

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/26/1722

Details pursuant to condition 11 (highway works) 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 condition 11 names four highway works and the applicant has submitted details for one of them, while certifying on its application form that it is not seeking to discharge only part of a condition. The one work for which details are given is the access to the replacement sports ground, and two of the four drawings state on their face that coach access would require different junction radii. The group asks the Council to refuse the application, or in the alternative to hold it undetermined until details of all four works are before it.

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 11. The group relies in addition on its Formal Representation to the Council of 9 August 2026, on its objection to MC/26/1646 of 7 September 2026, and on its supplementary objection to MC/26/1646 of 8 September 2026 concerning the overhead electricity line, and asks that all three be linked to this file.

1. Summary of the objection

- Condition 11 requires details of four highway works. Details have been submitted for one, the Buttway Lane sports pitch access. The application form answers "No" to the question whether only part of a condition is to be discharged.***
- None of the four submitted drawings carries the reference of any of the four drawings named in condition 11, and none carries any cross-reference to them. The Council cannot***

presently confirm that what has been submitted is the work condition 11 requires.

- Two of the four drawings record vehicle tracking for a refuse vehicle, a van and a large car only, and state that coach access would require the junction radii to be changed. This is the sole vehicular access to a replacement sports ground.*
- The general arrangement drawing offers highway drainage “to be adopted by KCC”. Kent County Council has no highway function in Medway. The word “Medway” does not appear on any of the four drawings.*
- The site clearance drawing proposes the removal and relocation of a pole and the removal of trees, with no arboricultural information of any kind, no electricity apparatus plotted and no evidence of any agreement with the statutory undertakers.*
- Approval of condition 11 would not permit any development to commence. Condition 9 contains no exception for highway works and extends in terms to site clearance and preparation, and no application has been made to discharge it.*

2. What condition 11 requires, and what has been submitted

Condition 11 of the permission granted on appeal provides:

No development shall take place until the details of the following highway works have been submitted to and approved in writing by the local planning authority: ITB11092-GA-012E – Proposed sports pitch access Buttway Lane; ITB11092-GA-010F – Proposed site access arrangement Church Street; ITB11092-GA-011J – Proposed site access arrangement Church Street; ITB11092-GA-016A – Proposed site access arrangement Cooling Road. The approved details shall thereafter be implemented in full prior to the first occupation of the development phase to which they relate.

Condition 11 was not among the conditions amended by MC/24/0750, and this is its operative wording.

The application form lists the material submitted for approval as four drawings and a covering letter:

- 5997-003-6002 rev A02, “Proposed sports pitch access on Buttway Lane”, general arrangement;*
- 5997-003-6012 rev A02, “Proposed sports pitch access – site clearance”;*
- 5997-003-6022 rev A02, “Proposed sports pitch access on Buttway Lane - kerbs and surfacing”; and*
- 5997-003-6032 rev A01, “Proposed white lining on Buttway Lane”.*

All four are by Robert West Consulting and all four relate to the Buttway Lane sports pitch access. Drawings 6002, 6012 and 6022 were issued for approval as revision A01 on 11 August 2026 and updated to revision A02 on 25 August 2026, the revision note reading “UPDATED AS PER CLIENT COMMENTS”. Drawing 6032 exists only in revision A01 of 11 August 2026 and was not updated; the client comments incorporated into the other three were not applied to the white lining drawing. No revision on any of the four responds to a comment from a highway authority. The client is named in the title blocks as “ESQUIRE DEVELOPEMENTS”.

The application was received and validated on 8 September 2026, although the documents are recorded on the register as published on 7 September 2026. The internal target date is 3 November 2026.

3. Ground 1: details have been submitted for one of the four works, and full discharge is sought

Condition 11 is expressed in the plural and lists four separate highway works at three separate locations: the sports pitch access at Buttway Lane, two site access arrangements at Church Street, and a site access arrangement at Cooling Road. Nothing has been submitted in respect of the Church Street accesses or the Cooling Road access.

The covering letter of 7 September 2026, signed by Mr James Daughtry of Esquire Developments, quotes condition 11 in full, including all four drawing references. The group records that as a point in the applicant's favour: there is no attempt to disguise the scope of the condition. But the letter then lists only the four Buttway Lane drawings, and says nothing at all about the Church Street or Cooling Road accesses. It does not explain why they are absent, does not say that they will follow, and does not identify a phase.

The application form for MC/26/1722 gives the condition number as "11", without qualification, and answers "No" to the question "Are you seeking to discharge only part of a condition?". The Council is therefore being asked to discharge condition 11 in its entirety on the basis of details for a quarter of what it requires.

The group anticipates the applicant's answer. Condition 11's implementation trigger is phase-linked: the approved details are to be implemented "prior to the first occupation of the development phase to which they relate". The applicant may say that this contemplates access by access approval. The answer is that the submission trigger is not phase-linked and is absolute: no development shall take place until the details of all four works have been submitted and approved. Whatever the merits of phased implementation, phased submission is not what the condition provides for, and phased approval is not what the form seeks.

If the Council is minded to approve anything on this application, the group asks that the decision notice state in terms that it approves details of drawing ITB11092-GA-012E only, that condition 11 remains undischarged in respect of ITB11092-GA-010F, ITB11092-GA-011J and ITB11092-GA-016A, and that no development may take place until those details have also been approved.

4. Ground 2: the submitted drawings do not identify themselves as the works condition 11 names

Condition 11 approves details of four identified drawings. The drawings now submitted carry a different reference series entirely. The reference "ITB11092" appears nowhere on any of the four submitted drawings, and none carries any cross-reference to ITB11092-GA-012E or to any other drawing named in the condition. The only cross-reference on the drawings is the general note that the drawing "is to be read in conjunction with all relevant Architect's and Engineer's drawings and specification".

The group does not assert that the works shown differ from those on ITB11092-GA-012E. It says that nothing on the face of the application enables the Council, or a consultee, or a resident, to confirm that they are the same. The group asks the Council to require the applicant to state expressly, in writing on the file, that drawings 5997-003-6002, -6012, -6022 and -6032 are the details of the highway work shown on ITB11092-GA-012E, and to identify any respect in which they depart from it.

5. Ground 3: the access is designed without provision for coaches, and the drawings say so

Drawings 5997-003-6012 revision A02 and 5997-003-6032 revision A01 each carry the following note, which the group reproduces as printed, without a terminal full stop:

Junction tracking works for Refuse vehicle, Van & Large car. If a requirement for coach access then changes to the junction radii would be required

The group records, for accuracy, that this note is not on the general arrangement drawing 5997-003-6002. It appears on the site clearance and white lining drawings.

This is the only vehicular access to the ground which is to replace the APCM Recreation Ground. Condition 42 requires a management and maintenance scheme for the pitches, courts and pavilion, and condition 43 requires the use of the replacement playing field to be the subject of a community use agreement prepared in consultation with Sport England. A community sports ground with two football pitches, a cricket pitch and tennis courts will be visited by away teams, by junior sides, by school parties and by officials. Minibus and coach arrival is an ordinary incident of such use.

The group states plainly that the note is a limitation the applicant's own engineers volunteered rather than concealed, and it is expressed conditionally. That is to the applicant's credit. But the point has been identified and left unresolved, and the Council is being asked to fix the geometry of the access now, while the design and layout of the ground it serves is undetermined under condition 41 in MC/26/1646, the reserved matters for that phase are undetermined in MC/26/1467, and no application has been made under conditions 40, 42 or 43.

The group does not put this as a submission that highway works within the public highway are themselves development on the replacement playing field for the purposes of condition 41. It puts it as a matter of ordinary planning judgment, and labels it as such. Once the radii are built, they are built. The Council should not approve an access designed to exclude coaches before it has decided what the ground served by that access will be, how it will be managed and who will be entitled to use it.

The group asks the Council to require the applicant to state whether coach and minibus access is intended, to consult its own highways officers on that question, and to determine this application alongside MC/26/1646 and MC/26/1467.

6. Ground 4: the drawings name an authority which has no highway function here

The key to drawing 5997-003-6002 revision A02 contains this entry, which the group reproduces as printed, including the misspelling of "existing":

Proposed Gullies and laterals to be adopted by KCC and connected to exisiting highway drainage. Connection Point to be confirmed on site.

Kent County Council has no highway function in Medway and cannot adopt highway drainage here. By articles 4 and 5 of the Kent (Borough of Gillingham and City of Rochester upon Medway) (Structural Change) Order 1996, SI 1996/1876, the functions of the county council in relation to the districts of Gillingham and Rochester were transferred to the new Medway council and the district ceased to form part of Kent, with effect from 1 April 1998. By section 1(2) of the Highways Act 1980 the highway authority for highways in a county area is the council of that county. Medway Council is accordingly the local highway authority for Church Street, Cooling Road and Buttway Lane.

The word "Medway" does not appear anywhere on any of the four submitted drawings.

The drawings also record "S278 Extents" and "Extent of S278 Works Area", and a "Highway Boundary". The group notes precisely what that is and is not: the drawings show an extent, and record no section 278 agreement, no party to any agreement, no status and no date. They

propose visibility splays annotated “2.4m x 43m Junction Visibility Splays” and “1.5m x 43m Pedestrian Crossing Visibility Splays Unless Otherwise Stated”.

The group anticipates the applicant’s best answer: that adoption, detailed design, tree removal and apparatus diversion are all matters for the section 278 process rather than for condition 11. That answer does not meet the point. A section 278 agreement is made with the highway authority under the Highways Act 1980. It is not a substitute for the written approval of the local planning authority which condition 11 requires, and it is not before the Council. Drawings offered for approval under a planning condition should not be approved while they name the wrong authority as the future adopting body, because that note records an assumption about who will maintain the works in perpetuity.

The group asks the Council to confirm that its highways officers have been consulted as local highway authority, to place their response on the file, and to require the drawings to be corrected to name Medway Council.

7. Ground 5: site clearance, tree removal and the relocation of a pole

Drawing 5997-003-6012 revision A02, “Proposed sports pitch access – site clearance”, proposes among other things, as printed:

Telegraph pole to be removed and relocated. Existing services cover to be reset to new carriageway levels. Existing trees to be removed (within visibility splay). Existing Kerb to be Removed. Existing Fence to be Removed.

On drawing 5997-003-6032 the same tree removal is justified differently, as “Existing trees to be removed to provide required visibility”.

Three points arise.

First, no arboricultural information of any kind accompanies the application. The group has looked for it. Across all four drawings there is no species, no girth, no root protection area, no reference to BS 5837, no tree tag or number, no tree survey and no replacement planting proposal. The only landscape reference anywhere is a bare key entry on drawing 6012 reading “Proposed Landscaping Works”. The Council cannot assess the loss of trees it has not been told about, and the group records the applicant’s answer, which is that removal is compelled by the 43 metre visibility splays the permission itself requires. That may be right. It is not a reason for the Council not to know what is being felled or what will replace it.

Second, the pole. The applicant’s own Utilities Assessment for MC/22/0254 records that UK Power Networks holds a high voltage overhead line crossing the north-west of the site at the location of the proposed playing fields, running from pole 712400 at the rear of “Rectory” on Church Street, and that underground high voltage cables run from that pole within the verge of St Helens Road. The group’s own Objection Addendum of 11 October 2022 recorded a 33,000 volt overhead cable at the southern end of the relocated sports field. The drawing now before the Council describes the pole it proposes to remove and relocate as a telegraph pole. Across all four drawings there is no pole number, no voltage, no cable, no wayleave, no owner and no relocation position, and the only statement about services is the standard general note that information on existing underground services is given in good faith after consultation with the relevant authority and that the contractor is responsible for obtaining and checking it.

The group asks the Council to require the applicant to plot every overhead line, pole and underground cable affecting the works and the sports ground phase, with voltages and owners

identified, and to produce written confirmation from the relevant statutory undertakers that the pole may be removed and relocated as drawn. This is the subject of the group's supplementary objection to MC/26/1646 of 8 September 2026.

Third, and most importantly, site clearance cannot lawfully be carried out at present in any event. That is the subject of the next ground.

8. Ground 6: approval of condition 11 would not permit development to commence, and the Council should say so

Condition 9, as amended by MC/24/0750, provides:

No development shall take place on any phase of development (including site clearance or preparation) until the details of a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority (who shall consult with National Highways). Thereafter, the construction of the development shall proceed in strict accordance with the approve CEMP unless otherwise agreed in writing by the local planning authority.

The group quotes the condition as it stands, including the missing letter in "the approve CEMP", which appears in both the appeal decision and the amended notice.

Unlike conditions 7, 21, 22, 32, 34 and 54, condition 9 contains no exception for highway works, and it extends in terms to site clearance and preparation. The words "including site clearance or preparation" and the absence of any highway works exception are original to the Inspector; the only change MC/24/0750 made to condition 9 was to insert the words "on any phase of development". No application has been made to discharge condition 9. The site clearance shown on drawing 5997-003-6012 therefore cannot lawfully be carried out, whatever the Council decides on this application.

The group asks the Council to answer one question on the file. Condition 21 as originally imposed contained no exception for highway works, and the exception now appearing in it was added by MC/24/0750. The group has now read the Schedule of Conditions annexed to the appeal decision of 28 November 2023. As imposed by the Inspector, none of conditions 7, 21, 22, 32, 34 or 54 contained an exception for highway works. The group has not seen the decision notice for MC/24/0750 and asks the Council to confirm that the exceptions now found in that series were inserted by it. If the non-material amendment inserted the highway works exception into that series of pre-commencement conditions while leaving condition 9 untouched, the Council should record that expressly, because it means the construction environmental management plan is the one pre-commencement control which the amendment did not relax.

Nor is condition 11 the last of the highway barriers. Conditions 12, 13 and 14 are in the same form. Condition 12 requires details of the Cooling Road improvements shown on ITB11092-GA-022 before development on the eastern parcel; it is the subject of MC/26/1723, validated on 7 September 2026 and undetermined. Conditions 13 and 14 require details of the B2000 works and of the A289 and B2000 off slip, and no application has been made under either. Condition 20 bars commencement, other than that required as part of an approved scheme of remediation, until conditions 20 to 22 have been complied with, and conditions 22 and 23 are undetermined in MC/26/1542. No application has been made under condition 20.

On the Council's own register, only three conditions have been discharged on this permission: condition 5 in MC/24/0801, condition 6 in MC/24/1396 and condition 53 in MC/25/0101.

The group asks the Council to record on any decision notice that the approval confers no entitlement to commence development of any kind, including site clearance or preparation, and to identify the conditions which remain to be discharged first. That is a matter of public information as much as of law: residents seeing contractors on Buttway Lane will need to know whether what they are seeing is lawful.

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

The group puts this ground as a question about the decision record.

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.

This application is the one of the four now before the Council which most directly contemplates physical works on the ground: the clearance of vegetation, the felling of trees, the relocation of a pole and the construction of a new carriageway and footway. The group does not assert that its approval would of itself authorise the project to proceed; condition 9 alone prevents that. That is a reasonable inference the group invites the Council to consider, and not a proposition it presses as fact.

The appropriate assessment carried out for the 2023 appeal, recorded at paragraphs 53 to 55 of the decision, addressed recreational disturbance to the Thames Estuary and Marshes Special Protection Area and Ramsar site from the additional resident population. It did not address construction works of this kind as a source of effect in their own right.

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 determination, and to consider whether works of vegetation clearance should in any event be restricted outside the bird breeding season and outside the over-wintering period. For the avoidance of doubt, no argument is advanced under regulation 65 of those Regulations.

10. 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 highways officers be consulted as local highway authority, and that the officers holding the ecology and arboricultural responsibilities be consulted on the tree removal, and that their responses be placed on the file before determination. The group makes no assumption about whether those consultations have been issued. It asks that the position be recorded.

11. 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. Article 30(a) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, made under section 74A(6)(c), disappplies 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.

12. What the group asks the Council to do

- **Refuse the application, for the reasons set out at section 13.**
- **Alternatively, hold the application undetermined until details of all four highway works named in condition 11 have been submitted, and determine them together.**
- **If any approval is issued, state in terms on the decision notice that it approves details of drawing ITB11092-GA-012E only; that condition 11 remains undischarged in respect of ITB11092-GA-010F, ITB11092-GA-011J and ITB11092-GA-016A; and that the approval confers no entitlement to commence development of any kind, including site clearance or preparation, conditions 9, 12, 13, 14 and 20 remaining undischarged.**
- **Require the applicant to confirm in writing on the file that drawings 5997-003-6002, -6012, -6022 and -6032 are the details of the highway work shown on ITB11092-GA-012E, and to identify any departure from it.**
- **Require the applicant to state whether coach and minibus access to the replacement sports ground is intended, and consult the Council's highways officers, as local highway authority, on the junction geometry, the visibility splays and the tracking assumptions.**
- **Require the drawings to be corrected to name Medway Council, and not Kent County Council, as the adopting highway authority.**
- **Require a tree survey and arboricultural method statement for the trees proposed to be removed, together with replacement planting proposals.**
- **Require the applicant to plot every overhead line, pole and underground cable affecting these works and the sports ground phase, with voltages and owners identified, and to produce written confirmation from the statutory undertakers that the pole may be removed and relocated as drawn.**

- **Record on the public file the Council's screening conclusion under regulation 63(1A) of the Conservation of Habitats and Species Regulations 2017, and link the group's Formal Representation of 9 August 2026 and its objections of 7 and 8 September 2026 to this file.**
- **Determine this application alongside MC/26/1646 and MC/26/1467.**
- **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/26/1722, and notify mycliffevillage@gmail.com on the day any decision is issued.**

13. Suggested reasons for refusal

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

- **Condition 11 of the permission granted on appeal under APP/A2280/W/22/3313673 requires details of four highway works, namely those shown on drawings ITB11092-GA-012E, ITB11092-GA-010F, ITB11092-GA-011J and ITB11092-GA-016A. Details have been submitted in respect of one of those works only, while full discharge of the condition is sought, and the submitted drawings carry no reference to and no cross-reference to the drawings the condition names. The local planning authority is therefore unable to discharge the condition.**
- **The submitted drawings design the sole vehicular access to the replacement sports ground for refuse vehicles, vans and cars only, and record that coach access would require the junction radii to be altered, at a time when the design and layout of the replacement playing field remains undetermined under condition 41, the reserved matters for that phase remain undetermined, and no scheme has been approved under conditions 42 and 43 governing its management and community use. Approval of these details would be premature and would prejudice the determination of those matters.**
- **The submitted drawings identify Kent County Council as the authority which would adopt the proposed highway drainage, that authority having no highway function within Medway, and propose the removal of trees and the removal and relocation of a pole without any arboricultural information, without plotting the electricity apparatus recorded on the site in the applicant's own Utilities Assessment, and without evidence of agreement from the statutory undertakers.**

14. Closing

The village has been told for four years that it will receive a replacement sports ground better than the one it is losing. The first physical thing to be built will be the road into it. These drawings would fix that road before anyone has decided what the ground is, who may use it, or how visiting teams are to arrive. They would do so under a condition requiring details of four highway works, on the strength of details for one, on drawings which do not carry the reference of the drawing the condition names and which name a highway authority that has had no function here since 1998.

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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