

## MC/23/0038

Date Received: 6 January 2023  
Location: Land Rear Of 18 - 24 City Way Rochester  
ME1 2AB  
Proposal: Construction of a part two storey/ part three storey block of 8 flats  
with associated external works  
Applicant: Mrs Sara Daly  
Agent: TaylorHare Architects Ltd  
TaylorHare Architects Ltd  
The Cowshed  
Overland Lane  
Canterbury  
CT3 2LE  
Ward: Rochester East and Warren Wood Ward  
Case Officer: Nick Roberts  
Contact Number: 01634 331700

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**Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 25th October 2023.**

### **Recommendation - Refusal**

- 1 The proposed development would appear unacceptably dominant and cramped on the site due to the extent of the footprint and mass relative to the shallow site depth. As a result, the proposal would be detrimental to the character and appearance of the street scene and the layout of units 3 and 6, and the location of the private amenity space for unit 2 would also appear overly contrived to fit the limited space available. Consequently, the proposal would be contrary to Policies BNE1 and H4 of the Local Plan and paragraphs 126 and 130 of the NPPF.
- 2 The proposed building by virtue of its scale and mass would substantially obscure the Napoleonic Walls and fill the intentionally empty space that they define. The harm identified to the significance of the asset would be substantial and long lasting and it is not considered that the heritage benefits as outlined in the heritage statement outweigh the harm that would be caused to the heritage asset. The proposal would therefore be contrary paragraphs 199 - 203 of the NPPF.

- 3 The application fails to address the impact of the proposal on the Special Protection Areas of the Thames Estuary and Marshes and the Medway Estuary and Marshes through either the submission of details to allow the undertaking of an Appropriate Assessment or via a contribution towards strategic mitigation measures. In the absence of such information or contribution, the proposal fails to comply with the requirement of the Conservation of Habitat and Species Regulations and is contrary to Policies S6 and BNE35 of the Local Medway Local Plan and paragraphs 180 and 181 of the NPPF.

**For the reasons for this recommendation for refusal please see Planning Appraisal Section and Conclusions at the end of this report.**

### **Proposal**

This application seeks planning permission for the construction of 8 flats comprising 5 x one-bedroom units and 3 x two-bedroom units within a part two/part three storey apartment block.

Due to the shape of the site the building's footprint would be tapered with a maximum width of approx. 7.5m at the northern end of the site narrowing to approx. 3.5m at the south. The length of the building would be approx. 45m. The building would be set a minimum of approx. 1m from the retaining wall at the rear of the site, this distance would then extend to approx. 4m at the northern end to reflect the sites tapered nature. The principal elevation of the building would front directly onto the footpath with defensive space provided to the ground floor habitable windows abutting Delce Road. The building would have a flat roof with a maximum height of approx. 9.5m (three storey element) dropping down to approx. 6.3m (two storey element).

Internally the layout would comprise 2 x 1 bed flats and 1 x 2 bed flat with associated private amenity space on the ground floor, with cycle and bin storage and a communal stairwell to the flats above; 2 x 1 bed flats and 1 x 2 bed flat with private balconies on the first floor; with a 1 x 1 bed and 1 x 2 bed flat with private balconies on the second floor. The design of the building would be modern with brick detailing and recessed balconies, the proposed materials would consist of a light tone brickwork, aluminium windows and doors and bronzed metal balustrading.

Access to the block would be from Delce Road, this would be for pedestrians and cyclists only, with no vehicle parking proposed.

### **Site Area/Density**

Site Area: 0.05 hectares (0.12 acres)

Site Density: 160 dph (64 dpa)

## Relevant Planning History

MC/10/2689	Development of existing derelict land comprising part of 18 City Ways Garden to 7 flats with one retail unit with access onto Delce Road. Decision: Overturned and refused by committee Dismissed at Appeal Date: 24 November 2011
MC/10/1009	Development of existing derelict land comprising part of 18 City Ways Garden to 7 flats with one retail unit with access onto Delce Road. Decision: Withdrawn

## Representations

The application has been advertised on site and by individual neighbour notification to the owners and occupiers of neighbouring properties. Historic England, KCC Archaeology, STG Building Control and Southern Water have also been consulted.

**Six** letters of representation have been received raising the following objections.

- Scale is inappropriate for the size of the site.
- Design is monolithic.
- Heritage Impacts in terms of the setting of the Napoleonic wall.
- Impacts in terms of additional traffic and pressure on parking.
- Impact on Trees.
- Visual impact of the proposal.
- Impact during construction.

**Historic England** have advised that they are not offering advice and the Council should seek views from their specialist conservation and archaeological advisers.

**KCC Archaeology** have not formerly objected to the application but advise that the proposals will be harmful to the significance of the Napoleonic Z-shaped defensive walls. This harm arises because the new development will largely obscure the wall and because it will fill the intentionally open space that they define. They have advised that in determining this application a 'precautionary approach' is followed and in the absence of information to the contrary the surviving remains are assumed to be of schedulable quality (whereby footnote 68 of the NPPF would apply, which states that archaeological remains of demonstrable significance to a scheduled monument should be subject to the policies for designated assets). This would include the requirement to place "great weight" on the conservation of the heritage asset and to weigh the harm caused by the scheme against the public benefits of the proposal. KCC have also advised that if the Council are minded to determine the application positively and harm to the historic environment cannot be avoided, then it would be necessary to secure measures to minimise harm. Such

measures must include structural repair works and on-going maintenance, whilst options for heritage interpretation and enhancement works should also be sought.

**Southern Water Services** have advised that they require a formal application to be made for a connection to the public sewer. They have also provided general advice with respect to SuDS and their future adoption. In addition, and in the event that a sewer is found to be crossing the site, an investigation of the sewer will be required to ascertain ownership.

## **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 2023 (NPPF) and are generally considered to conform. Where non-conformity exists, this is addressed in the Planning Appraisal section below.

## **Planning Appraisal**

### *Background*

This site has been subject to a previous application back in 2010, planning reference MC/10/2689. That proposal was for two separate, two storey blocks comprising 7 flats with one retail unit with pedestrian access onto Delce Road. The Planning Committee determined to refuse that application. The applicant subsequently appealed the decision which was dismissed at appeal (APP/A2280/A/11/2157256) on the 24 November 2011. In dismissing the appeal, the Inspector concluded that the “proposed buildings would appear unacceptably dominant and cramped on the site due to the extent of their footprints and mass relative to the shallow site depth”. He also concluded that the proposal “would not make adequate provision for on-site amenity space” and that with no parking the development “would place additional pressures on local parking facilities”.

When this application was considered the Development Plan comprised the Medway Local Plan 2003 and national advice was provided via Planning Policy Guidance Notes. The NPPF was first published in 2012, and following subsequent amendments the current application would now also need to be considered alongside the NPPF 2023.

### *Principle*

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the Development Plan unless material considerations indicate otherwise.

The NPPF seeks to pursue sustainable development, in a positive way through a presumption in favour of sustainable development, unless the policies within the NPPF provide clear reasons for refusing development, or any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits (paragraph 11).

Paragraph 60 of the NPPF also seeks to significantly boost the supply of housing by bringing forward a variety of land to meet specific housing requirements. Paragraph 69 of the NPPF also refers to the important contribution small sites can make to meeting the housing requirement of an area. In addition, paragraph 119 of the NPPF states that planning policies and decisions should promote the effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Paragraph 105 also states that the planning system should actively manage patterns of growth to address transport issues and that significant development should be focussed on locations which are, or can be made, sustainable.

The application site relates to an area of unused garden land within the urban area as defined on the proposal maps to the Local Plan. Although it would technically form part of the garden to 18 City Way (and therefore would be excluded from the NPPF's definition of previously developed land), the level changes between the main garden area and the site are such that its current use is limited, with evidence of fly tipping.

Policy S1 of the Local Plan seeks to prioritise re-investment in the urban fabric, including the re-development of underused land and Policy H4 of the Local Plan promotes the best use of vacant or derelict land, and the redevelopment and infilling of existing residential areas providing a clear improvement in the local environment will result. Policy H5 of the Local Plan also supports higher density housing close to town centres, near existing public transport points or along routes capable of being well served by public transport and which are close to local facilities. This is broadly consistent with paragraph 86f of the NPPF which states that planning policies should recognise that residential development often plays an important role in ensuring the vitality of centres and encourage residential development on appropriate sites. The section of Delce Road in which the site is located is identified in the Local Plan as a Local Shopping Centre (policy R10).

In view of the above, and subject to a further assessment of design, amenity, contamination, noise, highway and heritage considerations the principle of the proposal is accepted having due regard to Policies H5, S1 and S2 of the Local Plan and Paragraphs 11, 60, 86 and 119 of the NPPF.

### *Design*

Policy BNE1 of the Local Plan states that the design of development should be appropriate in relation to the character, appearance and functioning of the built and natural environment by amongst other matters being satisfactory in terms of scale, mass, proportion, details, and materials. Paragraphs 126 and 130 of the NPPF also emphasises the importance of good design.

The application site is a long, narrow tapering parcel of unused garden land to the rear of the properties on City Way. There is a significant land level change between the application site which would front Delce Road and those properties on City Way which sit in an elevated position above the site. The street scene on Delce Road is mixed in

character, featuring predominantly two storey residential properties which include a mix of commercial uses at ground floor on the opposite side of the road. To the south the houses sit at a higher land level and behind a grassed bank which contains the remains of Delce Tower. To the north there are more traditional two storey terrace properties. The fencing along the boundary of the application site is used to display advertising boards, and beyond that are the Napoleonic defensive walls which run along the sites northern and eastern boundary. There are also a number of mature trees overhanging the site from the rear gardens of the properties on City Way.

The proposed building would occupy a significant portion of the site, with the shape of its footprint reflecting the tapered nature of the site. Although some thought has been given to ensure circulation can be provided around the back of the building for access to private amenity space and to allow for maintenance, the building would appear dominant and cramped on the site due to the scale and mass of the building relative to the depth and size of the site, and its proximity to all boundaries. This is reflected in the layout of the units and some of the private amenity spaces, particularly those located within the southern section of the site where space is limited. As a result of this the layout for units 3 and 6, and the location of the private amenity space for unit 2 do appear overly contrived to fit the limited space available.

Whilst architecturally there is no objection to the contemporary design, the use of brick detailing, and inset balconies and planting buffers to create defensible space, and a greater sense of privacy is a positive aspect of the scheme, the scale and form of the building would appear contrived in its setting and unacceptably dominant in the street scene. Generally, this would not reflect the more open and spacious character and pattern of development in the surrounding area.

Consequently, the scale of the proposal would be detrimental to the character and appearance of the street scene contrary to Policies BNE1 and H4 of the Local Plan and paragraphs 126 and 130 of the NPPF.

In the context of the previous proposal dismissed by the Inspector the two blocks were set over two storeys, with building heights varying between approx. 5.8 – 6.5m (stairwell projecting to approx. 7m). The length of the respective blocks measured approx. 29m (larger block) and 15m (smaller block) respectively. In comparison and under the current proposal the block would extend up to three storeys for a large part, before dropping down to two storeys and, as a result, the height of the building would now extend to approx. 9.5m falling down to approx. 6.5m at the two-storey element. The total length of the building would also be a continuous block with a width of approx. 45m. The building proposed under this current application would therefore appear more dominant, as it would be taller and of a greater mass.

### *Amenity*

There are two main amenity considerations, firstly the impact of the proposed new apartment block on neighbours and secondly the living conditions which would be created

for potential occupants of the development itself. Policy BNE2 of the Local Plan and paragraph 130 of the NPPF relates to the protection of these amenities.

### Neighbouring Residential Amenity

The difference in land levels between the site and the nearest residential properties in City Way, combined with a minimum distance between of approx. 24.5m - rear elevation to rear elevation (with the exception of 18 City Way) - is such that there will be a minimal impact on the light and outlook of these existing properties. Although the apartment block would also have a visual presence when viewed from the rear gardens and rear facing habitable room windows of the residential properties on City Way, by virtue of the land level difference it would only sit approx. 2.7m above the height of the existing rear fences. As such, and when also considering the lengths of the gardens of these properties and the associated separation distances from rear elevation to rear elevation, the development would not be considered overbearing. The layout of the second-floor flats is also such that there would be no habitable room windows located within the rear elevation, and therefore this would not present any concerns with regard to overlooking. Similarly, the proposed sections would indicate that the rear facing habitable rooms serving the proposed first floor would be below the height of the neighbouring fences.

18 City Way itself is owned and occupied by the applicant as a nursery. But it is still relevant to consider what impact on its amenity the development might cause. This property would be much closer to the proposed development than other neighbouring properties. However the difference in land levels and the boundary treatment would still be sufficient to prevent any significant impact in terms of light, outlook and privacy. As this is also occupied as a commercial premises it would also be less sensitive in terms of amenity impact in comparison to a dwelling. While the development of the site could also cause some increase in levels of activity and therefore noise, this would not be any greater than might be expected in a busy mixed-use area and therefore would not have any significant detrimental impact on neighbouring properties.

Due to the proximity of neighbouring properties and the potential for nuisances to be caused during the construction phase a Construction Environment Management Plan would be required and would have been secured as a condition if approval had been recommended. Subject to the condition as set out above no objection is raised with regards to Policy BNE2 and paragraph 130 of the NPPF.

### Amenity of Future Occupiers

The proposed new dwellings have been considered against the technical housing standards - nationally described space standard dated March 2015 (the national standard). Below is a table showing the proposed floorspace for each dwelling based on the number of bedrooms and number of bedspaces in comparison to the Technical Housing Standards Nationally Described Space Standard.

	Number of bedrooms and bed spaces	National Standard (m <sup>2</sup> )	Proposed (m <sup>2</sup> )
Unit 1	2 Bed 3 Person	61	64
Unit 2	1 Bed 2 Person	50	51
Unit 3	1 Bed 2 Person	50	51
Unit 4	2 Bed 3 Person	61	65
Unit 5	1 Bed 2 Person	50	50
Unit 6	1 Bed 2 Person	50	57
Unit 7	2 Bed 3 Person	61	65
Unit 8	1 Bed 2 Person	50	59

The table demonstrates that the proposed flats would either meet or exceed the requirements of the national standard. In addition, the bedrooms would also meet the national standards area and width requirements and all habitable rooms would be provided with suitable outlook.

As guidance, the Medway Housing Standards (interim) November 2011 (MHDS) also states flats should have access to 5m<sup>2</sup> of private outdoor space in the form of a patio, terrace or balcony. Where it is not suitable to provide balconies, patios or terraces, amenity needs should be met with an internal space of the same size. All of the flats would be provided with either a courtyard garden area or balcony in accordance with the MHDS guidance. Furthermore, the site is located in a highly accessible location and within easy walking distance to public open space, including Jackson's Field which is an approx. 1–2-minute walk.

Although it is acknowledged that due to the land level differences between City Way and Delce Road that the private amenity areas for the ground floor units would sit adjacent to a large retaining wall which in turn would impact daylight provision, when taking into account that this a flatted development, and that this space could create a more enclosed intimate courtyard experience with the historic wall in the backdrop, on balance no objection is raised. In addition, the internal layout of the flats has been organised to ensure that the main habitable rooms would all have windows fronting Delce Road to ensure adequate outlook and daylight provision can be achieved.

A secure refuse storage area is also proposed at ground floor street level adjacent to the stairwell. It is considered that the area proposed would be sufficient to provide adequate refuse storage for future occupants.

In view of the above the proposal is therefore in accordance with Policies BNE2 and H4 of the Local Plan and paragraph 130 of the NPPF.

### *Noise*

The application has been submitted with an Acoustic Assessment (Ref; P1509/01, dated July 2022). The acoustic report concludes that the proposed glazing specification will need to ensure that the internal noise levels in habitable rooms remain within the desired

design criteria of BS8233:2014: Guidance on Sound Insulation and Noise Reduction for Buildings. Alternative ventilation will also need to be installed either in the form of individual ventilators to each of the habitable rooms or a whole building system or other specialist system, to provide adequate rapid ventilation. The installed units must not give rise to an increase in internal noise levels over the desired internal noise level values. External levels will also be below the limit level of 55dB LAeq,T provided by BS 8233:2014 in at least part of the space for apartments 2 and 3 and below the more stringent desirable level from BS 8233:2014 of 50dB LAeq,T in apartment 1 private garden and the external circulation areas for apartments 2 and 3.

Following consultation with the Environmental Protection Team and following their assessment of the submitted acoustic report they raise no objections to the proposal subject to conditions to ensure acceptable noise levels within the development are maintained to protect residential amenity should approval be recommended. This would also include a scheme of internal sound insulation between the separate flats.

Consequently, no objection is raised with regards to Policy BNE2 of the Local Plan and paragraph 185 of the NPPF.

### *Contamination*

The application has been submitted with a Phase 1 Environmental Assessment Report (Ref; 12893, dated August 2022). The report is in line with current guidance and recommends a further intrusive investigation based on the findings which concludes there is potential for contamination on the site. This is on the basis that the proposed end use is sensitive, being residential. Subject to the imposition of conditions requiring a more intrusive investigation, including a remediation strategy to deal with the potential risks associated with any contamination and a subsequent verification report no objection is raised in regard to Policy BNE23 of the Local Plan and paragraphs 183 and 184 of the NPPF.

### *Highways*

Policy T13 of the Local Plan states development proposals will be expected to make vehicle parking provision in accordance with the adopted residential parking standards. Paragraph 111 of the NPPF assert that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

In accordance with the Councils adopted residential parking standards a development of this size would require a total of 12 parking spaces (including visitors). However, the standards do state that reductions will be considered if the development is within an urban area that has good links to sustainable transport and where day-to-day facilities are within easy walking distance. The application is proposed as a 'car free development', however, and although parking is restricted to a maximum of 2 hours Monday – Saturday between the hours of 8am – 6pm on Delce Road, there are a number of neighbouring roads within

close proximity of the site that do not have any parking controls in place such as Ross Street, James Street, St Peter Street, Church Street, Queen Street and Fort Street. A car parking stress survey was undertaken which demonstrated of the roads assessed where parking is unrestricted, all but one road (Fort Street Zone 4) exhibited parking stresses of across 1 of the days surveyed. As such concerns were raised by the Councils Transport Planner that should the future occupiers of the development own a vehicle this could exacerbate existing pressures.

In response to these comments the applicant submitted a Transport Technical Note (dated May 2022) and an additional Technical Note (dated May 2023). The Technical Note demonstrates that the site is accessible to a number of retail, commercial, community and public transport services which are within walking distance including Rochester High Street and railway station. The section of Delce Road in which the site is also identified in the Local Plan as a Local Shopping Centre which contains day to day facilities including a Co-Op, Londis, chemist and the Rochester Healthy Living Centre. In addition, the development is also served by the 145-bus service, with a bus stop immediately adjacent to the site, and the development also proposes secure cycle parking on site.

In these circumstances and when taking into account the limited number of units proposed and the highly sustainable location of the site, on balance a car free development is considered acceptable. However, and had approval been recommended, this would have been subject to a condition requiring the submission of a package of details that would have been put in place to promote sustainable modes of transport for the new residents.

In view of the above, and with the aforementioned condition no objection is raised under Policy T13 of the Local Plan and paragraph 111 of the NPPF.

### *Archaeology and Heritage*

The retaining wall to the sites northern and eastern boundaries formed part of the Napoleonic Z-shaped defensive walls which in turn was part of a wider network of defences on the southern side of Chatham. These defensive works at the Delce include the buried (and partially upstanding) remains of a defensive guardhouse (gun tower) and its flanking walls, erected in the period 1804 to 1812. As with other works at Chatham, the fortifications at the Delce were built in brick, and were a direct response to the threat of invasion by the armies of Napoleon.

The defensive works at the Delce therefore form part of a wider group of 'Napoleonic' period fortifications at Chatham which are collectively of outstanding significance. Major surviving elements of the defences have been designated, including Fort Pitt and Fort Clarence. However, and although, the defensive remains at the Delce are not designated this does not mean that they are not of national importance.

The application is accompanied by a Heritage Asset Assessment (ref; NGR: TQ 74635 67809, Issue 1) by Oxford Archaeology (OA). Although the OA report provides some useful information, it does not appear to reach a firm position on the significance of the remains at the site. The OA report notes that the removal of vegetation, advertising hoarding and a later terrace would “more clearly define the historic form of the defensive walls”. However, the construction of a new building would then obscure the walls and fill the intentionally empty space that they define. This would be harmful to any future aspiration to better enhance or reveal the significance of the ‘Napoleonic’ period defences at the Delce.

The OA report suggest that the proposed development would not have any impact on the setting of the former Delce Tower. Following consultation with Kent County Councils (KCC) Archaeology Officer they have confirmed that they do not agree with this conclusion, as the remains of the tower and the associated defensive walls were designed to function together. The construction of new development in what was intended to be open-space would harm an ability to understand how the tower was designed to function defensively, including close-defence against infantry. It must therefore stand that the proposed development (taking account the changes that have already occurred) would further impact the setting of the remains of the Delce Tower.

Whilst the precise significance of the remains at the Delce are not currently fully appreciated it is possible that the remains of the Delce Tower and the associated walls and other features might be of national importance. Future works to further enhance and reveal what remains of the tower could demonstrate this to be the case. Although the site is not nationally designated, due to the potentially national importance of the remains of the heritage asset, and in the absence of information to the contrary the surviving remains are assumed to be of schedulable quality (whereby footnote 68 of the NPPF would apply, which states that archaeological remains of demonstrable significance to a scheduled monument should be subject to the policies for designated assets). This would include the requirement to place “great weight” on the conservation of the heritage asset and to weigh the harm caused by the scheme against the public benefits of the proposal.

The OA report suggests that remedial works to the wall, including structural repair works and on-going maintenance would be a public benefit. Maintenance and repair of the walls would be a positive outcome, however as retaining structures one would expect there would be an incumbent duty on the landowner to carry out a level of on-going maintenance irrespective of whether or not the site is developed.

Similarly, the OA report notes that the removal of intrusive elements and revealing the wall would be a heritage benefit. However, as previously mentioned, this benefit would be substantially undone through the construction of a three-storey building in front of the wall. Additionally, some of the benefits stated with the OA report such as removing the advertising hoardings, clearance of vegetation and tidying up of the site could be secured without the development.

Whilst works that enhance understanding of the defensive remains, through better revealing significance and through interpreting and promoting what is there would be a heritage benefit, the NPPF requires a balanced judgement having regard to the scale of any harm or loss and the significance of the heritage asset. In the case, of this application the harm identified to the significance of the asset would be substantial and long lasting. This feeds into the balance of considerations as set out in the planning balance below.

Paragraph 195 of the NPPF states that LPA's should identify and assess the particular significance of any heritage asset that may be affected by a proposal (*this has been done -see above*) . They should take this into account when considering the impact of a proposal on a heritage asset to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.

Para 197 says that in determining applications LPA's should take account of the desirability of sustaining and enhancing the significance of heritage assets....

Para 199 states that when considering the impact of a proposed development on the significance of a designated heritage asset great weight should be given to the asset's conservation. This is irrespective of whether the harm amounts to substantial, total loss or less than substantial.

Para 200 goes further and states that any harm to or loss of the significance of a designated heritage asset should require clear and convincing justification. Substantial harm of (b) assets of the highest significance such as scheduled ancient monuments should be wholly exceptional. In this respect, the Committee needs to consider the comments of the KCC archaeological officer referred to and the importance of footnote 68 of the NPPF.

Para 201 says that where a proposal will lead to substantial harm to a designated heritage asset the application should be refused unless it can be demonstrated that the harm is necessary to achieve significant public benefits that outweigh that harm.

Para 202 similarly says that where the harm is less than substantial it must still be weighed against the public benefits of the proposal.

Para 203 says that the effect of an application on the significance of a non-designated heritage asset should be a consideration in the balance of considering a proposal. *Note here that it is considered that footnote 68 applies and in this respect the wall should be considered as a designated asset.*

It is therefore concluded that the proposal conflicts with the above paragraphs of the NPPF.

Although the Council are aware that these conclusions differ from those reached under the previous appeal, this reflects a greater understanding of the defences at the Delce, how they relate to the evolution of contemporary defences in the Medway and elsewhere.

Furthermore, the development proposals in terms of scale, layout and mass are materially different and therefore this new scheme would need to be assessed on its individual merits.

### *Trees*

An Arboricultural Report (Ref; TSR 01, dated September 2022) has been submitted with the application. A total of 2 individual trees and 2 groups of trees were surveyed. Multiple small trees and shrubs occupy the site, however as none of these would meet the minimum diameter requirements to be considered these were not surveyed. There are also trees to the north, however, and according to the survey they are not affecting the site due to the root barrier zones and small canopy spreads. Trees were inspected using visual observation from ground level only. According to the Councils records none of the trees within the application site or within the rear gardens of the properties on City Way are protected by a Tree Preservation Order. Although Tree Group 1 would need to be removed to facilitate the proposed development they have been classified as trees of low quality (Category C). While it is acknowledged that this group of trees do have a visual presence in the street scene, their amenity value is somewhat impaired by the existing advertising boards fronting Delce Road. Furthermore, Trees T01, T02 and Group G02 which would be of higher quality (Category B) would be retained and by virtue of their elevated position above the existing retaining wall would still have a strong visual presence in the street scene. The retaining wall dividing the neighbouring sites would also act as complete root barriers, and therefore no additional root protection would be required to protect these retained trees.

In view of the above no objection is raised in respect to Policy BNE43 of the Local Plan and paragraph 131 of the NPPF.

### *Flood Risk*

The site lies within Flood Zone 1 according to the Environment Agency mapping and therefore has a low probability of river or sea flooding. Furthermore, the site is not considered to be at risk of surface water flooding. Subject to conditions, had approval been recommended, requiring further information with respect to sustainable drainage principles, a construction surface water management plan and a drainage verification report no objection is raised in regard to Policy CF13 of the Local Plan and paragraph 167 of the NPPF.

### *Climate Change and Energy Efficiency*

The application has been submitted with a Climate Change Statement which can be summarised as follows:

- The design team will consider the building fabric and how it will achieve and/or exceed the U-Values set out in the updated (2022) Part L of the Building Regulations.

- Consideration will be given to the architectural detailing of air permeability and thermal bridging, ensuring air tightness of the building and that the building's thermal envelope is maximised.
- Excessive mechanical cooling will be prevented, the proposed building should provide natural ventilation where practical through operable windows and trickle vents.
- Overheating would be addressed by recessing the glazing into the building's facade or using low emissive coatings on the glazing.
- The source of energy for each of the dwellings (e.g., boiler and associated equipment) should be as efficient as possible with the heating controlled through use of programmer, individual room thermostats and TRVs.
- The proposed development is to comply and/or exceed the water usage for new dwellings as set out within Part B of the Building Regulations.
- The proposed development is to have a waste management strategy that is based on the sustainable management of waste throughout the stages of site preparation, construction and occupation.
- To ensure the recycling levels are maximised during the lifetime of the proposed development, the occupied dwellings (post construction) will be provided with adequate storage for recyclable materials.
- The application site is within a highly sustainable location that justifies that no onsite parking.

Further details of these measures would have been requested as a condition if planning permission is granted in accordance with paragraph 154 of the NPPF.

### *Bird Mitigation*

As the application site is within 6km of the North Kent Marshes SPA/Ramsar Sites, the proposed development is likely to have a significant effect, either alone or in-combination, on the coastal North Kent Special Protection Areas (SPAs)/Ramsar sites from recreational disturbance on the over-wintering bird interest. Natural England has advised that an appropriate tariff of £314.05 per dwelling (excluding legal and monitoring officer's costs, which separately total £550) should be collected to fund strategic measures across the Thames, Medway and Swale Estuaries. This tariff should be collected for new dwellings, either as new builds or conversions (which includes HMOs and student accommodation).

These strategic SAMMS mitigation measures are being delivered through Bird Wise North Kent, which is the brand name of the North Kent Strategic Access Management and Monitoring Scheme (SAMMS) Board, and the mitigation measures have been informed by 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. Further information regarding the work being undertaken is available at The Bird Wise website which can be found at <https://northkent.birdwise.org.uk/about/>

Although the applicants have previously agreed in principle to pay this tariff should the application be approved, means of securing this contribution have not been received. The applicant should be aware that in the event of this application being refused a completed unilateral undertaking or SAMMs Mitigation Contribution Agreement should be submitted as part of any appeal documentation if an appeal is lodged.

*Presumption in Favour of Sustainable development and the Overall Planning Balance (Having Regard to the Council's Position on its Five-Year Land Supply)*

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise.

The Council cannot demonstrate a five-year supply of housing land sought by paragraph 74 of the NPPF. There is therefore a significant need for new housing in the Medway area, and as the development proposed would create new housing, the presumption in favour of sustainable development as set out in Paragraph 11(d) of the NPPF is engaged. Paragraph 11(d)(ii) applies which states that:

- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>8</sup>, granting permission unless:
  - 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.

Footnote 8 of the NPPF states that 11(d) also includes for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 74); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years. As of January 2021, the Council had only delivered 67% of its target number of dwellings in the preceding 3 years (Medway Housing Delivery Test Action Plan, July 2022).

As identified earlier within this report, and for the reasons set out in the relevant headings above, it is considered that this proposal would cause harm to the character and appearance of the area and to the significance of a heritage asset. These adverse impacts would be significant and long lasting and, in both respects, would create conflict with the NPPF. **Substantial weight is attributed to this harm.**

The Government's objective is to significantly boost the supply of housing and the proposal would provide 8 new homes in an urban location with adequate access to services. The proposal would also have a small short-term economic benefit during its construction phase and a small long-term economic benefit through extra households

using local services. **Modest weight is assigned to those benefits.** Although the proposal would also generate additional revenue through Council Tax payments this would be used to pay for services required by new residents. As such this would not amount to a benefit.

Paragraph 69 of the NPPF refers to the important contribution small sites can make to meeting the housing requirement of an area. Paragraph 119 of the NPPF explains that planning decisions should promote an effective use of land in meeting the need for homes while ensuring healthy living conditions, amongst other things. Paragraph 126 of the NPPF states the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve, with good design being a key aspect of sustainable development. Paragraph 130 of the NPPF advises that planning decisions should ensure that developments will function well and add to the overall quality of the area and are visually attractive and sympathetic to local character and optimise the potential of sites to accommodate an appropriate amount of development, amongst other things.

Taking all matters raised into account, the adverse impacts of the proposal would significantly and demonstrably outweigh its benefits, when assessed against the policies in the NPPF taken as a whole.

#### *Local Finance Considerations*

None relevant.

#### **Conclusions and reasons for Refusal**

The proposed development would appear unacceptably dominant and cramped on the site due to the extent of the footprint and mass relative to the shallow site depth. As a result, the proposal would be detrimental to the character and appearance of the street scene. The layout of units 3 and 6, and the location of the private amenity space for unit 2 would also appear overly contrived to fit the limited space available. Consequently, the proposal would be contrary to Policies BNE1 and H4 of the Local Plan and paragraphs 126 and 130 of the NPPF.

The proposed building by virtue of its scale and mass would substantially obscure the Napoleonic Walls and fill the intentionally empty space that they define. The harm identified to the significance of the asset would be substantial and long lasting and it is not considered that the heritage benefits as outlined in the heritage statement would outweigh the harm that would be caused to the heritage asset. The proposal would therefore be contrary paragraphs 199 – 203 of the NPPF.

The application would normally be determined under delegated powers but is being referred for Committee determination at the request of the Chief Planning Officer in light of the site's previous history.

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## **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 on Medway Council's Website <https://publicaccess1.medway.gov.uk/online-applications/>