

# AMENDED AGENDA

## PLANNING COMMITTEE MEETING



Date: Thursday 8 August 2013  
Time: 6.00 p.m.  
Venue: Town Hall, High Street,  
Maidstone

### Membership:

Councillors Ash, Chittenden, Collins, Cox,  
Harwood, Hogg, Lusty (Chairman),  
Moriarty, Nelson-Gracie, Paine,  
Paterson, Mrs Robertson and  
J.A. Wilson

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Page No.

1. Apologies for Absence
2. Notification of Substitute Members
3. Notification of Visiting Members
4. Items withdrawn from the Agenda
5. Date of Adjourned Meeting - 15 August 2013

**Continued Over/:**

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**Issued on 5 August 2013**

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*Alison Broom*

**Alison Broom, Chief Executive, Maidstone Borough Council,  
Maidstone House, King Street, Maidstone, Kent ME15 6JQ**

6. Any business the Chairman regards as urgent including the urgent update report as it relates to matters to be considered at the meeting
7. Disclosures by Members and Officers
8. Disclosures of lobbying
9. To consider whether any items should be taken in private because of the possible disclosure of exempt information.
10. Minutes of the meeting held on 18 July 2013
11. Presentation of Petitions (if any)
12. MA 08 2125 - IDEN MANOR NURSING HOME, CRANBROOK ROAD, STAPLEHURST, TONBRIDGE, KENT
13. MA 12 1949 - KENT COTTAGE AND CHANCE HOLDING, GRIGG LANE, HEADCORN, KENT
14. MA 13 0724 - PILGRIMS RETREAT, HOGBARN LANE, HARRIETSHAM, MAIDSTONE, KENT
15. MA 13 0737 - PARNHAM HOUSE, NORTH STREET, HEADCORN, KENT
16. MA 13 0791 - 110A MARION CRESCENT, MAIDSTONE, KENT
17. MA 13 0928 - POPLAR TREE, MILEBUSH LANE, MARDEN, TONBRIDGE, KENT
18. MA 13 0939 - LOWER HIGH STREET, MAIDSTONE, KENT
19. MA 13 1072 - 4 COURT LODGE FARM OAST, LOWER ROAD, EAST FARLEIGH, MAIDSTONE, KENT
20. Appeal Decisions
21. Chairman's Announcements
22. **Report of the Head of Planning and Development - Plot 4, Eclipse Park, Sittingbourne Road, Maidstone, Kent ME14 3EN** **133 - 145**

**PLEASE NOTE**

**The order in which items are taken at the meeting may be subject to change.**

**The public proceedings of the meeting will be broadcast live and recorded for playback on the Maidstone Borough Council website.**

## Maidstone Borough Council

### Planning Committee

Thursday 8 August 2013

#### Report of Head of Planning and Development

Report prepared by Steve Clarke

**LOCATION: PLOT 4, ECLIPSE PARK, SITTINGBOURNE ROAD, MAIDSTONE, KENT, ME14 3EN.**

**PROPOSAL: MA/12/2314: Erection of Class A1 retail development (with ancillary cafe) and associated servicing, car parking, landscaping and access arrangements**

1: Background

1.1 This application was reported to the Council's Planning Committee on Thursday 6 June 2013. Having considered the application and report, Members resolved as follows:

1. That subject to the Heads of Terms of a Section 106 legal agreement (to be negotiated with the applicants in consultation with the Council's retail consultants, a representative of Maidstone Town Centre Management and the Political Group Spokespersons) to secure contributions for public realm improvements to mitigate the impact of the development on Maidstone Town Centre and contributions to mitigate the impact of the development on the local community, if appropriate, being reported to the Planning Committee for approval, permission be granted subject to conditions and informatives to be drafted by the Officers and agreed by the Committee.
2. That the application be referred to the Secretary of State for consideration under the Town and Country Planning (Consultation) (England) Direction 2009.

1.2 I can advise Members that the application was formally referred to the Secretary of State via the National Planning Casework Unit. The National Planning Casework Unit notified the Council by letter dated 24 July 2013 that the Secretary of State will not intervene and 'call-in' the application. It is therefore returned for this Committee to determine the matter.

1.3 The purpose of this report is to update Members on the negotiations relating to the proposed Section 106 agreement Heads of Terms and the proposed conditions and informatives.

2 Heads of Terms

2.1 As Members will be aware, for any section 106 obligation to be acceptable, it has to meet the following tests set out at Paragraph 204 of the National Planning Policy Framework and regulation 122 of the CIL Regulations 2010:

‘ Planning obligations should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms;
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.’

It must also satisfy one of the descriptions of a planning obligation set out in section 106 of the Town and Country Planning Act 1990. Planning obligations can:

- (a) restrict the development or use of the land in a specified way;
- (b) require specific operations or activities to be carried out in, on under or over the land
- (c) require the land to be used in a specific way; or
- (d) require a sum or sums to be paid to the authority on a specified date or dates, or periodically.

So first of all the LPA must establish what is the harm caused by the development which has to be mitigated before permission can be granted, then it must establish how the proposed obligation will overcome that harm.

2.2 Members will be aware that the Council does not have an adopted Supplementary Planning Document (SPD) relating to s106 Contributions and neither is there an adopted CIL Schedule in place in the Borough. Any negotiation and decision to accept a contribution must be taken with this in mind.

2.3 Members may recall that at the Planning Committee on 6 June 2013 the application was recommended for refusal on the following four grounds

1: In the opinion of the local planning authority, the applicants have not satisfactorily demonstrated sufficient flexibility in coming to the conclusion that there are no more sequentially preferable sites for the proposed development or better located out of centre sites. It is therefore considered that the sequential test as set out at paragraph 25 of the National Planning Policy Framework 2012 and Policy R2 of the Maidstone Borough-wide Local Plan 2000 has not been met. To permit the development would therefore be contrary to the advice at paragraph 27 of the National Planning Policy Framework 2012 and Policy R2 of the Maidstone Borough-wide Local Plan 2000.

2: The proposed development in cumulation with the proposed retail development at Newnham Court would in the opinion of the local planning authority, have a

significant adverse impact on the vitality and viability of Maidstone Town Centre. It is therefore considered that the proposed development would fail the impact test as set out at paragraph 26 of the National Planning Policy Framework 2012. To permit the development would therefore be contrary to the advice at paragraph 27 of the National Planning Policy Framework 2012 and Policy R3 of the Maidstone Borough-wide Local Plan 2000.

3: The proposed building is considered to be of poor design. The prominent and exposed siting and overall height and mass of the building, together with the largely unrelieved north, east and west elevations, would introduce a visually intrusive and discordant feature that would be harmful to the character and visual amenity of the area and which would not be successfully integrated into the existing natural and built environment of the area. To permit the development therefore would be contrary to the advice in paragraphs 58, 61 and 64 of the National Planning Policy Framework 2012.

4: Granting permission for a Class A1 retail unit on this site would result in the loss of a well located, sustainable and designated employment site with an extant permission for Grade A Class B1 office development. In the opinion of the local planning authority to permit the development in advance of the completion of a review of such sites as required by paragraph 22 of the National Planning Policy Framework would be premature.

- 2.4 In terms of using a s106 obligation to mitigate harm in accordance with the relevant tests and the s106 of The Act, Members did not support reasons 3 and 4 relating to the design of the building and the loss of the employment site respectively and in any event in my view no obligation could be reasonably expected to address these and meet the relevant tests.
- 2.5 Similarly, the first ground of refusal which relates to the sequential test is also not a reason on which harm can be mitigated by a s106 agreement, if the principle of development has been accepted.
- 2.6 This leaves the second ground of refusal, which related to the impact of the proposed development on the viability and vitality of the Town Centre.
- 2.7 This issue was considered as part of the assessment of the application and set out in the previous report to the Committee. It was concluded by the Council's consultants that there would be an impact on town centre comparison goods trading of some 2.13% on the store's opening in 2015 falling to 2.09% by 2017.
- 2.8 In monetary terms, the forecast impact of 2.13% in 2015 is due to a reduction in town centre comparison goods sales of £8.56m. The forecast impact of 2.09% is from a reduction in town centre comparison goods sales of £9.21m.
- 2.9 These figures were greater than the impact set-out in the applicant's assessment for both dates. In monetary terms, the applicant's assessment

of a forecast impact of 1.37% in 2015 is due to a reduction in town centre comparison goods sales of £3.8million in 2015 and £4.13 million in 2017.

- 2.10 I would stress to Members that the above figures were produced using analysis that makes different assumptions as to the impact and baseline figures.
- 2.11 In reaching their 'minded to approve the application' decision (subject to satisfactory negotiation of the s106 details and conditions) on the 6 June, Members accepted that there would be some impact on the Town Centre but considered that with mitigation achieved through an appropriate s106 obligation, that harm could be addressed and the development would thus be acceptable.
- 2.12 In addition, Members were concerned to ensure that if appropriate, any adverse impact of the development on the immediate locality should also be mitigated. These concerns related primarily to offsetting the impact on the local natural environment arising from the development.
- 2.13 The applicants have offered £140,000, an increase on the originally offered sum of £50,000, to be used on projects which mitigate the impact of the development including a contribution of £20,000 a year for two years (a total of £40,000) to be allocated to the Maidstone Town Team for projects to improve the vitality of the Town Centre. They have also indicated that they are willing to enter into an obligation to keep its Fremlin Walk store or an alternative store within Maidstone Town Centre open for a minimum five year period (save where prevented from doing so by matters beyond the reasonable control of Next).
- 2.14 Dealing with the 'keep open' obligation, I do not consider this is either appropriate or meets the relevant NPPF and section 106 tests. It is unenforceable. It should be noted that Next indicated in its application that it intends to keep a town centre store open in any event, as part of its business plan.
- 2.15 The key in seeking to mitigate any potential impact on the Town Centre is to ensure that it remains as an attractive destination and this includes measures to maintain/increase footfall in the town centre.
- 2.16 As Members will be aware, phase 1 of public realm improvements to the High Street have been completed and that phase 2 is under way. As part of the background to inform this project, an economic impact assessment was undertaken on behalf of the Council by Colin Buchanan in 2010. This provided a cost-benefit analysis of the whole High Street project. The report concluded that following completion of the project (a total expenditure across both phases of £4.1million), it would generate over a 10 year period some £3million of user benefits, £4.5million additional

sales/year, a net increase of 72 jobs in the daytime economy and 19 jobs in the evening economy. It also concluded that retail rents were also likely to increase. Overall the report concluded that taking into account employment as well as user benefits, the project will generate £3 for the Maidstone economy for every £1 invested into the scheme.

- 2.17 In the section of the High Street that has already been completed and despite the current economic climate, there is evidence that vacancy rates are lower than elsewhere in the Town Centre, with a number of units recently let or with indications that they are in the process of being occupied.
- 2.18 I consider that the benefits of public realm improvement in helping to maintain interest and vitality in the Town Centre are clear and that potentially the use of any contribution secured through a s106 obligation towards future public realm projects would be appropriate and meet the relevant tests.
- 2.19 Turning to the possible use of any financial contribution, a number of potential public realm improvement projects are being considered in the Town Centre but will be subject to a similar impact assessment as the High Street Project. Potential future projects include Gabriels Hill, Week Street and Earl Street and could also include Market Buildings and Rose Yard as connecting links between the High Street and Fremlin Walk/Earl Street. However, no consideration has been given for any project to proceed at the current time.
- 2.20 Members may also be aware of the Town Team. This group, established following the Portas Review and on which the Council and Town Centre Management are represented, seeks to promote the Town Centre. It focuses on four key areas; Marketing, Events, Regeneration and Culture with an overall committee but also individual groups focusing on the key areas. For example one of the key areas of work for the Team has been to promote events and the use of Jubilee Square, with the aim of making Maidstone a more attractive destination and to increase 'dwell-time' for visitors to the Town. The use of any contribution in conjunction with the Town team to promote the vitality and viability of the Town Centre as a destination, to increase footfall and 'dwell-time' and hence spend to offset the impact of the development would also in my view be appropriate.
- 2.21 As stated above, the applicants have offered the sum of £140,000 as a contribution to mitigate the impacts of the development.
- 2.22 In the absence of a specific S106 Contributions SPD and a CIL Schedule, I consider that the sum offered is appropriate, reasonable and necessary, overcoming the potential ground for refusal mentioned above. The contribution would be used as part of the funding towards further public

realm improvement works in the Town Centre, with £40,000 (£20,000 a year for two years) used to support the work of the Town Team in promoting the Town Centre and their projects to increase its attractiveness as a destination which would offset the potential draw of the store at Eclipse Park.

- 2.23 As part of their resolution at the meeting on 6 June Members requested officers to secure contributions to mitigate the impact of the development on the local community, if appropriate.
- 2.24 A number of suggestions have been put forward by the Mid Kent Downs Countryside Project which is backed by Kent County Council. The project is working with local residents to undertake a number of environmental improvement projects in the Penenden Heath area which have been costed and have an implementation programme, with the works scheduled to take place prior to April 2016. The projects local to the site include the following. A programme of works at Heath Wood, Shaw Close and at Penenden Heath itself has been set-out amounting to some £30,000 in total.
- 2.25 In justification it is stated that the direct impact of the Eclipse Park will relate to more than just Heath Wood and Shaw Close as the species impacted (breeding birds, reptiles etc.) will range across all contiguous habitat within the area. This is in line with the Environment White Paper of 2011 which states that larger, better connected greenspaces should be the target to achieve a more robust outcome for wildlife in the future. By enhancing greenspace connectivity in the Penenden Heath area to some of the habitats that are immediately adjacent to Eclipse Park there is an increased likelihood that these mitigation measures will actually achieve positive outcomes for wildlife in the vicinity of the development.
- 2.26 Members will be aware that the site currently has an extant outline planning permission for a B1 office development of a greater potential floor area (up to 6400m<sup>2</sup> gross external floorspace) and has been the subject of various outline approvals for employment development since 2002.
- 2.27 It is a fact therefore that development has previously been approved on this site and it is also a fact that no s106 contributions to mitigate the environmental impact of development on the local area were considered necessary to make that development acceptable in planning terms. The currently proposed development will not in my view cause any more environmental impact than the development previously approved.
- 2.28 Highway improvements in the vicinity of the site approved as part of other development proposals on Eclipse Park have recently been undertaken and as stated in the original committee report; the traffic generated by the proposed development would be lower than the consented B1 office development and not peak hour based. At weekends when traffic

associated with the store would be higher, the offices at Eclipse Park and their associated traffic would be not be occupied to off-set this.

- 2.29 I would advise Members therefore, that whilst it is clear that the proposed local projects are likely to be deliverable and have been costed, I do not consider that they are necessary to make the development acceptable in planning terms or that they are directly related to the development. On this basis two of the three relevant tests are not met and an obligation cannot be sought.
- 2.30 I consider therefore that the proposed contribution should only be used to mitigate the impact of the development on the Town Centre. I consider that the sum offered is appropriate, reasonable and necessary and that it should be used as a contribution towards the implementation of future public realm improvements with £40,000 of the contribution being used to fund the programme of the Maidstone Town Team which seek to improve Maidstone Town Centre as a destination and hence its vitality.

#### Conditions and informatives

- 3.1 A schedule of suggested conditions and informatives has been drawn up by the applicants in consultation with officers. This is attached at Appendix One. I consider that the conditions suggested are appropriate and meet the six tests set out in Circular 11/95. The key condition is that which restricts the floorspace within the store devoted to fashion sales (proposed condition 14) and this is in line with the figures set out in the application. Store trading hours and delivery times have also been considered and are set out at conditions 15 and 16 respectively.
- 3.2 I do not recommend any further conditions.
- 3.3 The list of suggested informatives set out in the document at Appendix One is also considered acceptable. No further informatives are recommended.

#### Conclusion

- 4.1 The proposed contribution of £140,000 is acceptable and considered necessary and appropriate as are the projects it would be allocated to.
- 4.2 The proposed 'keep open' obligation is not considered appropriate or enforceable.
- 4.3 The schedule of conditions is also appropriate and will ensure particularly that the net retail sales areas devoted to fashion and 'home ware' goods will be restricted to the areas specified in the application.

#### Recommendation

Members resolve that the Head of Planning and Development be given delegated powers to grant permission:

A: Subject to the prior completion of a s106 legal agreement in such terms as the Head of Legal Services may advise to secure:

1. A contribution of £140,000 to offset the impact of the development on the Town Centre with £100,000 being used towards public realm improvement projects in the town centre and £40,000 to fund the programme of the Maidstone Town Team.

B: Subject to the conditions and informatives set out in the schedule at Appendix One to this report.

# APPENDIX ONE

**MAIDSTONE COUNCIL REF: MA/12/2314**  
**SUGGESTED PLANNING CONDITIONS and INFORMATIVES**

**Conditions**

**TIME LIMIT**

1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

**PRE COMMENCEMENT OF EACH PART OF THE DEVELOPMENT THEREOF**

**2 External Materials**

Prior to installation of materials to be used in the construction of the external surfaces of the building hereby permitted, details and samples of these external surfaces shall be submitted to and approved in writing by the Local Planning Authority. These works shall be carried out in accordance with the approved details before the first occupation of the building.

**3 External Lighting**

Prior to installation of any external lighting, all details shall be submitted to and approved in writing by the Local Authority. These works shall be carried out in accordance with the approved details before the first occupation of the building. This information shall include a layout plan with beam orientation and a scheme of equipment in the design (luminaire, type, mounting height, aiming angle and luminaire profiles). This scheme shall include a schedule of proposed hours of use for the different components of the submitted light scheme. The lighting shall be installed, maintained and operated in accordance with the approved details unless the Local Planning Authority gives its written consent to any variation.

**4 Drainage**

The development shall not commence until details of foul and surface water drainage have been submitted to and approved by the local planning authority. The development shall thereafter be carried out in accordance with the subsequently approved details.

**5 Landscaping**

Notwithstanding the details shown a detailed landscaping scheme shall be submitted prior to the completion of groundworks and drainage works and approved by the local planning authority. The submitted details shall include:-

(i) The planting of a range of evergreen and deciduous species selected for their robust habit and fruiting and flowering characteristics such that the planting will be appropriate for the intensively used car park environment whilst also enhancing the site's nature conservation value;

(ii) The provision of knee railings adjacent to the parking bays adjacent to the landscaped beds;

(iii) The provision of a native hedge and tree planting along the boundary of the application site.

These works shall be carried out in accordance with the approved details before the first occupation of the building.

#### 6 Cycle Facilities

Details of the cycle storage facilities shall be submitted to the Local Planning Authority. These facilities shall be approved in writing by the Local Planning Authority prior to installation. These works shall be carried out in accordance with the approved details before the first occupation of the building.

#### 7 Boundary Treatments

Prior to the erection of any fencing, walling and other boundary treatments, details shall be submitted to and approved in writing by the Local Planning Authority. These works shall be carried out in accordance with the approved details before the first occupation of the building.

#### 8 Floor Levels

The development shall not commence until, details of the proposed slab levels of the building and the existing site levels have been submitted to and approved in writing by the Local Planning Authority and the development shall be completed strictly in accordance with the approved levels.

### **PRE-OCCUPATION**

#### 9 Parking & Delivery Areas

The approved details of the parking/turning areas shall be completed before the commencement of the use of the land or buildings hereby permitted and shall thereafter be kept available for such use.

#### 10 Green Travel Plan

Prior to the first occupation of any part of the development hereby permitted, a Green Travel Plan which shall include measures for its implementation, monitoring, review and subsequent enforcement, shall be submitted to and approved by the local planning authority in consultation with the highway authority and shall thereafter be implemented in accordance with the details of the plan upon first occupation the development.

#### 11 BREEAM

The retail unit shall achieve a Very Good BREEAM Retail 2008 rating. A final certificate shall be issued to the Local Planning Authority for written approval to certify that at a Very Good BREEAM Retail 2008 rating has been achieved within 6 months of the first occupation of the development.

#### 12 Renewable Energy

Details relating to on-site renewable energy generation shall be submitted and approved by the Local Planning Authority. These details shall demonstrate that at least 10% of the site's energy consumption will be derived from on-site renewable energy sources.

## **POST-COMPLETION WORKS/ONGOING COMPLIANCE**

### **13 Site Contamination**

If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until the developer has submitted a remediation strategy to the local planning authority detailing how this unsuspected contamination shall be dealt with and obtained written approval from the local planning authority. The remediation strategy shall be implemented as approved.

### **14 Retail Floorspace Restriction**

The net internal sales area of the store hereby permitted shall not exceed 3,320 sq metres (net) of which no more than 1,479 sq metres (net) shall be used for the sale of fashion goods and no more than 1,841 sq metres (net) shall be used for the sale of home goods. No more than 198 sq metres (net) shall be used as a café and this will be ancillary to the main retail use.

### **15 Trading Hours**

The use hereby permitted shall only open to customers within the following times:

09.00 to 22.00 Monday to Saturday and up to 6 hours between 10.00 and 18.00 on Sunday and Bank Holidays. The café cannot be open outside of the store opening hours.

### **16 Delivery Hours**

Deliveries shall only take place or be accepted at the store within the following times:

07:00 to 22:00 Monday to Saturday or between 09:00 and 18:00 on Sundays/Bank/Public Holidays.

### **17 Landscape Maintenance**

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building(s) or the completion of the development, whichever is the sooner; and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

### **18 Approved Plans**

The development shall be carried out in accordance with: Plans numbered: 5320/LP01 Rev B, 5320/P21 Rev B, 5320/P101 Rev G, 5320/P102 Rev G & 5320/P112 Rev D as submitted on 8th February 2013.

## **Informatives**

- You are advised to ensure that the appointed contractor(s) is/are registered with the 'Considerate Constructors Scheme' and that the site is thereafter managed in accordance with the Scheme. Further information can be found at [www.considerateconstructorsscheme.org.uk](http://www.considerateconstructorsscheme.org.uk)

- A formal application for connection to the public sewerage system is required in order to service this development. To initiate a sewer capacity check to identify the appropriate connection point for the development, please contact Atkins Ltd. Anglo Street James House, 39A Southgate Street, Winchester, SO23 9EH.
- Where it is proposed to store more than 200 litres (45 gallon drum = 205litres) of any type of oil on site it must be stored in accordance with the Control of Pollution (oil storage) (England) Regulations 2001. Drums and barrels can be kept in drip trays if the drip tray is capable of retaining 25% of the total capacity of all oil stored.
- Care should be taken during and after construction to ensure that all fuels, oils and any other potentially contaminating materials should be stored (for example in bunded areas secured from public access) so as to prevent accidental/unauthorised discharge to ground. The areas for storage should not drain to any surface water system.
- Attention is drawn to Sections 60 and 61 of the Control of Pollution Act 1974 and to the Associated British Standard Code of practice BS5228:1997 for noise control on construction sites. Statutory requirements are laid down for control of noise during works of construction and demolition and you are advised to contact the Environmental Health Manager regarding noise control requirements.
- No vehicles in connection with the construction of the development may arrive, depart, be loaded or unloaded within the general site except between the hours of 0730 and 1900 Mondays to Fridays and 0800 and 1300 hours on Saturdays and at no time on Sundays or Bank Holidays.
- As an initial operation on site, adequate precautions shall be taken during the progress of the works to guard against the deposit of mud and similar substances on the public highway in accordance with proposals to be submitted to, and agreed in writing by, the local planning authority. Such proposals shall include washing facilities by which vehicles will have their wheels, chassis and bodywork effectively cleaned and washed free of mud and similar substances.
- You are advised that if during the course of development protected species are found on site, all works should cease until appropriate mitigation works have been agreed and any necessary licenses obtained in accordance with the requirements of The Wildlife and Countryside Act 1981 (as amended), The Natural Environment and Rural Communities Act 2006 (NERC Act) and The Conservation of Habitats and Species Regulations 2010 (Habitats Regulation 2010).
- If site clearance works take place during the bird breeding season (March to August), such work should be undertaken in consultation with and under the supervision of a trained ecologist as it is an offence to disturb active nests and nesting birds