



## Delegated Report

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| <b>Application No:</b> | 20240504                                                                    |
| <b>Location:</b>       | Garage Block Arthur Street Gravesend Kent DA11 0PP                          |
| <b>Description:</b>    | Demolish of existing garage block and construction of 6 no 1 bedroom flats. |
| <b>Applicant:</b>      | Sian                                                                        |

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### Submitted Documents/Plans

The application comprises the following documents and plans:

- Application form.
- Design and Access Statement.
- Drawing no. SH/1706/101 – Existing Site Plan.
- Drawing no. SH/1706/102 – Proposed Site Plan.
- Drawing no. SC/1706/103 – Block Plan Existing.
- Drawing no. SC/1706/104 – Block Plan Proposed.
- Drawing no. PC/3107/105 – Proposed Ground Floor Layout.
- Drawing no. PC/3107/106 – Proposed First & Second Floor Layout.
- Drawing no. PC/3107/107 – Proposed Elevations.

### Relevant Planning History

There is no relevant planning history relating to this site

### 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.
- CS20 – Heritage and the Historic Environment.

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

- P3 – Vehicle Parking Standards.
- T1 – Impact of Development on the Highway Network.
- TC3 – Development Affecting Conservation Areas.
- TC7 – Other Archaeological Sites.

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 16 – Conserving and enhancing the historic 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); and
- SPG 4 - KCC Parking Standards (2006).
- Darnley Road Conservation Area Character Appraisal (2009).
- Management Plan Gravesend Town Centre Conservation Areas (2009).

### **Consultations, Publicity and Representations**

### KCC Heritage

The site lies within an area of multi-period archaeological potential. However, based on existing Historic Environment Record data for the area and the relatively limited extent of the proposed works, which is understood would not involve any below-ground excavation, I consider it unlikely that these proposals would have a significant below-ground archaeological impact and have no further comments to make in this case

### GBC Conservation Officer

Having reviewed the latest proposals and looking at the site, the main issue is the scale and bulk of the proposals in relation to 69 Darnley Road and 34 Arthur Street. The proximity of the gable wall of the proposal to the rear of 69 Darnley Road will appear overbearing and the relationship of the proposed gable wall to the 34 Arthur Street will appear equally overbearing when viewed from the east along Arthur Street towards the site.

It would be preferable to adopt a single dwelling to mirror 35a, opposite the site. The roof pitch should be lowered and hipped as seen at 35a. This will reduce the impact on 34 Arthur Street, and a garden (with open parking?) introduced to the side between the proposal and the rear garden of 69 Darnley Road. The building line should be brought back at least to that of 28 Arthur Street, which forms the predominant building line on this side of the street, with boundary railings

### GBC Environmental Protection Services

The site falls within the buffer zone of a historic landfill site. In addition, the garages have been used for storage and use of this type of lock up garage often includes oil/chemical storage and often car repairs. It's noted that the garages are also constructed of asbestos containing material. In view of this a contaminated land assessments will be needed. It will therefore be important to ensure that when the garages are demolished care is taken to avoid asbestos dust and fragments being left on site (therefore contaminating the site) or being blown/deposited in the vicinity. The applicant is advised to contact the HSE for advice and use an appropriately licensed contractor for the demolition and removal of the asbestos materials. To address this and other matters, the following is recommended.

#### **Land Contamination**

No development approved by this permission shall be commenced prior to a contaminated land assessment (in accordance with the Environment Agency's Land Contamination Risk Assessment Management (LCRM) guidelines and methodology and if necessary an associated remedial strategy, together with a timetable of works, being submitted to the Local Planning Authority for approval.

- a) The contaminated land assessment shall include a desk study to be submitted to the Local Planning Authority for approval. The desk study shall detail the history of the site uses and propose a site investigation strategy based on the relevant information discovered by the desk study. The strategy shall be approved by the Local Planning Authority prior to investigations commencing on site.
- b) The site investigation, including relevant soil, soil gas, surface and groundwater sampling, shall be carried out by a suitably qualified and accredited consultant/contractor in accordance with a Quality Assured sampling and analysis methodology.
- c) A site investigation report detailing all investigative works and sampling on site, together with the results of analysis, risk assessment to any receptors and a proposed remediation strategy shall be submitted to the Local Planning Authority. The Local Planning Authority shall approve

such remedial works as required prior to any remediation commencing on site. The works shall be of such a nature so as to render harmless the identified contamination given the proposed end-use of the site and surrounding environment including any controlled waters.

d) Approved remediation works shall be carried out in full on site under a quality assurance scheme to demonstrate compliance with the proposed methodology and best practice guidance). If during any works contamination is encountered which has not previously been identified then the additional contamination shall be fully assessed and an appropriate remediation scheme agreed with the Local Planning Authority.

e) Upon completion of the works, this condition shall not be discharged until a closure report has been submitted to and approved by the Local Planning Authority. The closure report shall include details of the proposed remediation works and the quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology. Details of any post remediation sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.

f) Where applicable, a monitoring and maintenance scheme to include monitoring the long-term effectiveness of the proposed remediation over an agreed period of time, and the provision of reports on the same, must be prepared and approved in writing by the local planning authority.

Following completion of the measures identified in that scheme, and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced and submitted to the local planning authority.

#### **Land Contamination - 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 disruption to nearby premises.

#### **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).

#### **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](mailto: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**

13 surrounding properties were consulted, a site notice displayed and a press notice published. One representation has been received which raises the following concerns:

- Arthur Steet is a cramped road. There is limited parking. Who will be living in these flats? The area has gone down because of the houses made into flats. Rented out houses, people who have no respect for the area, use the land next to my house as a dump. Lowering the value of my home considerably.

The overall consultation period expired on 27 August 2024.

### **Analysis**

The application site is defined on the Core Strategy Policies Map as lying within the urban area and also the Darnley Road Conservation Area.

It lies on the southern side of Arthur Street and comprises two garage blocks each of which contains four garages. The site can be seen in the following photograph:



This proposal involves the demolition of the garages and their replacement with a detached building containing six flats. The building would accommodate two flats at ground floor level and two flats at first floor level. An additional two flats would be accommodated within the roofspace of the building. All six flats would have one bedroom. A communal garden area is shown to serve the development.

The submitted drawings show the rear elevation of the proposed building facing north (ie towards the public highway) and the front elevation facing south. This arrangement is consistent in all the submitted drawings. The application is therefore assessed on this basis.

## 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.*

As the property is located within a conservation area, Section 16 of the NPPF is also relevant. This sets out requirements relating to conserving and enhancing the historic environment. Paragraph 203 is of particular relevance and states that in determining applications, local planning authorities

should take account of:

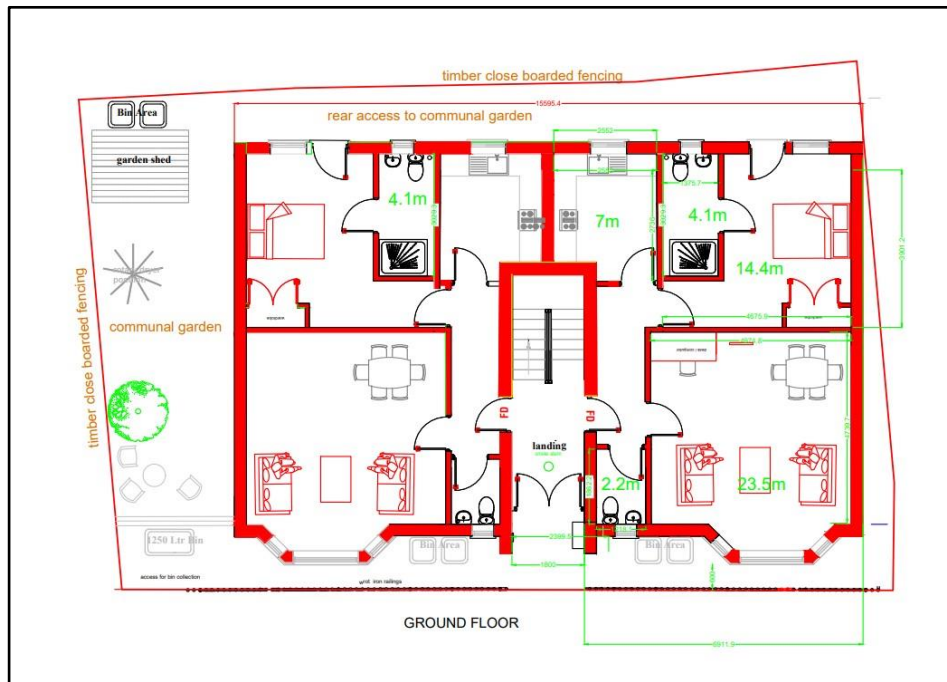
- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;*
- b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and*
- c) the desirability of new development making a positive contribution to local character and distinctiveness.*

Policy CS20 of the Council's Core Strategy and saved Policy TC3 of the Gravesham Local Plan First Review 1994 are also relevant. Policy CS20 of the Core Strategy places a high priority on the preservation, protection and enhancement of the Council's heritage and historic environment. Policy TC3 of the Gravesham Local Plan First Review 1994 requires that development within or affecting conservation areas will be carefully judged for its impact and will be expected to make a positive contribution to the conservation area.

This area is characterised by a mixture of terraced, semi-detached and detached buildings which differ in terms of their appearance and architectural style. They include two and three storey buildings some of which comprise flatted developments. There is also variation in the use of materials. The proposed development is of a standard design. However, given the mix of building types within this locality, there is no objection to the broad design of the building *per se*.

However, as noted above, the submitted drawings clearly indicate that the rear elevation of the proposed building would face north (ie towards the public highway) with a timber close boarded fence located between the building and public footpath. This would present a dead and unattractive frontage which would be out of keeping with the more traditional form of development within this locality. In addition, due to the proximity of the building to the public highway the gable walls of the building would be particularly prominent. It is considered that due to their height and scale, they would appear visually dominant and overbearing within the street scene. In these respects, the proposal would have an adverse impact on visual amenity and would fail to make a positive contribution to this part of the Darnley Road Conservation Area.

The proposed building also has a footprint that occupies the majority of the site. This is evidenced from the submitted ground floor layout:



This scale of development would be out of keeping with the form of development within the immediate locality where the size of buildings is more proportionate to the size of the plots within which they sit. This is evidenced from the following proposed block plan which accompanies the application:



It is acknowledged that the existing garage blocks are visually unattractive. Indeed, the Townscape Appraisal Map of the Darnley Road Conservation Area Character Appraisal identifies the garage blocks as “negative buildings”. However, for the reasons set out above, the proposed

development would have a negative impact upon this part of the Conservation Area. The poor visual quality of the existing garage blocks would not be sufficient to overcome the concerns with this proposal.

In light of the above, it is considered that this proposal would fail to meet the tests set out in the NPPF, Policies CS19 and CS20 of the Core Strategy, saved Policy TC3 of the Gravesham Local Plan First Review 1994 and the Darnley Road Conservation Area Character Appraisal (2009).

### **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”.

#### **Privacy**

Nos. 69 and 71 Darnley Road lie immediately to the west of the application site. These are both substantial three storey buildings with upper floor windows facing the application site. These can be seen in the following image:



These windows would have clear and uninterrupted views into the communal amenity area serving the proposed flats. Given the proximity of these windows to this area, this would result in a significant loss of privacy to future occupiers.

A window is shown to be provided within each of the flank elevations of the proposed building at second floor level. The window within the western elevation is shown to be obscure glazed. As such there would be no loss of privacy to the occupiers of nos. 69 and 71 Darnley Road. The window within the eastern elevation is not shown to be obscure glazed. This would have views into the rear garden of the property to the east, no. 34 Arthur Street resulting in a loss of privacy to the occupiers of this property.

A number of windows are also proposed at first floor level on the southern elevation of the new building. These would have unobstructed views of the private garden areas of the properties at no. 73 and 75 Darnley Road. This would result in a loss of privacy to the occupiers of these properties.

In light of the above the communal garden area of the proposed development would be overlooked by neighbouring properties and the proposal would result in a loss of privacy to the private amenity areas of neighbouring and nearby dwellings.

#### Sunlight and daylight

As a result of the siting and orientation of the proposed new building, it is unlikely to have a significant impact upon neighbouring properties in terms of loss of daylight. With respect to sunlight, the property at no. 69 Darnley Road is likely to be most affected. As it lies to the west of the application site, the rear garden area is likely to experience overshadowing during morning hours. Similarly, the ground and lower ground windows of this building may also experience loss of sunlight during this part of the day. In the absence of a sunlight/daylight assessment objection must therefore be raised on this issue.

#### Dominating impact

The western elevation of the proposed building would be located in close proximity to the rear boundary with the existing properties at nos. 69 and 71 Darnley Road. Due to the scale and height of the proposed building and the limited size of the garden area of these neighbouring properties, the development would appear visually overbearing and imposing. It would dominate outlook from the windows on the rear elevation of the existing properties as well as from the rear garden area. This would result in an unacceptable loss of amenity to the occupiers of nos. 69 and 71 Darnley Road.

#### 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 flat on the first and second floors would comprise a one-storey, one bedroom, two person dwelling. The required minimum gross internal floor area for such units is 50m<sup>2</sup>. The gross internal floor area of each proposed flat would significantly exceed this standard.

The two flats within the roofspace would comprise a one-storey, one bedroom, one person dwelling. The required minimum gross internal floor area for such units is 37m<sup>2</sup>. The gross internal floor area of each proposed flat would only measure 32.6m<sup>2</sup>

In this respect the proposal would fail to meet the minimum requirements for gross internal floor areas as set out in the “Technical housing standards – nationally described space standard”.

#### External space standards

Policy CS19 of the Core Strategy requires that new development “will provide appropriate levels of private and public amenity space”. In addition, the Council’s Residential Layout Guidelines require that for communal flats, a communal garden area equivalent to a minimum of 10 sq. metres shall be provided for amenity space.

Although this standard would be met in terms of the size of the amenity area, it is not clear how this would be accessed by future occupiers. The proposed ground floor flats would have direct

access via the bedrooms to each of these units. However, the occupiers of the upper floor flats do not appear to have direct access particularly given that it is shown to be enclosed by a wall at its southern end. In this respect the proposed communal amenity space would not be accessible for all occupiers of the development.

#### Other issues

The living/kitchen areas of the two flats within the roofspace would only be served by rooflights. This is considered to be unacceptable as it would provide insufficient levels of outlook for future occupiers. Similarly the bedroom to one of the units would only be served by a window which would be obscure glazed. Again, this would provide insufficient levels of outlook.

In light of the above assessment, it is considered that the impact of the proposed development on residential amenity would not be acceptable and would fail to meet the tests set out in the NPPF, Policy CS19 of the Core Strategy, the Technical Housing Standards – nationally described space standard (2015) and the Council's 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 parking space for each one-bedroom unit.

The proposed scheme does not make provision for on-site parking. However, the application site is located within a sustainable location adjacent to Gravesend town centre with its associated retail, leisure, community, business and educational facilities. It is also located in close proximity to good public transport links. Gravesend train station lies within walking distance of the site and local bus services are available. Given the sustainable location of the application site and its proximity to good public transport links, it is considered that, on balance, a nil level of on-site parking would be acceptable in this situation.

However, the application does not provide any information concerning the existing ownership and use of the garages to be demolished. It is likely that a number of these garages are currently used for parking purposes. Indeed, images from Google Streetview clearly suggest that the site is used to park cars. The loss of these garages would therefore result in the displacement of parking. Although a controlled parking zone operates in the roads in the immediate locality, displaced parking could be pushed further afield where there are no such controls and where there are high levels of parking stress. Demand for parking within these local streets could potentially be exacerbated due to the loss of the existing garages. In the absence of detailed information relating to the current occupancy and use of the garages, an objection must be raised on the grounds of loss of parking.

The current Kent County Council Vehicle Parking Standards provide minimum cycle parking standards. For flats, there is a requirement of one space per unit. As such provision for a total of six cycles would be required. The submitted drawings do not make provision for secure cycle storage. Even if this were to be provided within the communal garden, it is not clear how this would be accessed (see 'External space standards' above).

In light of these considerations, the proposal would fail to meet the tests set out in Policy CS11 of the Core Strategy and saved Policy P3 of the Gravesham Local Plan First Review.

#### Archaeology

The site is located in an Area of Archaeological Potential. However, given that the comments of KCC Heritage it is considered that the proposal is unlikely to have a significant below-ground archaeological impact. The proposal is therefore considered compliant with Policy TC7 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 application has been submitted with a self-build form, indicating that the applicant would undertake the building works themselves. The self-build of a development consisting of no more than 9 dwellings, on a site that has an area below 0.5 hectares and meets the definition of self-build housebuilding in section 1(A1) of the Self-build and Custom Housebuilding Act 2015, is an exemption to the BNG requirement.

The application seeks to construct six dwellings on a site of 0.01 hectares, and the construction of the dwellings are considered to meet the definition of self-build. Therefore, no additional information is required under Article 7 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 for BNG.

### **Other Issues**

Paragraph 32 of the Council's Residential Layout Guidelines (2020) relates to refuse storage and contains the following requirement:

*Refuse containers shall be provided on a hardstanding and within purpose built enclosures, which are readily accessible for collection.*

Four different areas have been shown within the site for bin storage. However, the level of detail provided is limited and due to the location of some of the bins it would appear they would not be readily accessible for collection. Furthermore, given the location of the site within a conservation area, it is important that details of the purpose built enclosures are also provided to ensure they are visually appropriate within this designated area.

The comments of the Council's Environmental Protection Services in relation to land contamination, construction and demolition, lighting, smoke control and drainage are noted. The issues raised could all be addressed through the use of appropriately worded planning conditions or informatives if permission were to be granted.

### **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 six residential units would offer a modest 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 for the following reasons:

1. The scale and appearance of the proposed development would be detrimental to the character of the surrounding area. It would also constitute an overdevelopment of the site which would result in a cramped form of development out of keeping with the character of the area. The development would therefore fail to preserve or enhance the character and appearance of the Darnley Road Conservation Area. The proposal would not result in public benefits that would clearly outweigh that harm. As such the proposed development would be contrary to the National Planning Policy Framework (2023), Policies CS19 and CS20 of the Gravesham Local Plan Core Strategy (2014), Policy TC3 of the Gravesham Local Plan First Review (1994) and the Darnley Road Conservation Area Character Appraisal (2009).
2. The proposal would result in a detrimental impact on the amenities of neighbouring occupiers in terms of loss of privacy, loss of sunlight and overbearing impact. The development would therefore fail to meet the tests set out in the National Planning Policy Framework (2023) and Policy CS19 of the Gravesham Local Plan Core Strategy (2014).
3. The proposed development would fail to provide a satisfactory level of residential amenity for future occupiers due to insufficient levels of internal living space, lack of outlook from habitable rooms and a community amenity area that would not be accessible to the occupiers of all six flats. The development would therefore fail to meet the tests set out in the National Planning Policy Framework (2023), Policy CS19 of the Gravesham Local Plan Core Strategy (2014), the Technical Housing Standards – nationally described space standard (2015) and the Council's Residential Layout Guidelines including Housing Standards Policy Statement (October 2015, Adopted 1996 – amended June 2020).
4. In the absence of detailed information relating to the use and occupancy of the existing garages, it is considered that their loss could lead to a displacement of parking. This would increase the demand for parking on local streets where there are already high levels of parking stress. As such the proposal would fail to meet the tests set out in Policy CS11 of the Gravesham Local Plan Core Strategy (2014) and Saved Policy P3 of the Gravesham Local Plan First Review.
5. The proposed development would fail to provide appropriate and accessible cycle storage facilities and as such would be contrary to the National Planning Policy Framework (2023) and Policy CS11 of the Gravesham Local Plan Core Strategy (2014).
6. The proposed development would fail to provide appropriate and accessible waste storage facilities and as such would be contrary to the National Planning Policy Framework (2023), Policy CS19 of the Gravesham Local Plan Core Strategy (2014) and the Council's Residential Layout Guidelines including Housing Standards Policy Statement (October 2015, Adopted 1996 – amended June 2020).
7. The applicant has failed to provide any ecological evidence to inform a habitat regulations assessment to address the impact of the proposed development on the Thames Estuary and Marshes Ramsar site and Special Protection Area (SPA) or offered a financial contribution towards the identified mitigation measures to address the impact of the development on the SPA/Ramsar site. The proposal is therefore contrary to Policy CS12 of the Gravesham Local Plan Core Strategy (2014) which seeks to ensure that detrimental effects on the integrity of SPA/Ramsar sites are avoided, and also contrary to Paragraphs 186 and 187 of the National Planning Policy Framework (2023).

See draft Decision

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|-----------------------------------|------------------------------------------------------------------------------------------------------|
| <b>Case Officer:</b> Gary Edwards | <b>Team Leader:</b> Miss Faye Hobbs                                                                  |
| <b>Signed:</b> Gary Edwards       | <b>Signed:</b><br> |
| <b>Dated:</b> 28/08/2024          | <b>Dated:</b> 28 August 2024                                                                         |