, they would not have a significant impact upon neighbouring properties in terms of loss of sunlight/daylight. Similarly, existing properties would be unlikely to result in an unacceptable loss of sunlight/daylight to the proposed new dwellings.

Privacy

The Council's adopted Residential Layout Guidelines require a minimum distance of 21 metres to be provided between the windows of habitable rooms and the private garden area of any dwelling. A private garden area is defined as the first five metres of garden adjacent to the rear of the dwelling.

The design of the proposed dwellings would incorporate two dormer windows within the front roofslope of the building. These would face Central Avenue and the private rear garden of no. 38 Cross Lane East which lies on the western side of Central Avenue. The private garden area of this dwelling is limited in size. Furthermore, it would only be located approximately 15m from the proposed dormer windows. This is significantly less than the minimum distance of 21m required by the Residential Layout Guidelines. As such it is considered that the occupiers of no. 38 Cross Lane East would suffer from a significant loss of privacy.

The only windows at first floor level within the rear of the proposed dwellings are rooflights which are unlikely to result in a significant loss of privacy to neighbouring occupiers. A cross section of the building has not been provided to demonstrate their height above floor level. If permission were to be granted, this could be subject to a condition requiring the submission of a cross section together with specific details of the positioning of the rooflights to ensure there would be no loss of privacy.

There is also concern that the private garden areas of the proposed new dwellings would be overlooked. The first and second floor windows of properties at nos. 40 and 42 Cross Lane East and nos. 112 and 113 Portland Avenue would have direct views into the rear gardens of the proposed properties. In all cases the distance between these windows and the garden areas would be less than 21m. In this respect the development would again fail to meet the requirements of the Council's adopted Residential Layout Guidelines.

Dominating impact

The northern elevation of the proposed development would be located immediately adjacent to the boundary with the existing property at no. 40 Cross Lane East. This would measure almost 6.5m in height. Due to the proximity of the existing dwelling and the limited size of the garden area of this property, the proposed development would appear visually overbearing and imposing. It would dominate outlook from the windows on the rear elevation of the existing property as well as from the rear garden area. This would result in an unacceptable loss of amenity to the occupiers of no. 40 Cross Lane East.

Internal space standards

The "Technical housing standards – nationally described space standard" was published by the Department for Communities and Local Government in March 2015. This document sets out requirements for the gross internal area of new dwellings at a defined level of occupancy as well as floor areas and dimensions for key parts of the home.

Each dwelling would comprise a two-storey, one bedroom, two person dwelling. The required minimum gross internal floor area for such units is 58m². The gross internal floor area of the proposed dwelling would measure 61.09m² which meets this standard.

Both dwellings would also meet the minimum standards for room sizes as set out in the Council's adopted Residential Layout Guidelines.

Amenity space

The Gravesham Residential Layout Guidelines require a minimum garden area of 37.2m² for a 1-2 bedroom property and a minimum depth of 7.6m.

The submitted drawings indicate that the combined amenity space of the two dwellings would measure 34.0m². Furthermore, it would measure just over 2.0m in depth. The proposal would therefore fail to meet the minimum standards for amenity space as set out in the Council's adopted Residential Layout Guidelines.

Parking and highways

Policy CS11 of the Core Strategy seeks to ensure that new development mitigates its impact on the highway and that sufficient parking is provided in accordance with adopted parking standards, reflecting the availability of public transport provision and the accessibility of local services and facilities. Saved Policy P3 of the Gravesham Local Plan First Review requires development to make provision for vehicle parking in accordance with the Kent County Council Vehicle Parking Standards. These standards require a maximum of one space to be provided for dwellings with one bedroom.

The proposed scheme does not make provision for on-site parking. However, the application site is located within a sustainable location in close proximity to two local centres (as defined on the Policies Map of the Core Strategy). It is located close to Gravesend town centre with its associated retail, leisure, community, business and educational facilities. It is also located in proximity to public transport links with local bus services available on Wrotham Road. Given the sustainable location of the application site and its proximity to public transport links, it is considered that, on balance, a nil level of on-site parking would be acceptable in this situation.

In light of these considerations, the proposal is acceptable in terms of highway safety and meets the tests set out in Policy CS11 of the Core Strategy and Saved Policy P3 of the Gravesham Local Plan First Review.

Recreational Pressures on the Thames Estuary and Marshes Special Protection Area (SPA) and SAMMS

The Thames Estuary and Marshes Special Protection Area (SPA) is classified in accordance with the European Birds Directive which requires Member States to classify sites that are important for bird species listed on Annex 1 of the European Directive, which are rare and/or vulnerable in a European context, and also sites that form a critically important network for birds on migration. It is also listed as a Wetland of International Importance under the Ramsar Convention (Ramsar Site). Studies have shown marked declines in key bird species, particularly in areas that are busiest with recreational activity. Research conducted in 2011 found that additional dwellings were likely to result in additional recreational activity, causing disturbance to protected bird species that over-winter or breed on the SPA and Ramsar Site. The studies found that 75% of recreational visitors to the North Kent coast originate from within 6 km of the SPA boundary and Ramsar Site. The impacts of recreational disturbance can be such that they affect the status and distribution of key bird species and therefore act against the stated conservation objectives of the European Sites.

The Local Planning Authority has mitigated out the impacts of this on each and every planning application for a new residential development of one or more units within the 6km zone since September 2015 by accepting a Strategic Access Mitigation and Monitoring Strategy (SAMMS) (tariff) payment (currently £328.27 per dwelling) where applicable. This approach is approved by Natural England for all new residential developments. For every planning application for a new dwelling (including new flats), the tariff contributions are secured through a Section 106 legal agreement or unilateral undertaking or if there are no other financial contributions this is secured

through a contribution agreement. Where a developer is unwilling to make the SAMMS payment, sufficient evidence is required to be supplied to enable the Council to undertake an Appropriate Assessment to determine that it is unnecessary to mitigate any potential Likely Significant Effect.

The tariff has previously been accepted effectively in lieu of an Appropriate Assessment (AA). However, in a recent Court of Justice European Union (CJEU) ruling this approach was not considered to be valid, as the CJEU considered the first stage to be a screening assessment as to whether the development either alone or in combination, is likely to have significant effects on a designated site without mitigation. In this respect, the CJEU judgement made a distinction between “the plan or project” itself and “measures intended to avoid or reduce the harmful effects of a plan or project on a European site”. This means that mitigation measures, which are intended to avoid or reduce effects, should be assessed within the framework of an Appropriate Assessment and that mitigation measures cannot be taken into account at the screening stage.

The applicant has not made the required contribution. On this basis, the proposal would fail to comply with the NPPF, Policy CS12 of the Core Strategy and the requirements of the Conservation of Habitats and Species Regulations 2017.

Biodiversity Net Gain

Biodiversity net gain is a way of creating and improving biodiversity by requiring development to have a positive impact ('net gain') on biodiversity.

In England, biodiversity net gain is required under a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021). This statutory framework is referred to as 'biodiversity net gain' in Planning Practice Guidance to distinguish it from other or more general biodiversity gains.

Under the statutory framework for biodiversity net gain, subject to some exceptions, every grant of planning permission is deemed to have been granted subject to the condition that the biodiversity gain objective is met (“the biodiversity gain condition”). This objective is for development to deliver at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat. This increase can be achieved through onsite biodiversity gains, registered offsite biodiversity gains or statutory biodiversity credits.

The proposed development would result in the loss/degradation of over 25m² of onsite habitat that has biodiversity value greater than zero. The de-minimis exception would not therefore apply in this particular case. This has been confirmed by the Kent County Council Biodiversity Officer.

Therefore, additional information is required under Article 7 of The Town and Country Planning (Development Management Procedure) (England) Order 2015. However, as the application is deemed to be unacceptable no further information is required.

Other Issues

The proposal makes provision for waste and recycling storage as well as cycle storage to serve each dwelling. This is considered to be acceptable.

The comments of GBC Environmental Protection are noted. If this application were to be recommended for approval, the requirements set out in their comments could be secured by planning conditions and informatives where necessary.

Conclusion

It is acknowledged that the Council is currently unable to demonstrate a five-year housing supply and as the delivery of housing is substantially below (less than 75%) that required by the Housing Delivery Test, the housing delivery element of Policy CS02 of the Core Strategy must be regarded to be out of date, as required by the Paragraph 11(d) of the NPPF.

The proposed development for a net increase of two dwellings would offer a minimal contribution towards meeting this local need and delivery and, accordingly, adds some weight in support of the application.

However, notwithstanding this a balanced approach has to be taken and it is considered that the adverse impacts of the development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF and established local policy taken as a whole.

In this case the balance is tilted towards refusal for the reasons set out in the recommendation below.

Recommendation:

REFUSE PLANNING PERMISSION

See draft Decision

Case Officer: Gary Edwards	Team Leader: Richard Hart
Signed: Gary Edwards	Signed: <i>R Hart</i>
Dated: 21/10/2024	Dated: 21st October 2024