

CLIFFE AND CLIFFE WOODS RESIDENTS DEVELOPMENT GROUP

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Constituted 29 March 2022 | Rule 6(6) party to appeal APP/A2280/W/22/3313673 | Nominating body for the APCM Recreation Ground asset of community value

Ms Hannah Gunner

Principal Planning Officer, Development Management

Medway Council, Gun Wharf, Dock Road, Chatham, Kent ME4 4TR

By email: hannah.gunner@medway.gov.uk and planning.representations@medway.gov.uk, and via the planning portal

Copy: Mr Peter Hockney, Head of Development Management Planning Service

9 September 2026

Dear Ms Gunner

OBJECTION

Application MC/26/1720

Details pursuant to condition 54 (air quality emissions mitigation), as amended by MC/24/0750, on the outline planning permission granted on appeal under APP/A2280/W/22/3313673 (application MC/22/0254), land to the east and west of Church Street, Cliffe, Rochester

The Cliffe and Cliffe Woods Residents Development Group objects to this application. The group is a constituted residents' association, was granted Rule 6(6) status by the Planning Inspectorate in the appeal which granted the underlying permission, and is the nominating body for the listing of the APCM Recreation Ground as an asset of community value.

The group objects because the submitted Emissions Mitigation Statement calculates nothing. Condition 54 requires the Statement to be prepared in accordance with the Medway Air Quality Planning Guidance, and that guidance states that the latest Defra source sector damage costs should always be used. The Statement performs no calculation of its own. It carries forward, unchanged, a figure produced in the Environmental Statement, which the Statement dates to January 2022, at a time when the Defra values have since been updated twice. It then sets against that figure two operational measures, one of which the developer is required to provide by the Building Regulations. The group asks the Council to refuse the application, or in the alternative to hold it undetermined until a current calculation and a proper account of additional mitigation have been provided.

This objection does not seek to reopen the principle of development. That was settled by the appeal decision of 28 November 2023. It is directed solely at whether the details now submitted are capable of discharging condition 54. The group relies in addition on its Formal Representation to the Council of 9 August 2026, which is on the files for MC/26/1459, MC/26/1465, MC/26/1466 and MC/26/1467, and asks that it be linked to this file.

1. Summary of the objection

- The Statement performs no damage cost calculation. It adopts the figure of £66,702 calculated in Chapter 15 of the Environmental Statement submitted with MC/22/0254. It***

cites no Defra value, no emission factor, no version of the Emissions Factor Toolkit and no price year, and it nowhere states that the 2022 figure remains the latest.

- The Defra damage cost values have been updated twice since that Environmental Statement, in 2023 and in 2025. The current values are expressed in 2025 prices and the guidance was last updated on 28 April 2026.*
- Of the £350,000 of operational mitigation claimed, £175,000 is one electric vehicle charge point per dwelling. Charge points for new dwellings with associated parking have been required by Part S of the Building Regulations since 15 June 2022.*
- The arithmetic in the only table in the Statement does not work. At the stated £750 per unit, £175,000 buys 233.3 units. The permission and reserved matters application MC/26/1465 are for 250 dwellings, which at £750 per unit would be £187,500 for each measure and £375,000 in total. No number of dwellings is stated anywhere in the table or beside it.*
- No unit rate is evidenced. No quotation, cost plan, supplier or source is given for either £750 figure.*
- No phase or sub-phase is identified, although condition 54 operates prior to each phase or sub-phase and a phasing plan has been approved under condition 5.*
- The Statement makes no reference to the Thames Estuary and Marshes Ramsar site, to the Special Protection Area, to the Site of Special Scientific Interest, to nitrogen deposition or to any ecological receptor at all.*
- The Statement states that condition 54 is a condition of MC/24/0750. The covering letter and the application form submitted with it say the permission is MC/22/0254. The Council should record which decision it treats as carrying the operative condition.*

2. What has been submitted

The public register records three documents: an application form marked REDACTED, published 7 September 2026; a covering letter of 4 September 2026; and “Air Quality Emissions Mitigation Statement, Church Street, Cliffe”, prepared by SLR Consulting Limited, project number 416.067092.00001, revision 1.0, dated 4 September 2026. The Statement runs to seven pages, of which the substance occupies three.

The application form gives the condition number as 54 and answers “No” to the question whether only part of a condition is to be discharged. Full discharge is therefore sought. It answers “No” to whether development has started. The application was received on 7 September 2026 and validated on 8 September 2026. The internal target date is 3 November 2026.

The covering letter, signed by Mr James Daughtry of Esquire Developments and dated 4 September 2026, recites the permission, quotes condition 54 in full, lists the Statement as the enclosure, and closes: “We trust sufficient information has been provided for the validation of the application.” It identifies no phase.

3. Ground 1: no damage cost has been calculated for this application

Condition 54, as amended by MC/24/0750, provides:

No development shall take place prior to each phase or sub-phase, with the exception of highway works, until an Air Quality Emissions Mitigation Statement has been submitted to and approved in writing by the Local Planning Authority. The Statement shall be prepared in accordance with the Medway Air Quality Planning Guidance and shall provide full details of the

measures that will be implemented as part of the development to mitigate the development related road transport emissions. The development shall be implemented, and thereafter maintained, entirely in accordance with the measures set out in the approved Mitigation Statement.

Preparation in accordance with the Council's guidance is not a presentational requirement. It is the operative standard written into the condition.

The Council's Air Quality Planning Guidance of March 2016, revised November 2021, states in terms:

The source sector damage costs are updated periodically by Defra, therefore the latest costs should always be used.

It also states:

Due to the total size of the Medway population, the Road Transport Urban Big source sector costs should be used in the emissions mitigation calculation. This may be subject to change, therefore clarification should always be obtained from the Environmental Protection Team.

The guidance sets out a five step method: additional trip numbers are put through the Defra Emissions Factor Toolkit to give pollutant emissions in kilogrammes per year; those are converted to tonnes per year; multiplied by the damage costs; and multiplied by five to give a five year exposure cost value, which is the required mitigation spend.

The Statement does not follow that method. Section 2.0 reads, in full:

In line with the requirements of MC's Air Quality Planning Guidance, a calculation to estimate the likely financial operational emission impact of the Development (Damage Cost Calculation) was undertaken and presented within Chapter 15 of the ES prepared to support the outline planning application. This considered the maximum vehicle trip rate associated with the Site. As presented in Chapter 15 of the ES, a total damage cost of £66,702 was calculated. In line with the Condition 54 wording, this monetary value has been utilised as an appropriate benchmark to indicate proportionate mitigation requirements.

The group puts fairly the two points in that passage which assist the applicant. The Statement says the original calculation used the maximum vehicle trip rate, so it was a worst case. And its scope, as stated in the document, is expressly to "review" the previously calculated figure rather than to recalculate it.

The difficulty remains. The Statement's own second footnote gives the Environmental Statement as dated January 2022. The Council's own register records the environmental impact assessment as received on 11 March 2022 and the four volumes as published on 22 June 2022. The figure carried forward is four years and eight months old at the date of this application. It rests on the traffic assumptions, vehicle fleet assumptions, emission factors and damage cost values current in 2021 and 2022. The Statement contains no reference to Defra, to any emission factor, to the Emissions Factor Toolkit, or to any price year. It performs no arithmetic of any kind other than adding £175,000 to £175,000.

Defra's damage cost guidance has been updated since. It was first published on 17 March 2020 and was last updated on 28 April 2026, and the current values are stated in 2025 prices. Defra's own damage cost update report of 10 December 2025 records the sequence of updates as 2015, 2019, 2020, 2023 and 2025. Two updates therefore postdate the Environmental Statement on which this Statement relies.

The group asks the Council to require a damage cost calculated for this application using the current Defra values and current emission factors, with the inputs and assumptions stated, and to confirm, by reference to its own guidance, whether a figure carried across unchanged from a January 2022 Environmental Statement satisfies the requirement that the latest costs should always be used.

4. Ground 2: the mitigation relied on is not shown to be additional

The group makes this ground precisely, and no wider than it goes. The size of the damage cost is not, by itself, decisive. The Statement claims mitigation of £350,000 against a benchmark of £66,702, a ratio of 5.25 to 1, and correcting the benchmark for inflation and updated values would not on its own change that outcome. What changes the outcome is whether the measures claimed are additional at all.

The table in the Statement, labelled Table 3-1 in the body and Table 4-1 on the contents page, lists exactly two operational measures:

- electric vehicle charging infrastructure, “1 No. active EV charging point per dwelling (7.2kW output)”, at £750 per unit, total stated as £175,000; and**
- cycle parking, “1 No. cycle shed per dwelling”, at £750 per unit, total stated as £175,000.**

The group records that section 3.1 of the Statement identifies a third matter, the Construction Environmental Management Plan required by condition 9, whose measures it says “are anticipated to have a positive impact on air pollution”. That is a construction phase matter, it is not costed and it is not in the table. The group also records the applicant’s better point: that air source heat pumps are proposed for all dwellings, so no gas boilers will be installed at all, which exceeds rather than merely meets the guidance’s standard of below 40 mg NO_x per kWh. That betterment is real, and it is not costed in the table either.

On electric vehicle charge points, Part S of the Building Regulations for England applies to new residential buildings with associated parking from 15 June 2022, subject to transitional provision. Regulation 44D of the Building Regulations 2010, inserted by the Building Regulations etc. (Amendment) (England) (No. 2) Regulations 2021, SI 2021/1392, requires the number of associated parking spaces with access to a charge point to be the lesser of the number of spaces and the number of dwellings. The group states the qualifications, because they matter: the duty is capped, in that where the average connection cost would exceed £3,600 the developer must instead provide cable routes in the remaining spaces; and Part S is enforced by the building control body, not by the local planning authority.

Subject to those qualifications, one active charge point per dwelling with an associated parking space is a requirement the developer must satisfy under a separate consenting regime whether or not condition 54 exists. The Statement itself acknowledges the difficulty without confronting it. Section 3.2 recites that the Council’s guidance lists, as standard mitigation for major residential developments, gas fired boilers meeting a minimum standard of below 40 mg NO_x per kWh and “1 Electric Vehicle (EV) charging point per dwelling with dedicated parking or 1 charging point per 10 spaces (unallocated parking)”. It then explains that air source heat pumps are proposed so no gas boilers will be installed, and claims the charge points against the damage cost. The one item of the Council’s own standard mitigation which the developer must provide in any event is being counted as though it were something extra.

On cycle parking, the group states only what it can support. Secure cycle storage will in any event form part of the reserved matters now before the Council in MC/26/1465. The group has

not seen the design code approved under condition 6 in MC/24/1396 and does not assert what it contains; the Council will be able to confirm from its own approval whether cycle storage is required by it.

The group has looked for a statement in the Medway Air Quality Planning Guidance that measures required by other legislation may not be counted against the damage cost, and has not found one. The guidance is silent on the question. The group therefore does not assert that the guidance forbids this. It asks the Council to answer the question, because the answer determines the outcome. If measures required by Part S, by the development plan or by the approved design code may not be set against the damage cost, then the additional operational mitigation offered by this Statement is nil, the damage cost is unmitigated, and a contribution falls due.

The guidance itself points to who should answer. It states that clarification “should always be obtained from the Environmental Protection Team”, and the Council’s own air quality page for developers advises that developers should contact that team to confirm necessity and agree methodologies. The group asks that the question be put in writing to the environmental protection team and the answer placed on the file before determination.

The figures do not add up

The permission is for up to 250 dwellings and reserved matters application MC/26/1465 is for the 250 housing phase. The Statement states the figure of 250 once, in its introduction, and does not carry it into the costings. At the stated rate of £750 per unit:

- 250 x £750 = £187,500 for charge points, not the £175,000 stated;*
- 250 x £750 = £187,500 for cycle sheds, not the £175,000 stated; and*
- a total of £375,000, not the £350,000 stated.*

£175,000 divided by £750 is 233.3 units. Either the Statement has been costed on a number of dwellings which is not the number applied for, or the totals are wrong. On the same figures the damage cost equates to £266.81 per dwelling, and a ten per cent variation either way gives a range of £60,032 to £73,372. The group draws the discrepancy to the Council’s attention not because it is decisive on its own, but because a Statement whose only arithmetic is wrong should not be approved without being checked, and because the Council cannot know what number of dwellings the mitigation has actually been costed for.

No unit rate is evidenced. No quotation, cost plan, supplier or date is given for either the £750 charge point or the £750 cycle shed, and the Statement has no appendices.

5. Ground 3: no phase or sub-phase is identified

Condition 54 operates “prior to each phase or sub-phase, with the exception of highway works”. A phasing plan for the entire site was approved under condition 5 in MC/24/0801. The word “phase” appears in the Statement only as a section heading and within the recited text of the condition. Neither the application form, nor the covering letter, nor the Statement identifies the phase or sub-phase to which it relates, and full discharge of the condition is sought.

The group asks that any approval state expressly which phase or sub-phase it covers, by reference to the approved phasing plan, and that the Council record whether it is being asked to discharge the condition once for the whole development or phase by phase.

6. Ground 4: the Statement is not clear which permission it is discharging a condition of

The Statement says, in terms, that it “provides the EMS required by Condition 54 of MC/24/0750”, MC/24/0750 having been granted in May 2024 as a non-material amendment. The covering letter of 4 September 2026 and the application form both identify the permission as MC/22/0254 and the appeal reference APP/A2280/W/22/3313673.

MC/22/0254 was refused by the Council on 11 November 2022. The permission exists by virtue of the appeal decision of 28 November 2023. MC/24/0750 was a non-material amendment under section 96A of the Town and Country Planning Act 1990, and its own first informative states that it “is not a re-issue of the original planning permission MC/22/0254 (as approved at appeal - ref:APP/A2280/W/22/3313673), which still stands” and “must be read in conjunction with that original permission”.

The group raises this because it bears on the operative wording. The Council should record on the file, and on any decision notice, that the condition being discharged is condition 54 of the permission granted on appeal under APP/A2280/W/22/3313673, as amended by MC/24/0750, and should satisfy itself that the applicant has addressed that wording and not another.

7. Ground 5: the Habitats Regulations position is not recorded on the file

The group puts this ground as a question about the decision record, and not as a proposition about the merits of the mitigation.

Part 1 of Schedule 5 to the Planning and Infrastructure Act 2025, given effect by section 96(1)(a), inserted a new regulation 63(1A) into the Conservation of Habitats and Species Regulations 2017, extending the appropriate assessment duty to Ramsar sites in England. It was commenced on 21 May 2026 by regulation 3 of SI 2026/549. Regulation 4(1) of that instrument disapplies the amendments, so far as material here, in relation to a project authorised by a planning permission granted before 17 August 2020. This permission was granted on 28 November 2023. Regulation 4(2)(a) reads a permission granted under section 73 back to the date of its parent permission; MC/24/0750 was an amendment under section 96A and not a permission under section 73, so that provision does not assist. The saving therefore does not apply.

In C G Fry & Son Ltd v Secretary of State for Housing, Communities and Local Government [2025] UKSC 35 the Supreme Court considered whether regulation 63 operates at the reserved matters and condition-discharge stages. The group puts the authority accurately and in full. The developer’s appeal was dismissed on that issue but allowed on a separate issue, so the developer succeeded overall; and Lord Sales recorded at paragraph 43 that the interpretation point “is not a critical point in my reasoning”, the Court dealing with it because it had heard full argument. Subject to that, the Court concluded at paragraph 56:

in a case involving a potential impact on a European site where the Habitats Regulations have effect, application of a normal purposive approach to their interpretation and having regard to the precautionary principle leads to the conclusion that regulation 63 would apply to a decision to give reserved matters approval or to discharge conditions attached to such an approval where that would result in authorisation for the project to proceed.

The group does not assert that the discharge of condition 54, taken alone, is a decision which would result in authorisation for the project to proceed. Conditions 9, 12, 13, 14 and 20 all remain undischarged and the reserved matters are undetermined. That is a reasonable inference the group invites the Council to consider, and not a proposition it presses as fact.

The group records fairly what was done at appeal. At paragraphs 53 to 55 of the decision the Inspector recorded that the site is within 6 km of the Thames Estuary and Marshes Special Protection Area and Ramsar site, that an appropriate assessment had been carried out, and that Natural England was satisfied because of the agreed strategic solution, subject to the financial contribution being secured. That conclusion was directed to recreational disturbance from the additional resident population. It was not directed to air quality, and at that date Ramsar sites in England were protected as a matter of policy rather than by the Regulations.

The Statement now before the Council contains no reference to the Ramsar site, to the Special Protection Area, to the Site of Special Scientific Interest, to nitrogen deposition, to any habitat or to any ecological receptor. The group has looked for each of those terms and found none. The Statement considers road transport emissions solely as a monetised cost to human health. That may be all the Council's guidance asks of the applicant. It is not all regulation 63(1A) asks of the Council.

The group asks the Council to record its screening conclusion under regulation 63(1A), and the objective information supporting it, on the public file before determining this application. For the avoidance of doubt, no argument is advanced under regulation 65 of those Regulations.

8. Two requests about the conduct of the application

The group makes these as requests. It asserts no defect and no breach.

First, the register records no consultation start date and no consultation expiry date against this application, while inviting comments upon it. The group recognises that this application was validated on 8 September 2026 and that Medway ordinarily publishes consultation dates some days after validation, and it makes no complaint about that. It asks only that a consultation period of at least twenty-one days be set and published and that the closing date be confirmed in writing to mycliffevillage@gmail.com.

Second, the group asks that the Council's environmental protection team be consulted on this application, that the question at section 4 above be put to it in writing, and that its response be placed on the file before determination.

9. There is no time pressure on the Council

The deemed discharge provisions in section 74A of the Town and Country Planning Act 1990 do not apply to this application. Article 30(a) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, made under section 74A(6)(c), disapplies deemed discharge where the condition falls within Schedule 6 to that Order, and paragraph 2(1) (a) of that Schedule exempts a condition attached to the grant of planning permission where the development permitted is EIA development. At paragraph 52 of the appeal decision the Inspector recorded that the proposal is EIA development, supported by an Environmental Statement.

10. What the group asks the Council to do

- Refuse the application, for the reasons set out at section 11.***
- Alternatively, hold the application undetermined and require a damage cost calculated for this application using the latest Defra source sector damage costs and current emission factors, with the inputs, the trip generation and the price year stated.***
- Put to the Council's environmental protection team, in writing and on the file, whether measures required by Part S of the Building Regulations, by the development plan or by***

the approved design code may be counted as mitigation against the damage cost, and determine the application only once that answer is recorded.

- Require the applicant to correct the arithmetic in the mitigation table, to state the number of dwellings on which the costings are based, and to evidence the unit rates relied upon.*
- Require the applicant to identify the phase or sub-phase to which the Statement relates by reference to the phasing plan approved under condition 5 in MC/24/0801, and state that phase expressly in any decision.*
- Record on the file and on any decision notice that the condition being discharged is condition 54 of the permission granted on appeal under APP/A2280/W/22/3313673, as amended by MC/24/0750.*
- Record on the public file the Council's screening conclusion under regulation 63(1A) of the Conservation of Habitats and Species Regulations 2017, together with the objective information supporting it, and link the group's Formal Representation of 9 August 2026 to this file.*
- Set and publish a consultation period of at least twenty-one days and confirm the closing date in writing.*
- Acknowledge receipt of this objection in writing, confirm that it has been placed on the file for MC/26/1720, and notify mycliffevillage@gmail.com on the day any decision is issued.*

11. Suggested reasons for refusal

Offered so that the Council has wording available should it agree with this objection.

- The submitted Air Quality Emissions Mitigation Statement has not been prepared in accordance with the Medway Air Quality Planning Guidance as condition 54 of the permission granted on appeal under APP/A2280/W/22/3313673 requires, in that it performs no damage cost calculation and instead adopts unchanged a figure calculated in an Environmental Statement of January 2022, the Defra source sector damage costs having been updated in 2023 and 2025, contrary to that guidance's requirement that the latest costs should always be used.*
- The mitigation relied upon in the Statement comprises electric vehicle charging infrastructure required for new dwellings with associated parking by Part S of the Building Regulations and cycle parking which will form part of the reserved matters for the residential phase, and the Statement does not demonstrate that the measures relied upon would be implemented to mitigate the development related road transport emissions over and above those the development is required to provide in any event. The local planning authority is unable to conclude that the emissions impact of the development would be mitigated as the condition requires.*
- The costings in the Statement are internally inconsistent, the stated totals not corresponding to the stated unit rate at the number of dwellings permitted, and no number of dwellings and no evidence of the unit rates is given. The local planning authority is therefore unable to determine the value of the mitigation offered.*
- The Statement does not identify the phase or sub-phase to which it relates by reference to the phasing plan approved under condition 5, and the local planning authority is therefore unable to determine the extent of the development to which any approval would apply.*

12. Closing

Condition 54 exists because this development will put additional traffic onto the lanes of a village surrounded by internationally designated marshland. The Inspector imposed it. The

mechanism the Council chose for discharging it is a simple one: work out the cost of the harm using the latest figures, and show what is being done over and above the ordinary requirements to offset it. This Statement does neither. It repeats a figure calculated in January 2022, and counts against it a measure the Building Regulations require. The group asks that a current calculation and a proper account of additional mitigation be required.

The group would be grateful for written acknowledgement that this objection has been placed on the file, and asks to be notified of the decision.

Yours sincerely

Patricia Leslie (Chair)

For and on behalf of Cliffe and Cliffe Woods Residents Development Group

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