

4.1 20/00992/FUL

Revised expiry date 18 September 2020

Proposal: Demolition of existing house at No.17 Egerton Avenue and clearance of commercial buildings at Former Egerton Nursery and development of 35no. 2, 3 & 4 bedroom houses with associated access and parking including on-site provision of 14no affordable homes.

Location: 17 Egerton Avenue And The Former Egerton Nursery, Hextable, KENT BR8 7LG

Ward(s): Hextable

**Item for decision**

This application has been called to Committee by Councillor Kitchener and Councillor Hudson so that the special circumstances regarding shortfall of housing supply and the relevance of the emerging local plan can be considered.

**RECOMMENDATION:** That planning permission be REFUSED for the following reasons:

The proposals, by reason of the quantum of development proposed and the consequent scale, massing and height and spread of development, would represent inappropriate development in principle which would also be harmful to the openness of the Green Belt and also to the open character of the Green Belt. In addition only a portion of the land is lawful previously developed land. The very special circumstances advanced do not outweigh the harm to the Green Belt and other harm identified. The proposals are therefore contrary to the National Planning Policy Framework, policies L08 and SP1 of the Core Strategy, policy EN1 of the Allocations and Development Management Plan and guidance contained within the Sevenoaks Council Development in the Green Belt Supplementary Planning Document.

The proposals, by reason of the layout and density of development, particularly towards the southern portion of the site, would fail to reflect the semi-rural and open setting of the site and would be seriously detrimental to the established spatial character of the area. As such, the proposals are contrary to Government advice in the form of the National Planning Policy Framework and policy SP1 of the Council's Core Strategy and policy EN1 of the Allocations and Development Management Plan.

In the absence of a completed legal agreement to secure on site provision of affordable housing, the proposed development would be contrary to policy SP3 of the Council's Core Strategy and Affordable Housing SPD and the National Planning Policy Framework.

## National Planning Policy Framework

In dealing with this application we have implemented the requirements in the National Planning Policy Framework to work with the applicant/agent in a positive, proactive and creative way by offering a pre-application advice service; as appropriate updating applicants/agents of any issues that may arise in the processing of their application and where possible and if applicable suggesting solutions to secure a successful outcome. We have considered the application in light of our statutory policies in our development plan as set out in the officer's report.

### Description of site

- 1 The application site is located at the southern edge of Hextable. Apart from no.17 Egerton Road and its rear garden, the site in its entirety is located within the Green Belt.
- 2 Abutting the site to the west is an area of woodland, to the south are open fields and to the east are extensive gardens to neighbouring houses.
- 3 The site formerly comprised an extensive area of largely open land used as nursery gardens. Approximately 10 years ago there appears to have been some 4 buildings on the site, with limited numbers of containers and open storage located roughly centrally within the site. However, much of the site retained an open appearance.
- 4 More recently, a large polytunnel has been erected and within the last 3-5 years, use of the site appears to have changed dramatically, with a large number of other structures appearing on site. These include a significant number of storage containers, with the site also clearly being used intensively for storage/valeting and some maintenance of cars. The uses now extend over the majority of the site.

### Description of proposal

- 5 Demolition of the existing premises and subsequent residential development comprising of the construction of 35no. 2, 3 & 4 bedroom houses with associated access and parking. The proposals include the provision of 14 affordable housing units and a legal agreement is being drafted to secure this.
- 6 Access to the site would be gained via Egerton Avenue, but in a location currently occupied by no.17, which would be demolished in the process. The access would then run south into the site for approximately 60m, leading to a small, off-set, roundabout and then onwards a further 100m towards the southern portion of the site. The closest buildings would be set approximately 15m to the rear of no.19 Egerton Avenue and approximately 17m to the rear of no.13.
- 7 The dwellings would comprise a mix of semi-detached and detached dwellings, with 2 terraces of 3 houses. Some would have open forecourt

parking and some car ports or garages. The rear (southern-most) end of the site would incorporate an open green, surrounded by housing. The southern boundary would comprise a row of detached 4 bed houses.

8 The buildings would all be two storey in scale, with a variety of designs and materials, but predominantly concrete roof tiles with brick elevation, with some limited tile hanging and weatherboarding.

9 **Relevant planning history**

90/01653	Change of use of an agricultural building to storage	Grant 5.4.91
02/00424/LDCEX	Storage and distribution and the parking of commercial vehicles and trailers	Grant 10.7.02
03/01079/OUT	Erection of 54 self-contained retirement houses, community centre, garaging and parking, revalidated on 6/8/3 after receiving additional Certificate B regarding land not in applicants ownership	Withdrawn
03/01714/LDCPR	Resurfacing of existing yard.(Split decision see notice)	Split 26.8.03
03/02440/LDCPR	Extension to existing building. Replacement of storage containers in connection with use of buildings at the site.(SPLIT DECISION)	Split 3.12.03
03/02489/OUT	Erection of 54 self-contained retirement houses, community centre. Garaging and parking. (Outline)	Refused 9.1.04
05/00586/OUT	Erection of 5 No detached 5 bed houses (Outline).	Withdrawn
07/00991/FUL	Erection of Polytunnels and Facilities Building (Plot A)	Refused 17.5.07
07/00998/FUL	Erection of Polytunnels and Facilities Building (Plot B)	Refused 17.5.07
07/00999/FUL	Erection of Polytunnels and Facilities Building (Plot C)	Refused 17.5.07

07/01001/FUL	Erection of packhouse/warehouse and polytunnels. (Plot D)	Refused 17.5.07
07/01395/FUL	Erection of 3 polytunnels on Plot D2	Granted 16.11.07
08/01240/FUL	Erection of Potting & packing store/WC/mess area/office building and x2 polytunnels on site of former glasshouses on cleared and levelled land	Grant 30.12.08
09/02688/FUL	Erection of a facilities building and polytunnels to serve the horticultural use of the nursery at Plot B.	Grant 21.1.10
09/02689/FUL	Erection of a facilities building and polytunnels to serve the horticultural use of the nursery at Plot C.	Grant 21.1.10
09/02722/FUL	Erection of a facilities building and polytunnels to serve the horticultural use of the nursery at Plot D	Grant 21.1.10
10/03533/FUL	Erection of a facilities building and polytunnels to serve the horticultural use of this plot as a replacement for the original glasshouse at Plot B.	Grant 9.3.11
10/03534/FUL	Erection of a facilities building and polytunnels to serve the horticultural use of Plot C.	Grant 9.3.11
10/03535/FUL	Erection of a facilities building and polytunnels to serve the horticultural use of Plot D as a replacement for the original glasshouse at Plots D1 and D2.	Grant 9.3.11
11/01997/LDCPR	Use of toilet block for storage purposes	Refused 4.10.11
11/02007/FUL	Erection of a toilet/shower block to serve the lawful commercial and horticultural uses on the site, provision of a connection to public sewer and upgrading of access road at Egerton Nursery	Refused 10.11.11

12/01285/LDCPR	Use of building for storage purposes	Grant 15.6.12
13/00384/FUL	Demolition of existing storage building	Refused 5.4.13
13/01199/FUL	Replacement of existing storage building, with a new storage building to serve business use.	Grant 13.6.13
19/02017/FUL	Demolition of the existing premises and subsequent residential development comprising of the construction of 43no. 1 & 2 bedroom apartments and 2, 3 & 4 bedroom houses with associated access and parking including the onsite provision of 17no. 'affordable' housing units	WITHDRAWN 8.11.20

## Policies

### 10 Core Strategy:

- LO1 Distribution of Development
- L08 The Countryside and the Rural Economy
- SP1 Design of new Development and conservation
- SP2 Sustainable Development
- SP3 Provision of Affordable Housing
- SP5 Housing Type and Size
- SP7 Density of Housing Development
- SP8 Economic Development and Land for Business
- SP11 Biodiversity

### 11 Allocations and Development Management Plan (ADMP):

- SC1 Presumption in Favour of Sustainable Development
- EN1 Design Principles
- EN2 Amenity Protection
- EN5 Landscape
- EMP5 Non-Allocated Employment Sites
- T1 Mitigating Travel Impact
- T2 Vehicle Parking
- GI1 Green Infrastructure and New Development

- 12 Other:
- National Planning Policy Framework (NPPF)
  - National Planning Policy Guidance (NPPG)

### Constraints

- 13 The site lies within the following constraints -
- Number 17 only within built confines of Hextable.
  - Rest of site within Green Belt.

### Consultations

- 14 Hextable Parish Council:
- 15 “Hextable Parish Council strongly support this development, as it is broadly in line with the pending local plan for providing sites for housing, and suits the overall residential environment of Egerton Avenue.
- 16 The current site use of the formal nursery is not compatible with the immediate surrounding area.
- 17 In supporting this application, we have a number of areas that we request the Planning Officer considers carefully when determining this.
- 18 Consideration of a temporary trackway for construction traffic accessed from Main Road to the rear of the site to minimise it going through Egerton Avenue.
- 19 Sensible constraints on construction times. Consideration of the provision of future Infrastructure requirements such as future medical provision and school places.
- 20 Provision for adequate parking for the properties.
- 21 HPC would like to work with the developer for opportunities to maximise the benefit for the village of CIL contribution.”

### Planning Policy:

- 22 “Thank you for consulting Planning Policy on this application.
- 23 The key strategic planning policy issues are considered to be:
- Green Belt
  - Lawful use / Previously Developed Land
  - Provision of affordable housing
  - Emerging Local Plan
  - Loss of the existing use

- 24 This proposal seeks to redevelop a former nursery/commercial site on the edge of Hextable village into a 35 unit residential development.

### **Green Belt:**

- 25 The site (excluding 17 Egerton Avenue) is located in the Metropolitan Green Belt, within the narrow strategic gap that separates Hextable and Swanley. The site abuts the edge of Hextable's urban confines. Hextable is identified as a village in the District's settlement hierarchy (as identified in Core Strategy Policy LO7), and is one of the largest villages in the District, which can support infilling and redevelopment on a small scale.
- 26 This site lies within the Green Belt and the Core Strategy states 'the extent of the Green Belt will be maintained' (Policy LO8).
- 27 However, the Council recognises the acute housing need in the District and has proposed a number of green belt releases in the emerging Local Plan. Part of the site is a draft site allocation (ST2-59 Egerton Nursery, Egerton Avenue, Hextable) within the Local Plan, for 30 units. It is noted that the emerging Local Plan is no longer at examination since the Inspector's final report (2 March) concluded that the Plan is not legally compliant in respect of the Duty to Co-operate and recommended that the Plan is not adopted. The District Council is currently pursuing legal action in the form of a Judicial Review, but it remains the case that the District is facing huge housing need and will continue to support the release of Green Belt in sustainable and suitable locations, to provide community infrastructure and to help meet identified housing, including affordable housing need. Nevertheless, limited weight can be given to the emerging plan since it is no longer at examination and therefore the scheme must be considered in light of existing adopted policy, both local and national.

### **Lawful use / Previously Developed Land:**

- 28 National Policy (specifically NPPF paragraph 145g) outlines that the redevelopment of previously developed land is not inappropriate development in the Green Belt, provided that the scheme
- does not have a greater impact on the openness of the Green Belt than the existing development
  - does not cause substantial harm to the openness of the Green Belt, where the scheme contributes to meeting an identified affordable housing need.
- 29 The NPPF glossary defines previously developed land (PDL) as:
- "Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure..."

- 30 It is noted that Previously Developed Land (PDL) also excludes land that is or was last occupied by agricultural buildings.
- 31 Therefore, it is relevant to determine whether the site is PDL, to understand whether paragraph 145g) is relevant.
- 32 It is noted that the 2018 aerial photograph of the site shows that the uses on the southern half of the site are temporary, primarily being the placement of storage containers and the parking of vehicles, with no visible fixed surface infrastructure. Further, the 2016 aerial photograph of the site shows the southern half of the site to be primarily greenfield, and this is the case in aerial photographs dating back to 1999 and beyond. Therefore the brownfield status of the land asserted by the applicant is questionable. It is also understood that there is ongoing enforcement action on the site, in relation to lawful use.
- 33 In terms of impact on or harm to the openness of the Green Belt, this is a matter of judgement. Existing and proposed building heights, volumes and footprints are relevant, as is, for example, screening, planting and enclosure.

#### **Affordable Housing:**

- 34 It is noted that the District has an acute identified need for affordable housing, as set out in the Council's Strategic Housing Market Assessment (SHMA, 2015, linked below). It identifies an affordable housing need of 422 units per year, representing 68% of the overall objectively assessed housing need.
- 35 The scheme proposes the provision of 40% affordable housing, which is compliant with Core Strategy policy SP3 and is relevant if paragraph 145g) is engaged,

[https://www.sevenoaks.gov.uk/downloads/file/1539/hou001\\_sevenoaks\\_strategic\\_housing\\_market\\_assessment\\_september\\_2015](https://www.sevenoaks.gov.uk/downloads/file/1539/hou001_sevenoaks_strategic_housing_market_assessment_september_2015)

#### **Emerging Local Plan:**

- 36 The application site forms part of draft site allocation (ST2-59 Egerton Nursery, Egerton Avenue, Hextable) within the Local Plan. The application site extends to a wider area than that included in the site allocation. The proposed design guidance for the allocation site outlines that the land is proposed for residential development (30 units). It is noted that the proposed site allocation provided design guidance, which is repeated below for ease of reference, and the application should be reviewed against these draft criteria.
- **Careful design and layout to minimise impact on the openness of the Green Belt in this important strategic gap.**
  - **Access to be improved.**



37 Other considerations:

38 If it is determined that the scheme cannot be considered the redevelopment of PDL, in accordance with paragraph 145g) of the NPPF, then the proposals would be considered inappropriate development in the Green Belt and would need to demonstrate 'Very Special Circumstances'. It is suggested that the following factors may be relevant to such a consideration:

- The District-wide need for housing, particularly affordable housing
- The identification of a portion of the site as a proposed site allocation in the emerging Local Plan
- The location of the site, immediately adjacent to one of the District's largest villages, in close proximity of the District's second town, Swanley.
- The level of existing lawful built form on the site

**Loss of the existing use:**

39 In terms of the loss of the existing use, ADMP Policy EMP5 (Non-allocated employment sites) states that the impact of the proposals on the environment, economy and local community will be considered, and that sites should be actively marketed for at least six months before being considered for release.

40 Conclusion:

41 The northern part of this site is included in the emerging Local Plan and is considered a suitable location for a 30-unit housing development. It is not clear that the southern portion of the site constitutes PDL and was excluded from the proposed site allocation. The southern portion of the site juts out into the strategic Green Belt gap between Swanley and Hextable village, narrowing the gap between the settlements. Therefore, the boundary of the Local Plan site allocation was drawn to continue the existing Green Belt boundary line, which runs to the southern-side of the properties on Nutley Close. This was considered to facilitate a proportionate development, which reflected the developed elements of the site and did not compromise the purposes of Green Belt, which includes the preventing settlements from merging.

42 Please note I have not commented on the detailed design of the site, other than to note that any development in this settlement edge location should be of exemplar design quality, allowing the settlement to blend into the countryside (and Green Belt).”

- 43 KCC Highways: (in summary)
- 44 The application is supported by a Highway Statement.
- 45 The traffic generation from this development is expected to be in the region of 175 two-way traffic movements per day (although this is not evidenced) with around 17 - 20 two-way movements in the AM and PM peak hours. It is not expected that this number of traffic movements would be significantly greater than the existing business uses on the site. Access from the local distributor road network is via Egerton Avenue to Main Road (B258) to the east. Any additional traffic using the junction between Egerton Avenue and Main Road is not considered to be significant and is unlikely to cause any additional congestion.
- 46 The site is considered sustainable and the layout is generally in compliance with the requirements of Kent Design. The improved junction with Egerton Road is acceptable. Parking is provided in accordance with Kent Residential Parking Standards for a suburban area, with acceptable visitor parking.
- 47 A number of conditions are recommended.
- 48 Housing Policy:
- 49 “Thank you for your email dated 3 June seeking Housing Policy’s formal comments on this application. Our comments are as follows:
- 50 The offer of 40% on site affordable housing (14 homes) is noted and is in compliance with Core Strategy Policy SP3.
- 51 The proposed affordable housing tenure split of 65% of homes for social/affordable rent (9 homes) homes and 35% of homes for intermediate housing (5 homes) is noted and is in compliance with Policy SP3.
- 52 The proposed location and size of the affordable housing, as set out in drawing number 1921/51 “Affordable Housing Map”, is noted and is acceptable.
- 53 Compliance with the Nationally Described Space Standards is noted and in advance of Policy requirement, is welcomed.
- 54 Use of the District Council’s template legal agreement is noted and comments have been provided.
- 55 As per Policy SP3 and the accompanying Affordable Housing SPD 2011 (as updated in December 2019), delivery of the affordable housing by a partner Provider is sought. Contact details for the District Council’s partner Providers are provided on the website. Early selection of the Provider is encouraged.”
- 56 Environmental Heath:
- 57 “Having reviewed the submission it is clear that in order to produce an appropriate remediation strategy further investigation may be necessary. Therefore an extensive remediation strategy should be provided by the

applicant detailing any further investigation proposed and details of the remedial measures to be used where it is intended to reuse cleaned or recovered material and details of proposed imported soils. All to be agreed in writing by the local planning authority prior to work commencing.

- 58 On completion of remedial works and soil importation the applicant shall submit a verification report to demonstrate that all remedial works were undertaken in an appropriate manner and site is suitable for its intended use. This is to be agreed in writing by the local planning authority prior to first habitation of any dwelling.
- 59 Due to government policy regarding the replacement of conventional fuelled vehicles the applicant should provide EV charging points to all properties and infrastructure to allow all parking bays to have EV charging points at a later date if required.
- 60 All of these matters could be addressed by condition if you are minded to grant permission.”
- 61 SDC Arboricultural Officer:
- 62 “This site is devoid of any vegetation with the exception of trees within the rear garden of 17 Egerton Avenue, which are shown to be removed as part of the proposal. The main areas where existing vegetation may be affected is located within adjoining properties. I think this will be affected more post development than during.
- 63 I have noted the proposed reduction in dwelling numbers from the previous application, which is preferable and will benefit the potential for any new landscaping. The proposed landscaping masterplan (5426-LLB-XXXX-DR-L-0001) appears acceptable but detailed landscaping should be conditioned and attached to any consent given. I have noted the proposed general landscaping detail (5426-LLB-XX-XX-DR-L-0002) which shows Laurel in amongst the proposed plants. I strongly suggest that this species is replaced for another species as this type of plant is so widespread and regularly used by contractors.”
- 64 Natural England: No comments - refer to standing advice and recommend contacting own Ecologist.
- 65 KCC Ecology: (In summary, following submission of further information)
- 66 They are satisfied that sufficient information has been submitted to determine the planning application.
- 67 On the information available, it is considered unlikely that there are bats roosting at no.17 Egerton Avenue.
- 68 Concerns were raised regarding the potential impact on woodland/scrub adjacent to the development site, as badgers, roosting/foraging bats, reptiles and breeding birds could be present within this area. Further information submitted suggests that the impact would be limited by proactive mitigation including boundary fencing, which is proposed. The

fencing proposed is considered acceptable as it would reduce light spill from the site to the adjoining woodland/orchard, but this should include “hedgehog” highway routes through the fencing. This can be subject to condition relating to ecological enhancement of the site. Control of external lighting could also be controlled by a suitable condition.

- 69 Ecological enhancement is also sought. This too could be controlled by a suitable condition.
- 70 KCC Archaeology: (in summary)
- 71 The site of the proposed development lies in an area of general potential for prehistoric and later remains. There is early map evidence for activity on this site for horticultural greenhouses of local heritage interest. In view of the archaeological potential and size of the proposed development, a condition for an archaeological field evaluation is requested.
- 72 Lead Local Flood Authority (in summary):
- 73 Initially raised a number of queries and requested a revised drainage strategy.
- 74 In response to further information submitted, no objections are raised and request a number of conditions be attached in the event of a grant of permission.
- 75 Police Crime Prevention Unit :( in summary)
- 76 Have considered the proposals in light of the Crime Prevention Through Environmental Design (CPTED) and Secured by Design (SBD). They note reference to these in the Design and Access Statement.
- 77 A number of other recommendations are raised particularly with regard to boundary treatments/gates, lighting, improved on site surveillance and door and window technical specifications.
- 78 Environment Agency (in summary):
- 79 Consider planning permission could be granted, BUT subject to conditions relating to investigation for contamination and remediation if necessary and details of drainage.
- 80 Thames Water: (In summary)
- 81 With regard to Waste Water Network and Sewage Treatment Works they expect the developer to demonstrate what measures will be undertaken to minimise groundwater discharges into the public sewer and an informative is requested..
- 82 With regard to surface water drainage, if the developer follows the sequential approach, no objection would be raised. Prior approval will be required for discharge into a public sewer.
- 83 No objection is raised to water network and water treatment capacity.

- 84 KCC Economic Development: (in summary)
- 85 Highlight cost impact of development on infrastructure funding which they would seek were it not for the CIL list.

**Representations:**

- 86 Letters of support have been received from 25 interested parties expressing support as follows:

- The current commercial use is an anti-social one.
- Site is run-down.
- Proposals represent sympathetic development of brownfield site.
- Welcome inclusion of affordable housing.
- Housing need justifies development on scale proposed.
- Sustainable site.

- 87 Letters of objection have been received from 7 interested parties raising the following points:

- Overdevelopment of site in the Green Belt.
- Not all site is brownfield land and proposals would erode openness of the Green Belt and gap between Hextable and Swanley.
- Plot 35 would be visually overbearing.
- Erosion of Green Belt and gap to Swanley.
- The proposals will generate excessive traffic.
- Should be reduced scale of development
- Noise and disturbance, including from use of the access.
- Houses on Plots 1 and 35 would appear overbearing and result in overshadowing, overlooking and loss of privacy.
- There is inadequate boundary treatment between the access driveway and the neighbouring houses.

- 88 Non planning matters are also raised.

**Chief Planning Officer's appraisal**

- 89 Policy Background

- 90 Presumption in favour of sustainable development:

- 91 Paragraph 8 of the NPPF explains there are three overarching objectives to achieve sustainable development, an economic objective, a social objective and an environmental objective.

- 92 Para 11 of the NPPF confirms that the NPPF has a presumption in favour of sustainable development, and that development that accords with the development plan should be approved unless material considerations indicate otherwise.

- 93 Paragraph 11 d) of the NPPF also states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless (i) NPPF policies that protect areas of particular importance, including the Green Belt, provide a clear reason for refusal, or (ii) any adverse effects of granting permission would significantly and demonstrably outweigh the benefits, assessed against the NPPF as a whole.
- 94 Housing policies are considered out of date where a planning authority cannot demonstrate a deliverable five year housing supply or the Housing Delivery Test indicates delivery of less than 75% of requirement over the last three years. Where there has been significant under-delivery over the past three years, planning authorities should identify a minimum five year supply of deliverable housing sites plus a 20% buffer.
- 95 At paragraphs 143-145, the NPPF makes clear that the construction of new buildings is inappropriate development in the Green Belt requiring very special circumstances to justify it. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
- 96 Paragraph 145(g) makes the exception that the redevelopment of previously developed land (PDL) should not be regarded as inappropriate development in the Green Belt where the development would either have no greater impact on openness or where it would contribute to meeting an identified need for affordable housing.
- 97 The Glossary to the NPPF excludes from the definition of PDL land that is or was last occupied by agricultural buildings.

### **Main Planning Considerations**

- 98 The main issues requiring assessment relate to:
- Principle of development and land use;
  - Impact on openness;
  - Access, layout, scale, design and impact on the character of the area;
  - Impact on residential amenity;
  - Impact on highways and parking;
  - Impact on ecology and biodiversity;
  - Case for very special circumstances.

### **Principle of development and land use**

- 99 Having established that the site is within the Green Belt the Authority must consider both its own Development Plan Policy and the NPPF.
- 100 As set out in para 143 of the NPPF, where a proposal is inappropriate development in the Green Belt, it is by definition harmful and should not be approved except in very special circumstances.

- 101 Para 144 of the NPPF advises that LPAs should give substantial weight to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt, by reason of inappropriateness and any other harm, is clearly outweighed by other considerations.
- 102 Therefore, the harm in principle to the Green Belt remains even if there is no further harm to openness because of the development.
- 103 Paragraph 136 of the NPPF states that:
- “Once established, Green Belt boundaries should only be altered where exceptional circumstances are fully evidenced and justified, through the preparation or updating of plans.”
- 104 Policy L01 of the Core Strategy (2011) is relevant to the principle of development in this location and adopts a settlement hierarchy approach that seeks to accommodate new development within the most sustainable settlements.
- 105 However, the site is located outside of any designated settlement boundaries where small scale development is necessarily appropriate and in locations such as this policy L08 applies. In summary, the fundamental aim of this policy is to maintain the extent of the Green Belt and conserve the countryside. This follows the general thrust of the NPPF.
- 106 Whilst the authorised use of the wider site is highly questionable, it is clear that there is an element of legitimate commercial use. Policies SP8 of the Core Strategy and EMP5 of the ADMP are therefore also relevant. In summary these policies seek to resist the loss of lawful business premises if unviable or considered to be inappropriately located.
- 107 In my view, the site is poorly located for an intensive commercial use, with access via a relatively restricted residential road, bounded by houses. An intensive commercial use of the site would be likely to detract from the character of the area and the amenities of neighbouring occupiers, not only in terms of related highway activity but also general noise and disturbance contrary to EN2 of the Council’s ADMP. In addition, policy L08 of the Core Strategy seeks to conserve and enhance the countryside and the Green Belt. In the particular circumstances, I would not raise an objection to the loss of employment use of the site.
- 108 In my view, there may be some scope for replacement of the lawful business use with a residential use. However, the degree to which this can be satisfactorily achieved without having a greater impact on the Green Belt is fundamental to the consideration of this application.

### **Impact on Green Belt**

- 109 The starting point for this application is the fact that other than no.17 Egerton Avenue and its residential garden, which lies within the built confines, the site in its entirety is washed over by the Green Belt.

- 110 The NPPF makes clear that the essential characteristics of the Green Belt are their openness and permanence. Openness is not reliant upon degree of visibility but upon an absence of built development. The purpose of the Green Belt is also to protect land against unrestricted sprawl and safeguard countryside from encroachment.
- 111 There is both a visual and spatial aspect to openness. Openness is about freedom from built form. Even if there is absence of harm to openness, there can still be harm in principle to the Green Belt from inappropriate development.
- 112 The NPPF states that the construction of new buildings should be regarded as inappropriate in the Green Belt, except in a limited number of circumstances, the most pertinent being the redevelopment of previously developed land.
- 113 However, regard should also be had to the definition of “previously developed land” provided by Annex 2 of the NPPF, which states as follows:
- “Land which is or was occupied by a permanent structure, including curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes land that is or was last occupied by agricultural or forestry buildings...and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.”
- 114 With this in mind, paragraph 6.7 of the Council’s own Supplementary Planning Guidance “Development in the Green Belt” also provides a useful interpretation as to what is required for a building to be considered permanent in nature. This includes that it “*must be built on permanent solid foundations. Portacabins, caravans and mobile homes are not considered to be permanent buildings.*”
- 115 The former horticultural uses of the site comprised an agricultural use. Such uses latterly appear to have related to a more limited area of the site as a whole. Thus whilst the proposals may result in the loss of some agricultural land (Class/grade 2), this would be limited.
- 116 Of more relevance in my view, is the extent of commercial use.
- 117 Section 7 of the Council’s Development in the Green Belt SPD is also relevant to proposals for previously developed land. It states that the Council will consider redevelopment proposals of brownfield sites based on whether they would have a greater impact on the openness of the Green Belt. The Council would generally expect proposals to:
- a) Have no greater impact than the existing development on the openness of the Green Belt and the purposes of including land in it, and where possible have less;
  - b) Not exceed the height of the existing buildings; and
  - c) Not occupy a larger area of the site than the existing buildings.



- 118 The SPD states that the most relevant area for the purpose of (c) is the aggregate ground floor area of the existing buildings (the footprint). This does not however override the first criterion (a) relating to impact on openness which is not limited to footprint, but to the three-dimensional impact of built form, including building volume and height. It is necessary to assess whether any of these elements, either individually or combined, would result in unacceptable harm to the openness of the Green Belt. The character and dispersal of proposed redevelopment will also need to be considered.
- 119 From my visit to the site, the majority of structures were relatively low key and small scale, apart from a small number of “permanent” structures, the majority comprised storage containers, with a large area of the site utilised in the form of open car parking/storage.
- 120 The planning history for the site is fairly extensive. However, from my review, there appear to be only five buildings that benefit from a lawful use, two which were erected for horticultural use with one of these a large, light-weight, polytunnel type structure. The three other buildings appear to have a commercial use. These structures are sited on or adjacent to the northern portion of the site. One of the commercial buildings located in the centre of the site has an adjacent area with a lawful use for ancillary storage and distribution. However, the extent of this is relatively limited.
- 121 Whilst the wider site is presently extensively covered by car parking and numerous storage containers and other uses, there is no clear evidence that any of these are lawful and indeed are actually subject to current planning enforcement investigations. Aerial photographs suggest these uses have only occurred very recently (last three years).
- 122 My conclusion in light of the above, is that the majority of any justifiable previously developed land would appear to lie towards the northern and central portion of the site and is relatively limited in nature. The lawful buildings are of modest scale and furthermore, of the five buildings on site, the largest comprises a polytunnel and I consider it debatable whether this constitutes a “permanent” building.
- 123 Thus for the purpose of para. 145 g) of the NPPF, there are only five buildings/structures at best which, in my view, can be considered permanent.
- 124 Even a cursory comparison of the existing buildings with the proposed footprint, floor space and volume of the 35no. 2 storey dwellings reveal significant disparity in these regards. The proposals would not only have a significantly greater impact on the openness of the Green Belt because of the increase in scale and overall massing, but would also exceed the height of the existing buildings and, on the face of it, occupy a significantly greater proportion of the site than the existing lawful uses.
- 125 Even if consideration were to be given the impact of the numerous storage containers, these are not permanent buildings but mobile structures and are transient in nature. The same can be said of the extensive car parking on

site. Therefore, I would give limited weight to the impact of these elements on the openness of the Green Belt.

- 126 I note that there is both a visual and spatial aspect to openness. In spatial terms, I consider there to be no question that the proposals would have a materially greater impact on the openness of the Green Belt. In visual terms, the site in its current state has an intensively used and cluttered appearance with numerous structures (largely storage containers) dotted around the site. However, even were these uses and structures to be considered lawful (which is highly questionable as set out above), I do not consider extinguishment of the use would outweigh the impact which would arise by virtue of the extent and permanence of the development proposed.
- 127 In light of the above, it is my conclusion that the proposed houses and associated development would have a significantly greater impact on the openness of the Green Belt than the existing development. The proposals would fail the test of 145(g) of the NPPF and therefore represent inappropriate development, which by definition is harmful to the maintenance of the Green Belt.
- 128 In addition to the above, the properties in Egerton Avenue together with those in Nutley Close and just to the south east along Main Road form a clearly defined boundary to the edge of Hextable. The land to the south extending to New Barn Road, together with woodland directly to the south and Swanley Park to the south-west form a distinctive break between the settlement boundaries of Swanley and Hextable. Paragraph 4.3.5 of the supporting text to policy CS policy L04 (development in Swanley) highlights that land "...to the north and north east plays an important role in separating Swanley from the nearby communities of Hextable and Swanley Village..."
- 129 Whilst no.17 Egerton Avenue and its associated garden lie within the built confines of Hextable, the remainder of the site in its entirety lies within the Green Belt.
- 130 Due to the significant degree that the development site would extend southwards into the Green Belt, it is my view that the proposals would also fail to meet the purposes of the Green Belt to check the unrestricted sprawl of large built-up areas, to prevent neighbouring towns merging into one another and to safeguarding the countryside from encroachment.
- 131 Any case for very special circumstances will be set out below.

**Density, layout, scale, design, access and impact on the character of the area**

- 132 Section 12 of the NPPF relates to achieving well-designed places. Paragraph 124 states that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. *"Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities."*

- 133 At paragraph 127, the guidance explains, amongst other things, that *“planning policies and decisions should ensure that developments are visually attractive as a result of good architecture, layout and appropriate and effective landscaping” and that “are sympathetic to local character and history, including the surrounding built environment and landscape setting...”*
- 134 Paragraph 130 states that *“Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.”*
- 135 Policy SP1 of the Core Strategy states that all new development should be designed to a high quality and should respond to the distinctive local character of the area in which it is situated. Outside settlements, priority will be given to the protection of the countryside and any distinctive features that contribute to the special character of the landscape and its biodiversity will be protected and enhanced where possible. Policy LO8 of the Core Strategy recognises the importance of the visual quality of the landscape and requires development to respect the countryside by having no detrimental impact upon the landscape character. Policy EN5 seeks to protect the landscape throughout the District.
- 136 Policy EN1 of the ADMP states that the form of proposed development should be compatible in terms of scale, height, density and site coverage with other buildings in the locality. Criteria d) of policy EN1 of the ADMP requires a satisfactory means of access for vehicles and pedestrians and for provision of adequate parking and refuse facilities. Criteria f) and g) also require the design and layout of spaces, including footways to be permeable and provide connectivity with neighbouring areas and to provide safe and secure environments.
- 137 With regard to impact on the highway, paragraph 109 explains that *“Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”*
- 138 Policy T1 of the ADMP requires new developments to mitigate any adverse travel impacts, including their impact on congestion and safety and any adverse environmental impact. Policy T2 relates to vehicle parking, including cycle parking and requires provision in accordance with advice from the Highway Authority. Policy T3 requires the provision of electrical vehicle charging infrastructure.
- 139 With regard to housing mix and density, policy SP5 seeks an appropriate mix of housing, including smaller units. The proposals include a number of smaller 2 and 3 bed units as well as 4 bed houses. I consider the mix to be appropriate. The proposals would represent a density of approximately 28dph, which I consider compatible with the density of neighbouring development.
- 140 The layout and design would be typically suburban in appearance. Whilst the locality comprises a mix of two-storey and single storey houses, I consider the two-storey scale and design of the houses themselves would be

compatible. Whilst the details of materials would be subject to condition, the drawings and supporting information suggests the use of a palette of local materials including red/brown multi stock brick, areas of rendering, red/brown/grey roof tiling and elements of brick detailing. The houses would include a variety of designs and roof forms, with a reasonable degree of articulation. Overall, I consider the buildings to be of an acceptable design and to reflect the character of houses in the locality.

- 141 It should be noted that compared to the earlier withdrawn application, the current scheme reduces the numbers of houses, providing increased space for landscaping. Subject to detailing, the Council's Arboricultural and Landscape Officer raises no objections to the proposals.
- 142 However, bearing in mind the relatively sensitive semi-rural and open setting of the site, I do have reservations over the layout and form of the development. I would prefer to see a greater spaciousness to the southern portion of the site, as this area is more open in nature and abuts largely open land (or extensive neighbouring gardens). Rather than proposing a more landscaped buffer and introducing a degree of spaciousness, the southern portion of the site would essentially be the most densely developed part. Here the houses would form an almost continuous building line, with only narrow gaps between. This is in stark contrast to the houses to the east, for example, which have extensive, well foliated, gardens. In my view the layout proposed, most particularly the southern portion, would fail to reflect the open context of this part of the site.
- 143 Subject to conditions, the Highway Authority raise no objections to the new vehicular access onto Egerton Avenue, the new roadway within the site, or parking arrangements, which are considered to meet the relevant standards.
- 144 In conclusion, whilst the present proposals reduce the number of dwellings, have improved the landscaping of the site and would meet highway requirements, I remain concerned that the density of development to the southern portion of the site would fail to reflect the spaciousness, which characterises the surrounding area and transition into the countryside. In this particular regard, I consider the proposals fail to fully accord with the policies summarised above.
- 145 As an aside, even if the front part of the site were to be adopted for residential development as proposed in the emerging Local Plan, there is no intention to remove the southern portion of the site from the Green Belt.

#### **Amenity of neighbouring occupiers**

- 146 Paragraph 17 of the NPPF identifies a set of core land-use planning principles that should underpin decision-taking. One of these principles is that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings.
- 147 Policy EN2 of the ADMP relates to "Amenity Protection". The policy states that proposals will be permitted where they would provide adequate residential amenities for existing and future occupiers of the development

and would safeguard the amenities of existing and future occupants of nearby properties by ensuring the development does not result in, amongst other things, overlooking, loss of privacy, loss of light or visual intrusion.

- 148 The houses closest to the site and most likely to be directly affected would be nos.11-21 Egerton Avenue, particularly nos. 15 and 19, which would be sited approximately 15-17m away. The properties closest to these dwellings would be two storey in scale with blank flank elevations (first floor obscured toilet windows). I consider the separation distance sufficient to ensure that the new houses would not appear unduly overbearing and do not consider there would be overlooking or loss of privacy, or any significant loss of light.
- 149 Otherwise, the closest dwellings are those in Nutley Close to the east (esp. nos. 14 & 23). However, these properties would be set approximately 30m+ away from the rear elevations of proposed houses. In the circumstances, I do not consider the proposals would appear overbearing or result in loss of privacy or light.
- 150 Whilst there would be traffic implications from the proposals, there is significant activity associated with the existing site. In the circumstances, I do not consider the noise and disturbance from associated traffic would result in serious loss of amenity to neighbouring residents, particularly along Egerton Road. Were the proposals considered acceptable in other respects, it would be desirable to protect the amenities of occupiers of properties directly adjacent to the access through use of acoustic fencing and this could be subject to a condition.
- 151 Subject to conditions, I consider the proposals would be policy compliant in this regard.

### **Affordable Housing**

- 152 Paragraph 62 of the NPPF states that where a need for affordable housing is identified, planning policies should specify what is required and expect it to be met on site.
- 153 Policy SP3 of the Core Strategy would require the provision of affordable housing on site.
- 154 The applicant is proposing to provide affordable housing to meet the requirements of policy SP3 (40% = 14 units), with 9no. units for affordable rent and 5 units for discounted market sale or shared ownership. No objection is raised to this mix by the Council's Housing Policy Team.
- 155 The applicant has submitted a draft legal agreement which would secure the required affordable housing contribution. However, this is still being drafted and has not been completed to date.
- 156 As there is no signed legal agreement to secure the provision of the affordable housing, the proposals would fail to meet the requirements of policy SP3. A further update on the situation will be provided in the late observations prior to the committee meeting, should the Section 106 be completed.

## Trees & Ecology

- 157 Section 15 of the NPPF relates to conserving and enhancing the natural environment and includes discussion relating to biodiversity. Paragraph 175 explains that when determining planning applications, if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or as a last resort, compensated for, then planning permission should be refused.
- 158 At a local level, policies SP11 of the Core Strategy states that the biodiversity of the District will be conserved and opportunities sought for enhancement to ensure no net loss of biodiversity.
- 159 The site is not directly subject to any statutory or non-statutory ecological designations, however biodiversity is not confined to protected sites, but occurs throughout rural and urban areas, and it is important to protect species and provide enhancement.
- 160 It is accepted that there is little of ecological importance on the site itself. The site is very largely devoid of soft landscaping.
- 161 Concerns were originally raised by KCC Ecology to the potential impact on woodland/scrub adjacent to the site, which could contain protected species, which could in turn be adversely impacted by the proposed development. However, following the submission of further information/clarification has shown that relatively simple mitigation, for example, in the form of suitable fencing along the boundaries, would address concerns. This could be satisfactorily controlled through use of conditions, as could the provision of ecological enhancement of the site.
- 162 An extensive landscaping scheme is also proposed, which would considerably enhance the appearance of the site.
- 163 Subject to suitable conditions relating to details of landscaping and ecological enhancement, I consider the proposals would comply with the relevant policies.

## Other issues

- 164 In this regard, paragraph 178 of the NPPF states that decisions should ensure that a site is suitable for its proposed use taking into account ground conditions and any risks arising from land instability and contamination and that adequate site investigation information, prepared by a competent person, is available to inform these assessments.
- 165 There is potential for contamination on site, which may present some risk to human health. I would note that the Council's Environmental Health Officer has advised that in order to produce an appropriate remediation strategy further investigation may be necessary. A pre-commencement condition is requested seeking details of this. Remediation and verification that the site is suitable for habitation could also be subject to condition.

## Community Infrastructure Levy (CIL)

166 The proposal would be CIL liable and no exemption is sought.

## Very Special Circumstances

167 Para 88 of the NPPF states that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by any other considerations.

168 The harm in this case has been identified as:

- The harm in principle from inappropriate development in the Green Belt, which must be given significant weight.
- The harm to the openness of the Green Belt, which is also given significant weight.
- Harm as a result of the proposed site layout, particularly the southern extent of the development, which would fail to reflect the open context of the site. It would also result in a significant degree of visual encroachment of built development into the rural area between the settlement boundaries of Hextable and Swanley.

169 The applicant has put forward the following VSC:

- Front of site allocated for housing in emerging local plan.
- The site in its entirety is a brownfield site.
- Sustainably located.
- Significant shortage of housing land in Sevenoaks.
- Provides affordable housing.
- The site is a bad neighbour and developing only the front and retaining the rear for commercial use would prohibit residential development.
- No impact on strategic gap.

170 On 2<sup>nd</sup> March 2020, the Planning Inspectorate wrote the final report on the examination of the Sevenoaks District Local Plan. It concluded that the Plan was not legally compliant in respect of the Duty to Co-operate. This decision is presently subject to judicial review.

171 The weight that can be attached to the Local Plan is therefore very limited.

172 National policy reflects the Government's objective to significantly boost the supply and delivery of new homes. The NPPF sets out that it is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay.

173 The Council has failed to meet the Government target of providing 95% of the District's housing requirement over the previous three years. It is

accepted that the Council cannot demonstrate 5 years' worth of deliverable housing supply (the 5 year housing land supply calculation finds 2.6 years of supply of deliverable housing sites including the necessary 20% buffer). Because of this, we have produced a Housing Delivery Test Action Plan. Amongst other measures, it is considered that the Local Plan, once adopted, would provide a significant boost of housing sites. However, housing need will not be met without the adoption of the emerging Local Plan.

- 174 In conclusion, for the purposes of this application, the Council cannot demonstrate a five year housing land supply. Therefore paragraph 11d of the NPPF is engaged in deciding this application.
- 175 This means that there is a presumption in favour of the development unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the NPPF as a whole.
- 176 The market and affordable housing contributed by the development would be a substantial planning benefit.
- 177 Balancing exercise:
- 178 Though very little weight can be attached to the Local Plan, it is worth noting that because of the need to find sufficient land for housing part of the site was proposed to be allocated in the plan for residential use.
- 179 The site, in part, was promoted as suitable for housing development in the emerging Local Plan as ST2-59 and the sustainability of the site is accepted. This identifies the northern part of this site (approximately 45% area of this submission) as potentially capable of accommodating 30 dwellings (density of 60 dwellings per hectare). This conclusion has been reached following detailed consideration of the site.
- 180 Full details are provided on the Council's web-site under supporting documents SUP016 (Site Appraisals and Methodology), which has been used to inform document SUP017a (Sites Included in the Local Plan).
- 181 These documents recognise the need to provide new housing whilst preserving the character of the area. In brief summary, the analysis for this site concluded that:
- The site is presently within the Green Belt;
  - It provides a strategic gap between Hextable and Swanley;
  - There is low/medium landscape sensitivity;
  - Development should be restricted to the northern portion of the site, which is considered to comprise previously developed land.
- 182 However, for the purposes of this application, I would again note that the starting point is that the site in its entirety is within the Green Belt (apart from no.17 Egerton Avenue itself).
- 183 Whilst there is clearly a difference of opinion regarding the extent of the site which comprises previously developed land, in my view, there is



inadequate evidence to show that the site in its entirety benefits from being previously developed land. This is reflected in the Council's brownfield register and the resultant proposed policy designation, which recommends allocation of the front part only. There is no additional evidence within this application, which suggests otherwise. In conclusion, in light of the above, only the northern portion of the site is considered potentially suitable for development.

- 184 Having reached the conclusion that the proposals would represent inappropriate development in the Green Belt, NPPF subparagraph 11d(i) is relevant in terms of whether NPPF policies to protect the Green Belt provide a clear reason for refusal of the application.
- 185 With regard to the cessation of the existing use of the site, it is accepted that the site has resulted in considerable noise and disturbance to neighbouring residents. Removal of all structures and clutter from the site, including the storage containers and cars and cessation of the use would be beneficial to the openness of the Green Belt. However, as explained above, there is no evidence to show that the site in its entirety benefits from lawful commercial use and many of the uses are presently subject to enforcement investigation. Without evidence to clearly show that the site in its entirety benefits from a law commercial use, I can give only limited weight to the cessation of the use, as ultimately these uses may be removed from the site regardless.
- 186 In any event, there are few buildings on site of a substantial and permanent nature and the majority of structures are mobile and are transient in nature. Indeed aerial photographs suggest that they have only recently appeared on site (last 3-4 years). I would therefore give only limited weight to the cessation of the use and removal of all structures.
- 187 The proposals would result in the erection of a large number of substantial and permanent houses and garages, together with formal accesses and extensive hardsurfacing. The impact from the proposals in Green Belt terms would be irreversible. The proposals would erode the gap between the settlements of Hextable and Swanley and fail to respond to the open spatial character of the immediate area.
- 188 Weighed against these adverse impacts must be the significant benefit of contributions to affordable and market housing and the potential for ecological enhancement of the site.
- 189 On a balance of judgement however, it is my view the very special circumstances advanced above would fail to clearly outweigh the harm to the Green Belt in principle, the harm to the openness of the Green Belt or the impact of the design on the character of the area.
- 190 I would add, that even were the site to be considered previously developed land in its entirety, I consider that because of the permanent and extensive nature of the proposals, they would have a significantly greater impact on the openness of the Green Belt than the existing development and the because of this the benefits would fail to significantly and demonstrably outweigh the harm.

## Conclusions

- 191 Whilst I do consider there is potential for re-development of the *northern* part of the site for residential purposes, in light of the above it is my conclusion that the present proposals would represent inappropriate development which would be harmful to the openness of the Green Belt and the circumstances in favour of the proposals do not clearly outweigh the harm identified.
- 192 I consider the proposed layout, particularly the degree of development towards the southern end of the site would fail to respond to the open spatial character of the area.
- 193 Whilst the applicant is amenable to a legal agreement for the provision of affordable housing, until this has been completed this cannot be formally secured.
- 194 I consider there to be no other material considerations that could not otherwise be covered by suitable conditions and thus which would warrant refusal.
- 195 Taking all these factors into account, I conclude that planning permission should be REFUSED.

**RECOMMENDATION: REFUSE**

## Background papers

Site and block plan

Contact Officer(s):            Jim Sperryn            01732 227000

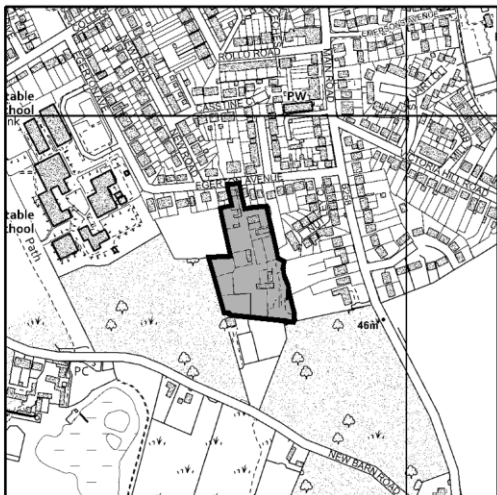
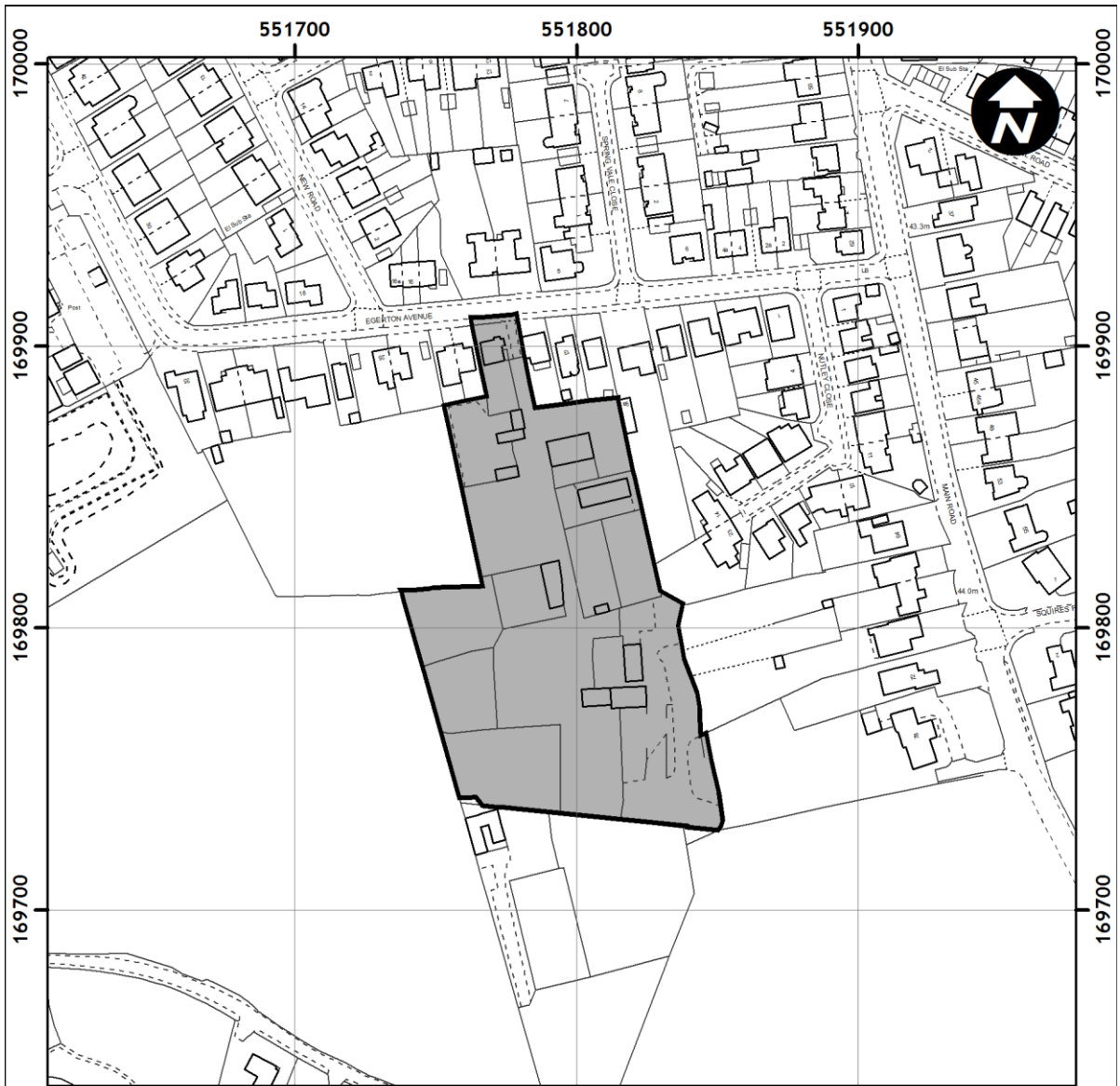
Richard Morris  
Chief Planning Officer

Link to application details:

<https://pa.sevenoaks.gov.uk/online-applications/simpleSearchResults.do?action=firstPage>

Link to associated documents:

<https://pa.sevenoaks.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=Q8DJ1XBKG7H00>



# Site Plan

Scale 1:2,500

Date 26/09/2020



DISTRICT COUNCIL

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Ordnance Survey 100019428.

# BLOCK PLAN

