

MC/16/3537

Date Received: 22 August, 2016

Location: 21 Victoria Street, Rochester, ME1 1XJ

Proposal: Demolition of existing building (in part) and construction of a 5 bedroomed terraced house

Applicant: Mr N Jenkins

Agent: Mr J Jenkins Stable Cottage Scragged Oak Road Detling Kent ME14 3HA

Ward Rochester East

Case Officer Chris Butler

Contact Number 01634 331700

Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 16 November 2016.

Recommendation - Refusal

- 1 The demolition of this Grade II Listed Building, in part, would result in substantial harm to the significance of 21 Victoria Street. This substantial harm has not been justified by any of the tests set out in paragraph 133 of the National Planning Policy Framework and consequently the proposal would if permitted fail to comply with:
 - A) The desirability of preserving listed buildings, their setting and any features of special architectural or historic interest which they possess as set out in Section 16(2) of the Planning (Listed Building And Conservation Areas) Act 1990 (as amended);
 - B) The requirement to provide clear and convincing justification as to why the demolition of this listed building, in part, is appropriate as required by Paragraph 132 and 133 of the National Planning Policy Framework and the requirement of Policy BNE16 of the Medway Local Plan 2003, including the requirement to demonstrate that the benefits resulting from the demolition of this heritage asset would outweigh that harm or loss of the heritage asset in terms of the nature of the heritage asset preventing all reasonable uses of the site; and demonstrating that no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and conservation

by grant-funding or some form of charitable or public ownership is demonstrably not possible; and the harm or loss is outweighed by the benefit of bringing the site back into use, as required by Paragraph 133 of the National Planning Policy Framework.

Proposal

This application seeks full planning permission for the demolition of an existing building, in part, and the construction of a new five bedroomed terraced house.

Site Area/Density

Site Area: 0.0229 hectares (ha) (0.057 acres)

Site Density: 43.7 dph (17.67 dpa)

Relevant Planning History

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| MC/16/3533 | Listed Building Consent for demolition of existing building (in part) and construction of a 5 bedroomed terraced house
Decision - Also under consideration on this planning committee agenda |
| MC/10/4377 | Application for variation of conditions 2, 3 & 5 and removal of condition 9 of Listed Building Consent MC/09/2762 (Listed Building Consent for conversion of existing building 19-21 Victoria Street from former clinic & dwelling into five 2-bedroomed units incorporating construction of a single storey rear extension to No.21)
Decision Approval With Conditions
Decided 20 January, 2011 |
| MC/10/4369 | Application for variation of conditions 2, 3 and 5 and removal of condition 8 of planning permission MC/09/2761 (conversion of existing building 19-21 Victoria Street from former clinic & dwelling into five 2-bedroomed units incorporating construction of a single storey rear extension to No.21)
Decision Approval With Conditions
Decided 20 January, 2011 |
| MC/10/3256 | Details pursuant to conditions 02, 03, 05 & 09 on Listed Building Consent MC/09/2762 for Listed Building Consent for conversion of existing building 19-21 Victoria Street from former clinic & dwelling into five 2-bedroomed units incorporating construction of a single storey rear extension to No.21
Decision Discharge of Conditions
Decided 18 October, 2013 |

- MC/10/3255 Details pursuant to conditions 02, 03 & 08 on planning permission MC/09/2761 for Conversion of existing building 19-21 Victoria Street from former clinic & dwelling into five 2-bedroomed units incorporating construction of a single storey rear extension to No. 21
Decision Withdrawn by Applicant
Decided 18 October, 2013
- MC/09/2762 Listed Building Consent for conversion of existing building 19-21 Victoria Street from former clinic & dwelling into five 2-bedroomed units incorporating construction of a single storey rear extension to No.21
Decision Approval With Conditions
Decided 8 June, 2010
- MC/09/2761 Conversion of existing building 19-21 Victoria Street from former clinic & dwelling into five 2-bedroomed units incorporating construction of a single storey rear extension to No. 21
Decision Approval With Conditions
Decided 8 June, 2010
- MC/08/0100 Conversion of the existing buildings at 19-21 Victoria Street into one 1-bed flat and four 2-bed flats together with the construction of a block of one 1-bed flat and four 2-bed flats and a block of five 2-bed flats with associated parking
Decision Refusal
Decided 06/01/2009
- MC/08/0099 Listed building consent for conversion of existing building 19-21 Victoria Street to four 2-bed flats and one 1-bed flat together with the construction of a block to the rear comprising one 1-bed flat and four 2-bed flats.
Decision Refusal
Decided 06/01/2009

Representations

This application has been advertised on site and in the press and by individual neighbour notification to the owners and occupiers of neighbouring properties.

The Ancient Monuments Society for England, The Council for British Archaeology, The Environment Agency, The Georgian Group, Historic England, Kent County Council (KCC) Archaeology, The Society for the Protection of Ancient Buildings The Twentieth Century Society, The Victoria Society, Southern Water have all been consulted

The Ancient Monuments Society for England (AMSfE) have written advising:

"The applicant's Design and Access Statement claims that the building is of "low quality" and was "originally only listed for group value." This is not the information the Heritage List gives, however. Although it is stated that the building is included for group value, it is also described as a "former service wing" to No. 21, which was originally listed together with No. 19... It is not clear why each building now has its own/separate list entry, but the fact that No. 21 was kept on the list shows that Historic England (then English Heritage) believed it deserved continued protection.

The Heritage Statement included with the Design and Access Statement states that: "[21 Victoria Street] feels out of context with its 3 storey neighbours and has differing fenestration and brick detailing to the adjoining properties. The finish to the No. 21 property is lower quality than the rest of the Victoria Street. It is clear that the building was not considered to be worthy of high quality build finish at the time of construction." There is some speculation that the building may have been "higher at one time", but no detailed analysis is given. The list descriptions states that 19 and 21 were built contemporaneously and were designed to function together. The information provided does not conclusively challenge this assertion. We suggest that an expert historic building consultant is employed to provide an analysis of the significance of No.21, as well as the contribution it makes to the significance of No.19, and its other neighbour No.23, so that the site can be better understood. It would be useful to see some reference to historic maps, which may give further information on the origins, function and development of the buildings.

A detailed heritage impact assessment should also be produced. The Heritage Statement refers to PPS5, a guidance document which was cancelled in March 2015 and replaced with the National Planning Policy Framework (NPPF). Paragraphs 132 to 134 of the NPPF set out the conditions under which harm to the significance a designated heritage asset may be deemed acceptable. In this case the harm to the listed building itself (No. 21) would be substantial (total loss) and there would also be harm to the setting of No 19. In our view the conditions listed in Paragraph 134 of the NPPF have not been met - the applicant must be able to demonstrate that the demolition of the listed building is acceptable under the terms of the NPPF."

Finally that AMSfE state that they also have concerns about the proposed new building. They advise that "...it is not clear to us why an asymmetrical arrangement has been chosen..." and go on to question whether it is really the applicant's intention to retain the existing building's façade?

The **Environment Agency** have advised that they have **no comments** to make in regard to this submission.

Historic England have **objected** to this development advising:

"21 Victoria Street is listed in its own right at grade II. It appears to be contemporary with the grade-II listed, early nineteenth-century Victoria House, to which it is attached. It is a three-cell, single-storey building with two large sash windows fronting the road, an entrance doorway directly off the pavement and a slate roof. It may initially have been used as a service wing to Victoria House, but was certainly later used as a surgery for a doctor living in Victoria House. As a group, this is an unusual and special survival, illustrating a period in which doctors' surgeries formed a part of their residences, but usually had separate entrances. The relationship between the

house and its side wing clearly demonstrates this history, as well as adding variety and architectural interest to the streetscape. A grade-II listing is therefore entirely justified. Although 21 Victoria Street has been sadly neglected in recent years, it survives well preserved and its relationship with Victoria House remains clearly legible.

The current proposal is for demolition of the majority of 21 Victoria Street and re-use of the site to form a three-storey house. It is not clear whether it would really be possible to retain the ground-floor masonry and support two storeys of masonry above, as is suggested on the application drawings; we suspect not and that the implications of the scheme are likely to be even more serious than currently suggested. In any event the scheme involves loss of almost all of the building and complete loss of its physical and historical relationship with Victoria House and the attractive variety it produces in the street scene. We therefore must conclude that the scheme constitutes substantial harm to significance and should be considered in accordance with paragraph 133 of the NPPF. In making your decision on these applications, you should also be aware that paragraph 132 of the NPPF requires that you give 'great weight' to the conservation of designated heritage assets like this one, and that any harm requires 'clear and convincing justification'. The statutory test for preserving listed buildings at paragraph 16(2) of the Planning (LBs and CAs) Act 1990 also applies.

Paragraph 133 of the NPPF requires that consent should be refused in cases of substantial harm, unless one of two sets of circumstances apply. The first is that the 'substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss'. Whilst provision of a new dwelling might be treated as a public benefit, this could not in our view be classed as a 'substantial public benefit', and in any event it doesn't seem to us to be 'necessary' to demolish, or even partly demolish, the existing building in order to achieve a new dwelling on this site.

The second set of circumstances requires that all of the following tests should apply: the nature of the heritage asset prevents all reasonable uses of the site; no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and the harm or loss is outweighed by the benefit of bringing the site back into use.

The first two of the above tests are perhaps most relevant in this case. Firstly, we have seen no evidence to suggest that the heritage asset prevents all reasonable uses of the site. There is no reason, for example, why 21 Victoria Street could not remain in use as an annexe to Victoria House. Alternatively, there has been a previous permission for this site allowing an extension to the rear of this building to form a separate single-storey residence. It has not been demonstrated, in light of the second above test, why this scheme is not viable and, if not, what the deficit is in this case. It may well be possible, for example, to make a scheme for this site viable by means of an amended version of the previous permission, albeit perhaps with more accommodation to the rear if this is demonstrably necessary to make the scheme viable. We think it is unlikely that a scheme of that sort (i.e. consisting of a rear extension to the existing range) would constitute substantial harm and therefore might be justified if it can be demonstrated to be the 'optimum viable use' for the site (see

NPPF, paragraph 134).

Historic England concludes that these applications would result in substantial harm to the significance of 21 Victoria Street, a grade-II listed building, and that this substantial harm is not justified by any of the tests set out in paragraph 133 of the NPPF. On this basis we formally object to the current application and recommend that planning permission and listed building consent should be refused..."

The applicant responded to Historic England's advice challenging some of the content of their letter of objection. The applicant advised...

Historic England were asked to reconsider their position, regarding this submission, in the light of the applicants comments mad in responding to Historic England's objection. Having reviewed their comments in the light of the applicants response, Historic England responded by advising that they maintain their objection. They note that the applicant *"...offers some helpful clarifications about the history of the site, [but] the scheme still proposes almost complete demolition of the listed building, which in our [Historic England's] view amounts to substantial harm to its significance and must therefore be considered in accordance with paragraph 133 of the NPPF. Our [Historic England's] objective here is absolutely not to prevent re-use of a site that has evidently been neglected for some time. Instead, we [Historic England] are promoting the exploration of all possible alternative solutions to find the outcome which best preserves the significance of the existing building. We [Historic England] have not seen clear and convincing justification (NPPF 132) [National Planning Policy Framework] that suggests re-use of the site in alternative, less harmful ways would not be viable..."*

Historic England has conceded "that it may now not be possible to create a link between this range and the adjacent house, but they state that they *"...can't see any reason why the existing range could not be extended to its rear to provide additional accommodation..."* and they stress that in their opinion *"...it has certainly not been demonstrated that this is not a viable alternative."*

Southern Water have written advising that a formal application for a connection to the foul sewer to be made by the applicant or developer and have requested an informative advising the applicant of this fact be included in the Councils Decision notice should Planning Consent be granted. SW have also advised the Councils to consult with building control officers/technical officers regarding the adequacy of soakaways to dispose of surface water from the proposed development and drew attention to changes to legislation which came into force in October 2011 regarding the ownership of sewers which could cross the site being deemed to be public sewers and the implications related to such sewers should they be found during construction works and the need for investigation of such sewers to ascertain its condition , the number of properties it serves , means of access, etc. They advise that such investigations would be required before any works recommence on the site. They draw attention to the need to consult with the Environment Agency as the site lies within a Source Protection Zone and have also requested the applicant be advised to contact them in the event of a planning permission being granted.

Four letters of support have been received, from neighbouring residents and businesses making the following summarised comments:

- The property has been in a terrible state for years, is virtually derelict, empty and attracts problems, such as squatters and alcoholics.
- The current building is unsightly, looks out of place and is out of character with the rest of the road. Something needs to be done;
- This property has no value as an old building and it would be better if it was knocked down and rebuilt to the same height as the properties located either side, which would improve the character of the street it is located within; and
- There is no good reason to preserve this existing structure, which is of no use;

Development Plan

The Development Plan for the area comprises the Medway Local Plan 2003 (the Local Plan). The policies referred to within this document and used in the processing of this application have been assessed against the National Planning Policy Framework 2012 and are considered to conform.

Planning Appraisal

Background

21 Victoria Street is a Grade II listed building and is located within the Rochester City Centre Conservation Area, and is in close proximity to the Star Hill Conservation Area. The properties that form Victoria Street are typically terraced with two to three storeys. There are still some shop fronts but the majority are now solely residential flats or houses. The street's buildings are of a Georgian and Victorian era and are likely to have been constructed at the time to accommodate the expanding town and High Street due to a thriving maritime industry, which would explain the mixed use which is still in evidence today.

No. 21 building is listed as part of the street frontage including Nos. 3 to 25 Victoria Street. The architectural and historic interest of the buildings relates to their value as a group, and the buildings are typical of their period. It is considered that No. 21 has a negative effect on this group value given its scale and impractical floor area for conversion.

The existing single storey building opens immediately to the pavement of Victoria Street, this access leads to a further door to the internal space or a series of steps down to the large garden. It may initially have been used as a service wing to Victoria House, but was certainly later used as a surgery for a doctor living in Victoria House. As a group, it is considered by Historic England (HE) and the Ancient Monuments Society for England (AMSfE) that this is an unusual and special survival, illustrating a period in which doctors' surgeries formed a part of their residences, but usually had separate entrances. The relationship between the house and its side wing clearly demonstrates this history, as well as adding an unusual character to the streetscape.

Despite the low level of No 21, the building feels out of context with its 3 storey neighbours and has differing fenestration and brick detailing to the adjoining properties. The historic connection of the Doctors Surgery attached to their residence may not be recognised or understood as it has been derelict for some time and therefore only acknowledged by those of a particular age or long standing appreciation of its history. The finish of the No.21 property is of lower quality than the rest of the Victoria Street. It is clear that this building was not considered to be worthy of high quality build finish at the time of construction. The relationship with No. 23 (as well as No.19), is evidenced by a blocked up door which would have led to the larger building in the past.

The only element within the development proposal which is to be retained is the front Façade, which has an aged patina and the southwest facing party wall with number 23 Victoria Street. In terms of the front Façade its character helps with its integration into the street scene. The existing internal space is small and would appear potentially to why the building has suffered no longer facilitate a practical use. Indeed the poor state of repair of the building, both internally and when viewed from the rear does not assist in this regard or from an officer level perspective add to the heritage value of either the local streetscene and the conservation area as a whole.

Principle

The site is located within the central urban area of Medway where the principle of new residential development is generally accepted, subject to the development being acceptable in all other regard and constraints. Policy H4 of the Medway Local Plan 2003 allows, amongst other criteria, for the use of vacant or derelict land or the change of use or redevelopment of existing buildings no longer required for non-residential use. However consideration also needs to be given to the acceptability of the development in regard to the developments impact on the character and appearance of the streetscene, its impact on its listed status as well as the impact on the character, appearance and setting of this listed building, the adjoining listed building, the conservation area it lies within and those conservation areas it adjoins. Consideration also needs to be given to the impact of the development on the amenities of adjoining occupiers and the acceptability of the development in terms of highways and pedestrian safety, as well as its acceptability in terms of parking provision, etc.

Listed Building/Conservation Area considerations.

These Listed Building and Conservation Area considerations have been considered in detail under the related Listed Building Consent application MC/16/3533, which is also on this agenda for Members consideration. This being the case it is not considered appropriate to repeat those considerations, within this report, other than to reiterate the fact that on the basis of the evidence submitted with the current submission that the demolition of this Grade II Listed Building, in part, would result in substantial harm to the significance of 21 Victoria Street and that the substantial harm identified has not been justified by any of the tests set out in paragraph 133 of the National Planning Policy Framework and consequently the proposal, as currently submitted, fails to comply with:

- A) The desirability of preserving listed buildings, their setting and any features of special architectural or historic interest which they possess as set out in Section 16(2) of the Planning (Listed Building And Conservation Areas) Act 1990 (as amended); and
- B) The requirement to provide clear and convincing justification as to why the demolition of this listed building, in part, is appropriate as required by Paragraph 132 and 133 of the National Planning Policy Framework and the requirement of Policy BNE16 of the Medway Local Plan 2003, including *the requirement to demonstrate that the* benefits resulting from the demolition of this heritage asset would outweigh that harm or loss of the heritage asset in terms of the nature of the heritage asset preventing all reasonable uses of the site; and demonstrating that no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and the harm or loss is outweighed by the benefit of bringing the site back into use, as required by Paragraph 133 of the National Planning Policy Framework.

Design and appearance

Irrespective of the Listed Building and Conservation Area considerations referred to above, consideration still needs to be given to the other material considerations relevant to an application of this nature. The Council's Design and Conservation team have previously been supportive of informal proposals of adding additional storeys to this building and turning the entire site into a single dwelling. In terms of the design of the proposed development it is considered that the new building has been carefully designed in its overall form and junction detail in order to integrate itself into Victoria Street and help to enhance its character and sense of place, as it will enhance the street's domestic character, which is its most prevalent historic quality. The retention of the existing front façade, and the mid terrace location has had an impact on the layout of the scheme with the footprint being positioned so as to pay due regard to the neighbouring properties and protect their views. The positioning of the proposed rooms have been considered and the main habitable spaces have been designed to reflect the current trend for open space living. If permitted the main living space would enjoy high quality natural light from the proposed orangery whilst the separation distances to the new building are already established as acceptable due to the rest of the terrace.

In terms of the proposed front facade, the fenestration is proportioned and detailed in the appropriate Georgian style and the applicants have indicated that the reclaimed materials will be sourced to match the existing building and terrace. It is clear that the applicant intends for the new building will fit seamlessly into its context from Victoria Street, and not appear to be a later addition. Clearly this will be dependant on a good choice of bricks to construct the remainder of the proposals, however, such matters can be dealt with by imposing suitably worded conditions. In terms of the rear façade, this elevation is not really visible from the public domain and can only be glimpsed, in part from Gravel Walk. However, the proposed design of the development to the rear will continue the traditional Georgian style with sash windows, but does incorporate a more modern orangery to be constructed of steel frame with charcoal finish. It is

considered that the large glazing element of the orangery will reflect its surroundings and is a common addition to many older buildings and will not look out of place with the surrounding area in general. The overall design is considered to be sympathetic to the conservation area and has been subject to a considered design approach that results in a building which is sensitive in relation to the character, appearance and functioning of the built and natural environment, being satisfactory in terms of use, scale, mass, proportion, details, materials, layout and siting; as well as respecting the scale, appearance and location of buildings, spaces and the visual amenity of the surrounding area in general. However, for the reasons set out in MC/16/3533 and briefly detailed above, all of these positive aspects do not overcome the current concerns raised in the listed building consent application or above related to the substantial harm to the listed building, as identified, not being justified on the basis of the evidence currently submitted.

Amenity Considerations

Turning to amenities of both neighbouring occupiers and the amenities of the future residents of the development, this development does raise some concerns related to potential noise issues. Victoria Street is a fairly busy through route for road traffic and there is frequently queuing of traffic at the junction with Star Hill. Future occupiers of the development may be exposed to high levels of road traffic noise, and this will require special consideration with respect to the final design and construction of the proposed dwelling house. For this reason, should planning permission be forthcoming it is recommended that a planning condition be imposed requiring a noise assessment to be undertaken, which identifies any mitigation that may be required, taking into account the fact that any solution identified will need to account for the fact that adjoining properties are listed and addressing the fact that the development site is located within a conservation area.

In terms of air quality, the site is located very close to the existing central Medway Air Quality Management Area (AQMA). Whilst an air quality assessment was not considered to be required in this instance, the Councils Environmental Protection Team considers that the site in such close proximity to the AQMA could of itself have an impact on the AQMA and therefore standard air quality mitigation will be required, in accordance with the 2016 Medway Air Quality Planning Guidance. This would usually consist of the provision of low NOx boilers and electric vehicle charging points, Etc. However, no off street vehicle parking for the development is to be provided and logistically a charging point would be difficult to provide, although as an alternative the provision of secure bicycle storage would be appropriate in this area.

In terms of the demolition and construction phases of the development amenity issues could potentially arise as a result of the development in this regard, especially for the existing/adjoining nearby residential dwellings. Noise, vibration and dusts emissions all have the potential to cause a loss of amenity and should consent be forthcoming a condition should be imposed to reduce the associated impacts through the submission of a Construction Environmental Management Plan (CEMP).

The proposed development would not introduce unacceptable levels of overlooking. No adverse impact would occur in terms of overlooking into neighbouring gardens, windows or private amenity space of properties immediately adjoining the site due to

the nature of the surrounding area and uses. No detrimental impact in terms of loss of privacy to a habitable room, private amenity space or habitable rooms of adjoining properties will occur and no objection is raised in this regard. The siting of the property, together with the window positions are considered to be acceptable and whilst the development would be seen from neighbouring curtilages, in consideration of siting, scale and orientation of the development, no objection is raised in terms of loss of outlook, impact on sunlight or daylight. Not significant detrimental impact on neighbouring amenity is considered to occur as a result of this development.

In terms of impact on the future occupants, whilst the internal layout is considered to be generally acceptable with the minimum floor space requirement for a five bedroomed eight person dwelling over three floors, two of the bedrooms would marginally fall below the internal floorspace standards, by approximately 0.06 Square Metres (SqM) per room. All of the other specified standards are complied with, as is the external private amenity standard as set out in the Councils Housing Standards. The fact that two of the bedrooms fall below the GTHS by some 0.06 SqM is not considered to be a sustainable ground of refusal in this instance. Overall, the development is considered to be acceptable in terms of amenity. As there will be no detrimental impact on either neighbouring amenity or the amenity of future occupants, this proposal is considered to be acceptable in terms of its compliance with the objectives of Policy BNE2 of the Medway Local Plan 2003.

Highways

The proposal has been considered in the light of no off street parking provision being proposed, as well as in relation to the more general highway and pedestrian safety considerations related to such a development. Whilst the Council would normally seek the provision of two off street parking spaces in relation to a development of this nature, due to the location of the site which is located in close proximity to the town centre, as well as the railway station and other forms of public transport provision no objections are raised in this instance to a nil provision of off street parking in this instance. The proposal will not result in any increase in risk to highway or pedestrian safety and in the light of these matters the development is considered to be acceptable in highways terms, as well as highway and pedestrian safety.

Turning to cycle storage. No cycle provisions have been incorporated into the submitted details and should the development be considered to be acceptable, a condition seeking details related to the proposed cycle storage should be secured.

Land Contamination

No concerns have been raised in relation to land contamination. However, the Council's Environmental Protection Officers consider that the site should be assessed for the presence of asbestos and in the light of their observations, should planning consent be forthcoming a condition requiring such an assessment to be undertaken, submitted to the Local Planning Authority and agreed in writing, Etc., should be imposed.

Archaeology

The site is located in an area of historic Rochester where archaeological remains have been previously recorded. These remains include a timber Roman building and possible cemetery and early medieval buildings to the north of the proposed development site. Should planning consent be granted them it would be appropriate to impose a Planning Condition, which requires a programme of archaeological works to be submitted to and approved in writing by the Local Planning Authority prior to any works commencing on site.

Recreational Bird Disturbance: Unilateral Undertaking

In January 2015, Natural England (NE), the Government adviser for the natural environment in England, wrote to members of the North Kent Environmental Planning Group (consisting Canterbury City Council, Dartford Borough Council, Gravesham Borough Council, Medway Council and Swale Borough Council) confirming advice that a significant effect, either along or in-combination, is likely to occur on the coastal North Kent Special Protection Areas (SPAs)/Ramsar sites from recreational disturbance on the over-wintering bird interest from new development proposals.

For clarity, this relates to development (notwithstanding the quantum of development) within 6km of the North Kent Marshes SPA/Ramsar Sites. Following this advice, NE has worked closely with the aforementioned local authorities to advise on establishing and securing the necessary strategic mitigation measures to protect the coastal SPAs and to enable development to proceed. Further advice was provided on 17 August 2015 concerning this matter. The strategic measures are in the process of being developed by the authorities, but are likely to be in accordance with the Category A measures identified in the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMM) produced by Footprint Ecology in July 2014. Whilst these measures are being developed, NE advise that it supports an interim approach that will enable development to proceed, based on the clear intention of the authorities to implement these measures. Natural England has also advised that an appropriate tariff is collected on the basis that it can be used to fund strategic measures across the Thames, Medway and Swale Estuaries. This interim tariff should be collected, for new builds, in anticipation of:

- An administrative body being identified to manage the strategic tariff collected by the local authorities.
- A memorandum of understanding or legal agreement between the local authorities and administrative body to underpin the strategic approach.
- Ensure that a delivery mechanism for the agreed SAMM measures is secured and the SAMM strategy is being implemented from the first occupation of the dwellings, proportionate to the level of the housing development.

The tariff which has been agreed across all of the local authorities and Natural England, currently stands at £223.58 per dwelling, excl. legal and monitoring officers costs which separately total £550. The applicant has agreed to this financial obligation. On this basis, no objection are raised in regards to Conservation of Habitats and Species Regulations 2010 and Policy BNE35 of the Medway Local Plan 2003, subject to the prior completion of a legal agreement, under Section 106 of the Town and Country Planning Act 1990 (as amended) to secure the Natural England

provision and related costs. The Community Infrastructure Levy Regulations 2010 provide that in relation to any decision on whether or not to grant planning permission to be made after 6 April 2010, a planning obligation (a s106 agreement) may only be taken in to account if the obligation is (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development. The obligations proposed comply with these tests for the reasons set out above, which are necessary to make the development acceptable in planning terms, directly related to the development as the development site lies within the 6km catchment zone and is fairly and reasonably related in scale and kind to the development under consideration

Local Finance Considerations

None

Conclusions and Reasons for Refusal

Whilst the development is considered to be acceptable in terms of general principle, design, amenity considerations and other material planning considerations listed above, it is clear that the information/evidence submitted that the demolition of this Grade II Listed Building, in part, would result in substantial harm to the significance of 21 Victoria Street and that the substantial harm identified has not been justified by any of the tests set out in paragraph 133 of the National Planning Policy Framework. Consequently, the proposal, as currently submitted, fails to comply with:

- A) The desirability of preserving listed buildings, their setting and any features of special architectural or historic interest which they possess as set out in Section 16(2) of the Planning (Listed Building And Conservation Areas) Act 1990 (as amended); and
- B) The requirement to provide clear and convincing justification as to why the demolition of this listed building, in part, is appropriate as required by Paragraph 132 and 133 of the National Planning Policy Framework and the requirement of Policy BNE16 of the Medway Local Plan 2003, including *the requirement to demonstrate that the* benefits resulting from the demolition of this heritage asset would outweigh that harm or loss of the heritage asset in terms of the nature of the heritage asset preventing all reasonable uses of the site; and demonstrating that no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and the harm or loss is outweighed by the benefit of bringing the site back into use, as required by Paragraph 133 of the National Planning Policy Framework.

and is recommended for refusal.

The application would normally be determined under delegated powers but is being referred to Committee due to the extent of representations received expressing a view contrary to the recommendation.

Background Papers

The relevant background papers relating to the individual applications comprise: the applications and all supporting documentation submitted therewith; and items identified in any Relevant History and Representations section within the report.

Any information referred to is available for inspection in the Planning Offices of Medway Council at Gun Wharf, Dock Road, Chatham ME4 4TR and here <http://publicaccess.medway.gov.uk/online-applications/>