

CLIFFE AND CLIFFE WOODS RESIDENTS DEVELOPMENT GROUP

mycliffevillage@gmail.com

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/26/1723

Details pursuant to condition 12 (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 12 requires details of one identified drawing, and none of the four drawings submitted carries that reference or any cross-reference to it. The group also asks the Council to correct the description under which this application has been advertised, which does not match either the condition or the drawings now 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 submitted are capable of discharging condition 12. The group relies in addition on its Formal Representation to the Council of 9 August 2026 and asks that it be linked to this file.

1. Summary of the objection

- Condition 12 requires details of the Cooling Road improvements shown on drawing ITB11092-GA-022. The reference "ITB11092" appears on none of the four drawings submitted.***
- The register describes this application as details of highway works to "town roads". The condition, the applicant's covering letter and every one of the four drawings identify the works as Cooling Road, eastern parcel.***
- The general arrangement drawing offers highway drainage for adoption by Kent County Council, which has no highway function in Medway.***

- ***One of the four drawings is a site clearance drawing. No arboricultural information of any kind accompanies the application.***
- ***Approval of condition 12 would not permit any development to commence. Condition 9 and condition 20 remain undischarged.***
- ***No consultation start date or closing date has been published for this application.***

2. What condition 12 requires, and what has been submitted

Condition 12 of the permission granted on appeal provides:

No development shall take on the eastern parcel until the details of the following highway works have been submitted to and approved in writing by the local planning authority: • Cooling Road improvements as shown on drawing number ITB11092-GA-022. The approved details shall thereafter be implemented in full prior to first occupation of that part of the development.

The words quoted are as they appear in the Schedule of Conditions annexed to the appeal decision of 28 November 2023, and as the applicant's own covering letter of 7 September 2026 reproduces them. The omission of the word "place" after "shall take" is in the Inspector's schedule and is not an error of transcription by the group.

The applicant's covering letter, reference 096, dated 7 September 2026 and signed by Mr James Daughtry, Development Manager, Esquire Developments, lists the material submitted in support as four drawings:

- ***5997-003-6004 Highway Access General Arrangement – Cooling Road – A02***
- ***5997-003-6014 Highway Access Site Clearance – Cooling Road – A02***
- ***5997-003-6024 Highway Access Kerbs and Surfacing – Cooling Road – A02***
- ***5997-003-6034 Highway Access White Lining – Cooling Road – A01***

All four are by Robert West Consulting and all four are titled "Cooling Road – Eastern Parcel". Revisions A01 are dated 11 August 2026 and revisions A02 are dated 25 August 2026. The application was received and validated on 7 September 2026, and its internal target date is 2 November 2026.

3. Ground 1: the drawings submitted are not the drawing the condition names

Condition 12 identifies the works it requires details of by reference to a single drawing, ITB11092-GA-022. That drawing is in the ITB11092 series prepared for the outline application and considered at the inquiry.

The four drawings now submitted are in a different series entirely. The reference "ITB11092" appears nowhere on any of them, and none carries any cross-reference to ITB11092-GA-022. The group makes the same point on MC/26/1722, where the same reference-series difficulty arises on condition 11.

The group does not assert that the submitted drawings depict works different from those shown on ITB11092-GA-022. It cannot tell, because the drawings do not say. That is the difficulty. The Council is being asked to approve details of works identified in the condition by one drawing number, on the strength of drawings which do not refer to it.

The group asks the Council to require the applicant to confirm, in writing and on the face of a revised drawing, that each submitted drawing is a development of ITB11092-GA-022, and to

identify any respect in which the works now proposed differ from those shown on the drawing the condition names.

4. Ground 2: the application is advertised under a description which does not match the condition

Medway's public register describes this application as "Details pursuant to condition 12 (details of the highway works- town roads) on planning permission MC/22/0254".

Condition 12 is not concerned with town roads. It is concerned with Cooling Road improvements on the eastern parcel. The applicant's covering letter says so, and every one of the four submitted drawings is titled "Cooling Road – Eastern Parcel".

The group raises this as a question rather than an assertion, because it does not know whether condition 12 was amended by MC/24/0750, a decision notice the group has not seen. Either the description on the register is wrong, or the condition has been amended in terms the group is unaware of. The group asks the Council to say which, and to correct the description if it is wrong.

This matters for a practical reason. A resident searching the register for works affecting Cooling Road will not find an application advertised as concerning town roads. If the description is wrong, the consultation which follows it will have been run on a wrong premise.

5. Ground 3: highway drainage is offered for adoption by an authority with no highway function here

The general arrangement drawing, 5997-003-6004 rev A02, carries the note: "Proposed Gullies and laterals to be adopted by KCC and connected to existing highway drainage. Connection Point to be confirmed."

Medway Council is the local highway authority for this area. 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 county council's functions were transferred to the new Medway council and the district ceased to form part of Kent with effect from 1 April 1998. Kent County Council has no highway function in Medway. The group asks the Council to confirm the position.

The word "Medway" does not appear on any of the four submitted drawings. The same defect appears on the drawings submitted with MC/26/1722.

The group asks that Medway's highways officers be consulted in their capacity as local highway authority, that their response be placed on the file, and that the adoption note be corrected before any approval is issued. A drainage connection point which is "to be confirmed" is not, in the group's submission, a detail which has been submitted for approval.

6. Ground 4: site clearance is proposed with no arboricultural information

One of the four drawings, 5997-003-6014 rev A02, is a site clearance drawing. No arboricultural information of any kind accompanies this application: no tree survey, no species, no girth, no root protection area, no reference to BS 5837, and no replacement planting proposals.

The group makes the same point on MC/26/1722, where a site clearance drawing was likewise submitted without arboricultural information. It asks that the officers holding the ecology and arboricultural responsibilities be consulted, that their responses be placed on the file, and that

no approval be issued which would permit clearance of vegetation before that information has been provided and assessed.

7. Ground 5: approval of condition 12 would not permit development to commence

Condition 9, as amended by MC/24/0750, provides that no development shall take place on any phase of development, “including site clearance or preparation”, until a Construction Environmental Management Plan has been submitted to and approved in writing by the local planning authority, which shall consult National Highways. The group has read the Schedule of Conditions annexed to the appeal decision and confirms that, as imposed by the Inspector, none of conditions 7, 21, 22, 32, 34 or 54 contained an exception for highway works, and neither did condition 9. No application has been made to discharge condition 9.

The Inspector said so in terms at paragraph 78 of the decision: “Conditions 1, 7, 9, 10, 11, 12, 13, 14, 20, 21, 22, 23, 26, 32, 34 and 54 are required to be pre-commencement conditions as it is fundamental that these details are agreed prior to any works commencing on site.”

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. Condition 10 is the subject of MC/26/1721 and condition 11 of MC/26/1722, both undetermined. No application has been made under conditions 13 or 14.

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 approval of condition 12 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. Residents who see contractors arrive on Cooling Road will need to know whether what they are seeing is lawful, and the decision notice is the document they will read.

8. Ground 6: 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 group’s reading is that the saving does not apply. It puts that as its own construction of regulation 4 and not as settled law.

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.

That passage is expressed in terms of a European site. The group's submission that it applies with equal force to the identically worded paragraph (1A) is its own construction, on which no court has ruled. The group also records the point which tells against it: at the date of that decision Ramsar sites in England were protected as a matter of policy rather than by the Regulations, which is why the Court held regulation 63 did not reach them. The group does not assert that the discharge of condition 12, taken alone, would authorise the project to proceed; condition 9 alone prevents that.

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 highway construction works, or vegetation clearance, as a source of effect in their own right.

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

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. 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 falls within Schedule 2, part 10(b) of the EIA Regulations and is therefore EIA development, supported by an Environmental Statement comprising four volumes. There is therefore no obstacle to the Council running a proper consultation before it determines this application.

10. What the group asks the Council to do

- Set and publish a consultation period of at least twenty-one days on MC/26/1723, confirm the closing date in writing to mycliffevillage@gmail.com, and do not determine the application before it expires.***
- Correct the description under which the application is advertised, or confirm that condition 12 has been amended in terms which make "town roads" accurate.***
- Require the applicant to confirm in writing, and on the face of a revised drawing, that each of drawings 5997-003-6004, 6014, 6024 and 6034 is a development of drawing ITB11092-GA-022 named in condition 12, and to identify any respect in which the works now proposed differ from it.***
- Consult the Council's highways officers, as local highway authority, and place their response on the file; and require the adoption note referring to Kent County Council to be corrected.***

- **Consult the officers holding the ecology and arboricultural responsibilities, and require a tree survey and replacement planting proposals before any approval which would permit site clearance.**
- **Record on any decision notice that approval confers no entitlement to commence development of any kind, including site clearance or preparation, conditions 9, 10, 11, 13, 14 and 20 remaining undischarged.**
- **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 to this file.**
- **Acknowledge receipt of this objection in writing, confirm that it has been placed on the file for MC/26/1723, and notify mycliffevillage@gmail.com on the day any decision is issued.**

11. Suggested reason for refusal

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

The details submitted do not identify themselves as details of the highway works required by condition 12 of the permission granted on appeal under APP/A2280/W/22/3313673, namely the Cooling Road improvements shown on drawing ITB11092-GA-022. The general arrangement drawing offers highway drainage for adoption by an authority which has no highway function in the area, and site clearance is proposed without any arboricultural information. The local planning authority is therefore unable to conclude that the details submitted accord with the condition.

12. Closing

The group is not seeking to be obstructive. It is asking that the Council be able to satisfy itself, and that residents be able to see, that what is being approved is what the condition requires. Five applications on this land were validated in two days. This one is advertised under a description which matches neither the condition nor the drawings submitted with it, and the group asks the Council to put that right before it determines the application.

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.

No member of the group is a lawyer. This letter is written by residents, on the documents the Council has published, and the group would welcome correction on any point where it has misread them.

Yours sincerely

Patricia Leslie (Chair)

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

mycliffevillage@gmail.com