

<b>APPLICATION PROPOSAL</b>			<b>Ref No 20/503031/FULL</b>	
Creation of animal rescue sanctuary, comprising a single storey building for use as a dwelling, administration office and training facility and 7 No. animal shelters with the addition of a separate single-storey maintenance and equipment building.				
<b>ADDRESS</b> Land At Jays Wood Canterbury Road Boughton Under Blean Kent ME13 9NY				
<b>RECOMMENDATION</b> - Refuse				
<b>WARD</b>	Boughton	And	<b>PARISH/TOWN</b>	<b>COUNCIL</b>
	Courtenay		Dunkirk	
			<b>APPLICANT</b> Ms Karen Brigden	
			<b>AGENT</b> John Tadman BD&S Associates	
<b>DECISION DUE DATE</b>			<b>PUBLICITY EXPIRY DATE</b>	
26/10/20			29/09/20	

## DESCRIPTION OF SITE

Jays wood is located within the parish of Dunkirk and lies outside of any established built up area boundary. The site is accessed from a track with a wooden pedestrian gate and a metal vehicle gate. The site is subject to confirmed tree preservation order no 2 of 2019, designated as Woodland W1, which protects all tree species and sizes within the woodland area. Only a small part of the wood towards the south western corner is designated as ancient semi natural woodland.

A lawful development certificate was granted under application 19/500282/LDCEX for a timber storage shed and steel shipping container which was deemed to have become lawful through the passage of time. The application whilst on this same site was under a different application address:

Jays Woods  
 Boughton Hill  
 Woodside  
 Dunkirk  
 Kent  
 ME13 9FL

The application site measures 9.7 hectares.

## PROPOSAL

The application seeks planning permission for the erection of a single storey building to accommodate family accommodation, animal welfare facilities, an administration office and a training room with 6 parking spaces shown to the front of the building. It is also proposed to erect a single storey maintenance and equipment building to the rear of the larger building where private parking would also be located. The buildings have been designed to be nestled into the natural topography of the site to try and minimise any visual impacts. The proposed materials include timber boarding to the external walls, timber and aluminium windows, aluminium doors and a sedum planted roof. The proposed building is also designed to 'Passive House' standards.

The application is accompanied by a number of reports and plans including:

- Design & Access Statement
- Heritage Statement
- Tree plans/schedule
- Pre-development tree survey/report
- Woodland management plan

- Bat report
- Dormouse report
- Preliminary ecological appraisal
- Biodiversity and ecology statement
- Historic environment record (HER) documents
- List of charity donors
- Support letters

The proposal is seeking approval through Para 79 (e) of the NPPF regarding innovative design, which reads as follows:.

*“e) The design is of exceptional quality in that it:*

- *Is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and*
- *Would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.”*

## **PLANNING CONSTRAINTS**

Ancient Woodland

Potential Archaeological Importance

Dunkirk Airfield

Enforcement Notice ENF/01/024

Tree Preservation Order Polygon MBC\_SBC Reference: 7930/TPO  
Description: Boughton Hill Wood, Dunkirk

Tree Preservation Order Polygon MBC\_SBC Reference: 7929/TPO  
Description: Boughton Hill Wood, Dunkirk

## **POLICY AND OTHER CONSIDERATIONS**

Bearing Fruits 2031: The Swale Borough Local Plan 2017

ST1 (Delivering sustainable development within Swale)

ST3 (Settlement strategy)

CP4 (Design)

DM9 (Rural exceptions housing)

DM14 (General development criteria)

DM19 (Sustainable design and construction)

DM21 (Water, flooding and drainage)

DM24 (Conserving and enhancing valued landscapes)

DM29 (Woodlands, trees and hedges)

DM30 (Enabling development for landscape and biodiversity enhancement)

The National Planning Policy Framework (NPPF): Paragraphs 8, 11, 79, 170 & 175

## **LOCAL REPRESENTATIONS**

Consultation letters were sent to 29 properties in the vicinity of the site and a site notice was placed at the entrance to the site. Five letters of objection were received from local residents and can be summarised as follows:

- There are already major traffic issues
- Access onto Boughton Hill is not safe
- Animals housed at the shelter would create noise, smell and disturbance to pets whose gardens back onto the proposed development
- The area of woodland where the proposed development is to be situated has a tree preservation order which would be breached
- The nature and number of animals to be housed is not specified and may mean more construction work of sheds and pens
- The pre-application advice set out by SBC clearly demonstrated that the application is contrary to the Local Plan
- The proposed development may exacerbate flood risk and surface water run off
- The letters of support submitted with the application are from people living outside the borough who would have very little knowledge of the village or local impacts
- We see no reason why the animal sanctuary cannot operate as it does now without the need for a residential property, other outbuildings and 7 animal shelters
- There are many more suitable and acceptable sites in the Swale area if, indeed, there is any need for such a facility in the locality
- The storage of animal waste on the site stored for collection would likely have an unpleasant smell and affect the ability to use gardens
- The wood is inhabited by a wide variety of rare birds, badgers, foxes and a whole host of other flora and fauna – the impact on this ecosystem should be taken into careful consideration

The Faversham Society also wrote in objection to the scheme as follows:

*“This application should be REFUSED because it is outside the boundaries of Boughton. It would result in the loss of countryside.*

*In addition, this type of use is likely to attract vehicular traffic to a greater extent than a usual house. It would introduce an additional entrance onto Boughton Hill on a busy road.*

*In addition, the building would result in the loss of trees covered by a TPO which would harm the appearance and biodiversity of the area.”*

## **CONSULTATION RESPONSES**

Dunkirk Parish Council – *“Councillors voted to object to the application.*

*It was noted that the applicants had been advised to speak with the Parish Council advice they have ignored. This application comes on the back of enforcement action from some two years ago when the applicant stated a planning application was imminent. Much work and change has occurred on the site in this time and we hope that no damage has been done contrary to the pre-application advice given on 20th August 2018. We note that the LDC for the container on site was approved, albeit that SBC’s suggestions were not followed, they approved the application. This application has come forward at a rather late stage in the sites development.*

*It is noted that the site has a strong Facebook presence, there is a business running from the site with goods and services being offered. It is currently protected woodland and no*

*business use has been granted for the goods and services being provided, and we were unable to ascertain if rates are being paid or waste collected.*

*This application conflicts with SBC Local Plan Bearing Fruits (LP) and NPPF.*

*The site is outside the village envelope (Tier 5 of Local Plan Bearing Fruits) and as such is normally either not allowed or resisted by SBC. It is in tier 6 of the local plan The open Countryside outside the built-up areas. All other remaining settlements and habitation without built-up area boundaries and other areas. The LP states development will not be permitted here unless supported by NPPF. Para 79, an application must comply with at least one section a-e; none of which applies here.*

*No reasons have been given to prove that other, more suitable and sustainable locations have been investigated and any reasons why such sites have been rejected, and it is felt there are many more suitable sites than this. DPC cannot see any justification for a development to include a house in this location that is contrary to policies and gives insufficient justification for a house to override many strong countryside protection policies.*

*The land is in an area of High Landscape Value (Kent level) and is subject to TPOs. In the application it is intended to remove a large number of mature trees, contrary to the TPO order, and further reduce the tree coverage in the Parish.*

*KCC has commented and there is clearly insufficient information for them (and ourselves) to have a complete picture. The woodland designation for now and the future should be preserved and this would degrade the land.*

*KCC flood and management have reservations and neighbours have concerns regarding run-off. Removing trees and using the land for a number of purposes proposed and more that are not detailed at this stage, could increase the danger of flooding to the properties below. The hill is moving all the time and KCC are unable to decide what they can do to stabilise the hill as it is.*

*The activity is unsustainable in this location and should be sited closer to services and away from a dangerous section of road where extra vehicles, turning across fast downward moving vehicles, or exiting into this stream or crossing this stream would be inherently dangerous. The application notes this road, and the site, to be a slight gradient. It is actually very steep. We note KCC has now provided a document with major concerns on road safety.*

*We note a number of local people whose property adjoins the site object on the grounds of smell and noise; DPC supports the residents on these material considerations. We note that any support comes from people outside the Parish with no knowledge of the land, the trees, flora and fauna or the LP restrictions that apply.*

*It is felt that the business use, the sale of goods and services along with a substantial house with all the ancillaries to this, plus the extra traffic to a sanctuary, on and off the hill, is unsustainable being in the wrong location.*

*We would ask that the application is refused.”*

The Council received additional illustrations of the proposed development which were uploaded to the website. Dunkirk PC subsequently submitted additional comments which are summarised as follows:

- The pictures show the scale, bulk and mass of the proposal to be overly large and out of keeping with a high landscape area woodland setting

- Over the top to have such a large building and living accommodation for a few pet cages
- PC strongly believe that this proposal should be refused

SBC Tree Consultant – *“Jays wood is subject to confirmed tree preservation order no 2 of 2019, designated as Woodland W1, which protects all tree species and sizes within the woodland area. Only a small part of the wood towards the south western corner is designated as ancient semi natural woodland. The majority of the wood, and more specifically within the area of the proposed development footprint, consists predominantly of mixed broadleaved species that have naturally regenerated creating what is generally termed secondary woodland. A woodland management plan has recently been approved by the Forestry Commission which aims to manage the wood for its wildlife and nature conservation values for which I fully support. However, whilst the majority of the woodland may not be ancient, it still provides an important biodiversity habitat, that in my view, will in part, be eroded by the proposed development.”*

*The submitted pre-development tree report by Miller Land Management appears more generic in content rather than site specific for the proposed scheme. Whilst it does provide details on the trees that would be directly affected by the proposal it fails to take into account the impact the siting of a new dwelling will have on the woodland as a whole. For example, there are no details on service routs (i.e. gas, electric, foul and water) to and from the site, or if the current access track (that passes through a number of trees root protection areas) is to be upgraded. I note in Kent Highways response that they consider the track to be too narrow and suggest consideration be given to widening the first 20m of access, to allow the passage of vehicles. Widening of the access track would have a significant impact on the surrounding larger trees that lie towards the roadside boundary, and in my view, may require the removal of a number of prominent specimens. Noise and light pollution within the wood will be increased thus giving rise to the disturbance of wildlife.*

*As with any development that is likely to affect TPO trees/woodland the need for the development must be balanced against the potential harm that it would cause. In this case, based on the submitted details to date, from an arboricultural perspective whilst I am sympathetic to the proposed use of the building, its location and construction within the woodland, would in my opinion erode the sylvan character by removing a number of protected trees contrary to policies intended to confer protection to trees and tree cover in the borough, specifically Policy DM 29 of Bearing Fruits 2031: The Swale Borough Local Plan 2017 together with Government Policy: Planning Practice Guidance; Tree Preservation Orders and trees in conservation areas.”*

SBC Design & Conservation Manager –

- *“The proposal is quite poorly presented and aspects of it are still unclear.*
- *Most critically, and in spite of the content of the pre-application enquiry response letter referenced above, we do not appear to be any wiser regarding the planning justification for this countryside location. Reading between the lines, it appears to be that the charity in Serving Faversham, Isle of Sheppey, Sittingbourne and surrounding rural areas question needed a new base for its operations and happened to have bought the parcel of land in question, but that does not equate to an adequate planning justification.*
- *Reference is made in the supporting information to paragraph 79 of the NPPF, but criteria a to d clearly do not apply, and I struggle to see that a case could be made that criterion e would apply either. The proposed used of Passivhaus principles/technology would, as you suggested in your pre-application enquiry letter, would be welcomed, but that in itself would not provide adequate justification for overriding strong countryside protection policies.*

- *From a built heritage conservation perspective, I have limited concern about this proposal based on the proposal as set out, although the concerns raised by Dunkirk Parish Council are quite alarming and it strikes me that there is scope for some harm in this respect. Notwithstanding, the unnecessary loss of protected trees at this rural location seems to be wholly unjustifiable.*
- *With other NPPF paragraph 79 applications, we have referred these to a design review panel for consideration by architectural experts, but it seems to me that this proposal is sufficiently far removed from being 'exceptional' that this would not be appropriate or a good use of officer time, nor indeed the panel members time, and as such, that the application should be refused without delay, unless the applicant is willing to withdraw it.*
- *The proposed development raises the prospect of at worst, limited harm to the setting of nearby designated heritage assets – harm that would in my view fall within the category of less than substantial harm. But the site is within the countryside and would result in the loss of trees subject to an area TPO, which also form part of a wider landscape designated as an Area of High Landscape Value (Kent Level). From a pure design perspective, the proposed design is quite good, but it is some distance from being exceptional (as would be needed to justify the proposal in relation to paragraph 79e of the NPPF). The proposal does not appear to offer any notable benefits to the management of the special landscape at this location which in turn provides the woodland setting for the nearby heritage assets, and whilst I am sympathetic to the proposed use of the building, no clear or adequate reason has, as far as I can see, been provided as to why a more remote location such as this countryside location, in the middle of a wood, is needed. As such, I consider that the application should be refused, although I would suggest that any heritage related reasons for doing so could only be secondary at best."*

KCC Flood and Water Management – Initially stated that more information would be required however, after discussing with the Officer it was deemed that as it was a single dwelling and no significant local flood risk it would be assumed that compliance with building control regulations would ensure that drainage from the building is adequately provided. In this instance it can be classified as low risk and would not require any further consultation.

Natural England – *"Since this application will result in a net increase in residential accommodation, impacts to the coastal Special Protection Area(s) and Ramsar Site(s) may result from increased recreational disturbance. Your authority has measures in place to manage these potential impacts through the agreed strategic solution which we consider to be ecologically sound. Subject to the appropriate financial contribution being secured, Natural England is satisfied that the proposal will mitigate against the potential recreational impacts of the development on the site(s)... The consultation documents indicate that this development includes an area of priority habitat, as listed on Section 41 of the Natural Environmental and Rural Communities (NERC) Act 2006."*

KCC Ecology – *"We have reviewed the ecological information submitted in respect of this application and we advise that additional information is sought prior to determination of the planning application.*

- *Clarification on the quality of existing broadleaved woodland and how the loss of woodland from the development will be mitigated/compensated for;*
- *Clarification on the extent of ancient woodland on site (informed by further surveys if required);*
- *Further surveys along with any necessary mitigation measures for reptiles;*
- *Clarification of any impacts upon botany/invertebrates;*
- *A lighting plan indicating the extent and impacts of any new lighting on bats;*

*Any further necessary surveys, and mitigation measures, will need to be submitted prior to determination of the planning application. This is in accordance with paragraph 99 of the ODPM 06/2005 which states: "it is essential that the presence or otherwise of protected species and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision."*

KCC Highways – *"Sections of the access road are narrow and consideration should be given to widening the first 20m of the access from the highway, to allow vehicles to easily pass each other. An updated block plan should be submitted, with dimensions of the access road clearly shown. The access gates should also be amended on this drawing, to show they will be set back a minimum of 10m from the carriageway edge and open away from the highway."*

*It is noted from the Design and Access Statement that the site will be used for various activities, in addition to the animal rescue sanctuary. Clarification is needed as to the expected numbers of overall vehicle movements associated with staff and visitors to the site. Further details should be provided to clarify this, to accurately work out the necessary parking provision.*

*The applicant should note that when further plans are submitted, all parking spaces should measure 5m in length x 2.5m in width, increasing to 2.7m if they are abutting a wall, fence or soft landscaping. There should be a turning provision behind each space of 6m.*

*The applicant should confirm the total number of animals to be stored at the site and details of where they will be stored. Further details should also be provided as to how the animals and any associated deliveries of feed/equipment/supplies will be brought to the site. If large vehicles are to be used, adequate parking and turning room will be required.*

*All dwellings with off-street private parking should have an electric vehicle (EV) charging point. The applicant should also consider the provision of an additional charging point for employees and visitors use.*

*Secure, covered cycle storage is also required and this should be detailed on any further submitted plans.*

*No information has been provided regarding refuse collection and the applicant should provide further details and indicate the bin collection point on any revised drawings."*

Southern Water – *Southern Water records show a water trunk main within the development site. "The exact position of the public assets must be determined on site by the applicant in consultation with Southern Water, before the layout of the proposed development is finalised. The public water trunk main requires a clearance of 6 metres on either side of the water main to protect it from construction works and to allow for future access for maintenance.*

*No excavation, mounding or tree planting should be carried out within 6 metres of the external edge of the public water trunk main without consent from Southern Water.*

*No new soakaways, swales, ponds, watercourses or any other surface water retaining or conveying features should be located within 5 metres of a public water trunk main.*

*All existing infrastructure, including protective coatings and cathodic protection, should be protected during the course of construction works."*

KCC Archaeology – *“The applicant has provided information from the Kent HER in support of the application and we agreed prior to application that a full archaeological DBA was not needed as long as details of the impact of proposals were set out.*

*The site lies just to the south of the main London to Canterbury and Kent coast Roman road. In other areas of Swale this Roman road has been found to lie just south of the present though it is not located accurately in the present area. The area has seen little previous investigation and the site itself has been undeveloped and mainly in woodland. Cropmarks seen on aerial photographs in the general wider landscape have illustrated the presence of past landscapes and to the east lies the important Iron Age hill fort of Bigbury and a separate camp thought to be contemporary at Homestall Wood. The Scheduled WW2 radar station and its defences lie to the north east of the site. Medieval finds have been made to the east of the site.*

*The proposals involve the construction of a new building block and ancillary structures in the general north western part of the site. The building itself will be sunk into the existing ground level to reduce its visual effects.*

*Given the above I advise that there is some potential for the scheme to affect archaeology that has yet to be identified. I am satisfied that any impact can be addressed through a condition for a programme of archaeological works attached to the permission if granted.”*

Kent Police – *“DOCOS team request an informative to discuss Designing Out Crime should this application be approved.”*

KCC Public Right of Way – Public footpath ZR536 passes through the site, south of the proposed development and further south that the ‘path’ marked on the site location plan. Discussions have taken place with the applicant and SBC Tree Officer to open the footpath on its definitive alignment. This has resulted in some trees being removed under section 154 of the Highways Act 1980. No objections to the proposals.

Swale Footpaths Group – Comments were received stating that the documents had not been checked but Officers should ensure that ZR 537 would not be affected in any way. (Please note the footpath that crosses the site is actually ZR 536).

Forestry Commission – Do not object or support. Generic advice relating to Ancient Woodland provided, including note that such woodlands are irreplaceable.

## **APPLICANT’S SUPPORTING COMMENTS**

The Design & Access Statement states:

*“The siting of the building was decided upon on the basis of two criteria:*

- 1) That the land was directly in line with the existing access driveway and therefore access to the building and the provision of car parking and other facilities would cause the least disruption and least impact upon the woodland and its setting and,*
- 2) That the land chosen for the building would result in minimal loss of trees, good quality undercroft and natural habitat and*
- 3) The elevational orientation of the main building and the maintenance building both facing south allows optimum levels of sunlight to facilitate the powering of the roof mounted solar panels although some reduction or loss of that facility will be occasioned when the sun lowers below the surrounding tree canopy.*



*Additionally, the placement of the building allows that it is far enough back from the public highway to be screened from view and not to be adversely affected by noise from passing traffic although it is not so far into the woodland setting that it would cause excessive disturbance to the quietude of the woodland environment from day to day activities within and about the building. The location of the building will require the removal of some small quantity of semi mature trees and low grade undergrowth but the loss of that habitat is mitigated by the planting of new trees and habitat that will enhance and improve the woodland for future generations."*

- It is calculated that 98% of the fabric and structure of the whole development will comprise recyclable materials
- Materials as far as possible shall be sourced from local suppliers
- The concept of development is to construct a sustainable form of building within a woodland setting that will support the charity's core function in tandem with providing educational facilities in a low carbon environment whilst at the same time enhancing and increasing the bio and eco diversity of the woodland
- A woodland management scheme is in place
- The availability of a regular bus service provides ready access to the shops and services provided in Dunkirk and Boughton

## **APPRAISAL**

The key issues here are that the site lies within a blanket TPO area, outside the built confines of the village, therefore lying in the countryside for the purposes of the Local Plan, and in an unsustainable location remote from the services needed for everyday life. The Council's pre-app response has been included within the submitted documents and the applicant was informed of the sensitive nature of the site and that a strong justification would be needed to override countryside policy objection to the scheme and the removal of TPO trees.

The Council's Local Plan Bearing Fruits 2031 was adopted in July 2017 and states that development proposals will be supported in accordance with the settlement hierarchy which is set out in Policy ST3. This identifies settlements in descending order of sustainability. Locations in the open countryside outside the built up area boundaries are in the fifth tier settlement and this site is therefore ranked at the bottom in terms of where the Council wishes to direct new homes and jobs. For locations such as this policy ST3 states;

*"At locations in the open countryside, outside the built-up area boundaries shown on the Proposals Map, development will not be permitted, unless supported by national planning policy and able to demonstrate that it would contribute to protecting and, where appropriate, enhancing the intrinsic value, landscape setting, tranquillity and beauty of the countryside, its buildings and the vitality of rural communities."*

It should also be noted the built up area boundary of Boughton lies approximately 75m to the West ending at Woodside and 75m to the North ending at Stoney Road. The built up area boundary of Dunkirk lies approximately 0.3 miles to the east. Both of these built up areas are within tier 4 of policy ST3 which states that these areas will provide minor infill and redevelopment sites within the built up area boundaries where compatible with the settlement's character, amenity, landscape setting, heritage or biodiversity value.

It is noted that the Council cannot demonstrate a 5 year housing land supply (currently it is 4.6 years supply) and therefore paragraph 11(d) of the NPPF is triggered. The NPPF sets out a presumption in favour of sustainable development, an economic role, a social role and an environmental role. Whilst I acknowledge there are dwellings relatively close by at

Woodside and the listed Old Vicarage the building would be sited in an isolated position within the woodland. The Design & Access Statement says that occupants and visitors can easily reach services at Dunkirk and Boughton however, the services provided within these villages are extremely limited and services such as doctors, secondary schools and larger shops are located in the towns of Faversham or Canterbury where the occupant would more than likely be reliant on the use of a car making this an unsustainable location for new housing. With regard to public transport, there are bus stops located on Canterbury Road a few minutes walk from the site providing routes to Canterbury and Faversham, however there is no railway station. Busses are available between around 7am and 10pm running at least hourly with reduced services at weekends and bank holidays.

In order to overcome the negative pre-app response in relation to the location of the dwelling outside the built up area boundary, the scheme has been submitted as a para 79(e) proposal which states:

*“e) The design is of exceptional quality in that it:*

- Is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and*
- Would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.”*

I acknowledge that the building has been designed with sustainability in mind using local resources and materials where possible and building to a ‘Passive House’ standard however, it was explained in the pre-app advice that this would not be enough to qualify for Para 79(e). The Council’s Design & Conservation Manager has also given his opinion on the scheme which he believes has some merit but is some distance from what would be expected in para 79 of the NPPF.

I have based my Paragraph 79 Assessment on the scheme reaching the extremely high bar of para 79(e) on appeal decisions elsewhere in the Country. I have found a very recent decision which I believe is particularly relevant in this case relating to a straw bale house in Holbeach (APP/A2525/W/20/3252743). Paragraphs 14 and 15 of the Inspector’s decision state:

*“14. The appellant has argued that the appeal should be allowed as the proposal complies with paragraph 79 of the Framework regarding the provision of isolated homes in the countryside. In particular the criteria set out in 79(e). These criteria include, amongst other things, the design of the building being exceptional quality, it would help to raise the standards of design more generally in rural areas, it would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.*

*15. I do not consider the location of the proposed dwelling to be isolated. It does not therefore meet the objective of paragraph 79 of the Framework. **However, and notwithstanding the dwellings location, the house has clearly been designed to address its environmental impacts, in terms of its carbon emissions and use of resources, in its construction and use. Whilst this is a benefit, it does not in itself make the building one of exceptional quality, nor would it help raise the standards of design more generally in rural areas. Measures to limit or prevent dwellings using more resources than necessary or limiting their carbon emissions are in use on other dwellings around the country. Indeed, the appellant mentions other examples of houses constructed to the ‘Passivhaus***

***principles' in her submissions. Therefore, despite the appeal proposal adopting up to date methods of construction, energy consumption and design it is unlikely that this would help raise the standards of design more generally in rural areas as examples are available elsewhere. Even if it were in an isolated location, I therefore do not consider that the proposed dwelling would comply with the criteria in paragraph 79 of the Framework"*** (my emboldening).

I believe the application before me is extremely similar to the case above in that it has been designed to fit the topography of the site and use sustainable materials and construction techniques, but this is just not enough to qualify for an exception to Local Plan policy under para 79 of the NPPF. I have discussed the application with the Design and Conservation Manager at length and the submission does not display any innovative or exceptional design qualities which is expected within para 79(e). There is also no assurance from the submitted documents building can reach an exceptional design quality due to a lack of technical details.

Even if the design was to meet the high standards of para 79(e) the fact still remains that the development would involve the removal of a number of trees covered by a blanket TPO. I acknowledge that the location of the building in the NE corner would involve the least removal but there is absolutely no justification provided within any of the documents as to why the dwelling and animal rescue centre has to be in this location. There is no discussion of other sites that have been explored and why the applicant believes this is the most suitable, especially given the pre-application response which highlighted a number of issues regarding this site and that a strong justification would be needed for Officer's to consider the development. The Council's Tree Consultant has stated in their consultation response that whilst the woodland management scheme is supported the documents relating to the removal of TPO trees is more generic and does not explain the potential impacts that removing these protected trees could have on the woodland and biodiversity as a whole. The removal of the protected trees is in clear violation of policy DM29 of the Local Plan which seeks to protect woodland, trees and hedges.

The KCC Highways Officer requested more information regarding the development as they concluded there was not sufficient information for them to be able to ascertain the affect of the proposal on highway safety.

A number of ecological reports and surveys were submitted with the application however, the KCC Ecology Officer has stated that the reports provided are not detailed enough to enable them to raise no objection. They advise that no clear evidence has been provided that there will be sufficient measures to offset the permanent loss of priority habitat as a result of the development. Issues are also raised in relation to reptiles, invertebrates and botany which have not been included in any ecological reports even though the site is a suitable habitat.

In conclusion, this planning application seeks permission for a residential dwelling and animal rescue centre within the countryside and within protected woodland covered by a Tree Preservation Order. Even if the design of the building were to meet the test of an exceptional design under para 79 of the NPPF (and this has not been demonstrated by the submitted documents), the proposed development would in my opinion be unacceptably harmful to the setting of the woodland and would result in the loss of protected trees with no justification. Accordingly, I recommend that the application should be refused.

### **The Conservation of Habitats and Species Regulations 2017**

The application site is located within 6km of The Swale Special Protection Area (SPA) which is a European designated site afforded protection under the Conservation of Habitats and

Species Regulations 2017 as amended (the Habitat Regulations). SPAs are protected sites classified in accordance with Article 4 of the EC Birds Directive. They are classified for rare and vulnerable birds and for regularly occurring migratory species. Article 4(4) of the Birds Directive (2009/147/EC) requires Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article.

Residential development within 6km of any access point to the SPA has the potential for negative impacts upon that protected area by virtue of increased public access and degradation of special features therein. The HRA carried out by the Council as part of the Local Plan process (at the publication stage in April 2015 and one at the Main Modifications stage in June 2016) considered the imposition of a tariff system to mitigate impacts upon the SPA on developments of 10 or more units, as ultimately agreed by the North Kent Environmental Planning Group and Natural England). These mitigation measures are considered to be ecologically sound.

The recent (April 2018) judgement (People Over Wind v Coillte Teoranta, ref. C-323/17) handed down by the Court of Justice of the European Union ruled that, when determining the impacts of a development on protected area, "it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site." The development therefore cannot be screened out of the need to provide an Appropriate Assessment (AA) solely on the basis of the agreed Strategic Access Management and Monitoring Strategy measures (SAMMS), and needs to progress to consideration under an AA.

In this regard, there are likely to be impacts upon the SPA arising from this development and the Council has been expecting the need for mitigation measures to be implemented within the SPA from collection of the standard SAMMS tariff only on larger schemes (at £301 per dwelling unit to be collected via a Section 106 Agreement) and not from small developments like this.

However, the Council has recently received an appeal decision for a site elsewhere but also within 6km of the SPA, which related to the refusal of planning permission for a single dwelling on amenity grounds. This appeal was dismissed solely on the basis that the appellant did not propose to make a contribution towards mitigation of the impact of the development on the nearby SPA.

The Inspector considered the Council's approach thus far to be incorrect and has made it clear that contributions must be secured for any new dwelling. Legal advice provided since that decision concurs with the Inspector – namely that the Council should now seek mitigation contributions on all applications for new dwellings.

On the basis that they are now required, the decision to permit or refuse all such applications must now be on the basis of whether the applicant is prepared to make such mitigation payments. In this case the applicant has not offered, or been asked to, make the SAMMS contribution (now at £250.39 per dwelling) and this is a matter that will need to be addressed should an appeal be lodged.

**RECOMMENDATION** – Refuse for the following reasons for refusal:

## **REASONS**

- (1) The proposal for the creation of an animal rescue sanctuary comprising of a single storey dwelling, office, training facility and animal shelters outside the defined settlement boundary and in the countryside is contrary to national and local policy

which seeks to guide development to locations more accessible to services and amenities, and which afford the countryside long term protection. The development would also be located remotely from those services needed for everyday life such as convenience retail and health services. As such, the proposal does not represent sustainable development and would not protect the countryside for its own sake, and is contrary to policies ST1, ST3 and DM14 of Bearing Fruits 2031: The Swale Borough Local Plan and to the provisions of the NPPF. The design of the building does not in the Council's opinion meet the high bar of para 79(e) of the NPPF in regards to rural exceptions housing.

- (2) The proposed development would result in the loss of trees protected under a Tree Preservation Order and which form part of an Ancient Woodland. The woodland would be harmed both by the loss of trees and by the introduction of the proposed development into the woodland contrary to policies DM14 and DM29 of Bearing Fruits 2031: The Swale Borough Local Plan.
- (3) Insufficient information has been submitted in relation to highway safety. The Council is therefore unable to determine the risks associated with the development in relation to these matters. As such, the proposal has failed to demonstrate that unacceptable risks to highway safety would not result as part of the development contrary to Policy DM14 of Bearing Fruits 2031: The Swale Borough Local Plan.
- (4) Insufficient information has been submitted in relation to ecological impacts. The Council is therefore unable to determine the risks associated with the development in relation to these matters. As such, the proposal has failed to demonstrate that unacceptable risks to ecology would not result as part of the development, contrary to policies DM14, DM29 and DM30 of Bearing Fruits 2031: The Swale Borough Local Plan and para 175 of the NPPF.

**The Council's approach to the application**

In accordance with paragraph 38 of the National Planning Policy Framework (NPPF), February 2019 the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and creative way by offering a pre-application advice service, where possible, suggesting solutions to secure a successful outcome and as appropriate, updating applicants / agents of any issues that may arise in the processing of their application.

In this instance:

The application was considered to be fundamentally contrary to the provisions of the Development Plan and the NPPF, and these were not considered to be any solutions to resolve this conflict.

Case Officer Alice Reeves

Case Officer Sign: Alice Reeves	Date: 22/10/2020
Delegated Authority Sign: Jim Wilson	Date:22/10/20
PRINT NAME:	
TL/DM Countersign:AJeffers	Date:23/10/20

