

PLANNING COMMITTEE MEETING

Date: Thursday 21 September 2023
Time: 6.00 p.m.
Venue: Town Hall, High Street, Maidstone

Membership:

Councillors Cox, English, Mrs Gooch, Harwood, Holmes, Jeffery, Kimmance, McKenna, Perry, Riordan, Russell, Spooner (Chairman) and D Wilkinson

The Chairman will assume that all Members will read the reports before attending the meeting. Officers are asked to assume the same when introducing reports.

<u>AGENDA</u>	<u>Page No.</u>
1. Apologies for Absence	
2. Notification of Substitute Members	
3. Election of Vice-Chairman	
4. Notification of Visiting Members	
5. Items withdrawn from the Agenda	
6. Date of Adjourned Meeting - 28 September 2023	
7. Any business the Chairman regards as urgent including the urgent update report as it relates to matters to be considered at the meeting	
8. Disclosures by Members and Officers	
9. Disclosures of lobbying	
10. To consider whether any items should be taken in private because of the possible disclosure of exempt information	
11. Minutes of the meeting held on 24 August 2023	1 - 8
12. Presentation of Petitions (if any)	
13. Deferred Items	9

Issued on Wednesday 13 September 2023
Over/:

Continued

Alison Broom

Alison Broom, Chief Executive

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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.

For full details of all papers relevant to the reports on the agenda, please refer to the public access pages on the Maidstone Borough Council website. Background documents are available for inspection; please follow this link:

<https://pa.midkent.gov.uk/online-applications/>

PUBLIC SPEAKING AND ALTERNATIVE FORMATS

In order to speak at the meeting, please call 01622 602899 or email committee@maidstone.gov.uk by 4 p.m. on Wednesday 20 September 2023. You will need to tell us which agenda item you wish to speak on. Please note that slots will be allocated for each application on a first come, first served basis.

If you require this information in an alternative format please contact us, call 01622 602899 or email committee@maidstone.gov.uk

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MAIDSTONE BOROUGH COUNCIL

PLANNING COMMITTEE

MINUTES OF THE MEETING HELD ON 24 AUGUST 2023

Present:

Committee Members:	Councillor Spooner (Chairman) and Councillors Cleator, Cox, English, Harwood, Holmes, Jeffery, McKenna, Munford, Parfitt-Reid, Russell and Springett
Visiting Members:	Councillors Forecast, Hastie, Hinder, Jones and S Thompson

76. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Kimmance, Perry, Riordan and D Wilkinson.

77. NOTIFICATION OF SUBSTITUTE MEMBERS

The following Substitute Members were noted:

Councillor Cleator for Councillor D Wilkinson
Councillor Parfitt-Reid for Councillor Perry
Councillor Springett for Councillor Riordan

78. NOTIFICATION OF VISITING MEMBERS

Councillors Forecast, Hastie, Hinder, Jones and S Thompson were present as Visiting Members for item 13 – 22/505560/FULL (Land at Newnham Court Way, Weaving, Kent). Councillor Thompson attended the meeting remotely.

79. ITEMS WITHDRAWN FROM THE AGENDA

There were none.

80. URGENT ITEMS

The Chairman said that he intended to take the update reports of the Head of Development Management and the verbal updates in the Officer presentations as urgent items as they contained further information relating to the applications to be considered at the meeting.

81. DISCLOSURES BY MEMBERS AND OFFICERS

Councillor Cox stated that he was the Chairman of the Vinters Valley Nature Reserve Trust which had raised objections to application 22/505560/FULL (Land at Newnham Court Way, Weaving, Kent). However, he had taken no part in the formulation of the Trust's representations and intended to speak and vote when the application was considered.

Councillor English stated that he was the Chairman of Detling Parish Council which had raised objections to application 22/505560/FULL (Land at Newnham Court Way, Weaving, Kent). However, he was not the Chairman when the representations were made as he had only recently been appointed to the Parish Council.

Councillor Springett stated that she was also a Member of Detling Parish Council which had raised objections to application 22/505560/FULL (Land at Newnham Court Way, Weaving, Kent). However, she was not a Member of the Parish Council when the representations were made.

82. DISCLOSURES OF LOBBYING

The following disclosures of lobbying were noted:

13.	22/505560/FULL – Land at Newnham Court Way, Weaving, Kent	Councillors Cleator, Cox, English, Harwood, Holmes, Jeffery, McKenna, Munford, Parfitt-Reid, Russell, Spooner and Springett
15.	23/501635/FULL – Chickenden Barn, Chickenden Lane, Staplehurst, Tonbridge, Kent	Councillor Harwood
17.	23/501361/FULL – Ledian Farm, Upper Street, Leeds, Kent	Councillors Cox, Harwood, Jeffery, McKenna, Munford, Russell and Springett
18.	23/502128/FULL – Elmscroft Cottage, Charlton Lane, West Farleigh, Kent	Councillor Spooner
19.	21/504779/REM – Land North of Old Ashford Road, Lenham, Kent	Councillor Jeffery

83. EXEMPT ITEMS

RESOLVED: That the items on the agenda be taken in public as proposed.

84. MINUTES OF THE MEETING HELD ON 20 JULY 2023

RESOLVED: That the Minutes of the meeting held on 20 July 2023 be approved as a correct record and signed.

85. PRESENTATION OF PETITIONS

There were no petitions.

86. DEFERRED ITEMS

22/504433/FULL - RETROSPECTIVE APPLICATION FOR THE REPLACEMENT AND RECONFIGURATION OF PATIO TO THE REAR OF THE HOUSE WITH PROPOSED PRIVACY SCREEN; THE ERECTION OF A GAZEBO WITH SURROUNDING DECKING; THE ERECTION OF AN ORANGERY; AND THE PART CONVERSION OF THE INTEGRAL GARAGE TO A UTILITY ROOM AND WC (RE-SUBMISSION OF 22/500345/FULL) - 8 NETHERMOUNT, BEARSTED, MAIDSTONE, KENT

23/501579/FULL - CHANGE OF USE OF FORMER TELEPHONE EXCHANGE (SUI GENERIS) TO AN OFFICE (CLASS E(G)), INCLUDING ERECTION OF A SINGLE STOREY SIDE EXTENSION (RE-SUBMISSION OF 22/505768/FULL) - FORMER TELEPHONE EXCHANGE, ASHFORD ROAD, HOLLINGBOURNE, KENT

The Head of Development Management advised the Committee that negotiations were continuing in respect of both of these applications.

87. 22/505188/FULL - CHANGE OF USE OF LAND FROM AGRICULTURAL LAND TO RESIDENTIAL TO FACILITATE THE INSTALLATION OF A PROPOSED SWIMMING POOL AND ERECTION OF AN OUTBUILDING POOL HOUSE - CAM HILL, SOUTH LEES LANE, SOUTH GREEN, SITTINGBOURNE, KENT

The Committee considered the report and the urgent update report of the Head of Development Management.

Mrs Barnardo, the applicant, addressed the meeting.

During the discussion, reference was made to the need to review the policy provision relating to swimming pools.

RESOLVED:

1. That permission be granted subject to the conditions set out in the report with:

The amendment of conditions 7 and 8 (Landscaping) to require ten-year protection for the landscaping rather than five-year protection.

The amendment of condition 7(b) to require double-staggered native hedgerows comprising 60-70% Hawthorn and Blackthorn plus other native species such as Guelder Rose.

The amendment of condition 10 (Enhancement of Biodiversity) to include reference to plants for pollinators and to require an area of chalk grassland to be established and managed appropriately with an informative regarding the use of the chalk spoil from the cut and fill works.

An additional condition requiring the submission of before and after contours and sections in connection with the proposed cut and fill works.

2. That the Head of Development Management be given delegated powers to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.
3. That the Landscape Officers be requested to consider the making of a Tree Preservation Order to protect trees around the boundaries of the site.

Voting: 11 – For 1 – Against 0 – Abstentions

88. 22/505560/FULL - ERECTION OF A NEW FOOD STORE (USE CLASS E(A)), WITH ACCESS, CAR AND CYCLE PARKING, LANDSCAPING AND ASSOCIATED WORKS - LAND AT NEWNHAM COURT WAY, WEAVERING, KENT

The Committee considered the report and the urgent update report of the Head of Development Management.

In introducing the application, the Principal Planning Officer wished to clarify that the application site was within the 'Medical' allocation part of Policy RMX1(1) of the Maidstone Local Plan 2017 and within the same allocation the Council was proposing to roll forward in the draft Local Plan Review. The applicant had circulated information stating that the site was not within the 'Kent Medical Campus' or 'KMC'. 'KMC' was the name the promoters of that site had given to the wider area and where there was an outline planning permission. The site was outside that planning permission but was within the 'Medical' allocation and the Local Plan 2017 allocation was paramount.

Mr McClellan, for the applicant, and Councillors Forecast, S Thompson, Hinder, Jones and Hastie (Visiting Members) addressed the meeting.

RESOLVED:

1. That permission be refused for the reasons set out in the report, as amended by the urgent update report, with the further amendment of reason 2 to reference the fact that the development is cramped within the site with insufficient space for landscaping which would be required to mitigate the impact of the development and mitigate the impact on ecology.
2. That delegated authority be given to the Head of Development Management to finalise the wording of amended reason 2 and to incorporate the relevant policies.

Voting: 11 – For 0 – Against 1 – Abstention

Note: Councillor Parfitt-Reid left the meeting at the conclusion of this application (7.55 p.m.).

89. 23/502100/FULL - PART CONVERSION OF EXISTING BARN AND ERECTION OF SINGLE STOREY SIDE EXTENSION TO CREATE A VISITOR CENTRE (RE-SUBMISSION OF 21/501538/FULL) - KINGS OAK FARM, CRUMPS LANE, ULCOMBE, KENT

The Committee considered the report of the Head of Development Management.

Mrs Shalders, an objector, Councillor Diamond of Ulcombe Parish Council, and Mr Tamsett, for the applicant, addressed the meeting.

During the discussion on the application, Councillor McKenna stated that he knew the applicant. To avoid the appearance of bias, he would not participate in the discussion or the voting on the application.

RESOLVED:

1. That permission be granted subject to the conditions set out in the report with:

The amendment of condition 5 (Enhancement of Biodiversity) to refer to the provision of new native hedging.

The amendment of condition 6 (External Lighting) to specify that any external lighting installed on the site shall only be operational during the hours that the Visitor Centre is open.

The amendment of condition 8 (Visitor Centre) to clarify that in weeks when public open days are not taking place (including outside the months of March to October), the Visitor Centre shall only be open for one pre-arranged school group visit per week.

The amendment of condition 14 (Soft Landscaping) to require double-staggered native hedging to screen the existing close-board fencing at the site entrance and double-staggered native hedging to screen the farm buildings from the south and west.

The amendment of the first line of condition 16 (Decentralised and Renewable or Low-Carbon Sources of Energy) to read:

The extension shall not commence above slab level until details of how decentralised and renewable or low-carbon sources of energy will be incorporated into the development hereby approved to provide ~~at least 10%~~ 100% of total annual energy requirements of the development have been submitted to and approved in writing by the Local Planning Authority.

2. That delegated powers be given to the Head of Development Management to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.

Voting: 10 – For 0 – Against 0 – Abstentions

Note: Having stated that he knew the applicant, Councillor McKenna did not participate in the discussion and voting on the application.

90. 23/501635/FULL - CONVERSION OF EXISTING BARN TO RESIDENTIAL DWELLING, INCLUDING NEW ENTRANCE AND ACCESS DRIVE WITH ASSOCIATED PARKING (RE-SUBMISSION OF 22/501591/FULL) - CHICKENDEN BARN, CHICKENDEN LANE, STAPLEHURST, TONBRIDGE, KENT

The Committee considered the report of the Head of Development Management.

In introducing the application, the Senior Planning Officer:

- Sought delegated authority to amend proposed condition 11 (Flood Resistance and Resilience Measures) to include the wider site as it only related to the building itself; and

- Advised the Committee that an additional representation had been received raising concerns about the safety of the access. This issue had been addressed in the Committee report, but the applicant could be required to submit sight lines for the access by way of a condition.

Ms Williams, an objector, Councillor Sharp of Staplehurst Parish Council, and Mr Jenner, for the applicant, addressed the meeting.

RESOLVED: That consideration of this application be deferred to:

- Seek further arboricultural information on tree removal and the impact of the proposed development on retained trees (if any); and
- Negotiate with the applicant regarding the submission of an ecological method statement for the dredging of the ditch and pond given the potential to affect protected species.

Voting: 11 – For 0 – Against 0 – Abstentions

91. 23/501361/FULL - SECTION 73 - APPLICATION FOR MINOR MATERIAL AMENDMENT TO APPROVED PLANS CONDITION 2 (TO ALLOW INSTALLATION OF PHOTOVOLTAIC PANELS ON THE BUILDINGS WITHIN PHASE 2) PURSUANT TO 19/506387/FULL FOR ERECTION OF 44 NO. ASSISTED LIVING UNITS (CLASS C2) WITH ASSOCIATED PARKING AND LANDSCAPING (AMENDMENT TO OUTLINE PERMISSION MA/12/2046 AND RESERVED MATTERS CONSENT MA/17/501933/REM) - LEDIAN FARM, UPPER STREET, LEEDS, KENT

The Committee considered the report of the Head of Development Management.

RESOLVED: That permission be granted subject to the conditions set out in the report with delegated powers given to the Head of Development Management to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.

Voting: 10 – For 0 – Against 0 – Abstentions

Note: Councillor Holmes was not present during consideration of this application.

92. 23/502128/FULL - DEMOLITION OF EXISTING YURT AND ERECTION OF SINGLE STOREY ROUND HOUSE WITHIN THE CURTILAGE OF ELMSCROFT COTTAGE (RE-SUBMISSION OF 22/504104/FULL) - ELMSCROFT COTTAGE, CHARLTON LANE, WEST FARLEIGH, KENT

The Committee considered the report of the Head of Development Management.

RESOLVED: That permission be granted subject to the conditions set out in the report with delegated powers given to the Head of Development Management to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.

Voting: 10 – For 0 – Against 0 – Abstentions

Note: Councillor Holmes was not present during consideration of this application.

93. 21/504779/REM - APPROVAL OF RESERVED MATTERS WITH APPEARANCE AND SCALE BEING SOUGHT FOR 102 NO. RESIDENTIAL DWELLINGS PURSUANT TO 17/500357/HYBRID FOR HYBRID PLANNING APPLICATION COMPRISING: FULL APPLICATION - ERECTION OF 48 DWELLINGS AND ASSOCIATED INFRASTRUCTURE, LANDSCAPING AND OPEN SPACE. OUTLINE APPLICATION - ERECTION OF 102 DWELLINGS (ACCESS, LAYOUT AND LANDSCAPING TO BE SOUGHT) - LAND NORTH OF OLD ASHFORD ROAD, LENHAM, KENT

The Committee considered the report and the urgent update report of the Head of Development Management.

In introducing the application, the Principal Planning Officer sought delegated powers to enable the Head of Development Management to refine the conditions in line with standard practice if Members were minded to agree the recommendation.

RESOLVED:

1. That subject to:
 - A. The prior completion and approval by the Planning Committee of a legal agreement in such terms as the Head of Legal Partnership may advise to secure the Heads of Terms set out in the report; AND
 - B. The conditions set out in the report and the additional condition set out in the urgent update report with the amendment of the relevant condition and informative to require the use of flint instead of Kentish ragstone,

the Head of Development Management be given delegated powers to grant permission and to be able to settle or amend the planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.
2. That the legal agreement must be reported to the Planning Committee for approval as Members are concerned to ensure that the nutrient mitigation is appropriately secured, managed and maintained and to ensure any requirements for "additionality" are satisfied.

Voting: 10 – For 1 – Against 0 – Abstentions

94. APPEAL DECISIONS

The Committee considered the report of the Head of Development Management setting out details of appeal decisions received since the last meeting.

The Head of Development Management expressed the view that the decisions were disappointing. A review would be undertaken of the Inspector's decision to allow the appeal against refusal of application 22/505562/FULL (Change of use from 6-bedroom HMO (Class 4) to 7-bedroom HMO (Sui-Generis)) and the policy context relating to HMOs and the intensification of mainly terraced houses in areas such as Fant.

RESOLVED: That the report be noted.

95. COUNCILLOR STEVE MUNFORD

Councillor Munford, the Vice-Chairman, announced that after ten years this would be his last meeting of the Planning Committee. He had enjoyed the discussions and meeting new people.

The Head of Development Management, the representative of the Head of Legal Services and the Chairman responded to Councillor Munford's announcement, thanking him for his valued contribution and approach to the work of the Committee.

96. DURATION OF MEETING

6.00 p.m. to 9.40 p.m.

MAIDSTONE BOROUGH COUNCIL

PLANNING COMMITTEE

21 SEPTEMBER 2023

REPORT OF THE HEAD OF DEVELOPMENT MANAGEMENT

DEFERRED ITEMS

The following applications stand deferred from previous meetings of the Planning Committee. The Head of Development Management will report orally at the meeting on the latest situation.

APPLICATION	DATE DEFERRED
<p><u>23/501579/FULL - CHANGE OF USE OF FORMER TELEPHONE EXCHANGE (SUI GENERIS) TO AN OFFICE (CLASS E(G)), INCLUDING ERECTION OF A SINGLE STOREY SIDE EXTENSION (RE-SUBMISSION OF 22/505768/FULL) - FORMER TELEPHONE EXCHANGE, ASHFORD ROAD, HOLLINGBOURNE, KENT</u></p> <p>Deferred for further information, including to check whether or not and to what extent vegetation would have to be removed to achieve the required visibility splays.</p>	20 July 2023
<p><u>23/501635/FULL - CONVERSION OF EXISTING BARN TO RESIDENTIAL DWELLING, INCLUDING NEW ENTRANCE AND ACCESS DRIVE WITH ASSOCIATED PARKING (RE-SUBMISSION OF 22/501591/FULL) - CHICKENDEN BARN, CHICKENDEN LANE, STAPLEHURST, TONBRIDGE, KENT</u></p> <p>Deferred to:</p> <ul style="list-style-type: none"> • Seek further arboricultural information on tree removal and the impact of the proposed development on retained trees (if any); and • Negotiate with the applicant regarding the submission of an ecological method statement for the dredging of the ditch and pond given the potential to affect protected species. 	24 August 2023

Agenda Item 14



Ordnance Survey - data derived from OS Premium

18/506662/FULL Courtyard Studios, Hollingbourne House, Hollingbourne Hill, Hollingbourne, Maidstone, Kent, ME17 1QJ

Scale: 1:2500
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REPORT SUMMARY

REFERENCE NO: - 18/506662/FULL and 19/506031/LBC		
APPLICATION PROPOSAL: 18/506662/FULL Demolition of the rear section of the building and erection of replacement structure, and conversion of front section of building including external alterations, to facilitate the creation of 2 dwellings with associated parking and garden areas. Demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse. 19/506031/LBC Demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse.		
ADDRESS: Courtyard Studios Hollingbourne House Hollingbourne Hill Hollingbourne Maidstone Kent ME17 1QJ		
RECOMMENDATION: 18/506662/FULL : Grant planning permission subject to the recommendation and conditions set out in Section 11.0 of main report dated 20 th July 2023(Appendix 1) 19/506031/LBC : Grant Listed Building Consent subject to the recommendation and conditions set out in Section 11.0 of main report dated 20 th July 2023(Appendix 2)		
SUMMARY OF REASONS FOR RECOMMENDATION: See main reports dated 20 th July 2023		
REASON FOR REFERRAL TO COMMITTEE: See main report dated 20 th July 2023		
WARD: North Downs	PARISH/TOWN COUNCIL: Hollingbourne	APPLICANT: Mr Paul Dixon AGENT: John Collins
CASE OFFICER: Rachael Elliott	VALIDATION DATE: 22/05/20	DECISION DUE DATE: 22/01/21
ADVERTISED AS A DEPARTURE: NO		

1.0 Background

- 1.01 These applications were withdrawn from consideration from the 20th July 2023 committee agenda following the decision to reconsult on the applications. The main body of the reports for the 20th July Committee remain unchanged and both are attached at Appendix 1 (18/506662/FULL) and Appendix 2 (19/506031/LBC). This report should be read in conjunction with the reports for the 20th July Committee.
- 1.02 Following the publication of the 20th July 2023 report a further letter of representation was received on behalf of a neighbouring occupier. The matters raised are summarised and addressed in this covering report.
- 1.03 This covering report relates to both applications 18/506662/FULL and 19/506031/LBC, as they are explicitly linked.

2.0 LOCAL REPRESENTATIONS

One letter has been received from Richard Buxton solicitors on behalf of the neighbouring occupier at Hollingbourne House. This was in response to the publication

of the committee report for the 20th July Committee. To date (the re-consultation period expired on 1st September 2023), no further neighbour representation has been received.

The points raised on behalf of the neighbours at Hollingbourne House are summarised below :

- No further consultation
- Listed wall allowed to fall into disrepair and be part dis-mantled
- Reduced footprint would be minimal
- Loss of business use, no evidence or consideration that the existing use would not be viable
- Current commercial use is low key
- Proposal wouldn't reduce vehicle trips
- Existing use does not impact negatively on amenity
- No consideration of part of the site currently being residential garden
- Site is of high environmental value – AONB, Setting of Heritage assets, Listed Walls and Areas of Landscaping would be lost
- Disagree with environmental benefits identified
- Local topography restricts use of sustainable modes of transport
- Public benefit in terms of heritage matters incorrectly interpreted
- Could achieve a conversion rather than rebuild (more policy support for conversion)

3.0 CONSULTEES (re-consultation - see Appendix 1 report for original comments)

Historic England : Standing advice on circumstances for consultation

Kent Highways : No further comments received

Client services : No comments received

Hollingbourne Parish Council : No further comments received

Conservation Officer : (Comments received relating to the level of harm and public benefits, Note there has been a change in Conservation Officer and the comments principally relate to expanding on the level of harm and the public benefit, incorporated into the Heritage section of this addendum report.)

From a heritage perspective, I would raise the following as having less than substantial (LTS) impact on the setting of the listed building:

- sub-division of the Walled Garden. Whilst this is a more modern feature, the subdivision will cause LTS harm to the understanding of the space. There has been some mitigation in the design, such as a hedge as boundary line and retaining the existing paths, etc. The division of the garden will create 'two' gardens, which will reflect the owners/ occupier's taste, and therefore would be unlikely to be read as a former single garden. It is likely that the paths will be lost over time, and it would be difficult to retain these as a condition. I would suggest a building recording of the walls and the gardens to allow for future research to be undertaken, which will help with the mitigation.
- in contrast to the above, the landscaping to the front courtyard would/does cause LTS harm as it changes the space to a domestic garden, rather than a working courtyard that it was. The evidence provided shows that by the mid-1900s there was a small garden (possible associated with the Chauffeur's Accommodation) but you would have still needed hardstanding to gain access to the garages. The current flower beds, whilst attractive and soften the space, do cause harm to the setting of the listed buildings as it confuses the understanding and reading of the spaces. The loss or reduction of domestic gardens/ flower

beds, would to me, be considered a heritage benefit as it would reinstate a better space.

- The proposed works would result in less than substantial harm due to the reduction of the height of the wall. However, it is acknowledged that the Walled Garden and associated walls have altered over time to suit the changing needs of the gardens.

For public benefits, we have the housing, but the proposal would also ensure active/ sustainable use of the site. The creation of the parking is not considered to cause any impact as this was a working space, and when motorcars were introduced to the UK, a garage (now lost) in the position of the proposed site was formed. It would seem natural therefore that cars would be parked in this area. If the courtyard landscaping is removed and minimal soft landscaping applied, this would be deemed as a heritage benefit as this would return this courtyard back into how it would have been understood, and separates the polite gardens of the house, with the working spaces of the estate. The restoration of the glass house would also be a heritage benefit. As part of the mitigation, a good building recording of the structures, garden and the walls would allow for future research to be undertaken

4.0 APPRAISAL

4.01 The key issues for considerations remain as set out at 9.01 of the Appendix 1 and Appendix 2 reports, repeated here for ease of reference, those in italics will be expanded on upon in this addendum report:

- *Consideration of the proposal in relation to Policy DM5 (Development of Brownfield land) (18/506662/FULL)*
- *Loss of the existing commercial floor space and the provision of a residential use (18/506662/FULL)*
- *Design, appearance, the countryside and the Kent Downs AONB (18/506662/FULL)*
- *Heritage (18/506662/FULL and 19/506031/LBC)*
- Residential amenity. (18/506662/FULL)
- Standard of proposed residential accommodation. (18/506662/FULL)
- Transport and traffic, access and servicing, car and cycle parking (18/506662/FULL)
- Ecology and biodiversity, trees and landscape (18/506662/FULL)

Consideration of the proposal in relation to Policy DM5 (Development of Brownfield land)

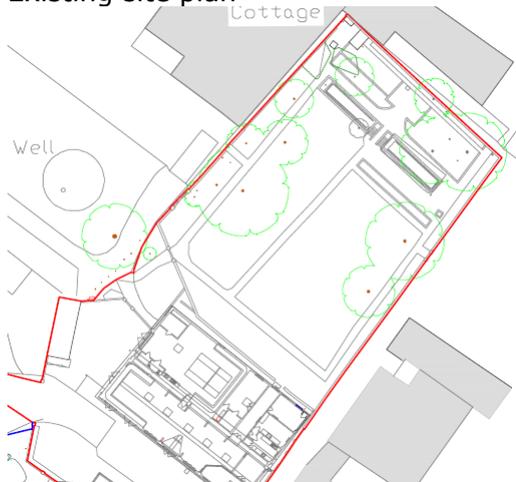
4.02 Members are reminded of the thread of Policy DM5 set out at paragraph 9.03 of Appendix 1. This is an exception policy which allows for the development of Brownfield Land for residential. The report in summary reaches the conclusions that :

- The site (taken as a whole) is not of high environmental value ;
- The density of development would reflect the character and appearance of the locality ;
- The site, although including part residential garden, would on balance meet the exception test which would allow for the principle of residential development on brownfield sites, given that the proposal would solely result in the intensification of the use of the said garden area (to serve two dwellings rather than one)
- The proposal would result in significant environmental improvement
- Improvements to the sites accessibility by sustainable modes of transport is possible such that the site is considered to be reasonably accessible to a larger

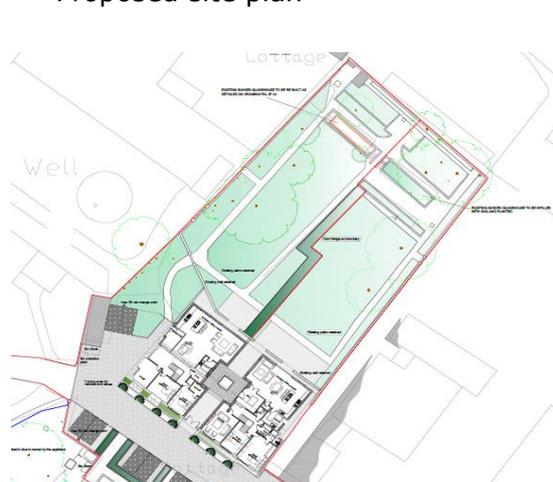
village

- 4.03 The representation received does not agree with those conclusions, however they largely concern matters of planning judgement. The representation places a higher environmental value on the site currently and disagrees with officers about whether the proposals will result in a significant environmental improvement. It also cites the topographical constraints of the site limiting cycling accessibility. The committee report at Appendix 1 addresses why the above conclusions at 4.02 above have been reached (expanded where necessary below).
- 4.04 Expanding on the point whether DM5 can apply, given that part of the site is considered to be residential garden. The policy clearly excludes residential garden and thus at face value it would seem perverse to continue to apply DM5 given that part of the site (the walled garden) is considered to be such, however that would be a simplistic application of the policy. The characteristics of the site are fairly unique, there is a juxtaposition of residential garden, situated cheek by jowl with the commercial use. The new dwellings would be situated on a similar footprint to the existing building, there would be no encroachment of built development beyond existing (it is noted that some landscaping would be lost to provide parking, but that is a matter relating more principally to other material considerations rather than the application of Policy DM5). The existing and proposed extract site plans below indicates the changes within the existing walled garden to the north-east of the site to differentiate its use for two dwellings rather than one being some hard and soft landscaping and the addition of a central hedge to demarcate the two sites.

Existing site plan



Proposed site plan



- 4.05 Given the minimal discernible changes to the walled garden (the land which is clearly partly existing residential garden land) it would in the officer's view depart from the essence of the policy to not apply Policy DM5 given the nature of the proposal. The Court of Appeal decision was clear that the site should be considered as a whole.
- 4.06 As such the site, although including part residential garden, on balance the proposal (taken as a whole) would meet the exception test of being a brownfield site which would allow for the principle of residential development on brownfield sites, given that the proposal would solely result in the intensification of the use of the said garden area as a garden (to serve two dwellings rather than one), with very minimal changes.

Loss of the existing commercial floor space and the provision of a residential use

- 4.07 The representation argues that the loss of the existing photographers' business use has not been adequately assessed in the context of its proposed replacement with residential use; that the Committee Report argues both that the existing use is low-key, but at the same time its removal would be beneficial in terms of reduced commercial traffic.
- 4.08 There is no policy requirement for the applicant to explicitly demonstrate that the existing use is unviable, nor that marketing has taken place, especially given that the proposal is being considered as a re-build, thus those policies relating to conversion need not apply (which have a requirement for commercial re-use).
- 4.09 in terms of the existing harm and potential benefits from an alternative use of the site from commercial to residential, the representation suggests a different judgment about those matters, but officer's view is that removing a commercial use (albeit one that is quite strictly conditioned so as to be suitable in a residential area) and replacing it with residential does contribute towards resulting in a significant environmental improvement..

Design, appearance, the countryside and the Kent Downs AONB

- 4.10 The representation agrees with the Officer conclusion that the proposal is a not a conversion (Officer's rationale set out in Paragraphs 9.43 – 9.46 of the Committee Report at Appendix 1). It however highlights that policy support is more for the conversion of buildings rather than re-build, citing DM30 (iv), SP21 and DM31). The Buxton letter re-produces a previously submitted sketch drawing of how this could be achieved (for one dwelling rather than the two proposed).
- 4.11 The cited part of Policy DM30 (iv), sets out : *iv. Where built development is proposed, there would be no existing building or structure suitable for conversion or re-use to provide the required facilities. Any new buildings should, where practicable, be located adjacent to existing buildings or be unobtrusively located and well screened by existing or proposed vegetation which reflect the landscape character of the area.*

The appraisal at 9.85 of the Committee Report at Appendix 1 remains. As discussed in the main report at 9.43-9.46 part of the building would be retained and where rebuilt, there would be a marginal reduction in footprint. The cumulative impact of the resultant building would not be dissimilar. Policy DM30 taken holistically relates to *Design principles in the countryside*, it is concerned with achieving high quality design. Conversion and re-use is a preference where the resultant development would not achieve the required design quality or have a harmful impact on the character and appearance of the countryside. Here both are met (for the reasons set out in the main report), such that to insist on a conversion in this case would not be necessary. This is an unusual circumstance where although overall agreed that the proposal is a new build, it does include part conversion/re-use of the existing building, resulting in high quality design in the countryside. It is an assessment of harm, in this case to the countryside, and it is not considered any additional harm would result.

Heritage

- 4.12 The Committee Report at Appendix 1, sets out a robust appraisal of the policy background and the impact of the proposal on the various heritage assets that the scheme could impact upon. For clarity and summary, in line with the NPPF it has been established that less than substantial (LTS) harm would result to each of the affected designated heritage assets, those being :
- Hollingbourne House (Grade II)

- Gazebo Building (Grade II)
- Donkey Wheel (Grade II)
- Brick garden walls (Curtilage Listed Grade II)
- Sunken glasshouses (partially curtilage listed)

4.13 The key areas of harm, identified in Conservation Officer comments, articulated in the recent re-consultation, are as following (to be read in conjunction with the main report):

- sub-division of the Walled Garden. Whilst this is a more modern feature, the subdivision will cause LTS harm to the understanding of the space. There has been some mitigation in the design, such as a hedge as boundary line and retaining the existing paths, etc. The division of the garden will create 'two' gardens, which will reflect the owners/ occupier's taste, and therefore would be unlikely to be read as a former single garden. It is likely that the paths will be lost over time, and it would be difficult to retain these as a condition. It is suggested a building recording of the walls and the gardens to allow for future research to be undertaken, which will help with the mitigation.

-in contrast to the above, the landscaping to the front courtyard would/does cause LTS harm as it changes the space to a domestic garden, rather than a working courtyard that it was. Evidence provided shows that by the mid-1900s there was a small garden (possible associated with the Chauffeur's Accommodation) but you would have still have needed hardstanding to gain access to the garages. The current flower beds, whilst attractive and soften the space, do cause harm to the setting of the listed buildings as it confuses the understanding and reading of the spaces. The loss or reduction of domestic gardens/ flower beds, would to me, be considered a heritage benefit as it would reinstate a better space.

- The proposed works would result in less than substantial harm due to the reduction of the height of the wall. However, it is acknowledged that the Walled Garden and associated walls have altered over time to suit the changing needs of the gardens.

4.14 The NPPF at paragraph 202 sets out :

Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

4.15 Government advice regarding public benefit sets out :

The [National Planning Policy Framework](#) requires any harm to designated heritage assets to be weighed against the public benefits of the proposal.

Public benefits may follow from many developments and could be anything that delivers economic, social or environmental objectives as described in the National Planning Policy Framework ([paragraph 8](#)). Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits, for example, works to a listed private dwelling which secure its future as a designated heritage asset could be a public benefit.

Examples of heritage benefits may include:

- *sustaining or enhancing the significance of a heritage asset and the contribution of its setting*
- *reducing or removing risks to a heritage asset*
- *securing the optimum viable use of a heritage asset in support of its long term conservation*

- 4.16 The public benefits in this case are identified throughout the assessment of Heritage at paragraphs 9.96-9.176 of the main report. As further clarification and summary these are identified and expanded upon as appropriate below.
- 4.17 - The change of use to residential would introduce a conforming use in this location that also reflects the historic use of this land as residential.
- The changes to the existing building, including elevation changes to the retained part and the new build would make a positive contribution to the setting of the Listed Wall and glass house.
 - The proposed residential use of the new building would bring the gardens back into full beneficial use.
 - Lowered listed wall would improve the relationship of the building and garden space
 - The restoration of the later glasshouse would enhance the existing historical interest in the garden area and preserve significance
 - The proposal will secure the optimum viable use of the site to provide two good quality family dwellings.
 - Securing the restoration and repair of the curtilage listed wall.
 - The creation of the parking and removal of courtyard landscaping and minimal soft landscaping, this would be deemed as a heritage benefit as this would return this courtyard back into how it would have been understood, and separates the polite gardens of the house, with the working spaces of the estate.
 - Landscaping and biodiversity improvements
 - More sustainable travel choices and use of renewable energy sources.
- 4.18 The public benefits identified above vary in degree, however taken holistically and compared with the level of harm, public benefit would arise. The proposal would result in the provision of two dwellings, which to a degree secure public benefit on social and economic terms through housing provision (although less weight can be attached as the housing targets can currently be met).
- 4.19 The proposed use would ensure the viable use of the associated heritage assets, currently the walled garden is disjointed from the Estate and remote from any associated dwelling, due to the development and sub-division of the estate
- 4.20 The curtilage listed wall is currently in need of repair and maintenance the proposal would facilitate this which would preserve the heritage asset in the long-

term and given the area a long-term sustainable use, promoting environmental and social public objectives of the NPPF.

- 4.21 The glasshouse would be restored, which would have an environmental benefit public benefit for future generations to appreciate the heritage asset.
- 4.22 The courtyard area to the south-west of the site would be returned to a working space (through the provision of parking and loss of raised beds), which would relate more readily to the defined areas of the site and its historical context, benefit socio-environmentally.
- 4.23 Sustainable travel choices, improved landscaping, biodiversity enhancements and the use of renewable energy sources which could be secured through conditions, all promote greater socio and environmental benefits, together with those economic benefits during construction (although this needs to be balanced against the limited scale of the project and the loss of an employment use).
- 4.24 These being public benefits rather than private, as they relate to the long-term optimum viable use of the site which accords with the historic use of the site, the commercial use, although not harming the setting of the heritage assets, this is not a sustainable use and put the site at risk from limited maintenance works. The residential use would be preferential for the setting of identified heritage assets for the reasons set out above, thus overall having public benefit.
- 4.25 The level of harm to the heritage assets has overall been identified as less than substantial by the Conservation Officer (as set out above and in the earlier report), this appraisal is agreed with, and it is considered that the public benefits of the proposals would outweigh any harm identified.

5.0 CONCLUSION

- 5.01 This remains unchanged on both from that set out in Section 10.0 of main report dated 20th July 2023 (Appendix 1 and 2)

6.0 RECOMMENDATION:

18/506662/FULL : Grant planning permission subject to the recommendation and conditions set out in Section 11.0 of main report dated 20th July 2023 (Appendix 1)

19/506031/LBC : Grant Listed Building Consent subject to the recommendation and conditions set out in Section 11.0 of main report dated 20th July 2023(Appendix 2)

Case Officer: Rachael Elliott

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

REPORT SUMMARY

REFERENCE NO: - 18/506662/FULL
<p>APPLICATION PROPOSAL: Demolition of the rear section of the building and erection of replacement structure, and conversion of front section of building including external alterations, to facilitate the creation of 2 dwellings with associated parking and garden areas. Demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse.</p>
<p>ADDRESS: Courtyard Studios Hollingbourne House Hollingbourne Hill Hollingbourne Maidstone Kent ME17 1QJ</p>
<p>RECOMMENDATION: Grant planning permission subject to conditions set out in Section 11.0</p>
<p>SUMMARY OF REASONS FOR RECOMMENDATION:</p> <p>The Court of Appeal found, in summary, that the earlier decision was flawed because the Council in applying DM 5 had failed to take into consideration the entire site and had focused only on the existing building. The judgement therefore concluded that the following matters needed re-consideration:</p> <ul style="list-style-type: none"> - The respondent will need to determine whether or not the application site as a whole is of high environmental value - The respondent will also have to assess whether the other criteria (of Policy DM5) are met including whether the proposed redevelopment will result in a significant environmental benefit <p>The proposal has been re-considered with reference to Local Plan guidance on policy DM5 (in particular paragraphs 6.35 and 6.37) and the policy itself, the proposal site as a whole (including everything in the red line) is not considered to be of high environmental value. With the proposed works significant improvement will arise in a number of ways as set out in the report below and including :</p> <ul style="list-style-type: none"> • The proposal will remove the existing business use that is operating substantially below capacity and provide two family homes offering a good standard of space and improvements to neighbour amenity. • The proposal involves the reinstatement of original building openings that will reduce the current blank ground floor appearance and restore the building symmetry. • The removal of this overly restricted commercial use will remove a non-conforming use in this location with a positive impact on amenity. • Further improvements will arise from the restoration works to the historic walls with slight modification that will allow the buildings to provide two family units with access to the rear amenity space. These works restoring the residential link to these gardens and ensuring the long term maintenance of the walls and bring the gardens back into use. • With the substantial historical alterations to the curtilage brick walls (including LBC99/1078) the proposal will retain their significance that comes from their alignment materials, and bond. <p>The density reflects the character and appearance of the area and the site can reasonably be made accessible by sustainable modes to a larger village and has the benefit of removing a use that would have higher trip generation . The site will be made accessible by sustainable modes by the provision of cycle parking, electric vehicle charging points (for existing and future residents) and by other agreed measures through a condition to</p>

encourage sustainable travel options. In light of these considerations the proposal is found to be in accordance with policy DM5 of the adopted Local Plan. Other matters which weigh in favour of the proposal and a positive recommendation for approval are :

- Large photographic studio spaces, like the one on the application site are in general decline and the current use operates below capacity and inefficiently.
- The proximity of other residential uses means the commercial use was approved as an exception subject to a number of restrictions to prevent harm to amenity. These restrictions and the proximity to residential reduce the potential for long term viable business use without harm to neighbouring residents.
- The council has previously accepted the loss of the business use granting permission for ancillary residential use as a swimming pool with a tennis court in the rear garden.
- The proposal is not a conversion and any more intense business use, due to the adjacent residential uses, would be directed to the economic development areas urban area or the rural service centres.
- The proposal includes car parking in accordance with minimum standards and is acceptable in relation to trip generation, biodiversity and landscape.
- Special regard has been had to the desirability of preserving Hollingbourne House its significance, its setting, and features of special architectural or historic interest including the curtilage listed walls.
- The harm that will result from the proposal to the significance of Hollingbourne House, the curtilage listed walls, the glasshouse, donkey wheel and gazebo will be less than substantial. The less than substantial harm to the significance of these heritage assets will be outweighed by the public benefits of the development. These public benefits include improvements to the front building elevation, heritage benefits arising from repairs to all the garden wall that will ensure their long term survival, the accessibility improvements to the garden space for future occupiers and the restoration works to the sunken glasshouses and securing the optimum viable uses consistent with their conservation.
- The proposed roof extensions facilitate the provision of staircases that allow the efficient use of the building as part of the provision of 2 good quality family homes with the existing roof space assessed by roof hatches.

Overall

- The proposal is in accordance with the Maidstone Borough Local Plan (2017) policies SS1, SP17, SP18, SP19, SP21 DM1, DM3, DM4, DM5, DM6, DM8, DM23 DM30, DM31 and Appendix B.

REASON FOR REFERRAL TO COMMITTEE:

Cllr Patrik Garten has referred this application to committee on the basis of the comments set out in the report below.

WARD: North Downs	PARISH/TOWN COUNCIL: Hollingbourne	APPLICANT: Mr Paul Dixon AGENT: John Collins
CASE OFFICER: Rachael Elliott	VALIDATION DATE: 22/05/20	DECISION DUE DATE: 22/01/21
ADVERTISED AS A DEPARTURE: NO		

Relevant Planning History

19/506031/LBC Listed Building Consent for the demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse. Pending Consideration (separate report on this agenda).

18/500228/FULL Conversion and adaptation of existing photography studio into 2

dwellings with associated parking and garden area. Refused 17.04.2018 for the following reasons:

1) *The proposed external works and extension due to the, design, scale and bulk of the proposals fail to respect the character and appearance of the existing buildings and would result in an overly domestic, urban and disjointed appearance that fails to respect the existing buildings contrary to Policies SP17, DM1, DM30, DM31 and the National Planning Policy Framework 2012.*

2) *The application fails to demonstrate that the buildings are of sound construction and their re-use and the reconstruction in the form proposed can be achieved without major or complete reconstruction contrary to Policy DM31 of the Maidstone Borough Local Plan 2017.*

3) *The proposed development would be located in an isolated position within the defined countryside, as established by adopted Local Plan Policy SS1 and SP17 which places emphasis on housing development within sustainable locations. The application for the creation of additional dwellings here has failed to demonstrate a significant environmental improvement and that the site can be reasonably made, accessible by sustainable modes to Maidstone urban area, a rural service centre or larger village as is therefore contrary to Policies SS1, SP17 and DM5 of the Maidstone Borough Local Plan 2017 and the National Planning Policy Framework 2012.*

14/0201 Change of use of studio outbuilding and associated service areas to a purpose incidental to the enjoyment of Mulberry and Well Cottages, and erection of fencing around a tennis court. Granted 07.04.2014

99/1078 Listed building consent for partial reduction in height of garden wall and formation of new gateway Granted 16.08.1999

99/0120 Retrospective listed building consent application for partial demolition of garden wall to provide fire escapes to building regulations requirements and amenity to office and workroom facilities. Refused 19.03.1999 for the following reasons *"The section of wall, the subject of this proposal is listed having been erected prior to 1948 and is within the historic curtilage of Hollingbourne House which is a grade II listed building. It is considered that this section of wall forms an important and integral part of the historic setting of Hollingbourne House and its demolition adversely affects the special historic and architectural interest of this listed building and its curtilage contrary to policy ENV19 of the Kent Structure Plan 1996, policies ENV3 and ENV4 of the Maidstone Local Plan 1993 and policies ENV11 and ENV12 of the Maidstone Wide Local Plan (Deposit) draft".*

99/0119 (Part retrospective) Insertion of windows and doors to north east elevation of the office and workroom facilities Granted 19.03.1999

97/1765 Change of use to a mixed use for photographic business (B1) and continuation of existing carpentry business ancillary to existing electronic workshop, and external alterations. Granted 01.05.1998 with conditions including a restriction to only B1(b) and B1(c) for the reason that "Unrestricted use of the building or land would cause demonstrable harm to the character, appearance and functioning of the surrounding area and/or the enjoyment of their properties by adjoining residential occupiers" and stating that no activity in connection with the uses hereby permitted shall be carried out outside the hours of 18:00 and 08:00 and not at any time on Sundays, Bank or Public Holidays in order to safeguard the enjoyment of their properties by adjoining residential occupiers

89/1936 Erection of detached garage block. Granted 20.02.1990

83/1419 Retrospective application for change of use from residential to electronic workshop and office. Granted 28.12.1983

MAIN REPORT

1. DESCRIPTION OF SITE

- 1.01 The application site (covering 0.02ha) is approximately 1km from the Hollingbourne settlement (Hollingbourne Hill and Pilgrims Way crossroads). The main part of the application site is approximately 85 metres to the south east of Hollingbourne Hill (B2163) with an internal service road providing vehicle access from the main road.
- 1.02 Whilst in the countryside, the application site is not in an 'isolated' location. The application site is located within a larger group of buildings that include a collection of functional agricultural buildings (Hollingbourne Farm) to the south east. The residential building called the Garden Cottage wraps around the northern corner of the application site.

Figure 1: Aerial photograph of the application site (Credit Google Earth)



- 1.03 To the south west of the red line application site boundary is Hollingbourne House (grade II listed). In addition to the main house (which faces south west), the building footprint also includes two cottages to the rear, with Wells Cottage attached to the rear of Hollingbourne House and Mulberry Cottage attached to Wells Cottage. These two cottages are in the applicant's ownership with the main Hollingbourne House in separate ownership. A further group of residential properties are located to the north west (125 metres from the site boundary) located on the opposite side of Hollingbourne Hill.
- 1.04 There are three entries on the national list of historically important buildings in the area surrounding the application site. To the north of the site entrance to Hollingbourne Hill (86 metres from the main part of the application site) is the Gazebo which is grade II listed. The Donkey Wheel is located 9 metres to the north west of the application site boundary which is grade II listed and Hollingbourne House (Mulberry Cottage and Wells Cottage) which is also grade II listed adjoins a section of the south west application site boundary.

- 1.05 Whilst the building on the application site is not listed or a non-designated heritage asset, a stretch of wall to the north east (rear) of this building has been identified as being curtilage listed by the local planning authority by virtue of its age and location in the curtilage of the original main house. The other walls of this residential garden area and one of two derelict glasshouses within the garden are also curtilage listed.
- 1.06 An area of Ancient Woodland (Marshall's Shaw) is located 185 metres to the north east, a local wildlife site is located 170 metres to the south west of the site. The roadside verges between the access to the application site to a point just to the north east of the Hollingbourne Hill and Pilgrims Way junction are protected. The application site is located in the Kent Downs Area of Outstanding Natural Beauty. There are group tree preservation orders on the opposite side of the site access in Hollingbourne Hill and the isolated tree in the open field to the north east (30 metres from the application site) is also covered by a tree preservation order.
- 1.07 The red line application site boundary includes the vehicle access drive from Hollingbourne Hill, with the main part of the application site broadly rectangular in shape.

Figure 2: Site outlined in red and adjacent heritage assets



- 1.08 The internal access drive from Hollingbourne Hill arrives at a courtyard that is located at the rear of the main Hollingbourne House building. Immediately to the left as you enter the courtyard is a small single storey building called the Smokery. The courtyard is located between a building attached to the rear of Hollingbourne House and the front of the building on the application site.
- 1.09 After the building to the rear of Hollingbourne House was purchased, it was renovated by the applicant and converted to provide the two cottages that are now present. The applicant lives in Mulberry Cottage and Wells Cottage provides a holiday let. Whilst these two cottages are located just outside the application site, an area of raised beds in front of the cottages is part of the application site.
- 1.10 The buildings occupied by the cottages would originally have provided ancillary accommodation to the main Hollingbourne House such as kitchens and servants quarters. Whilst these buildings are not mentioned in the official listing description, with this association and attachment they form part of the Hollingbourne House listed building.

- 1.11 The application site is occupied by a large commercial building. Submitted evidence suggests that a former building in this location was also previously used as ancillary space to the main house, including as stabling and as a milking shed prior to the sale of the adjacent farm in 1975. The existing building on the application site is currently used by a photographic business (known as 'Apache' Studios or Courtyard Studios) following the planning permission under reference 97/1765.
- 1.12 Externally there is a clear visual distinction between the front and rear parts of the building. The rear building constructed in the 1950's is a redundant cattle shed with a steel frame construction, breezeblock wall infills, cement sheet roof. The existing black timber cladding dates from around 1992. The building has a roof eaves height of circa 3.3 metres and a ridge height of 5.4 metres and is 27 metres wide with the side elevation of 10 metres. A section of the roof space of this rear part of the building has a concrete floor and is accessed by way of two roof hatches. The rear part of the building is internally domestic in scale consisting of smaller rooms and ancillary space to the main front studio space.

Figure 3: Existing front building elevation



Figure 4 Garden view to the south east towards neighbouring agricultural buildings



- 1.13 The front building in red facing brick and a cement sheet roof was constructed in the 1980s as part of works to replace and extend the front part of the building. This building has a roof eaves height of circa 3.7 metres and a ridge height of 5.8 metres and is 28 metres wide with a side elevation of 8 metres. The front part of the building has a double height space that provides the main large single studio space for the current use with natural light provided by existing roof lights.
- 1.14 Although of different heights and widths, the two buildings both have dual pitched roofs and side gables with a triangular dormer in the middle of the front elevation. This building is not listed, it is not a heritage asset and due to its relatively young age the building is not curtilage listed.

Figure 5 existing ground floor plan (top) and proposed ground floor plan (bottom) showing a reduced footprint in the rear section and new walls in orange.

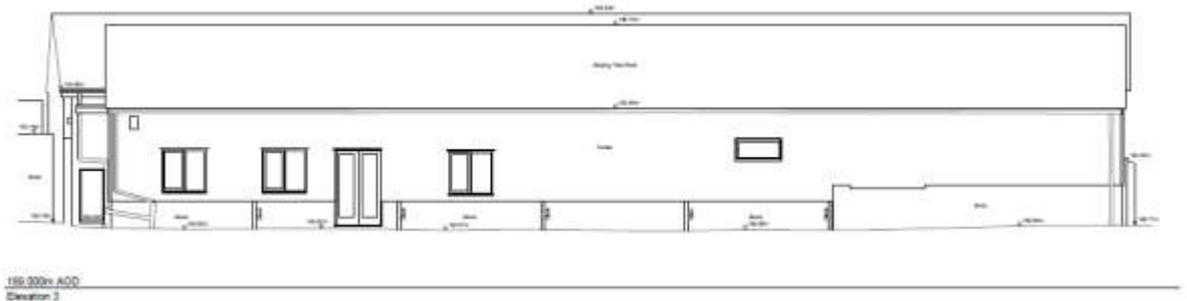


Existing Ground Floor Plan



- 1.15 At the rear of the studio building is a walled garden that is thought to formally have been a functional space linked to the main Hollingbourne House. The wall to the south west of this space that runs parallel to the studio building is thought to have enclosed an animal yard linked to the use of a building used for stabling. The brickwork in the walled garden shows that the walls have been significantly altered and reconstructed in the past and are currently in poor condition and in at some points in danger of collapse. Whilst now separated from the main listed building by the studio building, these walls are listed as a result of their age and the location in the curtilage of the grade II Hollingbourne House.
- 1.16 At the northern (rear) end of the walled garden are two derelict sunken glasshouses. The submitted information states that one of the structures that is built with imperial red brick dates from the late 1800's and is curtilage listed and the other from the 1950's.

Figure 6: Comparison between the existing rear elevation and the rear elevation currently proposed.





2. PROPOSAL

- 2.01 The submitted proposal involves the demolition and reconstruction of the timber clad rear part of the existing studio building. The applicant has said that the reasons for demolishing and replacing the rear building include the significant improvements to the levels of thermal efficiency that will be achievable in the completed building.
- 2.02 The applicant seeks to re-development of the entire site as shown on Figures 1 and 2 above, such that the proposed redevelopment would utilise the existing driveway as access and the existing walled garden would be sub-divided (principally by a native hedge), to provide residential amenity areas for each new dwelling.
- 2.03 The new rear section of building will have a slightly smaller footprint when compared to the existing structure. The new rear section of the building has the same roof height and same roof form and will have black timber cladding to match the existing building (see figure 6 above).
- 2.04 The existing bulls eye window to the north west (side) elevation will be replaced with a window similar to the existing window to the south east (side) building elevation. New glazing to the side elevation will provide natural light to a double height entrance lobby that also provides legibility to this front entrance to one of the two proposed dwellings.
- 2.05 The external alterations to the retained front section of the building include the replacement of the triangular dormer to the front elevation with more functional roof lights. Glazing will be installed in the existing blocked up openings at ground floor level to the front and side of the building to match the existing adjacent openings on the front elevation.
- 2.06 The proposal includes 2 roof additions. The roof additions are set back by over 5 metres from north west elevation and 4 metres from the south east elevation and behind the front and rear roof slopes. These extensions provide head room for internal staircases located in the two proposed residential units. The proposal also involves the creation of an internal covered courtyard in the centre of the building; the courtyard provides the entrance to the second of the two dwellings and direct access from the courtyard through to the rear walled garden.
- 2.07 The 2 dwellings will be formed from the replacement floor space to the rear of the building, the retained converted business floorspace in the front part of the building and relocation of existing floor space in the roof.
- 2.08 In terms of materials, the rear section will be timber weatherboarding to match the existing building and the front section the existing retained facing brick. The roof will be of slate; and the fenestration of dark aluminium frames.
- 2.09 The proposal includes formalised parking for the occupiers of the existing

accommodation to the south west (Wells Cottage and Mulberry Cottage) and the new dwellings in the courtyard area, including in front of the cottages.

- 2.10 The proposal includes the demolition of the existing garden wall to the rear of the existing studio building and its reconstruction in its existing position. The wall will be at a reduced height of 1.2 metres over part of its length with 2 additional openings.
- 2.11 Repairs and restoration works are proposed to other walls within the rear garden. The proposal includes the restoration of a period sunken glasshouses close to the rear boundary of the site with Garden Cottage and the removal of the more recent second glasshouse. The rear garden areas will be separated by a hedge.
- 2.12 Following the earlier advice from the Council's conservation officer and the reasons for the refusal of the earlier planning permission (application 18/500228/FULL) the proposal has been significantly altered and improved.
- 2.13 These changes include a much simplified design for the rear section of the building that more closely reflects the form and scale of the existing building. The alterations to the front part of the building now reflecting the functional building appearance. The submitted revised proposal is supported by the Council's conservation officer.

3. BACKGROUND

- 3.01 The Council issued a planning decision notice on the 29 March 2019 for the application under reference 18/506662/FULL, with the decision notice granting conditional planning permission.
- 3.02 On behalf of the occupier of Hollingbourne House, the Council were informed on the 7 May 2019 (Pre-Action Protocol letter) of the intention to submit a judicial review against the decision to grant planning permission on four separate grounds.
- 3.03 The Council indicated in a response letter dated 16 May 2019 that it accepted that *"there has been a failure to clearly identify what the setting to the listed building is in order to then set out how any impact, if any, to the setting of the Listed Building is mitigated by the proposed development"*. The Council accepted that for this reason it would not contest the claim which should succeed under Claimant's grounds 2 and 3.
- 3.04 A High Court Consent Order dated 8 July 2019 quashed the decision made by the Council to grant planning permission on the 29 March 2019.
- 3.05 This application, together with a Listed Building Consent application for the *Demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse..* were subsequently reported to Planning Committee on 17th December 2020 to re-consider the decision on this application and determine the Listed Building Consent submission. Members resolved to grant planning permission for the development specified in Section 1.0 above and Listed Building Consent under application 19/506031/LBC.
- 3.06 The decisions were issued on 21st January 2021.
- 3.07 A case to Judicially Review the decision was subsequently brought forward by the immediate neighbour in relation to both the grant of full planning permission

(18/506662/FULL) and Listed Building Consent (19/506031/LBC). This was initially refused permission to proceed by Mr Tim Mould QC, decision dated 5 May 2021. A renewed oral hearing by Lang J granted permission to bring forward substantive judicial review proceedings on four grounds. These being as follows :

- (i) MBC erred in its interpretation of the Local Plan policy DM5 "Development on brownfield land";
- (ii) MBC was inconsistent in the approach it took to the assessment of the contribution to the setting of the listed building made by the existing studio buildings;
- (iii) MBC was flawed in the approach taken to the assessment of heritage impact and in doing so acted in breach of its statutory duties pursuant to the provisions of section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
- (iv) MBC failed to take into account a material consideration, namely the potential for a sensitive conversion of the front studio building for the purpose of providing a dwelling.

3.08 The High Court in a ruling dated 14 July 2022 rejected all 4 grounds stating, in summary, the following :

Ground 1 fails as there was no misinterpretation of policy DM5 of the Local Plan, there was no proposal to develop existing residential garden; Ground 2 fails as there was no material misdirection contained within the OR; Ground 3 fails as it amounts to an attack upon the planning officer's assessment and evaluation of the impacts of the proposed development as set out in the OR; Ground 4 also fails as it is an attack upon a planning judgment, the alternative proposal having been considered but only briefly.

3.09 Permission was granted by the Court of Appeal to appeal against the High Court's decision on 2 grounds these in summary being :

1. The proper interpretation of, Policy DM5, in the Maidstone Borough Local Plan and the meaning of 'site'; in particular whether this means the whole of the site the subject of the application, including the garden to the rear of the main application building, or whether 'site' in the context of DM5 excluded the garden to the rear.
2. Whether the respondent failed to have regard to earlier views of the conservation officer which were said to be a material consideration

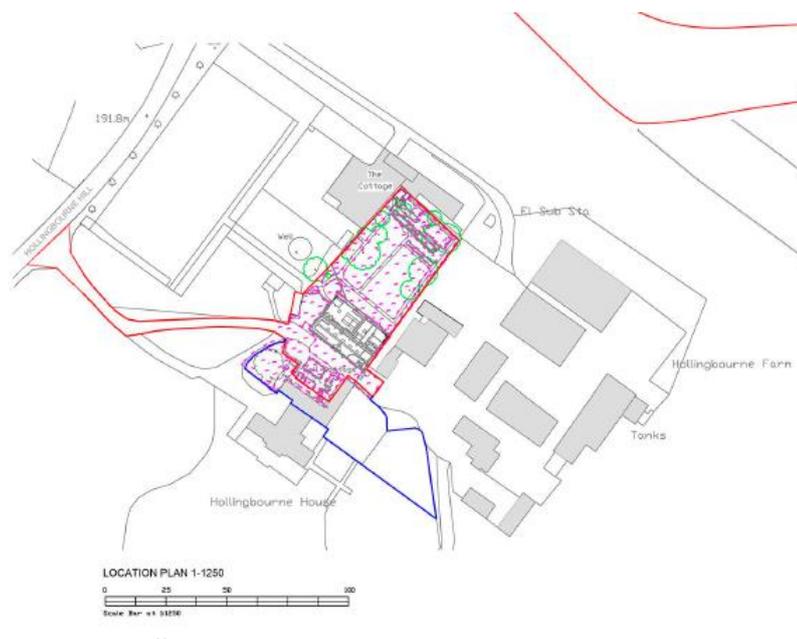
In its decision dated 22 February 2023 the Court of Appeal found that the Council had misinterpreted policy DM5, stating that :

The respondent failed properly to interpret Policy DM5 in that it failed to consider whether the application site as a whole had environmental value. Rather it only considered whether part of the application site, that is, the existing studio building, had a high environmental value. For that reason, I would quash the planning permission and the listed building consent and remit the matter to the respondent. It will have to decide whether or not the application site, comprising the studio building, the walled garden and the land connecting with the road, has high environmental value and whether the other criteria in DM5 are satisfied.

- 3.10 The second ground of appeal was rejected by the Court of Appeal.
- 3.11 All four decisions referred to above are attached for information as appendices to this report as described below :
- Appendix A : Copy of Timothy Mould QC decision on the papers dated 5 May 2021
- Appendix B : Copy of High Court Judgement dated 14 July 2022
- Appendix C : Copy of Court of Appeal Judgement dated 22 February 2023
- Appendix D : Copy of Order to Consent dated 8 July 2019
- 3.12 As set out in the High Court ruling, it was considered common ground that both decisions referred to (19/506031/LBC and 18/506662/FULL) *stand or fall together*. As such both the decisions made by members on the Listed Building Consent and Planning Permission have been quashed and both applications are now put back before members for due consideration and decision in light of the Court of Appeal's judgment about the proper interpretation of policy DM5.

4. KEY JUDGEMENT SUMMARY

- 4.01 The Court of Appeal found that the Council's earlier determination of what constitutes 'the site' in this case for the purposes of applying Policy DM5 was erroneous. , The December 2020 committee report solely considered the building itself in relation to its environmental value, rather than the entire site outlined in red (see map area identified as being within the red line (extract below)



- 4.02 The point which was made by the Appellant and which was accepted by the Court of Appeal is that in order to make a proper planning judgment in the application of DM5 about whether or not the site is of high environmental value and whether the proposed development will result in significant environmental improvement, it is necessary to consider the site in its entirety, including the main application building but also the walled garden to its rear and the access route to the highway. The judgement highlights what should be considered as 'the site', which is *the existing building, the walled gardens and the land connecting with the road* (paragraph 25 of Appendix C.)

4.03 Paragraphs 25 and 26 continue by setting out the key considerations the Council will need to reconsider, now that the court of Appeal has quashed the Council's decision. In summary being :

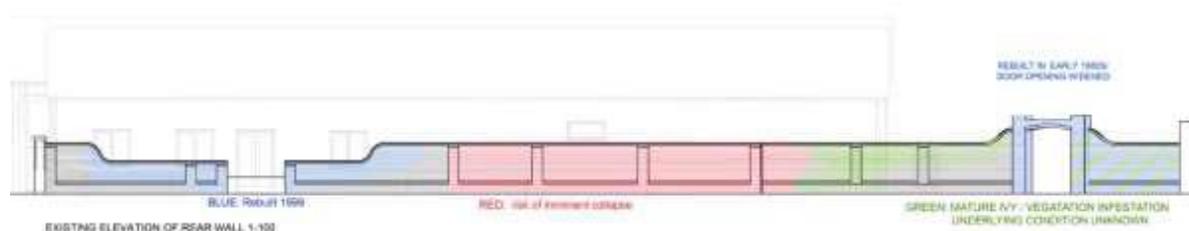
- The respondent will need to determine whether or not the application site as a whole is of high environmental value
- The respondent will also have to assess whether the other criteria (of Policy DM5) are met including whether the proposed redevelopment will result in a significant environmental benefit

5. MATERIAL CHANGES SINCE EARLIER DECISION

- 5.01 The Maidstone Borough Council – Local Plan Review Regulation 22 Submission has been made and Local Plan Hearings are ongoing. The regulation 22 submission comprises the draft plan for submission (Regulation 19) dated October 2021, the representations and proposed main modifications. It is a material consideration, and some weight must be attached to the document because of the stage it has reached. The weight is however limited, as it has yet to be the subject of a full examination in public.
- 5.02 The National Planning Policy Framework (NPPF) was revised on 20 July 2021.
- 5.03 Due to health and safety concerns, a section of the north-east facing garden wall has been removed/lowered and the bricks stored securely behind the remaining wall.



5.04 The existing elevations of the wall submitted with the application (see plan below), therefore now differ from the 'on the ground' situation. Areas highlighted in green have now been removed and those in red lowered.



- 5.05 The applicant is aware that the works carried out are without the benefit of a current consent. Amended plans are not required as the existing plan indicates the lawful height and position of the wall.

6. POLICY AND OTHER CONSIDERATIONS

- 6.01 The status of the development plan is confirmed by Section 38 (6) of the Planning and Compulsory Purchase Act, 2004 which states: "... *determination must be made in accordance with the plan unless material considerations indicate otherwise*

The supplementary planning guidance and national policy and guidance are material consideration in the determination of planning applications.

Development Plan

- Maidstone Borough Local Plan 2017 SS1, SP17, SP18, SP19, SP21 DM1, DM3, DM4, DM5, DM6, DM8, DM23 DM30, DM31 and Appendix B.

- Emerging Policies – Maidstone Borough Council – Local Plan Review Regulation 22 Submission

The regulation 22 submission comprises the draft plan for submission (Regulation 19) dated October 2021, the representations and proposed main modifications. It is a material consideration, and some weight must be attached to the document because of the stage it has reached. The weight is limited, as it has yet to be the subject of a full examination in public

Supplementary Planning Guidance

- Kent Downs AONB Management Plan 2014-2019 (2nd Revision) SD2, SD9, HCH1 and HCH4
- Maidstone Borough Landscape Character Guidelines SPD
- Supplementary Planning Guidance SPG4 'Kent Vehicle Parking Standards' of the Kent and Medway Structure Plan (July 2006)

National policy and guidance

- National Planning Policy Framework (NPPF)
- National Planning Practice Guidance (NPPG)
- Historic England Managing Significance in Decision Taking in the Historic Environment (2015).
- Historic England The Setting of Heritage Assets (2017).

7. LOCAL REPRESENTATIONS (these are original representations, no re-consultation has taken place following the Court of Appeal decision.)

Local Residents:

- 7.01 Two representations (including one representation from a planning consultant acting on behalf of a neighbour) have been received from local residents objecting to the proposal for the following summarised reasons
- The development is contrary to policy DM5 as it will not result in a significant environmental improvement.
 - Policy DM31 is not applicable to this development as the works do not constitute a conversion but amount to major reconstruction. It is overdevelopment and domestication very close to a working farm.
 - With the site location in the countryside and the AONB the proposal is contrary to policies SS1, SP17(1) and the NPPF. The site does not represent a sustainable location where new build dwellings would normally be acceptable
 - The proposal is 'inconsistent' with policy SP21 vii) which prioritises the commercial re-use of existing rural buildings in the countryside over conversion to residential use.

- A comparison between the introduction of the Heritage Report (the domestication the building and the reconstruction of the wall will cause harm on the significance of the heritage assets) and paragraph 4.3 of the same report (alterations would not result in any impact to the significance of Hollingbourne House) 'is confusing'.
- The suburban design (flat box roof and extensive glazing) is out of keeping with the prevailing character of the site, will detract from the agricultural character of the building and from the overall aesthetic of the estate and competing with the architectural features of Hollingbourne House.
- The side elevation windows will be visible when entering the site and from the listed walled gardens and will 'draw the eye' and 'significantly alter the experience of the historical surroundings of Hollingbourne House'.
- The proposal is dominating and overbearing, it is not subservient to adjacent Grade II listed building, and fails to conserve or enhance its significance.
- The demolition and rebuilding of a curtilage listed wall will lead to harm and the loss of historic fabric with significant alterations to the 'dimension of the wall' along with the creation of new openings. This is considered contrary to paragraphs 193 and 194 of the NPPF.
- If a financial argument is being made in relation to paragraph 79 of the NPPF, this decision needs to be informed by 'the appropriate calculations and conservation deficit figures'.
- Following a 'design exercise' carried out by the neighbour's consultant, it is considered that an alternative scheme to convert the existing barn into one large 4-bed house is entirely achievable and is possible with less harmful impact.
- The submitted application is lacking supporting information in relation to marketing, construction and structural information, independent valuation, and biodiversity protected species.
- It is considered that the changes made to the application description are "...incredibly confusing for everyone!".
- The advertisement of the planning application in the local press is questioned.
- It is questioned as to why the local highways authority have not been consulted.
- The comments received from the conservation officer dated December 2019 are misleading.
- I was not sent notice informing me of the application. (*NB: Consultation letter was sent on the 3 January 2019 to Hollingbourne Farm Hollingbourne Hill Hollingbourne*)
- I object to a listed wall being demolished. It is an important feature of the setting of Hollingbourne House that the four walled gardens remain intact. The Dixon's have not maintained the listed walls and allowed them to fall into disrepair. The walls form part of the historic fabric of the original farm and estate and are listed to protect them from such development.
- No Listed Building Consent has been applied for (*NB: A linked listed building consent application has been submitted and is considered as part of a separate report*)
- The design of the houses is not in keeping with the rural setting. It has too much glazing and is a poor overly modern and urban design (*NB: The building design has been subsequently amended with a reduction in the quantity of glazing*).
- It is not an appropriate design for an attractive historic location in an Area of Outstanding Natural Beauty.
- It looks to be predominantly a new build and therefore this surely must need to be a new build application and be scrutinised as such.

Assessment by Heritage Collective on behalf of a neighbour

(Comments on earlier proposal with relocation of the curtilage listed wall)

- 7.02 A neighbour has commissioned an independent heritage assessment carried out by Heritage Collective in summary the submission makes the following points that

- relate to the current application
- 7.03 Hollingbourne House is an asset of high quality and any application affecting its setting needs to take into consideration the effect on its heritage significance.
- 7.04 It has clear architectural and historical interest as a late 18th century mansion with associated grounds and individually listed features (Donkey Wheel and Gazebo, both separately listed grade II).
- 7.05 The heritage value of Hollingbourne House is experienced within a rural setting, with views toward and from the house defined by a country estate character with ancillary, agricultural and ornamental buildings evident in most views.
- 7.06 The substantial walls encircling the four walled gardens contribute to the historical interest of the house by indicating its former grounds, the use of walled gardens for various crops and the varying function of different spaces within an estate of this size.
- 7.07 Any scheme should recognize that the grounds of Hollingbourne House are relatively intact and thus sensitive to change which does not take account of significance.
- 7.08 The proposed development would cause less than substantial harm to the grade II listed building through alteration and relocation of a curtilage listed wall and harm to the historical significance of the building through inappropriate change within the setting of the building. As identified above the survival of no less than four separate walled gardens within the grounds of Hollingbourne House is unusual and worthy of preservation.
- 7.09 In relation to local policy this development would not preserve or enhance the distinctiveness and quality of the area's heritage assets as required by Policy SP18, nor does it conform to the requirements of Policy DM1 in relation to good design. By introducing alien roof extensions and excessive glazing to the two buildings the proposal would not respond positively to its local area or the historic character of the surrounding buildings, nor would it 'provide a high-quality design which responds to areas of heritage and townscape' .
- 7.10 Policy DM4 requires heritage assets to be conserved and where possible enhanced.
This will not be the case if this proposal is permitted.
- 7.11 Regarding Policy DM31.1 the proposal would fall foul of point (c) as the alterations proposed would not be in keeping with the landscape and building character in terms of materials used, design and form. It would also contravene point (e) relating to walls and fences through the introduction of new boundaries that would harm the landscape character of the walled garden. The application should be refused.

Councillor Patrik Garten

- 7.12 The policy determining conversion of rural buildings, Policy DM31 permits residential use only where every reasonable attempt has been made to secure a business re-use of the building. Evidence setting out why the business re use is not appropriate for the buildings needs to be provided and ought to be scrutinised by committee
- 7.13 Neighbours allege that the proposed works are unsympathetic, overly domesticated and fail to respect the character and appearance of the setting of the Grade II listed Hollingbourne House. As this is partially a subjective assessment, it should be considered by a committee.
- 7.14 As my previous reasons explains, the reason for call-in is mainly to secure public confidence in the planning process, which was previously thwarted and required a judicial review. While I welcome the amended details, they do not overcome the unfortunate history of this case.

Hollingbourne Parish Council

- 7.15 Do not wish to comment or object.

8.0 CONSULTATIONS (these are original consultation responses, no re-consultation has taken place following the Court of Appeal decision.)

(Please note that summaries of consultation responses are set out below with the response discussed in more detail in the main report where considered necessary)

Historic England

- 8.01 No comment. On the basis of the information provided, we do not consider that it is necessary for this application to be notified to Historic England under the relevant statutory provisions.

Conservation Officer (MBC)

- 8.02 I support the application and raise no objections from a conservation point of view. The works are wholly in line with our discussions on site and the submission is clear and of good quality
- 8.03 The initial proposal relating to the historic wall adjacent to the development site was that it would be demolished and relocated. I took the view that this would cause harm to a heritage asset and for no clear benefit.
- 8.04 The solution agreed with the applicant was to keep the wall in its historic location but it would be taken down and rebuilt using the viable bricks from the surviving wall supplemented by some bricks salvaged from earlier work. This will deal with the serious problems affecting the wall particularly its dangerous lean and the general decay of the masonry caused by invasive vegetation.
- 8.05 It is unlikely that enough bricks will be salvaged to rebuild the wall to its present height and accordingly it was agreed that the wall could be rebuilt at a lower height. It was also considered as acceptable that the applicant could make some new openings in the wall to suit the needs of the redeveloped adjacent building. The result will be a wall which retains the historic boundary line of the walled area and one which is stable and generally clear of other agents of decay. This seems to me to be a significant gain for the historic asset where there is currently a high risk of collapse and loss.
- 8.06 The works to the remainder of the boundary wall are measured and proportionate. Repairs and alterations have been carried out over the years and this is a continuation of that process which will enhance the appearance and condition of the boundary wall. The line of the boundary will be maintained
- 8.07 There is a historic glass house within the walled area. The structure is partly below ground and this part survives. All the above ground construction has been lost and there are no records of the form of the glass house. The applicant has proposed to build a lightweight structure on the historic base which will bring the building back into use as a glass house. The new construction will sit on top of the historic fabric but none of that original material will be removed or damaged by the new work. This work will protect the historic fabric from further decay.
- 8.08 The conversion of the existing studio building will bring about some alterations to the external appearance but this is minor and it is not considered that it will cause damage to the setting of the listed building. There is some upward extension of the building which will affect the roof line but this work is contained within the valley of the existing roof and will not be visible from Mulberry and Well Cottages. There is also a proposal to replace some of the infill panels on the southwest elevation with glazing instead of solid panels. This, in heritage terms, is simply a change in material and will not impact on the setting of the listed building.

Local Highways Authority (KCC)

- 8.09 No comment, the development proposal does not meet the criteria to warrant involvement from the Highway Authority in accordance with the current consultation protocol arrangements. If there are any material highway safety concerns. Recommend standard informative on any highway approvals that may be necessary.
(NB: in light of the nature of these comments and no new potential related issues the highways authority was not consulted on revisions to the proposal)

APPRAISAL

- 9.01 The key issue for consideration relates to

Consideration of the proposal in relation to Policy DM5 (Development of Brownfield land)

The Court of Appeal found, in summary, that the earlier decision was flawed because the Council in applying DM 5 had failed to take into consideration the entire site and had focused only on the existing building. The judgement therefore concluded that the following matters needed re-consideration:

- The respondent will need to determine whether or not the application site as a whole is of high environmental value
- The respondent will also have to assess whether the other criteria (of Policy DM5) are met including whether the proposed redevelopment will result in a significant environmental benefit

Other issues for consideration are as follows, the consideration of those matters mirrors the earlier Committee Report, with the appraisal updated as necessary in relation to those points raised in 5.0 above.

- Loss of the existing commercial floor space and the provision of a residential use
- Design, appearance, the countryside and the Kent Downs AONB
- Heritage
- Residential amenity.
- Standard of proposed residential accommodation.
- Transport and traffic, access and servicing, car and cycle parking
- Ecology and biodiversity, trees and landscape

Development of Brownfield land (Policy DM5)

- 9.02 As summarised above, the previous decision was quashed because the Council had wrongly interpreted Policy DM5 of the Local Plan. The Court of Appeal found, in summary, that the decision was flawed because the Council in applying DM 5 had failed to take into consideration the entire site and had focused only on the existing building. The judgement therefore concluded that the following matters needed re-consideration:
- The respondent will need to determine whether or not the application site as a whole is of high environmental value
 - The respondent will also have to assess whether the other criteria (of Policy DM5) are met including whether the proposed redevelopment will result in a significant environmental benefit

9.03 Policy DM5 is in these terms:

Development on brownfield land

1. Proposals for development on previously developed land (brownfield land) in Maidstone urban area, rural service centres and larger villages that make effective and efficient use of land and which meet the following criteria will be permitted:

- i. The site is not of high environmental value; and
- ii. If the proposal is for residential development, the density of new housing proposals reflects the character and appearance of individual localities, and is consistent with policy DM12 unless there are justifiable planning reasons for a change in density.

2. Exceptionally, the residential redevelopment of brownfield sites in the countryside which are not residential gardens and which meet the above criteria will be permitted provided the redevelopment will also result in a significant environmental improvement and the site is, or can reasonably be made, accessible by sustainable modes to Maidstone urban area, a rural service centre or larger village.

9.04 The policy therefore allows for residential development of brownfield sites in the countryside which are not of high environmental value; the proposed housing is of a density which reflects the character and appearance of the individual locality and is consistent with DM12 unless there are justifiable planning reasons for a change in density; that the proposed redevelopment results in a significant environmental improvement and the site is or can reasonably be made accessible to Maidstone, a rural service centre or larger village.

9.05 Above all, however, the Court of Appeal decision means that when determining whether the site is of high environmental value and whether the redevelopment results in a significant environmental improvement, the site as a whole, within the red line, including the walled garden to the rear of the existing studio building and the access road must be taken into consideration.

9.06 The Court of Appeal was explicit (paragraph 27) that assessing the environmental improvement must be made in this way:

That latter consideration is not tied to any particular geographic area. The local authority will have to consider the proposed redevelopment as a whole (and here the proposed redevelopment includes the changes to the existing studio building and the changes to the wall forming part of the walled garden). The significant environmental improvement may be to the whole of the application site, part of the application site (e.g. the repair of the historic wall) or to areas outside the application site, or a combination.

9.07 To assist in the interpretation of policy DM5 the supporting text in the Local Plan (paragraph 6.37) sets out six 'key considerations' to be used in assessing the redevelopment of brownfield sites in the countryside. These considerations are as follows:

- The level of harm to the character and appearance of an area.
- The impact of proposals on the landscape and environment.
- Any positive impacts on residential amenity.
- What sustainable travel modes are available or could reasonably be provided.
- What traffic the present or past use has generated; and

- The number of car movements that would be generated by the new use, and what distances, if there are no more sustainable alternatives.

9.08 Policy DM5 requires that for permission to be granted the site is not of high environmental value (1 (i)). The Local Plan does not define what is considered as high environmental value. The environmental value is a planning judgement. The pre-ambule to the policy at paragraph 6.35 states (authors emphasis in bold) :

*'in order to reduce the need for greenfield land, which is a finite resource and **often of higher quality in terms of landscape and biodiversity**'*

The Government's Guidance on Natural Environment does set out the following, but this is guidance and does not form part of the policy itself.

'Some previously developed or 'brownfield' land is of high environmental value, providing habitats for protected or priority species and other environmental and amenity benefits'

- 9.09 Considering the above the site is situated within the AONB, the site is within the setting of Well Cottage, Mulberry Cottage and Hollingbourne House all of which are Listed in their own right and other building/structures within the site or setting of the site are either listed in their own right or considered curtilage listed and part of the site is undeveloped. Ecological reports have not identified impact on protected species and the site is not within a Local Wildlife site, SSSI or Ancient Woodland, nor any other site designated for biodiversity importance. (The nearest designated sites lie to the south-west, south and north-east of the site over 150m away). The existing building on the site has low environmental value in itself with its existing use as a commercial building being a detractor from the site. In the absence of a clear definition of environmental value it is for the decision maker to draw a conclusion based on planning judgment..
- 9.10 There is no bar or scale to interpret what a site's environmental value should be and this could differ between sites, principally because no two sites are the same. In this case factors such as the site's location within the AONB and the heritage assets, weigh in favour of a higher environmental value of the site. On the ground the site includes an access drive, whose environmental value derives from where it is leading to and contribution as part of the setting of the Listed Buildings rather than being of high value in itself. Parking areas and hardsurfacing, which have limited to no environmental value, the Listed Wall does have a higher environmental value, however it is currently in disrepair in places and as such this lowers the value. The walled garden is a positive feature rather than having a high environmental value, it is currently underutilised and does not have a 'purpose'. It is disjointed from the properties it serves, which also benefit from alternative amenity space immediately adjacent to them. Features within the walled garden such as planting are generally overgrown and the maintenance of the walled garden has been generally limited to mowing, and other elements such as the former sunken greenhouses need TLC. The existing studio building has some character, but has previously been considered not to have high environmental value, and there is no reason to depart from that earlier conclusion.. Ecological reports have not identified impact on protected species and the site is not within a Local Wildlife site, SSSI or Ancient Woodland, nor any other site designated for biodiversity importance. (the nearest designated sites lie to the south-west, south and north-east of the site over 150m away).
- 9.11 The site as a whole, is not considered to be of high environmental value. Notwithstanding this conclusion, the site does have some value and due consideration relating to any redevelopment would need to be considered carefully in line with other policy considerations discussed within this report.

- 9.12 Turning to (1(ii)) of DM5, this requires that the density of the development would reflect the character and appearance of the locality and be consistent with Policy DM12 of the Local Plan unless there are justifiable planning reasons for a change in density.
- Policy DM12 advises *"All new housing will be developed at a density that is consistent with achieving good design and does not compromise the distinctive character of the area in which it is situated. Development proposals that fail to make efficient use of land for housing, having regard to the character and location of the area, will be refused permission"*.
- 9.13 The submitted proposal, includes a reduction in the building footprint, and the use of the site for the provision of 2 family residential units of a good standard.
- 9.14 The provision of two residential units will make efficient use of this site whilst respecting the local area that includes both the substantially larger main Hollingbourne House and also the smaller cottages adjacent to the application site boundary. The density of the proposal is acceptable in this location, it reflects the character and appearance of the locality and is consistent with DM12.
- 9.15 (2) of DM5 **exceptionally**, allows for the residential redevelopment of brownfield sites **which are not residential gardens and which meet the above criteria** (relating to environmental value and density).
- 9.16 The application site is wholly in the countryside,. As described above, the site includes the existing walled gardens and although the policy seeks to exclude residential gardens the Court of Appeal have made clear that the whole of the site (including the walled garden) must be assessed against the policy. In this case no change of use would result to facilitate the new gardens. The existing garden would just serve the two new dwellings rather than those existing. As such given the nature of the proposal, it is considered that the site as a whole complies with the policy.
- 9.17 The redevelopment then needs to result in significant environmental improvement and the site is, or can be reasonably be made, accessible by sustainable modes to Maidstone urban area, a rural service centre or larger village.
- 9.18 Firstly considering the significant environmental improvement, this again is not defined and it is for the decision make to determine as a planning judgment what those environmental improvements would be and attribute weight to them so as to determine whether they can be considered significant.
- 9.19 Again taking into account the pre-amble of DM5 paragraph 6.35 refers to landscape and biodiversity and paragraph 6.37 continues by identifying, the level of harm to the character and appearance of an area and the impact of proposals on the landscape and environment as key considerations.
- 9.20 As discussed elsewhere in this report the submitted proposal will improve the environmental value attributed to the character and appearance of the area (a key consideration set out in Paragraph 6.37 of DM5) in a number of ways. These include the reduction in the footprint of the building, the introduction of glazing and landscaping to the front of the building that will restore the rhythm across the long building frontage and improve the building setting.
- 9.21 The removal of the existing commercial use and the resulting activity, traffic and disturbance will have a positive impact on residential amenity for nearby occupiers and the wider area (by removing traffic from the surrounding rural

- country road). The walled garden is currently rarely used, the proposal will re-purpose this area, including works to repair the existing curtilage listed wall and the reinstatement of a former sunken coldframe/greenhouse. Thus resulting in environmental improvement of the site.
- 9.22 Biodiversity enhancements and the use of renewable energy sources also improve the environmental value of this part of the site, both which can be secured by condition. Landscaping improvements could also be secured through condition.
- 9.23 As such it is considered that significant environmental improvement to the site would result from residential development of the site (as a whole).
- 9.24 With regard to the accessibility of the site, it is located 2km from Eyhorne Street (Hollingbourne) which is a designated 'larger village' and a sustainable location in the Local Plan after the Maidstone Urban Area and the designated Rural Service Centres. Paragraph 4.21 of the Local Plan advises that "*The five larger villages ...have fewer services than rural service centres but can still provide for the day-to-day needs of local communities and the wider hinterland*". With this policy wording acknowledging the wider benefits outside the defined larger village settlement boundaries.
- 9.25 Paragraph 4.21 goes on to say "*All villages provide a nursery and primary school; a shop (including a post office); at least one place of worship, public house and community hall as well as open space provision. All have a range of local employment opportunities. The villages are connected by at least four bus journeys/weekday and Hollingbourne and Yalding are served by a train station*".
- 9.26 In applying policy DM5, key considerations are set out at paragraph 6.37 of the Local Plan. These include, what sustainable travel modes are available or could reasonably be provided; what traffic the present or past use has generated; and the number of car movements that would be generated by the new use, and what distances, if there are no more sustainable alternatives.
- 9.27 With the lack of any pedestrian pavement along Hollingbourne Hill and the nature of the road it is likely that walking into Hollingbourne will not be a safe or viable option for future occupiers. It is however possible to make provision for other sustainable travel modes in the terms of cycling and electric vehicles as part of the development. The submitted plans (3094 – 012F) show the provision of 4 electric charging points linked to the 10 car parking spaces that are provided for existing occupiers, users of the holiday let accommodation and future occupiers.
- 9.28 Each dwelling will have EV charging (a Building Regulations requirement) and cycle storage which can be secured by condition. It is considered that fast EV charging (above 7KWh) for each dwelling are necessary to be secured by condition in this situation due to the relatively poor sustainability of the site (i.e. in excess of normal Building regulations requirements). Planning conditions are recommended to request measures to encourage sustainable travel choices by future occupiers (could be vouchers for cycle purchase, travel vouchers etc) are submitted to and approved in writing by the Local Planning Authority and in place prior to occupation.
- 9.29 The supporting text to policy DM5 (at para 6.37) includes a reference to a comparison between existing and proposed uses in terms of traffic movements and the distance of the actual trips if there are no sustainable alternatives. As set out earlier in this report, whilst the existing building has permission for a general business use (Use Class B1) with the high volume of traffic and activity associated with a B1 use, this permission prevents an office use or B1 a) use (only allowing B1 b) or c)). The vehicle trips associated with the two proposed

residential units would be generally less than the trips generated by a B1 use permitted by this condition.

- 9.30 The distance of vehicle or cycle trips from the application site would be relatively short with a public house (The Dirty Habit, although understood to be temporarily closed following a fire, there is a strong likelihood this will reopen) located 1km from the site, Hollingbourne railway station 2.7km away. The nearest bus stop is 1.44km from the site (Church Green outside All Saints Church Hollingbourne no 13 with 9 buses a day into Maidstone Town Centre, Shepway, Otham, Leeds, Langley and around Hollingbourne).
- 9.31 In conclusion, whilst the site is not accessible to Eyhorne Street (Hollingbourne) on foot it is possible to improve the accessibility by sustainable modes with a number of measures. These include ensuring that electric charging points are provided, by ensuring that cycle storage facilities are provided and by putting measures in place through a condition to encourage sustainable travel choices by future occupiers.
- 9.32 The residential use would generate fewer vehicle trips than a general B1 use on the site and less than the studio of this size operating efficiently. The private vehicle trips to local facilities and public transport would be relatively short journeys.
- 9.33 This brownfield site in the countryside is a site that is not of overall high environmental value, and the proposal would result in significant environmental improvement, the density reflects the character and appearance of the area and the site can reasonably be made accessible by sustainable modes to a larger village and has the benefit of removing a use that would have higher trip generation. In light of these considerations the proposal is found to be in accordance with policy DM5 of the adopted Local Plan.

Loss of the existing business use and provision of residential floor space

- 9.34 Policy SP 21 of the adopted Local Plan states that the council is committed to supporting and improving the economy of the borough and providing for the needs of businesses. The policy sets out these aims will be achieved through a number of measures, with points i), ii), iii) and iv) of SP21 referring to the intensification of uses within the existing designated economic areas, referring to support for existing premises in the urban area and rural service centres and improving these areas and Maidstone Town Centre for business purposes.
- 9.35 A change of use of the application building from the existing low intensity use is likely to amount to a business expansion. Policy SP21 (viii) supports proposals for the expansion of existing economic development premises in the countryside, provided the scale and impact of the development is appropriate for a countryside location in accordance with policy DM37. Policy DM37 states that 'expansion' will be permitted in rural areas where new buildings are small in scale and where floor space would not result in unacceptable traffic levels. Where 'significant adverse impacts on the rural environment and amenity' would occur DM37 again directs expanding business to premises in the urban area or the rural service centres or an economic development area.
- 9.36 The application site is not in an economic development area and is not located in the urban area or a rural service centre. The quantity of business (Use Class B1) floor space that is present (approx. 470 square metres) was only acceptable in this location on the basis that the use of the building was restricted on residential amenity grounds.

- 9.37 These restrictions covered the building use (use class B1 b & c, MA/97/1765) for the reason that "*Unrestricted use of the building or land would cause demonstrable harm to the character, appearance and functioning of the surrounding area and/or the enjoyment of their properties by adjoining residential occupiers*".
- 9.38 The hours of use were also restricted with a condition specifying that no activity in connection with the uses hereby permitted shall be carried out outside the hours of 18:00 and 08:00 and not at any time on Sundays, Bank or Public Holidays. The reason for this restriction was to safeguard the enjoyment of their properties by adjoining residential occupiers. It is also understood that a separate covenant in the title deeds has a similar restriction.
- 9.39 The applicant has provided the background to the general decline of photographic studios with advances in technology (including CGI) and the switch to digital making photography more accessible to the general public. This move to digital has reduced the need for large studio spaces similar to that provided on the application site.
- 9.40 In these circumstances, it is unlikely. given these generally accepted market conditions that an alternative photography business would be found to occupy the application building. Other alternative businesses seeking employment floor space of this size would be directed towards the urban area or the rural service centres or an economic development area by DM37 for the same reasons that the restrictive conditions were imposed on the photography business .
- 9.41 The restrictions placed on the commercial use of the application building as a result of the location and the likelihood of future complaints from adjacent neighbours would make the application building unattractive for alternative for business use.
- 9.42 An alternative more intense business use using the same floor space would represent a business expansion and with the resulting noise, activity and traffic this would be unacceptable in this location. The proposal is in line with policies SP21 (minus vii) that is assessed below) and DM37.

Nature of the submitted proposal, conversion or a new building SP21 and DM31.

- 9.43 The distinction between the 'conversion' of a building and the formation of a 'new building' or rebuild has been considered by the courts under *Hibbitt v Secretary of State for Communities and Local Government*.
- 9.44 The judgement accepted that complete demolition of a building and it being rebuilt could not be a conversion. It was found that works to form a residential unit from a pole barn that involved infilling of three open sides was also not a conversion. In other circumstances the judgment advised that the assessment as to whether development was a conversion, or a new build had to be based on the scale and the nature of the proposed works.
- Figure 7 The studio space with blocked up openings visible (right hand side)



- 9.45 With the existing building (front and rear parts) covering 470 square metres, the proposal will involve the demolition of 291 square metres or 62% of the original building. The existing external walls of the building are a total of 94 metres long (including window and doors). The current proposal will demolish a length of 51 metres or 54% of the existing external walls (see walls marked in orange in figure 5).
- 9.46 With this extent of building works and the whole of the rear section of the building being demolished and rebuilt the officer view is that the proposal does not represent a conversion.

Policy SP21 Economic development & DM31 Conversion of rural buildings.

- 9.47 For the reasons outlined above, it is the officer view that the submitted proposal taken as a whole does not involve the conversion of the building and due to the extent of the proposed works the proposal will result in a new building.
- 9.48 Following on from this conclusion, it is the officer view that Local Plan policy SP21 (vii) and policy DM31 do not apply in the consideration of this current planning application. An assessment of the proposal against relevant policies including DM30 is provided later in this report
- 9.49 If members take a different view to officers and consider that the submitted proposal does represent a conversion, an assessment against policy SP21 (vii) and DM31 is provided below.
- 9.50 Policy SP21 (vii) advises that the commercial re-use of existing rural buildings in the countryside will be prioritised over the 'conversion' to residential use, in accordance with policy DM31. Policy DM31 considers the 'conversion' of rural buildings to other uses including residential stating that "Outside of the settlement boundaries as defined on the policies map, proposals for the re-use and adaptation of existing rural buildings which meet a number of listed criteria will be permitted. These criteria are considered below.

DM31 1 i) The building is of a form, bulk, scale and design which takes account of and reinforces landscape character

- 9.51 Whilst not a heritage asset, the front of the application building constructed of red brick and constructed in the 1980's has a functional broadly symmetrical business

appearance. The character of the front part of the building comes from the regular building openings across the front elevation that are separated by brick piers and the double height space with roof lights.

- 9.52 The rear of the building with the black timber cladding from 1992 is more domestic in scale with a lower roof ridge and eaves, roof lights and windows of residential domestic proportions (see figure 8).
- 9.53 Whilst it is accepted that historically there has been an agricultural building in this location, the two parts of the existing building are relatively modern. The front red brick building bears little resemblance to either modern or historical agricultural buildings. The rear building with the recent timber cladding, roof form and the domestic openings has the appearance of a converted agricultural barn (see figure 8).
- 9.54 Overall and taken as a whole the building is not of a form, bulk, scale and design which takes account of and reinforces landscape character and therefore its conversion would be contrary to policy DM31, 1i).

Figure 8 Rear elevation of the building viewed from the rear walled garden



DM31 1 ii). The building is of permanent, substantial and sound construction and is capable of conversion without major or complete reconstruction;

- 9.55 As set out earlier in this report, as the current proposal involves major reconstruction with the demolition of rebuilding of the rear part of the building the submitted proposal would not meet the requirement of policy DM31 1 ii). DM31 1 iii). Any alterations proposed as part of the conversion are in keeping with the landscape and building character in terms of materials used, design and form.
- 9.56 The proposed changes represent an improvement to the building frontage with the removal of the studio use allowing the existing building openings to be unblocked. This work will restore the symmetry and rhythm to the building frontage. In this context the proposal meets the requirement of DM31. 1 iii).

DM 31 1 iv) There is sufficient room in the curtilage of the building to park the vehicles of those who will live there without detriment to the visual amenity of the countryside.

- 9.57 The submitted proposal includes car parking for existing and future residential

accommodation in the courtyard to the front of the building. This parking will not cause harm to the visual amenity of the countryside. The proposal meets this requirement of DM31 1 iv).

DM31 1 v). No fences, walls or other structures associated with the use of the building or the definition of its curtilage or any sub-division of it are erected which would harm landscape character.

- 9.58 A new hedge separates the rear amenity areas within the enclosed rear walled garden however due to the location this will not harm landscape character. The proposal meets the requirement of DM31 1 v).

DM31 3 i). Every reasonable attempt has been made to secure a suitable business re-use for the building.

- 9.59 The applicant has set out the nature of the current business on the application site and the context of the general decline in photography studios, similar to the space provided on the application site.
- 9.60 The proximity of the existing residential accommodation to both the front and rear of the application building, the shared courtyard and the nature of vehicle access that is shared with the residential uses in Hollingbourne House, Mulberry Cottage and Wells Cottage makes the application building unattractive for potential commercial occupiers.
- 9.61 The sensitivity of the application building location in relation to residential amenity is shown by the existing restrictions placed on the floor space by planning conditions. These conditions would again restrict the interest in the floor space by alternative business occupiers.
- 9.62 The application submission also includes the following information that draws on the applicant's experience of running the existing holiday let (Wells Cottage adjacent to the application site) and the applicant's agent who has 30 years experience of the local property market.
- 9.63 The comments relate firstly to an alternative use of the building in line with the existing permission (B1 b) '*Research and development of products or processes*' and c) '*Industrial processes*') and secondly consider the conversion of the application building to provide holiday let accommodation.
Alternative B1 b) and c) use
- There is insufficient space on the site for the car parking that would be required for an alternative business use (applicant currently lives and works on site)
 - The works to increase car parking to make the site more attractive to potential tenants would harm the setting of the listed building
 - The use of the site by HGVs would harm residential amenity
 - There is a severe lack of mobile and high speed broadband in the area that is important for B class uses.

Holiday let accommodation

- The profitability of holiday let accommodation is low with falling income and rising costs.
- Holiday accommodation available locally already includes a Days Inn, Mecure, Hilton and Leeds estate properties and greater choice with the expanse of Airbnb.
- With the occupancy of holiday lets restricted by the nature of the business (and a requirement of DM31 2 iii), it would be difficult to get finance to cover the initial outlay for the conversion works.

- The realistic income that would be achievable from a completed conversion of the application building to holiday lets would not cover the cost of the finance required.

9.64 Following the above assessment, the submitted proposal meets the requirement of DM31 3 i).

DM31 3 ii). Residential conversion is the only means of providing a suitable re-use for a listed building, an unlisted building of quality and traditional construction which is grouped with one or more listed buildings in such a way as to contribute towards the setting of the listed building(s), or other buildings which contribute to landscape character or which exemplify the historical development of the Kentish landscape.

9.65 Whilst the front part of the application building is of quality construction it is not listed and its impact on the setting of the nearby listed building is a negative one.

9.66 The contribution of the building to landscape character and the historical development of the Kentish landscape is small. The proposal does not meet the requirement of DM31 3ii).

DM31 3 iii). There is sufficient land around the building to provide a reasonable level of outdoor space for the occupants, and the outdoor space provided is in harmony with the character of its setting.

9.67 With the large walled garden to the rear of the site, there is sufficient space for the proposed family accommodation. The proposal includes the repair and restoration of the garden walls and the introduction of the residential use into the building will assist in ensuring the future maintenance of the garden walls. The proposal is in line with policy DM31 3 iii).

9.68 In conclusion, with the proximity of nearby residential occupiers, the granting of planning permission for the use of the application building for commercial purposes was an exception.

9.69 The commercial use of the building was only acceptable on the basis that the building would be occupied by limited uses including a photography studio as an alternative commercial use *would "...cause demonstrable harm to the character, appearance and functioning of the surrounding area and/or the enjoyment of their properties by adjoining residential occupiers"*.

9.70 In addition where there are potential *'...significant adverse impacts on the rural environment and amenity'*, including where there is business expansion, adopted local plan policies direct commercial uses to the urban area, the rural service centres or an economic development area.

9.71 As set out in the planning history , the council has previously accepted the loss of a business use in the application building and the conversion of the space to ancillary residential use. Planning permission was granted in April 2004 for the change of use of the building from the photography studio with the approved plans showing a swimming pool and garage in the retained building with the rear garden providing tennis courts.

9.72 In this context and for the reasons that have been given, the loss of the existing commercial use and the provision of residential use in this location are acceptable.

- 9.73 Officers have concluded (in agreement with an objection from a neighbour) that due to the extent of works proposed overall, the application does not involve the conversion of the building as a whole.
- 9.74 The description of development correctly refers to one part of the proposal as the conversion of the two areas of the building that are retained from business to residential use. In this context policies DM31 and SP21 (vii) are not relevant to this application. If members consider otherwise, and that these policies do apply, the above assessment has found that the proposal is in line with DM31 1(iii), 1(iv), 1(v), 3(i), and 3(iii) but contrary to DM31 1(i), 1(ii) and 3(ii).

Design, appearance, the countryside and the Kent Downs AONB

- 9.75 Policy SP 17 of the Local Plan provides advice on the countryside which is defined as all those parts of the plan area outside the designated settlement boundaries on the policies map. Development proposals in the countryside will not be permitted unless they accord with other policies in this plan and they will not result in harm to the character and appearance of the area.
- 9.76 Policy SP 17 states that great weight should be given to the conservation and enhancement of the Kent Downs Area of Outstanding Natural Beauty including the management plan. Account should be taken of the Maidstone Borough Landscape Character Guidelines Supplementary Planning Document.
- 9.77 Policy DM 30 (Design principles in the countryside) states that proposals which would create high quality design, satisfy the requirements of other policies in this plan and meet a number of stated criteria will be permitted. These criteria are considered below.

i. The type, siting, materials and design, mass and scale of development and the level of activity would maintain, or where possible, enhance local distinctiveness including landscape features.

- 9.78 The design and appearance of the submitted proposal has sought to respect and enhance the positive aspects in the appearance of the existing commercial building. The reconstructed rear part of the building and the alterations to the front of the building retain and enhance the character of the building (removal of the blocked up openings) whilst seeking to reduce the negative aspect of its bulk and dominance in this location by increasing activity at ground floor level.
- 9.79 The application involves the demolition and rebuilding of the rear part of the building. This rebuilt section of the building will be in the same general location but with a smaller footprint. The rebuilt rear of the building will reflect the scale and character of the original and retained parts of the building with proposed window and door openings in a similar domestic style to the existing building.
- 9.80 The proposal involves the formation of a small 0.9 metre deep inset balcony with access doors to the south east (farm) elevation at first floor. The existing building has a high level window in this location. This balcony is in keeping with the character and appearance of the building. Amenity is discussed separately.
- 9.81 The design of the proposal and the other building changes are discussed in the heritage section of this report. The alterations and the design of the building have been considered by the Council's conservation officer and they have confirmed their support for the application.

ii. Impacts on the appearance and character of the landscape would be

appropriately mitigated. Suitability and required mitigation will be assessed through the submission of Landscape and Visual Impact Assessments to support development proposals in appropriate circumstances.

9.82 The application site is set some distance from the public highway, to the rear of the large main Hollingbourne House and will be seen in most views in the context of the adjacent larger agricultural buildings in Hollingbourne Farm.

9.83 The proposed building, including the roof extensions, is acceptable in this location, and will not have a negative impact on the landscape and as a result no mitigation is required. In addition, the building will not be highly visible on this enclosed site with screening provided by neighbouring buildings.

iii. Proposals would not result in unacceptable traffic levels on nearby roads; unsympathetic change to the character of a rural lane which is of landscape, amenity, nature conservation, or historic or archaeological importance or the erosion of roadside verges.

9.84 The proposal will not result in unacceptable traffic levels on nearby roads, and is likely to reduce the potential for damage to roadside verges as the removal of the commercial use will reduce the need for HGV's to visit the application site and reduce trip generation.

iv. Where built development is proposed, there would be no existing building or structure suitable for conversion or re-use to provide the required facilities. Any new buildings should, where practicable, be located adjacent to existing buildings or be unobtrusively located and well screened by existing or proposed vegetation which reflect the landscape character of the area.

9.85 The submitted proposal retains part of the existing front building and includes a reduction in the footprint of the rebuilt rear building. The proposal complies with this requirement.

v. Where an extension or alteration to an existing building is proposed, it would be of a scale which relates sympathetically to the existing building and the rural area; respect local building styles and materials; have no significant adverse impact on the form, appearance or setting of the building, and would respect the architectural and historic integrity of any adjoining building or group of buildings of which it forms part.

9.86 The submitted proposal that includes a reduction in the footprint of the rebuilt rear building with similar weatherboarding facing material complies with this requirement.

9.87 The proposed slate roof covering, and aluminium windows are acceptable. The proposed roof extensions set below the two roof ridges and set in by over 5 metres from north west elevation and 4 metres from the south east elevation and behind the front and rear roof slopes are in keeping with the appearance of the building. The proposal complies with this requirement with the proposed roof extensions discussed in the heritage section of this report.

Account should be taken of the Kent Downs AONB Management Plan and the Maidstone Borough Landscape Character Guidelines SPD

9.88 The application site is found within the Kent Downs ANOB. Policy SD2 of the Kent Downs AONB Management Plan states that the local character, qualities and distinctiveness of the Kent Downs AONB will be conserved and enhanced in the design, scale, setting and materials of new development.

- 9.89 Policy SD9 of the management plan states that the particular historic and locally distinctive character of rural settlements and buildings of the Kent Downs AONB will be maintained and strengthened. The use of locally-derived materials for restoration and conversion work will be encouraged. New developments will be expected to apply appropriate design guidance and to be complementary to local character in form, setting, scale, and choice of materials.
- 9.90 Policy HCH1 states that the protection, conservation and enhancement of the historic character and features of the Kent Downs landscape will be pursued and heritage-led economic activity encouraged. Policy HCH4 advises that opportunities to develop contemporary artistic, historic, cultural and scientific interpretation and celebration of the landscape and people of the Kent Downs will be pursued.
- 9.91 The proposal includes alterations to the front part of the building that are keeping with the building appearance and the rebuilding of the rear part of the building on a slightly smaller footprint. The building alterations will represent an improvement to the AONB in the limited views of the building on this enclosed site
- 9.92 The local character, qualities and distinctiveness of the Kent Downs AONB will be conserved and enhanced by the design, scale, setting and materials of the proposal in accordance with policy SD2 of the Management Plan. The submitted proposal is in accordance with the Kent Downs AONB Management Plan.
- 9.93 The application site is in the Wormshill, Frinsted and Otterden Downs and Dry Valleys character area in the Maidstone Borough Landscape Character Guidelines SPD. The area is described as a series of dry dip slope valleys and ridges to the north east of Maidstone, on the upper plateau of the North Downs within the Kent Downs Area of Outstanding Natural Beauty.
- 9.94 The key characteristics include
- gently undulating landform of dry dip slope valleys and ridges,
 - many large woodland tracts with oak and ash,
 - chalk grassland pasture in dip slope valleys, a
 - arable fields on ridges,
 - a strong network of species rich native hedgerows
 - Estate fencing and flint and red brick walls
 - Scattered villages and farmsteads with buildings featuring flint, chalk, red brick and chequered red and grey brick,
 - Narrow winding lanes which most often are lined by hedgerows (AONB).
- 9.95 The character guidelines conclude that actions should be taken to conserve and reinforce these characteristics. The submitted application that relates to an enclosed site will conserve these characteristics. The application is in accordance with the Kent Downs AONB Management Plan and the Maidstone Borough Landscape Character Guidelines SPD

Heritage

- 9.96 In making decisions on all listed building consent applications, or any planning application for development that affects a listed building, or its setting, a local planning authority must have special regard to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest. This obligation, found in section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (1), applies to all decisions concerning listed buildings.

- 9.97 Historic England advice is that preserving the building or its setting in this context means not harming the interest in the building, as opposed to keeping it utterly unchanged. The Court of Appeal decision in the case of *Barnwell vs East Northamptonshire DC 2014* made it clear that in enacting section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 Parliament's intention was that 'decision makers should give "considerable importance and weight" to the desirability of preserving the setting of listed buildings' when carrying out the balancing exercise'.

Figure 7: View looking west to Wells Cottage before and after improvement works



- 9.98 Policy SP18 of the Local Plan relates to the historic environment advising that the characteristics, distinctiveness, diversity and quality of heritage assets will be

protected and, where possible, enhanced to ensure their continued contribution to the quality of life in the borough. This aim will be achieved by the council encouraging and supporting measures that secure the sensitive restoration, reuse, enjoyment, conservation and/or enhancement of heritage assets, in particular designated assets identified as being at risk, to include securing the sensitive management and design of development which impacts on heritage assets and their settings.

- 9.99 Policy DM4 of the Local Plan relates to development affecting designated and non-designated heritage assets. Applicants will be expected to ensure that new development incorporates measures to conserve, and where possible enhance, the significance of the heritage asset and, where appropriate, its setting. A Heritage Assessment should respond to the value of the historic environment by assessing and taking full account of heritage assets, and their settings, which could reasonably be impacted by the proposals. The assessment should consider the significance of the assets and the scale of the impact of development on the identified significance.
- 9.100 Policy DM4 states that the council will apply the relevant tests and assessment factors specified in the National Planning Policy Framework when determining applications for development which would result in the loss of, or harm to, the significance of a heritage asset and/or its setting.
- 9.101 The National Planning Policy Framework (paragraph 197) states: *"In determining applications, local planning authorities should take account of: a) desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation; b) positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and c) desirability of new development making positive contribution to local character and distinctiveness"*.
- 9.102 NPPF paragraph 199 advises *"When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance"*.
- Paragraph 200 adds *"Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification...."*
- 9.103 In assessing the level of harm that may occur and the planning balance NPPF paragraph 202 advises *"Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use"*.
- 9.104 Further guidance on considering the significance of heritage is provided by Historic England (Managing Significance in Decision Taking in the Historic Environment (2015) and The Setting of Heritage Assets (2017)).
- 9.105 Policy DM4 of the Local Plan states that where development is proposed for a site which includes or has the potential to include heritage assets with archaeological interest, applicants must submit an appropriate desk-based assessment and, where necessary, a field evaluation. The application site is not in an area known to have archaeological interest. The buildings on the site are also relatively modern and their construction is likely to have destroyed anything of interest that

was present in the ground. It is for these reasons that no further archaeological information is required to support the current application.

- 9.106 The relevant heritage considerations as part of the current development include the need to consider the potential impact on:
- The setting and significance of Hollingbourne House (Grade II),
 - The setting and significance of the gazebo building (Grade II),
 - The setting and significance of the donkey wheel (Grade II),
 - The setting and significance of the brick garden walls (curtilage listed Grade II) and the sunken glasshouses (partially curtilage listed).
- 9.107 The NPPF defines 'setting' of a heritage asset as "*The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or ' contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral*".
- 9.108 The NPPF defines setting of a 'significance' of a heritage asset as "*The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting*"
- 9.109 The submitted planning application is supported by a heritage assessment prepared on behalf of the applicant.

The setting and significance of Hollingbourne House (Grade II)

- 9.110 The description of Hollingbourne House provided on the national list of historically important buildings is as follows:
- "House. 1798 by Charles Beazley, with later C19 alterations. White-brick with slate roof. 2 storeys on brick plinth. Ashlar plat band. Projecting eaves with flat boxed soffits, continued across gables. Eaves and verges form pedimented gable ends; central section breaks forward in 2 stages, with slightly higher eaves. Hipped roof to inner break, pedimented gable to outer. Gable end stacks and 4 rear stacks. Small semi-circular window in central pediment gable. Regular 10-window front of recessed sashes: three 12-pane to each side range, two 8-pane to first break, flanking central break which has two 12-pane sashes. Eight 18-pane ground-floor sashes breaking plinth, and with gauged segmental heads. Ground floor of first break has 2 niches with recessed square panels above. All windows except those of first break formerly with Venetian shutters. Large round-arched window to ground floor of right gable end, with Gothic glazing and ogee-headed central panel. Panelled door with rectangular fanlight, in later C19 addition to rear, flanked by fluted Corinthian pilasters and with triangular pediment. Interior: only partly inspected. Geometrical staircase in central rear turret. Central ground-floor room with Soanian ceiling".*
- 9.111 The significance of Hollingbourne House comes mainly from its historic importance as a grand country house but it also has architectural and artistic significance in its neo-classical design. With reference to neighbour comments, other than the individual comments on the gazebo, donkey wheel and house the listing descriptions do not highlight any historical significance or interest in the wider Hollingbourne House grounds or the gardens.
- 9.112 The submitted heritage assessment carried out on behalf of the applicant notes that the original building "*...was complemented by a grand setting, which*

reflected the landscape ideals of the eighteenth century. Mature trees were used to frame the approach to the building along the driveway from Hollingbourne Hill, while the coach house, stabling and ancillary buildings were located to the southeast, obscured from view by the principal house to guests". (RPS Heritage Assessment: paragraph 3.5).

- 9.113 The buildings attached to the rear of Hollingbourne house would originally have been part of the main residence but providing secondary functional service areas to the principal house. With this secondary relationship, the buildings would have been purposefully hidden behind the main house.
- 9.114 In the 1920-1940's with links to the main house maintained, the submitted information sets out that, what is now the ground floor of Wells Cottage was in use as the kitchens and laundry with a housekeepers flat upstairs. What is now Mulberry House was the breakfast room and servants' quarters.
- 9.115 With the subsequent change in ownership and the renovation of the buildings to provide two separate cottages, the 'use' of the rear buildings is no longer associated with the main house. The two cottages are however still physically attached to the rear of Hollingbourne House, they remain part of the listed building and have a historical association.
- 9.116 The land to the rear of the main house (where the detached studio building is currently located) is shown on historic maps (mid 1800's) as previously providing a livestock or horse enclosure with open ground and wide access gates. In the late 1940's the house and estate were all sold together, and the site subsequently included a dairy farm with building on the studio site providing a milking parlour.
- 9.117 The courtyard at the rear of the main building was at that time operating as part of the farm with the courtyard buildings providing a farm office and domestic staff quarters.
- 9.118 In 1975 the garden cottage, the farm and Hollingbourne House were split up and sold separately. In the years between 1975 and 1998 the former front barn on the application site was demolished and replaced with a modern steel framed structure. The owners of an audio manufacturing /touring business lived in the main house and ran the business from offices in the location of Mulberry cottage with other parts of these buildings let out for residential use.

Figure 8: Comparison between the existing and the proposed front elevations

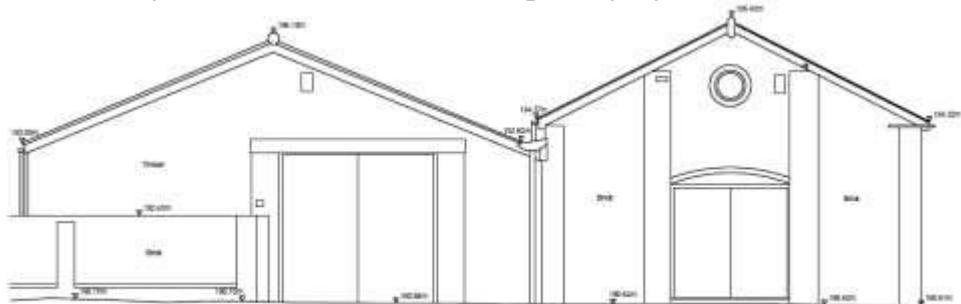




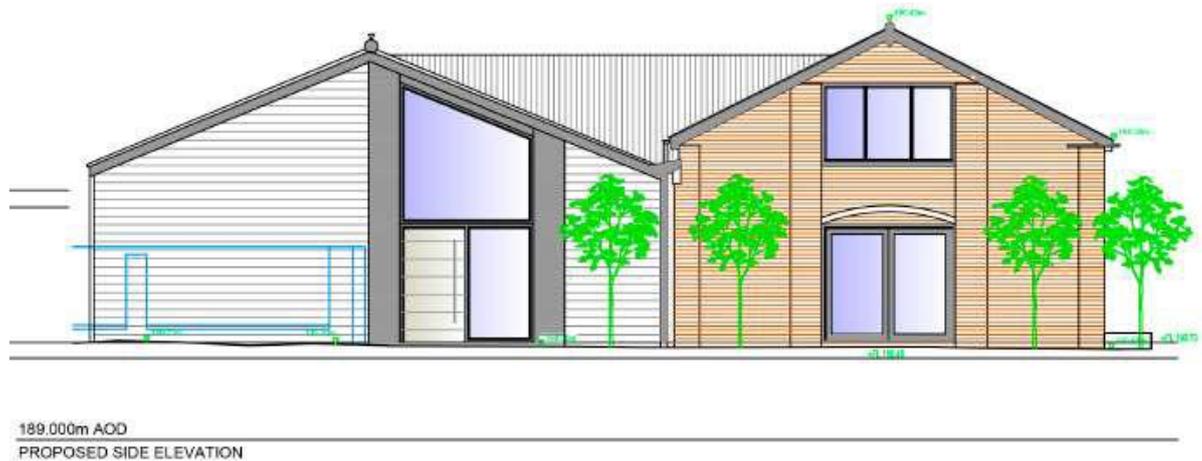
1:100 AOD
PROPOSED FRONT ELEVATION

- 9.119 The studio buildings were in separate commercial use including uses such as wood working, car body spraying, and stage equipment hire. The courtyard area was concreted over to protect underground water tanks from HGV's using this space. The area directly adjacent to the rear of the listed building (in front of Mulberry and Wells Cottages) was a hardstanding parking area (see Figure 7).
- 9.120 In 1998 the buildings that now provide Mulberry and Wells Cottages, were purchased by the applicant together with the detached building at the rear and the garden beyond. Work was carried out to renovate the buildings into the two cottages with the reinstatement of Georgian features and to convert the rear building into a photography studio. The studio building is now in need of expensive work such as heating systems, roofing and windows and this work is not economical given the current low scale use of the building.
- 9.121 The significance of Hollingbourne House is as a large country house, with the buildings and land at the rear largely screened from view. The land occupied by the application site, the garden and the commercial building were originally in domestic residential use linked to, and an important part of the main Hollingbourne House building. Other than the physical attachment and some shared access arrangements there is little that remains of the original relationship between the front and rear buildings of Hollingbourne House.

Figure 9: Comparison between the existing and proposed side elevation



1:100 AOD
Elevation 2



- 9.122 The buildings attached to the rear of Hollingbourne House have had a variety of uses, both residential and commercial. Following renovation by the applicant these buildings have reverted back to the original residential use providing two cottages, Mulberry Cottage and Wells Cottage (see Figure 7). These buildings are not referred to in the official listing description of the property which lists features of special architectural or historic interest in the building.
- 9.123 The large commercial application building to the rear of Hollingbourne House has a timber clad rear section constructed in the 1950's, with the red brick front building dating from the 1980's. This building is a modern addition to the site and is not a heritage asset. At the closest point, the blank narrow north east elevation of the listed building (Mulberry Cottage) is separated by a distance of 6 metres from the commercial building across a hardstanding area. The studio building and hardstanding area are in the setting of the listed building.
- 9.124 The commercial building is of a functional design and appearance. This building and the area of hardstanding in front currently provide shared access and car parking for the residential and commercial uses.
- 9.125 The change of use to residential would introduce a conforming use in this location that also reflects the historic use of this land as residential .
- 9.126 The council have previously accepted the loss of a business use in the application building (ref 14/0201). In the assessment of the application the case officer sets out that the proposed loss of the commercial floor space and introducing residential use
"...would benefit the setting of the listed buildings through the reunification of the site and its reversion to solely residential use, as well as through the removal of commercial vehicles/parking associated with the business use". The same conclusions are relevant and made in relation to the current planning application.
- 9.127 The physical changes to the front elevation of this commercial building involve the provision of glazing to two existing blocked openings. With the shape and location of the seven openings on the front elevation and the separating brick piers at even spacing, the glazing in the building frontage will restore the rhythm of the original design.
- 9.128 The glazing represents a positive change to the building by reducing the existing blank frontage on this prominent part of the building and providing interest and activity upon arrival at the courtyard. The other changes to the front elevation involve replacing the triangular front dormer with three roof lights and two additional roof lights. With roof lights on the existing application building and on

nearby farm buildings the addition of roof lights is in keeping with the retained building.

- 9.129 The appearance of this long building elevation will be further enhanced by the proposed trees and landscaping across the building frontage. This landscaping strip will provide some visual relief from the large area of hardstanding, improving the visual appearance of this area. The residential accommodation has been correctly designed with the living areas at ground floor level to the front of the building, which will provide activity and interest. The landscaping strip will provide some defensible space to these living areas.
- 9.130 On the side elevation of the commercial building there are three existing openings, two large openings at ground floor level (including double doors and a further blocked up original opening) and a high level bulls eye window.
- 9.131 The proposal involves replacing the bulls eye window with a larger window that will serve a bedroom. This first floor window respects the location and appearance of the retained ground floor opening but is of a smaller scale to respect the first floor location. This window is also the same scale and proportion as an existing high level window to the opposite south east (farm) building elevation. The proposal involves unblocking the original ground floor opening and fitting this with glazing.
- 9.132 The double doors will be replaced with a new narrower entrance door with the proposed glazing reflecting the new double height entrance lobby. Whilst it is accepted that glazing is only currently provided in the high bulls eye window, the total area of the proposed openings on the side elevation are similar to the area of the existing openings both covering an area of approximately 14 square metres.
- 9.133 The proposed works will use brickwork and weatherboarding to match the existing building facing materials. The existing cement sheet roof will be replaced with a slate covering. The existing timber doors and windows will be replaced with aluminium doors and windows.
- 9.134 The submitted plans show the relocation of the existing floor space in the roof space to the front part of the building. This space will provide new bedrooms for each of the two new units. The roof space is currently accessed by way of two roof hatches and the proposal involves two new staircases to improve accessibility. To achieve the necessary head height at the top of the stairs to meet building regulations, these staircases require roof extensions across the roof valley between the front and rear parts of the building.
- 9.135 As the extensions are lower than the two roof ridges, they will not be visible from the space at the front of the building that is shared with the listed building or to the rear of the building. In addition, the extensions are set back by over 5 metres from the north west (side) of the building of Unit 1 and at the shortest point 4 metres back from the south east (side) elevation of Unit 2. With the proposed roof eaves heights ranging between 3.2 and 3.8 metres and the set back from the edge of the roof, the existing building will provide some screening of these extensions especially in short to medium range views. Further screening of the extension on the south east side of the building will be provided by the large agricultural buildings on the adjacent site.
- 9.136 As highlighted by the submissions made by the neighbour, it is accepted that one of the extensions would be visible in longer range views from the grounds of Hollingbourne House further to the east (Donkey Garden). The extensions would be at a lower height than the roof ridges and a similar colour. With the scale of

the host buildings, and with the extension seen in the context of two large pitched roofs and the large agricultural buildings of Hollingbourne Farm the roof extension would not appear out of place in these views.

- 9.137 The courtyard between the listed building and the application building as well as access currently provides several areas of hardstanding that provides informal car parking. The submitted plans show the reorganisation of this parking to provide 10 formal spaces. These changes with the introduction of new planting and electric vehicle charging points will improve the appearance of this area.
- 9.138 An objection made on behalf of a neighbour has stated that the proposed works *"...are out of keeping with the prevailing character of the site and will detract from the agricultural character of the building and from the overall aesthetic of the estate"*. After assessing the orientation and access arrangements associated with the existing red brick building it is clear that the building has a closer relationship to the adjacent residential uses in these listed areas. The rear part of the building currently has the appearance of an agricultural barn converted to residential use and this appearance will be retained. Other than being adjacent, there is little relationship with the character and appearance of the agricultural buildings on Hollingbourne Farm or other agricultural buildings.
- 9.139 It is concluded that the current application building has a negative impact on the setting of the grade II listed building Hollingbourne House and the impact of the proposal on the significance of this heritage asset will be less than substantial.

The setting and significance of the brick garden walls (curtilage listed Grade II) and the sunken glasshouses (1 of 2 curtilage listed)

- 9.140 The submitted heritage assessment considers the significance of the curtilage listed walls and reports the following:
- On the title map of 1840 the walled gardens are in an earlier layout with the area behind the stables (studio) building yet to be fully enclosed by new walls.
 - The 1867 map shows that the gardens were still being developed and the new stable block and yard had yet to be added. The layout of the cottage garden paths was very different from today with no central path and the path close to the stable yard forward of its current position. The entrance to the garden would appear to be sited more in the corner too.
- Much of the garden development of the glasshouses and new walls are believed to date from about 1875 -88 and these appear to be present on the photograph of 1895.
- On the next photograph of 1940 glasshouses and vegetable plots show that the walled garden is largely a functional food production area. There is an access path outside the garden which helps connect the garden to the rear of the house
 - In the 1950's the owner has built new wide concrete tracks to access the gardens with tractor mowers from the main house driveway. The garden is renovated by the head gardener who builds up the right hand sunken bed to match the left hand one and replaces the cold frame with a raised bed.
 - In the rear garden the long raised bed can be seen in the 1960s with a much reduced vegetable crop. The importance of the garden relative to the setting of Hollingbourne House has been greatly impacted and diminished by the development and encroachment of the farm, its activities and its access road through the courtyard.
 - 1975 the sale of the farm and garden cottage resulted in the closing of 4 access points to the cottage garden increasing its isolation and amenity within the overall setting of the estate. The main Hollingbourne House was listed in 1984 without any mention of the walls.
 - With the location of the cottage garden to the rear of the studio building the applicant reports that current access to this residential garden is poor.

- It is reported that at the time of the applicant's purchase the neighbours boundary wall had collapsed and this has since been rebuilt, the wall behind the barn has long been collapsing and is currently propped up on timbers (see figure 10).
- 9.141 The heritage assessment after considering the significance of the walls advises *"...the surrounding landscape and arrangement of the walled gardens have been periodically and substantially altered since their construction. They now demonstrate numerous phases of redevelopment, with the garden walls to the west appearing to date from the construction of the previous Hollingbourne House in the seventeenth century. However, many of the walls appear to date from the late eighteenth century, with further nineteenth and twentieth century construction and intervention"* (Paragraph 3.6).
- 9.142 The wall alterations include works granted consent in August 1999 (99/1078) which involved a partial reduction in the height of garden wall to 1.2 metres and formation of new gateway.
- 9.143 Whilst the main Hollingbourne House was listed in 1984 without any mention of the walls, the council considers the walls within the garden area to the rear of the studio building to be statutorily listed due to their location in the curtilage of the grade II listed Hollingbourne House. Although in large parts not in their original form the walls have historical value in their general alignment in marking the boundaries of the walled garden and the retained bricks that the walls are constructed with.
- 9.144 The current application includes works and repairs to all of the garden walls surrounding the rear section of the application site. The applicant has advised that bricks salvaged from the proposed alterations and those retained from the 1999 alterations will be used to replace the blockwork in sealed openings or to carry out general repairs that are needed. The work will be carried out in accordance with the methodology provided at figure 12 which is submitted by the applicant.
- 9.145 The wall that runs mainly parallel to the rear of the studio building demarcated an animal yard from the walled garden and is in three different parts. The middle longer section was built at later date than the other two sections. A number of different parts of the wall have previously been rebuilt and a section lowered in accordance with a permission granted in 1999.
- 9.146 The proposed works to the wall are shown on the drawings below. A section of this wall is currently unstable and propped up as it is close to collapse (see Figure 10), this wall would be dismantled and rebuilt. The majority of the existing wall is 1.8 metres high but with an 8 metre long section (including a 2 metre wide opening) that drops down to a height of 1.2 metres that was previously granted consent. Listed building consent for partial reduction in height of garden wall and formation of new gateway, granted on the 16 August 1999 under reference 99/1078
- 9.147 The current lowered section of wall would be extended by 14 metres with two new openings formed of each 2.5 metres wide. With the many previous alterations, the value of the wall is in its alignment, the bricks used in its construction and the manner in which the original walls were constructed. With these elements protected as part of the current proposal, that will also secure the walls sustainable future, the harm to the wall is less than substantial.
- 9.148 The submitted proposals include the following works to the other garden walls:

- North west wall – likely to have been laid between 1866 and 1888 in imperial bricks with lime mortar. The wall will be repointed as joints have lost their mortar. An angled modern wall is to be removed.
- South west wall – although line of wall appears to match the original layout, the wall appears to have been rebuilt at least twice including in recent times. Laid in imperial bricks with sand and cement the piers to the opening are a modern addition in the 1950s. The propose works are to repair the wall, clear back the ivy, replace the gate with a Yew hedge infill and add caps to the brick piers.
- East garden wall – Wall dating from the early 1800's but has since had a range of different alterations including formation of new openings and a section of wall raised in the 1950's. A blocked up opening in the wall will be re blocked in more suitable bricks with a false door, ivy infestation removed and repointed. A leaning section may require buttressing.
- Northern glasshouse wall – believed to date from between 1800 – 1840 with Georgian bricks in Flemish garden bond with darker bricks in a 'diaper' pattern. The line of the wall appears in 1790. Appears that the upper section of this wall may be a later addition. The works include repointing with lime mortar and replacing blown bricks, loose sections of render from the former glasshouse removed, end of wall tied in. 1950's electrical shed repaired.

Figure 10 South wall curtilage listed showing existing propping (prior to its partial removal)



- 9.149 At the northern (rear) end of the walled garden are two sunken glasshouses. The submitted information reports that the sunken glasshouses are both currently in a highly derelict state.
- 9.150 The left hand glasshouse dates from around 1879 – 1880 and is built of imperial bricks. This earlier glasshouse is curtilage listed due to the location in the original curtilage of the main Hollingbourne House and as it existed on the 1st July 1948. The submitted proposal includes the renovation of this glasshouse include rebuilding above ground in reclaimed red brick and new glazing. The 1950s heating equipment would be removed with the interior rendered. The door frame and door would be reinstated in a design similar to the original four panel door.

- 9.151 It is thought that the right hand glasshouse was originally a sunken frame which was built up in the 1950s using buff bricks and then rendered. This 1950's glasshouse is not curtilage listed and is not a heritage asset. The applicant has stated that the repair of the later more recent glasshouse is not economically viable so the structure will be recorded and then reduced to ground level and filled with soil. A feature outline in brick at ground level would be retained to mark its position.
- 9.152 The proposed works to the application building, including the reduction in the building footprint as part of the rebuilding of the rear part of the building. These changes and the proposed residential use of the building is make a positive contribution to the setting of the wall and glasshouse.
- 9.153 It is concluded that the current application building has a neutral impact on the setting of the curtilage listed walls and the glasshouses and the impact of the proposal on the significance of these heritage assets will be less than substantial.

Figure 11 Works to the wall at the rear of the studio building



The setting and significance of the gazebo building (Grade II),

- 9.154 The Gazebo is located just to the north of the Hollingbourne Hill entrance to Hollingbourne House. The building is on the national list of historically important buildings (grade II). The Historic England listing is as follows:
"Gazebo. Late C18. Red brick in Flemish bond. Plain tile roof. Rectangular plan. Chamfered brick plinth, on flint base with stone quoins. Pyramidal roof. Rectangular window to south with Gothic panes. Blocked windows to west and north. Interior not inspected".
- 9.155 The submitted heritage statement sets out *"The Gazebo was constructed as an outbuilding to the principal house and effectively serves as a gate lodge to Hollingbourne House...and marks the principal entrance into the estate. This setting is an integral component of the listed building's significance....". The connection with the principal house is also an important component of its significance with the structure designed to mark the approach to the listed building. Although both structures form part of the estate, they were historically distinct, with the Gazebo constructed to mark the entrance to the estate and be visually conspicuous. In contrast the original stabling within the Site was located to the rear of the principal building, away from public views.*" (paragraphs 3.31 and 3.32).

- 9.156 With the lack of any meaningful functional relationship between the Gazebo and the application site and the separation distance of 95 metres, the application proposal will not impact on the setting or significance of the Gazebo with less than substantial harm.

The setting and significance of the donkey wheel (Grade II)

- 9.157 The donkey wheel is on the national list of historically important buildings (grade II). The Historic England listing is as follows:

Donkey Wheel. C19. Wooden. Horizontal, spoked, wooden drum on vertical wooden shaft. Brake shaft towards base. Attached by wooden frame to well head about 3 metres to south.

- 9.158 The submitted heritage statement sets out 3.33 "*The Donkey Wheel was constructed in the nineteenth century within the large walled garden, which historically housed the original Hollingbourne House. Although it now appears to be dismantled, its original significance was drawn from its historic interest as a piece of nineteenth-century engineering designed to help draw water from the well below. It also represents the continued use of animal power in the estate at this time. Its setting is intrinsically linked to the nearby well. The historic use of the structure is no longer apparent due to previous damage and the surrounding vegetation. It is possible that the Site shares some historic association with the Wheel, through its probable historic use as stabling. However, this function has long since ceased, with the structure within the Site having subsequently been reconstructed. As such, any such potential historic link is no longer legible and the Wheel base now serves an ornamental function within the garden. Its setting is therefore now largely linked to this ornamental role within a domestic setting, while its setting is also visually constrained by the surrounding wall. The Site therefore makes no contribution to the significance of the Donkey Wheel*".
- 9.159 Listed building consent was granted on the 15 June 2000 for the dismantling of a timber built donkey wheel. After considering the relationship the application site makes no contribution to the significance of the Donkey Wheel and the application will not harm its setting with less than substantial harm.
- 9.160 In overall heritage conclusions, with the above assessment it is concluded that the current application building and the application site make no contribution to the significance of the grade II listed Donkey Wheel and the Gazebo and they will not harm their setting with less than substantial harm.
- 9.161 The current application building has a negative impact on the setting of the grade II listed building Hollingbourne House and the impact of the proposal on the significance of this heritage asset will be less than substantial.
- 9.162 Policy SP18 of the Local Plan states that heritage assets will be protected to ensure their continued contribution to the quality of life. This aim will be achieved by the council encouraging and supporting measures that secure the sensitive restoration, reuse, enjoyment, conservation and/or enhancement of heritage assets, in particular designated assets identified as being at risk. NPPF (paragraph 197) states: "*In determining applications, local planning authorities should take account of... the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation...*".
- 9.163 The curtilage listed garden boundary walls have been subject of a wide range of

earlier work, including repairs alterations, demolition work and rebuilding. This work has included a new opening in relation to providing a fire escape from the commercial building. The section of the wall to be rebuilt is currently unstable, propped up and in danger of collapse. In these circumstances and with reference to policy SP18 this curtilage listed wall is identified as being at risk.

- 9.164 With the many previous alterations, the value of the walls is in their alignment that marks the boundaries of the walled garden. With further value from the bricks themselves and the manner in which the 'original' walls were constructed.
- 9.165 The current application will retain the walls on their current alignment. The reconstructed walls will be built, and repairs made with bricks that are retained from the earlier work to lower the adjacent wall and the proposed demolition. The walls will be built using a garden wall bond with the spacing of headers and stretchers to match the original wall, with a mortar mix to match the existing wall. The works will be carried out using the methodology set out at figure 12. This restoration work can be controlled through a planning condition.
- 9.166 The garden and boundary walls are now in different ownership to the listed building and separated from the listed building by the large commercial application building. The use of the garden by existing occupiers is currently restricted by this lack of direct access and as the garden walls are currently unsafe.

Figure 12: Methodology for repair and rebuilding the garden walls



- 9.167 The use of the proposed building for residential use will bring the gardens back into full beneficial use. The work to restore and rebuild the walls and the new openings will ensure there is direct access from the two proposed family homes to the rear garden space and that the functional role of the walls as means of enclosure is retained.
- 9.168 With the brick wall less than 500mm away from the rear elevation of the application building the lowered section of wall will enable residential outlook to

be provided to the rear windows. The lowered wall will also improve the relationship between the building and the garden space.

- 9.169 The work involving the removal and recording of the later glasshouse from the 1950s and the restoration of the later glasshouse from the 1880s as set out earlier in this report will enhance the existing historical interest in this garden area and will preserve its significance.
- 9.170 The work to the walls and the glasshouses is considered in line with SP18 with the restoration of the walls and glasshouse conserving this heritage asset and allowing the garden space to be enjoyed and used to its full potential. The proposal is in line with NPPF paragraph 197 in terms of putting the site to viable use that is consistent with its conservation. The works to repair and rebuild the curtilage listed structures and to secure their preservation is in line with paragraph 199 of the NPPF that states that great weight should be given to an asset's conservation.
- 9.171 It is concluded that the current application building has a neutral impact on the setting of the curtilage listed walls and the glasshouses and the impact of the proposal on the significance of these heritage assets will be less than substantial.
- 9.172 The harm arising from the proposal relates to the new openings in the curtilage listed wall and the roof extensions to the application building. NPPF paragraph 202 advises "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use".
- 9.173 The proposed roof extensions that are set behind and below the front and rear roof slopes and a minimum of 4 metres from the side elevations will be hidden in the majority of views of the application building. Where the roof extensions are visible, they will be seen in the context of the main building roof. The extensions are provided to provide headroom for the staircases with the staircases provision reasonable in terms of making optimum viable use of the site (NPPF, 202).
- 9.174 The curtilage listed wall at the rear of the application building is unstable and in danger of collapse. Whilst it is accepted that the proposed additional openings will result in harm to the heritage value of the wall, the benefits of providing the improved access to the rear garden and the future use of the garden that will result, outweigh this harm.
- 9.175 In addition to the individual benefits from the roof extensions and the changes to the wall the proposal will provide wider public benefits that outweigh the less than substantial harm that has been identified. As set out in this report these include the improvements to the building frontage, improvements to the listed building setting, reduction in the building footprint, new landscaping, restoration of the other walls and the glasshouse, removal of the existing commercial use and securing an optimum viable use providing 2 good quality family dwellings.
- 9.176 After having special regard to the desirability of preserving the relevant heritage assets, their setting and any features of special architectural or historic interest the proposal is in line with policy SP18 and DM4 of the adopted Local Plan and advice in the NPPF.

Neighbour amenity

9.177 Local Plan policy DM 1 states that proposals which would create high quality design will be permitted where they respect the amenities of occupiers of neighbouring properties. Development should not result in, excessive noise, vibration, odour, air pollution, activity or vehicular movements, overlooking or visual intrusion. Built form should not result in an unacceptable loss of privacy or light enjoyed by the occupiers of nearby properties.

Noise and disturbance

9.178 The operation of the existing commercial use is restricted by planning conditions due to the proximity of adjacent residential accommodation. This accommodation is The Garden Cottage to the north, to the south west Wells Cottage with Mulberry Cottage with Hollingbourne House beyond.

9.179 The current proposal will remove the existing commercial use and introduce a residential use that conforms with the use of neighbouring buildings. The activity, noise and disturbance from a residential use including from vehicle movements is likely to be lower than a commercial use in the building.

External lighting

9.180 Policy DM 8 states that external lighting will be permitted where it can be demonstrated that the lighting is the minimum amount necessary and that the design and specification of the lighting would minimise glare and light spillage. The lighting scheme should not be visually detrimental to its immediate or wider setting, particularly intrinsically dark landscapes.

9.181 The application site is in a group of other buildings including several other residential uses. Whilst visually any new external lighting will be seen in the context of these other buildings and uses, in order to avoid amenity issues a planning is recommended that seeks the submission of details of any lighting to be installed on the site.

Privacy, overlooking, outlook, daylight and sunlight.

9.182 The potential impact of the development on the amenities of the adjacent residential occupiers is considered below. These properties are Wells Cottage, Mulberry Cottage, the Garden Cottage and Hollingbourne House.

• *Wells Cottage*

9.183 Wells Cottage is in a two storey building that is parallel to and facing the front of the application building.

9.184 In terms of the front elevation, the submitted proposal involves new glazing in the front ground floor openings that are currently blocked (serving kitchen/ family room areas) and 5 roof lights on the front roof slope.

9.185 The middle three rooflights serve a double height covered accessway, the other two roof lights serve first floor bedrooms. With a separation distance of 22 metres (normal standard of 20 metres between directly opposing upper floor windows) across the shared public courtyard and access the proposed development is acceptable in relation to overlooking and privacy. The separation distance of 17 metres between the rooflights and the amenity space to the side of Mulberry Cottage is acceptable.

9.186 The introduction of glazing to the front elevation of the application building will remove the current blank appearance which will improve the appearance of the

building and in turn improve the outlook for adjacent occupiers. With no increase in the height of the building that will be visible from the front elevation the proposal is acceptable in relation to daylight and sunlight provision.

- *Mulberry Cottage*

9.187 Mulberry Cottage is orientated at an angle of 90 degrees from the frontage of the application property. Whilst a distance of 6 metres separates the side elevation from the application property there are no windows in the side wall of this neighbouring property

9.188 With the screening provided by the existing Mulberry Cottage building the proposal is acceptable in relation to privacy and overlooking issues in relation to the rear amenity space of this property. With no increase in the height of the building that will be visible from the front elevation the proposal is acceptable in relation to outlook, daylight and sunlight provision.

9.189 The existing application building has a high level window to the south east (farm) elevation. The proposal involves the formation of a small 0.9 metre deep inset balcony in this location that is accessed through the new bedroom. This elevation of the application building is level with the rear elevation of Mulberry Cottage and the balcony that has one open side will be 8 metres from the corner of Mulberry Cottage. With this relationship, the partially enclosed nature of the balcony and the existing window in this location the proposal is acceptable in relation to residential amenity

- *The Garden Cottage*

9.190 In terms of the rear elevation, the submitted proposal involves new additional ground floor glazing and 5 roof lights on the rear roof slope. The rooflights serve a double height covered accessway, the windows at ground floor are to bedrooms, lounge and a study.

9.191 At the closest point, the rear corner of the application building will be separated from the corner of the Garden Cottage by a distance of 30 metres. With this separation distance this relationship is acceptable in relation to privacy, overlooking daylight and sun light. With the building orientation the potential impact on the amenity space of the Garden Cottage will be minimal. With no increase in the height of the building visible from the rear elevation the proposal is acceptable in relation to outlook, daylight and sunlight provision.

- *Hollingbourne House.*

9.192 The main Hollingbourne House is located to the rear of, and attached to, the building that is occupied by Wells Cottage and Mulberry Cottage, and separated from the front elevation of the application property by a distance of 28 metres. With the separation distance and the intervening buildings, the changes to the front elevation of the application building are acceptable in terms of this relationship and privacy, overlooking outlook, daylight and sunlight.

9.193 The large grounds of Hollingbourne House extend from the south to the north west side of the application site. The side elevation of the existing building has a bull's eye window at first floor level (to a double height space) and two large openings at ground level. The proposal includes the formation of a new entrance with glazing to an internal double height space to the rear section of this side elevation. To the front section the bulls' eye is replaced with a larger window and the window opening at ground floor level will be unblocked.

- 9.194 The larger opening at first floor level is to a bedroom. A distance of 11 metres separates this first floor window from the site boundary with the boundary marked by the side wall of a single storey detached small smokery building is present to the side, used as storage for bikes building. In the grounds of Hollingbourne House beyond this utility building is a further single storey detached garage with its own driveway.
- 9.195 To the north of these detached outbuildings is a wall marking a formal garden area, with this garden area also the site of the dismantled donkey wheel. An objection has been received from the neighbouring occupier in relation to the overlooking of this garden from the proposed new glazing. The boundary of this garden is 10 metres from the new first floor window.
- 9.196 Whilst it is accepted that there may be overlooking from this window, with views partially screened by the existing detached building, trees and walls this overlooking is not sufficient to raise an objection. A separation distance of 10 metres between an upstairs window and a directly facing neighbours garden is normally considered acceptable (20 metres between directly facing windows). It is also highlighted that this overlooking impacts a very small area in the larger grounds of Hollingbourne House
- 9.197 In conclusion the submitted proposal is acceptable in relation to maintaining neighbour amenity and is in accordance with policy DM1.

Standard of proposed residential accommodation.

- 9.198 Local Plan policy DM1 and paragraph 130 of the NPPF states that proposals will be permitted where they create high quality design and provide adequate residential amenities for future occupiers of the development by ensuring that development is not exposed to, excessive noise, vibration, odour, air pollution, activity or vehicular movements, overlooking or visual intrusion.
- 9.199 The proposed accommodation provides a good standard of residential accommodation with adequate internal space for the intended function of individual rooms and spaces. The submitted plans show that the accommodation is provided with sufficient daylight, sunlight and outlook for future occupiers. The accommodation is provided with an external amenity area to the rear of the site.
- 9.200 In conclusion the submitted proposal is acceptable in relation to the standard of accommodation and is in accordance with Local Plan policy DM1 and paragraph 130 of the NPPF.

Access and servicing transport and traffic

- 9.201 Local Plan policy DM 1 states that proposals which create high quality design will be permitted, where they safely accommodate the vehicular and pedestrian movement generated by the proposal on the local highway network and through the site access.
- 9.202 The existing vehicle access to the site is from Hollingbourne Hill and this access is retained as part of the submitted proposal. The existing access is suitable including in relation to its width, driver sight lines and the future servicing of the accommodation. The bin storage is shown on the plan and will be located close to, and accessible for collection. In terms of refuse vehicles, through the commercial use of the site the access has been shown to be suitable for HGV's.
- 9.203 Local Plan DM21 seeks to ensure that the vehicle trips generated by a use can be

adequately accommodated on the road network. The vehicle trips associated with the efficient operation of the commercial use on the application site would be more than those associated with the proposed residential accommodation.

- 9.204 It is acknowledged that the site is not in the most sustainable location. A planning condition is recommended requesting the submission of measures to promote sustainable travel choices by future occupiers of the accommodation. This could include information given to new occupiers, including public transport timetables.
- 9.205 In conclusion the submitted proposal is acceptable in relation to access and servicing transport and traffic and is in accordance with Local Plan policies DM1 and DM21.

Car parking

- 9.206 Local Plan policy DM 23 states that the car parking for residential development will take into account the type, size and mix of dwellings and the need for visitor parking. Parking shall secure an efficient and attractive layout of development whilst ensuring the appropriate provision of integrated vehicle parking.

Figure 13 comparison of parking standards against the proposed car parking

Dwelling	Bedrooms	standard	Standard visitor	Standard required total	Provided
Unit 1	4	2	0.2	2.2	3
Unit 2	4	2	0.2	2.2	3
Wells Cottage	5	2	0.2	2.2	2.2*
Mulberry cottage	2	1.5	0.2	1.7	1.7*

* Total parking required for the cottages is 3.9 spaces and 4 spaces are proposed

- 9.207 Car parking standards are set out at Local Plan Appendix B. The local plan advises that new developments should ensure that proposals incorporate electric vehicle charging infrastructure.
- 9.208 Local Plan Appendix B advises that the car parking requirements applying to the application site are set as 'minimum' standards. The guidance states that for units with four or more bedrooms 2 independently accessible spaces are required per unit with 0.2 spaces per unit for visitor spaces. In relation to two bedroom units 1.5 spaces are required with 0.2 spaces per dwelling for visitor parking.
- 9.209 As set out in the table above the proposed parking meets the standards that are required in adopted policy. The proposal also includes 4 electric vehicle charging points. The applicant has advised that "*The possibility of additional 'tandem' parking exists to ensure that the concerns of neighbours in respect of the parking are fully met*".
- 9.210 In conclusion the submitted proposal is acceptable in relation to car parking and is in accordance with Local Plan policy DM 23 and Appendix B.

Cycle parking

- 9.211 Local Plan policy DM 23 states that cycle parking facilities on new developments will be of an appropriate design and sited in a convenient, safe, secure and sheltered location. The layout of the proposed building includes a central open area that could provide secure cycle parking.

- 9.212 Cycle standards are set out in Supplementary Planning Guidance SPG4 'Kent Vehicle Parking Standards' of the Kent and Medway Structure Plan (July 2006). These standards require 2 cycle spaces per unit for two or three bedroom dwellings and the proposal would therefore need to provide 6 spaces. A planning condition is recommended seeking details of cycle parking and for this storage to be in place prior to first occupation.
- 9.213 In conclusion with the recommended condition the submitted proposal is acceptable in relation to cycle parking and is in accordance with Local Plan policy DM 23.

Trees and landscape

- 9.214 Local Plan policy DM1 states that proposals should create high quality design and respect the topography and respond to the location of the site and sensitively incorporate natural features such as trees, hedges and ponds worthy of retention within the site. Policy DM3 states: "To enable Maidstone borough to retain a high quality of living and to be able to respond to the effects of climate change, developers will ensure that new development protects and enhances the natural environment by incorporating measures where appropriate to protect positive landscape character, trees with significant amenity value, and important hedgerows".
- 9.215 An area of Ancient Woodland (Marshall's Shaw) is located 185 metres to the north east, a local wildlife site is located 170 metres to the south west of the site. The roadside verges between the access to the application site to a point just to the north east of the Hollingbourne Hill and Pilgrims Way junction are protected. The application site is located in the Kent Downs Area of Outstanding Natural Beauty. There are group tree preservation orders on the opposite side of the site access in Hollingbourne Hill and the isolated tree in the open field to the north east (30 metres from the application site) is also covered by a tree preservation order
- 9.216 The current application involves the demolition and rebuilding of the existing building and does not involve works that would harm existing trees. Whilst it is highlighted that the provision of some of the new parking involves the loss of a raised bed, this harm is mitigated by new planting along the frontage of the building and the general improvements. The applicant has confirmed that no works to trees are proposed.
- 9.217 In conclusion the submitted proposal is acceptable in relation to trees and landscape and is in accordance with Local Plan policy DM1 and DM3.

Ecology and biodiversity

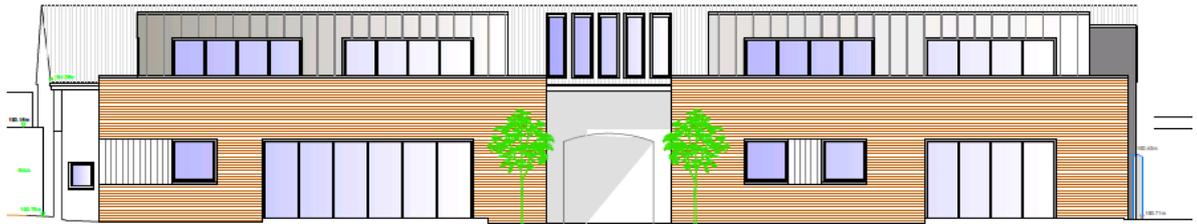
- 9.218 Local Plan policy DM3 states: "*To enable Maidstone borough to retain a high quality of living and to be able to respond to the effects of climate change, developers will ensure that new development protects and enhances the natural environment ...where appropriate development proposals will be expected to appraise the value of the borough's natural environment through the provision of...an ecological evaluation of development sites...to take full account of the biodiversity present, including the potential for the retention and provision of native plant species*".
- 9.219 The potential of the application site to accommodate protected species has been assessed as part of an ecological survey. This ecological survey was first carried out in 2016 and updated in December 2020.
- 9.220 The surveys found no bats or signs of bats during the internal/external inspection of the buildings. The studio buildings were not judged as offering roosting

potential for bats. The brick walls around the site were searched for bats and signs of bats but no signs found with four cavities deemed suitable for single roosting bats. The ecologist recommends that the works to the walls should follow a precautionary approach by checking each wall cavity with an endoscope directly before works and that these works should only be undertaken outside the bat hibernation season (November to March).

- 9.221 The smokery building is tiled with felt below and the space between tiles and felt could be used by crevice dwelling bats however this building is being retained as part of the development. Four apple trees present towards the back of the garden offer high suitability for roosting bats as they had cavities with these trees also retained (additional two trees from the first survey). These trees are not impacted by the works. The garden may be used by foraging and commuting bats although it is unlikely to support many prey animals and therefore is unlikely to be used more than occasionally by bats.
- 9.222 In terms of amphibians, no ponds were present on site or within 250m, the nearest being 300m to the West with only one other pond within 500m, present 480m to the North east. Due to the quality and management of the habitat on site and the distance to the nearest pond, it is judged unlikely that great crested newts would be present on site.
- 9.223 In terms of reptiles, wider local surveys have found a high likelihood of Adders being present and likely presence of the Viviparous Lizard. It is considered that the site has potential to support breeding birds within the trees. No signs of barn owls were found during the survey. It is considered that the site has no potential to support the hazel dormouse due to lack of habitat. No setts or signs of badgers were identified during the survey. It is considered that the site has moderate potential to support hedgehogs.
- 9.224 In order to maintain and enhance the biodiversity potential of the site the survey recommends a series of measures including tree protection during construction works, installation of a mix of open fronted and hole nesting bird boxes, bat roosting spaces within the buildings, provision of owl boxes, planting of climbing plants, and drought resistant wildflower planting.
- 9.225 A planning condition is recommended that seeks an ecological enhancement scheme and this could include a range of bird box types including open fronted and hole fronted nest boxes. A further planning condition recommends a landscape scheme that could include a wildlife-friendly planting scheme that uses native plant species.
- 9.226 In conclusion the submitted proposal is acceptable in relation to ecology and biodiversity and is in accordance with Local Plan policy DM1 and DM3.

Figure 14: Comparison between the existing rear elevation, the earlier refused application (18/500228/FULL) and the rear elevation currently proposed.





189.000m AOD
PROPOSED REAR ELEVATION



189.000m AOD
PROPOSED REAR ELEVATION

CIL

- 9.227 The proposed development is CIL liable. The Council adopted a Community Infrastructure Levy on 25 October 2017 and began charging on all CIL liable applications approved on and from 1 October 2018. The actual amount of CIL can only be confirmed once all the relevant forms have been submitted and relevant details have been assessed and approved. Any relief claimed will be assessed at the time planning permission is granted or shortly after.

Other Matters

- 9.228 In April 2018 planning permission was refused under delegated powers (18/500228/FULL) for the conversion and adaptation of existing photography studio into 2 dwellings with associated parking and garden area.
- 9.229 The current application involves substantial changes and improvements from the earlier submission that have satisfactorily addressed the earlier grounds for refusal.

PUBLIC SECTOR EQUALITY DUTY

Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

10. CONCLUSIONS and PLANNING BALANCE

SUMMARY OF REASONS FOR RECOMMENDATION:

The Court of Appeal found, in summary, that the earlier decision was flawed because the Council in applying DM 5 had failed to take into consideration the entire site and had focused only on the existing building. The judgement therefore concluded that the following matters needed re-consideration:

- The respondent will need to determine whether or not the application site as a whole is of high environmental value

- The respondent will also have to assess whether the other criteria (of Policy DM5) are met including whether the proposed redevelopment will result in a significant environmental benefit

The proposal has been re-considered with reference to Local Plan guidance on policy DM5 (in particular paragraphs 6.35 and 6.37) and the policy itself, the proposal site as a whole (including everything in the red line) is not considered to be of high environmental value. With the proposed works significant improvement will arise in a number of ways as set out in the report above and including :

- The proposal will remove the existing business use that is operating substantially below capacity and provide two family homes offering a good standard of space and improvements to neighbour amenity.
- The proposal involves the reinstatement of original building openings that will reduce the current blank ground floor appearance and restore the building symmetry.
- The removal of this overly restricted commercial use will remove a non-conforming use in this location with a positive impact on amenity.
- Further improvements will arise from the restoration works to the historic walls with slight modification that will allow the buildings to provide two family units with access to the rear amenity space. These works restoring the residential link to these gardens and ensuring the long term maintenance of the walls and bring the gardens back into use.
- With the substantial historical alterations to the curtilage brick walls (including LBC99/1078) the proposal will retain their significance that comes from their alignment materials, and bond.

The density reflects the character and appearance of the area and the site can reasonably be made accessible by sustainable modes to a larger village and has the benefit of removing a use that would have higher trip generation . The site will be made accessible by sustainable modes by the provision of cycle parking, electric vehicle charging points (for existing and future residents) and by other agreed measures through a condition to encourage sustainable travel options. In light of these considerations the proposal is found to be in accordance with policy DM5 of the adopted Local Plan.

Other matters which weigh in favour of the proposal and a positive recommendation for approval are :

- Large photographic studio spaces, like the one on the application site are in general decline and the current use operates below capacity and inefficiently.
- The proximity of other residential uses means the commercial use was approved as an exception subject to a number of restrictions to prevent harm to amenity. These restrictions and the proximity to residential reduce the potential for long term viable business use without harm to neighbouring residents.
- The council has previously accepted the loss of the business use granting permission for ancillary residential use as a swimming pool with a tennis court in the rear garden.
- The proposal is not a conversion and any more intense business use, due to the adjacent residential uses, would be directed to the economic development areas urban area or the rural service centres.
- The proposal includes car parking in accordance with minimum standards and is acceptable in relation to trip generation, biodiversity and landscape.
- Special regard has been had to the desirability of preserving Hollingbourne House its significance, its setting, and features of special architectural or historic interest including the curtilage listed walls.

- The harm that will result from the proposal to the significance of Hollingbourne House, the curtilage listed walls, the glasshouse, donkey wheel and gazebo will be less than substantial. The less than substantial harm to the significance of these heritage assets will be outweighed by the public benefits of the development. These public benefits include improvements to the front building elevation, heritage benefits arising from repairs to all the garden wall that will ensure their long term survival, the accessibility improvements to the garden space for future occupiers and the restoration works to the sunken glasshouses and securing the optimum viable uses consistent with their conservation.
- The proposed roof extensions facilitate the provision of staircases that allow the efficient use of the building as part of the provision of 2 good quality family homes with the existing roof space assessed by roof hatches.

Overall

The proposal is in accordance with the Maidstone Borough Local Plan (2017) policies SS1, SP17, SP18, SP19, SP21 DM1, DM3, DM4, DM5, DM6, DM8, DM23 DM30, DM31 and Appendix B.

11.0 RECOMMENDATION

GRANT planning permission subject to the following conditions

with delegated powers to the Head of Planning and Development to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.

CONDITIONS:

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2) No development shall take place other than in accordance with the following approved plans:
 - 3094-011Rev F Proposed elevations (May 2020)
 - Appendix 1 to the Heritage Statement (Nov 2019)
 - Design and Access Statement (May 2020)
 - PDL 01 A2 rev 2 Details of construction for remedial works and new openings to existing wall (May 2020)
 - 3094-012 rev F proposed site plan (May 2020) 3094-012 rev F2 proposed site plan (May 2020)
 - 3094-010 rev E Proposals (Proposed floorplans) (May 2020)
 - PDL 01 rev v7 Proposed maintenance work to southern garden wall remaining on existing line. (May 2020)
 - PDL 02 rev v2 Proposed conservation works to northern glasshouse garden wall. (May 2020)
 - PDL 03 rev v5 Proposed maintenance and amendments to east garden wall. (May 2020)
 - PDL 04 rev v6 Proposed maintenance and minor amendments to south western garden wall. (May 2020)
 - PDL 05 rev v5 Proposed maintenance and minor amendments to north west facing garden wall by barn. (May 2020)
 - PDL 07 rev v2 Proposed restoration works to sunken glasshouses. (May 2020)
 - Built Heritage Statement (May 2020)
 - Preliminary Ecological Appraisal Survey (2016)
 - Preliminary Ecological Appraisal Survey update (December 2020)

Reason: In the interests of proper planning and to ensure the quality of the development is maintained.

- 3) Prior to the commencement of the development above damp-proof course level, written details and samples of the external materials to be used in the construction of the replacement structure (to include dark stained timber weatherboarding and natural slate roof tiles) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed using the approved materials and maintained as such thereafter.
Reason: To ensure a satisfactory appearance to the development.

- 4) Prior to the demolition of the garden wall that lies to the immediate north-east of Courtyard Studios (as shown on drawing reference: 3094-008 Rev A), and restoration works to the remaining garden boundary walls, a schedule of works to the garden walls and the sunken glasshouses shall be submitted to and approved in writing by the local planning authority.
The schedule of works shall include:
 - a) The entire wall to be built from the bricks in the existing wall to be demolished;
 - b) A rebuilt wall that shall be a minimum of 1.2m in height at any point;
 - c) Full details of how the retained garden walls will be restored.
 - d) Details of the sunken glasshouse restoration.
 The dwellings hereby approved shall not be occupied until the approved works to the garden walls and the glasshouses have been completed, and the walls and the glasshouses shall be maintained as such thereafter.
Reason: To safeguard the value of the curtilage listed garden boundary walls and the glasshouse

- 5) The development hereby approved shall not commence above slab level until details for a scheme for the enhancement of biodiversity on the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include measures for the enhancement of biodiversity through integrated methods into the design and appearance of the building by means such as swift bricks, bat tube or bricks. The development shall be implemented in accordance with the approved details prior to first occupation and all features permanently maintained thereafter.
Reason: To protect and enhance the ecology and biodiversity on the site in the future.

- 6) Prior to the demolition of the garden wall that lies to the immediate north-east of Courtyard Studios (as shown on drawing reference: 3094-008 Rev A), and restoration works to the remaining garden boundary walls a sample panel of the rebuilt wall (with the reused bricks, mortar mix/pointing details and coping stone to be used) shall be made available for inspection by Council officers with the works proceeding in accordance with this approved panel,
Reason: To safeguard the value of the garden boundary walls.

- 7) Prior to the commencement of the development above damp-proof course level, details of a scheme of landscaping, using indigenous species which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with a programme for the approved scheme's implementation, shall be submitted to and approved in writing by the Local Planning Authority. The landscape scheme shall be designed using the principle's established in the Council's adopted Landscape Character Assessment 2012 and shall include details of a new native hedgerow to subdivide the rear gardens. The landscaping of the site shall be carried out in accordance with the approved details.
Reason: To ensure a satisfactory appearance to the development.

- 8) 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 or the completion of the development, whichever is the sooner. Any seeding or turfing which fails to establish or any trees or plants which, within ten years from the first occupation of a property, die or become so seriously damaged or diseased that their long term amenity value has been adversely affected, shall be replaced in the next planting season with plants of the same species and size as detailed in the approved landscape scheme unless the local planning authority gives written consent to any variation.
Reason: To ensure a satisfactory appearance to the development.
- 9) The vehicle parking spaces shown on the submitted plans shall be provided prior to first occupation of the approved dwellings and permanently retained for parking and shall not be used for any other purpose.
Reason: To ensure adequate parking provision.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), and except for the repositioned rear wall (as shown on drawing reference: 3094-008 Rev A), no extensions to any building, no outbuildings, and no fencing, walling or other hard boundary treatments shall be erected within or around the site.
Reason: To ensure a satisfactory appearance to the development.
- 11) Prior to first occupation of the approved accommodation a bin storage enclosure shall be in place and is in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority and retained for the lifetime of the development.
Reason: To safeguard the appearance of the development and the visual amenities of the area
- 12) Prior to first occupation of the development hereby approved measures to encourage sustainable travel choices by future occupiers shall have been submitted to and approved in writing by the Local Planning Authority, the measures shall be in place prior to first occupation and maintained for the lifetime of the development.
Reason: In the interests of sustainable travel and pollution prevention.
- 13) Any external lighting installed on the site (whether permanent or temporary) shall be in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. These details shall include, inter alia, measures to shield and direct light from the light sources so as to prevent light pollution and illuminance contour plots covering sensitive neighbouring receptors and demonstrate how the lighting meets Bat Conservation Trust guidelines. The development shall thereafter be carried out in accordance with the subsequently approved details and maintained as such thereafter.
Reason: In the interest of amenity.
- 14) Prior to first occupation of the accommodation hereby approved details of cycle parking shall be submitted to and approved in writing with the cycle parking in place prior to occupation and maintained for the lifetime of the development.
Reason: To promote sustainable travel choices.
- 15) The works to the garden boundary walls and the sunken glasshouses shall only take place outside the bat hibernation season (November to March) with the works following the precautionary approach with works only proceeding after each wall cavity is checked for bats with an endoscope.
Reason: in the interest of biodiversity and ecology

- 16) The development shall not commence above slab level until details of how decentralised, renewable or low-carbon sources of energy will be incorporated into the development hereby approved have been submitted to and approved by the local planning authority. Measures shall include EV fast charging points (above 7kW) to each dwelling and details of number and location of equipment such as solar array and/or Air Source Heat Pumps. The approved details shall be installed prior to first occupation of the relevant dwelling and maintained thereafter. If any PV panels are installed and are or become defective, they shall be replaced as soon as is reasonably practicable.

Reason: In the interests of sustainable and energy efficient form of development.

INFORMATIVES

- 1) The proposed development is CIL liable. The Council adopted a Community Infrastructure Levy on 25th October 2017 and began charging on all CIL liable applications approved on and from 1st October 2018. The actual amount of CIL can only be confirmed once all the relevant forms have been submitted and relevant details have been assessed and approved. Any relief claimed will be assessed at the time planning permission is granted or shortly after.

Case Officer: Rachael Elliott

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

REPORT SUMMARY

REFERENCE NO: - 19/506031/LBC
APPLICATION PROPOSAL: Demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse.
ADDRESS: Courtyard Studios Hollingbourne House Hollingbourne Hill Hollingbourne Maidstone Kent ME17 1QJ
RECOMMENDATION: Grant Listed Building Consent subject to conditions set out in Section 11.0
<p>SUMMARY OF REASONS FOR RECOMMENDATION:</p> <p>The Court of Appeal found, in summary, that the earlier decision was flawed because the Council in applying DM 5 had failed to take into consideration the entire site and had focused only on the existing building. The judgement therefore concluded that the following matters needed re-consideration:</p> <ul style="list-style-type: none"> - The respondent will need to determine whether or not the application site as a whole is of high environmental value - The respondent will also have to assess whether the other criteria (of Policy DM5) are met including whether the proposed redevelopment will result in a significant environmental benefit <p>As set out in the High Court ruling, it was considered common ground that both decisions referred to (19/506031/LBC and 18/506662/FULL) <i>stand or fall together</i>. As such both the decisions made by members on the Listed Building Consent and Planning Permission have been quashed and both applications are now put back before members for due consideration and decision in light of the Court of Appeal's judgment about the proper interpretation of policy DM5.</p> <p>The appraisal relating to the heritage matters remains principally unchanged from earlier consideration, subject to where necessary in relation to those matters raised at 5.0.</p> <p>A local planning authority in making decisions must have special regard to the desirability of preserving any features of special architectural or historic interest. Adopted policy states that the aim of protecting the characteristics, distinctiveness, and quality of heritage assets will be achieved by the council supporting measures that secure the sensitive restoration and reuse of heritage assets.</p> <p>The garden walls have been subject of a wide range of works, alterations, demolition and rebuilding in the past. The submitted proposal involves repair and restoration works that will generally maintain the character of the walls to ensure that they meet the functional role as means of enclosure.</p> <p>In addition to the restoration works, the proposal includes the lowering of the middle section of the southern wall and the formation of two new openings. The lowering of the wall, which will match a previously approved adjacent lowered wall, will improve the access to the rear garden space as part of the proposal to introduce family accommodation in the studio building. As the walls have previously been significantly altered it is considered that the important characteristics that require protection relate to the reuse of the bricks, the wall alignment and the manner in which the walls are constructed (bond, mortar mix etc).</p> <p>The significance of the walls and historic interest are limited to the materials used, method of construction and wall alignment. The proposed works involving the lowering of the wall</p>

and the formation of the two new openings are considered to represent less than substantial harm. The less than substantial harm will be outweighed by the public benefits of the development, which include heritage benefits arising from repairs to all the garden wall, the accessibility improvements to the garden space for future occupiers and the restoration works to the sunken greenhouse.		
REASON FOR REFERRAL TO COMMITTEE: Cllr Patrik Garten has referred this application to committee.		
WARD: North Downs	PARISH/TOWN COUNCIL: Hollingbourne	APPLICANT: Mr Dixon AGENT: DHA Planning
CASE OFFICER: Rachael Elliott	VALIDATION DATE: 03/06/20	DECISION DUE DATE: 22/01/21
ADVERTISED AS A DEPARTURE: NO		

MAIN REPORT

Relevant Planning History

18/506662/FULL Demolition of the rear section of the building and erection of replacement structure, and conversion of front section of building including external alterations, to facilitate the creation of 2 dwellings with associated parking and garden areas. Demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse. Pending Consideration (separate report on this agenda).

18/500228/FULL Conversion and adaptation of existing photography studio into 2 dwellings with associated parking and garden area. Refused 17.04.2018 for the following reasons:

- 1) *The proposed external works and extension due to the, design, scale and bulk of the proposals fail to respect the character and appearance of the existing buildings and would result in an overly domestic, urban and disjointed appearance that fails to respect the existing buildings contrary to Policies SP17, DM1, DM30, DM31 and the National Planning Policy Framework 2012.*
- 2) *The application fails to demonstrate that the buildings are of sound construction and their re-use and the reconstruction in the form proposed can be achieved without major or complete reconstruction contrary to Policy DM31 of the Maidstone Borough Local Plan 2017.*
- 3) *The proposed development would be located in an isolated position within the defined countryside, as established by adopted Local Plan Policy SS1 and SP17 which places emphasis on housing development within sustainable locations. The application for the creation of additional dwellings here has failed to demonstrate a significant environmental improvement and that the site can be reasonably made, accessible by sustainable modes to Maidstone urban area, a rural service centre or larger village as is therefore contrary to Policies SS1, SP17 and DM5 of the Maidstone Borough Local Plan 2017 and the National Planning Policy Framework 2012.*

- 14/0201 Change of use of studio outbuilding and associated service areas to a purpose incidental to the enjoyment of Mulberry and Well Cottages, and erection of fencing around a tennis court. Granted 07.04.2014

- 99/1078 Listed building consent for partial reduction in height of garden wall and formation of new gateway Granted 16.08.1999

- 99/0120 Retrospective listed building consent application for partial demolition of garden wall to provide fire escapes to building regulations requirements and amenity to office and workroom facilities. Refused 19.03.1999 for the following reasons *"The section of wall, the subject of this proposal is listed having been erected prior to 1948 and is within the historic curtilage of Hollingbourne House which is a grade II listed building. It is considered that this section of wall forms an important and integral part of the historic setting of Hollingbourne House and its demolition adversely affects the special historic and architectural interest of this listed building and its curtilage contrary to policy ENV19 of the Kent Structure Plan 1996, policies ENV3 and ENV4 of the Maidstone Local Plan 1993 and policies ENV11 and ENV12 of the Maidstone Wide Local Plan (Deposit) draft"*.
- 99/0119 (Part retrospective) Insertion of windows and doors to north east elevation of the office and workroom facilities Granted 19.03.1999
- 97/1765 Change of use to a mixed use for photographic business (B1) and continuation of existing carpentry business ancillary to existing electronic workshop, and external alterations. Granted 01.05.1998 with conditions including a restriction to only B1(b) and B1(c) for the reason that "Unrestricted use of the building or land would cause demonstrable harm to the character, appearance and functioning of the surrounding area and/or the enjoyment of their properties by adjoining residential occupiers" and stating that no activity in connection with the uses hereby permitted shall be carried out outside the hours of 18:00 and 08:00 and not at any time on Sundays, Bank or Public Holidays in order to safeguard the enjoyment of their properties by adjoining residential occupiers.
- 89/1936 Erection of detached garage block. Granted 20.02.1990
- 83/1419 Retrospective application for change of use from residential to electronic workshop and office. Granted 28.12.1983

1. DESCRIPTION OF SITE

See separate report for 18/506662/FULL

2. PROPOSAL

- 2.01 This application is linked to the application for full planning permission under reference 18/506662/FULL which is under consideration separately on the agenda.
- 2.02 The application for listed building consent relates to the demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other curtilage listed garden walls and restoration of 1 sunken glasshouse.

3. BACKGROUND

- 3.01 The Council issued a planning decision notice on the 29 March 2019 for the application under reference 18/506662/FULL, with the decision notice granting conditional planning permission.
- 3.02 On behalf of the occupier of Hollingbourne House, the Council were informed on the 7 May 2019 (Pre-Action Protocol letter) of the intention to submit a judicial review against the decision to grant planning permission on four separate grounds.
- 3.03 The Council indicated in a response letter dated 16 May 2019 that it accepted that

"there has been a failure to clearly identify what the setting to the listed building is in order to then set out how any impact, if any, to the setting of the Listed Building is mitigated by the proposed development". The Council accepted that for this reason it would not contest the claim which should succeed under Claimant's grounds 2 and 3.

- 3.04 A High Court Consent Order dated 8 July 2019 quashed the decision made by the Council to grant planning permission on the 29 March 2019.
- 3.05 This application, together with a Listed Building Consent application for the *Demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse..* were subsequently reported to Planning Committee on 17th December 2020 to reconsider the decision on this application and determine the Listed Building Consent submission. Members resolved to grant planning permission for the development specified in Section 1.0 above and Listed Building Consent under application 19/506031/LBC.
- 3.06 The decisions were issued on 21st January 2021.
- 3.07 A case to Judicially Review the decision was subsequently brought forward by the immediate neighbour in relation to both the grant of full planning permission (18/506662/FULL) and Listed Building Consent (19/506031/LBC). This was initially refused permission to proceed by Mr Tim Mould QC, decision dated 5 May 2021. A renewed oral hearing by Lang J granted permission to bring forward substantive judicial review proceedings on four grounds. These being as follows :
- (i) MBC erred in its interpretation of the Local Plan policy DM5 "Development on brownfield land";
 - (ii) MBC was inconsistent in the approach it took to the assessment of the contribution to the setting of the listed building made by the existing studio buildings;
 - (iii) MBC was flawed in the approach taken to the assessment of heritage impact and in doing so acted in breach of its statutory duties pursuant to the provisions of section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
 - (iv) MBC failed to take into account a material consideration, namely the potential for a sensitive conversion of the front studio building for the purpose of providing a dwelling.
- 3.08 The High Court in a ruling dated 14 July 2022 rejected all 4 grounds stating, in summary, the following :

Ground 1 fails as there was no misinterpretation of policy DM5 of the Local Plan, there was no proposal to develop existing residential garden; Ground 2 fails as there was no material misdirection contained within the OR; Ground 3 fails as it amounts to an attack upon the planning officer's assessment and evaluation of the impacts of the proposed development as set out in the OR; Ground 4 also fails as it is an attack upon a planning judgment, the alternative proposal having been considered but only briefly.

3.09 Permission was granted by the Court of Appeal to appeal against the High Court's decision on 2 grounds these in summary being :

1. The proper interpretation of, Policy DM5, in the Maidstone Borough Local Plan and the meaning of 'site'; in particular whether this means the whole of the site the subject of the application, including the garden to the rear of the main application building, or whether 'site' in the context of DM5 excluded the garden to the rear.
2. Whether the respondent failed to have regard to earlier views of the conservation officer which were said to be a material consideration

In its decision dated 22 February 2023 the Court of Appeal found that the Council had misinterpreted policy DM5, stating that :

The respondent failed properly to interpret Policy DM5 in that it failed to consider whether the application site as a whole had environmental value. Rather it only considered whether part of the application site, that is, the existing studio building, had a high environmental value. For that reason, I would quash the planning permission and the listed building consent and remit the matter to the respondent. It will have to decide whether or not the application site, comprising the studio building, the walled garden and the land connecting with the road, has high environmental value and whether the other criteria in DM5 are satisfied.

3.10 The second ground of appeal was rejected by the Court of Appeal.

3.11 All four decisions referred to above are attached for information as appendices to this report as described below :

Appendix A : Copy of Timothy Mould QC decision on the papers dated 5 May 2021

Appendix B : Copy of High Court Judgement dated 14 July 2022

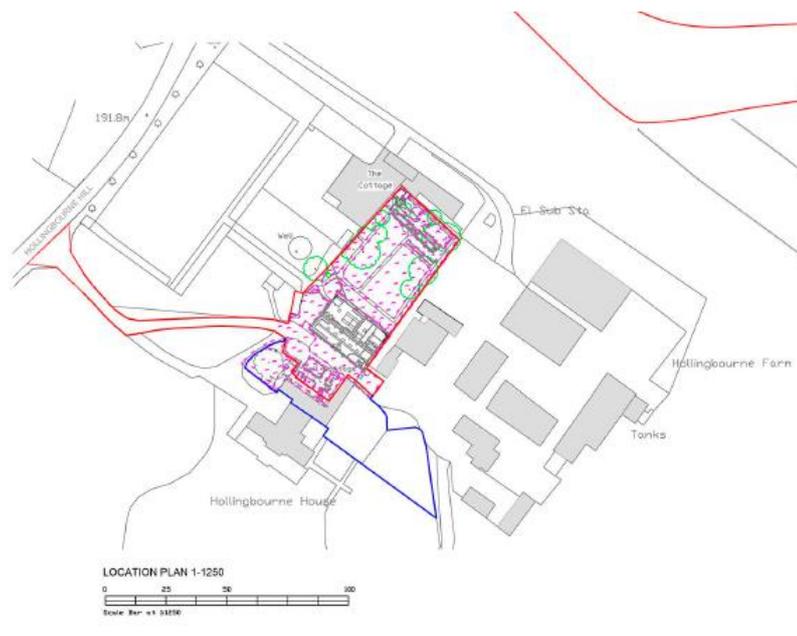
Appendix C : Copy of Court of Appeal Judgement dated 22 February 2023

Appendix D : Copy of Order to Consent dated 8 July 2019

3.12 As set out in the High Court ruling, it was considered common ground that both decisions referred to (19/506031/LBC and 18/506662/FULL) *stand or fall together*. As such both the decisions made by members on the Listed Building Consent and Planning Permission have been quashed and both applications are now put back before members for due consideration and decision in light of the Court of Appeal's judgment about the proper interpretation of policy DM5.

4. KEY JUDGEMENT SUMMARY

4.01 The Court of Appeal found that the Council's earlier determination of what constitutes 'the site' in this case for the purposes of applying Policy DM5 was erroneous. , The December 2020 committee report solely considered the building itself in relation to its environmental value, rather than the entire site outlined in red (see map area identified as being within the red line (extract below)



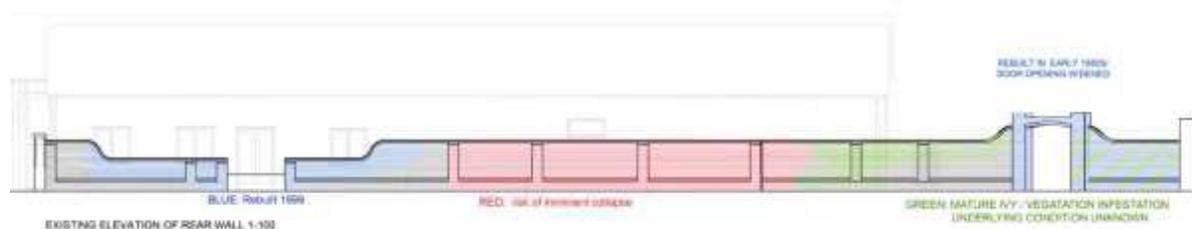
- 4.02 The point which was made by the Appellant and which was accepted by the Court of Appeal is that in order to make a proper planning judgment in the application of DM5 about whether or not the site is of high environmental value and whether the proposed development will result in significant environmental improvement, it is necessary to consider the site in its entirety, including the main application building but also the walled garden to its rear and the access route to the highway. The judgement highlights what should be considered as 'the site', which is *the existing building, the walled gardens and the land connecting with the road* (paragraph 25 of Appendix C.)
- 4.03 Paragraphs 25 and 26 continue by setting out the key considerations the Council will need reconsider, now that the court of Appeal has quashed the Council's decision. In summary being :
- The respondent will need to determine whether or not the application site as a whole is of high environmental value
 - The respondent will also have to assess whether the other criteria (of Policy DM5) are met including whether the proposed redevelopment will result in a significant environmental benefit

5. MATERIAL CHANGES SINCE EARLIER DECISION

- 5.01 The Maidstone Borough Council – Local Plan Review Regulation 22 Submission has been made and Local Plan Hearings are ongoing. The regulation 22 submission comprises the draft plan for submission (Regulation 19) dated October 2021, the representations and proposed main modifications. It is a material consideration, and some weight must be attached to the document because of the stage it has reached. The weight is however limited, as it has yet to be the subject of a full examination in public.
- 5.02 The National Planning Policy Framework (NPPF) was revised on 20 July 2021.
- 5.03 Due to health and safety concerns, a section of the north-east facing garden wall has been removed/lowered and the bricks stored securely behind the remaining wall.



- 5.04 The existing elevations of the wall submitted with the application (see plan below), therefore now differ from the 'on the ground' situation. Areas highlighted in green have now been removed and those in red lowered.



- 5.05 The applicant is aware that the works carried out are without the benefit of a current consent. Amended plans are not required as the existing plan indicates the lawful height and position of the wall.

6. POLICY AND OTHER CONSIDERATIONS

- Maidstone Borough Local Plan 2017
Policies SP18, DM1, DM4,
- National Planning Policy Framework (NPPF)
- National Planning Practice Guidance (NPPG)

- Emerging Policies – Maidstone Borough Council – Local Plan Review Regulation 22 Submission
The regulation 22 submission comprises the draft plan for submission (Regulation 19) dated October 2021, the representations and proposed main modifications. It is a material consideration, and some weight must be attached to the document because of the stage it has reached. The weight is limited, as it has yet to be the subject of a full examination in public
- Policy LPRSP15 (B) – The Historic Environment
- Policy LPRENV 1 – Historic Environment

7. LOCAL REPRESENTATIONS

Local Residents:

See separate report for 18/506662/FULL

Councillor Patrik Garten

- 7.01 The policy determining conversion of rural buildings, Policy DM31 permits residential use only where every reasonable attempt has been made to secure a

business re-use of the building. Evidence setting out why the business re use is not appropriate for the buildings needs to be provided and ought to be scrutinised by committee.

- 7.02 Neighbours allege that the proposed works are unsympathetic, overly domesticated and fail to respect the character and appearance of the setting of the Grade II listed Hollingbourne House. As this is partially a subjective assessment, it should be considered by a committee.
- 7.03 As my previous reasons explains, the reason for call-in is mainly to secure public confidence in the planning process, which was previously thwarted and required a judicial review. While I welcome the amended details, they do not overcome the unfortunate history of this case.

Hollingbourne Parish Council

- 7.04 Do not wish to comment/object.

8. CONSULTATIONS

(Please note that summaries of consultation responses are set out below with the response discussed in more detail in the main report where considered necessary)

Historic England

- 8.01 No comment. On the basis of the information provided, we do not consider that it is necessary for this application to be notified to Historic England under the relevant statutory provisions.

Conservation Officer (MBC)

- 8.02 I support the application and raise no objections from a conservation point of view. The works are wholly in line with our discussions on site and the submission is clear and of good quality
- 8.03 The initial proposal relating to the historic wall adjacent to the development site was that it would be demolished and relocated. I took the view that this would cause harm to a heritage asset and for no clear benefit.
- 8.04 The solution agreed with the applicant was to keep the wall in its historic location but it would be taken down and rebuilt using the viable bricks from the surviving wall supplemented by some bricks salvaged from earlier work. This will deal with the serious problems affecting the wall particularly its dangerous lean and the general decay of the masonry caused by invasive vegetation.
- 8.05 It is unlikely that enough bricks will be salvaged to rebuild the wall to its present height and accordingly it was agreed that the wall could be rebuilt at a lower height. It was also considered as acceptable that the applicant could make some new openings in the wall to suit the needs of the redeveloped adjacent building. The result will be a wall which retains the historic boundary line of the walled area and one which is stable and generally clear of other agents of decay. This seems to me to be a significant gain for the historic asset where there is currently a high risk of collapse and loss.
- 8.06 The works to the remainder of the boundary wall are measured and proportionate. Repairs and alterations have been carried out over the years and this is a continuation of that process which will enhance the appearance and condition of the boundary wall. The line of the boundary will be maintained
- 8.07 There is a historic glass house within the walled area. The structure is partly below ground and this part survives. All the above ground construction has been lost and there are no records of the form of the glass house. The applicant has

proposed to build a lightweight structure on the historic base which will bring the building back into use as a glass house. The new construction will sit on top of the historic fabric but none of that original material will be removed or damaged by the new work. This work will protect the historic fabric from further decay.

- 8.08 The conversion of the existing studio building will bring about some alterations to the external appearance but this is minor and it is not considered that it will cause damage to the setting of the listed building. There is some upward extension of the building which will affect the roof line but this work is contained within the valley of the existing roof and will not be visible from Mulberry and Well Cottages. There is also a proposal to replace some of the infill panels on the southwest elevation with glazing instead of solid panels. This, in heritage terms, is simply a change in material and will not impact on the setting of the listed building.

9. APPRAISAL

The Court of Appeal found, in summary, that the earlier decision was flawed because the Council in applying DM 5 had failed to take into consideration the entire site and had focused only on the existing building. The judgement therefore concluded that the following matters needed re-consideration:

- The respondent will need to determine whether or not the application site as a whole is of high environmental value
- The respondent will also have to assess whether the other criteria (of Policy DM5) are met including whether the proposed redevelopment will result in a significant environmental benefit

As set out in the High Court ruling, it was considered common ground that both decisions referred to (19/506031/LBC and 18/506662/FULL) *stand or fall together*. As such both the decisions made by members on the Listed Building Consent and Planning Permission have been quashed and both applications are now put back before members for due consideration and decision in light of the Court of Appeal's judgment about the proper interpretation of policy DM5.

The appraisal relating to the heritage matters remains principally unchanged from earlier consideration, subject to where necessary in relation to those matters raised at 5.0.

Main Issues

- 9.01 The key issues for consideration with the application for Listed Building Consent relate to the potential heritage impacts on the curtilage listed walls and sunken glasshouse.
- 9.02 The implications of the original decision being quashed principally relate to those matters whereby some public benefit was considered to arise as a result from the residential re-use of the site, providing somewhat the justification for the works to the wall (in particular where new opening are to be created). Discussion regarding whether the residential use of the site when considered under Policy DM5 is acceptable is contained within the agenda item for 18/506662/FULL. The appraisal below is based on that scheme being found acceptable and the report remains fundamentally unchanged from the December 2020 committee report appraisal. Except where amendments have been necessary as a result of those matters discussed in Section 5.0 above. The Court of appeal judgement found no fault in relation to matters pertaining to the impact on the Listed Building.

- 9.03 In making a decision on all listed building consent applications for works, a local planning authority must have special regard to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest. This obligation, found in section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and applies to all decisions concerning listed buildings.
- 9.04 Policy SP18 of the Local Plan relates to the historic environment states that the characteristics, distinctiveness, diversity and quality of heritage assets will be protected and, where possible, enhanced to ensure their continued contribution to the quality of life in the borough. This aim will be achieved by the council encouraging and supporting measures that secure the sensitive restoration, reuse, enjoyment, conservation and/or enhancement of heritage assets, in particular designated assets identified as being at risk, to include securing the sensitive management and design of development which impacts on heritage assets and their settings.
- 9.05 Policy DM4 of the Local Plan relates to development affecting designated and nondesignated heritage assets. Applicants will be expected to ensure that new development incorporates measures to conserve, and where possible enhance, the significance of the heritage asset and, where appropriate, its setting. A Heritage Assessment should respond to the value of the historic environment by assessing and taking full account of heritage assets, and their settings, which could reasonably be impacted by the proposals. The assessment should consider the significance of the assets and the scale of the impact of development on the identified significance.
- 9.06 Policy DM4 states that the council will apply the relevant tests and assessment factors specified in the National Planning Policy Framework when determining applications for development which would result in the loss of, or harm to, the significance of a heritage asset and/or its setting. The National Planning Policy Framework (paragraph 197) states: *"In determining applications, local planning authorities should take account of: a) desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation; b) positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and c) desirability of new development making positive contribution to local character and distinctiveness"*.
- 9.07 NPPF paragraph 199 advises *"When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance"*. Paragraph 200 adds *"Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification..."*
- 9.08 In assessing the level of harm that may occur and the planning balance NPPF paragraph 202 advises *"Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use"*.
- 9.09 Further guidance on considering the significance of heritage is provided by Historic England (Managing Significance in Decision Taking in the Historic Environment (2015) and The Setting of Heritage Assets (2017)).

- 9.10 Policy DM4 of the Local Plan states that where development is proposed for a site which includes or has the potential to include heritage assets with archaeological interest, applicants must submit an appropriate desk-based assessment and, where necessary, a field evaluation. The application site is not in an area known to have archaeological interest. The buildings on the site are also relatively modern and their construction is likely to have destroyed anything that was present. It is for these reasons that no further archaeological information is required.
- 9.11 The relevant heritage considerations as part of the current works include the need to consider the potential impact on the significance of the brick garden wall (curtilage listed Grade II) and the sunken glasshouses where one of the structures is grade II curtilage listed. The setting and significance of the brick garden walls (curtilage listed Grade II) and the sunken glasshouses (1 of the 2 structures are curtilage listed)
- 9.12 The submitted heritage assessment considers the significance of the curtilage listed walls and reports the following:
- On the title map of 1840 the walled gardens are in an earlier layout with the area behind the stables (studio) building yet to be fully enclosed by new walls.
 - The 1867 map shows that the gardens were still being developed and the new stable block and yard had yet to be added. The layout of the cottage garden paths was very different from today with no central path and the path close to the stable yard forward of its current position. The entrance to the garden would appear to be sited more in the corner too.
 - Much of the garden development of the glasshouses and new walls are believed to date from about 1875 -88 and these appear to be present on the photograph of 1895.
 - On the next photograph of 1940 glasshouses and vegetable plots show that the walled garden is largely a functional food production area. There is an access path outside the garden which helps connect the garden to the rear of the house
 - In the 1950's the owner has built new wide concrete tracks to access the gardens with tractor mowers from the main house driveway. The garden is renovated by the head gardener who builds up the right hand sunken bed to match the left hand one and replaces the cold frame with a raised bed.
 - In the rear garden the long raised bed can be seen in the 1960s with a much reduced vegetable crop. The importance of the garden relative to the setting of Hollingbourne House has been greatly impacted and diminished by the development and encroachment of the farm, its activities and its access road through the courtyard.
 - 1975 the sale of the farm and garden cottage resulted in the closing of 4 access points to the cottage garden increasing its isolation and amenity within the overall setting of the estate. The main Hollingbourne House was listed in 1984 without any mention of the walls.
 - With the location of the cottage garden to the rear of the studio building the applicant reports that current access to this residential garden is poor.
 - It is reported that at the time of the applicant's purchase the neighbours boundary wall had collapsed and this has since been rebuilt, the wall behind the barn has long been collapsing and is currently propped up on timbers (see figure 10).
- 9.13 The heritage assessment after considering the significance of the walls advises *"...the surrounding landscape and arrangement of the walled gardens have been periodically and substantially altered since their construction. They now demonstrate numerous phases of redevelopment, with the garden walls to the west appearing to date from the construction of the previous Hollingbourne House in the seventeenth century. However, many of the walls appear to date from the*

late eighteenth century, with further nineteenth and twentieth century construction and intervention” (Paragraph 3.6).

- 9.14 The wall alterations include works granted consent in August 1999 (99/1078) which involved a partial reduction in the height of garden wall to 1.2 metres and formation of new gateway.
- 9.15 Whilst the main Hollingbourne House was listed in 1984 without any mention of the walls, the council considers the walls within the garden area to the rear of the studio building to be statutorily listed due to their location in the curtilage of the grade II listed Hollingbourne House. Although in large parts not in their original form the walls have historical value in their general alignment in marking the boundaries of the walled garden and the retained bricks that the walls are constructed with.
- 9.16 The current application includes works and repairs to all of the garden walls surrounding the rear section of the application site. The applicant has advised that bricks salvaged from the proposed alterations and those retained from the 1999 alterations will be used to replace the blockwork in sealed openings or to carry out general repairs that are needed. The work will be carried out in accordance with the methodology provided at figure 12 which is submitted by the applicant.
- 9.17 The wall that runs mainly parallel to the rear of the studio building demarcated an animal yard from the walled garden and is in three different parts. The middle longer section was built at later date than the other two sections. A number of different parts of the wall have previously been rebuilt and a section lowered in accordance with a permission granted in 1999.

Figure 1 South wall curtilage lists showing existing propping



- 9.18 The proposed works to the wall are shown on the drawings below. A section of this wall was shown in the December 2020 committee report to be unstable and propped up as it is close to collapse (see Figure 1). As set out in Section 5.0 above, parts of this wall have now been removed/lowered as given the passage of

time since the above photograph further weathering has meant for health and safety reasons remedial works have been necessary. This wall would be dismantled and rebuilt. The majority of the existing wall is 1.8 metres high but with an 8 metre long section (including a 2 metre wide opening) that drops down to a height of 1.2 metres that was previously granted consent. Listed building consent for partial reduction in height of garden wall and formation of new gateway, granted on the 16 August 1999 under reference 99/1078.

Figure 2 Works to the wall at the rear of the studio building



- 9.19 The current lowered section of wall would be extended by 14 metres with two new openings formed of each 2.5 metres wide. With the many previous alterations, the value of the wall is in its alignment, the bricks used in its construction and the manner in which the original walls were constructed. With these elements protected as part of the current proposal, that will also secure the walls sustainable future, the harm to the wall is less than substantial.
- 9.20 The submitted proposals include the following works to the other garden walls:
- North west wall – likely to have been laid between 1866 and 1888 in imperial bricks with lime mortar. The wall will be repointed as joints have lost their mortar. An angled modern wall is to be removed.
 - South west wall – although line of wall appears to match the original layout, the wall appears to have been rebuilt at least twice including in recent times. Laid in imperial bricks with sand and cement the piers to the opening are a modern addition in the 1950s. The propose works are to repair the wall, clear back the ivy, replace the gate with a Yew hedge infill and add caps to the brick piers.
 - East garden wall – Wall dating from the early 1800’s but has since had a range of different alterations including formation of new openings and a section of wall raised in the 1950’s. A blocked up opening in the wall will be re blocked in more suitable bricks with a false door, ivy infestation removed and repointed. A leaning section may require buttressing.
 - Northern glasshouse wall – believed to date from between 1800 – 1840 with Georgian bricks in Flemish garden bond with darker bricks in a ‘diaper’ pattern. The line of the wall appears in 1790. Appears that the upper section of this wall may be a later addition. The works include repointing with lime mortar and replacing blown bricks, loose sections of render from the former glasshouse removed, end of wall tied in. 1950’s electrical shed repaired.
- 9.21 At the northern (rear) end of the walled garden are two sunken glasshouses. The submitted information reports that the sunken glasshouses are both currently in a highly derelict state.

- 9.22 The left hand glasshouse dates from around 1879 – 1880 and is built of imperial bricks. This earlier glasshouse is curtilage listed due to the location in the original curtilage of the main Hollingbourne House and as it existed on the *1st July 1948*. The submitted proposal includes the renovation of this glasshouse include rebuilding above ground in reclaimed red brick and new glazing. The 1950s heating equipment would be removed with the interior rendered. The door frame and door would be reinstated in a design similar to the original four panel door.
- 9.23 It is thought that the right hand glasshouse was originally a sunken frame which was built up in the 1950s using buff bricks and then rendered. This 1950's glasshouse is not curtilage listed and is not a heritage asset. The applicant has stated that the repair of the later more recent glasshouse is not economically viable so the structure will be recorded and then reduced to ground level and filled with soil. A feature outline in brick at ground level would be retained to mark its position.
- 9.24 The proposed works to the application building, including the reduction in the building footprint as part of the rebuilding of the rear part of the building. These changes and the proposed residential use of the building is make a positive contribution to the setting of the wall and glasshouse.
- 9.25 It is concluded that the current application building has a neutral impact on the setting of the curtilage listed walls and the glasshouses and the impact of the proposal on the significance of these heritage assets will be less than substantial.
- 9.26 In conclusion, policy SP18 of the Local Plan states that heritage assets will be protected to ensure their continued contribution to the quality of life. This aim will be achieved by the council encouraging and supporting measures that secure the sensitive restoration, reuse, enjoyment, conservation and/or enhancement of heritage assets, in particular designated assets identified as being at risk. NPPF (paragraph 197) states: "In determining applications, local planning authorities should take account of... the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation...".
- 9.27 The curtilage listed garden boundary walls have been subject of a wide range of earlier work, including repairs alterations, demolition work and rebuilding. This work has included a new opening in relation to providing a fire escape from the commercial building. The section of the wall to be rebuilt is currently unstable, propped up and in danger of collapse. In these circumstances and with reference to policy SP18 this curtilage listed wall is identified as being at risk.

Figure 3: Methodology for repair and rebuilding the garden walls

Methodology for the repair and rebuilding of sections of the garden wall and repairs to other areas of garden walling

- *Any section of wall that is need of complete rebuilding will be carefully taken down by hand. At first mortar would be remove as far as possible by a trowel or putty knife. Then bricks would be cleaned using a solution of 10 parts water and 1 part muriatic acid and a stiff brush. Industry standard personal protective equipment would be required and relevant guidance would need to be followed. Ehen bricks have been cleaned they must thoroughly be washed in clean water and stacked for re-use.*
- *Salvaged bricks would be set aside and stored for re-building*
- *Any spalded bricks would be reused where possible with the previous internal face cleaned and used as the new outer face*
- *The wall would be reconstructed using a garden wall bond with the spacing of headers and stretchers to match the existing*

- *The mortar mix of the wall would be considered and matching mortar mix used in the reconstruction*
 - *Other repairs to the walls will involve repointing with the use of appropriate lime mortar mixed to match that used historically*
 - *Where spalled bricks are to be removed the following will take place*
 1. *Remove the damaged brick with a suitable brick cutting tool*
 2. *Clean away mortar*
 3. *Either turn the brick and reuse/ or insert new or reclaimed brick into the prepared hole*
 4. *Repoint with suitable mortar*
 5. *Assist the carbonation of the lime mortar by covering pointed or repaired areas with hessian and mist spraying over a period of 3-4 days*
- 9.28 With the many previous alterations, the value of the walls is in their alignment that marks the boundaries of the walled garden. With further value from the bricks themselves and the manner in which the 'original' walls were constructed.
- 9.29 The current application will retain the walls on their current alignment. The reconstructed walls will be built, and repairs made with bricks that are retained from the earlier work to lower the adjacent wall and the proposed demolition. The walls will be built using a garden wall bond with the spacing of headers and stretchers to match the original wall, with a mortar mix to match the existing wall. The works will be carried out using the methodology set out at figure 3. This restoration work can be controlled through a planning condition.
- 9.30 The garden and boundary walls are now in different ownership to the listed building and separated from the listed building by the large commercial application building. The use of the garden by existing occupiers is currently restricted by this lack of direct access and as the garden walls are currently unsafe.
- 9.31 The use of the proposed building for residential use will bring the gardens back into full beneficial use. The work to restore and rebuild the walls and the new openings will ensure there is direct access from the two proposed family homes to the rear garden space and that the functional role of the walls as means of enclosure is retained.
- 9.32 With the brick wall less than 500mm away from the rear elevation of the application building the lowered section of wall will enable residential outlook to be provided to the rear windows. The lowered wall will also improve the relationship between the building and the garden space.
- 9.33 The work involving the removal and recording of the later glasshouse from the 1950s and the restoration of the later glasshouse from the 1880s as set out earlier in this report will enhance the existing historical interest in this garden area and will preserve its significance.
- 9.34 The work to the walls and the glasshouses is considered in line with SP18 with the restoration of the walls and glasshouse conserving this heritage asset and allowing the garden space to be enjoyed and used to its full potential. The proposal is in line with NPPF paragraph 197 in terms of putting the site to viable use that is consistent with its conservation. The works to repair and rebuild the curtilage listed structures and to secure their preservation is in line with paragraph 199 of the NPPF that states that great weight should be given to an asset's conservation.
- 9.35 It is concluded that the current application building has a neutral impact on the setting of the curtilage listed walls and the glasshouses and the impact of the

proposal on the significance of these heritage assets will be less than substantial.

- 9.36 The harm arising from the proposal relates to the new openings in the curtilage listed wall. NPPF paragraph 202 advises "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use".
- 9.37 The curtilage listed wall at the rear of the application building is unstable and in danger of or has collapsed. Whilst it is accepted that the proposed additional openings will result in less than substantial harm to the heritage value of the wall, the benefits of providing the improved access to the rear garden and the future use of the garden that will result, will outweigh this harm.
- 9.38 After having special regard to the desirability of preserving the relevant heritage assets, their setting and any features of special architectural or historic interest the proposal is in line with policy SP18 and DM4 of the adopted Local Plan and advice in the NPPF.

PUBLIC SECTOR EQUALITY DUTY

- 9.39 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

10 CONCLUSION

- 10.01 A local planning authority in making decisions must have special regard to the desirability of preserving any features of special architectural or historic interest. Adopted policy states that the aim of protecting the characteristics, distinctiveness, and quality of heritage assets will be achieved by the council supporting measures that secure the sensitive restoration and reuse of heritage assets.
- 10.02 The garden walls have been subject of a wide range of works, alterations, demolition and rebuilding in the past. The submitted proposal involves repair and restoration works that will generally maintain the character of the walls to ensure that they meet the functional role as means of enclosure.
- 10.03 In addition to the restoration works, the proposal includes the lowering of the middle section of the southern wall and the formation of two new openings. The lowering of the wall, which will match a previously approved adjacent lowered wall, will improve the access to the rear garden space as part of the proposal to introduce family accommodation in the studio building. As the walls have previously been significantly altered it is considered that the important characteristics that require protection relate to the reuse of the bricks, the wall alignment and the manner in which the walls are constructed (bond, mortar mix etc).
- 10.04 The significance of the walls and historic interest are limited to the materials use, method of construction and wall alignment. The proposed works involving the lowering of the wall and the formation of the two new openings are considered to represent less than substantial harm. The less than substantial harm will be outweighed by the public benefits of the development, which include heritage benefits arising from repairs to all the garden walls, the accessibility improvements to the garden space for future occupiers and the restoration works to the sunken greenhouses.

- 10.05 The proposed works involving the lowering of the wall and the formation of the two new openings are considered to represent less than substantial harm. The less than substantial harm will be outweighed by the public benefits of the development. These public benefits include heritage benefits arising from repairs to all the garden wall that will ensure their long term survival, the accessibility improvements to the garden space for future occupiers and the restoration works to the sunken glasshouses.

11 RECOMMENDATION

GRANT listed building consent subject to the following conditions

with delegated powers to the Head of Planning and Development to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.

- 1) The works to which this consent relates must be begun before the expiration of three years from the date of this consent.

Reason: In accordance with the provisions of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2) Prior to the demolition of the garden wall that lies to the immediate north-east of Courtyard Studios (as shown on drawing reference: 3094-008 Rev A), and restoration works to the remaining garden boundary walls, a schedule of works to the garden walls and the sunken glasshouses shall be submitted to and approved in writing by the local planning authority.

The schedule of works shall include: a)The entire wall to be built from the bricks in the existing wall to be demolished; b)A rebuilt wall that shall be a minimum of 1.2m in height at any point; c)Full details of how the retained garden walls will be restored. d) details of the sunken glasshouse restoration. The dwellings hereby approved shall not be occupied until the approved works to the garden walls and the glasshouses have been completed, and the walls and the glasshouses shall be maintained as such thereafter.

Reason: To safeguard the value of the curtilage listed garden boundary walls and the glasshouse

- 3) Prior to the demolition of the garden wall that lies to the immediate north-east of Courtyard Studios (as shown on drawing reference: 3094-008 Rev A), and restoration works to the remaining garden boundary walls a sample panel of the rebuilt wall (with the reused bricks, mortar mix/pointing details and coping stone to be used) shall be made available for inspection by Council officers with the works proceeding in accordance with this approved panel,

Reason: To safeguard the value of the garden boundary walls.

Informative

The applicant is advised that the following plans and documents were considered as part of the assessment of this application:

- 3094-011Rev F Proposed elevations (May 2020)
- Appendix 1 to the Heritage Statement (Nov 2019)
- Design and Access Statement (May 2020)
- PDL 01 A2 rev 2 Details of construction for remedial works and new openings to existing wall (May 2020)
- 3094-012 rev F proposed site plan (May 2020) 3094-012 rev F2 proposed site plan (May 2020)
- 3094-010 rev E Proposals (Proposed floorplans) (May 2020)
- PDL 01 rev v7 Proposed maintenance work to southern garden wall remaining on existing line. (May 2020)

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- PDL 02 rev v2 Proposed conservation works to northern glasshouse garden wall. (May 2020)
- PDL 03 rev v5 Proposed maintenance and amendments to east garden wall. (May 2020)
- PDL 04 rev v6 Proposed maintenance and minor amendments to south western garden wall. (May 2020)
- PDL 05 rev v5 Proposed maintenance and minor amendments to north west facing garden wall by barn. (May 2020)
- PDL 07 rev v2 Proposed restoration works to sunken glasshouses. (May 2020)
- Built Heritage Statement (May 2020)

Case Officer: Rachael Elliott

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.



**In the High Court of Justice
Queen's Bench Division
Planning Court**

CO Ref:
CO/836/2021

In the matter of an application for Judicial Review

The Queen on the application of

GLENN KINNERSLEY

Claimant

versus

MAIDSTONE BOROUGH COUNCIL

Defendant

and

PAUL DIXON

Interested Party

**Application for permission to apply for Judicial Review
NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)**

Following consideration of the documents lodged by the Claimant and the Acknowledgement of service filed by the Defendant

Order by Timothy Mould QC (sitting as a Deputy High Court Judge)

1. Permission is hereby refused.
2. The costs of preparing the Acknowledgment of Service are to be paid by the claimant to the defendant, in the sum of £3,848.10 unless within 14 days the claimant notifies the court and the defendant, in writing, that he objects to paying costs, or as to the amount to be paid, in either case giving reasons. If he does so, the defendant has a further 14 days to respond to both the court and the claimant, and the claimant the right to reply within a further 7 days, after which the claim for costs is to put before a judge to be determined on the papers. [Where the claimant seeks reconsideration, costs are to be dealt with on that occasion].
3. This is an Aarhus Convention Claim to which the limits on costs recoverable from the parties set out in CPR 45.43(2)(a) and (3) apply – Claimant £5,000; Defendant £35,000.

Reasons:

1. Ground 1 – I can detect no arguable misinterpretation of policy DM5 of the Local Plan in paragraphs 6.43 to 6.68 of the Officer's Report. Paragraph 6.45 refers to the relevant part of Policy DM5. Paragraph 6.46 directs the Defendant correctly to the guidance on the application of Policy DM5 given in paragraph 6.37 of the Local Plan. Given that the principal purpose of the planning application was to seek authority for building works to convert the existing studio building into two dwellings (paragraphs 2.01 to 2.07 of the OR), it seems to me that the planning officer's focus on the question whether the proposed works would produce an outcome that fulfilled the two policy considerations discussed in paragraphs 6.47 to 6.55 of the OR is obviously consistent with the lawful application of DM5 in accordance with its terms, to the facts of this case. Nobody was arguing for the

development of any area of existing residential garden. Insofar as the proposed development involved built development in the wider application site (i.e. the reconstruction of the existing wall), that element was regarded as positive in its environmental impact by the Conservation Officer (see OR at paragraphs 5.04 to 5.07). The change of use to residential was also seen as beneficial in environmental terms – see OR at paragraph 6.55. Ground 1 is not reasonably arguable.

2. Ground 2 – in *Mansell* at [42], Lindblom LJ said that the Court would not generally intervene in a case founded upon an alleged error in a planning officer's reported advice on a planning application unless that error involved a material misdirection to the decision making planning committee. That principle is very much in play in relation to the complaint under this ground. There is a difference of opinion evident in the reported views of conservation professionals and the planning officer in his report about the contribution that the existing studio building makes in the setting of Hollingbourne House. But even assuming that the planning officer's "inconsistent" judgment on that question is unexplained (which in itself is barely arguable – see below), it can hardly be said to have had a material bearing on the decision to grant planning permission. Nobody was arguing that the partial demolition and alteration of the existing studio building would in itself diminish the setting of the listed house in any material way. So the real question was whether the proposed replacement was acceptable in its impact on that setting. On that material question, as I understand it, the Conservation Officer was clear in her advice: the impact of the proposed works to the studio building would not materially harm the setting of the listed main house (see OR at paragraph 5.08). Applying the *Mansell* principle, ground 2 is not reasonably arguable.
3. Ground 3 – this ground asserts that the Defendant adopted a "flawed approach" to the assessment of the proposed development's heritage impact and acted in breach of its statutory duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. That contention essentially impugns paragraphs 6.90-6.170 and section 7 of the OR. In my view, it is simply unsustainable, in the light of the careful and thorough appraisal that is found in those paragraphs, supported by the advice of the Conservation Officer in paragraphs 5.02 to 5.08 of the OR. In fact, the planning officer reminded the Defendant of its statutory duty at the outset (paragraph 6.90); then set out the relevant policy requirements of the Local Plan and the NPPF (including paragraph 196 of the latter – see OR at paragraph 6.97). The setting and significance of the listed main house are described in paragraphs 6.104 – 6.133. The conclusion in paragraph 6.133 that there will be less than substantial harm to the setting of the listed main house is well explained. Paragraphs 6.134 – 6.170 address the impact on other listed elements (including the walls) and identify the benefits of the proposed development that bear upon the question whether the identified less than substantial harm should lead to refusal. In short, the planning officer's assessment sits properly within the framework of analysis set by the 1990 Act and the NPPF. As does his summary in section 7 (bullet three from the end). In short, ground 3 is, in substance an attack on the planning officer's assessment and evaluation of the impacts of the proposed development on the relevant heritage assets. That involves no arguable issue of law.
4. Ground 4 – The principles upon which the court approaches the contention that the decision maker in a planning decision has acted unlawfully in failing to take account of a relevant or "material" consideration were summarised by Lord Carnwath JSC at [30] – [31] in *R (Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council* [2020] PTSR 221, [2020] UKSC 3. Applying those principles, the contention that the Defendant acted unlawfully in failing to take account other than fleetingly of the Claimant's putative alternative proposal is unarguable. It cannot be said that the Defendant acted irrationally in taking that course.

5. The attack on the listed building consent is founded entirely on the asserted challenge to the legality of the decision to grant planning permission.
6. The proposed claim is unarguable.

Signed. TIMOTHY MOULD QC

The date of service of this order is calculated from the date in the section below

For completion by the Planning Court

Sent / Handed to the claimant, defendant and any interested party / the claimant's, defendant's, and any interested party's solicitors on (date): 05/05/2021

Solicitors:

Ref No.

Notes for the Claimant

If you request the decision to be reconsidered at a hearing in open court under CPR 54.12, you must complete and serve the enclosed FORM 86B within 7 days of the service of this order. A fee is payable on submission of Form 86B. ***For details of the current fee see the Court website <https://www.gov.uk/court-fees-what-they-are>***. Failure to pay the fee or lodge a certified Application for Fee remission may result in the claim being struck out. The form for Application for Remission of a Fee is obtainable from the Justice website <https://www.gov.uk/get-help-with-court-fees>.



Neutral Citation Number: [2022] EWHC 1825 (Admin)

Case No: CO/836/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL
Thursday 14 July 2022

Before :

HHJ KAREN WALDEN-SMITH sitting as Judge of the High Court

Between :

THE QUEEN (on the application of **Claimant**
GLENN KINNERSLEY)
- and -
MAIDSTONE BOROUGH COUNCIL **Defendant**

PAUL DIXON **Interested Party**

HARRIET TOWNSEND (instructed by **Richard Buxton Solicitors**) for the **Claimant**
GILES ATKINSON (instructed by **Mid Kent Legal Services**) for the **Defendant**

Hearing dates: 11 & 12 May 2022

Approved Judgment

Introduction

1. The Claimant, Mr Glenn Kinnersley, seeks to judicially review the decisions of the Defendant, Maidstone Borough Council (“MBC”), dated 21 January 2021 to grant both planning permission and listed building consent for the development of Courtyard Studios, Hollingbourne Hill, Hollingbourne, Kent ME17 1QJ (“the development site”). The interested party, Paul Dixon, took no part in the proceedings and was not represented at the hearing of the substantive judicial review proceedings.

The Factual Background

2. The planning permission granted to Paul Dixon is for:

“Demolition of the rear section of the building and erection of replacement structure and conversion of front section of building including external alterations, to facilitate the creation of 2 dwellings with associated parking and garden areas.

Demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse (“the development”).”

3. The listed building consent is for:

“Demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse.”

4. The Claimant, Mr Kinnersley, and his family, live at Hollingbourne House, a Grade II listed building, and the entirety of the application site falls within the grounds of Hollingbourne House and the curtilage of the listed building.
5. The relevant statutory development plan is the Maidstone Borough Local Plan which was adopted in 2017. The policies said to be directly relevant to this issue are:
 - (1) DM4: Development affecting designated and non-designated heritage assets;
 - (2) DM5: Development on brownfield land;
 - (3) DM30: Design principles in the countryside.
6. The application site includes two barn-type buildings which are joined and used together. These are known as the studio buildings. To the rear of the studio buildings, but adjacent to them is a historic walled garden. Hollingbourne House is at the top of Hollingbourne Hill which falls within the Kent Downs Area of Outstanding Natural Beauty and North Downs Special Landscape Area. Hollingbourne House is a Georgian property and designated heritage asset with four walled gardens, a separately listed Gazebo and Donkey Wheel.

7. Mr Dixon, the interested party, runs his photography business from the studio buildings which has B1 use for low key mixed commercial use. The dwellings known as Mulberry House and Well Cottage are also owned by Mr Dixon. These were formerly the servants' quarters of Hollingbourne House and in 2014 MBC granted planning permission for the studio buildings to be converted to use ancillary to the residential use of Mulberry and Well Cottages (for the purpose of providing an indoor swimming pool and related leisure facilities). This planning consent was not implemented.

The Planning History

8. Mr Dixon applied in 2018 (18/500228/FULL) for permission to convert the photography studio into two new residential dwellings. That application was refused on 17 April 2018. The Conservation Officer described the studio building as a "*single, linear unadorned construction, finished in brick and weatherboard and with a dual pitched roof in slate.*" He said this:

"[W]hilst I am prepared to accept some slight modifications to the building, the property's stark, agricultural character should continue to shine through, and this is necessary in order to conform with national guidance contained with Historic England's "The Conversion of Traditional Farm Buildings", and also the planning guidance associated with the Kent Downs AONB. Both these documents argue against the suburbanisation of the countryside...

I think that the subdivision of the cowshed into two separate dwellings distorts the legibility of the traditional arrangement of outbuildings to the main house and the relationships between the various estate buildings... The essential criteria is to retain the long, linear qualities of the cowshed, its pitched slate roof and its simple agrarian form.

The relationships between the functional outbuildings and the main house need to remain legible and obvious, and the answer is to adhere more closely to the shed's simple lines."

9. A further application (18/506662/FULL) was submitted on 27 December 2018. The Claimant, Mr Kinnersley, objected to permission being given on both planning and heritage grounds. He relied upon an assessment from a heritage expert which set out that Hollingbourne House has "*clear architectural and historical interest as a late 18th century mansion with associated grounds and individually listed features (Donkey Wheel and Gazebo both separately listed grade II)...The substantial walls encircling the four walled gardens contribute to the historical interest of the house by indicating its former grounds... Taking into consideration the specific application site buildings for conversion, they do not specifically enhance or contribute to the setting of the listing building but are of a form that does not disrupt the hierarchy of historic spaces and are largely benign in their current state ... they are not heritage assets but [that] they play a neutral role within the setting of the listed building and at present are in keeping with the traditional outbuilding form one would expect of an estate of this type.*" This expert considered the roof of the proposed building to be "*anomalous*" and the amount

of glazing in the proposed building to be “*excessive and will serve to detract from the character of the surroundings.*”

10. Planning permission was granted for the development on 29 March 2019, which determination was quashed on 8 July 2019 with the consent of MBC.
11. The proposal for the relocation of the listed wall was abandoned by Mr Dixon in May 2020 and replaced with a proposal partially to reconstruct the demolished wall along its existing line.
12. Mr Kinnersley’s planning consultant responded to the new proposals with points of objection relating to the impact of the proposed development:

“Clearly the suburban design with a flat box roof and extensive glazing will have an impact on the setting of the Grade II listed Hollingbourne House as well as the nearby former coach house and service wings, both of which form part of the listing building. These features are out of keeping with the prevailing character of the site and will detract from the agricultural character of the building and from the overall aesthetic of the estate”

13. The officer’s report dated 17 December 2020 (“the OR”) was both long and detailed and the Planning Committee of MBC resolved to grant planning permission. Planning permission and listed building consent were both granted on 21 January 2021.

The Challenge

14. Mr Kinnersley contends in these judicial review proceedings that the decision of MBC to grant planning permission and listed building consent was unlawful and ought to be quashed on the four following grounds:
 - (i) MBC erred in its interpretation of the Local Plan policy DM5 “Development on brownfield land”;
 - (ii) MBC was inconsistent in the approach it took to the assessment of the contribution to the setting of the listed building made by the existing studio buildings;
 - (iii) MBC was flawed in the approach taken to the assessment of heritage impact and in doing so acted in breach of its statutory duties pursuant to the provisions of section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990;
 - (iv) MBC failed to take into account a material consideration, namely the potential for a sensitive conversion of the front studio building for the purpose of providing a dwelling.
15. MBC contend that the judicial review challenge is misconceived and must fail on each of the four grounds set out. In essence, MBC contend that the arguments raised on behalf of Mr Kinnersley are either merits challenges or founded on merits challenges.

16. Permission to bring these substantive judicial review proceedings was granted at a renewed oral hearing by Lang J. The application for permission was originally refused on the papers by Mr Tim Mould QC, sitting as a Deputy Judge of the High Court. MBC seeks to rely upon the written reasons given by Tim Mould QC. However, as I said in the course of submissions, the reasons given for refusing or granting permission in no way bind or influence the decision made at the substantive hearing and can only be there to provide the basis upon which a determination to give or refuse permission is made.

The Legal Framework

17. In *R (Mansell) v Tonbridge & Malling BC* [2017] EWCA Civ 1314, [2019] PTSR 1452 Lindblom LJ set out the definitive summary of the principles to be applied where there is a judicial review of a planning permission based on criticism of an officer's report:

“42. The principles on which the court will act when criticism is made of a planning officer's report to committee are well settled. To summarise the law as it stands:

- (1) The essential principles are as stated by the Court of Appeal in *R v Selby District Council ex p Oxton Farms* [2017] PTSR 1103: see, in particular, the judgment of Judge LJ. They have since been confirmed several times by this court, notably by Sullivan LJ in *R (Siraj) v Kirlees Metropolitan Borough Council* [2011] JPL 571, para 19 and applied in many cases at first instance: see, for example, the judgment of Hickinbottom J in *R (Zurich Assurance Ltd (trading as Threadneedle Property Investments) v North Lincolnshire Council* [2012] EWHC 3708 (Admin) at [15].
- (2) The principles are not complicated. Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge (see the judgment of Baroness Hale of Richmond in *R. (on the application of Morge) v Hampshire County Council* [2011] UKSC 2, at paragraph 36, and the judgment of Sullivan J., as he then was, in *R. v Mendip District Council, ex parte Fabre* (2000) 80 P. & C.R. 500, at p.509). Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so on the basis of the advice that he or she gave (see the judgment of Lewison L.J. in *Palmer v Herefordshire Council* [2016] EWCA Civ 1061, at paragraph 7). The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way – so that, but for the flawed

advice it was given, the committee's decision would or might have been different – that the court will be able to conclude that the decision itself was rendered unlawful by that advice.

- (3) Where the line is drawn between an officer's advice that is significantly or seriously misleading – misleading in a material way – and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact (see, for example *R. (on the application of Loader) v Rother District Council* [2016] EWCA Civ 795), or has plainly misdirected the members as to the meaning of a relevant policy (see, for example, *Watermead Parish Council v Aylesbury Vale District Council* [2017] EWCA Civ 152). There will be others where the officer has simply failed to deal with a matter on which the committee ought to receive explicit advice if the local planning authority is to be seen to have performed its decision-making duties in accordance with the law (see, for example, *R. (on the application of Williams) v Powys County Council* [2017] EWCA Civ 427). But unless there is some distinct and material defect in the officer's advice, the court will not interfere"
18. The fundamental issue is whether the officer's advice to the members in this case is flawed in the way explained by Lindblom LJ. Namely, is there some distinct and material defect in the officer's report, which in this case is unusually long and thorough.
19. Insofar as the challenge is on *Wednesbury* grounds, the consideration is whether the decision is outside the range of reasonable decisions open to the decision-maker. Leggatt LJ and Carr J in *R (Law Society) v Lord Chancellor* [2018] EWHC 2094 set out the position as follows:

"The second ground on which the Lord Chancellor's Decision is challenged encompasses a number of arguments falling under the general head of "irrationality" or, as it is more accurately described, unreasonableness. This legal basis for judicial review has two aspects. The first is concerned with whether the decision under review is capable of being justified or whether in the classic *Wednesbury* formulation it is "so unreasonable that no reasonable authority could ever have come to it": see *Associated Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223 , 233-4. Another, simpler formulation of the test which avoids tautology is whether the decision is outside the range of reasonable decisions open to the decision-maker: see e.g. *Boddington v British Transport Police* [1998] UKHL 13; [1999] 2 AC 143 , 175 (Lord Steyn). The second aspect of irrationality/unreasonableness is concerned with the process by which the decision was reached. A decision may be challenged

on the basis that there is a demonstrable flaw in the reasoning which led to it - for example, that significant reliance was placed on an irrelevant consideration, or that there was no evidence to support an important step in the reasoning, or that the reasoning involved a serious logical or methodological error. Factual error, although it has been recognised as a separate principle, can also be regarded as an example of flawed reasoning - the test being whether a mistake as to a fact which was uncontentious and objectively verifiable played a material part in the decision-maker's reasoning: see *E v Secretary of State for the Home Department* [2004] EWCA Civ 49; [2004] QB 1044.”

Ground 1:

MBC erred in its interpretation of the Local Plan policy DM5 “Development on brownfield land

20. The permitted development includes the demolition of the existing and unstable (north east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse. The walled garden itself is not part of the proposal for development. The only other parts of the development which related to the garden are the other walls, which are to be repaired, and the sunken glasshouse, which is to be restored.
21. As is set out by Lindblom LJ in *Gladman Developments Ltd v Canterbury City Council* [2019] EWCA Civ 669:

“Section 38(6) of the 2004 Act requires the determination to be made “in accordance with the [development] plan unless material considerations indicate otherwise.” The development plan thus has statutory primacy, and a statutory presumption in its favour – which government policy in the NPPF does not. Under the statutory scheme, the policies of the plan operate to ensure consistency in decision-making. If the section 38(6) duty is to be performed properly, the decision-maker must identify and understand the relevant policies, and must establish whether or not the proposal accords with the plan, read as a whole. A failure to comprehend the relevant policies is liable to be fatal to the decision.”
22. The statutory development plan that is relevant to this site is the Maidstone Borough Local Plan, which was adopted on 25 October 2017. The application was determined on the basis that the proposed development accords with the statutory development plan. It is the contention of the claimant that policy DM5 of the local plan either applies to the entirety of the site, including both the residential garden (which is greenfield) and the previously developed land (pdl) and the development is contrary to DM5; alternatively DM5 does not apply at all and there is no policy support for the development so that the countryside policies of restraint apply.

23. Policy DM5, where it applies, requires the site not to be of high environmental value and residential development to be of a density which reflects the character and appearance of individual localities.

24. Paragraphs 6.34 to 6.38 of the Maidstone Local Plan sets out the explanation for policy DM5, which includes the following:

“6.34 One of the core principles of the NPPF encourages the effective use of land by re-using land that has been previously developed, provided it is not of high environmental value. This is known as brownfield land... Making the best use of previously developed land will continue to be encouraged throughout the lifetime of this plan.

6.35 It is important to ensure that brownfield land is not underused and that the most is made of vacant and derelict land and buildings in order to reduce the need for greenfield land ...

6.38 Residential gardens in urban and rural areas are excluded from the definition of brown field site.”

25. In the summary reasons for recommendation set out in the OR the planning officer set out that the *“site is not of high environmental value, but significant improvement will arise from the works in a number of ways.”*

26. The claimant criticises MBC for applying DM5 to only part of the site, averring that MBC erred in coming to a conclusion that the development of the historic walled garden is irrelevant to the policy test requiring an environmental gain.

27. The claimant suggests that the site should not have been artificially divided so as to consider what was proposed for the brownfield site alone, as DM5 relates to the entirety of the site not just the brownfield part. It is suggested that MBC fell into error by exchanging “site” with “building” and to apply DM5 only to the building, ignoring that part of the site which is land of high environmental value, and that changes to the site would, it is said, involve harm to a heritage asset.

28. The claimant is concerned that by concentrating upon the building, as the officer’s report sets out in paragraph 6.47:

“The two key questions here [referring to DM5] are whether the large commercial building on the site is currently of high environmental value, and whether the “redevelopment” will result in a significant environmental improvement to this building”

MBC have artificially restricted the scope of DM5. The claimant avers that MBC erred in coming to a conclusion that the development of the historic walled garden is irrelevant to the policy test requiring an environmental gain. The contention of the Claimant is that had MBC applied DM5 to the entirety of the site then the proposal would have conflicted with the local plan.

29. The respondent, MBC, contends that policy DM5 simply does not apply to the development of gardens. Gardens are expressly excluded in accordance with paragraph 2 “... *brownfield sites in the countryside which are not residential gardens.*”
30. The fundamental difficulty for the claimant with respect to its arguments under ground 1 is that DM5 does not apply to residential gardens. DM5 itself expressly provides that residential gardens in urban and rural areas are excluded from the definition of a brownfield site. The walled garden to the rear of the studio building is to be retained as a residential garden and is not brownfield land.
31. DM5 is very clearly worded and provides for development on brownfield land in the following terms:
- “1. Proposals for development on previously developed land (brownfield land) in Maidstone urban area, rural service centres and larger villages that make effective and efficient use of land and which meet the following criteria will be permitted:
- i. The site is not of high environmental value; and
 - ii. If the proposal is for residential development, the density of new housing proposals reflects the character and appearance of individual localities, and is consistent with policy DM12 unless there are justifiable planning reasons for a change in density.
2. Exceptionally, the residential development of brownfield sites in the countryside which are not residential gardens and which meet the above criteria will be permitted provided the redevelopment will also result in a significant environmental improvement and the site is, or can reasonably be made, accessible by sustainable modes to Maidstone urban area, a rural service centre or larger village”
32. The officer’s report considered the impact on the wall in paragraph 5.05:
- “it is unlikely that enough bricks will be salvaged to rebuild the wall to its present height. It was also considered as acceptable that the applicant could make some new openings in the wall to suit the needs of the redeveloped adjacent build. The result will be a wall which retains the historic boundary line of the walled area and one which is stable and generally clear of other agents of decay. This seems to me to be a significant gain for the historic asset, where there is currently a high risk of collapse and loss.”
33. There was also consideration in the OR of the impact of the proposals upon the listed house. At paragraph 6.90 of the OR the planning officer noted the obligation to have special regard to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest (section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990) and reached the conclusion, in paragraph 6.133 that

“the current application building has a negative impact on the setting of the grade II listed building Hollingbourne House and the impact of the proposal on the significance of this heritage asset will be less than substantial.”

34. DM5 does not apply to residential gardens and the OR correctly set out that:

“6.43 The Local Plan (paragraph 6.38) excludes residential garden land in both urban and rural locations from the definition of brownfield land.

6.44 In this context, the rear of the studio building (that is associated with the two cottages and will be retained as residential garden land) is not brownfield land. The studio building with the existing commercial use is located on brownfield land.”

35. The claimant’s contention that the manner in which MBC has applied DM5 is artificial, and an impermissible restriction of the scope of the policy and offends against the clear wording of DM5, is not a contention with which I can agree. DM5 is clearly worded. It applies to this development but it expressly does not apply to residential gardens. The officer clearly applied the policy and considered the correct issues in coming to the conclusion he did. The policy is only applicable to that part of the site which is brownfield.
36. The claimant is relying upon an incorrect interpretation of DM5 in an effort to show that the development is contrary to DM5. The officer’s report correctly refers to the relevant parts of DM5 and to the relevant guidance on the application of DM5. There was no proposal for the development of any part of the residential garden. The planning officer properly focussed on whether the proposed works would fulfil the policy considerations.
37. Ground one of the judicial review challenge therefore fails.

Ground 2

Inconsistent approach to the assessment of the contribution to the setting of the listed building made by the existing studio buildings without explanation or justification

38. The claimant contends that the approach taken by the officer in his report was inconsistent with respect to the planning judgment made as to the contribution made by the existing studio buildings to the significance of the listed building. It is submitted by the claimant that this inconsistency made unlawful MBC’s decision given the judgment as to the impact of the setting and significance of Hollingbourne House.
39. The fundamental principle relied upon by the claimant in support of this ground is that like cases are to be determined alike. See Mann LJ in *North Wiltshire District Council v Secretary of State for the Environment* [1993] 65 P & CR 137 where he set out the following:

“One important reason why previous decisions are capable of being material is that like cases should be decided in a like

manner so that there is consistency in the appellate process. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system. I do not suggest and it would be wrong to do so, that like cases must be decided alike. An inspector must always exercise his own judgment. He is therefore free upon consideration to disagree with the judgment of another but before doing so he ought to have regard to the importance of consistency and to give his reasons for departure from the previous decision.

To state that like cases should be decided alike presupposes that the earlier case is alike and is not distinguishable in some relevant respect. If it is distinguishable then it usually will lack materiality by reference to consistency although it may be material in some other way. Where it is indistinguishable then ordinarily it must be a material consideration. A practical test for the inspector is to ask himself whether, if I decide this case in a particular way am I necessarily agreeing or disagreeing with some critical aspect of the decision in the previous case? The areas for possible agreement or disagreement cannot be defined but they would include interpretation of policies, aesthetic judgments of assessment of need.”

40. In *R (Irving) v Mid Sussex DC & Anr* [2019] EWHC 3406 (Admin), Lang J set out that “*a local planning authority ought to have regard to its previous similar decisions as material considerations, in the interests of consistency. It may depart from them, if there are rational reasons for doing so, and those reasons should be briefly explained.*” Lang J. found on the facts of *Irving* that there was an unexplained inconsistency between the way in which the Council assessed the benefits of the proposal and how it had assessed public benefit on previous occasions and that, because the site was within a conservation area, the assessment of public benefits was a critical issue. She found the inconsistent approach to be unjustified and unlawful.
41. In this case, when planning permission for conversion of the photography studio into two new dwellings was submitted on 27 December 2018, it was not said that the studio buildings detracted from the setting or significance of Hollingbourne House. What was said by the Conservation Officer was that:

“At present it is a single, linear unadorned construction, finished in brick and weatherboard and with a dual pitched roof in slate. The proposal is to divide the building into two, to install a central walkway, and to extend out at the back with papated [sic.] extensions. The garden will be subdivided with a linear hedge.

Whilst I am prepared to accept some slight modifications to the building, the property’s stark, agricultural character should continue to shine through, and this is necessary in order to conform with national guidance...

I think that the subdivision of the cowshed into two separate dwellings distorts the legibility of the traditional arrangement of outbuildings to the main house and the relationships between the various estate buildings... The essential criteria is to retain the long, linear qualities of the cowshed, its pitched slate roof and its simple agrarian form.

The relationships between the functional outbuildings and the main house need to remain legible and obvious, and the answer is to adhere more closely to the shed's simple lines ...”

42. MBC purported to grant planning permission for the development as originally submitted, which permission was quashed on 8 July 2019. In May 2020, Mr Dixon, the IP, abandoned the proposals to relocate the listed wall and replaced that with a proposal to partially reconstruct the demolished wall along its existing line. The claimant objected to the amended proposals, including by a letter from his planning consultant that

“the suburban design with a flat box roof and extensive glazing will have an impact on the setting of the Grade II listed Hollingbourne House as well as the nearby former coach house and service wings, both of which form part of the listed building. These features are out of keeping with the prevailing character of the site and will detract from the agricultural character of the building and from the overall aesthetic of the estate”

43. The OR refers to the current construction as having a negative impact upon the nearby listed building (Hollingbourne House). In paragraph 6.33 it is said that whilst the front part of the application building is of quality construction it is not listed and *“its impact on the setting of the nearby listed building is a negative one.”* Similarly in paragraph 6.49 of the OR it is said that the commercial building makes a negative contribution to the setting of the listed building, and in paragraph 6.133:

“... the current application building has a negative impact on the setting of the grade II listed building Hollingbourne House and the impact of the proposal on the significance of this heritage asset will be less than substantial”

which opinion is repeated in paragraph 6.155 (under the heading “The setting and significance of the donkey wheel (Grade II)”.

44. The assessment in the OR that the application building has a negative impact is not the view that was expressed in the earlier report of the Conservation Officer of MBC, or the view of the claimant's heritage expert when she said that the application site buildings *“...do not specifically enhance or contribute to the setting of the listed building but are of a form that does not disrupt the hierarchy of historic spaces largely benign in their current state. I would concur with the planning officer who dealt with the last application that they are not heritage assets but that they play a neutral role within the setting of the listed building...”*

45. With respect to the impact of the proposals on the significance of the curtilage listed walls and the glasshouses, the impact of the existing building is described by the OR to be neutral. In paragraph 6.147 it is set out that the conclusion is that the current application building has a neutral impact on the setting of the curtilage listed walls and the glasshouses and the impact of the proposal on the significance of those heritage assets “*will be less than substantial.*” This view is set out in paragraph 6.165 as a conclusion: “*the current application building has a neutral impact on the setting of the curtilage listed walls and the glasshouses and that the impact of the proposal on the significance of these heritage assets will be less than substantial*”.
46. The inconsistency that is relied upon in this challenge is that the current building was previously referred to as having a neutral impact on the listed building, whereas the OR referred to the current building as having a negative effect on the significance of the listed building. In assessing the impact of proposals on the significance of affected heritage assets in accordance with the NPPF and the associated Planning Practice Guidance, the OR’s report failed to contain any reference to the earlier conclusions of MBC’s conservation officer or the heritage statements from both the claimant’s expert in 2019 and the IP in 2020. It is the complaint of the claimant that this inconsistency was neither identified nor explained in the OR and that the failure to do so makes the decision unlawful.
47. The claimant contends that the contribution made by the existing building to the heritage asset (Hollingbourne House) is an essential element of the impact assessment and that the failure to address the inconsistency cannot be ignored. It is said by the claimant not to be a minor matter as, when considering whether there was a clear and convincing justification for the identified loss of significance resulting from new openings in the curtilage listed wall and the roof extensions to the application building, the MBC was required to weigh the less than substantial harm caused by the development to the setting of Hollingbourne House against the public benefits of the proposal.
48. It is said by the claimant that the alteration of the impact of the existing building from neutral to negative alters the base line or starting point for an assessment of impact and the Planning Committee of MBC would not have known that the expressed view in the OR was not in line with the earlier view of the Conservation Officer or the view of both the claimant and the IP’s experts.
49. However, in my judgment this is not a matter which would have materially misled the members on a matter bearing on their decision (see *Mansell*).
50. What the Planning Committee was considering was the impact of the proposals on the significance of the setting of the listed house, Hollingbourne House. There is no evidence to support any submission that the proposals of the IP were harmful to the significance of the setting of the listed house and the Conservation Officer of MBC reported that it was considered acceptable that the applicant could make some new openings in the wall to suit the needs of the redeveloped adjacent building, the result being a wall which retains the historic boundary line of the walled area and one which is stable and generally clear of other agents of decay which “... *seems to me to be a significant gain for the historic asset where there is currently a high risk of collapse and loss.*” It is also set out in the OR that the conversion of the existing studio buildings will bring about some alterations to the external appearance but that “*this is minor and*

it is not considered that it will cause damage to the setting of the listed building.”(para 5.08 of the OR)

51. Consequently, while there is an inconsistency between the description of the impact of the existing building on the significance of the setting of Hollingbourne House being negative rather than neutral, as previously described, this was a relevant but not a “critical aspect” of the decision making.
52. The Planning Committee were not considering whether the proposals were removing something which was negative or damaging to the significance of the listed house, but rather they were considering what was being put in the place of the existing building and whether that was damaging to the setting of the listed building. The concentration on this inconsistency between whether the existing building has a neutral or a negative impact is not where the focus should be.
53. The reporting officer was entitled to reach the planning decision he did, relying (at least in part) on the conservation officer’s conclusion that *“The conversion of the existing studio building will bring about some alterations to the external appearance but that this is minor and it is not considered that it will cause damage to the setting of the listed building.”*
54. Insofar as the Planning Committee could have been misled by what was in the report, the claimant sought to put that right by the letter he sent to the individual members of the Planning Committee on 16 December 2020, the day before the decision. In that letter he set out clearly that he disagreed with the Planning Officer that the application site currently has a negative impact and said that the site has an agricultural character that is entirely suitable to its location. In that letter he sets out, on planning grounds, why the application ought to be refused.
55. The members of the Planning Committee would, therefore, have been fully aware of the issue with respect to whether the current impact was neutral (as per the earlier report of the Conservation Officer and the reports of the experts) or negative (as per the OR).
56. In conclusion on this ground, the impact of the existing building is plainly a matter for consideration by the planning committee but it is not a “critical aspect”. The major concern for the planning committee was in assessing the impact on the significance of the setting of the listed house if the proposals were undertaken. That was explored in full in the OR. While the “baseline” may have changed from a neutral impact to a negative impact, that did not alter the impact of the proposed development which was what the planning committee were concerned about. The advice was that the proposed conversion of the existing studio building would bring about some alterations to the external appearance and that was minor and not considered that it would cause damage to the setting of the listed building. There was no inconsistency that amounted to a material misdirection to the planning committee.
57. Even if it could properly be said that the difference between the OR describing the impact on the setting of the listing building as negative, whereas the Conservation Officer had previously described it as neutral, was a material matter that required highlighting and explanation, it would not, in my judgment, lead to a different decision having been reached.

58. In all the circumstances ground two of this judicial review must also therefore fail.

Ground 3: MBC adopted a flawed approach to the assessment of heritage impact and in so doing acted in breach of its statutory duty under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Listed Buildings Act”)

59. The claimant contends that in determining this application for planning permission, MBC were required to “*have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses*” (pursuant to the provisions of section 66 of the Listed Buildings Act) and that MBC failed to do so having concluded that the existing studio building had a “*negative impact on the setting of the grade II listed building and the impact of the proposal on the significance will be less than substantial*”. The claimant contends that the assessment that the existing studio buildings had a negative impact was a flawed assessment and contrasts that opinion contained in the OR with the opinion from the claimant’s expert and the earlier opinion of MBC’s conservation expert.
60. This ground is a direct attack on the planning officer’s assessment and evaluation of the impact of the proposed development on the setting of the listed house. The court will not interfere unless there is a distinct and material defect in the officer’s advice: “*The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made*”. (*Mansell*).
61. In paragraph 6.90 of the OR, the planning officer set out the statutory duty pursuant to section 66 of the Listed Building Act. In that section of the OR from 6.90 through to 6.170 the planning officer has set out a detailed appraisal of the impact of the proposed development upon heritage issues, referring in paragraphs 6.91 to 6.99 to the relevant advice from Historic England and the relevant passages from the Local Plan and the National Planning Policy Framework (NPPF), and correctly identifying that the relevant heritage considerations of the proposed development include consideration of the potential impact upon the listed building Hollingbourne House, the Gazebo, the Donkey Wheel, the brick garden walls and the sunken glasshouses.
62. It is not sufficient simply to recite the appropriate statutory and policy tests, it is necessary for the duty to be performed: *R (Liverpool Open and Green Spaces Community Interest Co) v Liverpool City Council* [2020] EWCA Civ 861, [2021] P & CR 10 per Lindblom LJ and *R (Kinsey) v Lewisham LBC* [2021] EWHC 1286.
63. The OR sets out in detail heritage considerations in the context of the setting and significance of Hollingbourne House (paragraphs 6.104 to 6.133), the setting and significance of the brick garden walls and the sunken glasshouses (paragraphs 6.134 to 6.147), the setting and significance of the Gazebo building (paragraphs 6.148 to 6.150), and the setting and significance of the Donkey Wheel (paragraphs 6.165 to 6.170).
64. Criticism is levelled against the conclusion in the OR that the courtyard studios have a negative impact on the setting of the grade II listed building and the impact of the proposal on the significance of this heritage asset “*will be less than substantial*” (paragraphs 6.133 and 6.155) and, as in the challenge contained under Ground 2, the claimant contends that the disparity between the officer’s view (that the existing building has a negative impact) with the view of the other experts and the Conservation

Officer (that the impact of the existing building is neutral) was a material consideration and it is contended that the flawed assessment of the baseline infected the judgment of impact. I do not accept that to be the case. These two paragraphs do set out the officer's view that the existing building has a negative impact, which does differ from the view of others, however, the conclusions that the impact of the proposed development is less than substantial is based upon the details set out in this part of the OR (spread over 80 paragraphs) and is thoroughly explained. Neither paragraph 6.133 nor 6.155 stand alone and must be read in the context of all that is said in that part of OR. It is a proper analysis of the heritage matters that the officer was required to consider both by reason of the Listed Buildings Act and the NPPF.

65. The second part of the challenge under this third ground, is the submission that the planning OR wrongly equates “less than substantial harm” with a less than substantial objection in breach of the duty imposed by section 66 of the Listed Building Act. Paragraphs 68 to 72 of the Statement of Facts and Grounds sets out the details of the complaint as follows:

“68 The reduction in the footprint of the building ... and the proposed residential use are said to make a positive contribution to the “setting of the wall and glasshouse” [OR 6.146]. This conclusion is bizarre since

(a) The footprint reduction is marginal

(b) The walled garden is already in residential use

(c) The walls and glasshouse are of significance for the role they play in revealing the significance of the principal listed building – not in themselves

“69 The proposal, the OR goes on, would have a neutral impact on the setting of the walls and the glasshouses and the impact would be less than substantial [6.147 and 6.165]. Not only is it the setting of the principal listed building and an impact on its significance that counts, not any setting of the wall per se, but this reinforces the reader's impression that a “less than substantial” impact is – erroneously – taken by the writer to be one that is “neutral” or unimportant.

70. As for the impact on the gazebo and the donkey wheel, the OR concludes “that the current application building and the application site make no contribution to the significance of the grade II listed Donkey Wheel and the Gazebo and they will not harm their setting with less than substantial harm” [6.155]. Again, the OR appears to equate lack of impact and less than substantial harm which undermines the reader's confidence that the writer properly understood their legal duty, or the relevant policies.

71. Finally, and without any analysis at all of why this is so, the OR concludes “The harm arising from the proposal relates to

the new openings in the curtilage listed wall and the roof extensions to the application building” [6.166]. Thus, there is at least some acknowledgement that – as advised by both the IP’s expert and Liz Vinson – the development would cause less than substantial harm to the significance of the principal listed building. The roof extensions are part of it, but there were other harmful elements which are not mentioned in the OR.

72. In these several ways, the OR equates “less than substantial harm” with a less than substantial objection, in breach of the section 66 duty. It also incorrectly assesses the impact on the setting of the curtilage listed wall and glasshouse, instead of the principal listed building. The impression given by a fair reading of the OR, as illustrated by these quotes, is confused about what the heritage asset is and of the significance of the a judgment that development causes less than substantial harm”.

66. It is the contention of the claimant that the alleged confusion renders the OR materially misleading.
67. This is fundamentally an argument that the planning officer’s judgment was wrong, which is an impermissible challenge. The court will only interfere if there is a distinct and material defect in the officer’s advice and in this case the planning officer has set out a detailed analysis of the proposal on each aspect of the heritage assets. Given the detail the planning officer has given with respect to each aspect of the heritage assets it is of course possible to point to minor errors and less than tight language, but that is not what the court is concerned with. The court considers the OR and the advice contained within it as a whole to determine whether it is misleading to the planning committee.
68. The OR contains a full appraisal of the impact of the proposal on all aspects of the heritage elements and in reading the document as a whole, there is no error of law which makes the decision properly open to challenge. The planning committee were not being misled on a material matter.
69. Ground three of this judicial review consequently does not succeed.

Ground Four: alternative proposal – a sensitive conversion of the front building

70. It is contended on behalf of the claimant that MBC failed to take into account a material consideration in granting permission, namely the potential for a sensitive conversion of the front studio building to provide a dwelling in a way which avoids harm to the significance of the listed building. The claimant, through his advisors, put forward an alternative proposal for the conversion of the front studio and the claimant referred to that proposal in his letter to the members of the planning committee on the eve of the decision.
71. The MBC contend that this is an impermissible merits based challenge based upon the planning officer’s judgment being wrong. It is said on behalf of the claimant that this ground is not an attack on the planning officer’s judgment, questions of weight being a matter for the decision maker, but as a matter of law the planning committee must take

into account all material considerations when deciding whether or not to grant planning permission and that MBC failed to do so.

72. The principles with respect to such a challenge are set out in *R (Samuel Smith Old Brewery) v North Yorkshire CC* [2020] UKSC 3, [202] PTSR 221, where Lord Carnwath JSC referred to his earlier decision in *Derbyshire Dales District Council v Secretary of State for Communities and Local Government* [2010] 1 P & CR 19, the issue in that case being whether the authority had been obliged to treat the possibility of alternative sites a material consideration:

“17. It is one thing to say that consideration of a possible alternative site is a potentially relevant issue, so that a decision-maker does not err in law if he has regard to it. It is quite another to say that it is *necessarily* relevant, so that he errs in law if he fails to have regard to it.

18. For the former category the underlying principles are obvious. It is trite and long-established law that the range of potentially relevant planning issues is very wide (*Stringer v Minister of Housing and Local Government* [1970] 1 WLR 1281); and that, absent irrationality or illegality, the weight to be given to such issues in any case is a matter for decision-maker (*Tesco Stores Ltd v Secretary of State for the Environment and West Oxfordshire District Council* [1995] 1 WLR 759, 780). On the other hand, to hold that a decision-maker has erred in law by *failing* to have regard to alternative sites, it is necessary to find some legal principle which compelled him not merely empowered) him to do so.”

73. In *Samuel Smith* Lord Carnwath also said the following:

“31. I referred to the discussion of this issue in a different context by Cooke J ... and in the planning context by Glidewell LJ in *Bolton Metropolitan Borough Council v Secretary of State for the Environment and Greater Manchester Waste Disposal Authority*...

“27. ... ‘ ... *in certain circumstances there will be some matters so obviously material to a decision on a particular project that anything short of direct consideration of them by the ministers ... would not be in accordance with the intention of the Act.*’ (*In re Findlay*)

28. *It seems, therefore, that it is not enough that, in the judge’s view, consideration of a particular matter might realistically have made a difference. Short of irrationality, the question is one of statutory construction. It is necessary to show that the matter was one which the statute expressly or impliedly (because “obviously material”) requires to be taken into account ‘as a matter of legal obligation.’*”

“32. ...

The question therefore is whether under the openness proviso visual impacts, as identified by the inspector, were expressly or impliedly identified in the Act or the policy as considerations required to be taken into account by the authority “as a matter of legal obligation”, or alternatively whether, on the facts of the case, they were “so obviously material” as to require direct consideration.”

74. The alternative proposal put forward by the claimant was in fact considered in the body of the OR. In paragraph 4.01

“Following a “design exercise” carried out by the neighbour’s consultant, it is considered that an alternative scheme to convert the existing barn into one large 4-bed house is entirely achievable and is possible with less harmful impact”

While this may have been a brief consideration, it does mean that there was a consideration of the alternative proposal. The question of weight to be given to that alternative proposal is a matter for the decision maker and is not something the court will interfere with. The planning officer was entitled to consider that alternative proposal as not having any prospect of being given permission and not a proposal that needed further consideration – that is purely a planning judgment.

75. The OR includes a consideration of proposals in the context of both DM 30 (in paragraphs 6.71 to 6.81), and DM31 (in paragraphs 6.15 to 6.42) depending upon whether the proposal is properly a conversion or a new build. The conclusion in the OR that the proposals were for a new build and that, accordingly, DM31 was not relevant. The OR also advised that it did accord with DM30.
76. Given the reference to the alternative proposal put forward by the claimant and the references to the appropriate policies, it cannot be said that MBC was acting irrationally.
77. The challenge under ground 4 must also fail.

Listed Building Consent

78. The challenge to the Listed Building Consent rests entirely upon the challenges to the legality of the design to grant planning permission. As those four challenges to the legality of the grant of the planning permission have failed, the challenge to the Listed Building Consent must also fail.

Conclusion

79. For the reasons set out the judicial review challenging the decision to grant planning permission and the Listed Building Consent fails on the various grounds advanced by the claimant.
80. In summary: Ground 1 fails as there was no misinterpretation of policy DM5 of the Local Plan, there was no proposal to develop existing residential garden; Ground 2 fails

as there was no material misdirection contained within the OR; Ground 3 fails as it amounts to an attack upon the planning officer's assessment and evaluation of the impacts of the proposed development as set out in the OR; Ground 4 also fails as it is an attack upon a planning judgment, the alternative proposal having been considered but only briefly.



Neutral Citation Number: [2023] EWCA Civ 172

Case No: C1/2022/001490

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN’S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT
HHJ WALDEN-SMITH sitting as a Judge of the High Court
CO/836/2021

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 February 2023

Before:

LORD JUSTICE BEAN
LORD JUSTICE MOYLAN
and
LORD JUSTICE LEWIS

Between:

THE KING (on the application of GLENN KINNERSLEY) Appellant
- and -
MAIDSTONE BOROUGH COUNCIL Respondent

PAUL DIXON Interested
Party

Harriet Townsend (instructed by Richard Buxton Solicitors) for the Appellant
Giles Atkinson (instructed by Mid Kent Legal Services) for the Respondent
The Interested Party did not appear and was not represented.

Hearing date: 8 February 2023

Approved Judgment

This judgment was handed down remotely at 10.30am on 22 February 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

LEWIS LJ:

INTRODUCTION

1. This appeal concerns the proper interpretation of a particular policy, Policy DM5, in the Maidstone Borough Local Plan (“the Local Plan”) which deals with developments on previously developed land, referred to as brownfield land. In essence, the policy provides that the residential development of brownfield sites in the countryside which are not residential gardens will be permitted if it meets certain criteria. Those include a criterion that the “site is not of high environmental value”. The principal issue on this appeal is the meaning of “site”. Does it mean the whole of the site which is the subject of the application for planning permission (including the land on which the residential development is to take place and any residential gardens forming part of that application site)? Or is it limited to the land where the residential development is to take place (leaving out of account that part of the application site which is residential garden)? The appellant, Mr Glenn Kinnersley, says it is the former. The respondent local planning authority, Maidstone Borough Council, says it is the latter. HHJ Walden-Smith sitting as a judge in the High Court (“the Judge”) decided it was the latter. A secondary issue concerns the question of whether the respondent failed to have regard to earlier views of the conservation officer which were said to be a material consideration.

THE LEGAL FRAMEWORK

2. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides, in essence, that applications for planning permission must be determined in accordance with the development plan for the area unless material considerations indicate otherwise. In the present case, the development plan includes the Local Plan. Relevant policies include Policy SP17 on the countryside which is defined to include all those areas outside the Maidstone urban area, rural service centres and larger villages. The proposed redevelopment in the present case is within the countryside. Paragraph 1 of Policy SP17 provides that:

“Development proposals in the countryside will not be permitted unless they accord with other policies in this plan and they will not result in harm to the character and appearance of the area.”

3. For present purposes, the material policy is DM5 which provides as follows:

“Policy DM5

Development on brownfield land

1. Proposals for development on previously developed land (brownfield land) in Maidstone urban area, rural service centres and larger villages that make effective and efficient use of land and which meet the following criteria will be permitted:
 - i. The site is not of high environmental value; and

- ii. If the proposal is for residential development, the density of new housing proposals reflects the character and appearance of individual localities, and is consistent with policy DM12 unless there are justifiable planning reasons for a change in density.
2. Exceptionally, the residential redevelopment of brownfield sites in the countryside which are not residential gardens and which meet the above criteria will be permitted provided the redevelopment will also result in a significant environmental improvement and the site is, or can reasonably be made, accessible by sustainable modes to Maidstone urban area, a rural service centre or larger village.
4. There is explanatory text in the Local Plan dealing with Policy DM5. Paragraph 6.38 of that text provides that “[r]esidential gardens in urban and rural areas are excluded from the definition of a brownfield site”.

THE FACTUAL BACKGROUND

The Grant of Planning Permission

5. The Interested Party, Mr Paul Dixon, applied for planning permission in respect of an area of land of approximately 0.2 hectares and comprising two barns which were joined and used together, an historic walled garden to the rear, and a proposed driveway connecting with a nearby road. That is the application site and is marked in red on the application for planning permission. The barns are currently being used as a photography studio and are referred to here as the studio building. The application for planning permission was, broadly, aimed at the conversion of the studio into two dwellings, and the demolition of an historic wall forming part of the walled garden and its reconstruction at a lower height and with two openings within the wall to facilitate access from each dwelling to the garden. The garden would be subdivided into two by a hedge. The application site is within the curtilage of Hollingbourne House, which is to the south west. That is a Grade II listed Georgian house. There are two cottages, Mulberry Cottage and Wells Cottage, attached to Hollingbourne House. Mr Dixon also applied for listed building consent for the demolition and reconstruction of the historic wall as the wall is also listed.
6. There was a detailed officer’s report dealing with the application for planning permission. That described the site. It set out the planning history. It noted that a previous proposal was rejected in 2018 and set out the reasons why it had been refused. It also noted that planning permission for a different scheme had been granted in 2019 but that that permission had been quashed on judicial review as it was accepted that the planning authority had failed to identify the setting of the listed building (Hollingbourne House) and to assess the impact of the proposal on the listed building.
7. The officer’s report then described the proposal, the relevant policies and summarised the consultation responses received. At section 6, it began its appraisal. It identified eight key issues one of which was “Brownfield Land DM5 and sustainability of the

location”. It dealt with that topic at paragraphs 6.43 to 6.68. At paragraphs 6.43-6.44, it states:

“6.43 The Local Plan (paragraph 6.38) excludes residential garden land in both urban and rural locations from the definition of brownfield land.

“6.44. In this context, the land to the rear of the studio building (that is associated with the two cottages and will be retained as residential garden land) is not brownfield land. The studio building with the existing commercial use is located on brownfield land.”

8. The report then summarises Policy DM5 noting that the relevant part is paragraph 2 and identifying the four relevant criteria which included the following “a) the site is not of high environmental value” and “b) the redevelopment will result in a significant environmental improvement”. It then assessed those matters under a heading of “Consideration of DM5 a) and b) above”. At paragraph 6.47, it said the following:

“6.47. The two key questions here are whether the large commercial building on the site is currently of high environmental value, and whether the ‘redevelopment’ will result in a significant environmental improvement to this building”.

9. The reference to the commercial building is a reference to the existing studio building. The report then assesses the existing building against the criteria in Policy DM5 and concludes at paragraph 6.68 that:

“6.68. This brownfield site in the countryside site is not on a site of high environmental value, the proposal will result in significant environmental improvement, the density reflects the character and appearance of the area and the site can reasonably be made accessible by sustainable modes to a larger village and has the benefit of removing a use that would have higher trip generation. After these considerations the proposal is in accordance with policy DM5 of the adopted Local Plan. The proposal is also in line with advice at paragraph 118 of the [National Planning Policy Framework] that states that planning decisions should encourage multiple benefits from rural land.”

10. The officer’s report also assessed heritage and noted the officer’s conclusion that the current application building had a negative impact on the setting of Hollingbourne House and the proposal would cause less than substantial harm to it. The officer’s report recommended that planning permission be granted.

11. The respondent’s planning committee met on 17 December 2020 and resolved to grant planning permission, subject to conditions, and listed building consent. Planning permission was formally granted on 21 January 2021 for:

“Demolition of the rear section of the building and erection of replacement structure, and conversion of front section of building including external alterations, to facilitate the creation of 2 dwellings with associated parking and garden areas. Demolition of existing derelict and unstable (north-east facing) garden wall, reconstruction on existing line at reduced height with 2 additional openings, repairs, restoration of other garden walls and restoration of 1 sunken glasshouse.”

12. Listed building consent for the demolition of the existing wall and its reconstruction was also granted on 21 January 2021.

The Claim for Judicial Review

13. The appellant, who is the owner of Hollingbourne House, sought judicial review of the grant of planning permission and listed building consent. It is common ground that the two stand or fall together. There were four grounds of claim but, for present purposes, it is only the first two that are material. First, the appellant contended that the respondent had misinterpreted Policy DM5 as it had had regard only to the existing studio building when deciding whether the “site” was of high environmental value and failed to have regard to whether the site as a whole, that is, the studio building, the walled garden and driveway, was of high environmental value. The second ground was that the respondent had taken an inconsistent approach to the assessment of the contribution made by the existing building. The officer had considered that the existing building had a negative effect on the setting of Hollingbourne House whereas previous officers had assessed the existing studio building as having a neutral impact. That change altered the baseline for assessment of the heritage impact.

14. The Judge dealt with ground 1 in the following terms:

“35. The claimant's contention that the manner in which MBC has applied DM5 is artificial, and an impermissible restriction of the scope of the policy and offends against the clear wording of DM5, is not a contention with which I can agree. DM5 is clearly worded. It applies to this development but it expressly does not apply to residential gardens. The officer clearly applied the policy and considered the correct issues in coming to the conclusion he did. The policy is only applicable to that part of the site which is brownfield.

36. The claimant is relying upon an incorrect interpretation of DM5 in an effort to show that the development is contrary to DM5. The officer's report correctly refers to the relevant parts of DM5 and to the relevant guidance on the application of DM5. There was no proposal for the development of any part of the residential garden. The planning officer properly focussed on whether the proposed works would fulfil the policy considerations.”

15. In relation to ground 2, the Judge held that any inconsistency between the views of earlier conservation officers and the current planning officer as to the impact of the

existing studio building on the setting of Hollingbourne House was not material. The respondent's planning committee was not considering whether the proposals were removing something that was negative or damaging to the significance of the listed building but rather they were considering whether what was put in its place was damaging to the setting of the listed building. Concentration on an inconsistency between whether the existing building had a neutral or negative impact was not where the focus should be. The Judge dismissed this ground of claim, and the other grounds, and dismissed the claim for judicial review.

16. Coulson LJ granted permission to appeal on two grounds, which correspond to grounds 1 and 2 of the claim. He refused permission to appeal on the other grounds.

THE FIRST ISSUE – THE PROPER INTERPRETATION OF DM5

Submissions

17. Ms Townsend submitted that the word “site” in paragraph 1.i of Policy DM5 means the whole of the application site. That is the natural meaning of that word. That is how the word “site” is used in other parts of the Local Plan. Further, the proposed redevelopment here involved parts of the walled garden, namely the wall itself and two patio areas. In addition, the aim of the Local Plan policies was to prevent redevelopment of residential gardens in the countryside. There would be no purpose in excluding the area of the walled garden from consideration of whether the site as a whole was of high environmental value in determining whether it met the criteria for redevelopment. She submitted that the respondent therefore erred in considering only part of the application site, that is the studio building.
18. Mr Atkinson for the respondent submitted that Policy DM5 was not intended to apply to residential gardens. They were excluded from the scope of that policy. That was consistent with the explanatory text to the policy which said, at paragraph 6.38 that “residential gardens in urban and rural areas are excluded from the definition of a brownfield site”. Consequently, the reference to “site” in paragraph 1.i of DM5 should be interpreted to mean the site excluding the residential garden.

Discussion

19. This issue concerns the proper interpretation of a policy in a development plan. Planning policies should be interpreted objectively, in accordance with the language used, read in its proper context. They should not be interpreted as if they were statutes or contracts. See, generally, *Tesco Stores Ltd. v Dundee City Council (Asda Stores Ltd intervening)* [2012] UKSC 13, [2012] PTSR 983, and see the summary of relevant principles set out by Holgate J. in *Rectory Homes Ltd. v Secretary of State for Housing, Communities and Local Government* [2020] EWHC 2098 (Admin), [2021] PTSR 143 at paragraphs 43 to 45.
20. The context is that Policy DM5 is dealing with development on previously developed land (which it refers to as “brownfield land”). Paragraph 1 provides that the residential development of previously developed land in urban areas must meet certain specified criteria including that the site is not of high environmental value and that the density of the housing is acceptable and consistent with policy. Paragraph 2 provides that exceptionally, the residential redevelopment of previously developed land in the

countryside (but not land which is a residential garden) may be permitted provided that certain criteria are met. Those are that (1) the “site is not of high environmental value” (2) the density is acceptable (3) “the redevelopment will also result in a significant environmental improvement” and (4) the site is, or can reasonably be made, accessible.

21. First, on the natural interpretation of the words of Policy DM5, read in context, the reference to “site” in paragraph 1.i means the application site, that is, the site which is the subject of the application for planning permission. That is how the word “site” is used in other parts of the Local Plan. By way of example, Policy DM1 indicates that proposals should incorporate “natural features such as trees, hedges and ponds worthy of retention within the site”. The reference to “site” there must mean the application site and cannot be read as excluding parts of the area in respect of which planning permission is sought.
22. That interpretation also reflects the difference between the words used in the main body of paragraph 1 and the criteria in paragraph 1.i. The paragraph itself provides that redevelopment on “previously developed land” (defined as “brownfield land”) will be permitted if it meets certain criteria. The criterion in paragraph 1.i is that the “site” is of high environmental value. The use of a different word, “site”, instead of the phrase “brownfield land” or “previously developed land” suggests that “site” may have a different meaning or scope. The obvious difference will be where the application site includes “previously developed” or “brownfield land” together with other land. In those circumstances, the environmental value of the whole of the site (not simply the brownfield, or previously developed, land) will need to be assessed. Similarly, when paragraph 2 refers to the redevelopment of “brownfield sites”, it requires that specified criteria be met including those in paragraph 1.i. that the “site” is not of high environmental value. Paragraph 2, therefore, distinguishes between the area where redevelopment is to be permitted and the “site”. The natural inference is that the reference to the “site” is to the application site as a whole.
23. Secondly, that meaning accords with the purpose underlying DM5. The aim is to ensure that redevelopment will take place on previously developed land only if the site is not of high environmental value. Where an application site consists both of previously developed land (which may be redeveloped) and other land such as a residential garden (where redevelopment is not permitted), it does not accord with the purpose of the policy if only the environmental value of part of the application site is assessed and if the “protected” part (the residential garden) is left out of account.
24. Thirdly, the premise upon which the respondent proceeded is mistaken. They considered that the “policy” did not apply to residential gardens as the explanatory text made it clear that residential gardens were excluded from the definition of a brownfield site for the purpose of Policy DM5. That is, however, to equate the policy as a whole with the definition of “previously developed land”. It is clear that residential gardens in the countryside will not benefit from the presumption that redevelopment will be permitted if certain specified criteria are met. That does not mean, however, that other

aspects of the policy should not apply to residential gardens. In particular, where residential gardens together with other previously developed land form part of a single application for redevelopment, there is no reason why other parts of Policy DM5 cannot apply. In particular, there is no reason why the residential garden area forming part of the application for planning permission should be left out of account when deciding if the “site” as a whole is of high environmental value.

25. In the present case, it is clear that the officer’s report only considered whether the existing studio building was of high environmental value. That follows in part from paragraphs 6.43 and 6.44 of the report which concluded that the residential garden was not part of the brownfield land. It appears most clearly from paragraph 6.47 and following where the officer considered whether “the large commercial building”, that is the studio building, was of high environmental value. He did not consider whether the application site, that is the existing building, the walled gardens and the land connecting with the road, was taken as a whole of “high environmental value”. For that reason, the respondent erred in its interpretation and application of Policy DM5. I would quash the planning permission, and the listed building consent and remit the matter to the respondent for it to consider the matter afresh. The respondent will need to determine whether or not the application site as a whole is of high environmental value.
26. The respondent will also have to assess whether the other criteria are met including whether the proposed redevelopment will result in a significant environmental benefit. That latter consideration is not tied to any particular geographic area. The local authority will have to consider the proposed redevelopment as a whole (and here the proposed redevelopment includes the changes to the existing studio building and the changes to the wall forming part of the walled garden). The significant environmental improvement may be to the whole of the application site, part of the application site (e.g. the repair of the historic wall) or to areas outside the application site, or a combination.
27. This consideration also explains why interpreting “site” in paragraph 1.i of Policy DM5 as meaning the application site will not lead to other difficulties. In particular, it was suggested in argument that the application could be drafted in a way which excluded the residential gardens so, for example, the application would only be for permission to redevelop the studio building and the application site would not include the walled garden. As a matter of fact, that would not be a practical proposal here as the redevelopment presupposes that the walled garden will be divided into two separate gardens, one for each of the two dwellings, and that would require work to the wall to provide two openings. More significantly the redevelopment, in this scenario, would comprise only the demolition and rebuilding of the studio building. That more limited redevelopment would still need to result in a significant environmental improvement in the way described above. If all that was to be done was to replace the existing studio building with a different building, it may well be that that criterion would not be met.

THE SECOND GROUND – MATERIAL CONSIDERATION

Submissions

28. Ms Townsend submits that the grant of planning permission was unlawful as there was an inconsistency between the decision in the present case and earlier expressions of view by the respondent's then conservation officer which was not explained by the officer's report. Ms Townsend submitted that at various stages in the officer's report he referred to the impact of the existing studio building as negative and the proposal as having a less than substantial effect on the listed building. This she submitted set the baseline for assessment of the impact of the proposed redevelopment on the listed building. Previously it had been implicit that the conservation officer had considered that the effect of the existing studio building was benign or neutral as if that were not the conservation officer's view, the officer would have said so explicitly.
29. Mr Atkinson submitted that the Judge below was correct to conclude that any inconsistency was not critical as the issue was the effect of the current proposals on the listed building.

Discussion

30. The existing case law establishes that a decision of a planning inspector or a local planning authority on a critical issue such as the interpretation of planning policy, aesthetic judgments, or assessments of need may depending on the circumstances, be a material consideration for subsequent planning decisions. If a subsequent decision-maker is to depart from the conclusion on such an issue, he will need to give reasons for doing so or there will be a risk that a court would conclude that the subsequent decision-maker failed to have regard to a material planning consideration: see *North Wiltshire District Council and the Secretary of State for the Environment and Clover* (1992) 65 P. & C.R. 137 especially at 145 to 146. If a decision is quashed, that decision is not capable of giving rise to legal effect. But if the decision is quashed for reasons which do not affect the conclusions of the decision-maker on a specific issue, the conclusions on that issue may be a material consideration for subsequent decision-makers: see per Coulson J. in *Vallis v Secretary of State for Local Government* [2012] EWHC 578 (Admin) cited in *R (Davison) v Elmbridge Borough Council* [2019] EWHC 1409 (Admin), [2020] 1 P. & C.R. 1 and see *Fox v Strategic Land and Property Ltd. v Secretary of State for Communities and Local Government* [2012] EWCA Civ 1198, [2013] 1 P. & C. R. 152.
31. The first document relied upon by the appellant is a record of the conservation officer's response to consultation on an application for planning permission for conversion of the studio building into two dwellings in 2018. The officer commented on the studio building, referring amongst other things to "the long, linear qualities of the cowshed, its pitched slate roof and its simple agrarian form." Ms Townsend submitted that it is implicit in this and other comments that the then conservation officer considered that the existing studio building was neutral or benign in its impact or the officer would have said so. The refusal of planning permission was made for other reasons. The second document is a brief note of advice given by the then conservation officer when a different proposed redevelopment was granted planning permission. The officer commented that she was satisfied that the conversion of the barns would not have a negative effect. Ms Townsend again submitted that this amounted to a conclusion that the effect of the existing studio was neutral or benign which was unaffected by the

subsequent quashing of the planning permission. The planning officer therefore had to explain why he was taking a different and inconsistent view.

32. I do not consider that either of the documents relied upon amounts to a material consideration that required the planning officer in the present case specifically to give reasons as to why he was departing from their earlier reasoning. The first contains general expressions of view about aspects of the existing building contained in a consultation response. It is not possible on the facts of this case to discern any clear or implicit conclusion on a critical issue to do with the assessment of the impact of the existing studio buildings such that any later expression of a different view had to refer to and explain the departure from that earlier view. Further, the application for planning permission was refused and it is difficult to see that that refusal would amount here to an endorsement of any views on the existing building expressed by the conservation officer in the course of considering the application. Similarly, on the information before this court, I do not consider that the comments of the conservation officer in the second document that she was satisfied that a different proposed development did not have a negative impact on the adjacent heritage assets amounts to a clear conclusion on the assessment of the impact of the existing buildings. The grant of planning permission was subsequently quashed. It could not, however, be said that that left in place any discrete decision on a critical issue concerning the impact of the existing building.
33. In any event, I am satisfied that, reading the planning officer's report as a whole, the focus was on the effect of the proposed redevelopment on the listed building. In that regard, he considered that the "impact of the proposal on the significance of this heritage asset will be less than substantial" (see paragraph 6.133 and repeated at paragraph 6.155 of the report). Any difference between the current planning officer's assessment of the existing building and any earlier view was not critical or material to the advice that the officer was giving to the planning committee. The officer's advice was not based on any difference in the assessment of the impact of the existing buildings. For those reasons, I do not regard the second ground of appeal as established.

CONCLUSIONS

34. The respondent failed properly to interpret Policy DM5 in that it failed to consider whether the application site as a whole had environmental value. Rather it only considered whether part of the application site, that is, the existing studio building, had a high environmental value. For that reason, I would quash the planning permission and the listed building consent and remit the matter to the respondent. It will have to decide whether or not the application site, comprising the studio building, the walled garden and the land connecting with the road, has high environmental value and whether the other criteria in DM5 are satisfied.

MOYLAN LJ

35. I agree.

BEAN LJ

36. I also agree.

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Claim No. CO/1878/19

IN THE MATTER OF A CLAIM FOR JUDICIAL REVIEW
BETWEEN:



GLENN KINNERSLEY

Claimant

- and -

MAIDSTONE BOROUGH COUNCIL

Defendant

- and -

PAUL DIXON

Interested Party

Rhodi P. King, City of Maidstone Deputy High Court Judge
1-vii-2019



CONSENT ORDER

1. UPON the Claimant having lodged this claim on 10 May 2019 for judicial review of the Defendant's decision, dated 29 March 2019, to grant planning permission for development at Courtyard Studios, Hollingbourne Hill, Hollingbourne, Kent ME17 1QJ ("the application site") under reference 18/506662/FULL ("the Decision");
2. AND UPON the Defendant and the Interested Party having indicated that they will not contest the claim;
3. AND UPON considering the matters set out at Schedule 1 to this order, being the statement of reasons for making this order.

BY CONSENT IT IS ORDERED that:

4. Permission to apply for judicial review is granted.
5. The Claim is allowed.
6. The Decision is hereby quashed.
7. There be no order as to costs.

Richard Buxton Solicitors / LP

RICHARD BUXTON SOLICITORS for the CLAIMANT



MID KENT LEGAL SERVICES for the DEFENDANT

PAUL DIXON for the INTERESTED PARTY

RICHARD BUXTON SOLICITORS for the CLAIMANT

MID KENT LEGAL SERVICES for the DEFENDANT

P. R. Dixon

PAUL DIXON for the INTERESTED PARTY

*Approved by
Philip I. Loring
sitting as
Deputy High Court Judge
1-vii-2019*

By the Court

SCHEDULE 1 - Statement of reasons for making the order

The following is agreed between the Claimant and the Defendant:

1. In December 2018, the Interested Party applied to the Defendant for planning permission for "the conversion and adaptation of the existing photographic studios into 2no dwellings." The works proposed involve the demolition of the rear section of the application building and the demolition and relocation of part of the listed wall. The application was given reference 18/506662/FULL.
2. Hollingbourne House is a Grade II listed building owned and occupied by the Claimant and his family. The application site consists of a barn and adjoining land within the ownership of the Interested Party. The Claimant and Defendant agree that the application site falls within the curtilage of Hollingbourne House. The Interested Party does not agree that the application site falls within the curtilage of Hollingbourne House and reserves his position in this respect.
3. On approximately 26 February 2019, the description of the development was amended to read:

"Demolition of the rear section of the building and erection of replacement structure, and conversion of front section of building including external alterations, to facilitate the creation of 2 dwellings with associated parking and garden areas."
4. The Claimant submitted multiple letters of objection, including by planning consultants Kember Loudon Williams and heritage expert, Ms Liz Vinson of Heritage Collective.
5. On 29 March 2019, the Council issued a decision notice granting planning permission to application 18/506662/FULL ("the Decision").
6. The Decision was taken by an officer of the Council exercising delegated powers. The Council was therefore required by Regulation 7 of the Openness in Local Government Regulations 2014 to record its reasons for the decision. These are

found within the 9-page officers' report which recommended that planning permission be granted. [CB/2/301]

7. On 7 May 2019, the Claimant's solicitors wrote to the Defendant in accordance with the Pre-Action Protocol for Judicial Review setting out four proposed grounds of challenge. The letter also noted that the Claimant's solicitors had been instructed very recently and, in light of the pending deadline to lodge the claim (which was 10 May 2019), indicated that if the Defendant confirmed in writing by 21 May 2019 that it would not contest the claim, the Claimant would not seek an order for the recovery of his costs from the Defendant incurred up to and including the lodging of the claim.
8. On 10 May 2019, the Claimant lodged Judicial Review proceedings challenging the claim on four grounds – the same four grounds that had been set out, in outline, in the Claimant's pre-action letter of 7 May 2019. The four grounds are as follows:-
 - i) The Planning Authority failed to address the question whether or not the proposal "accorded with" the Development Plan as a whole, in breach of its statutory duty under section 38(6) of the Planning and Compulsory Purchase Act 2004.
 - ii) It is clear from a fair reading of the officer's report that the Planning Authority's decision was tainted by significant errors of policy interpretation and/or failures to take account of material considerations in the application of policy to the facts of the case. The Claimant's Statement of Facts and Grounds ("SOFG") identified six significant failings (SOFG paragraphs 37-43).
 - iii) The Council adopted a flawed approach to the assessment of heritage impact and in so doing acted in breach of its statutory duty under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Claimant relied on seven errors in this regard (SOFG paragraphs 52-58).
 - iv) The Planning Authority failed to comply with its duty to give reasons for its decision under Regulation 7 of the Openness in Local Government Regulations 2014 (SOFG, paragraph 61).

9. By letter dated 16 May 2019 and emailed to the Claimant on 17 May 2019, the Defendant indicated that it accepted that *"there has been a failure to clearly identify what the setting to the listed building is in order to then set out how any impact, if any, to the setting of the Listed Building is mitigated by the proposed development."* The Defendant therefore accepted that for this reason it would not contest the claim, which should succeed under the Claimant's grounds 2 and 3.
10. This consent order is made without prejudice to the parties' positions on the other grounds.
11. The Defendant agrees that it will reconsider the application in accordance with the law and without any reliance on any part of the reasoning in the officer's report associated with the impugned decision notice.
12. On 31 May 2019, the Interested Party, Mr Dixon, indicated his consent to the draft order, in light of the agreement set out above between the Claimant and the Defendant.

Conclusion

In light of the above, the Parties are agreed that it would be appropriate for the Court to make an order in the terms set out.

By the Court

Agenda Item 15



Ordnance Survey - data derived from OS Premium

22/504433/FULL 8 Nethermount, Bearsted, Maidstone, Kent, ME14 4FE

Scale: 1:1250

Printed on: 13/6/2023 at 8:37 AM by JoannaW

134



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REPORT SUMMARY

REFERENCE NO: - 22/504433/FULL		
APPLICATION PROPOSAL: Retrospective application for the replacement and reconfiguration of patio to the rear of the house with proposed privacy screen; the erection of a gazebo with surrounding decking; the erection of an orangery; and the part conversion of the integral garage to a utility room and WC (Resubmission of 22/500345/FULL).		
ADDRESS: 8 Nethermount Bearsted Maidstone Kent ME14 4FE		
RECOMMENDATION: Grant Permission subject to the conditions set out in 4.0.		
SUMMARY OF REASONS FOR RECOMMENDATION: Subject to conditions being imposed with regard to the provision and retention of the proposed privacy screening and use of the gate, the development complies with the relevant development plan policies.		
REASON FOR REFERRAL TO COMMITTEE: The application has been called in by Councillor Springett for the reasons set out in paragraph 5.08 of the report.		
WARD: Bearsted	PARISH/TOWN COUNCIL: Bearsted	APPLICANT: Mr Tim Croom AGENT: Kent Planning Consultancy Ltd
CASE OFFICER: Georgina Quinn	VALIDATION DATE: 27/10/22	DECISION DUE DATE: 06/10/23
ADVERTISED AS A DEPARTURE: NO		

Relevant Planning History

See Appendix 1 – Copy of Committee report from 22 June 2023 meeting

MAIN REPORT

1.0 BACKGROUND

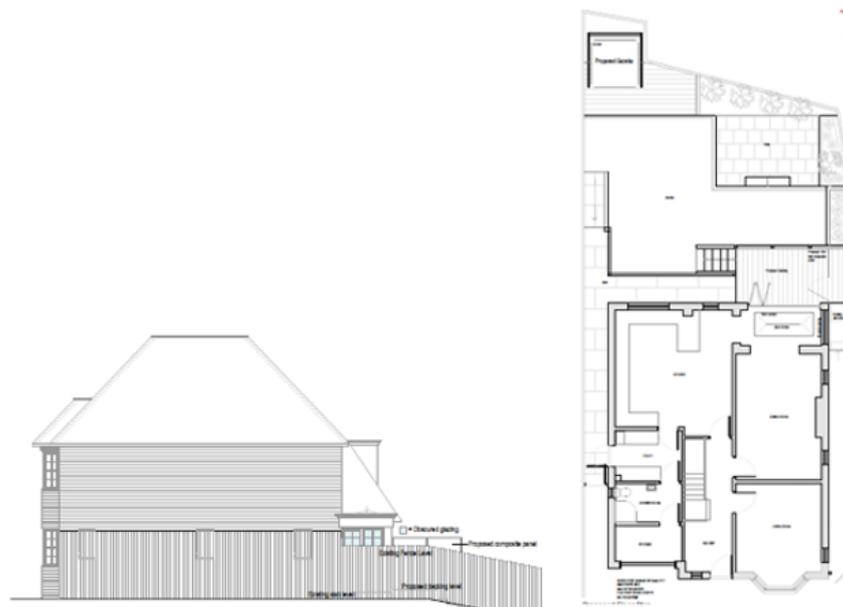
1.01 This report should be read in conjunction with the copy of the Committee Report attached at Appendix 1. Members resolved at the 22/6/23 meeting to defer the determination of the application for the following reason :

That consideration of this application be deferred for one meeting cycle to enable the Officers, in consultation with Councillor Springett (a Ward Member), to seek to negotiate a compromise solution to concerns raised about the new raised decking constructed adjacent to the conservatory, the side conservatory window and the proposed privacy screen.

1.02 Following on from the meeting on 22 June 2023, discussions were held between the case officer; Councillor Springett; and the agent and applicant on 18 July 2023. This centred on the need to mitigate the loss of privacy that has resulted for the occupants of no.9 Nethermount as a result of the patio as presently constructed. The scheme has now been amended and is detailed on drawings submitted on 11 August 2023.

1.03 The dimensions of the patio itself remain as described in paragraph 2.09 of the original report at Appendix 1 but the proposals now include a privacy screen that will be set in from the boundary with no.9 Nethermount. This will align with the flank wall of the existing dwelling and will be comprised of a solid, composite panel of 1.8m in height. The panel will incorporate a gate to facilitate access along the side elevation of the house.

- 1.04 The window in the flank elevation of the orangery will be fitted with obscure glazing to its upper parts where it faces towards no.9 Nethermount.



- 1.05 Members are now asked to make a decision whether the amendments would overcome the earlier concerns and be minded to approve subject to conditions set out below.

2.0 RE-CONSULTATION

- 2.01 Following the submission of the revised scheme on 11 August 2023, a further round of consultations with the same residents was undertaken. This has resulted in the submission of representations from no.9 Nethermount, which makes the following (summarised) points and objections:

- With regards to the resubmission of the revised plans, our main concern is that of the decking and the glass screen with supporting post being constructed up to our boundary fence, which we want removed back to the building line. The current configuration of the decking inhibits access to maintain and repair our close boarded fence;
- Proposed Floor Plan, Gazebo Elevations & Block Plan - The area between the Conservatory and the fence is labelled as "existing slab level". As previously mentioned, this was raised in height at the time the conservatory was built and should therefore read "proposed slab level";
- Proposed Elevations – The South East boundary shown on the plan is incorrect and significantly exaggerates the length of the actual boundary. The plan actually shows the boundary length between house numbers 7 & 8. The area indicated by the Gazebo applies to the South West boundary only;
- The "Proposed South East Elevation" diagram has a dotted line near the base of the fence. Given that it does not reflect the height and shape of the decking, what does this dotted line indicate?
- The diagram does not state the height of the decking running out into the garden from the conservatory;
- In principle we strongly object to the decking. However, as a result of our proposed compromise, as per published plans we would welcome the obscure glazing in the conservatory and the composite panel screen;
- However, we insist as a condition of our compromise that the obscure glass and composite screen must remain in perpetuity and the composite gate should

remain locked at all times unless required for temporary access to the side of the house.

Officer comment

- 2.02 Issues relating to the maintenance of the boundary fence and access to carry out any such works are a civil matter and are not a material planning consideration. Certificate A is signed on the application form to indicate that the applicant is the sole owner of the land to which the application relates. The grant of planning permission would not give the right to carry out any works to land or property in other ownership. It is recommended that an informative is added to the decision notice to remind the applicant of this situation.

Bearsted Parish Council Consultation on Amendments Submitted 11.08.2023

- 2.03 No comments submitted.

Councillor Springett's Response to Revisions Submitted on 11.08.2023

- 2.04 The compromise proposal is very welcome. I have no further concerns. I would ask for two conditions to be added:
- That the privacy screen remains in the approved position in perpetuity; and
 - The gate is kept closed at all times apart from when access to the side of the property is needed.

3.0 CONCLUSION

- 3.01 The plans initially submitted with this application (as considered at the meeting of 22.06.2023) detailed an alternative form of privacy screen, being comprised of a solid timber screen to a height of 1.8m topped with a trellis of 0.3m. This was to be positioned directly adjacent to the existing fence that marks the boundary between nos.8 and 9 Nethermount. This continued to raise concerns and consequently, Members requested at the meeting of 22.06.2023 that discussions be held to seek a compromise to this situation. This has resulted in the amendments to the materials and position of the proposed screen and its height, along with the provision of obscure glazing to the upper part of the orangery window that is located on its flank elevation.
- 3.02 By lowering the overall height of the proposed screen and taking it in from the boundary, this reduces its prominence in the general outlook from the neighbouring property at no.9. Its height at 1.8m and solid composition are sufficient to ensure that there will be no overlooking from the patio to the garden area or windows of no.9. It is recommended that the privacy screen is subject to a condition that it is installed within a period of 2 months of the decision being issued and that it is maintained as approved on a permanent basis. This reflects the comments put forward by Cllr Springett and also addresses the concerns put forward by the occupants of no.9.
- 3.03 In terms of the incorporation of the gate, the applicant has expressed a need to maintain access to the side of their property from the garden and this is not an unreasonable expectation. The proposed positioning of the privacy screen is such that it will mean that a small part of the raised patio (as built) becomes unusable as a seating/leisure area as it will effectively be sectioned off by the privacy screen/gate. This area is of very limited size (as shown in the images below) and would not be usable for any meaningful purpose other than access for maintenance or perhaps storage of garden items. It is however essential that to safeguard the privacy of the neighbouring occupants at no.9, that the gate is maintained in a closed position at all times, except when access is required and this can be

controlled by a condition. This will also address the comments of Cllr Springett and the occupants of no.9.



- 3.04 It is also proposed to alter the glazing in the window to the flank elevation of the orangery (as seen photograph above) so that it is fitted with obscure glazing to its upper parts. The lower section of the window has views towards the established boundary fence only. This alteration will remedy the existing issue of overlooking from this window towards the garden of no.9 Nethermount. Again, a condition is recommended to require that the window be maintained with suitably obscured glazing on a permanent basis.
- 3.05 The objections received from the occupants of no.9 raise concern as to the accuracy of the submitted plans in terms of the length of the boundary as detailed in relation to their property; the height and extent of the decking; and the meaning of a dotted line detailed on the south-eastern elevation. The plans are all drawn to scale and as the patio is already there, its height and position is established. The plans do not detail any alterations to the footprint, the only additional elements being the glazed balustrade and privacy screen/gate. The length of the boundary with no.9 is better illustrated on the proposed floor plan which details the angles of the boundary lines in relation to the adjacent properties, whereas the elevation drawings are somewhat limited by their 2 dimensional aspect. The consideration of this proposal has also included a visit to the neighbouring property. The dotted line has been queried with the agent for the application and at the time of writing a response is awaited. This will be reported in an update to the meeting.
- 3.06 Following the additional negotiations that have taken place since this scheme was reported to Members on 22.06.2023, the latest amendments represent a balance of retaining the patio as constructed by incorporating screening to improve the relationship with the neighbouring property at no.9 such that the development accords with Policies DM1 and DM9 of the adopted Maidstone Borough Local Plan (2017) as well as the guidance contained in the Residential Extensions SPD (2009).
- 3.07 The initial alterations to the garage and the construction of the original orangery took place over 10 years ago and were not reported to Planning Enforcement at the time. Under the terms of Section 191 of the Town and Country Planning Act 1990, such development would be exempt from enforcement action after a period of 10 years. Whilst these additions have been the subject of more recent alterations, the

general principle is long established and no material impacts are identified that would suggest that these additions should not be accepted. The current proposals include an alteration to the flank window of the orangery so that it will be fitted with obscure glazing to the upper part to restore privacy for the adjacent householders and this can be permanently secured by a condition.

- 3.08 In considering the updated proposal and the objections raised, it is recommended that subject to imposing conditions regarding the timeframe for installing the proposed screening and obscure glazing; their retention (as approved) on a permanent basis; and the maintenance of the gate in a closed position (except for access purposes only), this is an acceptable scheme.

4) RECOMMENDATION

GRANT planning permission subject to the following conditions

with delegated powers to the Head of Planning and Development to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.

CONDITIONS:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 3859-01F; 3859-12C; 3859-14G;
Reason: To clarify which plans have been approved.
- 2) Within 2 months of the date of this decision notice, the solid privacy screen of 1.8m in height, as detailed on the plans approved under condition 1 of this decision, shall be installed and fully completed and shall thereafter be retained and maintained as approved on a permanent basis;
Reason: In the interests of maintaining the privacy and amenities of the neighbouring householders.
- 3) The access gate incorporated within the privacy screen approved under condition 1 of this decision, shall be maintained in a closed position except for purposes of access to the side of the dwelling;
Reason: In the interests of maintaining the privacy and amenities of the neighbouring householders.
- 4) Within 2 months of the date of this decision notice, the window in the flank elevation of the orangery, as detailed on approved drawings 3859-12C and 3859-14G, shall be fitted with obscure glazing to not less than the equivalent of Pilkington Glass Privacy Level 3, and shall permanently be maintained as such;
Reason: In the interests of maintaining the privacy and amenities of the neighbouring householders.

INFORMATIVES

- 1) Advice regarding the need to comply with Building Regulations.
- 2) Notification that planning permission does not convey any rights of encroachment or works to any property that is not within the applicant's control.

Case Officer: Georgina Quinn

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

REPORT SUMMARY

REFERENCE NO: - 22/504433/FULL		
APPLICATION PROPOSAL: Retrospective application for the replacement and reconfiguration of patio to the rear of the house with proposed privacy screen; the erection of a gazebo with surrounding decking; the erection of an orangery; and the part conversion of the integral garage to a utility room and WC (Resubmission of 22/500345/FULL).		
ADDRESS: 8 Nethermount Bearsted Maidstone Kent ME14 4FE		
RECOMMENDATION: Grant Permission subject to conditions set out in 8.0.		
SUMMARY OF REASONS FOR RECOMMENDATION: Subject to conditions being imposed with regard to the provision and retention of the proposed privacy screening, the development complies with the relevant development plan policies.		
REASON FOR REFERRAL TO COMMITTEE: The application has been called in by Councillor Springett for the reasons set out in the 5.0 of the report		
WARD: Bearsted	PARISH/TOWN COUNCIL: Bearsted	APPLICANT: Mr Tim Croom AGENT: Kent Planning Consultancy Ltd
CASE OFFICER: Georgina Quinn	VALIDATION DATE: 27/10/22	DECISION DUE DATE: 06/07/2023
ADVERTISED AS A DEPARTURE: NO		

Relevant Planning History

22/500345/FULL Retrospective application for the replacement and reconfiguration of patio to the rear of the house with proposed privacy screen; the erection of a gazebo with surrounding decking; the erection of an orangery; and the part conversion of the integral garage to a utility room and WC - Refused 30.06.2022

13/1795 - Loft conversion with dormer window to rear elevation, and rooflights to front and side elevations as shown on drawing numbers 368-01, 368-02, 368-03, 368-04, 368-05, 368-08 and 368-09 received 21st October 2013 - Approved 16.12.2013

13/1560 - An application for a Certificate of Lawfulness for a Proposed Development being the introduction of rooflights to front and side elevations and rear dormer Refused 26.09.2013

09/2222 - Part retrospective planning permission for construction of timber decking, raising of ground levels and erection of 2.4m fencing and trellis to plots 1, 2 and 3 as shown on drawing no.s P108/PL/19A, 1433/2c received on 4 December 2009 and a site location plan and letter received on 11 December 2009 - Approved 04.02.2010

08/1183 - Amendments to approved scheme MA/07/0152 for the erection of three detached houses and six semi-detached houses with associated garaging - Approved 01.08.2008

07/0152 - Erection of three detached houses and six semi-detached houses with associated garaging - Approved 19.06.2007

Enforcement History:

21/500972/OPDEV - Enforcement Enquiry - Pending Consideration

Appeal History:

An appeal was lodged in relation to the refusal of application 22/500345/FULL, however the Planning Inspectorate did not receive all of the necessary documents from the Appellant within the required timeframe and therefore the appeal submission could not be validated.

MAIN REPORT

1. DESCRIPTION OF SITE

- 1.01 The application site comprises a detached house located to the north-eastern side of Nethermount. The land levels fall heading to the north-east and consequently, the rear garden is on a lower level than the floor level of the dwelling and continues to drop towards the boundary with 2 Little Orchard to the rear. The dwelling has previously been the subject of a loft conversion and orangery extension as well as internal and external alterations to convert part of the integral garage to a utility room and WC.
- 1.02 Nethermount is located within Bearsted and is a relatively new development of 9 houses located to the north-west of Church Lane.

2. PROPOSAL

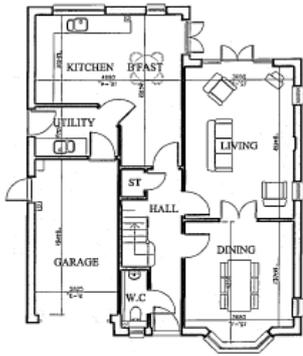
- 2.01 This application represents a resubmission following the refusal of application 22/500345/FULL in July 2022 which was made in response to an enforcement investigation regarding the construction of a raised patio and alterations to an existing orangery as well as the addition of a gazebo structure in the rear garden. The application was presented to the Planning Committee on 23.06.2022 and was refused by Members for the following reason:

Without adequate screening, the extended deck, by virtue of its rearward projection and height results in a loss of privacy to No.8. The proposed privacy screen by virtue of its height in relation to the neighbouring site and position on the boundary would be overbearing resulting in a loss of amenity contrary to Policy DM1 of the adopted Maidstone Local Plan 2017 (NB The impact relates to no.9, the reference to no.8 is a typing error. An additional note to explain this has been added to the file).

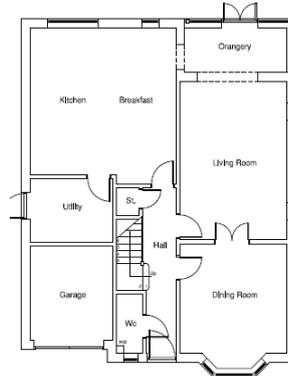
- 2.02 The original planning consent for the housing development at Nethermount included a condition that withdrew householder permitted development rights under classes A to E; as well as the right to erect any fences, walls and/or gates. There was also a restrictive condition added in relation to the parking spaces detailed on the approved plans in that they must remain available for such use at all times. By virtue of these constraints, it transpired during the assessment of the initial submission made under reference 22/500345/FULL that the orangery addition, and alterations to the original integral garage to form a utility room and WC should have had the benefit of planning consent. To regularise matters, these items were also added to the planning application. The reason for the refusal of application 22/500345/FULL did not cite the garage conversion; orangery; or gazebo but as such, these elements do not currently benefit from express planning consent.
- 2.03 Accordingly, the present submission seeks to regularise all of these matters, i.e. the conversion of the garage; orangery extension; garden gazebo structure; and the

raised patio area, including an alternative means of privacy screen to the previous scheme.

- 2.04 As originally approved (figure 1), 8 Nethermount had an irregular footprint to the ground floor and according to the evidence provided by the applicant, the previous owners of the house constructed an orangery extension in 2012 to effectively 'square - off' the ground floor. Internal alterations were also made in 2011 to enlarge the kitchen and reposition the utility room within the garage area (Figure 2)



Original Layout (Figure 1)



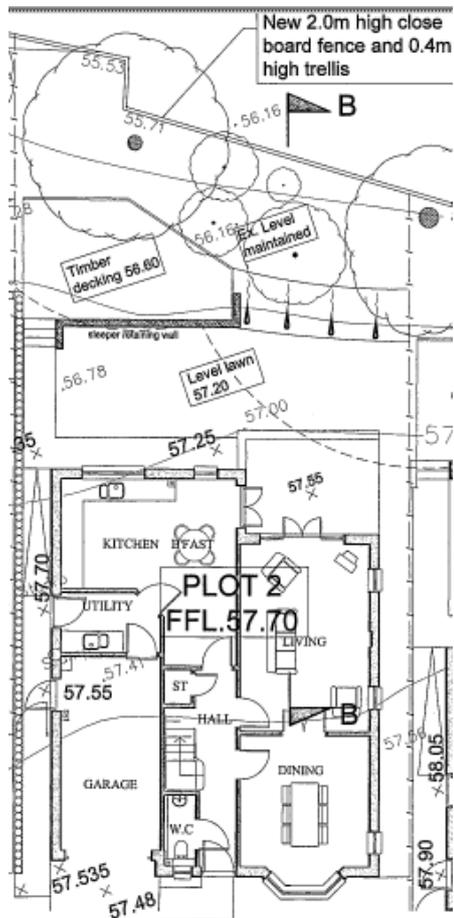
Layout Following Orangery Extension and garage alterations (Figure 2)

- 2.05 Further alterations were then carried out to relocate the downstairs WC to within the former garage space, including the insertion of a small window. A storage area is retained to the front together with the garage doors to the front elevation of the dwelling (figure 3).



(Figure 3)

- 2.06 In terms of the raised patio, given the land level differences in the rear garden, the original design of the dwellings in this part of Nethermount incorporated a patio and stepped access down to the main garden areas (approved as an amendment to the original scheme under reference 09/2222). The construction of the orangery at no.8 had reduced the patio space and the current occupants of the dwelling wished to increase its size. Consequently, the area to the rear of the orangery was replaced and enlarged in length and width.
- 2.07 The original area projected approximately 1.5m from the rear elevation of the orangery and incorporated steps into the rear garden (Figure 4)



(Figure 4)

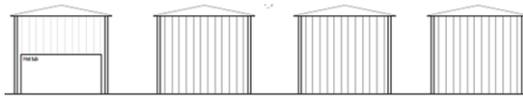


(Figure 5)

- 2.08 The sales history of the property that are available online indicate that the rear elevation of the dwelling appeared as follows in May 2018 (Figure 5)
- 2.09 The new patio addition has a depth of approximately 2.3m and is positioned adjacent to the boundary fence with no.9. The height at approximately 1.4m from the garden level aligns with the floor level of the dwelling. A glazed balustrade of approximately 1.1m in height is also proposed along the end of the patio. The original patio incorporated steps into the garden to the north-eastern elevation and these have been repositioned to the north-western elevation. The orangery addition has also been altered to incorporate glazed bi-folding doors across the rear elevation leading onto the patio as well as amendments to the design of the window on the flank elevation facing the boundary with no.9 Nethermount. Due to the higher ground levels in the garden for the application property when compared to no.9 (the adjacent property to the east) it is proposed to erect a solid timber privacy fence along this side to the same length as the highest part of the patio. This is detailed as being 1.8m in height topped with a trellis of 0.3m bringing the total height to 2.1m. The submitted plans indicated that the fence will be directly adjacent to the existing boundary fence (which belongs to no.9) but will be constructed independently.



- 2.10 The gazebo addition has been constructed at the end of the rear garden to house a hot tub. The ground immediately adjacent to the gazebo has been surfaced with decking. The structure has a height to eaves of approximately 1.9m and a maximum height of 2.15m. The building is 2.3m in width and 2.3m in depth. The exterior walls are finished in timber. The gazebo is open to the elevation facing into the garden and is used to house a hot tub.



(Figure 7)



3. POLICY AND OTHER CONSIDERATIONS

Maidstone Borough Local Plan (2011-2031):

Policy DM1 – Principles of Good Design;

Policy DM9 – Residential Extensions, Conversions and Redevelopment within the Built Up Area;

Policy DM23 – Parking Standards;

Maidstone Borough Council Draft Local Plan Review (Regulation 22):

Policy LPRSP15 – Principles of Good Design;

Policy LPRHOU 2 - Residential extensions, conversions, annexes and redevelopment in the built-up area;

Policy LPRTRA4 – Assessing the Transport Impacts of Development

The National Planning Policy Framework (NPPF)

National Planning Practice Guidance (NPPG)

Supplementary Planning Documents: Residential Extensions (2009)

4. LOCAL REPRESENTATIONS

Local Residents: The consultations on the initial submission attracted representations from one neighbouring property, no.9 Nethermount, which raised the following (summarised) objections:

- When referring to decking, the comments relate to the decking extending from the conservatory and not the decking built adjacent the gazebo;
- We request that the decking adjacent to the house at no.8 be removed or lowered to an acceptable level and also request that no development take place within 1.0m of the boundary fence and any such unlawful construction be removed;
- The proposed amendments to the refused scheme set out do not overcome the substantive reason for refusal in the previous scheme relating to the unacceptable impact on the neighbouring amenities;
- The height of the proposed screen, its solid appearance, notwithstanding the trellis on top, will appear unacceptably dominating and overbearing, it will affect our immediate outlook from the garden and house;
- The proposed fence (screen) is higher than the previous application which was refused. It would measure a total height of 3.1m from the ground level of no.9;
- We do not have an issue with the garage conversion or gazebo, we question why the applicants wished to build raised decking;
- We do not have an issue with the conservatory itself, but we do have an issue with the definition of the original patio slab which has been raised and extended sideways to our boundary fence;
- Elements of the submitted plans are inaccurate and could be misleading;
- The suggestion of an additional fence with trellis and planting is merely a sticking plaster to the original issue, as it will not address noise issues nor provide privacy to/from our entire garden;
- The proposals do not comply with the requirements of Maidstone Borough Local Plan Policies DM1 and DM11 and the original removal of PD Rights demonstrates that there were valid reasons for doing so as this is a requirement of the NPPF (paragraph 54);
- The statement supporting the application is inaccurate in the references to application 09/2222 as this relates to the rear boundary fence only and there are also inaccurate references to the original slab levels;
- When the houses were originally built, there was circa 1m between the side of the house and the boundary fence that was lower than the level of the original patio. Therefore, there was no issue of overlooking. When the conservatory was built in 2017, this reduced the area to around 0.9m which was not enough space to permit socialising;
- The construction of the decking against the fence (without any gap) does not permit any future essential maintenance and the proposed privacy fence will also prevent access;
- The boundary length is considerably shorter than shown on the plans meaning that the raised decking runs two thirds of the way along our boundary, reiterating the lack of privacy over a high percentage of our smaller garden;
- The height of the decking measured from the ground level of no.9 will be at least 3.1m, add to this the proposed (unspecified) planting, could result in heights of 3.5m to 5m and could constitute a high hedge. There is a lack of detail and specific information of the proposed planting should be part of the consultation;
- Upon our objection being upheld, we request that the decking at no.8 be removed or lowered to an acceptable level i.e. no more than 30cm above ground level to negate all the other issues i.e. overlooking, loss of amenity and

screening. No development should take place within 1.0m of the boundary fence and any such unlawful construction adjacent the fence be removed;

- 4.1 Following discussions with the agent for the application, the originally submitted plans were amended to correct a number of errors. In order to ensure that the proposals had been accurately conveyed, a further consultation process was undertaken. This attracted one neighbour objection, from no.9 Nethermount, stating the following (summarised comments):
- There are no perceived material changes to the previous documents and our original comments still apply;
 - The decking is too high, affecting privacy;
 - The proposed screen acts as a sticking plaster and would be too high and overbearing;
 - The proposed screen would be excessively high for a home and for a fence between gardens, when measure from no.9 it would be approximately 3.1m;
 - It would have a severe impact on our amenity and outlook;
 - There are still errors on the original plans which incorrectly show the original patio and steps abutting the fence. The original situation was that they finished in line with the side wall of the house. The length of the fence between 8 and 9 is still inaccurate such that the impact on no.9 would be much greater than the diagram portrays.
- 4.2 Issues relating to the maintenance of the boundary fence and access to carry out any such works are a civil matter and are not material planning considerations.

5. **CONSULTATIONS**

Bearsted Parish Council

- 5.01 BPC recommend refusal based on the height of the decking and the loss of privacy to the neighbours and the visual impact.

Bearsted Parish Council – Response to Consultation on Revised Plans

- 5.02 Planning Committee voted to make no comment on this application and for it to be decided by MBC.

Councillor Springett

- 5.03 As with the previous application, I wish to make no comment on the part conversion of the garage to a utility room nor the gazebo and surrounding decking, but my objections remain with regards to the replacement and reconfiguration of the patio to the rear of the house and the proposed fence and trellis.
- 5.04 The current application fails to address the reason for refusal of the previous application 22/500345. The main cause of the loss of privacy and amenity issues for number 9 Nethermount is the height of the decking which has been installed without permission. Permitted development rights were removed from these properties at the initial approval of the development.
- 5.05 The height of the decking has introduced a privacy and amenity issue for the neighbours, as users of the decking can see into the kitchen window and private patio area of number 9. The previous proposal for a glazed screen was odd and out of character. Whilst use of a timber fence with trellis on top would seem to be more

in keeping with a garden environment, the fact that this fence and trellis are set on top of the decking, means that in reality, the overall height of the fence and trellis is now approximately 3.1 metres above the terraced lawned area in the garden of number 9, which would be very overbearing and affect the amenity of the occupiers of number 9 and their enjoyment of their garden. Because of the height of the proposed fence and trellis relevant to the existing fence line, and the fact that the patio area has been extended circa 1 metre towards the neighbouring property, the outlook from the kitchen window of number 9 will be severely impacted.

- 5.06 The lack of measurements on any documents makes it difficult to assess the change in levels and dimensions, no datum heights have been shown on the current documents to highlight the various levels involved, but when referenced to the original datum heights of the lawns and decking shown in application 09/2222, the difference in heights can be clearly seen. The applicant should be asked to provide measurements and or datum heights on the documents to assist in determining the various levels involved. In addition, the decking approved under 09/2222 did not extend eastwards towards the boundary fence, it remained aligned with the side wall of number 8. Therefore, the extension eastwards towards the boundary fence of circa 1 metre, has increased the amount of overlooking and loss of amenity that would have been considered when 09/2222 was determined. Therefore the additional harm is greater than indicated on page 6 of the planning statement.
- 5.07 In addition, no reference has been made to policy DM9, which relates to redevelopment within the built-up area, and this proposal fails to comply with parts i, ii and iii of this policy. I therefore ask that this application is refused, as it fails to comply with DM1 and DM9, parts i, ii and iii.
- 5.08 I wish to call this application back to the planning committee should you be minded to approve it. My reason is that I do not consider the applicant has overcome the original reason for refusal on the previous submission, 22/500345/FULL.

Councillor Springett – Comments on Revised Plans

- 5.09 The revised plans seem to show little difference to the previous ones. The overall height of the fence and trellis above the decking area is still quite significant and will be overbearing to the outlook and amenity of the residents of number 9. Number 9 is set further forwards to the road frontage and so this proposed fence extends some length along the rear boundary between the properties, and its overall height is exacerbated by the fall of the land away from the rear of the properties. The slope of the land is the main reason why permitted development rights were removed from these properties, in order to protect the privacy between properties.
- 5.10 The decking should be lowered where it abuts the rear of number 8 so that it sits lower down the slope. My call-in to committee remains.

6. **APPRAISAL**

The key issues are:

- The principle, design and visual impact of the raised patio and proposed privacy screen;
- The impact on the amenities, privacy and outlook of the neighbouring occupants.

Orangery extension, garage conversion and the gazebo

- 6.01 The planning merits of the orangery extension, garage conversion and the gazebo with its surrounding decking have been considered in the previous submission.

These elements were not referred to in the reason for refusal. The design and impact of these alterations and additions was set out in the committee report relating to application 22/500345/FULL. The current submission does not detail any alterations to these aspects of the scheme and furthermore, the objections received from the occupants of no.9 Nethermount as well as the objection from Cllr Springett specifically indicate that the garage conversion and gazebo with related decking surround, are not of concern.

- 6.02 In the context of policies DM1 and DM9 as well as the SPD guidelines relating to domestic extensions, the design and appearance of the orangery extension is reflective of the existing dwelling and the addition is also subservient to the original house. The alterations to the garage have seen the retention of the original garage door and consequently, the appearance to the street facing elevation of the dwelling remains unchanged. The small ground floor window serving the new WC does not make a significant or unacceptable change to the appearance of the dwelling and has a suitable relationship with the neighbouring dwelling at no.7. The level of parking provision is also of an acceptable standard for this type of location.
- 6.03 The gazebo style addition that has been constructed at the end of the rear garden is a relatively modest building that is comprised of timber. The addition has a shallow pitched roof that is hipped on all sides. Its position within the garden is such that the building is seen against the backdrop of the boundary fence and this in combination with its overall scale and massing means that it is not visually dominating in its setting or in the general outlook from the properties at the rear (24 The Orchard and 2 Little Orchard). The decking path that has been added around the gazebo is also visually acceptable and is not significantly greater in height than the established ground level.
- 6.04 The substantive issues therefore remain the impact of the raised patio and privacy screen and whether the proposals suitably overcome the previous reason for refusal.

Principle and Visual Impact

- 6.05 As set out above, the original planning consent for the residential development of Nethermount included a condition that withdrew the permitted development rights that residential dwellings would usually enjoy. Even if this were not the case, the raised patio would have required consent because it does not fall within the limitations of permitted development due to its height above the ground level.
- 6.06 The design of the raised patio, which incorporates a light grey composite decking material together with the proposal to complete the addition with a glazed balustrade will overall be of a relatively modern appearance but would not appear at odds with the somewhat contemporary style of the dwelling. It is often the case that garden patios are completed in contrasting materials to the related dwelling.
- 6.07 The overall size of the patio area is not disproportionate to the original house and its height relates to the floor level of the dwelling. The raised area adjoins part of the patio relating to the original property that is to be retained. Due to the changing levels across the entirety of the site, it is a characteristic of the garden area that there are grassed and hard surfaced areas of differing heights, albeit lower than the proposed patio, however such variations are an intrinsic part of the character of the garden. Due to the location of the proposal being to the rear, it will not be visible in the general streetscene of Nethermount.



(Figure 8)

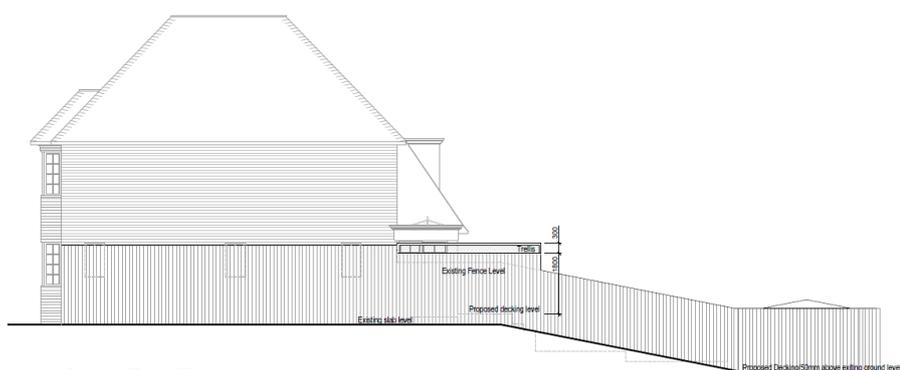
- 6.08 The proposed privacy screen largely resembles a boundary fence topped with trellis. The boundary lines of the rear gardens on Nethermount are generally defined by close boarded timber fencing of varying heights and therefore this is a feature of the street in general as well being a common characteristic of suburban areas. The privacy screen will largely be viewed in the context of the established boundary fence given its proximity to the boundary treatment that is in the ownership of no.9. The upper 0.3m being comprised of a trellis will see that the fence does not appear overly solid and will add some degree of visual interest. The extent of the screen will be the length of the patio and flank elevation of the orangery only. The boundary fences themselves will remain unchanged.
- 6.09 Policy DM1 requires that developments respond positively to the local character of the area. Policy DM9 is supportive of extensions to dwellings in built up areas where they fit unobtrusively with the existing building and character of the streetscene. Support is also given to the retention and reinforcement of the traditional boundary treatment of an area. Similar guidance is also given in the Residential Extensions SPD which notes that developments will be expected to retain and reinforce (where feasible) traditional boundary treatments. On balance, in considering the above assessments, this proposal would comply with these requirements.

Residential Amenity

- 6.10 The application property has neighbours to all sides of the rear garden, being no.9 Nethermount to the east/south-east; no.7 Nethermount to the north-west; 2 Little Orchard to the north/north-east; and a small part of the rear boundary of 24 The Orchard to the north-west. The previous submission determined that the raised patio, without screening, would materially impact the privacy of the householders at no.9 Nethermount and that the glazed privacy screen proposed at that time would be overbearing by virtue of its height and proximity to the boundary. This formed the sole reason for refusal.
- 6.11 The current submission seeks to overcome this issue by detailing a form of screen that is akin to a boundary fence topped with trellis. This will extend along the length of the patio and flank elevation of the orangery to prevent views from the existing window that faces the boundary. The screen is detailed on the plans as being directly adjacent to the boundary fence but constructed independently and therefore on land within the applicant's control. The screen will be solid timber to a height of 1.8m with a trellis of 0.3m above. The existing fence along the boundary with 9 Nethermount is in the ownership of the neighbouring occupants and not the applicant. A planter is also detailed on the plans although no specific details of what would be planted are provided.
- 6.12 The present circumstances are such that the absence of any form of screening means that the raised patio has views towards the rear windows and private garden area of no.9 Nethermount (the private garden area is defined in the Residential Extensions SPD as the first 5m beyond the rear elevation of a dwelling). This situation is at odds with the requirements of Policies DM1 and DM9 as well as the guidance contained within the Residential Extension SPD. This issue arises because

of the height and position of the raised patio and its proximity in relation to the boundary, as well as the fact that the garden of no.9 Nethermount is on a lower ground level.

- 6.13 It would appear that the current boundary fencing remains the same as when the development of Nethermount first took place and is such that the fence is higher at the point where it is closer to the dwelling at no.9. Whilst the original patio area was smaller, the height of the fencing is such that there would likely have been some views towards no.9 Nethermount. That aside, it is simply not acceptable in the context of the relevant policies and guidelines to facilitate development that would exacerbate this situation. Very clearly, the objections from the occupants of this property and the Local Ward Councillor demonstrate that the present situation impacts upon the ability of the residents to enjoy their property in a way that they can reasonably expect to.
- 6.14 In considering the planning balance, it must therefore be determined if there are alterations or conditions that could remedy this situation. The previous scheme put forward the idea of an obscure glazed privacy screen and this was refused on the grounds that it would be overbearing, consequently detracting from the amenities enjoyed by the neighbouring householders. The current solution put forward would essentially resemble a fence comprised of solid timber to a height of 1.8m from the floor level of the patio. The proposed height is the standard that would be expected to suitably protect privacy. The addition of the trellis on top would enhance this situation. The length of the proposed screen would directly address the areas where overlooking occurs.
- 6.15 Visually, this would appear similar to other boundary treatments that surround no.9 Nethermount. Whilst the existing boundary fence does not suitably obscure the views, the exposed area is limited and essentially, the proposal would appear similar to an extension of the highest part of the existing boundary fence (the existing fence is highest at the point where it is directly adjacent to no.9). The proposal will align with the maximum fence height and will be comprised of solid material to a suitable height together with a trellis above which will see that it is not overbearing:



- 6.16 The proposed planter to the patio will serve the purpose of softening the appearance of the screen but this impact would largely be confined to the application site. Due to the design and height of the timber screening, it will suitably restore the privacy of the neighbouring occupants. Consequently, although the type of planting has been queried in the objections, specific details of the proposed landscaping are not necessary. Although PD Rights are withdrawn, this would not extend to the ability to add planting within the garden and technically, it is open to any resident of Nethermount to add any soft landscaping of their choosing to their garden.

Conditions relating to plants within planters would also be difficult to apply and uphold and furthermore in this case, would not appear to meet the test of being necessary. As with any garden, there is legislation that offers protection in relation to high hedges and therefore it would not seem reasonable or necessary to require that any planting be maintained at a certain height.

- 6.17 In terms of the points relating to the accuracy of the plans, the proposals are clearly set out on the block, floor and elevation plans. In terms of the extent of the boundary with no.9, it would appear that the two dimensional nature of the elevation drawing suggests a greater boundary length as it cannot reflect the turn to the north-west. The proposals relate to the rear elevation and immediate surroundings so there is no doubt in terms of the nature of what is proposed, particularly given that the raised patio element is already constructed. In regard to the representation of the original layout of the patio and garden, the plans associated with the planning consent for the development of Nethermount have been reviewed in the assessment of this application and it is noted that the approved scheme did not detail the patio directly adjoining the boundary fence. It is however the case that the submission is seeking consent for the replacement and reconfiguration of the patio and the intentions are clearly detailed on the plans.
- 6.18 The potential use of the increased patio as a seating area in connection with the host dwelling is not considered unreasonable. No change of use is proposed and there is environmental legislation that could be invoked in the case that excessive noise is an issue. Ultimately, this is a family sized house with a garden and there is nothing within the application submission to suggest that the patio would be used for any purpose other than that which would be expected in a residential setting.
- 6.19 In terms of the relationship with no.7, the fence along this boundary is greater in height than along the boundary with no.9. In view of this together with the distance of the patio from the boundary, there are no adverse relationships. The situation is similar in relation to the property at the rear in that the separation distance and height of the boundary treatment together with established planting means that the relationships are acceptable.

Other Matters

- 6.19 Nethermount is positioned near to Bearsted Conservation Area but the location and general scale of the development proposed would have no impact on the wider views towards this designated area. It is also the case that there are listed buildings in the distance to the north-east and south-east but again, the level of separation; location of the proposals; and presence of other buildings in between will see that there is no impact upon the wider setting or general appreciation of these heritage assets. Trees on the adjoining land at Little Orchard are subject to a Tree Preservation Order however the proposals are well separated from any of these trees such that there will be no impact.

PUBLIC SECTOR EQUALITY DUTY

- 6.20 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

7. CONCLUSION

- 7.01 On balance, it is the case that subject to the conditions set out above, the proposal is acceptable in the context of the relevant development plan policies and SPD guidelines. The amended scheme is therefore considered to address the issues

regarding the privacy, amenities and outlook from the neighbouring property at no.9 Nethermount that were set out in the refusal of the previous application.

- 7.02 In considering the objections received, as well as carrying out an assessment on site, the patio construction in its present form undoubtedly results in an unacceptable relationship between no.8 and no.9 by virtue of the inability of the established boundary treatment to maintain a satisfactory level of privacy for the occupants of no.9. It therefore becomes necessary to consider whether alterations and/or the use of conditions could overcome this issue. The amended proposal relating to the provision of a suitable privacy screen within the application site adjacent to the boundary will remedy the situation and can be conditioned to be maintained on a permanent basis. Whilst this proposal has raised an objection from the Local Ward Councillor, and the occupants of no.9, the amount of the screen that will be visible from this property and its garden area, is not so significant as to be considered overbearing. Its appearance will be representative of other established boundary treatments in the immediate area.
- 7.03 The initial alterations to the garage and the construction of the original orangery took place over 10 years ago and were not reported to Planning Enforcement at the time. Under the terms of Section 191 of the Town and Country Planning Act 1990, such development would be exempt from enforcement action after a period of 10 years. Whilst these additions have been the subject of more recent alterations, the general principle is long established and no material impacts are identified that would suggest that these additions should not be accepted.
- 7.04 In assessing the details of the proposal and the objections raised, it is recommended that subject to imposing a suitably worded condition regarding the timeframe for installing the proposed screening and its retention on a permanent basis, this is an acceptable scheme.

8. **RECOMMENDATION**

GRANT planning permission subject to the following conditions

with delegated powers to the Head of Planning and Development to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 3859-01F; 3859-03E; 3859-12A; 3859-14D;
Reason: To clarify which plans have been approved.
- 2) Within 2 months of the date of this decision notice, the privacy screening detailed on the plans approved under condition 1 of this decision shall be installed and fully completed and shall thereafter be maintained as approved on a permanent basis;
Reason: In the interests of the privacy and amenities of the neighbouring householders.

INFORMATIVES

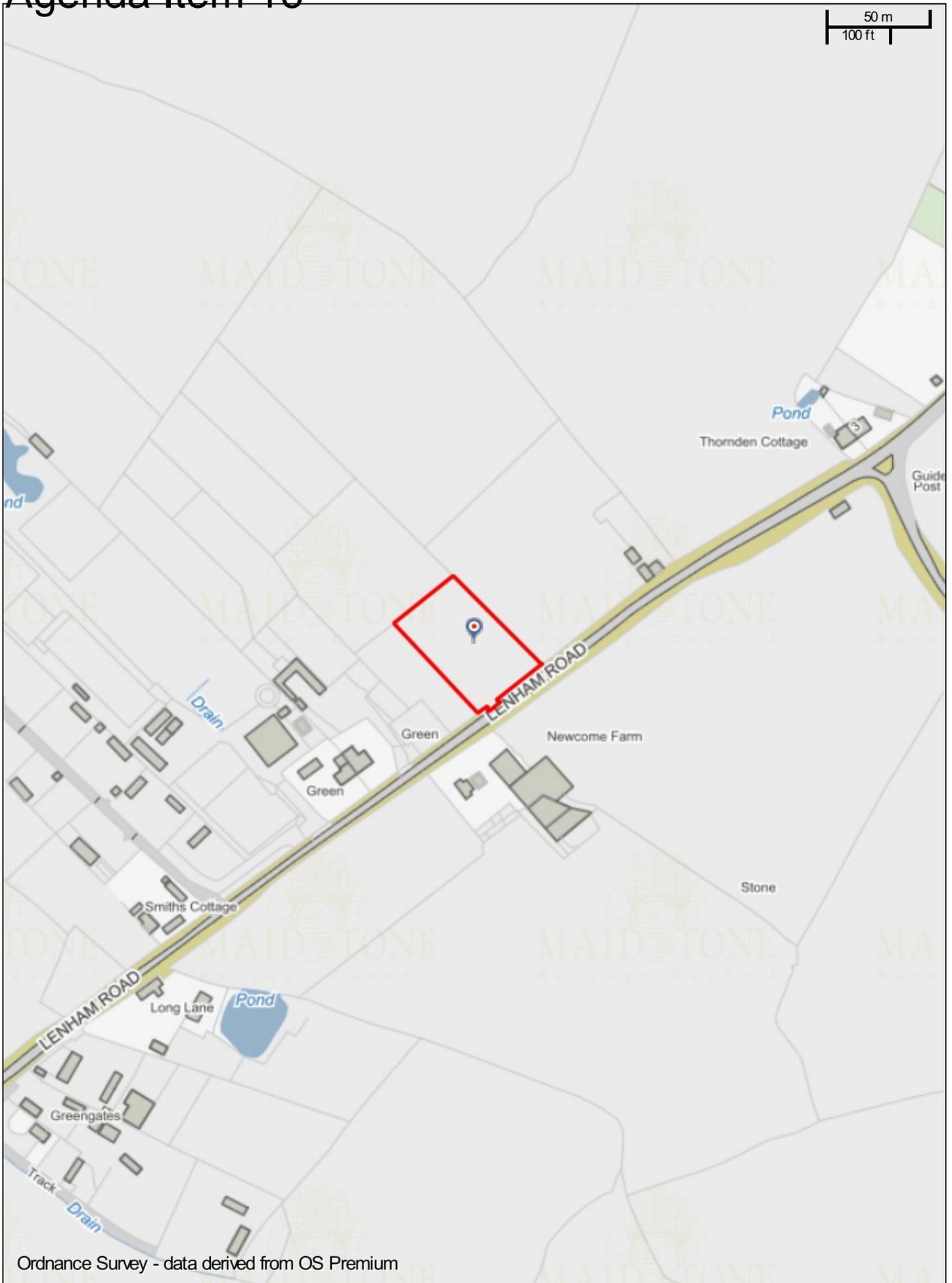
- 1) It is the responsibility of the developer to ensure, before the development hereby approved is commenced, that approval under the Building Regulations (where required) and any other necessary approvals have been obtained, and that the details shown on the plans hereby approved agree in every aspect with those approved under such legislation.

- 2) The grant of this permission does not convey any rights of encroachment of the boundary with the adjacent property and any persons wishing to implement this permission should satisfy themselves fully in this respect. Regard should also be had to the provisions of the Neighbour Encroachment and Party Wall Act 1995 which may apply to the project.

Case Officer: Georgina Quinn

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

Agenda Item 16



Ordnance Survey - data derived from OS Premium

REPORT SUMMARY

REFERENCE NO: - 23/502511/FULL		
APPLICATION PROPOSAL: Erection of vehicle workshop, training hub and drop-in centre for military veterans, and creation of new vehicle access (resubmission of 21/502548/FULL - dismissed at appeal under APP/U2235/W/21/3287610).		
ADDRESS: Field adjacent to Dancing Green Lenham Road Headcorn TN27 9LG		
RECOMMENDATION: REFUSE PLANNING PERMISSION		
SUMMARY OF REASONS FOR RECOMMENDATION: The application fails to demonstrate the proposed development of a new building with associated parking and access for light industrial use (restoration garage) is justified and compatible in this countryside location contrary to policy SS1, SP17, DM30 and DM37 of the Maidstone Borough Local Plan (2017) The proposed development, by virtue of its scale, design, and siting, would result in an isolated development and overly dominant building in the rural landscape, causing unacceptable harm to the character and appearance of the countryside and the Low Weald Landscapes of Local Value hereabouts. The proposal would therefore be contrary to policies SP17, DM1, DM3, DM30 and DM37 of the Maidstone Borough Local Plan (2017) and the National Planning Policy Framework (2021). The proposed new access by virtue of its prominent location, and requirement to puncture a substantial gap in the existing hedgerow along the frontage of Lenham Road (to make way for the vehicle access) and opening up the view with the introduction of further hardstanding area in the new public views into the site, represents development overly urban in appearance that would cause unacceptable visual harm to the rural character and appearance of the countryside and the Low Weald Landscapes of Local Value. As such, the development is contrary to policies SP17, DM1, DM3, DM30 and DM37 of the Maidstone Borough Local Plan (2017) and the National Planning Policy Framework (NPPF 2021). The submission in the absence of an Acoustic Report fails to demonstrate the acoustic environment around nearby houses would be within acceptable tolerances and the development would not have an adverse effect on the residential amenity of occupiers of these houses. It would fail to comply with policy DM1 of the Maidstone Borough Local Plan and the core principles set out in paragraph 130 of the NPPF (2021) requiring development to secure high quality design and a good standard of amenity for all existing and future occupants of buildings. As stated throughout the process, it is highlighted that there is strong common ground between officers and the applicant on the principles behind the project. Officers continue to be strongly supportive of the project aims but consider that for the reasons identified in this report that this is the wrong site for this building and this use.		
REASON FOR REFERRAL TO COMMITTEE: Cllr. Martin Round has requested the application is determined by the Planning Committee.		
WARD: Headcorn	PARISH COUNCIL: Headcorn	APPLICANT: HX Motors
CASE OFFICER: Francis Amekor	VALIDATION DATE: 06/07/23	DECISION DUE DATE: 25/09/23
ADVERTISED AS A DEPARTURE: Yes		

Relevant planning history

21/502548/FULL Erection of a restoration garage and creation of new vehicle access Refused 22.07.2021 for the following reasons:

The application fails to demonstrate the proposed development of a new building with associated parking and access for light industrial use (restoration garage) is justified and compatible in this countryside location contrary to policy SS1, SP17, DM30 and DM37 of the Maidstone Borough Local Plan (2017)

The proposed development, by virtue of its scale, design, and siting, would result in an isolated development and overly dominant building in the rural landscape, causing unacceptable harm to the character and appearance of the countryside and the Low Weald Landscapes of Local Value hereabouts. The proposal would therefore be contrary to policies SP17, DM1, DM3, DM30 and DM37 of the Maidstone Borough Local Plan (2017) and the National Planning Policy Framework (2021).

The proposed new access by virtue of its prominent location, and requirement to puncture a substantial gap in the existing hedgerow along the frontage of Lenham Road (to make way for the vehicle access) and opening up the view with the introduction of further hardstanding area in the new public views into the site, represents development overly urban in appearance that would cause unacceptable visual harm to the rural character and appearance of the countryside and the Low Weald Landscapes of Local Value. As such, the development is contrary to policies SP17, DM1, DM3, DM30 and DM37 of the Maidstone Borough Local Plan (2017) and the National Planning Policy Framework (NPPF 2021).

The submission, in the absence of any surveys has failed to demonstrate that protected species would not be adversely impacted as a result of the proposed development and following on from the conclusions of surveys the proposal is unable to demonstrate a net biodiversity gain. This would be contrary to the aims of policies DM1 and DM3 of the Maidstone Local Plan (2017); Paragraph 99 of Government Circular (ODPM 06/2005) Biodiversity and Geological Conservation - Statutory Obligations & Their Impact Within the Planning System; Natural England Standing Advice; and the aims of the National Planning Policy Framework (2021).

Appeal history

Appeal dismissed 21.09.2022. The main conclusions of the Inspector are as follows.

- application building is visually separated from Dancing Green and Newcombe Farm accentuating its visual impact.
- Such a large structure would intrude into the largely undeveloped surroundings in a significant way and would detract markedly from the intrinsic character of the countryside.
- Entrance through the existing hedge would open up views from along Lenham Road.
- Design, mass and scale would not maintain local distinctiveness or respond positively to the local character of the area contrary to policies DM1 and DM30.
- Would result in harm to character and appearance of the area contrary to Policy SP17.
- Would not protect the rural character of the Borough contrary to spatial strategy, Policy SS1.

NB: Following the dismissed appeal, the applicant was provided with detailed planning advice at a meeting with planning officers and Cllr Lottie Parfitt-Reid (Cabinet Member for Housing and Health:) in January 2023. The appeal decision and advice letter following this meeting is provided as an appendix to this report.

MAIN REPORT

1. DESCRIPTION OF SITE

- 1.01 The application site is 1.9 miles to the northeast of Headcorn Railway Station, the site is in the countryside and within the designated Low Weald Landscape of Local Value.
- 1.02 The Maidstone Landscape Character Assessment identifies the area as falling within Southern Mixed Pasturelands landscape character area (area 10) with a guidance to conserve and strengthen. The site is also identified as falling within Headcorn Pasturelands (area 13) on the Borough Wide Character Area, which is of high sensitivity and in good condition, with guidance to conserve.
- 1.03 The application site is a roughly rectangular shaped, open field located on the northwest side of Lenham Road. The site measures approximately 38 metres in width and 60 metres in depth, with sections of its boundaries defined by trees and well-established hedgerows. Ground levels within the site are relatively flat and the wider landscape has a relatively flat to slightly undulating topography. Views into the site from Lenham Road are currently screened to a large extent by matured boundary vegetation.
- 1.04 The surrounding area is characterised by a patchwork of predominantly open fields. There are sporadic developments along this part of Lenham Road, including some farmsteads and Gypsy Traveller sites.
- 1.05 Within the immediate vicinity of the application site is the equestrian facilities at Fiddlers Green Stud approved in July 2020 under reference number:19/504099/FULL. This approval includes a large indoor school building measuring 22 metres wide, 73 metres long with a ridge height of 8 metres. This development includes a stable block comprising of 13 stables a detention basin and a canter track. Beyond this development is the Gypsy Traveller site known as 'Land to the rear of The Meadows'.

2. PROPOSAL

- 2.01 The application is a resubmission of the previous application under reference number 21/502548/FULL for the erection of a restoration garage and creation of new vehicle access. This application was refused on 22.07.2021 and a subsequent appeal dismissed. The reasons for refusal are provided in the planning history section of this report.
- 2.02 The current application is the same as the previously refused scheme, in terms of its layout, scale, height and design and the proposed uses. The application description has been updated to list all the proposed uses (vehicle workshop, training hub and drop-in centre for military veterans). The appeal decision letter uses the same description as the current application.
- 2.03 The proposed building would be approximately 20 metres in width and 40 metres in depth, rising approximately 6 metres above ground level to the highest part of the pitched roof, with eaves at 3.5 metres. The dimensions of the building are the same as that in the previously refused scheme. The applicant has set out that the building has to be this size due to the need to accommodate wheelchair users and amputees with prosthetic limbs safely and efficiently in a workshop environment.
- 2.04 The Design and Access Statement indicates that the proposed building would accommodate an existing relocated vehicle restoration business that maintains tractors, farming equipment and Land Rovers. The business is having to vacate existing premises following a request from the landlord.

- 2.05 The objective of the business is to provide training in mechanical skills to veterans to provide future employment opportunities as well as boosting self-esteem. It is also indicated that Veterans and military leavers would be trained to NVQ standard under the auspices of Mid Kent College.
- 2.06 As in the previously refused application, and as highlighted by the appeals inspector the submitted layout plans show most of the internal space would be given over to the workshop use and related business activity. Only one unmarked room on the ground floor is potentially available to provide related services to veterans.
- 2.07 The internal space shown on the informal Computer Generated Images (CGI) submitted by the applicant to show services for veterans, do not correspond with any of the formal submitted floor plans that the Council would approve. There is no information available on where these services will be provided in the building.
- 2.08 Activities designated on the submitted ground floor plan includes a workshop, paint bay, preparation bay, staff rest area, office, wc facilities and a reception area. The first floor would have a storage and waiting area.
- 2.09 Externally, the building would have three large openings and a pedestrian access point on the south west facing elevation on the ground floor. An additional entrance is provided on the ground floor of the south east facing elevation, including a first floor entrance doorway accessed via a metal staircase. A total of 12 roof light openings are incorporated in the north east and south west facing roof slope.
- 2.10 The submitted site layout plan indicates retention of majority of the mature boundary hedge along the southern boundary. The south western boundary would be enclosed by a 1.2 metre post and fence with firs and willows hedging. The northern and the north eastern site boundaries would be enclosed by a 1.2 metre post and rail fence. The proposed scheme includes provision of a bin store, oil waste tan and septic tank on the premises.



Proposed Site Plan for current application Ref:23/502511/FULL (no change from the application that was refused under reference 21/502548/FULL and dismissed at appeal)

- 2.11 A total of 13 car parking spaces and 2 mobility impaired spaces are provided on the paved area in front of the building for staff and customers. A new vehicle access point comprising of reinforced concrete crossover would be formed from Lenham

Road. This would require removal of the section of the matured boundary hedge along Lenham Road.

3. POLICY AND OTHER CONSIDERATIONS

Development Plan: Maidstone Local Plan 2017:

- Policy SS1 – Maidstone Borough Spatial Strategy
- Policy SP17 – Countryside
- Policy SP21 – Economic Development
- Policy DM1 – Principles of good design
- Policy DM3 – Natural environment
- Policy DM2 – Sustainable design
- Policy DM8 – External lighting
- Policy DM23 – Parking standards
- Policy DM30 – Design principles in the countryside



Proposed elevations for current application under ref: 23/502511/FULL (no change from application refused under reference 21/502548/FULL and dismissed at appeal)

Emerging Draft Policy: Maidstone Draft Local Plan:

Maidstone Borough Council – Local Plan Review, draft plan for submission (Regulation 22) dated October 2021. The Regulation 22 draft is a material consideration however weight is currently limited, as it is the subject of an examination in public that commenced on the 6 September 2022 (Stage 2 hearings concluded on the 9 June 2023).

- Policy LPRSS1– Maidstone Borough Spatial Strategy
- Policy LPRSP9 – Development in the Countryside
- Policy LPRSP15 – Principles of Good Design
- Policy LPRQ & D4 – Design principles in the Countryside
- Policy LPRTRA4 – Parking

The National Planning Policy Framework -NPPF (2021)

Section 2 – Achieving Sustainable Development
Section 4 – Decision Making
Section 6 – Building a strong, competitive economy
Section 12 – Achieving well Designed Places

Supplementary Planning Document

Maidstone Landscape Character Assessment

4. LOCAL REPRESENTATIONS

Local Residents:

28 representations were received in support of the application stating the following summarised reasons.

- The scheme is in keeping with other structures recently built in the area.
- The proposals would support veterans who suffer from PTSD.
- The scheme would provide a safe and happy place for ex service personnel
- The scheme would provide a central hub, run by Vets and Charities for vets.
- The development would not have an adverse effect on countryside amenities.
- The building will be in a traditional style, with wood-cladding, to give the appearance of an old barn.

1 representation was received objecting to the proposal on the following grounds:

- Increased vehicle movements associated with the development would cause highways safety issues.
- The proposals would increase noise levels and pollution in the local area.
- The proposals would have an adverse effect on property values.

Issues relating property values are not material planning considerations that can be assessed in determining this application.

Headcorn Parish Council

First response after a committee vote the majority wish to see this refused, as it is on a green field site (albeit one that isn't used), is rather large and will possibly add to traffic on this road. Referral to committee is required.

Second response 'We received a very mixed deciding vote with several abstentions and as a council we do not feel this result is fair to the Applicants and that ultimately the decision should be made by MBC Council in this case. We do however acknowledge that the ultimate good this will do for its target demographic (Veterans) would be inestimable.

Cllr Martin Round

Requested that the application is determined by the Planning Committee. (No planning reasons provided)

Cllr. Lottie Parfitt-Reid, Cabinet Member for Housing and Health

Commented stating that 'Looking at the scale of the vast riding school next door, it's hard to see how a commercial building of that scale could be granted and not the veteran's hub which will provide much needed veterans support not just in our borough but across the county.

(Officer comment: The Council's adopted Local Plan has a planning policy (DM41) specifically drafted for the assessment of equestrian development on land in Maidstone borough. Policy DM41 recognises the locational need for equestrian uses to be in countryside locations. In terms of the current proposed uses, relevant

adopted Local Plan policies direct these uses to existing settlements (policy SS1) or the Economic Development Areas (SP21) designated by the Local Plan where accessibility for future users of the facility will be maximised).

5. CONSULTATIONS

KCC Highways

No objection subject to a Construction Management Plan condition for the following reasons Visibility splays meet the Manual for Streets 2 standards, achieving in excess of 200 metres. Provision of 13 car parking spaces, including 2 mobility impaired spaces, meet the Kent Design Guide standards stated in IGN3'.

6. APPRAISAL

6.01 The key issues for consideration are:

- Countryside location and policy SP17
- Character and appearance
- Spatial strategy
- Proposed vehicle workshop, training hub and drop-in centre policy DM37.
- Residential amenity
- Highways
- Ecology

Countryside location and policy SP17

6.02 The application site is in the countryside and the starting point for the assessment of all applications in the countryside is Local Plan policy SP17.

6.03 Policy SP17 states that development proposals in the countryside will only be permitted where:

- a) there is no harm to local character and appearance, and
- b) they accord with other Local Plan policies

6.04 Policy SP17 does not specify an acceptable level of harm to local character and appearance and all proposals in the countryside are likely to result in some degree of harm. In this context all development outside the designated settlements does not accord with this part of SP17.

6.05 In certain circumstances where there is locational need for development (rural worker dwelling, agricultural buildings etc) other Local Plan policies permit development in the countryside subject to listed criteria (the applicant highlights agricultural and equestrian buildings that also fall in this category). If development accords with one of these other Local Plan policies, this compliance is weighed against the harm caused to character and appearance with the potential for a proposal to then be found in accordance with policy SP17 overall.

6.06 The National Planning Policy Framework (NPPF) highlights that the planning system is plan-led. The NPPF reiterates The Town and Country Planning Act 1990 and The Planning and Compulsory Purchase Act 2004, which require by law that planning applications "*must be determined in accordance with the development plan, unless material considerations indicate otherwise*".

6.07 The following report considers:

- the degree of harm that the proposal will cause to the character and appearance of the countryside,
- whether there are other policies in the Local Plan that permit the development in this location and
- if found contrary to the plan whether there are material considerations present that would justify approval as a departure from the Local Plan.

Character and appearance

- 6.08 The application site is within the Low Weald Landscape of Local Value. Policy SS1 states that Landscapes of Local Value will be conserved and enhanced, and that protection will be given to the rural character of the borough. Policy SP17 states that the distinctive landscape character of Landscapes of Local Value will be conserved and enhanced and proposals in the countryside will not result in harm to the character and appearance of the area. At the same time, policy DM30 states that new development should maintain, or where possible, enhance the local distinctiveness of an area.
- 6.09 The Maidstone Landscape Character Assessment identifies the area as falling within Southern Mixed Pasturelands landscape character area (area 10) with guidance to conserve and strengthen. The site is also identified as falling within Headcorn Pasturelands (area 13) on the Borough Wide Character Area which is in good condition with high sensitivity and guidance to conserve.
- 6.10 The application site is currently an open field adjacent to the road and the proposed development would introduce a large building, providing approximately 800m² of floor space. The building is approximately 6 metres above ground level to the highest part of the pitched roof. The building would be surrounded by open countryside, designated as Low Weald Landscape of Local Value.
- 6.11 Within the wider area pockets of built form, including agricultural, residential and some traveller sites, are interspersed from each other by open fields, hedges, and trees. The appeals inspector noted in the previous appeal that the building.
- '...would intrude into the largely undeveloped surroundings in a significant way and would detract markedly from the intrinsic character of the countryside'.*
- 6.12 The visibility of the proposed building would be made more apparent by virtue of the loss of hedgerow currently along the front boundary of the site. This impact would be particularly noticeable when travelling in either direction along Lenham Road. The appeals inspector pointed out in the previous appeal decision for the site
- 'the formation of the entrance through the existing hedge would open up the proposal to views from along Lenham Road, stating that 'landscaping should not be used to 'hide' a building that would otherwise be out of place in this location'.*
- 6.13 The proposed building would be a prominent feature in the landscape and would not assimilate with the countryside setting within which it would sit. The harmful visual impact would be accentuated by the increased site visibility from the loss of the hedgerow through forming the new site access.
- 6.14 Cllr Lottie Parfitt-Reid, Cabinet Member for Housing and Health and local residents contend that the proposed building is significantly smaller, compared with the indoor school building at Fiddlers Green Stud.
- 6.15 The Council's adopted Local Plan has a planning policy (DM41) specifically drafted for the assessment of equestrian development on land in Maidstone borough. Policy DM41 recognises the locational need for equestrian uses to be in countryside.
- 6.16 In terms of the current proposed uses, there is no locational need for the uses to be in this location. Adopted Local Plan policies direct these uses to existing settlements (policy SS1) or the Economic Development Areas (SP21) designated by the Local Plan where accessibility for future users of the facility will be maximised.

- 6.17 The Fiddlers Green Stud building is positioned at the rear of properties fronting Lenham Road, and whilst it may be larger in scale and height, it has a locational need to be in the countryside (DM41). The Meadows development also has a locational need to be in the countryside and the Inspector considering 'The Meadows' appeal case identified that.

'Fiddlers Green Stud is to be a centre of excellence for the training and production of high-level competition horses¹⁷. The indoor school provides the necessary buildings and infrastructure to realise this intent'.

- 6.18 The appeal Inspector for The Meadows concluded that all of the caravans at The Meadows result in harm however the appeal inspector found that some of this harm was justified given the presence of the Fiddlers Green Stud building. Whilst not present with the current application, the justification for the Fiddlers Stud and The Meadows was the presence of adopted Local Plan policy and the acceptance that these uses should be in the countryside.
- 6.19 It is acknowledged other large buildings exist in the wider area; however, most are of agricultural origin and appear to be largely screened and set back much further from the road (in contrast to the current application building, equestrian and agricultural buildings have a locational need to be in the countryside). The proposal as a result would diminish the contribution the site makes to the largely open and rural character of the area, designated as Landscape of Local Value.
- 6.20 The proposed development would result in the encroachment of built development into what is an open area of land in a rural location and would constitute an erosion of the open, rural landscape of the area. It would neither conserve or strengthen the rural landscape as advocated in The Maidstone Landscape Character Assessment and thus would have an adverse impact on the open and rural character of the countryside.
- 6.21 The proposals would conflict with policies SS1, SP17 and DM30 and the advice in the Maidstone Landscape Character Assessment, jointly targeted towards conserving the rural landscape character of the area. The proposal would result in a high degree of harm to the character and appearance of the countryside.
- 6.22 In terms of the design, mass, and scale of the development the proposal would not maintain local distinctiveness or respond positively to the local character of the area contrary to policies DM1 and DM30 of the Adopted Local Plan.

Spatial strategy

- 6.23 Policy SS1 of the Maidstone Borough Local Plan sets out the spatial strategy and the settlement hierarchy for the borough. This approach directs development to areas of the borough that have been found to be the most sustainable locations for new development. This assessment included considering access by non-motorised transport such as presence of pavements, prospect of linked trips etc.
- 6.24 The hierarchy directs development firstly to the urban area, then the designated rural service centres followed lastly to the larger villages. The supporting text to Policy SS1 explains that development should be delivered where employment, key services, and facilities together with a range of transport choices are available.
- 6.25 The application site is in the countryside and 1.9 miles to the northeast of Headcorn Railway Station. Roads linking the site to Headcorn are unlit and without pavements making access on foot or by bicycle largely impractical.
- 6.26 The applicant has said that the facility will be the only one of its kind in Kent and so the facility will have a large catchment area. The appeal Inspector noted.

"Existing centres within Kent are only open for 84 days a year in total to serve 77,000 veterans in the county. The proposed centre would be open 6 days a week all year round thereby filling a gap and significantly increasing provision for this group".

- 6.27 The rural nature of the site means most users of the building are likely to rely on private motor vehicles for travel to the site. This situation will generate more, and longer vehicle trips and the countryside site location will provide a constraint on the buildings future use by veterans.
- 6.28 The application site in the open countryside, it is not in a sustainable location and not a location where the Local Plan directs new development. In addition, uses that will generate the proposed vehicle trips are directed to sustainable locations. Accordingly, the proposal would conflict with the locational strategy of the development plan.
- 6.29 The appeal Inspector noted:

'...one of the purposes of the planning system is to ensure that development is located in the right place. A site outside of any town or village for a combined industrial, educational and health use would not achieve that objective. The siting of the development is driven by the fact that the appellant owns the land. Whilst understandable this [land ownership] should not be the only consideration'.

Proposed vehicle workshop, training hub and drop-in centre policy DM37.

- 6.30 Policy SP21 sets out the Council's strategy for supporting and improving the economy of the borough and providing for the needs of local businesses. Where scale and impact is appropriate for the countryside location policy SP21 supports expansion of 'existing' economic development premises in the countryside.
- 6.31 The application site is an open green field and is not occupied by any commercial buildings and as a result the proposal does not involve the expansion of an existing business (it is accepted that the applicant has a similar existing use on a different site).
- 6.32 As outlined earlier in this report, the scale and impact of the large, proposed building is not appropriate for the countryside location. With reference to NPPF advice (paragraph 84) the proposed building is not 'well designed'.
- 6.33 As the proposal does not involve the expansion of an existing business on the application site, local plan policy DM37 is not relevant. In any event the proposal would be contrary to DM37 (1, ii)) which requires new buildings to be "...small in scale... and satisfactorily integrated into the local landscape.
- 6.34 The supporting text to DM37 highlights the importance of carefully weighing the advantages to the rural economy against the adverse impact on the rural environment. The text advises that where significant adverse impacts would result, rural business should look to relocate to one of the Council's designated Economic Development Areas.
- 6.35 Given these factors, the application site does not provide a suitable location for new vehicle restoration business. The application is contrary to policies SS1, SP17 and SP21 (policy DM37 is not relevant) of the Adopted Maidstone Borough Local Plan, which seek to direct new development to accessible locations and restrict inappropriate development outside the built confines of settlements.

Residential amenity

- 6.36 Policy DM1 of the Maidstone Borough Local Plan and the core principles set out in paragraph 130 of the NPPF (2021) advise that planning should 'always seek to secure high quality design and a good standard of amenity for all existing and future occupants of buildings'.
- 6.37 The proposed building would be positioned approximately 45 to 50 metres from nearby dwellings called 'Dancing Green' and 'Newcombe Farm'. As a result, occupiers of these dwellings are likely to be subjected to noise and disturbance from the proposed use. It is accepted that the applicant is currently one of these occupiers but highlighted that the planning system seeks to protect the amenities of the dwelling. As occupancy cannot be guaranteed long term, the protection of the dwelling carries significantly more weight than the situation with the current occupier.
- 6.38 Noise associated with the proposed use could include the starting and revving of engines, customer and staff activity within the site and noise from the workshop. In contrast to other motor vehicle repair garages in built up areas, the application site is in an exposed rural location that does not benefit from screening by adjacent buildings. As a result of this location noise and disturbance is likely to be carried a further distance.
- 6.39 In the absence of a Noise Assessment Report the submitted application has failed to demonstrate that the proposed use and resulting potential noise and disturbance will not result in a loss of residential amenity. Thus, the proposal would fail to comply with policy DM1 of the Maidstone Borough Local Plan and the core principles set out in paragraph 130 of the NPPF (2021) requiring development to secure high quality design and a good standard of amenity for all existing and future occupants of buildings.

Highways

- 6.40 On parking provision and demand, Policy DM23 sets criteria for vehicle parking standards within the borough. The aim is to ensure that new development provides adequate off-street parking to accommodate the need generated by the development and to protect the surrounding area from inappropriate vehicle parking that could create inconvenience and danger to drivers and pedestrians.
- 6.41 The site layout plan indicates provision of 13 car parking spaces and 2 mobility impaired spaces. KCC Highways has responded stating that the level of parking provision is consistent with requirement in the Kent Design Guide, IGN3'.
- 6.42 A new access point from Lanham Road would be provided as part of the development, and this would comprise of reinforced concrete crossover. KCC Highways has responded stating that the new access to the site would have good visibility splays that are consistent with the standards recommended within Manual for Streets 2.
- 6.43 The proposal is contrary to the Council's spatial strategy in that it involves a use that will generate significant vehicle trips (including large catchment area for service users, the vulnerable nature of service users and nature of the vehicle repair use) in an unsustainable countryside location outside any settlement.
- 6.44 The likely effects on the local road network are a different consideration to the sustainability of the location. Government guidance in the NPPF (2021) advises that development proposals should only be refused on transport grounds where the residual cumulative impact is severe and cannot be mitigated by offsite

improvement to the transport network. The proposal is not of a scale that would result in a severe impact on the local road network.

- 6.45 The proposals would comply with policy DM23 and the NPPF (2021) which demand that the adverse effects of development on the wider road network is mitigated. On this basis, KCC Highways have confirmed they raise no objection to the proposals provided a condition is used requiring submission of a Construction Management Plan before the commencement of any development.

Ecology

- 6.46 The application site is a field used as paddocks and as indicated above, one of the earlier reasons for refusal related to the absence of surveys to demonstrate that protected species would not be adversely affected by the development.
- 6.47 An extended Phase I habitat survey was submitted as part of the appeal against the earlier decision to refuse permission. The survey found the site to be of limited ecological value with no evidence of the presence of protected species.
- 6.48 Recommendations are made for habitat enhancement and the need to check for the presence of nesting birds if the hedgerow is removed during the season. Whilst this survey was not resubmitted with the current application the site circumstances have not changed significantly over the intervening period to justify requesting a further survey. No objections are raised on grounds of ecology.

Other matters

- 6.49 The National Planning Policy Framework (NPPF) highlights that the planning system is plan-led. The NPPF reiterates The Town and Country Planning Act 1990 and The Planning and Compulsory Purchase Act 2004, which require by law that planning applications "*must be determined in accordance with the development plan, unless material considerations indicate otherwise*".
- 6.50 The proposal would provide a new building for the relocated business to continue to operate, whilst benefiting the social wellbeing of veterans and making a limited contribution to the local economy. However, in determining the previous appeal, the inspector found these benefits would not outweigh the concerns over the location of the proposal, and there are no material factors in this current proposal to disagree with these findings.
- 6.51 The submission indicates the proposed building would enable an existing vehicle restoration business to relocate to the site. It is intended to train veterans and military leavers to NVQ standard under the auspices of Mid Kent College. The objective is to provide training in mechanical skills so as to provide future employment opportunities as well as boosting self-esteem. A number of comments have been received from local residents emphasising support for military veterans, especially those suffering from post-traumatic stress disorder
- 6.52 As in the previously refused application, and as the appeals inspector pointed out the submitted layout plans show most of the internal space would be given over to the workshop use with only one unmarked room on the ground floor potentially available to provide services to veterans.
- 6.53 The internal space shown on the informal Computer Generated Images submitted by the applicant to show these services for veterans, do not correspond with any of the formal submitted floor plans that the Council would approve and there is no information available on where these services will be provided in the building

- 6.54 The first-floor areas are shown to be storage and a waiting area, and it has not been indicated where the offices of the charities including mental health consultations, CV training and computer skills could take place alongside the workshop. Additionally, as in the previous submission, this current application fails to explain why these services could not be provided in existing venues in the locality and why a new facility is required.
- 6.55 It is the Council's view that the proposal would have an unacceptable adverse effect on the character and appearance of the area. Accordingly, the proposal would be contrary to Policies SP 17 and DM 30 of the Maidstone Local Plan 2017. These policies amongst other things state that development proposals in the countryside will only be permitted if they do not cause harm to the character and appearance of the area and accord with other local plan policies (such as DM36 that relates to new agricultural buildings).
- 6.56 The Council's adopted Local Plan policies reflect the locational needs of certain buildings and uses such as agricultural and equestrian that require rural locations. There are no such locational factors associated with the current proposal and use.
- 6.57 The site is in a location poorly served by public transport with future users reported to be travelling from all over Kent. There is an acknowledged need for the use from the appellant and officers, but importantly it is highlighted there is no need for a countryside location or even a specific 'local' Headcorn need with the appellant implying that the use will generate vehicle trips from across Kent.
- 6.58 Commercial buildings and uses of this size are generally directed to the borough's industrial areas due to the potential harm to amenity both from the use itself and associated vehicle trips in this case from staff, customers and potentially recovery vehicles.
- 6.59 With these negative aspects and the conflict with the development plan, if the outcome of a planning balance exercise weighs in favour of approving the current application, then it is assumed that the decision maker has placed substantial weight (and in the officer's view undue weight) on the nature of the use for veterans. In this situation, the options would appear to be whether there are planning conditions that meet the statutory tests that would secure the use of the building for veterans in perpetuity (as the reason why planning permission was given) or alternatively permission should be refused.
- 6.60 With the practical nature of the use, the lack of any business plan, the lack of any precise detail on how the use would operate it is not considered that a planning condition relating to the use would meet the statutory test of being enforceable. In these circumstances with the impact of the building on the rural character and appearance weighing against the proposal the officer recommendation is to refuse planning permission.
- 6.61 The National Planning Policy Framework (NPPF) highlights that the planning system is plan-led. The NPPF reiterates The Town and Country Planning Act 1990 and The Planning and Compulsory Purchase Act 2004, which require by law that planning applications "*must be determined in accordance with the development plan, unless material considerations indicate otherwise*". The proposal is found to be contrary to the development plan and no material considerations are found that would justify a departure from the Local Plan.
- 6.62 As stated throughout the process, it is again highlighted that there is strong common ground with the appellant on the principles behind the project and officers continue to be strongly supportive of the project aims but consider that this is the wrong site for this building and this use.

PUBLIC SECTOR EQUALITY DUTY

- 6.63 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

7. CONCLUSION

- 7.01 In summary, the application fails to demonstrate the proposed development of a new building with associated parking and access for light industrial use (restoration garage) is justified and compatible in this countryside location contrary to policy SS1, SP17, DM30 and DM37 of the Maidstone Borough Local Plan (2017)
- 7.02 The proposed development, by virtue of its scale, design, and siting, would result in an isolated development and overly dominant building in the rural landscape, causing unacceptable harm to the character and appearance of the countryside and the Low Weald Landscapes of Local Value hereabouts. The proposal would therefore be contrary to policies SP17, DM1, DM3, DM30 and DM37 of the Maidstone Borough Local Plan (2017) and the National Planning Policy Framework (2021).
- 7.03 The proposed new access by virtue of its prominent location, and requirement to puncture a substantial gap in the existing hedgerow along the frontage of Lenham Road (to make way for the vehicle access) and opening up the view with the introduction of further hardstanding area in the new public views into the site, represents development overly urban in appearance that would cause unacceptable visual harm to the rural character and appearance of the countryside and the Low Weald Landscapes of Local Value. As such, the development is contrary to policies SP17, DM1, DM3, DM30 and DM37 of the Maidstone Borough Local Plan (2017) and the National Planning Policy Framework (NPPF 2021)
- 7.04 The submission in the absence of an Acoustic Report fails to demonstrate the acoustic environment around nearby houses would be within acceptable tolerances and the development would not have an adverse effect on the residential amenity of occupiers of these houses. It would fail to comply with policy DM1 of the Maidstone Borough Local Plan and the core principles set out in paragraph 130 of the NPPF (2021) requiring development to secure high quality design and a good standard of amenity for all existing and future occupants of buildings.
- 7.05 The applicant has failed to demonstrate that there are any other material considerations that would justify going against the local plan.

8. RECOMMENDATION

REFUSE planning permission for the following reasons:

- 1) The application fails to demonstrate the proposed development of a new building with associated parking and access for light industrial use (restoration garage) is justified and compatible in this countryside location contrary to policy SS1, SP17, DM30 and DM37 of the Maidstone Borough Local Plan (2017)
- 2) The proposed development, by virtue of its scale, design, and siting, would result in an isolated development and overly dominant building in the rural landscape, causing unacceptable harm to the character and appearance of the countryside and the Low Weald Landscapes of Local Value hereabouts. The proposal would therefore be contrary to policies SP17, DM1, DM3, DM30 and DM37 of the Maidstone Borough Local Plan (2017) and the National Planning Policy Framework (2021).
- 3) The proposed new access by virtue of its prominent location, and requirement to puncture a substantial gap in the existing hedgerow along the frontage of Lenham Road (to make way for the vehicle access) and opening up the view with the

introduction of further hardstanding area in the new public views into the site, represents development overly urban in appearance that would cause unacceptable visual harm to the rural character and appearance of the countryside and the Low Weald Landscapes of Local Value. As such, the development is contrary to policies SP17, DM1, DM3, DM30 and DM37 of the Maidstone Borough Local Plan (2017) and the National Planning Policy Framework (NPPF 2021).

- 4) The submission in the absence of an Acoustic Report fails to demonstrate the acoustic environment around nearby houses would be within acceptable tolerances and the development would not have an adverse effect on the residential amenity of occupiers of these houses. It would fail to comply with policy DM1 of the Maidstone Borough Local Plan and the core principles set out in paragraph 130 of the NPPF (2021) requiring development to secure high quality design and a good standard of amenity for all existing and future occupants of buildings.
- NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

Appeal Decision

Site visit made on 17 August 2022

by David Smith BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st September 2022

Appeal Ref: APP/U2235/W/21/3287610

Field adjacent to Dancing Green, Lenham Road, Headcorn, TN27 9LG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Adam Francis against the decision of Maidstone Borough Council.
 - The application Ref 21/502548/FULL, dated 16 April 2021, was refused by notice dated 22 July 2021.
 - The development proposed is erection of vehicle workshop, training hub and drop in centre for military veterans and creation of new vehicle access.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's decision notice describes the proposal as the "erection of a restoration garage". However, the lengthy description on the application form indicates that the proposed use of the building is wider than this. As well as the vehicle workshop it is intended that the building would be a training hub for military veterans and a meeting space and base for four military charities. Consequently, as agreed by the parties, it would be more accurate to consider the proposed development as being that set out in the heading above.

Main Issues

3. One of the reasons for refusal concerned the absence of surveys to demonstrate that protected species would not be adversely impacted. An extended Phase I habitat survey has now been undertaken. This found that the appeal site is of limited ecological value with no evidence of the presence of protected species. Recommendations are made about habitat enhancement and the need to check for the presence of nesting birds if the hedgerow is removed during the season. None of these findings have been challenged and there is no objection in this respect.
4. Therefore the main issues are whether the location is suitable for the proposed development having regard to local policies and the effect on the character and appearance of the area. Furthermore, if any harm would occur, whether this is outweighed by other material considerations, including the proposed use.

Reasons

Whether suitable location

5. Policy SS1 of the Maidstone Borough Local Plan of 2017 sets the spatial strategy for the Borough and identifies the expanded urban area of Maidstone as the principal focus for development. Rural service centres, including Headcorn, will be the secondary focus. This policy is concerned with the spatial distribution of all development and therefore applies to the proposal as a mixed 'sui generis' use outside of any Use Class.
6. The appeal site is well outside the defined settlement boundary of Headcorn. Therefore, the proposed building does not benefit from the support in Policy SS1 5) for services to meet the needs of the local community and suitably scaled employment opportunities. Rather criterion 9) applies to the appeal site which establishes that in other locations, protection will be given to the rural character of the Borough. As a result, the proposed development would not be in accordance with the broad thrust of the spatial strategy.
7. Policy SP17 provides that development proposals in the countryside will not be permitted unless they accord with other policies in the Plan and do not result in harm to the character and appearance of the area. Therefore, whilst locational policies do not favour the proposal, development in the countryside is not entirely ruled out by the Local Plan. Before a final conclusion can be reached on this point, consideration therefore needs to be given to the effect of the proposal on the character and appearance of the area.

Character and appearance

8. The appeal site comprises a field used as paddocks. It is within an area of flattish countryside with field boundaries marked by trees and hedgerows. Whilst the land nearby is predominantly open there are pockets of built form in the vicinity. These include dwellings, a stud farm and associated buildings and the agricultural buildings opposite at Newcome Farm. The traveller sites and hardstandings to the south-west are said to be unauthorised but there are further dwellings and a fencing yard to the north-east. However, the strong overall impression is of a rural area with limited development.
9. The Council refers to the Low Weald Landscapes of Local Value but there is no detail as to its attributes or how the appeal site contributes to them.
10. The proposed building would be 800 sq m. This size has partly been dictated by the need to accommodate wheelchair users and amputees with prosthetic limbs safely and efficiently in a workshop environment. Nevertheless, it would be a substantial building with an industrial appearance. Materials could be controlled by condition to blend the building into the surroundings as far as possible but this would not mitigate its overall dimensions.
11. The proposal would be visually separated from Dancing Green and Newcombe Farm which would accentuate its visual impact. Such a large structure would intrude into the largely undeveloped surroundings in a significant way and would detract markedly from the intrinsic character of the countryside. The formation of the entrance through the existing hedge would not be intrusive in itself. Nevertheless, it would open up the proposal to views from along Lenham Road. Because of the existing and proposed planting the proposal would not be very prominent in wider views once this has established. But

landscaping should not be used to 'hide' a building that would otherwise be out of place in this location.

12. The buildings at Newcombe Farm are said to have a floor area of 1,050 sq m. However, they are clearly agricultural in origin and because they are made up of different elements have less of a visual impact than a single structure. Reference is also made to a larger building under construction at Fiddlers Green close to the appeal site. Presumably this is for an equestrian use which is generally accepted to require a countryside location and sited in conjunction with the existing stud farm buildings. As the proposal would be 'free-standing' it can be distinguished from this permission.
13. Policy DM37 provides that planning permission will be granted for the sustainable growth of rural businesses in the rural area, subject to certain criteria. The policy and explanatory text infer that this is to enable the expansion of an existing operation rather than the re-location of one from another site. In any event, as the new building would not be small in scale, appropriate to the location or satisfactorily integrated into the local landscape, it would conflict with criterion i. Therefore, the proposal would not accord with Policy DM37.
14. In conclusion, the proposal would result in harm to the character and appearance of the area. It would therefore be contrary to Policy SP17. As it would not protect the rural character of the Borough it would be at odds with the spatial strategy in Policy SS1. There would also be conflict with the principles of good design in Policy DM1 and the design principles in the countryside contained in Policy DM30. In particular, the design, mass and scale of the development would not maintain local distinctiveness or respond positively to the local character of the area.

Other material considerations

15. The proposal would enable an existing vehicle restoration business to be re-located from premises that are said to be in a rural location. This trades by maintaining tractors, farming equipment and Land Rovers. The appellant indicates that vehicle restoration can take up to 6 to 12 months and that he plans to be working on 8 vehicles at any one time. There is limited information to support the current circumstances of the business and why and when it needs to move. However, as the proposal would provide a base for it to continue then this weighs in favour.
16. The testimony given in support of the application is powerful in conveying that there is a considerable need for support for military veterans, especially those suffering from post-traumatic stress disorder. In order to maintain their health and well-being, access to mental health specialists and other advice is extremely important as well as having a place where they can meet others who have served and may be experiencing similar issues. To this end a full-time mental health nurse would be housed at the building as well as a drop-in centre. Furthermore, the intention is to provide training in mechanical skills so as to provide future employment opportunities as well as boosting self-esteem. Veterans and military leavers would be trained to NVQ standard under the auspices of Mid Kent College.
17. Existing centres within Kent are only open for 84 days a year in total to serve 77,000 veterans in the county. The proposed centre would be open 6 days a

- week all year round thereby filling a gap and significantly increasing provision for this group.
18. However, one of the purposes of the planning system is to ensure that development is located in the right place. A site outside of any town or village for a combined industrial, educational and health use would not achieve that objective. The siting of the development is driven by the fact that the appellant owns the land. Whilst understandable this should not be the only consideration.
 19. The appellant has nevertheless sought other premises without success and paying a commercial rent would eat into the resources of the charities. Furthermore, whilst its Armed Forces Champion has been involved, the Council has not indicated any possible locations that are available and suitable. The absence of clear alternatives therefore also provides support for the proposal.
 20. The ambition of the scheme is laudable but it is nevertheless unclear as to how it would operate in practice in some respects. For example, there is no detail or commitment as to how the four charities would use the facility. In particular, the layout plans show that the majority of the internal space would be given over to the workshop use with only one unmarked room on the ground floor potentially available to provide services to veterans. The upstairs areas are shown to be storage and a waiting area.
 21. It is therefore difficult to see where the offices for the charities would be located. Furthermore, it is not obvious how and where the mental health consultations, CV training and computer skills, mock job interviews and social interactions referred to could take place alongside the workshop. The floor plans do not show any spaces allocated for these purposes. In addition, it has not been explained why such services could not be provided in existing venues in the locality and why a new facility is required.
 22. Whilst not doubting the appellant's sincerity there is also no mechanism in place to ensure that the training elements and the support hub for veterans would materialise and would continue in the long-term. If this part of the venture were to fail for any reason, then the remaining development would be a vehicle repair workshop in the countryside. To emphasise, there is nothing to indicate that this is likely to happen. But in order to make an exception to development plan policy, a greater level of assurance that the proposal would come to fruition as anticipated and be sustained would be required.
 23. No detailed wording has been put forward for possible conditions to ensure that the building is used as proposed. It is not for me to do this but, in any event, it is doubtful whether a condition would be effective in the long-term given that the building would have been erected. The appellant also indicates that he would be happy to submit a planning obligation to provide certainty that the proposal would be used for the described and intended purposes. However, the Planning Inspectorate's publication *Procedural Guide: Planning appeals – England* explains that this should be provided at the time of making an appeal. There are no very exceptional circumstances to warrant delaying this decision.
 24. An appeal for a workshop in connection with the motorsport business was allowed at Willow Dene in Skegness in 2021 (Ref: APP/D2510/W/21/3267373). That site was also in the countryside but the Inspector concluded that its location was suitable with particular regard to accessibility and that other

material considerations outweighed the conflict with development plan policies. However, a notable difference between that case and this one is that the impact of the proposed building on the landscape was found to be acceptable. This decision therefore provides limited support to the proposal.

25. If the recommendations from the habitat survey were implemented then there would be a modest net biodiversity gain and this provides a similar level of support for the proposed development.
26. The building would cater for the needs of those with physical or mental impairments which have a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. Therefore, some of those attending the building are likely to have a relevant protected characteristic as defined by the Equality Act 2010. As a consequence the public sector equality duty is applicable. The proposal would be beneficial in eliminating discrimination against, and advancing equality of opportunity for, those persons and fostering good relations between them and others.

Final balance

27. The proposed development would cause harm to the character and appearance of the area. The National Planning Policy Framework recognises the intrinsic character and beauty of the countryside and this would be diminished. The Framework also stipulates that the planning system should be genuinely planned. However, the proposal would undermine the spatial strategy for the Borough if it were to be allowed. It would be contrary to relevant development plan policies in this respect and the objections to the scheme are significant.
28. On the other hand, the Framework also indicates that planning decisions should enable the sustainable growth and expansion of all types of businesses in rural areas. They should also recognise that sites may have to be found beyond existing settlements. However, as the proposed building would not be sensitive to its surroundings, it does not benefit from the full support for economic growth provided by national policy.
29. The Framework also promotes healthy communities and indicates that decisions should enable healthy lifestyles, especially where this would address identified local health and well-being needs. The opportunity to provide a dedicated facility to meet the significant needs of veterans falls into this category. The first-hand evidence provided indicates the gravity of the situations that some individuals find themselves in and their need for help. This innovative project is supported by the Parish Council.
30. However, the importance to be given to this aspect of the proposed development is qualified because there is no means to ensure that the building would be used in this way into the future. Furthermore, it is not obvious how the internal areas would offer the facilities and services that are proposed. That is not to say that they would not occur as intended. But rather that in order to give these matters significant weight greater surety is required than is currently the case.
31. The appeal decision at Willow Dene and the opportunities for net biodiversity gain are of limited weight.
32. At the end of the day, the positive aspects of the proposal do not outweigh the significant objections. I have had due regard to the likelihood that the building

would be used by those with a protected characteristic of “disability” as referred to by the Equality Act. However, the visual harm that would be caused and the poor location of the site when judged against relevant policies for the area, outweigh the benefits that are outlined in paragraph 26. It is therefore proportionate and necessary to dismiss the appeal.

Conclusion

33. The proposed development does not accord with the development plan and there are no other material considerations that outweigh this finding. Therefore, for the reasons given, the appeal should not succeed.

David Smith

INSPECTOR

Maidstone Borough Council

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King Street,
Maidstone, Kent ME15 6JQ

 maidstone.gov.uk

 [maidstonebc](https://twitter.com/maidstonebc)

 [maidstoneboroughcouncil](https://www.facebook.com/maidstoneboroughcouncil)

By email only to [REDACTED]

20 January 2023

Dear Mr Roberts

APPLICATION REF: 21/502548/FULL

PROPOSAL: Erection of vehicle workshop, training hub and drop in centre for military veterans and creation of new vehicle access

ADDRESS: Field adjacent to Dancing Green, Lenham Road, Headcorn, TN27 9LG

The following advice is provided following the meeting at Maidstone House on the 16 January 2023 attended by:

- Twiggy Roberts (HX motors)
- Adam Francis
- Councillor Lottie Parfitt-Reid (Lead Member, Communities and Public Engagement)
- Rob Jarman (Head of Development Management)
- Tony Ryan (Development Team Leader)

Summary conclusions:

- No revised drawings or details have been submitted to date that seek to address the reasons for the refusal of planning permission. These reasons are set out in the planning history below.
- Planning legislation requires planning decisions to be made in accordance with the Local Plan unless other considerations indicate otherwise.
- There are no policies in the Local Plan that support the provision of the proposed building and use in this location.
- The application represents a departure from the Local Plan and (as happened with the first submission) the application would generally be refused under delegated powers and not reported to a planning committee.
- A resubmitted planning application should seek to demonstrate that there are other relevant considerations that justify a departure from the Local Plan by providing the information listed in points a) to r) in the advice below.
- This information submitted with a planning application will be considered by the planning case officer and a judgment made to whether the information justifies a departure from the plan.
- The applicant should seek assistance from either the Parish Council or a ward councillor to submit (within three weeks of the application submission) a call in to the case officer to report the application to a planning committee, this call in would be if the officer recommendation is to refuse planning permission (an officer recommendation to approve would already need a committee decision as a departure).
- When a planning committee date is known (agenda set 7 working days beforehand) you will have the opportunity to lobby members of the planning committee before the meeting and also address members in person for 3 minutes at the meeting. More information is available at this link to the Council's website [Committee details - Planning Committee \(maidstone.gov.uk\)](http://maidstone.gov.uk)

Relevant planning history:

- Application 21/502548/FULL refused 22 July 2021 for the following reasons:
 - (1) *The application fails to demonstrate the proposed development of a new building with associated parking and access for light industrial use (restoration garage) is justified and compatible in this countryside location contrary to policy SS1, SP17, DM30 and DM37 of the Maidstone Borough Local Plan (2017)*
 - (2) *The proposed development, by virtue of its scale, design, and siting, would result in an isolated development and overly dominant building in the rural landscape, causing unacceptable harm to the character and appearance of the countryside and the Low Weald Landscapes of Local Value hereabouts. The proposal would therefore contrary to policies SP17, DM1, DM3, DM30 and DM37 of the Maidstone Borough Local Plan (2017) and the National Planning Policy Framework (2021).*
 - (3) *The proposed new access by virtue of its prominent location, and requirement to puncture a substantial gap in the existing hedgerow along the frontage of Lenham Road (to make way for the vehicle access) and opening up the view with the introduction of further hardstanding area in the new public views into the site, represents development overly urban in appearance that would cause unacceptable visual harm to the rural character and appearance of the countryside and the Low Weald Landscapes of Local Value. As such, the development is contrary to policies SP17, DM1, DM3, DM30 and DM37 of the Maidstone Borough Local Plan (2017) and the National Planning Policy Framework (NPPF 2021).*
 - (4) *The submission, in the absence of any surveys has failed to demonstrate that protected species would not be adversely impacted as a result of the proposed development and following on from the conclusions of surveys the proposal is unable to demonstrate a net biodiversity gain. This would be contrary to the aims of policies DM1 and DM3 of the Maidstone Local Plan (2017); Paragraph 99 of Government Circular (ODPM 06/2005) Biodiversity and Geological Conservation - Statutory Obligations & Their Impact Within the Planning System; Natural England Standing Advice; and the aims of the National Planning Policy Framework (2021).*
- Appeal against the refusal of permission dismissed in a decision letter dated 21 September 2022 (Inspector conclusions discussed in the advice below)

Policies:

The status of the development plan is confirmed by Section 38 (6) of the Planning and Compulsory Purchase Act, 2004 which states: "... *determination must be made in accordance with the plan unless material considerations indicate otherwise.*" National policy and guidance are material considerations in the determination of planning applications.

Development Plan

- Maidstone Borough Local Plan (October 2017),
(https://maidstone.gov.uk/_data/assets/pdf_file/0005/171149/Local-Plan-v2-November-2017.pdf)

Policy SS1 Maidstone borough spatial strategy
 Policy SP17 Countryside
 Policy SP23 Sustainable transport
 Policy DM1 Principles of good design
 Policy DM3 Natural environment
 Policy DM6 Air Quality
 Policy DM8 External lighting
 Policy DM21 Assessing the transport impacts of development
 Policy DM23 Parking standards
 Policy DM30 Design Principles in the Countryside
 Policy DM37 Expansion of existing business in rural areas

National policy and guidance

- National Planning Policy Framework (NPPF 2021)
- National Planning Practice Guidance (NPPG) 177

Maidstone Landscape Capacity Study: Sensitivity Assessment - January 2015

Site is located in landscape character area 43, Headcorn Pasturelands. The Maidstone Landscape Capacity Study: Sensitivity Assessment - January 2015 assesses the area as being of high overall landscape sensitivity and sensitive to change.

The relevant guidelines and mitigation are:

- New development should respect the local vernacular in scale, density and materials
- Plant new isolated oaks within pasture and hedgerows to replace ageing population
- Conserve and enhance the small scale field pattern and sense of enclosure
- Conserve the largely undeveloped rural landscape and the remote quality of isolated farmsteads
- Soften the visual prominence of large agricultural barns through native planting

Maidstone Borough Council Local Plan Review, draft plan for submission (Reg 22)

- The Regulation 22 draft is a material consideration however weight is currently limited, as it is the subject of an examination in public that commenced on the 6 September 2022. The relevant policies in the draft plan are as follows:
 - LPRSP12: Sustainable transport
 - LPRSP14: The environment
 - LPRSS1: Maidstone borough spatial strategy
 - LPRSP9: Development in the countryside
 - LPRSP14A: Natural environment
 - LPRSP14(C): Climate change
 - LPRSP15: Principles of good design
 - LPRTA2: Assessing the transport impacts of development
 - PRTRA4: Parking
 - LPRQ&D 1: Sustainable design
 - LPRQ&D 2: External lighting
 - LPRQ&D 6: Technical standards

Assessment:

The main planning considerations relate to

- Location
- Visual impact, bulk and massing
- Information on the use

Location

The application site is in the countryside and the starting point for assessment of all applications in the countryside is Local Plan Policy SP17.

Policy SP17 states that development proposals in the countryside will not be permitted unless:

- a) they will not result in harm to the character and appearance of the area and
- b) they accord with other Local Plan policies

The supporting text to policy SP17 advises "*The countryside has an intrinsic character and beauty that should be conserved and protected for its own sake*". The provision of a large building with an industrial appearance will result in harm to the character and appearance of the area. As a result, the development is contrary to (as listed above) SP17 (a).

After outlining the protection to the intrinsic countryside character, the supporting text goes on to say "*...there is a need to ensure a level of flexibility for certain forms of development in the countryside in order to support farming... the countryside economy and to maintain mixed communities*". The policy P17(b) in response, refers to a need to accord with other LP policies.

There are no Local Plan exception policies that apply. With the proposal not in accordance with SP17 (a) or (b) the application would be a departure from the adopted Local Plan.

Local Plan policy SS1 (Maidstone Borough spatial strategy) states that the main focus for new development in the borough will be Maidstone's urban area (as the largest and most sustainable location) followed by the designated rural service centres and then the designated larger villages. The site is located in the countryside outside any of these areas.

The appeal inspector states that the proposal is not in accordance with the broad thrust of the Council's spatial strategy. The Inspector noted that one of the purposes of the planning system is to ensure that development is in the right place. A site outside of any town or village for a combined industrial, educational and health use would not achieve that objective. Unlike the appeal proposal other nearby buildings "... require a countryside location". The proposal would not accord with Policy DM37.

Resubmitted planning application requirements

This letter must include the advice that the proposed building and use should be relocated to a site within an existing settlement that is supported by other uses and is served by public transport.

A future planning application submitted for the same site, is requesting that an exception is made for this use in this location as a departure from normal planning policy. In this situation and for the application to seek to justify the location, a future planning application should:

- a) Additional information on the current circumstances of the business and why and when it needs to move.
- b) Provide an estimation of how many staff and visitors will be in the building at the busiest time and how these people will get to the building, especially given the wide catchment area.
- c) Explain why the support functions need to be provided in this location and not in an area better served by public transport?
- d) Set out what public transport is available and how will visitors be encouraged to use public transport. If visitors come by private vehicle how will the impact be minimised (encouraging car share etc). Subject to landscape considerations is there sufficient on site car parking.
- e) Show provision of adequate on site cycle parking and EV charging point.
- f) Provide precise details of the site search, including site postal address, who was approached and the reason why the alternative site was discounted.
- g) Demonstrate why this relatively inaccessible site is the only location where this facility and this building can realistically and feasibly be provided.

Visual impact, bulk and massing

Local Plan policies DM1 and DM30 state that proposals in the countryside should create high quality design with layouts that are accessible to all and maintain and maximise opportunities for permeability. Proposals should respond positively to, and where possible enhance, the local, natural or historic character of the area. Particular regard will be paid to scale, height, materials, detailing, mass, bulk, articulation and site coverage. Proposals should sensitively incorporate natural features such as trees, and hedges worthy of retention.

The appeal inspector made the following observations:

- Substantial building with an industrial appearance.
- Material would not mitigate overall building dimensions
- Visually separated from Dancing Green and Newcombe Farm accentuating its visual impact.
- Such a large structure would intrude into the largely undeveloped surroundings in a significant way and would detract markedly from the intrinsic character of the countryside.
- Entrance through the existing hedge would open up views from along Lenham Road.
- Would not protect the rural character of the Borough contrary to spatial strategy, Policy SS1.
- Design, mass and scale of the development would not maintain local distinctiveness or respond positively to the local character of the area contrary to policies DM1 and DM30

The proposal that was refused planning permission consisted of a single, large building that occupied a large percentage of the application site area. This design approach, the bulk and massing and the separation from the front boundary increased the visual impact of the building. As noted by the appeal inspector other nearby buildings have similar floorspace but visual impact is reduced by breaking up the bulk and massing into different heights.

Resubmitted planning application requirements

It is unclear why a double height workshop space is required in the building, and information should be submitted with a future application to either reduce the size of the space or to demonstrate the need for this space.

With the offices and potentially other uses (such as the paint spraying bays) not requiring double height space, there are opportunities to break up the building massing. Some parts of the building could be single storey with perhaps single storey at the front of the site and double storey space at the rear.

As the appeal inspector set out, inappropriate development should not be approved in the countryside on the basis that landscape screening is provided. Notwithstanding this, where development is approved, landscaping can help mitigate some of the negative visual impacts on the countryside.

A resubmitted planning application should include a detailed landscaping scheme designed in accordance with the Council's adopted Landscape Character Assessment (2012).

The scheme should show all existing trees and hedgerows on the land, and details of those retained, and a planting schedule (including location, quantities, planting species and size) together with a programme for the approved scheme's implementation and long term management.

The landscape scheme should show a double layer of staggered planting along the front boundary and include trees. The views into the site from the entrance should be screened by using an angled access road with landscaping screening the building and parking areas from the site entrance. Landscape screening should also be provided on the other site boundaries.

Information on the use

Legislation requires decisions on planning applications to be made in line with the adopted Local Plan unless other relevant considerations indicate otherwise.

The Council in refusing permission and the independent appeal Inspector in dismissing the appeal have concluded that the planning application was not in line with the Local Plan.

In this situation, the onus is on the applicant to provide sufficient information on other factors that could justify granting planning permission as a departure from the Local Plan. The applicant needs to show that the negative visual impact on the countryside and development in an unsustainable location is outweighed by the benefits of the proposal now and in the long term.

Resubmitted planning application requirements

A future planning application would need to include the following information:

- h) Information on how the four charities would use the facility and how would this be secured long term.
- i) Provide details of the terms on which you are seeking to occupy the site at Dancing Green (10 year guarantee etc) and why this financial assistance cannot be applied to acquiring/occupying an alternative site in a more appropriate location.
- j) Set out the relationship of the existing business (HX Motors) to the new building and use. It is understood that the existing site that offers motor vehicle repairs will be vacated due to redevelopment of the site.
- k) Explain what business related services the new use and the large workshop space will offer to paying customers and how will the use be viable long term, especially after the 10 year support period. Where will the vehicles that are being restored come from?
- l) Provide assurance that the proposal will come to a position as anticipated and be sustained.

- m) Provide details of the special space and circulation requirements that the use has and as much information from official sources on these requirements.
- n) Amended plans to show the reduction in the bulk and massing of the building and the different internal uses of the floorspace.
- o) Additional information on how the use would operate in practice on a day to day/weekly basis.
- p) Information on where the mental health consultations, CV training and computer skills, mock job interviews and social interactions referred to could take place alongside the (incompatible) workshop use. Would these functions be available all the time or at set times?
- q) The plans submitted with a future planning application should show measures to prevent noise nuisance to neighbours, renewable energy generation and measures to achieve a net biodiversity gain such as bird boxes bat boxes and bee bricks which should ideally be integrated into the building.
- r) Should include a detailed landscaping scheme designed in accordance with the Council's adopted Landscape Character Assessment (2012).

Other issues

The fourth ground for the refusal of planning permission related to the lack of any survey to establish whether the development would harm protected species.

The Inspector in the appeal decision letter stated that a phase 1 survey has been carried out following the refusal of planning permission and the Inspector had received a copy of the survey report.

There is no record to date of this report being sent to the Council. The phase 1 survey report should be submitted with the future planning application and the Council will seek advice from the KCC Ecology team

Documents required to be submitted:

If you wish to submit an application, you can do so online at: www.planningportal.co.uk/applications When applying for planning permission there are National and Local requirements that are used to determine whether to make a planning application valid. The validation checklist of what is needed can be found online at: www.maidstone.gov.uk/validationchecklist.

The advice given above does not indicate any formal decision by the Council as Local Planning Authority. Any views or opinions are given in good faith and to the best of ability, without prejudice to the formal consideration of any planning application. The final decision on any application that you may make can only be taken after the Council has consulted local people, statutory consultees and any other interested parties. The final decision on an application will then be made by senior officers or by the Council's Planning Committee and will be based on all of the information available at that time.

The advice will be carefully considered in reaching a decision or recommendation on any resulting application; subject to the proviso that circumstances and information may change or come to light that could alter that position. It should be noted that the weight given to pre-application advice notes will decline over time.

Prior to the submission of a future planning application, you are advised to contact and seek the views of the local ward councillors for the area and the parish council. Details of the ward councillors (Headcorn) can be found at the following link to a page on the Council's website: [Your Councillors - Maidstone Borough Council](#) Headcorn Parish Council can be contacted at [Contact The Clerk - Headcorn Parish Council \(headcornpc.org\)](#)

The ward councillors have the power to call in any planning application for determination by the Council's planning committee. The planning committee meets every month with the case officer committee report deadline two weeks before the committee meeting date. Details of the planning committee are available on the Council's website at the following link: [Browse meetings - Planning Committee \(maidstone.gov.uk\)](#)

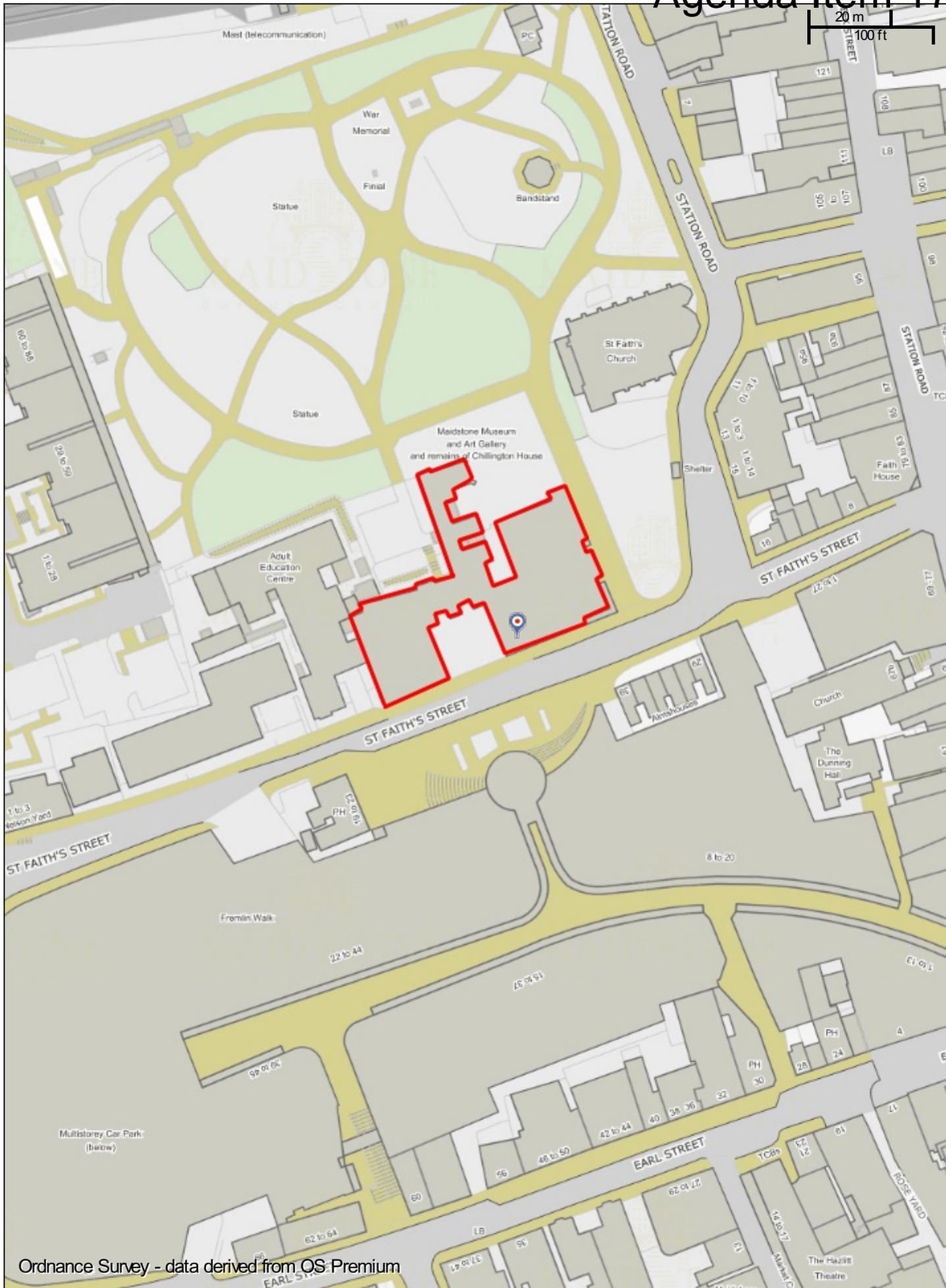
The advice given above does not indicate any formal decision by the Council as Local Planning Authority. Any views or opinions are given in good faith and to the best of ability, without prejudice to the formal consideration of any resulting planning application. The final decision on any application will only be taken after the Council has consulted local people, statutory consultees and any other interested parties. The final decision on an application will then be made by senior officers or by the Council's Planning Committee and will be based on all of the information available at that time.

The advice in his letter will be carefully considered in reaching a decision or recommendation on any resulting planning application. The assessment of the application will also take into account any change in circumstances or new information that could alter the advice that has been provided. It should be noted that the weight given to pre-application advice will decline over time.

Yours sincerely

For Head of Development Management

Tony Ryan
01622 602358



Ordnance Survey - data derived from OS Premium

23/503347/LBC Maidstone Corporation, Museum and Art Gallery, St Faiths Street, Maidstone, Kent, ME14 1LH

Scale: 1:1250
Printed on: 31/8/2023 at 12:01 PM by JoannaW

REPORT SUMMARY

REFERENCE NO: - 23/503347/LBC		
APPLICATION PROPOSAL: Listed Building Consent to replace an existing stairway with a flexstep platform lift.		
ADDRESS: Maidstone Corporation Museum And Art Gallery St Faiths Street Maidstone Kent ME14 1LH		
RECOMMENDATION: Grant – subject to planning conditions set out in Section 8.0 of the report.		
SUMMARY OF REASONS FOR RECOMMENDATION: The works would preserve the significance and special interest of the listed building, any harm would be of a very low level and outweighed by public benefits and the proposal complies with development plan policy and the aims of the NPPF.		
REASON FOR REFERRAL TO COMMITTEE: The Council is the applicant.		
WARD: High Street	PARISH/TOWN COUNCIL: Not Applicable	APPLICANT: Maidstone Borough Council AGENT:
CASE OFFICER: Louise Welsford	VALIDATION DATE: 25/07/23	DECISION DUE DATE: 19/09/23
ADVERTISED AS A DEPARTURE: NO		

Relevant Planning History

None specifically relevant.

MAIN REPORT

1. DESCRIPTION OF SITE

- 1.01 This application site relates to Maidstone Museum, a grade II*, multi-phased listed building. The museum is located within Chillington House conservation area, within Maidstone town centre.
- 1.02 The core of the building contains the remains of the medieval manor, Chillington Manor, with subsequent alterations and extensions, most notably in the Victorian period.

2. PROPOSAL

- 2.01 Listed Building Consent is sought for the replacement of an existing internal stairway with a flex step platform lift. This is proposed to enable access for all, as this area of the building is currently not accessible to all.

3. POLICY AND OTHER CONSIDERATIONS

Maidstone Borough Local Plan (2011-2031): SP18, DM4

Emerging Local Plan : The Regulation 22 Local Plan Review submission comprises the draft plan for submission (Regulation 19) dated October 2021, the representations and proposed main modifications. It is therefore a material consideration and attracts some weight. However, this weight is limited as although

Stage 1 and 2 Hearings have recently concluded, the Plan is still in Examination.
Policy LPRSP15 (B) – The Historic Environment
Policy LPRENV 1 – Historic Environment

The National Planning Policy Framework (NPPF)
National Planning Practice Guidance (NPPG)
IHBC Toolbox Guidance Note – Guidance on Alterations to Listed Buildings (January 2021)

4. LOCAL REPRESENTATIONS : None received.

5. CONSULTATIONS

Historic England:

5.01 Do not wish to engage.

6 National Amenity Societies:

5.02 No response.

MBC Conservation Officer:

5.03 No objection.

6. APPRAISAL

The key issue is the impact upon significance and special interest of the listed building.

Impact on the significance and special interest of the Listed Building

- 6.01 The proposal relates to a 1970s set of steps. The existing steps themselves are modern and not of any significance. Their loss would therefore not result in harm.
- 6.02 The new lift would have a greater visual impact, but in this location, and in the place of the existing modern steps, this would be very limited. There is no assessment of the age of the wooden door surround within the application, but the application does confirm that it would be retained, so there would be no loss of historic fabric. A condition can be imposed to seek details of the attachment of the lift to ensure a satisfactory relationship with the door surround and no harm to its fabric.
- 6.03 In conclusion therefore, any harm is considered of a very low level indeed, much less than substantial.
- 6.04 Where harm is identified, the NPPF requires this to be balanced against public benefits, including securing the optimum viable use of the heritage asset. In this case, the purpose of the lift is to provide disabled access. This is a public benefit, as it would ensure inclusivity, so that this part of the museum can be accessed by all. Although significant weight and importance must be attached to any harm to a listed building, in this case, the level of harm is very, very low. Therefore, in this particular case, the public benefit to provide more inclusive access to this building which is used by the public is considered to outweigh the very minimal level of harm. The proposal therefore complies with development plan policy and the aims of the NPPF.

PUBLIC SECTOR EQUALITY DUTY

- 6.05 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

7. CONCLUSION

- 7.01 The proposal would result in only an extremely low level of harm, if any. The proposal would improve disabled access and inclusivity which is a significant public benefit and the public benefit is considered to outweigh the very minimal level of harm. The proposal therefore accords with development plan policy and the aims of the NPPF.

8. RECOMMENDATION

GRANT Listed Building Consent subject to the following conditions

with delegated powers to the Head of Planning and Development to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.

CONDITIONS:

- 1) The works to which this consent relates must be begun before the expiration of three years from the date of this consent;

Reason: In accordance with the provisions of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.Plans
- 2) The works hereby permitted shall be carried out in accordance with the following approved plans:

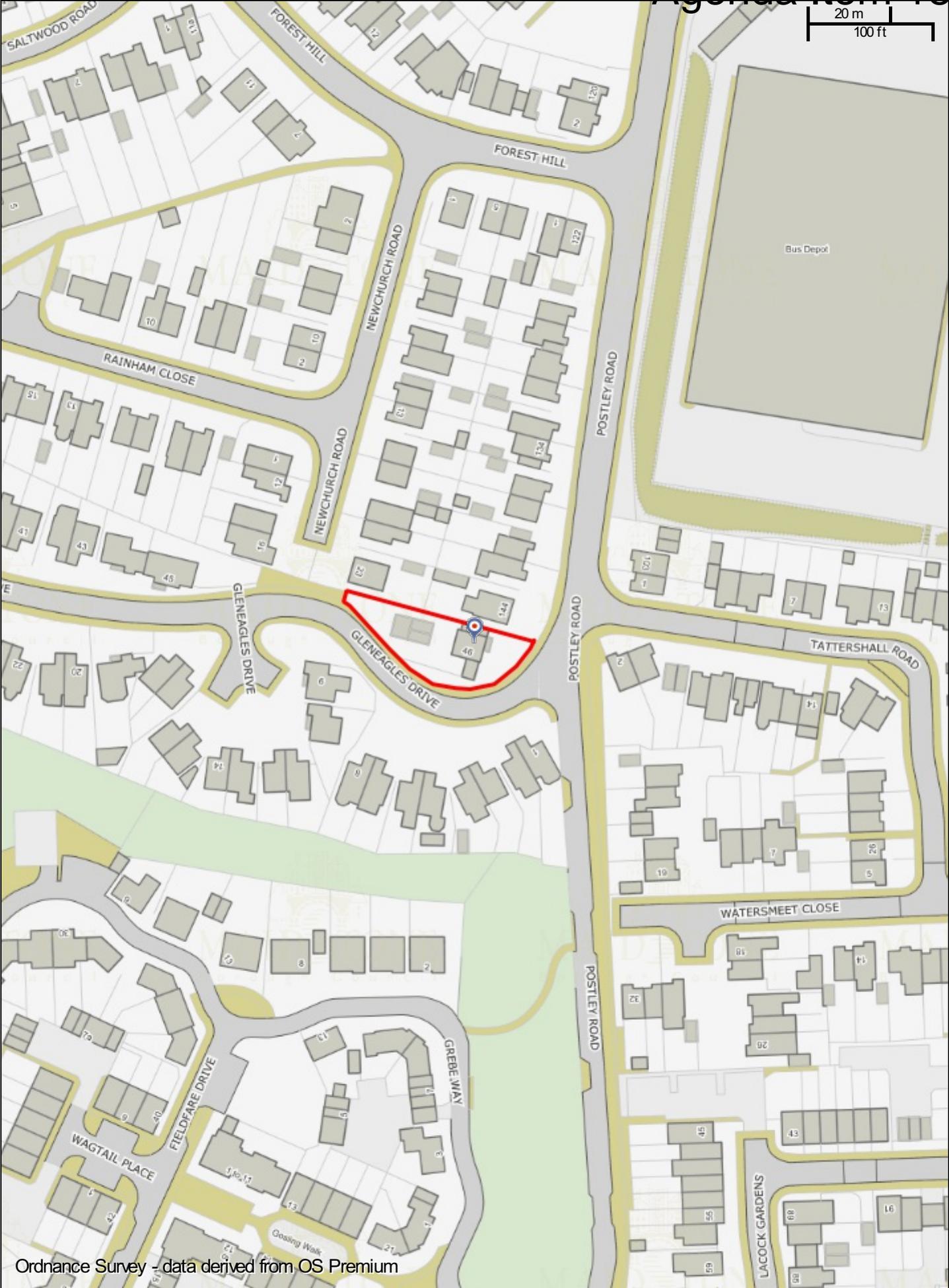
Drawing numbers 1a (Southgate Stairs Proposed), PBP1 A3 (Proposed Block Plan) and BP1 A3 (Block Plan) received on 25/07/23 and a site location plan received on 18/07/23;

Reason: To clarify which drawings have been approved and to preserve the character, appearance and special interest of the listed building.
- 3) The works shall not commence until full details of how the lift would be attached in relation to the adjacent wooden door surround, have been submitted to, and approved in writing by, the Local Planning Authority and the works shall be completed in accordance with the approved details;

Reason: To ensure a satisfactory appearance and that the historic significance of the listed building is maintained.

Case Officer: Louise Welsford

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.



Ordnance Survey - data derived from OS Premium

23/502594/FULL - 46 Geneagles Drive. Tovil, Maidstone, Kent, ME15 6FH

Scale: 1:1250

Printed on: 7/9/2023 at 14:31 PM by KirstyS



REPORT SUMMARY

REFERENCE NO: - 23/502594/FULL		
APPLICATION PROPOSAL: Conversion of double garage into residential annexe accommodation.		
ADDRESS: 46 Gleneagles Drive Tovil, Maidstone Kent ME15 6FH		
RECOMMENDATION: GRANT – subject to planning conditions set out in Section 8.0 of the report.		
SUMMARY OF REASONS FOR RECOMMENDATION: For the reasons set out below it is considered that the proposed conversion of double garage into residential accommodation would be acceptable and would not cause significant visual harm, harm to neighbouring amenity nor would it be unacceptable in terms of any other material planning considerations. The proposed development is considered to be in accordance with current policy and guidance.		
REASON FOR REFERRAL TO COMMITTEE: The recommendation is contrary to the views of Tovil Parish Council who have requested the application be presented to the Planning Committee.		
WARD: South	PARISH/TOWN COUNCIL: Tovil Parish Council	APPLICANT: Mr Darren Tomlin AGENT: G M Everard Ltd
CASE OFFICER: Sema Yurtman	VALIDATION DATE: 16/08/2023	DECISION DUE DATE: 29/09/2023 (EOT)
ADVERTISED AS A DEPARTURE: NO		

Relevant Planning History

96/0096 - Extension to existing detached single garage to form double garage as shown on drawing nos.GD/1 submitted on 22.01.96. Approved 15.03.1996

93/0133 - Erection of Single Storey Side Extension repositioning of side fence & change of use of open amenity land to private residential land. Refused 12.05.1993

85/0872 - Erection of 15 bungalows, 56 semi-detached houses, 19 detached houses, garages and access roads as amended by Drawings 011.229.01C and 011.229.02A - 21.8.85, 011.229.3A, 4A, 5A and 6A - 9.8.85, 011.229 - 11 and 12 - 29.8.85 and 011.229.13 and 14 -2.9.85, validated & amended 011.229.01D. Approved 23.04.1986

MAIN REPORT

1. DESCRIPTION OF SITE

- 1.01 46 Gleneagles Drive is a detached two-storey dwellinghouse located to the northern side of the Gleneagles Drive in the urban boundary of Maidstone. The application site is a corner plot at the junction of Postley Road and Gleneagles Drive.
- 1.02 The property is a residential dwelling, and the site is not situated within a conservation area, or an area of outstanding natural beauty. There are restrictions on the use of the garage as parking under reference 96/0096 as condition 3 states:

The garage hereby permitted shall be safeguarded for the domestic parking of vehicles. No development whether permitted by the Town and Country Planning (General

Permitted Development) Order 1995 or not shall be carried out on the garage indicated or in such a position as to preclude vehicular access to the said land or garages.

Reason: Development without adequate parking or garage provision is likely to lead to parking inconvenient to other road users and to be detrimental to amenities and prejudicial to road safety.

2. PROPOSAL

- 2.01 The proposal is for the conversion of double garage into residential accommodation. The garage has been previously extended from single to double garage (which was granted planning permission under reference 96/0096).
- 2.02 The existing garage has approximately 6m width, 5.5m depth, 2.2m eaves of height and 3.4 ridge of height with part flat and part pitched roof; the proposed alterations would not change the footprint of the existing garage. The flat section of the garage roof would be removed and replaced with a pitched roof. The proposed pitched roof would match the existing garage roof height.
- 2.03 There is an existing covered storage area to the rear of the garage, this would be removed as part of the proposal.
- 2.04 There is an existing closed boarded timber fence to the boundary adjoining properties number 144 Postley Road and number 23 Gleneagles Drive. This would not be altered. There is also close boarded fence along the Gleneagles Drive this fence also would remain.
- 2.05 The proposed annexe would consist of a combined lounge/kitchen, one bedroom, and a bathroom. The proposed annexe is considered ancillary to the host dwelling. It is located within the curtilage, would not have its own access and would share garden and utilities.
- 2.06 The submitted elevation plans were originally annotated with the incorrect elevations, the south elevation should read west elevation, north should be east elevation, east and west elevations should read north and south respectively. The application has been considered on the basis of the correct elevations and amended plans have been received. Additional information clarifying the parking arrangements have also been received.

3. POLICY AND OTHER CONSIDERATIONS

Maidstone Borough Local Plan (2011-2031):

- DM1 – Principles of good design
- DM9 – Residential extensions, conversions and redevelopment within the built-up area
- DM23 – Parking standards

Maidstone Borough Council – Local Plan Review, draft plan for submission (Regulation 22):

- LPRSP15 – Principles of good design
- LPRHOU2 – Residential extensions, conversions, annexes, and redevelopment in the built-up area

The National Planning Policy Framework (NPPF):

National Planning Practice Guidance (NPPG):

Supplementary Planning Documents: Maidstone Local Development Framework:
Residential Extensions SPD

4. LOCAL REPRESENTATIONS

Local Residents: 15 neighbours consulted.

3 representations received from local residents (9 Gleneagles Drive, 16 Gleneagles Drive, 11 Gleneagles Drive) raising the following (summarised) issues:

- Objection on ground, the application will result very cramped dwelling and will reduce the garden land to the main house to a minimal amount.
- The development would be against the rhythm of the street and not keeping with the rest of the area.
- The development would cause a hazard for other road users and contravenes the vehicle parking standards.
- Health and safety issue for children, residents, pets in terms of the road being extremely busy and possibility of causing accidents.
- Objection on grounds for parking problems on the road, concern of the street becoming an industrial estate with multiple work vehicles.
- Concern about reduced visibility along the road due to commercial vehicles/vans parked along the road where proposed drop kerb is to be used by the applicant's vehicles and will end up taking up most of the resident and visitor parking spots along the road.

The concerns are noted however issues of health and safety issues in terms of the road being extremely busy are not material considerations. The use of annexe would be conditioned to be ancillary to the main dwelling and only normal residential activities would be expected to occur in the annexe.

Cllr Clark: : I understand that this application is being called in by Tovil Parish Council but if you have yet to receive the objection and notification from the parish, as South Ward councillor I would wish for this to go forward to planning committee review should you be mindful to approve.

5.0 CONSULTATIONS

5.01 Tovil Parish Council

Original comments

The Planning Committee of Tovil Parish Council raised concerns as to whether the side entrance shown continued to exist and raised concerns regarding the site layout. It recommends that this application is refused, the reasons agreed by the Planning Committee are listed below.

It constituted backland development for the existing property.
It would result in limited availability of amenity space due to the loss of the garden constituting a poor form of development.

The Committee resolved to ask MBC to refer the matter to the Planning Committee should officers be minded to grant approval.

Following re-consulation

The Planning Committee of Tovil Parish Council reconsidered this application in the light of the Planning Officers email dated 16 August at their meeting on 4 September 2023.

The Planning Officers Comments were noted, but our committee still felt that the application should be refused as contrary to Policy of the Local Plan, Principles of Good Design.

Planning history suggests that an application for an extension was refused in the 90's following which an application to increase the garage from a single to a double was permitted. Local knowledge suggests that this double garage has not been used for a period of time as the access is always blocked by parked commercial vehicles.

We are concerned that the annexe may become a single independent unit in the future that would be difficult to enforce on appeal, as the footprint of residential use has not changed.

We note that if the vehicular access is used it would reduce the vehicles parked on the street but as access is onto a convex residential street, vision splays would be severely restricted if commercial vehicles continued to park there. We feel this is contrary to Policy DM 11 of the Local Plan.

6.0 APPRAISAL

The key issues are:

- Site background/Principles of Development/Policy Context
- Visual Impact
- Residential Amenity
- Parking/Highway Safety
- Other Matters

Site Background/Principle of Development/Policy Context

- 6.01 The application site is located within the Maidstone Urban Area.
- 6.02 Policy DM1 (ii) in terms of design refers to developments responding positively to the local character of the area, with regard being paid to scale, height, materials, detailing, mass, bulk, articulation and site coverage. DM1 (iv) re-iterates consideration to be paid to adjoining neighbouring amenity. DM1 (xiv) refers to being flexible towards future adaptation in response to changing life needs.
- 6.03 Policy DM9 refers to residential extensions, conversions and redevelopment within the built-up area. DM9 states that within the defined boundaries of the urban area, rural services centres and larger villages, proposals for the extension, conversion and redevelopment of a residential property, design principles set out in this policy must be met. DM9 states:
- (i) The scale, height, form, appearance and siting of the proposal would fit unobtrusively with the existing building where retained and the character of the street and/or its context;*
 - (iii) The privacy, daylight, sunlight and maintenance of a pleasant outlook of adjoining residents would be safeguarded; and*
 - (iv) Sufficient parking would be provided within the curtilage of the dwelling without diminishing the character of the street scene.*
- 6.04 The Residential Extensions SPD in relation to this proposal sets out the following:

Garages and other outbuildings should be subservient in scale and position to the original dwelling and not impact detrimentally on the space surrounding buildings or the street scene by virtue of their scale, form or location.

- 6.05 As detailed in the applicant's cover letter, the requirement for the proposed conversion is to accommodate elderly family member who needs care. However, in any event, the proposed annexe is actually considered as a residential extension and not garden development providing new residential development so local housing needs does not need to be considered for such proposals. What needs to be ensured is that the proposal remains ancillary to the main dwelling.
- 6.06 An annexe is actually considered as a householder residential extension and so is assessed under policy DM9. It is not new residential development or a subdivision of a plot and so does not need to be considered under DM11 or DM12. What needs to be ensured is that the proposal remains ancillary to the main dwelling and a condition will be imposed to address concerns. Such conditions are regularly used on annexe permissions to ensure that the annexe remains ancillary and read as follows:

"The additional accommodation to the principal dwelling hereby permitted shall not be sub-divided, separated or altered in any way so as to create a separate self-contained unit; and shall only be used as ancillary accommodation to the main dwelling currently known as 46 Gleneagles Drive, Maidstone."

- 6.07 The principle of residential annexes within settlements is therefore considered acceptable, provided that the material planning considerations discussed below would be acceptable.

Visual Impact

- 6.08 As mentioned, the building is existing, it is situated fairly centrally within the plot, set back from the road frontage and predominantly shielded by the existing close boarded timber fence. Visibility from the streetscene is limited to that of the pitched roof.
- 6.09 The proposal would include the replacement of the flat roof section of the existing garage with a pitched roof, this would not significantly increase the visual prominence of the building and the design would match existing building.

Figure 1: View from Gleneagles Drive



- 6.10 Concerns were raised with regards that the proposal will reduce the garden land. However, the proposal would not include any additional development on the garden area, the garage is existing and the footprint would not be altered.
- 6.11 The proposed materials consist of concrete tiles for the roofing, Upvc double glazed windows and doors, all of which would match the host dwelling. Therefore, the overall design and materials proposed are considered to be visually acceptable and be in keeping with host building and existing materials. It would not detrimentally impact the character and appearance of the host dwelling. It would appear as a subservient outbuilding in line with local plan policies and guidance.
- 6.12 The removal of the existing open storage structure to the rear of the garage would also be visually beneficial.
- 6.13 Overall, the proposed annexe is not considered to have a detrimental impact on the streetscene or character of the area. Such buildings within the garden are not unexpected and would not look out of place.

Residential Amenity

- 6.14 The nearest neighbouring properties are to the north (No.144 Postley Road) and to the northwest (No.23 Gleneagles Drive). All other neighbouring properties are considered to be a significant distance away to be unaffected by the proposal.



Figure 2: Neighbouring properties

- 6.15 The garage is in close proximity (approx. 2m and 2.4m) to the common boundary with No.144 Postley Road on the north and No.23 Gleneagles Drive on the northwest. With regard to Number 144 Postley Road, the proposal would not include any side window facing towards number 144 and any changes to the roof would be on the southern side of the building, away from the neighbouring boundary. It is considered that no detrimental impact on neighbouring amenity in terms of loss of light or overshadow would result. The existing garage is already located in a reasonable distance from main dwelling.
- 6.16 Regarding Number 23 Gleneagles Drive, the proposal would include windows in the west facing elevation to replace the existing garage door, however due to existing boundary treatment, and single storey nature of the building it is considered that there would be no detrimental impact on neighbouring amenity in terms of loss of privacy or overlooking. No additional loss of light, overshadowing or loss of outlook would result.
- 6.17 Taking the above into consideration, it is considered that the proposal will not cause unacceptable harm to the residential amenity of the adjoining properties that would warrant a refusal.

Parking/Highways

- 6.18 Planning permission for the use of the building as annexe accommodation is required due to a condition restricting the use of the garage as parking. The reason for the condition reads : *'development without adequate parking or garage provision is likely to lead to parking inconvenient to other road users and to be detrimental to amenities and prejudicial to road safety'*
- 6.19 The proposal would result in the loss of the existing double garage and facilitate an additional bedroom. There is an existing parking area to the west of the existing garage building, this is served by an access from Gleneagles Drive. This area of parking has been clarified on the revised site plan. This provides sufficient parking for a minimum of 2 cars (as required by the Local Plan parking standards at Appendix B). No harm highway safety/parking provision would result.
- 6.20 Concerns were raised with regards to the parking issues that the proposal would reduce parking areas along the road and would reduce the visibility along the street due to the commercial vehicles/vans parked along the road. The road has unrestricted parking and the proposal would not impact on the existing parking arrangements or visibility.
- 6.21 The front garden is currently used as informal parking, however this is not facilitated by a dropped kerb or hardsurfacing. The revised site plan does indicate that there is the intention for the applicants to formalise parking to the front. This is not explicitly applied for and is unlikely to require planning permission provided that the surfacing would be permeable or porous. To ensure it would meet those requirements a condition relating to the surfacing material of hardsurfacing is proposed.

Other Matters

- 6.22 Biodiversity/Ecological Enhancements: Due to the nature and relative scale of the development and the existing residential use of the site, it is not considered that any ecological surveys were required.
- 6.23 Policy DM1 of the Local Plan sets out, at point viii, that proposals should 'protect and enhance any on-site biodiversity and geodiversity features where appropriate or provide mitigation.' This is in line with the NPPF and advice in the Residential Extensions SPD. Consequently, it is considered that a condition should be attached requiring biodiversity enhancement measures are provided integral to the proposed additional pitched roof and within the curtilage of the dwellinghouse.

PUBLIC SECTOR EQUALITY DUTY

- 6.24 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

CIL

- 6.25 The proposed development is CIL liable. The Council adopted a Community Infrastructure Levy on 25 October 2017 and began charging on all CIL liable applications approved on and from 1 October 2018. The actual amount of CIL can only be confirmed once all the relevant forms have been submitted and relevant details have been assessed and approved. Any relief claimed will be assessed at the time planning permission is granted or shortly after.

7.0 CONCLUSION

- 7.01 For the reasons set out above it is considered that the proposed conversion of double garage into residential annexe accommodation would be acceptable and would not cause significant visual harm, harm to neighbouring amenity nor would it

be unacceptable in terms of any other material planning considerations. The proposed developments are considered to be in accordance with current policy and guidance.

8.0 RECOMMENDATION

GRANT planning permission subject to the following conditions

with delegated powers to the Head of Planning and Development to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.

CONDITIONS

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

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Proposed Elevations – Drawing no. Rev 02 Rev A Received 12.09.2023
Proposed Site Plan – Drawing no. Rev 04 Rev A Received 12.09.2023
Existing and Proposed Floor Plan – Drawing no. Rev 06 Received 05.06.2023
Location Plan – Drawing no. Rev 05 A Received 05.06.2023

Reason: To clarify which plans have been approved.
- 3) The materials to be used in the development hereby approved shall be as indicated on the approved plans and application form

Reason: To ensure a satisfactory appearance to the development
- 4) The additional accommodation to the principal dwelling hereby permitted shall not be sub-divided, separated or altered in any way so as to create a separate self-contained unit; and shall only be used as ancillary accommodation to the main dwelling currently known as 46 Gleneagles Drive, Maidstone.

Reason: Its use as a separate unit would be contrary to the provisions of the development plan for the area within which the site is located
- 5) The development hereby approved shall be occupied as an annexe until details of a scheme for the enhancement of biodiversity on the site have been submitted to and approved in writing by the Local Planning Authority. The scheme shall consist of the enhancement of biodiversity through the provision integral to the new pitched roof and within the site curtilage such as bird boxes, bat boxes, bug hotels, log piles, wildflower planting and hedgehog corridors. The development shall be implemented in accordance with the approved details prior to first use of the annexe and all features shall be retained and maintained thereafter.

Reason: To enhance the ecology and biodiversity on the site in the future.
- 6) Any additional hardsurfacing indicated on the submitted site plan (Proposed Site Plan – Drawing no. Rev 04 Rev A Received 12.09.2023) shall be surfaced in a porous material, or provision made to direct run-off from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse.

Reason : In the interests of sustainable drainage and surface run off.

Case Officer: Sema Yurtman NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.



Ordnance Survey - data derived from OS Premium

23/503281/FULL - Hillside, Hayle Place, Cripple Street, Maidstone, Kent, ME15 6DW

Scale: 1:2500

Printed on: 8/9/2023 at 10:27 AM by KirstyS



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REPORT SUMMARY

REFERENCE NO: - 23/503281/FULL		
APPLICATION PROPOSAL: Erection of single storey timber framed storage structure and relocation of existing shed.		
ADDRESS: Hillside Hayle Place Cripple Street Maidstone Kent ME15 6DW		
RECOMMENDATION: GRANT – subject to planning conditions set out in Section 8.0 of the report		
SUMMARY OF REASONS FOR RECOMMENDATION: The proposal is considered to comply with Development Plan policy and the aims of the National Planning Policy Framework and there are no overriding material considerations to indicate a contrary decision.		
REASON FOR REFERRAL TO COMMITTEE: The Parish Council have objected and asked for the application to be considered by Planning Committee.		
WARD: South	PARISH/TOWN COUNCIL: Tovil	APPLICANT: Mr J Slaughter AGENT: EP Architects Ltd
CASE OFFICER: Louise Welsford	VALIDATION DATE: 19/07/23	DECISION DUE DATE: 29/09/23 (EOT date)
ADVERTISED AS A DEPARTURE: NO		

Relevant Planning History

17/501515/FULL

Construction of a detached single storey building to house swimming pool, sauna and changing facilities
Approved 19.05.2017

12/1074

Erection of a new first floor and replacement conservatory as shown on Drawings 1510.P.21, 1510.P.22 and 1510.B010 and supporting Design and Access statement received 11 June 2012
Approved 14.08.2012

11/0417

Erection of detached garage with store and entrance gates and alterations to existing vehicular access as shown on drawing no.s 1510/P02, 1510/P03 and a site location plan shown on drawing no. 1510/P01 Rev A received on 16/03/11 and Tree Survey, Arboricultural Impact Assessment and Tree protection Plan received on 12/04/11.
Approved 10.05.2011

66/0580/MK1

Erection of bungalow with double garage
Approved 01.09.1966

MAIN REPORT

1. DESCRIPTION OF SITE

1.01 This application relates to a detached dwelling, which is located in the open countryside in the parish of Tovil. The dwelling is relatively modern (built in the late 1960s and extensively extended in 2012). There is an existing detached

garage adjacent to the access and a pool house (which is partly obscured due to its design and construction built into the topography).

- 1.02 The site lies in within the Loose Valley landscape of local value and Loose Conservation Area. Land levels drop across the site and the site contains a significant number of mature trees. To the West part of the site (where the proposal primarily relates) is an area of hardstanding (tarmac) and detached shed upon it, with the hardstanding being understood to be the site of a former tennis court. This is indicated on historic OS maps dated between 1939 and 1945 and also shown on the approved plans when the host dwelling was approved in the 1960s.
- 1.03 Some of the trees on site are protected by Tree Preservation Order 23 of 1975. This is a mixed species order and includes elm, larch, horse chestnut, Spanish chestnut, beach, poplar, pine, oak, lime, cedar and birch. Other trees on site which are of sufficient size would be protected under the conservation area designation.
- 1.04 There is a local wildlife site and Ancient Woodland on Teasaucer Hill. Hayle Place is a Listed Building, the site is likely to have once been part of the grounds of the building (converted to flats in the 1960s), but now separated from for some time.

2. PROPOSAL

- 2.01 Planning Permission is sought for the erection of a detached single storey timber framed storage building and the relocation of an existing shed. Both are understood to be required for purposes ancillary to the use of the main dwelling.
- 2.02 The building would have a footprint of approximately 20.5 m in length by a depth of between 8 – 10 m. Its ridge heights would be approximately 5.1 m to the front gable and 4.6 m to the longer ridge.
- 2.03 The application confirms that no further hardstanding is proposed. The purpose of the building has been informally stated to be for the storage of cars and related equipment for ancillary use to the dwelling.

3. POLICY AND OTHER CONSIDERATIONS

Maidstone Borough Local Plan (2011-2031): DM1, DM3, DM4, DM30, DM32, SP17, SP18

Emerging Local Plan :The Regulation 22 Local Plan Review submission comprises the draft plan for submission (Regulation 19) dated October 2021, the representations and proposed main modifications. It is therefore a material consideration and attracts some weight. However, this weight is limited as although Stage 1 and 2 Hearings have recently concluded, the Plan is still in Examination. Policies LPRSP15, LPRENV1, LPRQ&D4, LPRHOU11

The National Planning Policy Framework (NPPF)

National Planning Practice Guidance (NPPG)

Supplementary Planning Documents: Residential Extensions

4. LOCAL REPRESENTATIONS : None received.

5. CONSULTATIONS

Tovil Parish Council

- 5.01 Objects to the application and requires it to be reported to Planning Committee in the event of a contrary recommendation. States that there is an assumption against development in the Valley Conservation Area, scale is inappropriate,

creation of an access would be detrimental and questions if access for vehicles across a garden is appropriate.

Maidstone Borough Council Landscape Officer

- 5.02 No objections. The addition of the building on what is an existing tarmac hardstanding is generally acceptable. Compliance with the tree protection measures should be secured as a condition.

Natural England

- 5.03 No objections. There would be no significant impact on statutorily protected nature conservation sites or landscapes. Provides standing advice.

Kent Wildlife Trust

- 5.04 No response.

Forestry Commission

- 5.05 Provides standing advice in support of retaining trees and improving biodiversity.

6. APPRAISAL

The key issues are:

- Impact upon the character and appearance of the Loose Conservation Area, the Loose Valley Landscape of Local Value and the open countryside
- Impact upon trees

Visual Impact upon the Loose Conservation Area, the Loose Valley Landscape of Local Value and the open countryside

- 6.01 The proposed building would have a significant footprint, being approximately 20.5 m in length by between 8 – 10 m in depth. However, despite this, it is considered that in this case it would have a subordinate appearance to the main house, in line with the residential extensions guidelines. The building would be single-storey only, which is in line with the guidelines, and its ridge heights of approximately 5.1 m and 4.6 m would not be excessive. Its design would be simple and functional, appropriate to a domestic outbuilding. Also, it would be positioned in a subordinate location in relation to the main house, further down the hillside, at a lower level. It is a distance from the dwelling itself, but the siting is justified given the siting of existing hardstanding, land levels and tree coverage, with the siting chosen being where visual impact and impact on trees would be minimised. (There are other important mature trees across the lawns, further from the proposed site).
- 6.02 The Parish Council have raised concern over its scale and impact upon the Loose Valley Conservation Area. However, the building would occupy a secluded location, surrounded by tree coverage, which is generally shown to be retained (see discussion regarding trees below). The specific site is not an area of any high quality character or appearance – indeed, it appears to be the former site of a tennis court which is already hard surfaced. Therefore, it is not a location which makes any positive contribution towards the special character of the conservation area or which is visually important. In any case, the simple, functional design of the outbuilding is not wholly out of keeping with an agricultural building which one might expect to find in a rural location. The finish of walls and roofs are shown to be either black or dark in colour, which would minimise their visual impact, with fenestration and rainwater goods equally being finished in black to further this end.
- 6.03 The building is not out of character with the buildings on site, because Hillside is not a building of historic character, but has a modern 20th/21st century

appearance. The proposal is not related closely enough to any listed or other historic buildings (including Hayle Place) to have any adverse effect upon them or their settings.

- 6.04 Policy does not preclude the addition of new buildings within conservation areas or landscapes of local value, but requires that such development should be appropriate and not result in harm. It is considered that, given the relatively low height of the building, the dark finish of its external materials and its secluded siting, that it would not result in any material harm to the character or appearance of the Loose Valley Conservation Area, nor to the Loose Valley Landscape of Local Value of a scale to justify a refusal. Again, given its low height and its secluded siting, it would not materially harm the openness of the countryside to justify a refusal.

Impact upon trees

- 6.05 The site contains visually important trees. Some trees are protected by Tree Preservation Order number 23 of 1975, including a rare mature cork oak, Douglas fir and 2 common limes, all graded as grade A. The site also falls within the conservation area which provides protection to other trees of the appropriate size which are not covered by the tree preservation order.
- 6.06 However, in terms of the impact upon trees, the site which has been chosen for the proposed building, and for the relocation of the shed, is an existing area of tarmac hardstanding, understood to have formerly been site tennis courts.
- 6.07 The landscape officer has visited the site and raises no objection to the application. It is considered the submitted arboricultural impact assessment, method statement and tree protection plan and is satisfied that there would be no significant harm to any important trees providing that the development is carried out in accordance with the said documents. The documents do identify some minor Crown lifting works and removal of dead wood, but these works appear to be reasonable and justified and the landscape officer does not object to these.
- 6.08 There are no tree grounds to justify refusal and the development would not appear to result in any significant harm to any trees which are of high amenity value, including those protected under the Tree Preservation Order. A condition to ensure compliance with the submitted arboricultural documents is considered appropriate and necessary.

Ecology

- 6.09 The area for the proposed development is an area of the existing hardstanding with limited works proposed to existing trees. Therefore, there are not considered to be any significant ecological issues or loss of important habitat. However, in line with development plan policy and the aims of the NPPF, this is an opportunity to secure further biodiversity enhancements by way of condition and this is considered appropriate given the scale of development.

Other Matters

- 6.10 There are no significant residential amenity issues, as the development would be well separated from neighbouring dwellings. The proposal does not adversely affect the parking provision.
- 6.11 The Parish Council have questioned the creation of an access and the issue of vehicles crossing the garden. The application confirms that no further hardstanding (which might be visually detrimental or detrimental to trees) is proposed and if an owner should choose to drive their own vehicles across their

own garden on unsurfaced land, that is an issue which is beyond the remit of planning, as they could in any case do this within the confines of their own property outside of planning. It is considered necessary and reasonable to remove permitted development rights for further hardsurfacing, this would be within the curtilage as it would be difficult to distinguish, thus enforce between hardsurfacing that would be in connection with the proposed development or otherwise.

- 6.12 The proposal lies in an area of archaeological potential, however, given the fact that the site is already hard surfaced, there are not considered to be any significant archaeological issues.
- 6.13 The NPPF, Local Plan and residential extensions SPD all seek to promote the use of renewables and energy/water efficient buildings. The proposal by its nature would be ancillary to an existing dwelling such that it would be unreasonable to seek to secure such measures which do not accord with the scale of the development. Energy efficiency can be secured through measures such construction, or renewables or water efficient for use of measures such as water butts, as such to secure such measure a condition is considered reasonable to ensure that the development incorporates appropriate measures.

PUBLIC SECTOR EQUALITY DUTY

Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

7. CONCLUSION

- 7.01 The proposed development would preserve the special character of the Loose Valley Conservation Area, together with the setting of any other designated heritage assets and the Loose Valley Landscape of Local Value. Important trees which contribute positively towards the visual amenity of both areas would be retained and the landscape officer raises no objection to the proposal on tree grounds.
- 7.02 The development is considered to comply with Development Plan policy and the aims of the NPPF. There are no material considerations which indicate a contrary decision.

8. RECOMMENDATION

GRANT planning permission subject to the following conditions

with delegated powers to the Head of Planning and Development to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.

CONDITIONS:

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

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing numbers 2008.E.01 Rev B and 2008.P.01 Rev B received on 18/08/23;

Reason: To clarify which plans have been approved and to ensure the quality of the development.

- 3) The development shall be carried out strictly in accordance with the Arboricultural Impact Assessment, Preliminary Arboricultural Method Statement and Tree Protection Plan by Rooted Arboricultural Consultancy Ltd dated 24/05/2023 and received on 19/07/23. No further tree works, other than those specified within the said document, shall be carried out without the prior written agreement of the local planning authority;

Reason: In order to protect trees which contribute positively towards the visual amenity of the Loose Valley conservation area and landscape of local value and the open countryside.

- 4) The materials to be used in the development hereby approved, including their finished colours, shall be as indicated on the approved plans unless otherwise approved in writing by the Local Planning Authority.

Reason: To ensure a satisfactory appearance to the development

- 5) The building hereby permitted shall only be used for purposes incidental to the domestic use of the related dwelling house and/or the parking of private motor vehicles and for no other purposes or use;

Reason: To prevent the introduction of commercial vehicles or uses which would cause demonstrable harm to the enjoyment of their properties by adjoining residential occupiers in the interests of visual amenity.

- 6) Notwithstanding the provisions of Schedule 2, Part 1, Class F of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no additional hardsurfacing shall be laid within the curtilage of the dwellinghouse.

Reason: In order to protect trees which contribute positively towards the visual amenity of the Loose Valley conservation area and landscape of local value and the open countryside.

- 7) No external lighting shall be installed in connection with the development hereby permitted unless full details of any such lighting have first been submitted to, and approved in writing by, the local planning authority. The development shall thereafter be carried out in accordance with the approved details;

Reason: In order to prevent undue light pollution, to preserve the character and appearance of the Loose Valley conservation area and landscape of local value, and in the interests of biodiversity.

- 8) The development hereby approved shall not commence above slab level until details for a scheme for the enhancement of biodiversity on the site shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall consist of the enhancement of biodiversity through either integrated methods into the design and appearance of the extension by means such as swift bricks, bee bricks, bat tube or bricks, or through provision within the site curtilage such as bird boxes, bat boxes, bee hotels, bug hotels, log piles,

hedgerow corridors and native planting. The development shall be implemented prior to occupation in accordance with the approved details and all features shall be maintained thereafter.

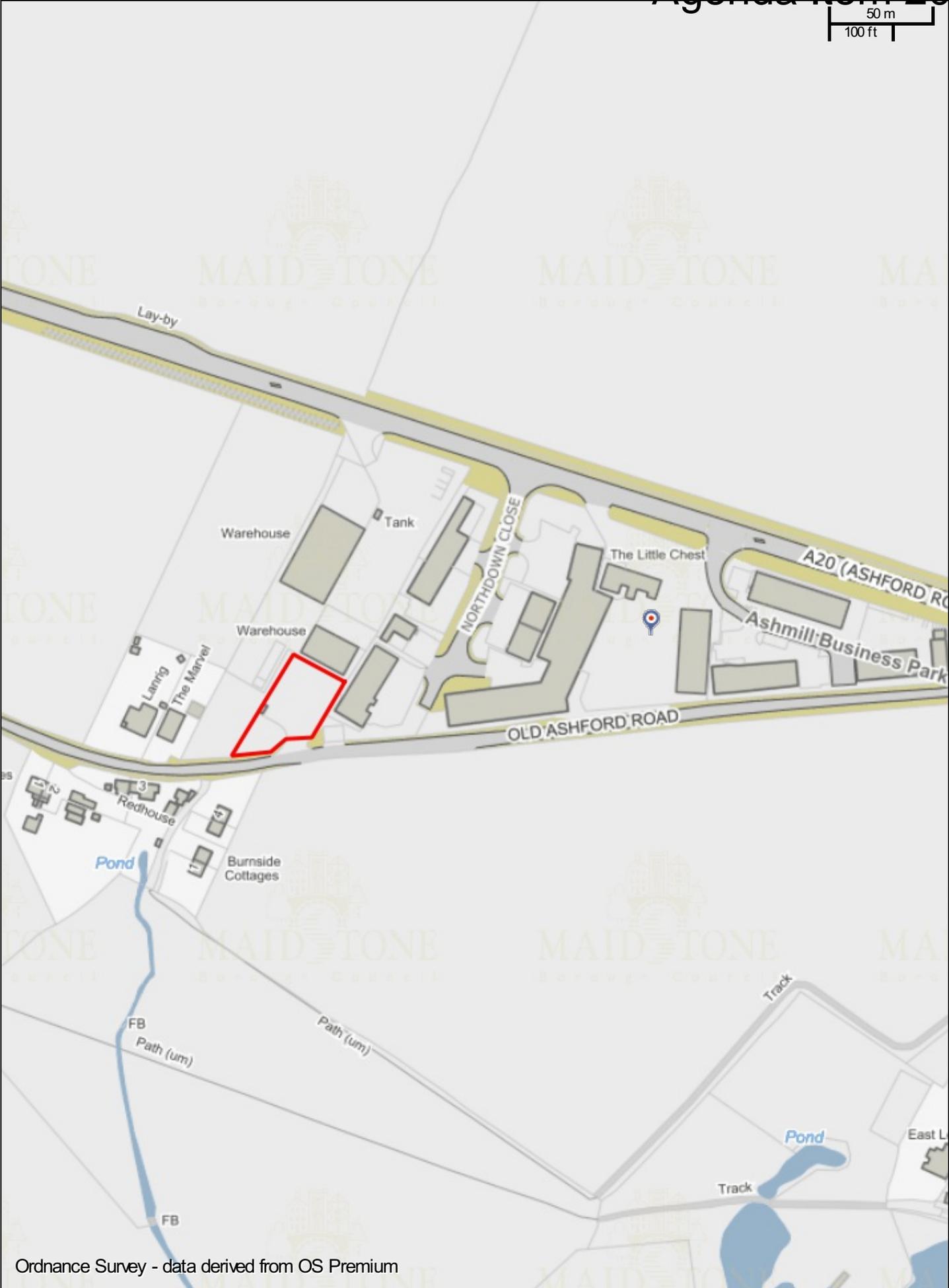
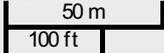
Reason: To protect and enhance the ecology and biodiversity on the site in the future.

- 9) The development shall not commence above slab level until details of how the proposal hereby approved shall be constructed to secure the optimum energy and water efficiency of the outbuilding have been submitted to and approved in writing by the local planning authority. The approved details shall be installed prior to first occupation and maintained thereafter; The details shall demonstrate that consideration has been given to incorporating small scale renewable energy generation options have been considered first and shall only be discounted for reasons of amenity, sensitivity of the environment or economies of scale, installing new energy efficient products, such as insulation, energy efficient boilers, low energy lighting shall be considered as a secondary option if the use of renewables has been demonstrated to not be appropriate.

Reason: To ensure an energy efficient form of development.

Case Officer: Louise Welsford

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.



Ordnance Survey - data derived from OS Premium

23/501294/FULL - The Coach Park, Old Ashford Road, Lenham, Kent, ME17 2DG

Scale: 1:2500

Printed on: 8/9/2023 at 10:47 AM by KirstyS



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REPORT SUMMARY

REFERENCE NO: - 23/501294/FULL		
APPLICATION PROPOSAL: Retrospective application for the erection of a tyre bay building and the laying of hardstanding.		
ADDRESS: The Coach Park Old Ashford Road Lenham Kent ME17 2DG		
RECOMMENDATION: GRANT PLANNING PERMISSION subject to conditions		
SUMMARY OF REASONS FOR RECOMMENDATION: The development is acceptable with regard to the relevant provisions of the Development Plan, the NPPF and all other material considerations such as are relevant.		
REASON FOR REFERRAL TO COMMITTEE: The application has been called in by Lenham Parish council. The reasons for committee referral are available below in section 4.		
WARD: Harrietsham And Lenham	PARISH/TOWN COUNCIL: Lenham	APPLICANT: Mrs Nertila Sinani AGENT: TSJ Drawings
CASE OFFICER: William Fletcher	VALIDATION DATE: 24/05/23	DECISION DUE DATE: 29/09/23
ADVERTISED AS A DEPARTURE: No		

Relevant planning history

18/505045/FULL

Change of use to general commercial use and car wash/valeting, with retention and erection of wash down area and valeting canopies together with ancillary structures and drainage, including plant room and sealed drainage system. (Resubmission of 18/501630/FULL) Approved 28.11.2018

23/501293/FULL

Change of use of land for the siting of mobile burger van and canopy for the provision of hot food on the forecourt. Pending Consideration.

Officer Note: Whilst the application is seeking a change of use of land, the burger van would be situated on the forecourt of what is now the carwash. The application has been submitted by the same applicant.

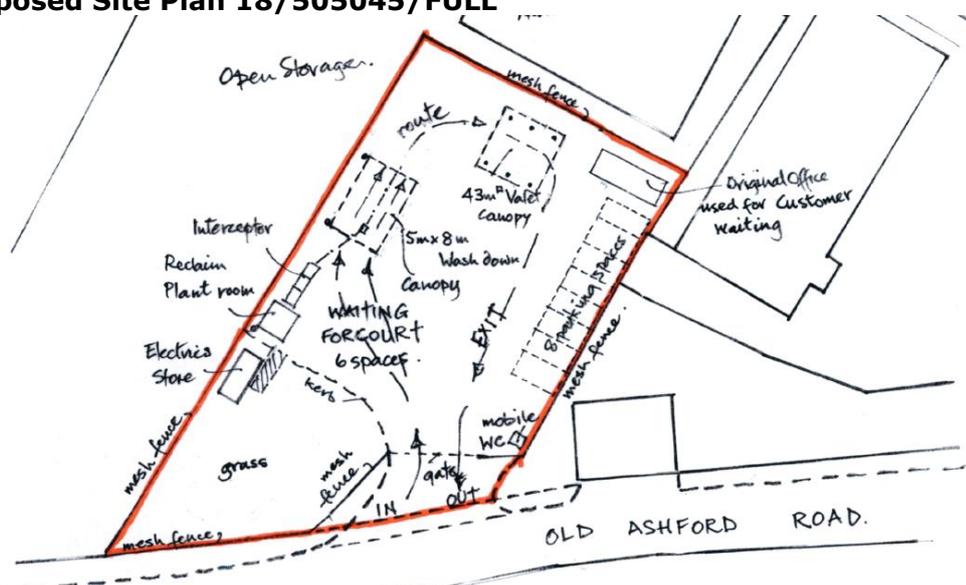
MAIN REPORT

1. DESCRIPTION OF SITE

- 1.01 In policy terms the application site is located in the countryside outside of all settlement boundaries as defined within the Maidstone Borough Local Plan.
- 1.02 The site is located on the northern side of Old Ashford Road, with a frontage onto the road. The site lies within a semi-rural area situated approximately 50m east of the settlement boundary of Lenham which the local plan designates as a Rural Service Centre. The application site is located within a minerals safeguarding area.

- 1.03 The site is served by an established gated vehicular access point from Old Ashford Road. The front boundary of the application site is formed of a metal post fence, very urban/commercial in appearance.
- 1.04 The southern boundary fronts Old Ashford Road with residential properties situated either side of the road. To the south west of the application are two-storey semi-detached residential properties which also front Old Ashford Road.
- 1.05 To the northeast of the site are warehouses which forms a part of the adjacent industrial land. However, most of the buildings are set back further away from the site with notable trees and dense vegetation screening their view from the site.
- 1.06 The site was previously used as a coach store, with vehicles parked on the hardstanding. The site has permission for the car wash use taking place which includes the canopies and various utility buildings associated with the use. The Site plan submitted with that application is depicted below.

Proposed Site Plan 18/505045/FULL



2. PROPOSAL

The application which is retrospective seeks permission for the erection of a tyre bay building and the laying of hardstanding around the building.

- 2.01 The proposed building has a maximum height of 4.1m with its pitched roof a length of 11.4m and a width of 8.7m. The external surfaces are formed of sheet metal. Approximately 150m² of hardstanding has been laid to the north and east of the building.
- 2.02 The building would be used for the changing/servicing of tyres and is related to the existing activities taking place on site.

3. POLICY AND OTHER CONSIDERATIONS

Maidstone Borough Local Plan 2017:
 SP17 Countryside
 DM1 Principle of good design
 DM30 Design principles in the countryside
 DM37 Expansion of rural business

Neighbourhood Plan Lenham Policies:
Policy D1 – Quality Design

Kent Waste and Minerals Plan (amended 2020):

The National Planning Policy Framework (NPPF):
National Planning Practice Guidance (NPPG):
Maidstone Landscape Character Assessment 2012 (Updated 2013)

Application site is located within the East Lenham Vale Landscape Character Area which is assessed as being in 'Good' condition and of 'High' sensitivity with guidelines to 'Conserve'.

The Regulation 22 Local Plan Review submission comprises the draft plan for submission (Regulation 19) dated October 2021, the representations and proposed main modifications. It is therefore a material consideration and attracts some weight. However, this weight is limited as although Stage 1 and 2 Hearings have recently concluded, the Plan is still in Examination.

4 LOCAL REPRESENTATIONS

Local Residents:

- 4.01 2 representations received objecting to the application for the following (summarised) reasons:
- Vehicle movements generated by the development.
 - Aural Impacts.

Lenham Parish Council

- 4.02 Objection for the following reasons:
- Contrary to Policy D1 [quality design] of the Lenham Neighbourhood Plan.
 - No attempt to minimise visual impact and no contribution to local visual amenity.
 - Could be better placed on the site and layout appears back to front as tyre bay building should be at the rear of the site next to the field with the wash points nearer the front.
 - Elevation materials are wrong.
 - Represents overdevelopment and overcrowding including in relation to parking and deliveries.
 - Highway safety due to overspill parking.
 - Noise impact
 - Retrospective creep application that is likely to have further future applications.
 - Support comments from neighbours.
 - If officers are minded to approve request committee determination.

4. CONSULTATIONS

KCC Minerals and Waste

- 4.01 No objection:
- no land-won minerals or waste management capacity safeguarding objections or comments.

5. APPRAISAL

- 5.01 The key issues are:
- Spatial strategy
 - Expansion of existing businesses in the countryside

- Residential amenity
- Highways
- Biodiversity

Spatial strategy

- 5.02 The starting point for assessment of all applications in the countryside is Local Plan Policy SP17. Policy SP17 states that development proposals in the countryside will only be permitted where:
- a) there is no harm to local character and appearance, and
 - b) they accord with other Local Plan policies
- 5.03 Policy SP17 does not specify an acceptable level of harm to local character and appearance and all proposals in the countryside are likely to result in some degree of harm. In this context all development outside the designated settlements does not accord with this part of SP17.
- 5.04 In certain circumstances where there is locational need for development (equestrian, rural worker dwelling agricultural buildings etc) other Local Plan policies permit development in the countryside subject to listed criteria. If development accords with one of these other Local Plan policies, this compliance I weighed against the harm caused to character and appearance with a proposal found in accordance with policy SP17 overall.
- 5.05 In this instance the building would be associated with a car wash business permitted under 18/505045/FULL as such the application benefits from consideration under policy DM37 (Expansion of existing businesses in rural areas), the 2018 application and the current application have both been submitted by the same applicant.

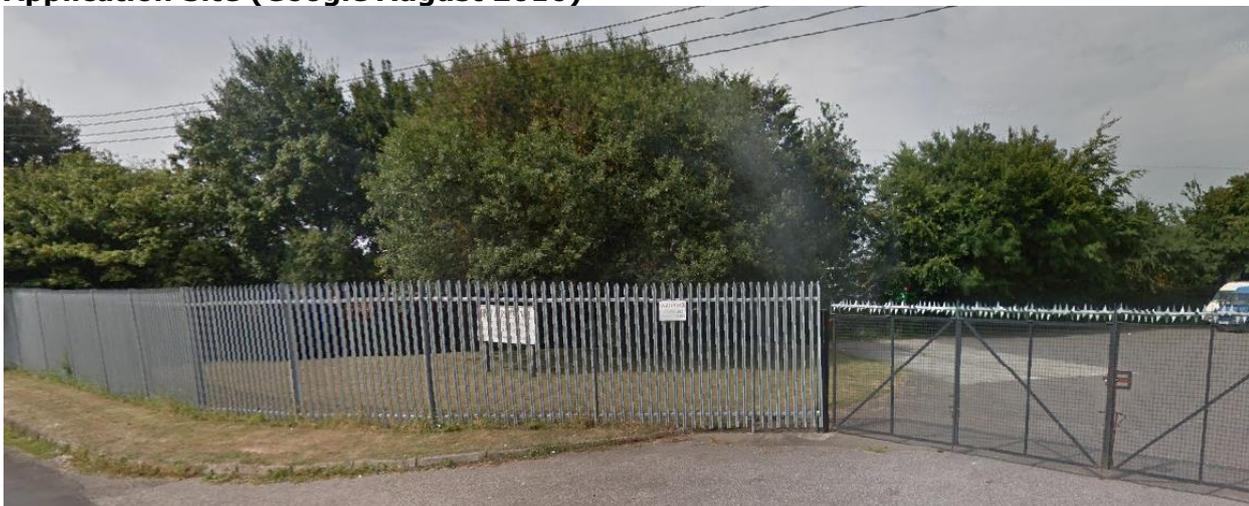
Expansion of existing businesses in the countryside/ Visual Harm

- 5.06 Policies DM1 and DM30 both seek to ensure development is well designed and makes a positive contribution to the character and appearance of the area. Policy D1 of the Lenham Neighbourhood Plan has similar objectives stating "Proposals for new development should seek to optimise the capacity of the site by responding appropriately to the scale, character, materials, grain and architectural rhythm of the existing built form.
- 5.07 Policy DM37 also has design objectives and as such an assessment of the proposals visual impact us included below as well as an assessment against each point of policy DM37.
- 5.08 The policy states that planning permission will be granted for the sustainable growth and expansion of rural businesses in the rural area where:
- New buildings are small in scale and provided the resultant development as a whole is appropriate in scale for the location and can be satisfactorily integrated into the local landscape.
- 5.09 Prior to the carwash, the site was used as a caravan storage lot. The site predominantly comprised of hardstanding with a grass verge with mature tree separating the hardstanding area from the roadside with a metal fence securing the site as depicted below.
- 5.10 In terms of the visual harm the building causes, much consideration must be given to the fact that the majority of the site is already covered in hardstanding, has metal 'industrial' fencing around the site and the building which is functional in

appearance would be seen in context of this. It is not clear when the fencing has been added to the site but photos available indicate at least since 2009.

- 5.11 It is accepted that visually this fencing and building are poor, but, whilst the distance between the application site and residential buildings to the west is small (perhaps 20m), there is a change in character between these locations and the application site is resolutely commercial in character which is where the building would be situated.

Application Site (Google August 2016)



- 5.12 The development has now removed this tree, erected a building on top of this grass verge and laid hardstanding over the remainder of this grass verge, as depicted below.

Application Site (March 2023)



- 5.13 Views of the building from the west (from the neighbouring residential dwellings) are obscured by existing landscaping. When viewed from the east the building is seen in context with the industrial/commercial buildings to its north with these buildings clearly in the backdrop. When considering the existing, lawful, commercial uses taking place on site and its current character, dominated with hardstanding and functional buildings and boundary treatments it is not assessed that the development causes such a level of harm to the character of the area that a refusal would be warranted on visual harm.

The increase in floorspace would not result in unacceptable traffic levels on nearby roads or a significant increase in use of an existing substandard access.

5.14 The development utilises an existing access which is adequate. There is already a car wash operating on site, it does not seem unreasonable to suggest that vehicles most likely to use the site will be ones associated with the industrial site to the north, rather than customers specifically travelling to use the site.

5.15 Conditions will be imposed requiring the applicant to submit a site management scheme which will include details of traffic management on site.

The new development, together with the existing facilities, will not result in an unacceptable loss in the amenity of the area. In particular the impact on nearby properties and the appearance of the development from public roads will be of importance.

5.16 When considering the existing car wash use taking place on site it is not assessed that the tyre bay would result in such a detrimental increase in any existing aural impacts that a refusal would be warranted on this basis alone. Conditions can be imposed restricting the hours of use, as well as restricting the noise of equipment on site similar to the car wash operating on site. The development would not result in any loss of privacy. The visual impact of the development is assessed above.

No open storage of materials will be permitted unless adequately screened from public view throughout the year.

5.17 Conditions can be imposed to ensure tyres are not stored outside.

Residential amenity

5.18 Policy DM1 requires development to safeguard the amenity of neighbouring properties.

5.19 The closest neighbouring properties are approximately 30m away to the west and south of the application building. Environmental Health consultees did not object to the car wash development on the basis of aural impacts only requesting a condition restricting the noise generated by equipment on site.

5.20 When considering the existing background noise from the car wash and conditions which could be imposed it is not assessed that the development would result in such a significantly harmful intensification of any existing impacts that a refusal would be warranted on these grounds.

5.21 Representations have been raised raising concerns relating to aural harm of the development. Neighbouring properties are some distance from the development, and on this basis the application is not assessed as being causing a loss of privacy, or loss of amenity otherwise to neighbouring properties.

Highways

5.22 The application site consists of a significant amount of hardstanding and is served by an existing access. There would be adequate space to park vehicles on site, it is not assessed that the development would cause highways harm from the movement of vehicles onto and off the site.

Biodiversity

5.23 When considering the extent of hardstanding on site it is not assessed that the application site had any significant biodiversity value. The development appears to

have resulted in the loss of a grass covered area towards the front of the site and possibly the loss of a tree on site, although this tree was not depicted on plans submitted with 18/505045/FULL and may have been removed some time ago.

- 5.24 When considering the use on site it is unlikely to be suitable for any significant biodiversity enhancements. There may be some scope for additional landscaping at the southwestern corner of the site which would provide further screening when viewed from the south west, the hardstanding to the east of the building could also be removed and replaced with planting, plans do not indicate this is parking space.

PUBLIC SECTOR EQUALITY DUTY

- 5.25 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

6. CONCLUSION

- 6.01 When considering the character of the application site and the activities taking place on site as well as the surrounding commercial uses it is concluded that the development would not result in harm to the character and appearance of the area.
- 6.02 Subject to conditions it is concluded that the development would not cause harm to the amenity of neighbouring occupants.
- 6.03 It is concluded that the development would not cause harm to the wider highway network.
- 6.04 When considering the activities taking place on site and the extent of hard surfaces it is concluded that the development does not results in any biodiversity harm.
- 6.05 The development is acceptable with regard to the relevant provisions of the Development Plan, the NPPF and all other material considerations such as are relevant. A recommendation of approval is therefore made on this basis, subject to the suggested conditions.

7. RECOMMENDATION

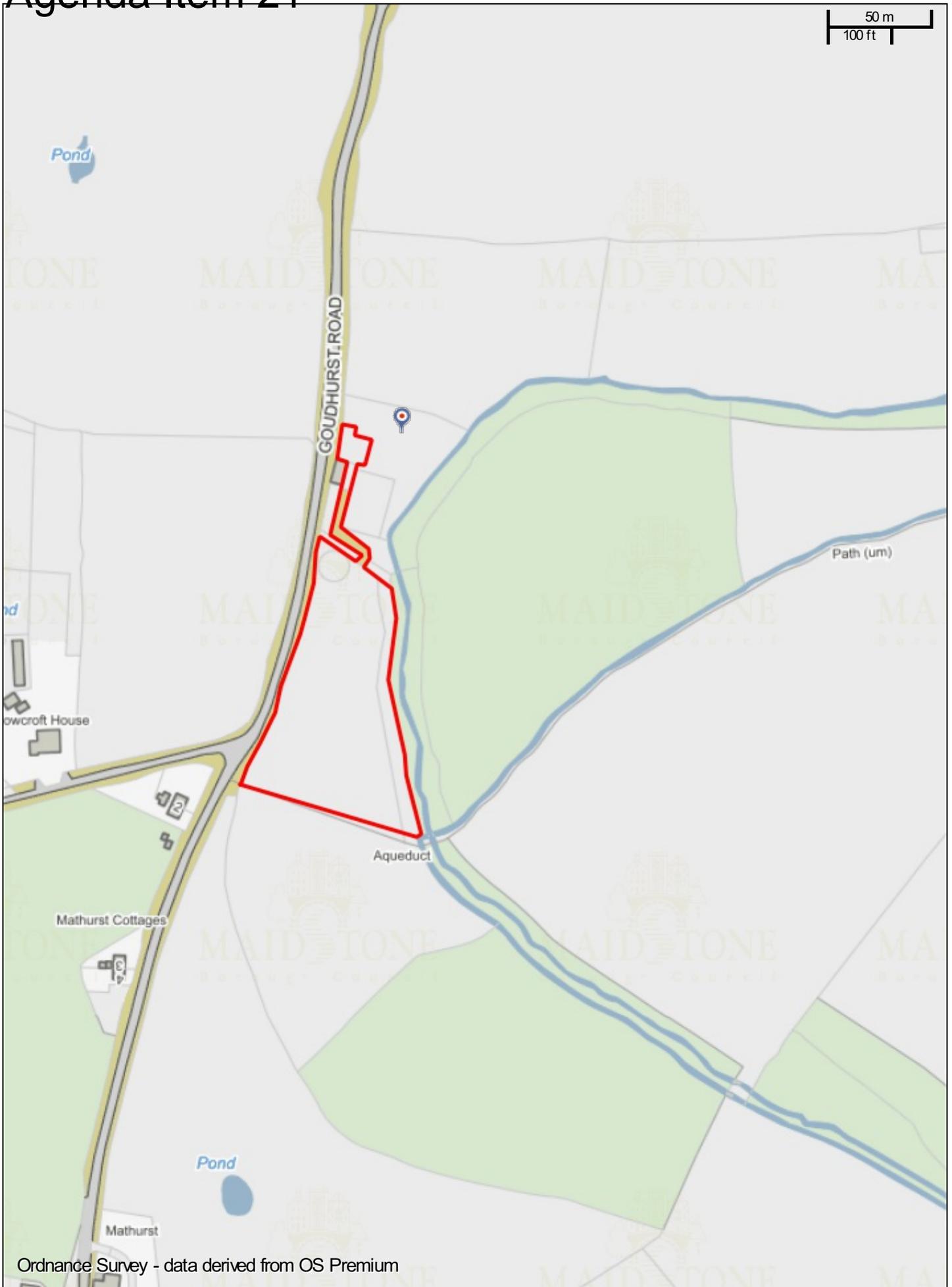
GRANT PLANNING PERMISSION subject to the following conditions

- 1) The development shall be carried out in accordance with the following approved plans and documents.
Application for planning permission
23/1210/HD/01 Rev D Existing Site Location and Block Plan
23/1210/HD/11 Rev A Site Location and Proposed Block Plan
23/1210/HD/12/1 Rev A Proposed Roof Plan
23/1210/HD/13 Rev A Proposed Front and Rear Elevations
23/1210/HD/13/LR Rev B Proposed Left and Right Side Elevations
23/1210/HD/12 Rev C Proposed Ground Floor Plan
Reason: To ensure the development is carried out to an acceptable visual standard.
- 2) The tyre bay hereby approved shall not be open for customers outside the hours of 09:00-18:00 Monday - Saturday and 10:00 - 16:00 on Sundays and Bank Holidays.
Reason: To safeguard the enjoyment of their properties by adjoining residential occupiers.
- 3) The rating level of noise emitted from the proposed plant and equipment to be installed on the site (determined using the guidance of BS 4142 : 2014 Rating for industrial noise affecting mixed residential and Industrial areas) shall be 5dB below the existing measured background noise level LA90, T. Reason: In the interests of aural amenity.

- 4) Any external lighting installed on the site (whether permanent or temporary) shall be in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. The submitted details shall be in accordance with the Institute of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Lighting, GN01, dated 2011 (and any subsequent revisions) and follow the recommendations within Bat Conservation Trust's 'Guidance Note 8 Bats and Artificial Lighting', and shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles) and an ISO lux plan showing light spill. The development shall thereafter be carried out in accordance with the subsequently approved details and maintained as such thereafter. Reason: To safeguard the character and appearance of the countryside and in the interests of residential amenity and wildlife.
- 5) The use hereby permitted shall cease and all structures, equipment, and materials brought onto the land for the purposes of such use shall be removed and the land restored to its condition before the development took place within 6 weeks of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
- i) Within 6 weeks of the date of this decision a Site Development Scheme, hereafter referred to as the 'Scheme', shall have been submitted for the written approval of the Local Planning Authority. The Scheme shall include details of:
 - a) The extent of hardstanding.
 - b) existing external lighting on the boundary of and within the site.
 - c) details of existing landscaping and details of soft landscape enhancements, specifically planting to the south west and south east of the Tyre Bay building in order to screen the building from Old Ashford Road.
 - d) details of the measures to enhance biodiversity at the site, specifically bird boxes and other habitats installed around the site boundaries; and,
 - e) a timetable for implementation of the scheme including a) to e) with all details implemented in accordance with the agreed timetable and all details retained for the lifetime of the development.
 - ii) Within 11 months of the date of this decision the Scheme shall have been approved by the Local Planning Authority or, if the Local Planning Authority refuse to approve the Scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted Scheme shall have been approved by the Secretary of State.
 - iv) The approved Scheme shall have been carried out and completed in accordance with the approved timetable and thereafter maintained and retained as approved.
- Reason: To ensure the visual amenity, character, and appearance of the open countryside location.

NB: For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.

Agenda Item 21



Ordnance Survey - data derived from OS Premium

REPORT SUMMARY

REFERENCE NO: - 23/503100/FULL		
APPLICATION PROPOSAL: Change of use from equestrian to dog exercise area and erection of stock fencing.		
ADDRESS: Lovehurst Paddock Goudhurst Road Staplehurst Tonbridge Kent TN12 0HQ		
RECOMMENDATION: GRANT PLANNING PERMISSION subject to planning conditions in Section 8 of this report and subject to no new material considerations being raised because of the departure press notice expiring on the 12 th October 2023.		
SUMMARY OF REASONS FOR RECOMMENDATION:		
<ul style="list-style-type: none"> • The proposal is acceptable in relation to the minimal level of harm that will be caused to the character and appearance of this rural area. The proposal is acceptable in relation to neighbour amenity and the access and parking arrangements are all acceptable. • The application brings a vacant equestrian site back into beneficial use and supports the aims of NPPF and the Local Plan in achieving a prosperous rural economy. • It is concluded that these material considerations indicate that planning permission should be approved. 		
REASON FOR REFERRAL TO COMMITTEE: The application is a departure from the development plan.		
WARD: Staplehurst	PARISH/TOWN COUNCIL: Staplehurst	APPLICANT: Mrs D Leyland AGENT: CLM Planning
CASE OFFICER: Chloe Berkhauer-Smith	VALIDATION DATE: 12/07/23	DECISION DUE DATE: 29/09/23
ADVERTISED AS A DEPARTURE: Yes		

Relevant Planning History

04/0513: Change of use of agricultural land for the keeping of horses and erection of a block of two stables, tack room and adjoining hay store as shown on drawing numbers A3 plans and elevations and A4 site location plan received on 10/03/04. Refused 07.05.2004 for the following reasons:

The proposed development provides inadequate supervision/security arrangements for the horses in that the application site is physically remote from the owner's dwelling, contrary to policy ENV46 (part 7) of the Maidstone Borough-Wide Local Plan 2000.

An appeal against refusal of 04/0513 allowed the permission to be granted. The appeal inspector noted that the main issue was the appropriateness of the site for the proposed building. The appeal inspector concluded:

While I understand the Council's concern, I have assessed the application before me on its own merits. In particular, I have had regard to the scale of the proposal and to the fact that the Council would have control over any future applications affecting the site. In the light of these considerations. I conclude that it would not, subject to appropriate conditions, be contrary to the objectives of the quoted policy to grant permission for the building.

09/0606: An application to discharge conditions relating to MA/04/0513 - (Change of use of agricultural land for the keeping of horses and erection of a block of two stables, tack room and adjoining hay store) being details of Condition 4 as shown on drawing no. PLAN 2 received 04/06/09 Approved 05.06.2009

16/502801/FULL: Construction of sand school Approved 22.06.2016

MAIN REPORT

1. DESCRIPTION OF SITE

- 1.01 The site is located within the open countryside as defined in the Local Plan. It is situated to the south-west of the Staplehurst settlement boundary. The site has no special landscape designation. The lawful use of the land is equestrian as approved by the allowed appeal on application 04/0513.
- 1.02 The site has an existing vehicular access to Goudhurst Road in the centre of the western boundary. There is an existing area of hardstanding adjacent to the existing access, the rest of the site is open land (approx. 0.8 hectares). Also within the applicants ownership but not part of this application is a stable block adjacent to the entrance situated to the south, a sand school located to the south of the entrance and an open field (approx. 1.4 hectares) to the north of the entrance.
- 1.03 The site is bound by a high hedgerow to the west where the site adjoins Goudhurst Road. To the east the site is bound woodland, to the north it is bound by a hedgerow and to the south there is existing stock fencing along the boundary. There is a public right of way (KM318) which runs parallel to the southern boundary.

2. PROPOSAL

- 2.01 This application seeks the change of use from equestrian to dog exercise area and erection of stock fencing.
- 2.02 A 1.8m high stock fence is proposed along the western boundary of the site. This fence will match the existing stock fence situated along the eastern and southern boundaries. Parking provision is included within the site.
- 2.03 The applicant states: *"The proposal is to use the southern part of the site for the exercising of dogs in a secure environment. Dog walkers would be able to rent the field for dog exercising at hourly intervals during the day on an appointment only basis. It is envisaged that the field would be available 7 days a week during daylight hours.*

Not more than 3 dogs would exercise in the field at any given time. The existing hard stand near the site's entrance would be used for customer parking. A 1.8m high stock fence is proposed along the site's frontage set alongside the existing stock fence behind the established frontage planting. The proposed fence would match the height and appearance of the stock fence on the other boundaries of the field."

3. POLICY AND OTHER CONSIDERATIONS

Maidstone Borough Local Plan (2011-2031):

SS1: Maidstone Borough spatial strategy

SP17: Countryside

SP21: Economic development

DM1: Principles of good design

DM3: Natural environment

DM23: Parking standards

DM30: Design principles in the countryside

Maidstone Borough Council – Local Plan Review, draft plan for submission (Regulation 22) dated October 2021.

The Regulation 22 draft is a material consideration however weight is currently limited, as it is the subject of an examination in public that commenced on the 6 September 2022 (Stage 2 concluded on the 9 June 2023). The relevant policies in the draft plan are as follows:

LPRSS1 Maidstone Borough Spatial Strategy

LPRSP9 Development in the Countryside

LPRSP11 - Economic development
LPRSP12 - Sustainable transport
LPRSP14 - Environment
LPRSP14(A) - Natural environment
LPRSP15 - Principles of good design
LPRTRA2 - Assessing transport impacts
LPRTRA4 - Parking
LPRQ&D 4 Design principles in the countryside

Neighbourhood Plan: Staplehurst Neighbourhood Plan 2016

The National Planning Policy Framework (NPPF):

National Planning Practice Guidance (NPPG):

4. LOCAL REPRESENTATIONS

- 4.01 32 representations were received. 30 in support of the application and 2 objections raising the following (summarised) issues:
- Flooding and boggy and therefore not fit for purpose.
 - Highway safety concerns
 - There are numerous dog walking facilities within the area, the addition of another is unnecessary.

5. CONSULTATIONS

(Please note that summaries of consultation responses are set out below with the response discussed in more detail in the main report where considered necessary)

Staplehurst Parish Council

- 5.01 No objection. Councillors recommend that the application be approved, but do not request the application to be referred to MBC Planning Committee.

KCC Rights of Way

- 5.02 No objection. The Public Right of Way Footpath KM318 runs to the south of the application site. The applicant is advised that no works can be undertaken on the Public Right of Way without express consent of the Highways Authority.

6. APPRAISAL

- 6.01 The starting point for assessment of all applications in the countryside is Local Plan Policy SP17. Policy SP17 states that development proposals in the countryside will only be permitted where:
- a) there is no harm to local character and appearance, and
 - b) they accord with other Local Plan policies
- 6.02 Policy SP17 does not specify an acceptable level of harm and all proposals in the countryside are likely to result in some harm to local character and appearance. In this context all development outside the designated settlements does not accord with this part of SP17.
- 6.03 Other Local Plan policies permit development in the countryside in certain circumstances and subject to listed criteria. The earlier application (04/0513) for the existing stables on the application site if submitted now would be considered against criteria in policy DM41 equestrian development. If development accords with one of these other Local Plan policies, this compliance is weighed against the harm caused to character and appearance with a proposal assessed against policy SP17 overall.
- 6.04 The application does not involve the conversion of agricultural land to domestic garden so DM33 is not relevant. Nor does it involve the expansion of an existing business on the application site so policy DM37 is not relevant.

- 6.05 The proposal will result in harm to the character and appearance of the countryside and there are no Local Plan policies that support the application. The recommendation to grant planning permission would be a departure from the adopted Local Plan.
- 6.06 The National Planning Policy Framework (NPPF) highlights that the planning system is plan-led. The NPPF reiterates The Town and Country Planning Act 1990 and The Planning and Compulsory Purchase Act 2004, which require by law that planning applications “must be determined in accordance with the development plan, unless material considerations indicate otherwise”.
- 6.07 The relevant material considerations in this case include assessing the impact of the proposal in the following areas:
- Character and appearance
 - Residential amenity
 - Parking, access, highways and site location
 - Rural economy
 - Other matters

Character and appearance

- 6.08 Supporting text to policy SP17 advises “The countryside has an intrinsic character and beauty that should be conserved and protected for its own sake”.
- 6.09 In the Council’s published Landscape Character Assessment, the application site is just within the boundary of Knoxbridge Arable Lowlands which is part of the wider Lower Weald landscape. The summary of actions within this area are as follows:
- Conserve the pastoral land and resist conversion to arable land
 - Conserve and enhance the small scale field pattern and sense of enclosure, encouraging restoration of historic field boundaries with new plantings
 - Conserve the archaeological features throughout this landscape, and their rural setting.
 - Soften the visual prominence of large agricultural buildings through native planting and encourage native hedgerows around commercial and housing developments.
 - Enhance habitat opportunities around water bodies and ditches by creating and managing a linked.
- 6.10 The application site has a lawful equestrian use with an existing parking area and vehicular access in the centre of the western boundary. The site is screened from Goudhurst Road by mature landscaping (as shown in the image below). A Public Right of Way (PROW KM318) runs parallel along the southern boundary of the site.



View looking towards the western boundary.

- 6.11 The application incorporates a new 1.8m high fencing along the western site boundary. The style and height of the proposed fencing would match that of the existing fencing found along the other perimeters of the site which is also 1.8m in height. The new fencing would be of a timber and metal wire mesh construction. Views of the proposed fencing from the PROW would be visible, however, the open mesh design of the fencing ensures that the visual impact is minimal, and the proposed fencing would be screened from the road by existing mature vegetation along the western boundary.
- 6.12 The proposal only seeks the change of use of the land and the erection of a 1.8m high stock fence along the western boundary and would not incorporate the conversion or addition of any buildings on site. The proposal therefore would involve minimal physical changes to the existing site. The open nature of proposed stock fencing ensures minimal visual impact, and it would match the existing fencing on site. Furthermore, it would be screened from the road by existing vegetation to the boundaries. I am therefore satisfied that the proposal would be visually acceptable.

Residential amenity

- 6.13 Local Plan policy DM 1 states that proposals will be permitted which create high quality design and where they respect the amenities of occupiers of neighbouring properties. Development should not result in, excessive noise, vibration, odour, air pollution, activity, or vehicular movements, overlooking or visual intrusion. Built form should not result in an unacceptable loss of privacy or light enjoyed by the occupiers of nearby properties.
- 6.14 The nearest residential properties are No.1 and 2 Mathurst Cottage, Goudhurst Road which are situated approximately 28m south-west of the site. The application site and these dwellings are separated by Goudhurst Road and mature landscaping on the application site. Given the nature of the application, whereby the proposal seeks a change of use of the land and no buildings are proposed to be added, I do not consider the proposal will result in any adverse impact on residential amenity in terms of a loss of light or overshadowing, or a loss of privacy or overlooking.
- 6.15 Other potential sources of nuisance would be noise. The applicant has stated "*Dog exercising can generate noise through dogs barking. Any one time, there would be up to 3 dogs exercising in the field. The nearest residential properties are located some 30m from the nearest part of the field. At this distance, any noise that may be generated by dogs exercising is unlikely to cause a nuisance to the occupants of those properties. In any event, the limited number of dogs exercising in the field are unlikely to concentrate their activity in one particular part of the site, particularly the furthest section of the field from the field's access*".
- 6.16 Overall, the proposal will not result in any significant adverse effects to the residential amenity of any neighbouring properties.

Parking, access, highways and site location

- 6.17 The NPPF states that planning decisions "...should recognise that sites to meet local business...needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. In these circumstances it will be important to ensure that development ... does not have an unacceptable impact on local roads...".
- 6.18 Whilst outside of a settlement, Staplehurst train station is 7 minutes by car from the site. In addition, due to the nature of the use it would be difficult to find a site in a settlement with the benefit of the large area of open space for dog exercising that this site offers.

- 6.19 There is an existing access for the site located in the centre of the western boundary. The access has good visibility onto Goudhurst Road and would be suitable for the limited increase in use considering no more than 3 dogs would exercise in the field at any given time.
- 6.20 The car parking standards for non-residential uses set out in Supplementary Planning Guidance SPG 4 Kent Vehicle Parking Standards July 2006. These standards are generally set as maximum (not minimum) and there is no standard provided for the proposed use (sui generis). However, although not directly relevant to this application, the SPG sets out that for outdoor sports facilities or playing fields there should be 1 space per 2 participants.
- 6.21 There is an existing parking and turning area which can accommodate visitor's cars with sufficient turning space to allow vehicles to leave the site in forward gear. The submitted proposed site plan indicates that there would be 2 visitor parking spaces. Given no more than 3 dogs would use the site at any given time, I am satisfied that there would be sufficient parking at the site to accommodate the proposal.
- 6.22 Local Plan policy DM1 states that proposals will be permitted, where they can safely accommodate the associated vehicular and pedestrian movement on the local highway network and through the site access.
- 6.23 The proposed change of use would likely increase vehicular activity at the site, given the proposal would not incorporate any more than 3 dogs using the field at any given time and the use of the field would be on an appointment only basis, I do not consider the proposal to significantly increase trip generation to the site.
- 6.24 The NPPF states "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe (Paragraph 111)". It is concluded that the impact of the application on highway safety will be acceptable and the impact on the road network will not be 'severe'. The impact of the proposal is found to be acceptable.

Rural economy

- 6.25 Guidance in the National Planning Policy Framework is a material planning consideration. Under the heading "Supporting a prosperous rural economy" the NPPF states planning decisions "...should enable the sustainable growth and expansion of all types of business in rural areas...through conversion of existing buildings".
- 6.26 Although not directly relevant, Local Plan policies SP21 and DM37 (no existing business) are generally supportive of proposals for economic development in the countryside. With the nature of the use and the space required for dogs to be exercised, it would be difficult to find a suitable site for this use in a settlement.

Other matters

- 6.27 Concerns have been received regarding flooding at the site. The application site is within Flood Zone 1 which is the lowest risk of flooding.
- 6.28 Furthermore, the NPPF Annex 3: Flood risk vulnerability classification sets out that development such as amenity open space, nature conservation and biodiversity and outdoor sports and recreation are all considered to be water-compatible development. I therefore do not consider the proposal to result in any issues in terms of flooding.

PUBLIC SECTOR EQUALITY DUTY

- 6.29 Due regard has been had to the Public Sector Equality Duty, as set out in Section 149 of the Equality Act 2010. It is considered that the application proposals would not undermine objectives of the Duty.

7. CONCLUSION

- 7.01 The National Planning Policy Framework (NPPF) reiterates The Town and Country Planning Act 1990 and The Planning and Compulsory Purchase Act 2004, which requires by law that planning applications “must be determined in accordance with the development plan, unless material considerations indicate otherwise”.
- 7.02 The proposal will result in harm to the character and appearance of the countryside contrary to policy SP17 and there are no Local Plan policies that directly support dog exercise uses. In this context as the application is not in accordance with the adopted Local Plan, it needs to be determined as to whether there are other material considerations that justify granting planning permission.
- 7.03 The application involves a change of use of land that is currently in equestrian use. The proposal is found to be acceptable in relation to the minimal level of harm that will be caused to the character and appearance of this rural area. The proposal is acceptable in relation to neighbour amenity and the access and parking arrangements are all acceptable. A planning condition will require a further application for the display of any advertisements or signs.
- 7.04 The application brings a vacant equestrian site back into beneficial use and supports the aims of NPPF and the Local Plan in achieving a prosperous rural economy.
- 7.05 It is concluded that whilst the application is not in accordance with the development plan (a departure) these material considerations that have been outlined and the minimal level of harm indicate that planning permission should be approved.

8. RECOMMENDATION GRANT PLANNING PERMISSION subject to the following conditions with delegated powers to the Head of Planning and Development to be able to settle or amend any necessary planning conditions in line with the matters set out in the recommendation and as resolved by the Planning Committee.

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

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
Fence Plan and Elevation – Drawing No. LPS/5 – Received 04/07/2023
Covering Letter and Supporting Statement – Received 04/07/2023
Location of Block Plans – Received 12/07/2023
Proposed North Block Plan – Drawing No. LPS/3 – Received 12/07/2023
Proposed South Block Plan – Drawing No. LPS/4 – Received 12/07/2023
Tree Survey – Received 12/07/2023

Reason: To clarify which plans have been approved.

- 3) Any external lighting installed on the site (whether permanent or temporary) shall be in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. The submitted details shall be in accordance with the Institute of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Lighting, GN01, dated 2011 (and any subsequent revisions) and follow the recommendations within Bat Conservation Trust's 'Guidance Note 8 Bats and Artificial Lighting', and shall include a layout plan with beam orientation and a schedule of light equipment proposed (luminaire type; mounting height; aiming angles and luminaire profiles) and an ISO lux plan showing light spill. The

development shall thereafter be carried out in accordance with the subsequently approved details and maintained as such thereafter.

Reason: To safeguard the character and appearance of the countryside and in the interests of residential amenity and wildlife.

- 4) The use shall only accommodate a maximum of 3 dogs at any one time and the land shall be used for as a dog care facility only and for no other purpose (including any other purpose in Classes E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 or permitted under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any statutory instrument revoking and re-enacting those Orders with or without modification).

Reason: Unrestricted use of the land could potentially cause harm to the character, appearance and functioning of the surrounding area and/or the enjoyment of their properties by adjoining residential occupiers.

- 5) Prior to commencement of the approved use, the approved parking areas shall be provided, kept available for such use, and permanently retained.

Reason: To ensure that adequate off street car parking space is provided.

- 6) Prior to the commencement of the approved use, further details of the new fencing shall have been submitted to and approved in writing by the local planning authority. The details shall include:

* a layout plan indicating the location of the new fencing including post locations in relation to existing trees and hedges.

* measures taken to allow the passage of wildlife.

The fencing shall be constructed in accordance with the approved details and maintained as such thereafter.

Reason: To ensure a satisfactory appearance to the development.

- 7) Notwithstanding the provision of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 no advertisements or signage shall be displayed at the site without the consent of the local planning authority.

Reason: To safeguard the character and appearance of the surrounding area.

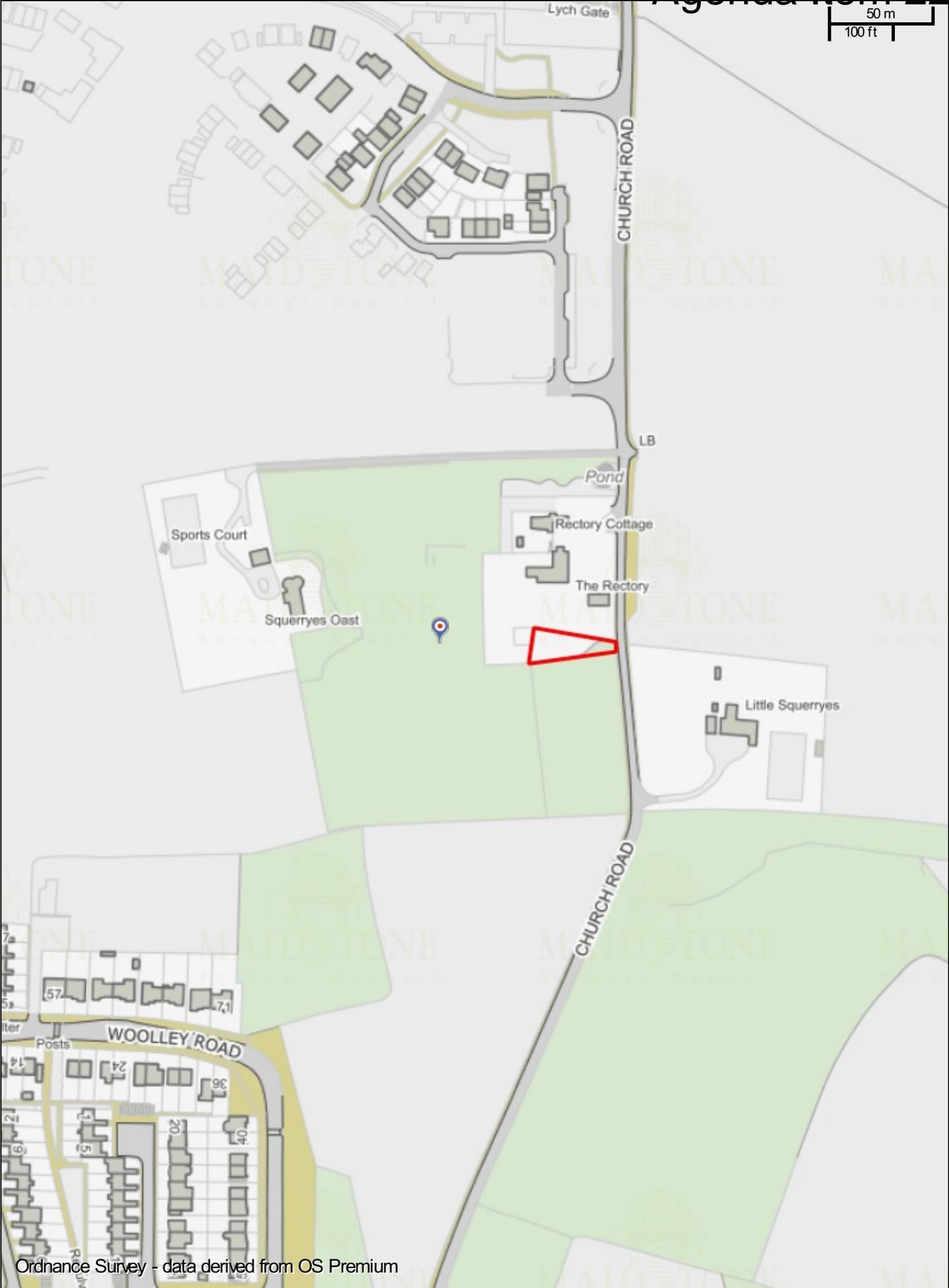
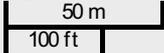
INFORMATIVE

The applicant is advised that no works can be undertaken on a Public Right of Way without the express consent of the Highways Authority. In cases of doubt the applicant should be advised to contact this office before commencing any works that may affect the Public Right of Way. Should any temporary closures be required to ensure public safety then this office will deal on the basis that:

- The applicant pays for the administration costs.
- The duration of the closure is kept to a minimum.
- Alternative routes will be provided for the duration of the closure.
- A minimum of six weeks notice is required to process any applications for temporary closures.

This means that the Public Right of Way must not be stopped up, diverted, obstructed (this includes any building materials or waste generated during any of the construction phases) or the surface disturbed. There must be no encroachment on the current width, at any time now or in future and no furniture or fixtures may be erected on or across Public Rights of Way without consent.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.



Ordnance Survey - data derived from OS Premium

REPORT SUMMARY

CASE REFERENCE: 5005/2023/TPO	
ADDRESS: Otham Glebe, Church Road, Otham, Kent ME15 8SB	
RECOMMENDATION: Confirm Tree Preservation Order No. 5005/2023/TPO with MODIFICATION as per the attached Order.	
SUMMARY OF REASONS FOR RECOMMENDATION: The Council considers that the tree or trees contribute to amenity and local landscape character, and it is expedient to make a Tree Preservation Order (TPO).	
REASON FOR REFERRAL TO COMMITTEE: An objection was received to the making of the TPO	
PARISH: Downswood and Otham	WARD: Downswood and Otham
CASE OFFICER: Paul Hegley	SITE VISIT DATE: 13/04/2023
PROVISIONAL TPO MADE: 13.04.2023	PROVISIONAL TPO EXPIRY: 13.10.2023
PROVISIONAL TPO SERVED: 14.04.2023	TPO OBJECTION EXPIRY: 13.06.2023

RELEVANT PLANNING HISTORY

Planning:

Pre-application 21/504121/PAMEET

Enforcement:

NONE

Appeals:

NONE

MAIN REPORT

1. INTRODUCTION AND BACKGROUND

- 1.01 The Maidstone Borough Council made the provisional Tree Preservation Order No. 5005/2023/TPO on the 13.04.2023, which is attached.
- 1.02 The site has been subject to two previously unconfirmed TPO's (ref: 5003/2021/TPO & 5003/2023/TPO) both of which were made as area orders protecting only the trees present at the time regardless of their size, age or condition. The previous lapsed TPO's were requested by local Cllrs following the sites submission within the Council's call for sites allocation of December 2020.

- 1.03 Following a more detailed assessment of the site the current TPO subject to this report now categorizes the trees as either individuals, groups or Woodlands giving a greater level of protection than the previously lapsed area orders.

2. DESCRIPTION OF TREES

- 2.01 The TPO protects 15 individual trees growing towards the centre, northern and southern boundaries, 2 groups towards the western boundary a small block of woodland along the western boundary and a larger area of woodland towards the south-eastern corner.
- 2.02 The majority of the protected individual trees are of young age having established over the years as self-sown specimens. The most prominent of the individual trees is an English Oak growing towards the centre of the site. The Oak displays veteran characteristics and as such is listed on the Woodland Trust Ancient Tree Inventory as ID 172227.

3. OBJECTIONS

- 3.01 One objection was received to the making of the TPO, which has been summarised below.
- 3.02 Objections Summary:

Concerns raised include:

- The owners have worked closely with Maidstone Borough Council to ensure that those trees worthy of retention or transplanting are protected as the land is brought back into productive agricultural use. The privately owned agricultural land has been the subject of a succession of agricultural tenancies and after a fallow period has, this year, been cleared of brambles and is currently being enclosed with stock-proof fencing. The resumption of agricultural use does not need planning permission. Some trees are worthy of protection in situ, but others should either be pruned and transplanted or simply removed.
- The owners agree to the retention of the following trees/groups/woodlands: T1, T5, T7, T8, G1, W1, W2.
- Trees that should be relocated i.e., saplings to be transplanted in the Autumn: T2, T3, T4, T6, T9, T10, T14, T15.
Several of these young trees will need expert pruning to give them a healthy future.
- Trees that should be removed:
T11, T12 and T13.
The owners' arborist categorised these as "C" under BS5837 i.e., of low-quality value.
- In 2020, as part of the Local Plan Call for Sites, the Local Planning Authority assessed the site as available, suitable for housing development and achievable. In assessing the site as suitable for 27 houses, allowance was made for some 0.86 hectares (2.1 acres) of trees/woodland. Retention of T11, T12 and T13, which are of poor quality and low value would sterilise the access and therefore the development potential of the land. The fact that it is not currently intended for development is not a valid planning reason to sterilise a site that is available, suitable for sustainable development and achievable, and which may well be needed for housing in the future.
- The Council should resolve not to confirm the TPO, but to replace it with an Order that only protects the following trees/groups/woodlands:
T1, T5, T7, T8, G1,

4. REPRESENTATIONS

4.01 One other representation in support was received to the making of the TPO, which has been summarised below.

4.02 Representations Summary:

I am writing in support of the above Tree Preservation Order made with regard to Otham Glebe.

However, I would ask that you look again at the boundary of Otham Glebe as you have mistakenly included part of my garden within Woodland W1 identified on the map. The boundary of the W1 woodland is incorrect, it should be a rectangle. On an aerial photo and OS maps it could appear that the woodland continues into my garden, but this is not the case. We do have a couple of trees in that area, but also a wildlife pond, lawn and shrubs. It is not a woodland, and the trees are not under threat.

5. CONSIDERATIONS & APPRAISAL

5.01 Condition:

At the time of assessment, the trees listed within the TPO appeared to exhibit no visual defects to indicate they pose an abnormal safety risk.

5.02 Contribution to public amenity:

Whilst some trees in the TPO are more prominent than others from surrounding public areas, as a collective they contribute positively and significantly to the mature and verdant landscape of the area and to its character and appearance.

5.03 Response to objection:

Up until recently the site has been unmanaged for many years becoming an overgrown paddock with dense thickets of brambles and young developing self-seeded trees/saplings. The recent clearance of the brambles in preparation of returning the area back to grazing land has opened up the site to some degree making the retained trees more important in terms of their landscape value. It is acknowledged that many of the sapling trees present throughout the site are of poor form and not worthy of protection, however those made subject to the order are considered to have good overall form/structure that makes them suitable for inclusion and as such are not considered to warrant any expert pruning as suggested.

The categorization of trees under British Standard 5837:2012 is based on a tree's suitability of retention in terms of potential development of the site and not its inclusion within a TPO. Consequently, the use of this standard to exclude trees T11, T12 & T13 is considered inappropriate and unjust. In line with current government guidance a TEMPO amenity evaluation assessment has been carried on the three trees which confirms their suitability for inclusion.

In terms of development, a TPO should not be imposed to prevent good use of the site but merely to add protection to existing healthy prominent trees that otherwise could be lost in pre-development clearance works. However, it should be noted that the granting of full planning consent overrides a TPO.

5.04 Response to representations

Having reviewed the coverage of woodland W1 on the TPO, it would appear that the northern boundary has been incorrectly plotted to include a small proportion of the neighbouring garden of The Rectory. As the area is clearly domestic garden and not woodland its inclusion is not considered expedient, so it is recommended that it is omitted from the TPO as shown as red hatching on the amended TPO at Appendix A.

6. CONCLUSION

- 6.01 The objections raised to this TPO are not considered to be sufficiently robust to question its validity and the exclusion of the incorrectly plotted area of garden as woodland within W1 is considered appropriate in terms of following good government guidance when making and confirming preservation orders.

7. RECOMMENDATION

- 7.01 **Confirm** the Tree Preservation Order **No. 5005/2023/TPO With MODIFICATION** as per the attached Order to exclude the area of red hatching within Woodland W1.

Case Officer: Paul Hegley

Date: 05.09.2023

Note: Tree Officer assessments are based on the condition of the trees on the day of inspection. Whilst every effort is made to ensure that the assessments are accurate, it should be noted that the considerations necessary for determining applications/notifications may be able to be made off-site and, in any case, no climbing or internal inspections or excavations of the root areas have been undertaken. As such, these comments should not be considered an indication of safety.

APPENDIX A

Copy of amended/modified TPO 5005/2023/TPO

Dated 13 April 2023

Town and Country Planning Act 1990

The Maidstone Borough Council

TREE PRESERVATION ORDER No. 5005/2023/TPO

**Otham Glebe, Church Road, Otham, Kent ME15
8SB**

Town and Country Planning Act 1990
The Maidstone Borough Council
Tree Preservation Order No. 5005/2023/TPO
Otham Glebe, Church Road, Otham, Kent, ME15 8SB

The Maidstone Borough Council in exercise of the powers conferred on them by Section 198 of the Town and Country Planning Act 1990 make the following Order –

Citation

1. This Order may be cited as The Maidstone Borough Council Tree Preservation Order No. 5005/2023/TPO Otham Glebe, Church Road, Otham, Kent, ME15 8SB

Interpretation

2. (1) In this Order “the authority” means The Maidstone Borough Council
(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation) (England) Regulations 2012.

Effect

3. (1) Subject to Article 4, this Order takes effect provisionally on the date on which it is made.
(2) Without prejudice to subsection (7) of Section 198 (power to make tree preservation orders) or subsection (1) of Section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in Regulation 14, no person shall –
 - (a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or
 - (b) cause or permit the cutting down, topping, lopping, wilful damage or wilful destruction of,

any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with Regulations 16 and 17, or of the Secretary of State in accordance with Regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter “C”, being a tree to be planted pursuant to a condition imposed under paragraph (a) of Section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 13th day of April 2023

Signed on behalf of, The Maidstone Borough Council

R. L. Jarman

Rob Jarman
Head of Development Management
Maidstone Borough Council

Authorised by the Council to sign in that behalf

Town and Country Planning Act 1990**The Maidstone Borough Council****Tree Preservation Order No. 5005/2023/TPO****Otham Glebe, Church Road, Otham, Kent, ME15 8SB**

SCHEDULE

Specification of trees

Trees specified individually

(Encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
T1	Oak (Veteren)	///W3W: tested.door.reject
T2	Oak	///W3W: walks.money.goals
T3	Oak	///W3W: evenly.blows.fired
T4	Sweet Chestnut	///W3W: noble.impact.gross
T5	Oak	///W3W: tribe.gangs.blog
T6	Oak	///W3W: legal.food.belong
T7	Oak	///W3W: level.pulse.swing
T8	Oak	///W3W: sector.tape.areas
T9	Sweet Chestnut	///W3W: switch.treat.gone
T10	Sweet Chestnut	///W3W: spell.lend.gets
T11	Oak	///W3W: green.pumps.ruled
T12	Silver Birch	///W3W: sounds.given.suffer
T13	Hawthorn	///W3W: squad.couches.bountry
T14	Oak	///W3W: song.votes.brass
T15	Oak	///W3W: oasis.plugin.begins

Trees specified by reference to an area

(within a dotted black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
NONE		

Groups of trees

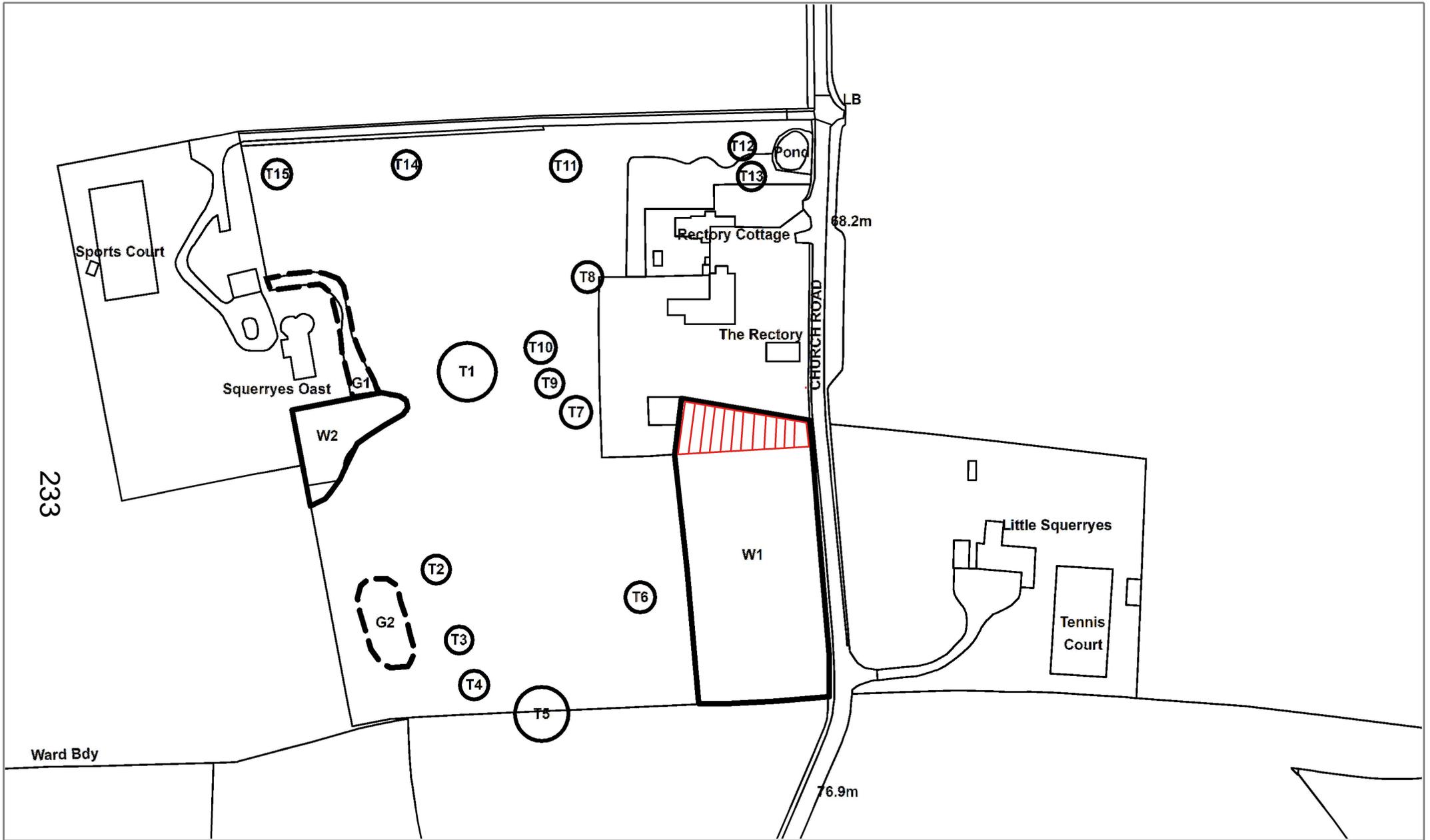
(within a broken black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
G1	5no. Beech; 1no. Cherry; 25no. Sycamore; 1no. Lime; 4no. Horse Chestnut; 1no. Birch; 1no. Sweet Chestnut.	Located along West boundary.
G2	3no. Oak	Located in South West Corner (///W3W: dads.formal.woke)

Woodlands

(within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
W1	Consisting mainly of Oak, Ash, Chestnut, Sycamore, Hawthorn, Cherry	Located West of Church Road. Excluding area hatched in red
W2	Consisting mainly of Oak, Chestnut, Sycamore, Hazel, Thorn	Located on West boundary.

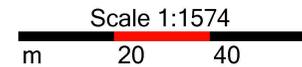


THE MAIDSTONE BOROUGH COUNCIL

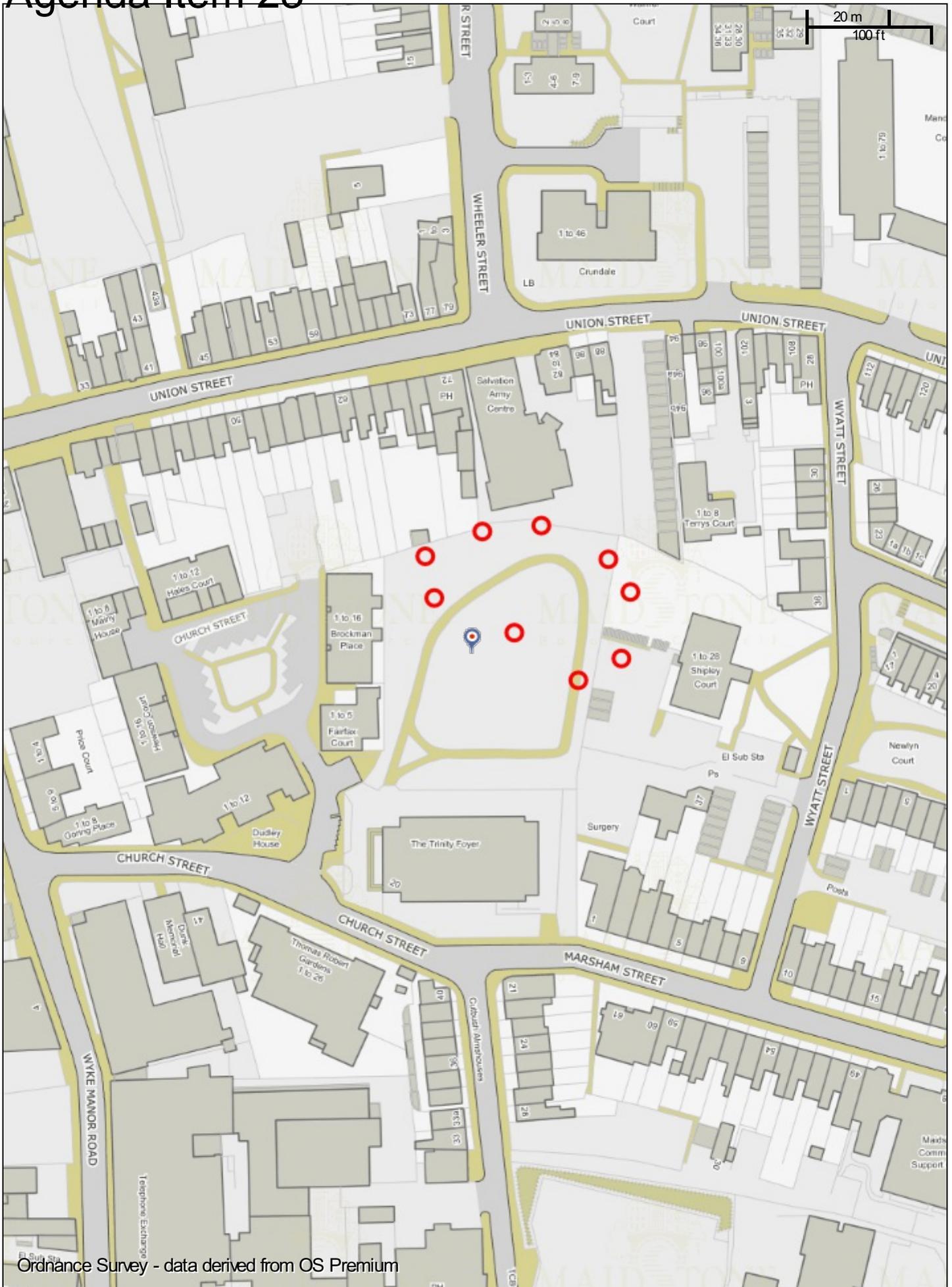
Tree Preservation Order No. 5005/2023/TPO
 Otham Glebe, Church Road, Otham, Kent, ME15 8SB



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Agenda Item 23



Ordnance Survey - data derived from OS Premium

REPORT SUMMARY

CASE REFERENCE: 23/500247/TPOA		
ADDRESS: Trinity Park, Church Street, Maidstone, Kent ME14 1DT		
PROPOSAL: TPO Application to Fell Two Ash Trees (T1 and T2). To Reduce one Ash Tree (T5) by 4m, 9m to 5m, lift to 5m and thin by 15%. To Re-pollard One Lime Tree (T6) from 13m to 7m. To Lift One Sycamore Tree (T7) to 5m over car park and reduce longer laterals by 3m from 8m to 5m. To Lift One Yew Tree (T8) to 4m over neighbouring property and prune overhang to clear building by 1.5m. To Remove epicormic growth up to crown break of One Lime Tree (T9), thin by 15% & re-pollard 1 x vertical stem (closest to fence) due to major cavity from previous historical pollard point (cavity at 6.5m).		
RECOMMENDATION: Application Permitted – subject to CONDITIONS / REASONS and INFORMATIVES		
SUMMARY OF REASONS FOR RECOMMENDATION: The proposed works are considered appropriate arboricultural management.		
REASON FOR REFERRAL TO COMMITTEE: The application has been made by Maidstone Borough Council.		
PARISH:	WARD: High Street	
APPLICANT: Maidstone Borough Council	AGENT: Qualitree Services	
CASE OFFICER: Paul Hegley (MBC)	SITE VISIT DATE: 06.02.2023	
DATE VALID: 17.01.2023	CONSULTATION EXPIRY: 23.02.2023	DECISION DUE: 14.03.2023

RELEVANT PLANNING HISTORY

Planning:

21/506702/TCA - Conservation Area Notification for 1 x (T1) Lime - Lift to 5m above ground and 1 x (T2) Pine -To Fell. - **Withdrawn** - **19.08.2022**

23/500247/TPOA - TPO Application to Fell Two Ash Trees (T1 and T2). To Reduce one Ash Tree (T5) by 4m, 9m to 5m, lift to 5m and thin by 15%. To Repollard One Lime Tree (T6) from 13m to 7m. To Lift One Sycamore Tree (T7) to 5m over car park and reduce longer laterals by 3m from 8m to 5m. To Lift One Yew Tree (T8) to 4m over neighbouring property and prune overhang to clear building by 1.5m. To Remove epicormic growth up to crown break of One Lime Tree (T9), thin by 15% & re-pollard 1 x vertical stem (closest to fence) due to major cavity from previous historical pollard point (cavity at 6.5m). - **Pending Decision** -

23/502937/TDD - Ash T1 monolith at 3m, Ash T2 Fell to ground level and Pine T10 remove major deadwood over footpath

- - **27.06.2023**

TA/0135/08 - Notification of intention to fell to ground one false Acacia/Robinia Pseudacacia; tree being located within Holy Trinity Conservation Area.

- **No Objection** - **10.12.2008**

TA/0090/08 - An Application for consent to 30% crown lift one Ash tree designated as part of Tree Preservation Order No: 32 of 1973. - **Approved** - **02.10.2008**

TA/0170/09 - An application for consent to crown lift to give 3m clearance over neighbouring property of two Lime trees and One Sycamore tree, prune back to suitable side branches to provide 2m clearance from adj. property of one Yew tree, re-pollard and remove basal growth of two Lime trees, crown reduction of 20% to one Ash tree, clear basal growth from base and stem up to main union of six Lime trees; all trees being subject to Tree Preservation Order no: 32 of 1973. - **Approved** - **18.12.2009**

TA/0142/13 - Conservation area notification: Holy Trinity Conservation Area notification of intention of works to trees as described in application TA/0142/13 - **No Objection** -

TA/0083/12 - Conservation area notification: Holy Trinity Church Conservation Area notification of intention to remove limb (east at height of 2m) of 1No. Cherry as set out in the application documentation received 25th May 2012. - **No Objection** - **12.07.2012**

TA/0154/04 - Notification of intention to crown lift 1 No Yew tree to give a maximum clearance of 3m, re-pollard 1 No Lime tree at 7m and cut back branches of 1 No Cherry tree by no more than 2m to clear adjacent building; all trees being located in Holy Trinity Church Conservation Area - **No Objection** - **29.11.2004**

TA/0146/13 - Tree Preservation Order application: TPO No. 32 of 1973: an application for consent for works as described in application TA/0146/13 - **Approved** - **02.01.2014**

TA/0082/12 - Tree Preservation Order application: TPO No.32 of 1973: an application for consent to an application for consent to trim to clear adjacent building by 2m and remove basal growth of 1No. European Lime annually; to remove limb (east side at height of 5m) of 1No. Ash; and to remove basal growth of 8No. European Lime annually as shown in the application documentation received 25th May 2012. - **Approved** - **16.07.2012**

TA/0124/11 - Tree Preservation Order application: TPO No. 32 of 1973: an application for consent to reduce back several limbs overhanging building by 2.5 metres and remove dead wood. - **Approved** - **04.10.2011**

TA/0153/04 - An application for consent to cut back branches of 1 No Lime tree subject to TPO No 32 of 1973 to clear adjacent building by 4m - **Approved** - **02.08.2005**

TA/0046/04 - An application for consent to remove stem and Basal suckers on 17 no. Lime Trees; All trees subject to Tree Preservation Order No. 32 of 1973 - **Approved** -

MAIN REPORT

1. DESCRIPTION OF TREES

- 1.01 The trees subject to this application are all growing along the northern boundary of Trinity Park making up the sylvan character of the site.

2. PROPOSAL

- 2.01 To Reduce one Ash Tree (T5) by 4m, 9m to 5m, lift to 5m and thin by 15%.
- 2.02 To Re-pollard One Lime Tree (T6) from 13m to 7m.
- 2.03 To Lift One Sycamore Tree (T7) to 5m over car park and reduce longer laterals by 3m from 8m to 5m.
- 2.04 To Lift One Yew Tree (T8) to 4m over neighbouring property and prune overhang to clear building by 1.5m.
- 2.05 To Remove epicormic growth up to crown break of One Lime Tree (T9), thin by 15% & re-pollard 1 x vertical stem (closest to fence) due to major cavity from previous historical pollard point (cavity at 6.5m).

3. PLANNING CONSTRAINTS

- 3.01 Tree Preservation Order No.32 OF 1973:

Ash T5 and Lime T6 are designated within G3 of the TPO

Sycamore T7 is designated as individual T4 in the TPO

Yew tree T8 is designated as individual T3 in the TPO

Lime T9 is designated within G2 of the TPO

- 3.02 Conservation Area:

Holy Trinity Church Conservation Area

4. POLICY CONSIDERATIONS

- 4.01 Government Policy:

National Planning Policy Framework (2021)

Planning Practice Guidance Tree Preservation Orders and trees in conservation areas, March 2014.

The Town and Country Planning (Tree Preservation)(England) Regulations 2012

- 4.02 Compensation:

A refusal of consent to carry out works on trees subject to a Tree Preservation Order can potentially result in a claim for compensation for loss or damage arising within 12 months of the date of refusal.

5. LOCAL REPRESENTATION

5.01 None received.

6. CONSULTATIONS

6.01 None made.

7. CONSIDERATIONS & APPRAISAL

7.01 T1 & T2 – Ash on application (within G3 of the TPO):

7.1.1 Since the submission of this application both trees have recently died so in the interests of safety, they were made subject to a 5 day exemption notice under 23/502937/TDD for removal. Consequently, the removal of these two trees does not require consideration as part of this application.

7.02 T5 – Ash on application (within G3 of the TPO)

7.2.1 Condition:

Fair – Showing minor signs of deterioration and/or defects.

7.2.2 Contribution to public amenity:

Reasonable – Limited views only/partially blocked by other features.

7.2.3 Retention/Longevity:

Medium – Estimated remaining life expectancy of at least 10 years.

7.2.4 Impacts:

The Ash tree has a heavy asymmetrical canopy to wards the north that hangs low over the adjacent Salvation Army carpark. The proposed reduction and lifting of the lower branches to reduce obstruction to the users of the carpark is considered acceptable works.

7.3 T6 – Lime on application (within G3 of the TPO)

7.3.1 Condition:

Fair – Showing minor signs of deterioration and/or defects.

7.3.2 Contribution to public amenity:

Reasonable – Limited views only/partially blocked by other features.

7.3.3 Retention/Longevity:

Medium – Estimated remaining life expectancy of at least 10 years.

7.3.4 Impacts:

The Lime has been historically pollarded in the past with multiple stems now growing from old pollard points. The new developing growth has in part been

suppressed by larger surrounding trees. The proposed re-pollarding works to this tree is considered acceptable arboricultural management.

7.4 **T7 – Sycamore on application (individual T4 in the TPO)**

7.4.1 Condition:

Good – No significant defects noted.

7.4.2 Contribution to public amenity:

Excellent – Prominent feature of the area/particularly suited to the location.

7.4.3 Retention/Longevity:

Long – With an estimated remaining life expectancy of at least 20 years.

7.4.4 Impacts:

A partly Ivy clad tree with a broad spreading canopy of good form for the species. Given its broad habit a large proportion of the crown towards the north overhangs the adjacent Salvation Army carpark. Therefore, the proposed lifting and reduction works to reduce obstruction to the users of the adjacent carpark is considered reasonable works.

7.5 **T8 – Yew on application (individual T3 in TPO)**

7.5.1 Condition:

Good – No significant defects noted.

7.5.2 Contribution to public amenity:

Good – Clearly visible to the public.

7.5.3 Retention/Longevity:

Very long – With an estimated remaining life expectancy of at least 40 years.

7.5.4 Impacts:

A relatively young tree for its species with a healthy developing crown, part of which is starting to physically obstruct the Salvation Army building to the north. Consequently, the proposed lifting and cutting back of the offending branches from the building is acceptable.

7.6 **T9 Lime on application (within G2 of the TPO)**

7.6.1 Condition:

Fair – Showing minor signs of deterioration and/or defects.

7.6.2 Contribution to public amenity:

Reasonable – Limited views only/partially blocked by other features.

7.6.3 Retention/Longevity:

Long – With an estimated remaining life expectancy of at least 20 years.

7.6.4 Impacts:

The Lime is a mature lapsed pollard with multiple main upright stems forking from old pollard points at around 5m from ground level. A developing open decay cavity has formed below one of the main pollard points to the north, commonplace on old pollarded trees. The re-pollarding of the main stem above the developing cavity is considered necessary in the interests of safety in order to prevent structural failure of the stem and potential damage to nearby adjacent buildings.

8 CONCLUSION

8.2 The works proposed to the trees detailed above are considered appropriate arboricultural management and necessary on the grounds of safety and abating nuisance to neighbouring properties.

9 RECOMMENDATION

9.2 **Grant Consent** – Subject to the following CONDITIONS / REASONS and INFORMATIVES.

Conditions:

(1) All works hereby permitted shall be carried out in accordance with the provisions of the current edition of BS 3998 by a competent person;

Reason: To ensure the work complies with good arboricultural practice to safeguard the longevity, amenity and nature conservation value of the tree/s and its/their contribution to the character and appearance of the local area

(2) All pollarding cuts shall be made to just above the old pollard points, and shall be carried out during the dormant period.

Reason: In the interests of good arboricultural practise and visual amenity.

Informatives:

(1) The proposed works to Ash trees T1 and T2 (on the application) have been addressed as exempt works in application/notification 23/502937/TDD. Therefore, these trees have not been considered under this application.

(2) Works to trees could result in disturbance to wild animals, plants and important wildlife sites protected by law. Therefore, the works hereby permitted should be carried out in a manner and at such times to avoid disturbance. Further advice can be sought from Natural England and/or Kent Wildlife Trust.

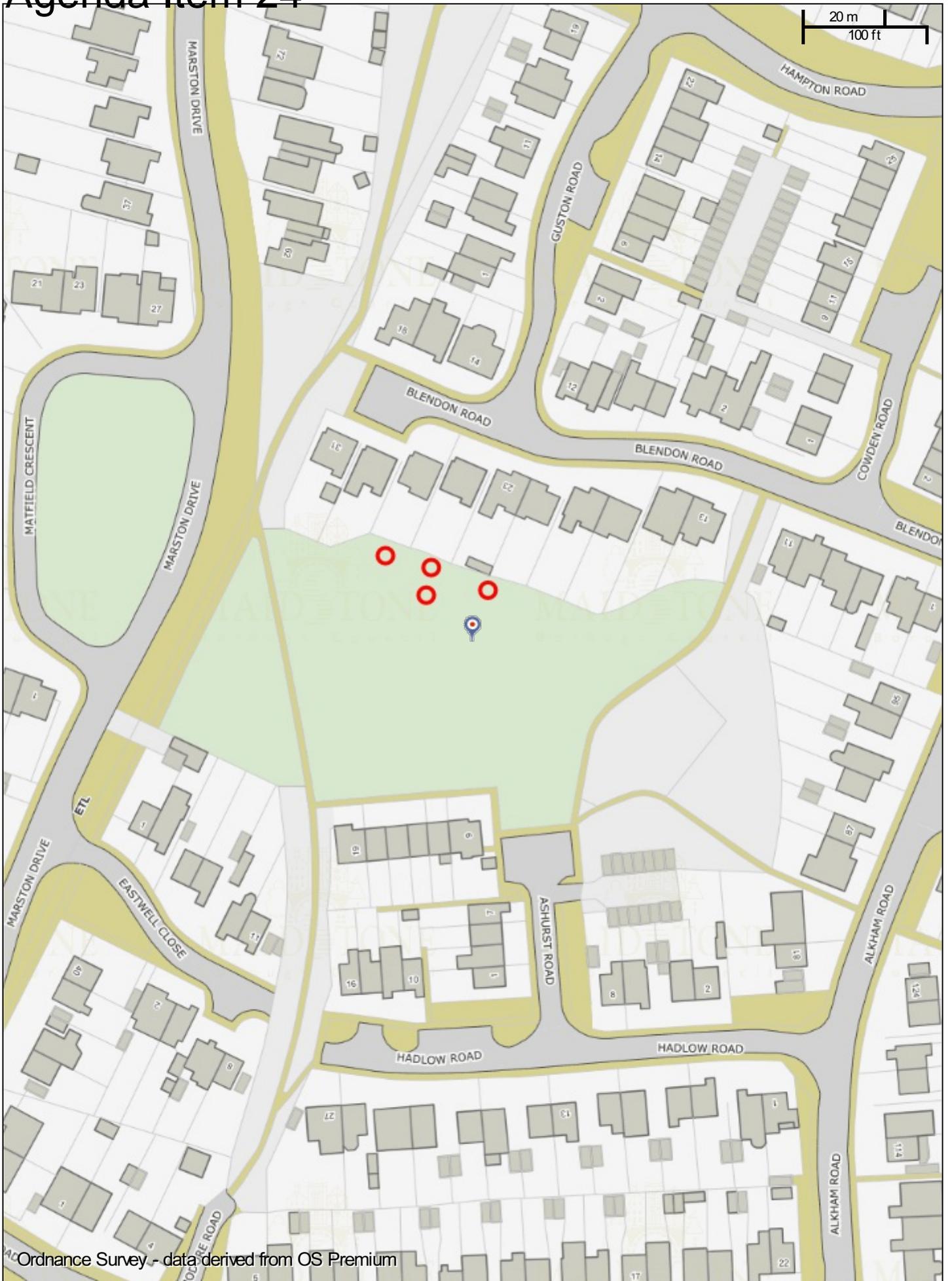
(3) All cut timber/wood between 15cm and 60cm in diameter, together with any senescent and rotting wood, should be retained and stacked safely on

site for the colonisation of saproxylic organisms, except where an alternative proposal has been submitted to and approved in writing by the local planning authority.

Case Officer: Paul Hegley (MBC)

NB – For full details of all papers submitted with this application, please refer to the relevant Public Access Pages on the Council’s website.

Agenda Item 24



Ordnance Survey - data derived from OS Premium

23/502061/TPOA Ashurst Road Open Space, Ashurst Road, Maidstone, Kent, ME14 5PZ

Scale: 1:1250

Printed on: 31/8/2023 at 11:00 AM by JoannaW

REPORT SUMMARY

CASE REFERENCE: 23/502061/TPOA		
ADDRESS: Ashurst Road Open Space Ashurst Road Maidstone Kent ME14 5PZ		
PROPOSAL: TPO application to crown reduce one multi-stemmed Sycamore to height of 18m, width to 7m.		
RECOMMENDATION: Application Permitted – subject to CONDITIONS / REASONS and INFORMATIVES		
SUMMARY OF REASONS FOR RECOMMENDATION: The works are considered appropriate arboricultural management.		
REASON FOR REFERRAL TO COMMITTEE: The application has been made by Maidstone Borough Council		
PARISH:	WARD: East	
APPLICANT: Maidstone Borough Council	AGENT: Qualitree Services	
CASE OFFICER: Paul Hegley (MBC)	SITE VISIT DATE: 23.05.2023	
DATE VALID: 04.05.2023	CONSULTATION EXPIRY: 02.06.2023	DECISION DUE: 29.06.2023

RELEVANT PLANNING HISTORY

Planning:

17/505404/TPO - TPO Application for 1 x Prunus - remove tree, 1 x Cherry - remove dead wood and lift over path to 3m, 1 x Sycamore - lift to 5m over path, 1 x Conifer - lift to 3m on stem all round, 1 x Cherry - lift to 3m over path, 1 x Hawthorn - reduce by 50% and sever Ivy, 1 x Sycamore - lift over path to 3m and reduce off garden by up to 3m - **Approved** - **11.12.2017**

22/501310/TPOA - TPO application to carry out tree works as per Tree Location Plan (and List of Works received 12/04/22). - **Approved** - **19.10.2022**

22/504642/TPOA - TPO application to crown reduce remaining stem of one Mature Hawthorn (has had 1x dead stem removed under an exemption notice). - **Invalid No Further Action** - **09.11.2022**

22/504772/TDD - Removal of Dead and or hanging branches from trees located behind play area goal posts. - **No Objection** - **29.09.2022**

22/505588/TPOA - TPO Application to T1 (dead stem previously removed under exemption notice). Clean out crown & complete crown reduction (of remaining stem).

- Invalid No Further Action - 10.01.2023

23/500453/TPOA - TPO application to coppice one Hawthorn tree. - **Approved** - **01.06.2023**

23/502061/TPOA - TPO application to crown reduce one multi-stemmed Sycamore to height of 18m, width to 7m. - **Pending Decision** -

TA/0080/12 - Tree Preservation Order, TPO No. 3 of 1971, application for consent to crown reduce 1no Walnut by 40%. - **Approved** - **17.07.2012**

TA/0134/08 - An application for consent to crown reduce by 30% one Walnut tree and two Sycamore trees and fell to ground level one Sycamore tree; all trees being subject to Tree Preservation Order No. 3 of 1971. - **Approved** - **23.12.2008**

TA/0068/09 - An application for consent to remove two lower branches from one Oak Tree, where overhanging 17 Blendon Road, Maidstone; tree subject to Tree Preservation Order no. 3 of 1971. - **Approved** - **20.07.2009**

TA/0096/08 - An application for consent to fell and treat stumps of 11 Sycamore trees, fell one Cherry tree, fell two Norway Maple trees, fell one Silver Birch tree, fell one Conifer tree, fell one Sycamore tree; all trees being part of Tree Preservation Order No. 3 of 1971. - **Approved** - **09.10.2008**

TA/0187/04 - An application for consent to crown lift to 2.5m above pathway 1 no. tree subject to Tree Preservation Order no. 3 of 1971, thin by 25% and cut back from property by 4m. - **Planning Permission Not Required** - **04.07.2005**

MAIN REPORT

1. DESCRIPTION OF TREES

- 1.01 The tree subject to this application is a mature Sycamore located along the northern boundary of the park, close to the adjacent rear gardens or properties along Blendon Road.
- 1.02 The Sycamores overall physiological condition is generally good for its species although a large open cavity has formed at the base of the main trunk to the south, which without appropriate management is likely to compromise the tree's long-term structural integrity.

2. PROPOSAL

- 2.01 Crown reduce one multi-stemmed Sycamore to height of 18m, width to 7m.

3. PLANNING CONSTRAINTS

- 3.01 Tree Preservation Order No.3 of 1971:

Located within Area A1 – consisting of 48 various species.

4. POLICY CONSIDERATIONS

4.01 Government Policy:

National Planning Policy Framework (2021)

Planning Practice Guidance Tree Preservation Orders and trees in conservation areas, March 2014.

The Town and Country Planning (Tree Preservation)(England) Regulations 2012

4.02 Compensation:

A refusal of consent to carry out works on trees subject to a Tree Preservation Order can potentially result in a claim for compensation for loss or damage arising within 12 months of the date of refusal.

5. LOCAL REPRESENTATION

5.01 None received.

6. CONSULTATIONS

6.01 None made.

7. APPRAISAL

7.01 Condition:

Fair – Showing minor signs of deterioration and/or defects.

7.02 Contribution to public amenity:

Good – Clearly visible to the public.

7.03 Retention/Longevity:

Medium – Estimated remaining life expectancy of at least 10 years.

8. CONCLUSION

8.01 The presence of the developing open cavity at the base of the Sycamore is a safety concern, so the proposed reduction works to reduce windsail and structural loading at the base of the tree is considered appropriate management.

9. RECOMMENDATION

9.01 **Grant Consent** – Subject to the following CONDITIONS / REASONS and INFORMATIVES.

Conditions:

- (1) All works hereby permitted shall be carried out in accordance with the provisions of the current edition of BS 3998 by a competent person;

Reason: To ensure the work complies with good arboricultural practice to safeguard the longevity, amenity and nature conservation value of the tree/s and its/their contribution to the character and appearance of the local area

Informatives:

- (1) Works to trees could result in disturbance to wild animals, plants and important wildlife sites protected by law. Therefore, the works hereby permitted should be carried out in a manner and at such times to avoid disturbance. Further advice can be sought from Natural England and/or Kent Wildlife Trust.
- (2) All cut timber/wood between 15cm and 60cm in diameter, together with any senescent and rotting wood, should be retained and stacked safely on site for the colonisation of saproxylic organisms, except where an alternative proposal has been submitted to and approved in writing by the local planning authority.

Case Officer: Paul Hegley (MBC)

NB – For full details of all papers submitted with this application, please refer to the relevant Public Access Pages on the Council’s website.



Ordnance Survey - data derived from OS Premium

23/502211/TPOA Methodist Church Community Centre, Brewer Street, Maidstone, Kent, ME14 1RU

Scale: 1:1250
N

Printed on: 31/8/2023 at 11:16 AM by JoannaW

REPORT SUMMARY

CASE REFERENCE: 23/502211/TPOA		
ADDRESS: Methodist Church Community Centre, Brewer Street, Maidstone, Kent ME14 1RU		
PROPOSAL: TPO application to carry out various works -please see application form for schedule of works.		
RECOMMENDATION: Application Permitted – subject to CONDITIONS / REASONS and INFORMATIVES		
SUMMARY OF REASONS FOR RECOMMENDATION: The works are considered appropriate arboricultural management.		
REASON FOR REFERRAL TO COMMITTEE: The application has been made by Maidstone Borough Council		
PARISH: Unparished	WARD: East	
APPLICANT: Maidstone Borough Council	AGENT: Qualitree Services	
CASE OFFICER: Paul Hegley (MBC)	SITE VISIT DATE: 06.06.2023	
DATE VALID: 09.05.2023	CONSULTATION EXPIRY: 27.06.2023	DECISION DUE: 04.07.2023

RELEVANT PLANNING HISTORY

Planning:

17/504884/TCA - Trees in Conservation Area application to pollard 25 No Lime/Sycamore trees around the boundary. - **No Objection** - **31.10.2017**

23/502211/TPOA - TPO application to carry out various works -please see application form for schedule of works.

- **Pending Decision** -

MAIN REPORT

1. DESCRIPTION OF TREES

- 1.1 The 11 trees subject to the application all sit within the open space/park forming the historic planting for the site, giving it a sylvan character.

2. PROPOSAL

2.1 The Works listed within the application form are as follows:

T1 Lime: Lift to 5m & thin by 15%

T2 Horse Chestnut: Lift to 5m & thin by 15%

T3 Sycamore: Lift to 5m & thin by 15%

T4 Sycamore: Lift to 5m & thin by 15%

T5 Sycamore: Lift to 5m & thin by 15%

T6 Sycamore: Lift to 5m & thin by 15%

T7 Acer: Lift by 5m & thin by 15%

T8 Holly: Lift to 5m & thin by 15%

T9 Sycamore, Fell to ground (dead)

T10 Holly: Lift to 5m & thin by 15%

T11 Horse Chestnut, Lift to 5m & thin by 15%

Remove dead wood from all trees.

Remove self-sown Sycamore saplings (close proximity to wall) Fell & clear ground cover.

3. PLANNING CONSTRAINTS

3.1 Tree Preservation Order No.6 OF 1975:

All the trees subject to this application fall with area A1 of TPO 6 of 1975

3.2 Conservation Area:

Holy Trinity Church Conservation area

4 POLICY CONSIDERATIONS

4.1 Government Policy:

National Planning Policy Framework (2021)

Planning Practice Guidance Tree Preservation Orders and trees in conservation areas, March 2014.

The Town and Country Planning (Tree Preservation)(England) Regulations 2012

4.2 Compensation:

A refusal of consent to carry out works on trees subject to a Tree Preservation Order can potentially result in a claim for compensation for loss or damage arising within 12 months of the date of refusal.

5 LOCAL REPRESENTATION

5.1 None received.

6 CONSULTATIONS

- 6.1 None made

7 CONSIDERATIONS & APPRAISAL

7.1 **T1 Lime, T2 Horse Chestnut, T3-T6 Sycamore, T7 Acer, T8 & T10 Holly and T11 Horse Chestnut on the application (all located within A1 in the TPO)**

7.1.1 Condition:

Fair – Showing minor signs of deterioration and/or defects.

7.1.2 Contribution to public amenity:

Excellent – Prominent feature of the area/particularly suited to the location.

7.1.3 Retention/Longevity:

Long – With an estimated remaining life expectancy of at least 20 years.

7.1.4 Impacts:

Most of the trees have become overgrown with low branches that now impede the central public path that runs through the centre of the park. The proposed crown lifting and thinning works will remove the offending branches to clear obstruction to the path and surrounding buildings so such works are considered acceptable.

7.2 **T9 Sycamore on the application (located with A1 of the TPO)**

- 7.2.1 The upper crown of the tree is dead with most of the lower trunk heavily Ivy clad. Consequently, its removal to leave the trunk standing as a monolith is considered necessary in the interests of safety as its replacement by way of a condition.

8 CONCLUSION

- 8.1 The works proposed to the trees detailed above are considered appropriate arboricultural management and necessary on the grounds of health and safety of the users of the park.

9 RECOMMENDATION

- 9.1 **Application Permitted** – Subject to the following CONDITIONS / REASONS and INFORMATIVES.

Conditions:

- (1) All works hereby permitted shall be carried out in accordance with the provisions of the current edition of BS 3998 by a competent person;

Reason: To ensure the work complies with good arboricultural practice to safeguard the longevity, amenity and nature conservation value of the

tree/s and its/their contribution to the character and appearance of the local area

- (2) One replacement tree/s selected from the following list of suitable species shall be planted on or near the land on which the felled tree/s (T9 in the application) stood during the planting season (October to February) in which the tree work hereby permitted is substantially completed or, if the work is undertaken outside of this period, the season immediately following, except where an alternative proposal has been submitted to and approved in writing by the local planning authority one month prior to the end of the relevant planting season. The replacement tree/s shall be of not less than Nursery standard size (8-10cm girth, 2.75-3m height);, conforming to the specifications of the current edition of BS 3936, planted in accordance with the current edition of BS 4428 and maintained until securely rooted and able to thrive with minimal intervention;

Suitable Species:

Hornbeam (*Carpinus betulus*)
Small leaved Lime (*Tilia cordata*)
English Oak (*Quercus robur*)

Reason: To safeguard the amenity and nature conservation value of the tree/s that has/have been removed and to maintain and enhance the character and appearance of the local area

- (3) Any tree planted in accordance with the conditions attached to this permission, or in replacement for such a tree, which within a period of five years from the date of the planting is removed, uprooted, destroyed, dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, shall, in the same location, be replaced during the next planting season (October to February) by another tree of the same species and size as that originally planted, except where an alternative proposal has been submitted to and approved in writing by the local planning authority prior to that planting season;

Reason: To safeguard the amenity and nature conservation value of the tree/s that has/have been removed and to maintain and enhance the character and appearance of the local area

Informatives:

- (1) Works to trees could result in disturbance to wild animals, plants and important wildlife sites protected by law. Therefore, the works hereby permitted should be carried out in a manner and at such times to avoid disturbance. Further advice can be sought from Natural England and/or Kent Wildlife Trust.
- (2) All cut timber/wood between 15cm and 60cm in diameter, together with any senescent and rotting wood, should be retained and stacked safely on site for the colonisation of saproxylic organisms, except where an alternative proposal has been submitted to and approved in writing by the local planning authority.

- (3) Removal of dead wood from protected trees is an exception to current legislation and does not require a formal application. However, the regulations require five days notice in writing of intention to carry out such works. Its inclusion on this application is considered to satisfy that requirement.

Case Officer: Paul Hegley (MBC)

NB – For full details of all papers submitted with this application, please refer to the relevant Public Access Pages on the Council’s website.

THE MAIDSTONE BOROUGH COUNCIL **PLANNING COMMITTEE – 21st SEPTEMBER 2023**

APPEAL DECISIONS:

- 1. 21/506575/FULL** **Proposed conversion of agricultural barns to 2 no. residential dwellings together with change of use of existing studio to ancillary accommodation.**

APPEAL: DISMISSED

Foxden Farm
Claygate Road
Yalding
Maidstone
Kent
ME18 6BD

(Delegated)

- 2. 22/503351/FULL** **Erection of an ancillary outbuilding (partially retrospective).**

APPEAL: DISMISSED

Pollyfields Barn
Scragged Oak Road
Detling
Kent
ME14 3HL

(Delegated)

- 3. 21/506239/OUT** **Outline application for erection of 2(no) dwellings (Matter of access being sought with all other matters reserved for future consideration).**

APPEAL: ALLOWED

Glenrowan House
Roundwell
Bearsted
Maidstone
Kent
ME14 4HL

(Delegated)

- 4. 22/504469/FULL Erection of a 1no. three bedroom dwelling house.**

APPEAL: DISMISSED

Pleasant Valley Farm
Pleasant Valley Lane
East Farleigh
Maidstone
Kent
ME15 0BB

(Delegated)

- 5. 22/502839/FULL Retrospective application for construction of a seating canopy, laying of artificial grass, and new patio and brick wall.**

APPEAL: PART ALLOWED/PART DISMISSED

The Chequers Inn
Old Loose Hill
Loose
Kent
ME15 0BL

(Delegated)

- 6. 22/500613/PNQCLA Prior notification for the change of use of agricultural barn to 1no. smaller dwellinghouse and 1no. larger dwellinghouse and associated operational development. For its prior approval to: - Transport and Highways impacts of the development - Noise impacts of the**

development - Contamination risks on the site - Flooding risks on the site - Whether the location or siting of the building makes it otherwise impractical or undesirable for the use of the building to change from agricultural use to C3 (dwellinghouses) - Design and external appearance impacts on the building - Provision of adequate natural light in all habitable rooms of the dwellinghouses.

APPEAL: DISMISSED

Elmscroft Farm
Charlton Lane
West Farleigh
Maidstone
Kent
ME15 0NY

(Delegated/Committee)

7. 22/500356/OUT

Outline application for the erection of 1no. three bedroom bungalow with cycle storage shelter and Bin storage attached, associated hardstanding for two car parking spaces, the creation of two bunds and associated landscaping (Access being sought).

APPEAL: DISMISSED

Land At Thurnham Lane
Thurnham
Kent
ME14 3LD

(Delegated)

8. 22/501746/FULL

Conversion of barn to three bedroom dwelling, including provision of parking/turning area and erection of detached 2-bay garage.

APPEAL: DISMISSED
COSTS: REFUSED

Franks Barn Blue House
Battle Lane
Marden
Kent
TN12 9AN

(Delegated)

9. 22/504892/FULL

Erection of two storey extensions to both sides and loft conversion, to create 6no. flats and 1no. semi-detached dwellinghouse, with associated parking.

APPEAL: DISMISSED

353, 353A, 355 & 355A Willington Street
Maidstone
Kent
ME15 8HL

(Delegated)
