

# ADJOURNED PLANNING COMMITTEE MEETING

Date: Thursday 2 July 2020

Time: 6.00 p.m.

Venue: Remote Meeting - The public proceedings of the meeting will be broadcast live and recorded for playback on the Maidstone Borough Council website

Membership:

Councillors Adkinson, Brindle, Chappell-Tay, English (Chairman), Eves, Harwood, Kimmance, Munford, Parfitt-Reid, Perry, Spooner (Vice-Chairman), Vizzard and Wilby

*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.*

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<b><u>AGENDA</u></b>	<u>Page No.</u>
1. Apologies for Absence	
2. Notification of Substitute Members	
3. Notification of Visiting Members	
4. Items withdrawn from the Agenda	
5. Any business the Chairman regards as urgent including the urgent update report as it relates to matters to be considered at the meeting	
6. Disclosures by Members and Officers	
7. Disclosures of lobbying	
8. To consider whether any items should be taken in private because of the possible disclosure of exempt information.	
9. 19/500765/OUT & 19/501988/ADJ - Gibraltar Farm, Ham Lane, Hempstead, Gillingham, Kent	1 - 23
10. 20/501029/FULL & 20/501030/LBC - Len House, Mill Street, Maidstone, Kent	24 - 61
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**Issued on Monday 29 June 2020**

**Continued Over/:**



**Alison Broom, Chief Executive**

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| 12. 20/502043/FULL - Maidstone Lawn Tennis Club, Poplar Grove,<br>Maidstone, Kent | 119 - 126 |
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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 REPRESENTATIONS AND ALTERNATIVE FORMATS**

**In order to make a submission to the Committee (to be read out on your behalf or played), please call 01622 602899 or email [committee@maidstone.gov.uk](mailto:committee@maidstone.gov.uk) by 4 p.m. on the working day before the meeting. You will need to tell us which agenda item you wish to make representations on. Please note that slots will be allocated for each application on a first come, first served basis.**

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19/500765/OUT - Gibraltar Farm, Ham Lane, Gillingham, Kent

Scale: 1:5000

Printed on: 16/6/2020 at 9:35 AM by JoannaW



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<b>REFERENCE NO -</b> (A) 19/500765/OUT (B) 19/501988/ADJ		
<b>APPLICATION PROPOSAL</b> (A) Outline Application (with all matters reserved except access) for the erection of up to 450 market and affordable dwellings, children's nursery and supporting retail space up to 85sqm, with provision of main access to Ham Lane; estate roads; cycle and pedestrian routes; residential and community open space and landscaping; new junction for Lidsing Road/Hempstead Road and realignment and widening of Lidsing Road. Off site related highway works to Westfield Sole Road, Shawstead Road, Hempstead Road, Chapel Lane, Hempstead Valley Drive, Hoath Way roundabout, Hoath Way and M2 Junction 4. (B) Adjoining Authority Consultation from Medway Council - Outline application with some matters reserved (appearance, landscaping, layout, scale) for construction of up to 450 market and affordable dwellings; nursery and supporting retail space up to 85sqm, with provision of access; estate roads; cycle and pedestrian routes; off site highway improvements; residential and community open space and landscaping		
<b>ADDRESS</b> Gibraltar Farm Ham Lane Hempstead Gillingham Kent ME7 3JJ		
<b>RECOMMENDATION</b> Application Permitted subject to s106 Agreement		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b>  This is a cross boundary planning application of which a small area of 1.7ha (comprising 6% of the overall site area) is in MBC district. There is an extant planning permission granted by Medway Council for construction of up to 450 market and affordable dwellings. The key difference between that development approved and the current joint applications is the matter of 'Access'. It cannot be presumed that Medway Council will approve their duplicate cross boundary application MC/19/0336. However, should they do so, the impacts of the access onto the Maidstone BC highway network have been considered and judged by the Local Highway Authority to be acceptable. 7.03 Taking account of NPPF paragraph 109, KCC (H&T) do not object to the overall development proposal in terms of unacceptable impact on highway safety, nor the residual cumulative impacts on the road network being severe. However, the early timing of off-site highway capacity improvements is key to this stance. A s106 contribution of £100,000 should be secured for the villages of Boxley and Bredhurst to mitigate any residual impact and similarly, proposals for enhanced or diverted bus services must be secured by Medway Council for consistency with the earlier outline planning permission at Gibraltar Farm. There is proposed to be mitigation to visual impact and landscape harm in the form of advance planting of tree screening. Adequate information has been provided to demonstrate no direct harm to ecology interests in the Borough and there is scope for enhancement.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> The Recommendation is contrary to the views of Bredhurst PC and Boxley PC and Ward Councillor Hinder.		
<b>WARD</b> Boxley	<b>PARISH/TOWN COUNCIL</b> Boxley	<b>APPLICANT</b> F D Attwood & Partners  <b>AGENT</b> Hume Planning Consultancy Ltd
<b>TARGET DECISION DATE</b> 31/01/20		<b>PUBLICITY EXPIRY DATE</b> 12/07/19

**Relevant Planning History**

15/508776/ADJ

Adjoining Authority Consultation from Medway Council - Outline application with some matters reserved (appearance, landscaping, layout and scale) for the construction of up to 450 market and affordable dwellings with associated access, estate roads and residential open space (MC/14/2395).  
Allowed on Appeal 06.03.17

18/501039/ADJ

Adjoining Authority Consultation from Medway Council - Outline application with some matters reserved (appearance, landscaping, layout, scale) for construction of up to 450 market and affordable dwellings with associated access, estate roads and residential open space (MC/18/0556)  
Approved 29.09.18

## **MAIN REPORT**

### **1. DESCRIPTION OF SITE (A & B)**

- 1.01 The application site is agricultural land 27 ha in size but the vast majority lies in Medway. A small part (approx 1.5 ha) lies in the Borough of Maidstone.
- 1.02 The main part of the site lies immediately adjacent to Lordswood. The site is situated to the south of the Capstone Valley. To the east, separated by agricultural land, is further residential development in Hempstead/Wigmore. The site is therefore relatively close to areas with existing services, employment, transportation links and community facilities.
- 1.03 The application site within the MBC area is 800m as the crow flies from the AONB which lies south of the M2 Motorway.
- 1.04 Further east along Ham Lane and on its northern side, is the Elm Court Industrial Estate. The south eastern boundary of the proposed residential parcel follows the administrative boundary between Maidstone Borough Council (MBC) and Medway Council (MC) which is across open arable fields.
- 1.05 Some of the eastern end Ham Lane is within MBC and comprises a single track lane with mature hedgerows on its northern side and an arable field with a low field margin bund with tall ruderal species on its southern side.
- 1.06 Most of the existing line of Lidsing Road is not in Maidstone Borough until south of the junction with Hempstead Road. On its eastern side is a mown grass verge, then meadow grass and then a mature hedgerow. This is a "Roadside Nature Reserve". On its western side is an arable field with a low field margin bund with tall ruderal species.
- 1.07 Only the very end of Hempstead Road junction is within MBC area. On its north-western side is a tall mature hedgerow and on its south-eastern side is an arable field with a low field margin bund with tall ruderal species.
- 1.08 There are no existing street lights in the vicinity of the works in MBC and the speed limit of Lidsing Road is unrestricted ( ie 60mph).
- 1.09 The topography of the area is that site slopes down from south-west to the north-east. The highest part of the Site is located at approximately 131m AOD in the south-west corner of the Site. Ham Lane is between 113m and 115m AOD. The lowest level is 104m AOD at Gibraltar Farm (the lowest point on the Site).
- 1.10 The levels on the boundary with MBC range from 131m OD at the west to 115m OD at Lidsing Road to the east, ie dropping 16m over a distance of 900m. This boundary has no demarcation, being across an arable field.

## 2. PROPOSAL (A & B)

- 2.01 **Application A** is an outline application to MBC because part of the site lies in our administrative district. **Application B** is the consultation from Medway Council on the same application for the major part which lies in its area. The developer needs planning permission from both Local Planning Authorities.
- 2.02 The scheme is effectively a revision of MC/18/0556 which was permitted by Medway with a legal agreement for affordable housing and contributions towards, inter alia, Education; Open Space; bus services, health and Community facilities.
- 2.03 The current application has been submitted in outline form with only means of access being for consideration at this time. The application proposes a development of up to 450 dwellings of 2-5 bed houses and 1-bed and 2-bed apartments with 25% intended as being affordable. It includes new strategic woodland planting intended to contain the development and create a consolidated edge to the new housing, along the site's northern (Ham Lane) and eastern (open field) boundaries.
- 2.04 The density would be approx. 35 dwellings per hectare, occupying 13.01 hectares (32.15 acres) – circa 50% of the application site's area. There is indicated to be a small shop and a children's nursery.
- 2.05 The illustrative masterplan shows that on the SE edge which aligns on the Borough boundary, there will be an advance planted screen of trees/woodland indicated to be 15m wide (mix of field maple, sycamore, hornbeam, hazel, hawthorn, beech, small leaved lime).
- 2.06 The proposed development's main impact on Maidstone Borough arises from the main vehicular access. In the 2 previous outline planning permissions, access was to the NE towards North Dane Way spur road in Medway with only an emergency access to Ham Lane. Hence none of the access works in the previous schemes directly impacted on land within the Borough of Maidstone.
- 2.07 It is understood that Medway Council, as landowner, was not agreeable to some of its land being purchased by the developer to provide access, preventing the implementation of those other planning permissions. The decision by MC has resulted in the applicant proposing this alternative, being the provision of a primary access point to the SE, via Ham Lane leading to Lidsing Road. This has resulted in the scheme now requiring engineering (highway) development in the Borough of Maidstone, specifically, to allow for the re-configuration/re-alignment of 2 junctions: Ham Lane/Capstone Road and Lidsing Road/Hempstead Road. Also there needs to be an extension of the existing 40mph speed restriction, to allow for the provision of suitable visibility splays from the new junctions.
- 2.08 The eastern most section of Ham Lane will be "stopped up" for a distance of 100m and a new access road from Ham Lane will run approx 50m parallel to Lidsing Road (also in MBC's area) before turning to a new T-junction. Within the MBC area, Lidsing Road will be realigned by up to 20m to create a straight alignment from the current curve in the road (the original line of Lidsing Road lies in Medway and would be "stopped up"). The new section of Lidsing Road will be wide enough to allow for waiting lanes plus a traffic refuge island with an uncontrolled and unlit crossing for pedestrians and cyclists.
- 2.09 The new junction to Lidsing Road will be approx. 45m NW from a new reconfigured junction with Hempstead Road. The reconfiguration of that junction involves a small southwards extension to Hempstead Road and the formal widening of the "give way" to 2 lanes for left and right egressing traffic.

- 2.10 There is also to be a separate cycleway/footway arising along the line of a Byway RC29 in Lordswood that will cross the new section of Lidsing Road midway between the new junction and the reconfigured junction to Hempstead Road. This will then run on the north side of the realigned Lidsing Road and terminate 25m along Hempstead Road. It will also cross Hempstead Road via the traffic island. It is understood that the continuation of the footway/cycleway towards the facilities of Hempstead would be provided by Medway Council as far as it is able to and the developer is to fund this by contributions.
- 2.11 On his land near Westfield Sole Road (which is in MBC district), the applicant will provide 3 laybys to improve vehicle passing. This route leads towards Walderslade and thereafter to M2 Junction 3 (which is in KCC's administrative area, being in Tonbridge and Malling Borough). This will require the removal of a limited amount of hedgerow. These works will need separate planning permission and safety audit.
- 2.12 In Medway, further road engineering works aimed at increasing highway capacity are proposed at Hempstead Valley Drive/Chapel Lane; Hoath Way/Sharsted Way Roundabout and at Junction 4 of the M2 (2 full lane widths turning northbound into Hoath way). Hempstead Road is indicated to be traffic calmed with 5 "Give Way" deflections for shuttling of traffic, intended to encourage traffic to use Chapel Lane and thence Hempstead Valley Drive.
- 2.13 An initial element of the proposal was to also to reprioritise the junction of Lidsing Road with Forge Lane which included the straightening a section of Lidsing Road. This has been deleted from the application since it was originally submitted.
- 2.14 The traffic analysis from the applicant's consultant states that the junction capacity improvements proposed along the route between the site and Junction 4 are to encourage use of that route, ie the assumption is that most traffic to and from the proposed development will use Hempstead Road via Hempstead rather than use Lidsing Road via Bredhurst and/or Boxley. That is, the off site highway works in Medway reduce congestion and therefore there is less incentive to travel via inappropriate routes (rat runs).
- 2.15 The submission includes a number of supporting reports, some of which have been updated during the course of the application and in response to consultee concerns. In particular relevant to MBC interests, there has been supplementary information on trees, transport and Ecology.
- 2.16 The Framework Travel Plan is based on information to residents to discourage private vehicle use, encouraging walking and cycling, car share database; introductory 4 weeks of free travel on Arriva within Medway; voucher for a local cycle retailer.
- 2.17 The applicant states that there will be negligible traffic impact beyond the intended traffic flows via Hempstead but has offered £100,000 to fund traffic calming measures or similar enhancements in the villages of Boxley and Bredhurst.

### **3. POLICY AND OTHER CONSIDERATIONS (A & B)**

Maidstone Borough Local Plan 2017 SP17; ID1; DM3; DM6; DM8; DM21; DM30;  
Kent Minerals and Waste Local Plan 2016 N/A  
Supplementary Planning Documents Air Quality  
National Planning Policy Framework (NPPF)  
National Planning Practice Guidance (NPPG)

- 3.01 Members are advised that there is currently a lack of a 5 year housing supply in Medway which means that para 11 (d) the NPPF applies: policies in that district that restrict the supply of housing (ie countryside restraint policies) should be viewed

together and an overall judgement made whether the policies as a whole are out of date.

#### **4. LOCAL REPRESENTATIONS (A )**

4.01 Medway Liberal Democrats have responded with the following summarised concerns:

- the impacts on rural roads in the Bredhurst and Boxley area is likely to be greater than those presented in the assessments made to date
- scarce provision for public transport so will increase car use to access secondary education, health care and employment
- congestion at junctions 3 and 4 of the M2
- reduced access to open spaces for exercise and other recreation
- noise and air quality impacts
- noise and air quality impacts to
- construction traffic

#### **Local Residents:**

4.02 156 objections received from local residents in both MBC and Medway raising the following (summarised) issues:

- Access should be off North Dane Way, do not want local roads altered
- Loss of woodland/countryside heritage/green lung of Capstone Valley- area of local landscape importance
- Affects setting of AONB
- objective is developer profit
- only 25% affordable (statutory minimum)
- over stretched schools/libraries/nurseries/Community facilities/Leisure/Police/GP Surgeries/dentists and local hospitals/youth facilities
- Nursery site inadequate
- Water and Wastewater services inadequate.
- air quality
- traffic gridlock and pollution
- remote so will require a higher percentage of people to travel by car
- traffic calming measures proposed are unworkable
- redevelopment of Hempstead Valley Shopping will put an increasing burden on the road system
- Surrounding road infrastructure is inadequate, narrow and with poor visibility and no lighting or footpath provision
- passing places in wrong location
- unclear impact on Public Rights Of Way
- rat runs via Bredhurst and Boxley which will be at a standstill, harming residential amenity rights to quiet enjoyment of their homes.



- The traffic analysis does not provide an accurate representation of the severe traffic issues around this area.
- local Bus and train services and station car parks are inadequate
- harm to wildlife
- harm to water catchment area; surface water problems - flash floods resulting in sinkholes
- Inadequate local employment
- Reduces property values
- noise, light pollution
- Housing targets are not realistic and cannot be met
- Wrong type of housing proposed
- diminish the community feel of both Hempstead and Lordswood.
- street lighting on the surrounding roads
- loss of prime agricultural land which cannot be replaced
- Brexit will mean more farm land is needed.
- Not enough gas supply locally
- Will increase risk of flooding in Capstone Valley
- schools are not within walking distance
- other more suitable brownfield sites in Medway/Maidstone
- less freely accessed open space
- statutory objection from Sport England over concerns with open space
- Coronavirus pandemic has proven that we need open space and countryside for horticultural needs and exercise and personal well-being and mental health
- Not enough GPs to deal with the extra population.

Issues of developer profit and reduced property value are not material planning considerations and therefore cannot be taken into account in the determination of this application. The other matters relevant to the part of the site in MBC's area raised by neighbours and other objectors are discussed in the detailed assessment below.

## **5. CONSULTATIONS (A)**

- 5.01 (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)

### Medway Council

- 5.02 No response to date.

### Boxley PC

- 5.03 Concerned for the health and safety of other road users and the impact on the local highway infrastructure on Lidsing Road, Forge Lane, Westfield Sole Road, Yelsted Lane, Harp Farm Road and also the M2 junctions 3 and 4.
- 5.04 Will create a fast route via Boxley Village and Walderslade for access to junction 3 of the M2 which is already operating beyond design capacity.

- 5.05 The proposal to improve and realign Lidsing Road would attract additional vehicle movements along what will suddenly return back to poorly maintained narrow country lanes creating safety issues and congestion.
- 5.06 In a survey (November 2018) Boxley Village recorded an average 52,391 vehicular movements per week, the single road through the village is unclassified and any additional traffic would have a severe and direct impact on the residential properties that line the road as it is a linear village.
- 5.07 Additional comments:
- Reiterates previous objections
  - Applicant recognises that there are traffic issues on Westfield Sole Road; the whole road will need improving for it to be safe; will be congestion, crashes and potentially personal injuries. Safety Audit needed before a decision is made.
  - unknown route for HGVs

Bredhurst PC

- 5.08 Strongly object: the proposed traffic management scheme is not accurate and does not account for the amounts of traffic which will pass through Bredhurst village; which passes by a local primary school. Noise and pollution in the area and major impact on local stables and horses. The local roads are unable to support the potential usage of 450 more households. With Bredhurst being in an AONB, development to these country lanes should be limited in order to protect the nature rural village. The proposed straightening of Lidsing Road allows users to speed to a greater extent than is already present.

Highways England

- 5.09 Several sets of comments have been made by Highways England including holding objections made in regard of M2 Junction 4. Following extensive discussion with traffic consultants employed by the applicant, the final comments of HE are:
- In regard of potential impact on the safe and efficient operation of the M2 and A2, Highways England have now reached a point of agreement where we can consider the impacts on safety, reliability and/or operation to be acceptable subject to conditions on: Construction Management Plan; scheme of phasing; Travel Plan; minimum 15% affordable dwellings; Prior to the occupation of 200 dwellings on the site hereby permitted, the improvement works at M2 Junction 4 shall be completed and opened in full to traffic.

KCC (Highways and Transportation)

- 5.10 The TA is predominantly focused on how the new proposals differ from those previously granted planning consent in terms of access arrangement and highway network impact.
- 5.11 The eastern end of Ham Lane falls within Kent County Council (KCC) jurisdiction. The applicant has proposed to modify Ham Lane and realign the eastern part of the road, including the junction with Capstone Road, southwards along Lidsing Road. The 6m carriageway width and reduction in the speed limit to 30mph, which will require a Traffic Regulation Order, is consistent with the Kent Design Guide for a 'local distributor road' serving 300+ houses. A 100m section of the existing Ham Lane will be made redundant and is proposed to be stopped up.

- 5.12 The proposed new configuration of the Ham Lane/Lidsing Road and Lidsing Road/Hempstead Road junctions as a staggered crossroads includes modifications to Lidsing Road that fall within KCC jurisdiction.
- 5.13 The proposals incorporate the widening and realignment of Lidsing Road to accommodate the provision of new dedicated right turn lanes at both junctions. An extension of the 40mph speed limit is also proposed at the new staggered crossroads with 4.5m x 120m visibility splays in both directions. These represent an improvement when compared against the existing situation at the Ham Lane/Capstone Road junction. The reduced speed limit will be beneficial to the forward visibility of oncoming and turning vehicles at the Lidsing Road/Hempstead Road junction. A Stage 1 Road Safety Audit has identified no issues of concern.
- 5.14 The applicants' justification for the inclusion of right turn lanes is evident from the peak period traffic forecasts and the inclusion of right turn lanes also reduces the potential for conflicts to arise when a vehicle waiting to turn right inhibits through flows of traffic. The works falling within KCC jurisdiction, including the Traffic Regulation Order necessary for the speed limit reduction, should be secured via a Section 278 Agreement.
- 5.15 Sustainable Travel Walking and Cycling: The site is well placed in relation to several key facilities: Shopping Centres, Lordswood Leisure Centre and primary schools. The proposed footway/cycleway link to Lordswood/Walderslade via North Dane Way is unchanged from the extant scheme.
- 5.16 The site is not currently well connected to Hempstead, Wigmore and Park Wood, due to the absence of footways on Ham Lane, Lidsing Road and the southern part of Hempstead Road. A new footway/cycleway route connecting with Hempstead Road partly falls within KCC jurisdiction via an uncontrolled refuge island crossing. In the Stage 1 Road Safety Audit a toucan crossing on Lidsing Road was considered rather than the uncontrolled form of crossing now proposed. However, the uncontrolled crossing with pedestrian refuge island also passed the safety audit.
- 5.17 It is understood that the route is not proposed to include lighting. This will reduce its attractiveness during periods of darkness. The termination point of the route on Hempstead Road lies within Medway Council jurisdiction which need to comment on the highway safety implications associated with onward journeys.
- 5.18 A Section 106 should secure enhanced or diverted bus services as per permission MC/14/2395.
- 5.19 The TA indicates the proposed development will generate 223 vehicle trips in the AM peak hour and 221 vehicle trips in the PM peak hour. During the AM peak, 81% of trips have been assumed to use routes within Medway; the remainder involve routes on the KCC network, with 10% shown to route via Westfield Sole Road and 5% via Lidsing Road. The pattern in the PM peak is similar, with 12% using Westfield Sole Road and 5% using Lidsing Road. The assessment of traffic impact has been founded on turning count and queuing surveys undertaken in October 2018.
- 5.20 The modelling indicates that the reconfigured staggered crossroads arrangement will operate satisfactorily during both peak periods. The applicant has proposed a series of capacity improvements encompassing J4 and Hoath Way/Sharsted Way roundabouts, as well as the Hempstead Valley Drive/Chapel Lane priority junction. These are essential in encouraging access to the motorway network via J4 and preventing worsening delays at J3. Highways England has recommended completion of the J4 improvement prior to the occupation of 200 dwellings so there is a concern that this delay could influence the propensity for traffic to route via J3.

- 5.21 The TA reaffirms nearby minor roads are expected to experience modest traffic increases. It would be appropriate for a S106 contribution equivalent to the estimated cost of the withdrawn Forge Lane Junction works to be secured, for the purposes of funding measures that will deter through traffic movement and improve highway safety in the communities of Bredhurst and Boxley.
- 5.22 The mitigation of the impact of additional traffic movements on Westfield Sole Road through 3 three formal passing places are supported in principle, if a safety audit raises no substantive issues.
- 5.23 The timing of delivery of the off-site highway works in Medway are of critical importance to deter re-routing via Bredhurst. It is essential that the Hoath Way/Sharsted Way junction capacity improvement is delivered prior to occupation and in advance of any traffic calming on Hempstead Road.
- 5.24 KCC Highways raise no objection to this planning application subject to conditions and a Travel Plan monitoring fee (£1,422).

KCC Archaeology

- 5.25 The site is situated as it is at the head of a dry valley leading towards the Brook and in turn into the River Medway so potential for occupation and activity, particularly in the later prehistoric and Romano-British periods. Archaeological works would be necessary by condition.
- 5.26 Revised Comments: The archaeological works will include a phased programme of archaeological works including fieldwork (evaluation and possibly excavation work and/or watching brief), post excavation and publication and interpretation works. In addition, the archaeological work needs to be agreed and implemented prior to development commencing.

KCC (Flood and Water Management)

- 5.27 Within the Kent district, surface water from the engineering development will simply shed to the surrounding open land and infiltrate to ground.

Forestry Commission:

- 5.28 Refer to joint standing advice produced with Natural England (last updated 5 November 2018) on ancient woodland, ancient trees and veteran trees. The Forestry Commission encourages local authorities to consider the inclusion of green infrastructure (including trees and woodland) in and around new development; and the use of locally sourced wood in construction.

Environment Agency

- 5.29 The site is within a Source Protection Zone (SPZ) of a principal aquifer. Only shallow design for SuDS should be permitted. Suggest conditions on contamination and no infiltration of surface water drainage into the ground other than with the express written consent. Investigations have been undertaken in a principal aquifer and appear to have left gravel filled boreholes to 20m depth, these should be fully decommissioned.

Parks and Open Space

- 5.30 The majority of this site lies within Medway, therefore no comment.

KCC (Economic Development)

- 5.31 The majority of this application site falls within Medway Unitary Authority area. This development proposal of 450 homes will have significant impact upon local infrastructure. We would request Maidstone Council ensure Medway Council provide proper mitigation prior to determining the application.

Southern Water Services

- 5.32 Any works within highway/access road will need to be agreed and approved by SW to protect public apparatus. Southern Water can provide foul sewage disposal to service the proposed development.

KCC (Ecology)

- 5.33 Site important for foraging and roosting bats; breeding populations of dormouse; Stag Beetle; Breeding/possible breeding birds. The site is adjacent to/within areas of Ancient Woodland, Local Wildlife Site and Roadside Nature Reserves.
- 5.34 Likely to be a negative impact from the construction/operational phase of the development eg dust, noise and recreational pressure. The NE standing advice details that the AW buffer should be at least 15m.
- 5.35 Roadside Nature Reserve (RNR): Clarification needed if there will be a loss to enable a cycle/footpath to be created – the works will result in the loss of an area of chalk grassland which is a scarce resource within Kent. Need additional information clarifying how they are going to mitigate for any loss of the grassland habitat.
- 5.36 A significant increase in lighting can have a negative impact on bats (and other species). Prior to determination we require information to be provided if there is an intention to fell the trees with roosting potential as part of this development. The additional information will enable us to consider if there is a need for emergence surveys to be carried out as part of this planning application.
- 5.37 Needs an outline site wide ecological mitigation strategy to cover risks from domestic cats; maintaining Stag Beetle population; to ensure that birds can continue to utilise the site, skylark breeding habitat. A site wide ecological management plan (including the woodland areas) should be produced for the lifetime of the development. More can be done within the built area of the proposed development for ecological enhancements.
- 5.38 Revised Comments: Construction works will impact the RNR and measures will have to be included within the construction management plan to ensure those impacts are minimised - suggest that the measures are agreed by an ecologist and engineer to ensure that they are implementable. I'd also suggest that a condition is included requiring report to be submitted providing the following on completion of the works: Survey of the site following construction work by an ecologist: Details of any remedial measures required; Details of when those works will be carried out.

KCC (PROW)

- 5.39 The proposed development would impact on PROW network that is within the remit of KCC. The proposed 'Pedestrian/Cycle Links' would be valuable but need to secure appropriate funding or mechanism for likely future maintenance.
- 5.40 Pedestrian and cycle routes should be overlooked within open and welcoming environments. Planting should be kept to an absolute minimum to ensure there are clear lines of view from properties and publicly accessible open spaces, to the paths in the area.
- 5.41 No impact on Public Footpath KH34: the applicant is including an access gap where the Definitive Alignment of Public Footpath KH34 connects with the proposed development site. Impact on BOAT KH41: The site layout should be revised so that the route indicated on the plans reflects the Definitive Alignment of this PROW.

Kent Police

- 5.42 Welcome a discussion with the applicant/agent about site specific designing out crime.

**6. APPRAISAL (A & B)**

## **Main Issues**

6.01 The key issues for consideration relate to:

- Impact on the Countryside/Landscape
- Highways and Traffic
- Ecology

## **Impact on the Countryside/Landscape**

- 6.02 Policy SP17 of the MBLP requires development proposals in the countryside to not harm the character and appearance of the area. Proposals should not have a significant adverse impact on the settings of the Kent Downs Area of Outstanding Natural Beauty. Policy DM30 goes into detail that, outside of the settlement boundaries, proposals should create high quality design.
- 6.03 There will be 2 forms of visual impact: one is the residential parcel within Medway and the second is the engineering work within MBC's area for the changed highway network.
- 6.04 On the first impact, the indicative siting and style of the houses and related development will be expected to be similar to the 2 previous planning permissions including the one allowed at appeal. These establish the principle of the built form of the buildings and their geographical extent. Both the extant planning permission and the current application have a similar width tree buffer screen to the shared boundary. There is inevitably a slight gap in the screening at the NE corner due to that now forming the main access. However, that is not considered to measurably worsen the overall visual impact of the housing units as viewed from the Maidstone District.
- 6.05 The landscape character of the MBC part of the application site (Bredhurst and Stockbury Downs) is assessed in the Maidstone Landscape Capacity Study: Sensitivity Assessment (2015) as being of moderate sensitivity to development with scope for change with certain constraints. The area is part of the green wedge between Maidstone and the Medway Towns, and the setting of the AONB. Extensive or significantly visually intrusive development would be inappropriate.
- 6.06 The proposed junction/road improvements impact on intensively farmed arable fields with no trees or hedgerows affected. From a landscape point of view, these proposals are incompatible with the key characteristic of predominantly narrow lanes.
- 6.07 Since the majority of trees and hedgerow species are broadleaved and the arable crops are seasonal, the area appears more open in the winter. Development of this area would harm the landscape and erode the green wedge and the buffer to the existing built development. Thus extensive landscape screening would be needed to mitigate the harm, ideally to give the outward impression of an extension of the rural character of the landscape using native woodland and hedgerow species.
- 6.08 The submitted Landscape and Visual Impact Assessment (LVIA) is mainly the same one as used for the previous applications on the site, dating from 2014 with one extra viewpoint (Hempstead Road) in an addendum to reflect the different extent of the engineering development for the proposed new access. The LVIA states that the Medway part of the site falls within the southern part of 'North Downs', "*rolling open plateau landscape*" with; scattered villages and hamlets; exposed intensively cropped large arable/fields with sparse hedgerow pattern and limited sheltered belt and scattered small woodlands.

- 6.09 Looking northwest from Lidsing Road near the junction with Forge Lane: in the medium term, the maturation of the proposed woodland planting belt would provide some screening of the housing development. However, the new access would extend the urbanising effect of the development on lower ground to the right of the view but the LVIA states that new planting along the new access route would serve to largely screen this new road corridor. As such, overall, the medium-term effect is stated to be a moderate adverse effect.
- 6.10 Looking from Forge Lane where it bridges over the M20: this is where road users approaching from Maidstone Borough will first see the proposed development in their view. In the medium term, the extent of change will fall to Minor/Negligible for the same reasons as given above.
- 6.11 Looking from Hempstead Road: in the short term, the visual impact will be very high. However, with the significant strategic woodland planting proposals the medium term, the level of effect is stated in the LVIA to fall to moderate adverse.
- 6.12 It is clear that the engineering works to change the road layout and increase the capacity of the junctions will harm rural character. It is inevitable that new highways have to meet safety audits and thus modern criteria for lane widths, visibility splays, separate footway/cycles ways etc. In addition, because the proposed new access would serve 450 dwellings, a waiting lane is deemed necessary hence significantly increasing the overall width. Similarly, as the rationale of the scheme is to facilitate the use of Hempstead Road as the main route in and out of the development, this junction also needs a waiting lane based on engineering standards as free flowing non-turning traffic is safer.
- 6.13 There have been some changes to the scheme to reduce the overall urbanising extent of the works, being deletion of a footway approx. 35m on the north side of Lidsing Road and one of 65m on the south side of Lidsing Road, which were concluded to be unnecessary as neither reflected realistic desire lines of pedestrian or cyclists. The toucan crossing originally proposed has also been replaced by an uncontrolled crossing.
- 6.14 There will be scope for enhanced planting of redundant sections of Lidsing Road but it is still unquestionably harmful to rural character as a contrast to the current layout of rural lanes. However, the overall area affected is relatively small and KCC (H&T) does advise that it provides some overall safety benefits, not least by improving the visibility from Hempstead Road. On balance, it is not considered that the impact on the countryside is harmful enough to refuse planning permission.
- 6.15 In terms of the realignment of Ham Lane to make this a 2 lane new main access, this will be intrusive visually and harmful to the character of the rural locality. However, there is proposed to be mitigation in the form of tree screening along the outside edge of the new road and also the enclosed field that is currently intensively farmed for arable is shown to be planted with trees. It is considered that these acceptably mitigate the access but conditions should be imposed requiring there to be advance planting as far as practicable.
- 6.16 The conflict with SP17 is outweighed by the highway safety benefits arising. The scheme does not impact on the setting of the AONB which is south of the M2.

### **Highways and Traffic**

- 6.17 Policy DM21 of the MBLP Development proposals must demonstrate that the impacts of trips generated to and from the development are mitigated to prevent severe residual impacts, including delivering mitigation measures ahead of the development being occupied. They must also provide a satisfactory Transport Assessment and a satisfactory Travel Plan. Proposals for major development should include adequate provision for public transport secured through legal agreements.

- 6.18 The TA states that 5% of development traffic will head south via Lidsing Road and Boxley Village which (based on TRICS data) equates to 8 additional southbound vehicles heading south in the AM peak and 7 returning in the PM peak.
- 6.19 The TA concludes that 3% of development traffic will head north-east via Bredhurst. This equates to 5 additional southbound vehicle movements in the AM peak and 4 returning in the PM peak.
- 6.20 The assessment of the broad traffic distribution from the application site derived from the 2011 Census journey to work data from Lordswood and typical journey times derived from online mapping tools were used to estimate car movements on the roads leading to Boxley and Bredhurst. (There was no provision of data on existing traffic levels through those villages)
- 6.21 However, the figures have not been disputed by KCC to a degree that would result in an objection to the overall development proposal in terms of impact on the highway network in MBC. The NPPF paragraph 109 is clear that development should not be refused on highway grounds unless there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe.
- 6.22 In response to KCC's concerns about the HE acceptance of a delay in Junction 4 improvements to 200 unit occupation, the applicant has responded that J4 and in particular the Hoath Way approach to it are not subject to congestion currently and therefore do not contribute to rat running locally. This situation is forecast to remain the case in the future. Mitigation proposed at M2 J4 is focused on safety implications of queuing on the westbound off-slip. The consultants state that a delay or omission of this mitigation would have no impact on KCC's road network as the off-slip at M2J4 does not have an alternative pragmatic route (rat-run) that utilises the KCC network.
- 6.23 However, a second condition is suggested which would focus on the Sharsted Way/Hoath Way junction improvement being completed early in the development programme in order to minimise the scope for increased rat-running as it is already congested.
- 6.24 With respect to the traffic calming point raised by KCC and the concerns expressed by Boxley and Bredhurst PCs, the applicant has consistently maintained that the impact of the development on local rural lanes does merit traffic calming as it is argued that there will be benefits on the Medway highway network, which will improve the attractiveness of those primary routes and reduce wider instances of rat running. Notwithstanding the above, the request for a contribution towards traffic calming/environmental mitigation is noted and a contribution of circa £100,000 is put forward by the applicant.
- 6.25 The case put forward by the applicant on the timing of Highway improvements is accepted. In term of Boxley and Bredhurst, these villages already have some traffic calming. However, there may be scope for additional elements or other improvements eg to the pedestrian environment, more 20mph roundels on the road, more 20mph repeater signs, at each end of the village or quiet tarmac throughout the village. It is therefore recommended that the s106 contribution of £100,000 be secured for these types of measures.
- 6.26 It is understood that the applicant has offered £212,133.32 (plus indexation for 1 year) towards the provision of a new bus service to serve the development or the extension of an existing service to serve the development. The details would be agreed between Medway Council and Arriva buses. This should include consultation with KCC's public transport officers.



- 6.27 The changes to Westfield Sole Road are formalising the points at which vehicles currently pass so it is doubtful that they would make the road more attractive as a short cut. The changes would require both a safety audit and a separate planning permission so these works would need to be "best endeavours" which would be interpreted as the seeking of planning permission if the safety audit can be met.
- 6.28 Other road improvements from the development in the Medway area include direct creation of extra road capacity plus a sizeable contribution towards the creation of a cycleway link along part of Hempstead Road and towards traffic calming on Hempstead Road.

### **Ecology**

- 6.29 The initial concerns of the KCC Biodiversity Officer (the loss of the grassland habitat, bat roosting, site wide ecological mitigation strategy) were responded to by the applicant in the form of an Ecology Addendum Report and a Mitigation Strategy for the whole site, the latter indicating on a plan the extent of Ecological Protection Zones (EPZ).
- 6.30 In regard of Road Nature Reserve (an area of calcareous grassland located on the north eastern site boundary within Medway), the consultant advised that further design work has confirmed that there will be no impact from the pedestrian/cycle connection is now able to avoid this area. Nonetheless, new grassland habitats, including species-rich meadow flower and, where appropriate, calcareous grassland will be created in areas of currently arable habitat around the edges of the site. The agent then provided further clarification that the RNR was outside of the red line boundary of the application site, being the verge of the eastern side Lidsing Road, north of the junction with Hempstead Road.
- 6.31 Advice from a suitably qualified ecologist will be sought before the felling or removal of limbs from trees containing potential bat roosting features which will be retained and protected within the EPZs. At the detailed design stage, further surveys will inform the need for licencing. Enhancement in the form of six bat boxes and twenty bat roosting features are also proposed.
- 6.32 Other Enhancement/Mitigation will be in the form of Woodland Management Plans, new native woodland, retained linear woody habitats, new mixed native hedgerow planting, new tree planting; new grassland habitats, new wetland habitats within surface water attenuation features and detailed strategies for birds, bats, dormice and stag beetle.
- 6.33 Overall, it is concluded that there is no direct harm to ecology interests in the Borough and there is scope for enhancement. Policy DM3 of the MBLP is complied with.
- 6.34 However, the construction of the road improvements to Lidsing Road (which will be inevitable from formal kerbing/drainage etc) could impact on the Roadside Nature Reserve and Medway Council should be urged to take on board the advice of KCC Ecology to protect this area as far as practicable in the construction process.

### **Other Matters**

- 6.35 The matter raised by KCC's PROW section can be the subject of informatives as the layout of the scheme is not yet defined and so the alignment issues can be resolved subsequently.
- 6.36 The external lighting strategy in the Ecological Mitigation Strategy states that a wildlife-sensitive lighting scheme should be devised to avoid or minimise light spill where development is located in close proximity to retained foraging habitats (particular regard to bats and dormice). Elsewhere, light spill is to be minimised, the

colour temperature will be a yellow tone; and sensitive timing of street lights etc. A condition is suggested to comply with policy DM8 of the MBLP.

- 6.37 The site is outside the Council's Air Quality Management Area but an air quality assessment monitoring on site is needed by condition to comply with policy DM6 of the MBLP.
- 6.38 In terms of policy ID1 of the MBLP, there are no implications on infrastructure in KCC's district. Previous schemes on the site have included s106 agreements secured by Medway Council covering contributions to, inter alia, Health, Community and Education Services within its area. It will be important that this is similar for this application.

#### **PUBLIC SECTOR EQUALITY DUTY (A)**

- 6.39 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.

### **7. CONCLUSION**

#### **Application (A) 19/500765/OUT**

- 7.01 This is a cross boundary planning application of which a small area of 1.7ha (comprising 6% of the overall site area) is in MBC district.
- 7.02 There is an extant planning permission granted by Medway Council for construction of up to 450 market and affordable dwellings. The key difference between that development approved and the current joint applications is the matter of 'Access'. It cannot be presumed that Medway Council will approve their duplicate cross boundary application MC/19/0336. However, should they do so, the impacts of the access onto the Maidstone BC highway network have been considered and judged by the Local Highway Authority to be acceptable.
- 7.03 Taking account of NPPF paragraph 109, KCC (H&T) do not object to the overall development proposal in terms of unacceptable impact on highway safety, nor the residual cumulative impacts on the road network being severe. However, the early timing of off-site highway capacity improvements is key to this stance. A s106 contribution of £100,000 should be secured for the villages of Boxley and Bredhurst to mitigate any residual impact and similarly, proposals for enhanced or diverted bus services must be secured by Medway Council for consistency with the earlier outline planning permission at Gibraltar Farm.
- 7.04 There is proposed to be mitigation to visual impact and landscape harm in the form of advance planting of tree screening.
- 7.05 Adequate information has been provided to demonstrate no direct harm to ecology interests in the Borough and there is scope for enhancement.

#### **Application (B) 19/501988/ADJ**

- 7.06 Medway Council should be advised that there are no objections subject to the matters being adequately addressed that reflect the representations of statutory consultees as far as they also apply to development proposed within Medway. This should include adequate developer contributions for infrastructure and health, community and educational services. There should be proposals for enhanced or diverted bus services for consistency with the earlier outline planning permission at Gibraltar Farm, with KCC officers being consulted.

- 7.07 Medway Council should be urged to take on board the advice of KCC Ecology, including measures to protect the Roadside Nature Reserve at Lidsing Road as far as practicable in the construction process.

## **8. RECOMMENDATION**

### **Application (A) 19/500765/OUT**

The Head of Planning and Development BE DELEGATED POWERS TO GRANT planning permission subject to the prior completion of a legal agreement to provide the following (including the Head of Planning and Development being able to settle or amend any necessary terms of the legal agreement in line with the matters set out in the recommendation resolved by Planning Committee):

- Contribution of £100,000 towards environmental/traffic calming measures in the villages of Boxley and Bredhurst
- No construction traffic to use Westfield Sole Road or travel via the villages of Boxley or Bredhurst.
- Appropriate mechanism for funding of future maintenance of Pedestrian/Cycle Links
- Best Endeavours to secure the passing bays on Westfield Sole Road.
- Completion of a Stopping Up Order for the redundant section of Ham Lane
- Travel Plan monitoring fee to KCC of £1,422
- MBC s106 Monitoring Fee of £1500 for one obligation and £750 for each additional planning obligation

and the imposition of the conditions as set out below:

- 1) The development hereby approved shall not commence until approval of the following reserved matters relating to the access road and footway/cycleway within the Borough of Maidstone have been obtained in writing from the local planning authority:

(a) Landscaping

Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.

The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later;

Reason: No such details have been submitted and in accordance with the provisions of Section 92 of the Town and Country Planning Act 1990

- 2) There shall be no implementation of any of the highway works on drawing 18-015-002 rev N except in conjunction with the implementation of a planning permission granted under ref MC/19/0336 for the 450 unit residential development it is intended to serve.

Reason: The works are only justified by the necessity to access a significantly sized residential development.

- 3) Prior to the first occupation, the Proposed Site Access shall be completed and fully open for use in accordance with drawing 18-015-002 rev N and retained thereafter.  
Reason: To provide satisfactory access.
- 4) The development hereby permitted shall not commence above slab level until a scheme for the permanent closure of the existing access of Ham Lane to vehicular traffic has been secured and approved by the local planning authority and the approved scheme shall be completed within 4 weeks of the new access being available for use;  
Reason: In the interests of road safety
- 5) No dwelling shall be occupied until off site highway capacity improvements at Hoath Way/Sharsted Way and Hempstead Valley Drive/Chapel Lane have been completed and are open for use. These shall accord with the details hereby approved or any minor variation thereafter approved by the Local Planning Authority in consultation with KCC (Highways and Transportation). There shall be no traffic calming to Hempstead Road in advance of these works.  
Reason: To ensure that traffic from the development is adequately mitigated from using inappropriate alternative routes in the Borough of Maidstone.
- 6) No dwelling shall be occupied until a full footway/cycleway link from the public highway at North Dane Way/Albemarle Road to the public highway at Hempstead Road has been completed in accordance with details that have been submitted and approved by the Local Planning Authority.  
Reason: In the interests of sustainable access to local services.
- 7) No dwelling shall be occupied until a site-wide Travel Plan has been submitted to and approved by the Local Planning Authority and the Travel Plan shall be implemented as approved.  
Reason: In the interests of sustainable development
- 8) No dwelling shall be commenced above slab level until advance planting of tree screening buffer of at least 20m in width along the boundary with the Borough of Maidstone has been carried out in accordance with details that have been submitted and approved by the Local Planning Authority.  
Reason: To accord with the terms of the application and in the interests of rural visual amenity.
- 9) A landscape and ecological management plan (LEMP), including long term design objectives, management responsibilities and maintenance schedules for all landscaped and open areas shall be submitted to and approved in writing by the local planning authority prior to first occupation of any dwelling on the site. Landscape and ecological management shall be carried out in accordance with the approved plan unless the local planning authority gives written consent to any variation.  
Reason: In the interests of biodiversity, landscape, visual impact and amenity of the area.
- 10) The development hereby approved within the Borough of Maidstone shall not commence until details of earthworks within the Borough have been submitted to and approved in writing by the local planning authority. These details shall include the proposed grading and mounding of land areas including the levels and contours to be formed, showing the relationship of proposed mounding to existing vegetation and surrounding landform.

Reason: In the interests of landscape, visual impact and amenity of the area and to ensure a satisfactory appearance to the development.

- 11) No dwelling shall be commenced above slab level until a landscape scheme within the Borough of Maidstone designed in accordance with the principles of the Council's landscape character guidance has been submitted to and approved in writing by the local planning authority. The scheme shall show all existing trees, hedges and blocks of landscaping on, and immediately adjacent to, the site and indicate whether they are to be retained or removed, provide details of on site replacement planting to mitigate any loss of amenity and biodiversity value (together with the location of any habitat piles) and include a planting specification, a programme of implementation and a 10 year management plan. The landscape scheme shall specifically address the need to provide tree planting to screen the highway works within and visible from the Borough of Maidstone.

Reason: In the interests of landscape, visual impact and amenity of the area and to ensure a satisfactory appearance to the development

- 12) There shall be no occupation of any dwelling until all planting, seeding and turfing specified in the approved landscape details has been completed within the Borough of Maidstone. All such landscaping shall be carried out during the planting season (October to February). Any seeding or turfing which fails to establish or any trees or plants which, within five years from the first occupation of a property, commencement of use or adoption of land, 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: In the interests of landscape, visual impact and amenity of the area and to ensure a satisfactory appearance to the development

- 13) No development shall take place in Borough of Maidstone until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work relevant to the Borough in accordance with a written specification and timetable which has been submitted to and approved by the Local Planning Authority. The archaeological works should include a phased programme of archaeological works including fieldwork (evaluation and possibly excavation work and/or watching brief), post excavation and publication and interpretation works.

Reason: To ensure that features of archaeological interest are properly examined and recorded

- 14) No development above slab level shall commence until a report has been submitted to and approved by the Local Planning Authority detailing and, where possible, quantifying measures or offsetting schemes which will reduce the transport related air pollution of the development during construction and when in occupation. The developer should have regard to the DEFRA guidance from the document Low Emissions Strategy -using the planning system to reduce transport emissions January 2010.

Reason: In the interests of mitigation of Air Quality harm.

- 15) There shall be no lighting except in accordance with details that have been submitted to and approved by the Local Planning Authority. This scheme shall take note of and refer to the Institute of Lighting Engineers Guidance Notes for the

Reduction of Obtrusive Lighting, GN01, dated 2005 (and any subsequent revisions) 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.

These details shall include a "wildlife sensitive lighting plan" for the site boundaries which shall:

- a) Identify those areas/features on site that are particularly sensitive for wildlife and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory;
- b) Show how and where external lighting will be installed so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory.

All external lighting shall be installed in accordance with the specifications and locations set out in the plan and these shall be maintained thereafter as approved.

Reason: In the interests of rural amenity and ecology.

- 16) The site is located above a Principal Aquifer and within SPZ3. If during construction, evidence of potential contamination is encountered, works shall cease and

(a) the site shall be fully assessed to enable an appropriate remediation plan to be developed. Works shall not re-commence until an appropriate remediation scheme has been submitted to, and approved in writing by, the Local Planning Authority and the remediation has been completed.

(b) Upon completion of the building works, a closure report shall be submitted for approval in writing by the Local Planning Authority. The closure report shall include details of:

(i) sampling and remediation works conducted and quality assurance certificates to show that the works have been carried out in full in accordance with the approved methodology.

(ii) post-remedial sampling and analysis to show the site has reached the required clean-up criteria shall be included in the closure report together with the necessary documentation detailing what waste materials have been removed from the site.

Reason: There is always the potential for unexpected contamination to be identified during development groundworks.

- 17) No infiltration of surface water drainage into the ground is permitted other than with the express written consent of the local planning authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approval details.

Reason: To protect the underlying groundwater from the risk of pollution and in accordance with the requirements of the National Planning Policy Framework

- 18) Prior to occupation, a detailed site wide ecological management plan should be produced and submitted to for approval of the LPA. It shall include

- Details of the habitats to be managed
- Details of the aims/objectives of the management
- Rolling 5 year management plan

- Dates of when the management plan will be reviewed and updated
- Details of who will be implementing the management.
- Details of on going monitoring

The plan must be implemented as approved.

Reason: In the interests of biodiversity.

- 19) There shall be no fencing, walling or other boundary treatments within the Borough of Maidstone except in accordance with details (that should include timetabling) which have been submitted to and approved in writing by the local planning authority. The boundary treatments shall be carried out in accordance with the approved details and timetable.

Reason: To ensure a satisfactory appearance to the development.

#### INFORMATIVES

- 1) It is noted that investigations have been undertaken and appear to have left gravel filled boreholes to 20m depth. These should be fully decommissioned in accordance with our current guidance as they pose a short cut route for any agricultural-derived contamination or any spillages from future construction activities.
- 2) The report mentions the possibility of using deep bore soakaways for the disposal of surface water. This is currently not acceptable at this site without further detailed consultation. Only a shallow design for SUDs should be permitted as the site is within an SPZ3.
- 3) The CLAIRE Definition of Waste: Development Industry Code of Practice (version 2) provides operators with a framework for determining whether or not excavated material arising from site during remediation and/or land development works are waste or have ceased to be waste. Under the Code of Practice: excavated materials that are recovered via a treatment operation can be re-used on-site providing they are treated to a standard such that they fit for purpose and unlikely to cause pollution. Treated materials can be transferred between sites as part of a hub and cluster project. Some naturally occurring clean material can be transferred directly between sites.
- 4) Developers should ensure that all contaminated materials are adequately characterised both chemically and physically, and that the permitting status of any proposed on site operations are clear. If in doubt, the Environment Agency should be contacted for advice at an early stage to avoid any delays. Developers should refer to the Position statement on the Definition of Waste: Development Industry Code of Practice and The Environmental regulations page on GOV.UK.
- 5) No demolition/construction activities shall take place, other than between 0800 to 1800 hours (Monday to Friday) and 0800 to 1300 hours (Saturday) with no working activities on Sunday or Bank Holiday.
- 6) The applicant should have regard to EA PPG6 pollution prevention guidance on construction sites in developing any detailed Construction Environmental management plans - <https://www.gov.uk/government/collections/pollution-prevention-guidance-ppg>.
- 7) A formal application for connection to the public sewerage system is required in order to service this development, please contact Southern Water, Sparrowgrove

House, Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330 303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk). Please read our New Connections Services Charging Arrangements documents which has now been published and is available to read on our website via the following link  
<https://beta.southernwater.co.uk/infrastructure-charges>

- 8) A formal application for connection to the water supply is required in order to service this development. Please contact Southern Water, Sparrowgrove House Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330 303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk)"
- 9) It is possible that a sewer now deemed to be public could be crossing the above property. Therefore, should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its condition, the number of properties served, and potential means of access before any further works commence on site. The applicant is advised to discuss the matter further with Southern Water, Sparrowgrove House Sparrowgrove, Otterbourne, Hampshire SO21 2SW (Tel: 0330 303 0119) or [www.southernwater.co.uk](http://www.southernwater.co.uk)".
- 10) No furniture, fence, barrier or other structure may be erected on or across Public Rights of Way without the express consent of the Highway Authority. There must be no disturbance of the surface of the Public Rights of Way, or obstruction of its use, either during or following any approved development without the express consent of the Highway Authority. No hedging or shrubs should be planted within 1 metre of the edge of the Public Rights of Way. There is no consent or right to close or divert any Public Right of Way at any time without the express permission of the Highway Authority. No Traffic Regulation Orders will be granted by KCC for works that will permanently obstruct the route unless a diversion order has been made and confirmed. If the applicant needs to apply for a temporary traffic regulation order whilst works are undertaken, six weeks notice is needed to process this.
- 11) Any works within highway/access road will need to be agreed and approved by Southern Water Services to protect public apparatus
- 12) It is the responsibility of the applicant to ensure, before the development hereby approved is commenced, that all necessary highway approvals and consents where required are obtained and that the limits of highway boundary are clearly established in order to avoid any enforcement action being taken by the Highway Authority. The applicant must also ensure that the details shown on the approved plans agree in every aspect with those approved under such legislation and common law. It is therefore important for the applicant to contact KCC Highways and Transportation to progress this aspect of the works prior to commencement on site
- 13) KCC Highways require that the works falling within its jurisdiction, including the Traffic Regulation Order necessary for the speed limit reduction, are secured via a Section 278 Agreement.

#### **Application (B) 19/501988/ADJ**

Medway Council is informed that NO OBJECTIONS be raised subject to consideration of the following matters:

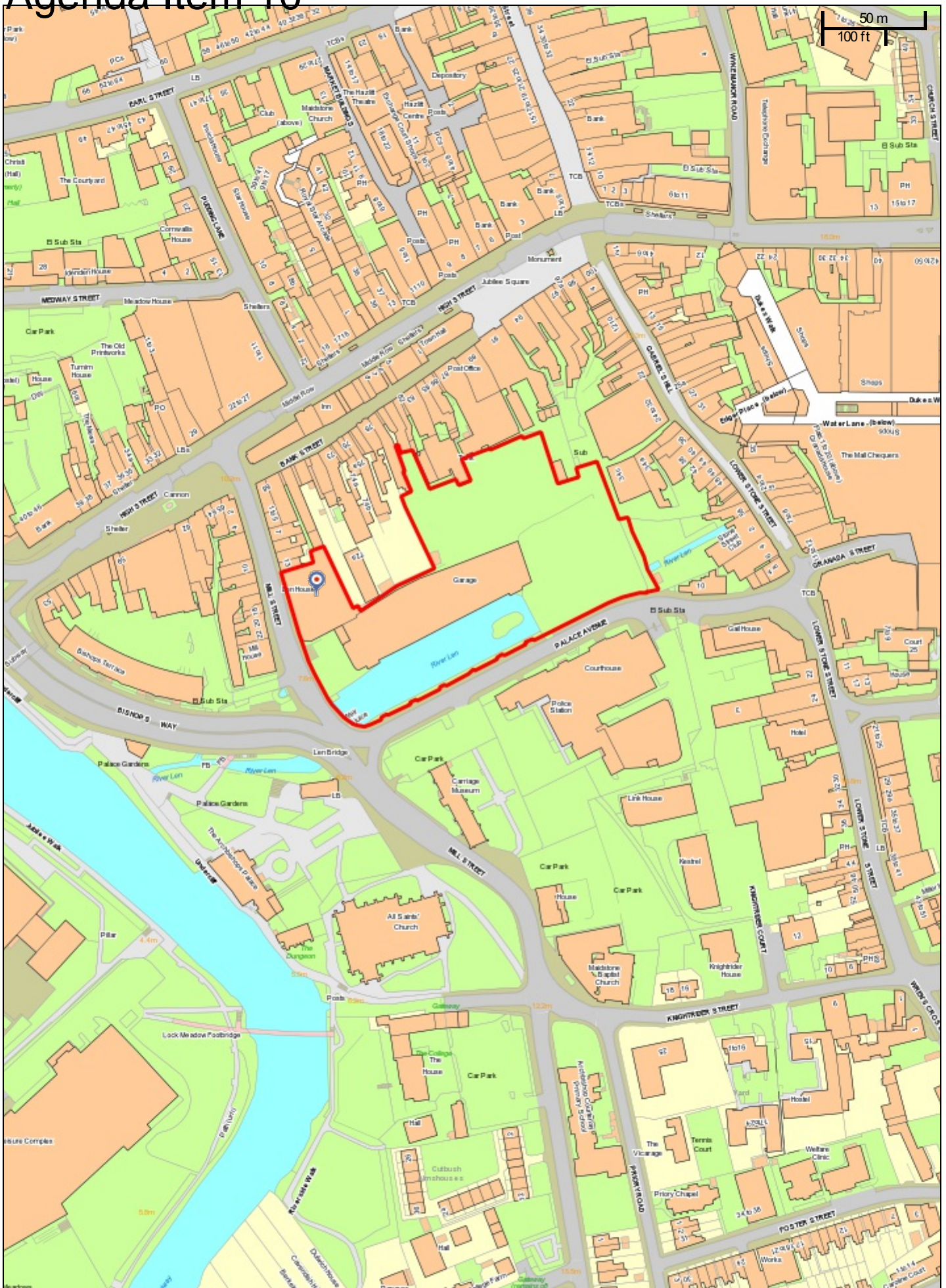
- Provision of a financial contribution to improve local bus services commensurate with the extant planning permission with KCC (Highways and Transportation) being consulted on the measures.



- Securing full contributions towards necessary health, social, educational and community infrastructure so as not to impact on any NHS West Kent CCG or Kent County Council facilities
- Preparation and submission of a Construction Environmental Management Plan for approval in consultation with both Local Highway Authorities. It that should avoid construction traffic using Westfield Sole Road or routing via the villages of Boxley or Bredhurst. It should include provision of construction vehicle loading/unloading and turning facilities prior to commencement of work on site and for the duration of construction; Provision of parking facilities for site personnel and visitors prior to commencement of work on site and for the duration of construction; Provision of wheel washing facilities prior to commencement of work on site and for the duration of construction;
- Provision of measures to prevent the discharge of surface water onto the highway
- Continuation of the off site footway/cycleway along Hempstead Road which lies within Medway
- Compliance with the Site Wide Ecological Mitigation
- As per the advice of KCC Ecology, to protect Roadside Nature Reserve as far as practicable in the construction process.
- Advance planting of a tree buffer screen adjacent the Borough of Maidstone
- Ensure that finished floor levels of the dwellings are as low as practicable.
- Only shallow design for SuDS should be permitted and there should be no infiltration of surface water drainage into the ground other than with the express written consent of the local planning authority
- To safeguard the principal aquifer, there should be full decommissioning of any existing gravel filled boreholes
- No external lighting except in accordance with approved details that shall minimise light pollution and be sensitive to wildlife, including the colour temperature.
- Full compliance with the requested conditions of Highways England.
- The detailed site layout should allow for connections to the Definitive Alignments of KH34 and BOAT KH41 that lie within the Borough of Maidstone.

Case Officer: Marion Geary

# Agenda Item 10



20/501029/FULL & 20/501030/LBC - Len House, Mill Street, Maidstone, Kent, ME15 6YD

Scale: 1:2500

Printed on: 10/6/2020 at 9:42 AM by JoannaW



## REPORT SUMMARY

**Members should note that this report introduces two applications: (A) the application for planning permission and (B) the application for the associated listed building consent works.**

**REFERENCE Nos** - (A) 20/501029/FULL and (B) 20/501030/LBC

### APPLICATION PROPOSALS

- (A)** Restoration of Len House and associated new build works to provide a mixed-use development comprising: (i) Retention with alterations and change of use of Len House to provide 3,612 sqm (GIA) flexible commercial floorspace (A1/A2/A3/A4/A5/B1a/D1/D2) at ground floor, 18 No. residential apartments (C3) at first floor level, together with ancillary car parking. (ii) Erection of part rear first floor and two storey roof extension to provide 62 No. new residential apartments, with rooftop amenity space. (iii) Construction of two new buildings of up to 5-storeys to provide 79 No. residential apartments (C3) with amenity space. (iv) Provision of associated car parking, open space, earthworks including demolition of hardstanding and structures, and new boardwalk to north side, and re-utilisation existing vehicular access points from Mill Street and Palace Avenue.
- (B)** Listed Building Consent for restoration of Len House and associated new build works to provide a mixed-use development comprising: (i) Retention with alterations and change of use of Len House to provide 3,612 sqm (GIA) flexible commercial floorspace (A1/A2/A3/A4/A5/B1a/D1/D2) at ground floor, 18 No. residential apartments (C3) at first floor level, together with ancillary car parking. (ii) Erection of part rear first floor and two storey roof extension to provide 62 No. new residential apartments, with rooftop amenity space. (iii) new boardwalk to north side.

**ADDRESS** Former Rootes Site, Len House, Mill Street / Palace Avenue, Maidstone

**RECOMMENDATION** That (A) planning permission and (B) listed building consent be granted, subject to conditions.

### SUMMARY OF REASONS FOR RECOMMENDATION

The scheme involves the refurbishment and extension of a significant heritage asset and redevelopment of under-utilised land within a prominent town centre location.

The site is not allocated for development within the Local Plan, but is one of five town centre sites that have been the subject of the preparation and adoption of an Opportunity Site Brief that has been approved by the Council's SPI Committee.

The proposals have been the subject of detailed pre-application discussions with Officers at MBC, KCC and Historic England.

This is considered to be a highly sustainable town centre location and, subject to detailed tests, an appropriate location for mixed-use development.

The proposed refurbishment works to the listed building are sensitive to its history and fabric and the proposed alterations and new build elements are of a high quality. Whilst some harm is identified in terms of, for example, the change of use from the building's original function and removing the original roof, such works are considered to be the

minimum necessary in order for a viable refurbishment scheme to be brought forward.

These impacts are considered to result in less than significant harm to the heritage asset, but are considered to be outweighed by the significant heritage benefits of bringing the building as a whole back into use in a manner that can be appreciated by the public and the benefits that this will offer in terms of enhancing the vitality and viability of the town centre. In addition, significant public benefits arise through the construction of a significant number of high quality new housing within a highly sustainable town centre location.

**REASON FOR REFERRAL TO COMMITTEE**

It is a significant town centre scheme that merits Committee consideration.

<b>WARD</b> High Street	<b>APPLICANT</b> Len House (Maidstone Ltd) Part Of Classicus Estates
	<b>AGENT</b> Esquire Developments

<b>DECISION DUE DATE</b> 15/07/20	<b>PUBLICITY EXPIRY DATE</b> 07/03/2019	<b>OFFICER SITE VISIT DATE</b> Various
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**RELEVANT PLANNING HISTORY:**

The site has an extensive planning history relating mainly to commercial activities associated with its previous motor trade use, none of which is relevant to the present application.

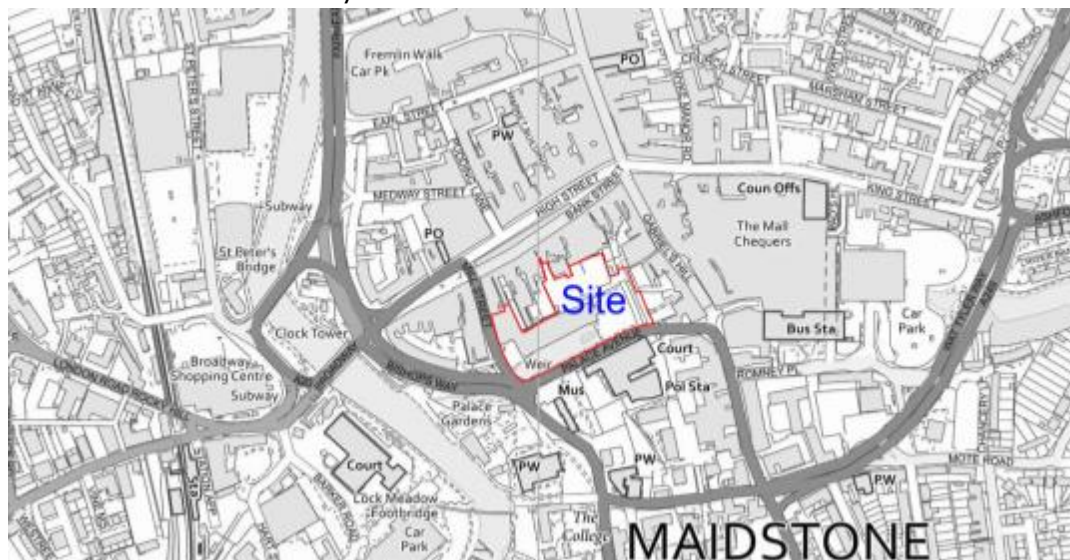
**MAIN REPORT**

**1.0 SITE DESCRIPTION**

1.01 The application site comprises Len House, the former Rootes motor dealership, which is Grade II listed. The site is prominently located along one of the main traffic routes through the town centre and on the busy junction of Mill Street / Palace Avenue / Bishops Way. As a consequence Len House is a prominent feature within the local townscape. Having regard to the building’s scale, architectural quality and history, it is considered to be a highly significant building.



- 1.02 The site lies towards the southern side of Maidstone town centre's main commercial area, with frontages and access points to both the Mill Street and Palace Avenue frontages. The River Len is culverted under the eastern part of the site, with the Mill Pond defining the Palace Avenue setting of the main building, before re-joining the culvert into the Medway.



- 1.03 The application site, which includes the Mill Pond, represents a large single plot size for the town centre, comprising circa 1.38 hectares. The principal access into the building is from the lower end of Mill Street, where the original showroom, offices and vehicular entrance are sited. The existing building is broadly L-shaped with a shorter frontage to Mill Street and a long prominent frontage to Palace Avenue. To the east and rear of the building are large open areas of hard surfacing previously used for the storage and display of cars.
- 1.04 The site levels rise towards the northern boundary, where the site abuts the rear of established development along Bank Street. Properties in Bank Street principally comprise commercial units with some residential accommodation on upper floors or to the rear. To the east, the site adjoins areas to the rear of commercial properties within Gabriel's Hill, which have a generally low grade appearance and detract from the character and appearance of the surrounding area, including the conservation area. The relationship of the proposed development to existing neighbouring uses, both commercial and residential, is set out in Section 6.1 of the 'Appraisal' section below.
- 1.05 The site lies within the Maidstone Town Conservation Area. A significant number of other heritage assets, both listed buildings and scheduled monuments are located within the surrounding area including; The Archbishop's Palace (Grade 1 and a scheduled monument) and All Saints Church (Grade 1). The All Saints Conservation Area lies to the south west.

#### **SITE HISTORY**

- 1.06 A unique characteristic of the site is that until vacated in 2019, when the motor dealership relocated to a site outside of the town centre, it had been in continuous

use by the Rootes Group since the early 20<sup>th</sup> Century, with the recent motor trade operation being continuous since the building's construction in the late 1930's.

1.07 The site and surrounding area represent a significant element in the development of Maidstone. Located adjacent to the 14<sup>th</sup> Century river bridge (parts of which remain and are designated as a scheduled ancient monument), what is now Mill Street formed part of the early medieval grid development of the town centre, with long narrow Burbage plots extending south from Bank Street. These characteristic plots remain evident today when viewing the rear of the Bank Street properties. The Mill Pond, also of medieval origin was constructed to serve the corn mills adjacent to the application site.



1.08 By the mid to late 19<sup>th</sup> Century a tannery was built on the application site, covering the area now occupied by Len House itself. The tannery continued in operation until the First World War when it was acquired by the Rootes Group and converted into an engineering works. During WW1 the company repaired aircraft engines on behalf of the Government.

1.09 After WW1 the Rootes company manufactured vehicles at the site until relocating its manufacturing base out of the town in the 1930's. At this time Rootes commissioned *Howard and Souster* to design a new flagship dealership. The resulting building was built in three phases around the tannery, with the first phase comprising a showroom on the Mill Street frontage, phase 2 the main workshops fronting the Mill Pond, completed by the frontage and forecourt in 1941.

1.10 Designed in a streamline modernist style, key features of the new building that were typical of the architectural style and approach of the architects included:

- A simple restrained approach to the facades
- Application of clean smooth curves on corner features
- Long strips of metal windows
- Use of towers and neon lighting to emphasise branding



1.11 Having been in continuous use as a motor dealership, with the same functions of sales, repair, service, parts and administration, many of the building's internal spaces and functions have remained unchanged throughout its operation.

*Showroom Fronting Mill Street*



*Main Workshops*



1.12 Over its lifetime the building has been the subject of numerous unsympathetic alterations, including internal office divisions and a mezzanine, but in the main the principal large internal voids remain. One notable features, which remains intact today and contributes to the building's heritage significance, is the large scale concrete vehicular ramp that allows vehicles to move between the two large workshop floors.



## 2 THE PROPOSAL

- 2.01 The Applicant is understood to have acquired the building in 2019. Both prior to purchase and during the evolution of the scheme, a series of pre-application discussions have taken place between the applicant, MBC, KCC and Historic England, which have informed the design team's approach to the scheme, in both in terms of the works to the listed building and the scale and form of the new-build elements.
- 2.02 The proposals, whilst designed to present a single cohesive scheme, can be broken down into a number of elements:
- 2.03 Len House Ground Floor

Restoration and conversion into commercial uses comprising 2,612 sq.m.

The application seeks permission for a flexible range of uses within use classes A1/A2/A3/A4/A5/B1a/D1/D2, but importantly, the application seeks to limit uses within the main part of the building to classes A3/A4, principally food and drink.

The commercial spaces at ground floor will retain the principally open and defining characteristic of the existing building interior.

The former forecourt facing Mill Street is to be converted to an active food and/or beverage area that would take the form of a modern interpretation of the now lost petrol kiosk. The details of the new kiosk will be sought through a subsequent application, but the submission is accompanied by a series of illustrations to demonstrate how this could work.



This new area of public realm will connect to the remainder of the site to the east via a boardwalk that sits over the building's frontage to the Mill Pond. The boardwalk has been designed to be minimal in nature so as not to interrupt the building's visual / reflective relationship to the water body. The boardwalk will not only allow food and drink uses within the building to have a some external seating area, but also allow pedestrians to pass east – west away from the traffic intense environment of Palace Avenue.





#### 2.04 Len House First Floor & Extensions

Together with a small rear infill extension of the Mill Street element, the first floor of the building will be converted to residential use, which, with a two level roof extension, will provide 62 residential apartments.

The first floor apartments fronting Palace Avenue will be set back behind winter gardens that will ensure that the existing character of the long unbroken string of windows is not interrupted by internal divisions.



The innovative retention of the vehicular ramp for its original function will provide access to residential parking within the deep internal floorplates of the building that would not suit residential or other commercial uses.

The new upper floors will have a lightweight appearance and have been set back a significant distance from the main building frontage and set down below the front parapet in order to minimise their overall visual impact.



## 2.05 New Build

The new build on the former parking areas will comprise two distinct elements. Fronting Palace Avenue will be a 4 storey building, the design of which represents a contemporary, but subordinate interpretation of Len House.



Members should note that following the submission of the application, the application has been amended for reasons of viability and deliverability to exclude the de-culverting of the River Len to the east of the site (as shown in image above), together with some minor remodelling of the massing of elements on the eastern part of the site to avoid sewer alignments. Whilst the de-culverting of the Len would have been welcomed, its exclusion does not undermine the overall design approach of the scheme and the priority is to secure a viable scheme of restoration for Len House.

The new build element to the rear of the site will possess a very different character that will respond to the town centre to the north. Pitched roofs and a vertical emphasis are informed by the character of the historic burbage plots. The buildings range from 2 to 5 storeys in height and utilise the site slope to create a varied roofscape, typical of the area immediately to the north. These residential units are set around a podium courtyard, beneath which is ground level car parking.



Building heights are modulated to reflect the organic character of the wider 'Town' conservation area, as well as allowing views of the historic building pattern to be achieved. Together with the upper elements being set in from the rear boundary, the a section is intentionally lowered in height elements to allow natural light into residential properties to the rear of Bank Street. In total the new build elements will provide 79 apartments.

2.06 The overall schedule of residential accommodation proposed is therefore:

Len House	New Build	Total
80	79	159

The unit mix, which reflects the site's central location, comprises:

1-bed - 42	2-bed - 108	3-bed - 9
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2.07 Car parking will be provided in the form of:

- 21 spaces within the first floor of Len House accessed via the existing Mill Street access
- 89 spaces below the new build element accessed off Palace Avenue
- 24 spaces for the commercial uses, also accessed off Palace Avenue

2.08 Residential parking is provided at a ratio of 70%, with 5% disabled parking.

2.09 168 cycle spaces will be provided for residents, a ratio of over 1 p/unit. Surface cycle parking will be provided for visitors to the commercial uses.

### **3.0 POLICY AND OTHER CONSIDERATIONS**

3.01 The following Maidstone Borough Local Plan policies are considered to be relevant to this application:

- SS1 Spatial strategy
- SP1 Maidstone urban area
- SP4 Maidstone town centre
- SP18 Historic environment
- SP19 Housing mix
- SP20 Affordable housing
- SP21 Economic development
- SP23 Sustainable transport
- DM1 Design Quality
- DM2 Sustainable design
- DM4 Development affecting heritage assets
- DM5 Brownfield land
- DM6 Air quality
- DM12 Density
- DM16 Town centre uses
- DM19 Open space
- DM20 Community facilities
- DM21 Transport impacts
- DM23 Parking standards

3.02 Supplementary guidance is provided in the form of the Len House Planning Guidelines, which were approved by SPI in 2019 and published in January 2020. Whilst not formal SPG, they are a material planning consideration.

3.03 The National Planning Policy Framework (NPPF) introduces a number of relevant considerations, including:

- An overarching objective of delivering sustainable development (7-11)
- Weight on the local plan (47)
- Housing supply / meeting housing needs (59-76)
- Promoting sustainable transport (102+/108+)
- Parking standards (105-106)
- Effective use of land (117+)
- Density of development (122-123)
- Design Quality (124-132)
- Climate change (149+)
- Historic environment (184+)

National Planning Practice Guidance (NPPG) supplements the NPPF and relevant guidance is assessed below.

### **4.0 LOCAL REPRESENTATIONS**

4.01 Representations have been received from 4 local residents occupying flats within a building in Bank Street, raising the following (summarised) issues

- Overshadowing and loss of natural light
- Potential loss of trees
- Increased traffic pollution / air quality impacts
- Inadequate parking
- Increased traffic impacts
- Impact on listed status of building
- Overbearing massing and density
- Increased flood risk
- Overlooking and loss of privacy
- The noise impact from entertainment venues on existing residents is unacceptable and it is not appropriate to build more in such close proximity
- The new buildings will also rebound noise from commercial premises increasing the existing impacts.

Non-planning consideration raised include:

- There are legal restrictions affecting building on the application site
- Construction impacts on night workers
- Loss of property value
- Loss of security
- Loss of outlook.

4.02 In addition, a number of representations have been received from owners / operators of commercial, mainly food/drink, establishments located adjacent to or nearby the site.

The operators that have expressed concerns are:

- The Bierkeller / Fever Bar complex has operated on their site since the 1970's and has capacity for 1,150 persons with a license to operate until 0200 daily. It employs a significant number of staff both directly and indirectly.
- Brenchley's has an active curtilage, with open areas serving food and drinks which is open to 0100 and lies immediately adjoining the site boundary close to the proposed dwellings.
- Harry's bar is open to 0200 and has an outside terrace with capacity for 150.
- Madisons in Gabriel's Hill has a rooftop bar and license to 0300.
- Banks Nightclub is open to 0300 on some nights and hosts both recorded and live music events and DJ's

Matters raised by these businesses focus upon:

- The introduction of new dwellings in close proximity to proposed residential dwellings may lead to increased complaints and threaten the viability of the business and their operating license.
- The NPPF seeks to avoid unreasonable restrictions being placed upon existing businesses – reference is made to the 'agent of change' principle – see 'Appraisal - 6.1' below.
- The Council need to have regard to whether the occupiers of the proposed new dwelling will experience adequate amenity.

- There is a need to assess whether occupiers of a heritage asset can be adequately mitigated from external noise.
- The NPPF recognises the role of bars and restaurants within town centre and their contribution to vitality.
- The loss of an established business could have material economic and social impacts.
- The submitted noise impact assessment is considered to be inadequate.
- Balconies should be removed from the proposed scheme as they are vulnerable to noise.
- Overlooking and / or overshadowing of the external areas by new residents could affect the enjoyment of patrons.
- There will be overlooking of the new homes and visa versa of the commercial outdoor areas leading to a respective loss of privacy.
- Inadequate parking within the development may lead to increased parking stress and together with increased traffic in the town centre could disrupt deliveries.
- The development will place increased pressure on local infrastructure.
- Bin storage areas are adjacent to the boundary and can involve staff emptying glass waste between 0200 and 0300.

4.03 These issues are considered in further detail within the Appraisal section below.

## **5.0 CONSULTATIONS**

The following (summarised/extract) comments have been received, full copies of which can be viewed on the Council's website.

### **5.01 MBC Conservation Officer:**

- The building and associated site occupies a large area within the Maidstone Town Centre Conservation Area, at the historic heart of the town. There are a large number of listed buildings to the north and east of the site primarily facing High Street, Bank Street, Gabriel's Hill and Lower Stone Street. The space north of the River Len was historically the burgage plots of the High Street/Bank Street properties, formed from the 12th century onwards.
- The site is close to the All Saints Conservation Area, and within the setting of the Archbishop's Palace (Grade I), Stables (GI and scheduled monument), Gatehouse (Grade II and SM), Dungeons (GII\*), Len Bridge (GII and SM) and All Saints Church (GI), and was historically the site of mill buildings associated with the palace, of which the mill pond is a remnant. Along with the College these assets form a highly significant group of medieval buildings considered of national importance. The road system has degraded the physical connections with the site, but the visual relationship remains, with extensive inter-visibility.
- The Conservation Officer's assessment of impacts is incorporated in the following 'Appraisal' at 6.2.

### 5.02 Historic England:

- The building is most recognisable for its distinctive Art Deco design and prominent location
- Its significance can be broadly summarised in two ways. Firstly, it has architectural interest as a fine example of the Art Deco style, a bold movement which was characterised by streamlined forms and geometric designs and decoration. This is best expressed on its two principal elevations (Mill Street and the elevation addressing the mill pond). Evidence of its original interior e.g. the staircases, also contributes to its significance.
- Secondly, the building has historical value as a rare example of a commercial garage and show room from an early phase of motoring. The building's internal layout including large volume workshops and particularly the ramp for vehicular access to a first floor workshop illustrate its historic function and continued use for the motor industry and thus also make an important contribution to the significance of the building.
- In some areas later 20th century alterations have detracted from an appreciation of the significance of the building particularly where either evidence of internal decoration or the layout of the building has been changed.
- The entire site is within the Maidstone Town Centre conservation area which is principally significant as a good example of a medieval market town with an intact street pattern and a large number of medieval and post medieval buildings. Of note is the high survival of narrow burgage plots and early buildings on Bank Street (at the rear of the site) most of which are no more than three storeys and form the immediate setting of the grade II garage and showroom. While the grade II listed building contributes positively to the conservation area as it illustrates its later development, the wider site of largely undeveloped open ground used mainly for parking is a largely unattractive space and its contribution to the significance of the conservation is much more limited.
- Harm to the significance of the Former Rootes Garage will arise in several ways. Firstly, the significance of the grade II building is intimately connected to its continued use as a garage for which it was designed and converting it to a residential use would harm an understanding of this aspect of significance. The loss of its original roof, which was designed to provide overhead light for first floor workspaces, and thus alludes to the functional use of the building, also causes harm as does the loss of internal features which contribute to significance including a staircase. The proposed two storey roof top extension is also capable of causing harm to the architectural qualities and thus also to the significance of the building which relies on its simplicity of form and repetitive detailing, e.g. window size and pattern for architectural effect. We think the harm arises chiefly from the appearance of the two storey addition which because of its dark cladding detracts from an appreciation of the simplicity of the form and detailing, particularly on the principal elevation of the building.
- We acknowledge that the design of the proposed blocks of development responds to historic roof forms and references the historic streetscape, for example with repetitive gables. However, the scale and massing of the proposed development and especially that to the rear of the site is inevitably greater in bulk and height than some of the surrounding historic townscape

and this has the potential to cause harm to the significance of the conservation area, depending on how the development and historic townscape are appreciated together in key views.

- We think great effort has been made to avoid or minimise harm to heritage significance, most notably in the retention and use of the car ramp for the use it was designed for. Harm to an appreciation of some large open volumes, e.g. the ground floor workshop, has been minimised by uses which require large open volumes. However, it may be worth exploring whether harm to the building's architectural qualities could be minimised by using a lighter coloured cladding for the rooftop extension in order to help reduce the visual impact of the extension.
- Historic England recommends that your Council should consider whether the harm to the architectural qualities of the grade II listed building is capable of being minimised by amending the cladding or perhaps the modulation of the rooftop extension to help you decide whether NPPF requirements to avoid or minimise harm and justify remaining harm are met.

### 5.03 Kent County Council Archaeology:

(Officer Note: in response to the following comments the applicant has since submitted an updated archaeological assessment that seeks addresses the points raised. Any further responses from the consultee will be reported within a UU.)

- The Archbishops Palace and Church are considered to have been the core of the Early Medieval settlement. There is high potential for associated remains, such as Early Medieval structural, industrial and trading activity remains, to survive in the surrounding area, including on the development site itself.
- The development site has been subject to several phases of Post Medieval use, including Tannery and the prestigious car sales complex itself. Len House is situated over much of this activity but there are other areas within the site, particularly to the north east, which may contain early Post Medieval remains. The southern part of the site is still occupied by the mill pond. This mill pond may have Medieval origins, serving a medieval mill complex, but much of the current asset is Post Medieval or later. Part of the mill pond is visible but the eastern part and associated water channels are buried beneath the current surface.
- There is potential for this site to contain significant remains associated with the Scheduled Monuments of Medieval and earlier date. As such this proposed development may have a major impact on significant heritage assets and the assessment of heritage needs to be very robust and comprehensive, to ensure informed decisions are made and there is appropriate and proportionate consideration of the heritage of the site and the town itself.
- I recommend that the assessment of heritage and archaeology needs to be far more detailed. Both heritage reports need to be revised and, in accordance with paragraph 189, NPPF, I recommend some preliminary fieldwork would be extremely helpful to clarify potential for as yet unknown significant archaeology, including modern structural remains associated directly with Len House.
- I recommend that prior to determination of this application, further more detailed heritage assessment would be appropriate.



#### 5.04 Kent County Council Highways:

- The residual difference between trips generated by the existing (prior) use and the proposed uses presented in the Transport Statement represent a robust forecast of the potential vehicle trip impact of this proposal.
- The proposals are projected to generate a net reduction in terms of trip generation in the AM peak. Potential PM peak net vehicle trip impact is varied between the potential scenarios. These impacts range from a net reduction of 8 trips in the PM peak up to an increase of 56 trips. . However, it is concluded that the additional 56 vehicle movements this proposed development would add to the network in the PM peak, under the “worst case scenario”, would represent a low increase that is likely to fall within the day-to-day variations in traffic using this road.
- It cannot be reasonably concluded that the impact of the proposal would be severe or significant in terms of vehicle trip generation.
- In terms of the primary Palace Avenue access, due to the minimal net trip generation of this proposal, the availability of suitable visibility lines and vehicle tracking and the collision record, it can be concluded that the proposal for this access junction would not have any significant impact on highway safety.
- In terms of the Mill Street access in the context of a likely reduction in vehicle movements at this junction compared to the existing use, the proposal for this junction is not considered to represent any potential significant negative highway impacts.
- Due to the nature of the site and the surrounding roads, where there is very limited opportunity to park without residents permits (which residents of this site would not qualify for), it is not considered likely that any parking overspill would occur. The applicant has confirmed that spaces within the site will be allocated and that residents will be fully aware before moving into to the flats whether they will be able to park a car or not. As this level of parking provision is supported by Travel Plan initiatives to minimise car dependency, this is considered a suitable approach to residential parking for this location. Visitors driving to the site are expected to use the nearby publicly available car parks, which is an appropriate strategy in this location given the high levels of public car park provision in the nearby area.
- It is noted that twelve disabled parking bays are proposed for the residential parking element, which is a suitable provision based on SPG4 guidance.
- The proposed “boardwalk” along the front of the Len House building has the potential to offer a benefit to pedestrian permeability, so long it is available as a through route, as it would offer a more attractive walking route than along Palace Avenue (A229).
- The site has access via continuous pavements into the town centre and key pedestrian trip attractors. The pavement widths available on Mill Street are acceptable for the likely increase in pedestrian footfall that this proposal would likely generate.
- The site benefits from access to a large number of different bus services available in close proximity. The nearby bus stops have suitable pedestrian access and generally have a good level of infrastructure, however the stop nearest to the entrance to the site on Mill Street is without a shelter. In order

- to encourage higher levels of sustainable trips to and from this site, it is recommended that the applicant should be required to provide a bus shelter.
- The proposal includes passive provision for all residential spaces with full charging provision in the 1st floor of Len House, a further 35 spaces with passive provision in the main residential car parking and passive provision for all commercial parking spaces.
  - While it would be preferable to have the greatest level of active EV charging provision possible in any new development, providing at least a high level of passive provision serves to reduce barriers to greater levels of EV adoption in the future. The amended proposals for EV charging provision on this site do represent an improvement.
  - It is noted that a total of 168 cycle parking spaces for the residential element and 16 for the commercial element of the on-site parking are proposed. This is consistent with SPG4 requirements.
  - It is noted that a framework Travel Plan has been provided with this application. The Travel Plan sets out suitable initiatives and objectives in order to maintain and enhance a sustainable modal share amongst residents, visitors and businesses on this site.
  - The framework Travel Plan submitted with the application states an overall target of the Travel Plan to “target a reduction of car-based trips by 5% over a 3 or 5 year period, with an aspiration of up to 10%.” These targets are a suitable starting point however it is recommended that the targets used in the final version of the Travel Plan should be agreed with the Local Planning Authority and Local Highways authority so that the most suitable targets can be agreed.

#### **5.05 Kent County Council Flood and Water Management:**

(Officer Note: in response to the following comments the applicant has submitted an updated flood risk assessment that seeks to address the points raised. Any further responses from the consultee will be reported within a UU.)

- The drainage strategy proposes utilisation of green roof, permeable pavement at ground level and attenuation at podium deck level. It is acknowledged in retaining the existing building and the high ground water levels encountered that there are limited design approaches to reduced surface water discharged from the site. The drainage strategy proposed may result in a reduction of discharge rates from the site from pre-developed conditions, from between 70% to 68.5% dependent upon the storm event.
- In general we do not disagree with the approach taken but there is a degree of uncertainty as to the sizing and location of elements of the drainage strategy proposed and whether this proposal is sufficient to provide the appropriate control of surface water generated from the site.
- The level of information is insufficient to provide detailed response to the Full application which has been submitted and we would recommend a holding objection until further information is provided to respond to the issues raised above.

#### **5.06 Kent County Council Ecology:**

- Advise that the proposed development has limited potential to result in ecological impacts and as such we are satisfied that there is no requirement for an ecological survey to be carried out.
- We have taken this view because the site is largely hardstanding and the building on site does not provide optimum habitat for bats (as it is flat roofed, in reasonably good condition and is well lit to due to the large numbers of windows).
- Recommend conditions seeking biodiversity enhancements

5.07 **Kent County Council Economic Development:** Identify the range of infrastructure contributions that should be sought from CIL funding. Also recommend conditions relating to broadband and accessible housing.

5.08 **Kent Police:** Recommend that the applicant engage with regard to secure by design principles.

5.09 **Southern Water:** Identify potential conflicts between the development and sewer. (Officer Note – the applicant has responded with on-site surveys and has adjusted the footprint of relevant buildings).

5.10 **Mid-Kent Environmental Health:**

Noise: A number of queries are raised and recommendations made with regard to noise management. A condition requiring a further noise assessment is recommended.

Air Quality: Our own modelling appears to confirm that there will be no exceedances of any air quality objectives. However, request that additional modelling is undertaken.

The Air Quality Assessment includes a damage cost calculation which yields £196,366. However, there is no costed mitigation scheme showing how the money is to be spent. We would like to see such a scheme, and would suggest that it would include EV charging in a minimum of 20% of the parking spaces and ducting to allow EV charging to be installed at a later date in the remainder of the spaces. We would also like to see at least 2 EV charging bays in the publicly accessible spaces. The damage cost could also be spent on, for example, cycle storage and low NOx boilers.

Land Contamination: Owing to the previous uses of the building, a contaminated land condition should be attached to any permission given for this development.

## 6.0 APPRAISAL

6.01 The appraisal of these applications adopts the following structure:

- 6.1 Principle of Development
- Commercial
  - Residential
- 6.2 Heritage
- Len House
  - Other heritage assets
  - Archaeology

- 6.3 Design and Visual Impact
  - Design Response
  - Townscape Assessment
  - Sustainable Design
- 6.4 Living Conditions
  - Neighbouring residents
  - Future occupiers
- 6.5 Highways and Sustainable Travel
  - Trip Generation
  - Access
  - Parking
  - Sustainable Transport
- 6.6 Ecology and Biodiversity Enhancement
- 6.7 Air Quality
- 6.8 Affordable Housing and Infrastructure

## **6.1 Principle of Development**

- 6.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning applications must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. It is a core principle of Government policy that the planning system must be plan-led. The MBLP 2017 is the principal Development Plan Document for the District. It is up-to-date and must be afforded significant weight.
- 6.1.2 The National Planning Policy Framework (NPPF) provides the national policy context and is a material consideration in the determination of the application. At the heart of the NPPF is a presumption in favour of sustainable development and for decision-taking this again means approving development that accords with the development plan. Members should note that the NPPF also states that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making.
- 6.1.3 In addition, it should be noted that despite the NPPF's presumption in favour of sustainable development and the emphasis upon the use of brownfield land, it also states that .... "*Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities* " It is therefore clear that good design is an essential requirement of any scheme that seeks to deliver sustainable development.
- 6.1.4 Policy SS1 of the Local Plan sets out the broad sustainable development strategy for the District and states that the Maidstone urban area will be the principle focus for development, with the best use made of available sites. It also states

that the town centre will be the focus for regeneration. The site falls within the defined town centre boundary as defined under policy SP4

- 6.1.5 Members should note that Policy SP1 seeks to respect and deliver the 'Spatial Vision' set out in the Local Plan. The Spatial Vision states that sustainable growth should be delivered alongside:
- protection of the Borough's built assets
  - creating an enhanced and exceptional urban environment
  - enhancement of heritage assets
  - securing high quality sustainable design and construction
  - ensuring that development is of a high quality design and makes a positive contribution to the area.
- 6.1.6 The Local Plan's vision for the town centre, which is reinforced through Policy SP4 sets out a number of objectives to which the proposed scheme responds positively, including:
- retaining its best environmental features
  - providing enhanced public realm
  - providing a diverse retail and leisure offer
  - ensuring that development is of a high quality design and makes a positive contribution to the area.

#### Commercial Uses

- 6.1.7 The application incorporates a number of commercial elements, namely:
- flexible commercial uses within the former car showroom fronting Mill Street
  - a food and drink related use within the
  - a large space within the former ground floor workshop that is proposed to be used for food and drink uses, namely A3 and A4

As Mill Street lies outside of the defined primary retail area, the flexible range of uses sought within the former showroom are considered to be appropriate.

With regard to the main commercial space fronting the Mill Pond, in response to Officers requests to ensure that this large space principally retains its historic scale and allows public appreciation of its character and history, the proposal limits the uses to those akin to a food and drink court/market. The applicant has referred to precedents such as Macnades and The Goods Yard Canterbury. Officers consider that such a use would respond positively to the Local Plan objective of enhancing the range of retail and leisure uses available within the town centre. In addition to the listed A3/A4 uses, an element of related A1 sales would be supported, but subject to A1 not being the predominant use and challenging the primary shopping area.

The proposal to activate the public realm in front of the buildings is again a positive response to the Local Plan's town centre vision and a proposal that should also enhance the appreciation of the site's heritage.

In summary it is considered that the commercial elements within the proposal respond positively to both NPPF and Local Plan policies. They will assist in

enhancing the economic and social sustainability of the town centre and enhancing its vitality and viability.

6.1.8 There are further commercial considerations that arise from the proposal, principally the potential to impact upon existing businesses within the town centre. This consideration is currently heightened by the economic impacts of the Covid Lockdown, during which the Government has asked local authorities to not place additional burdens upon local business sectors.

6.1.9 Competition between commercial and leisure uses is not a relevant consideration within the context of the site's town centre location, indeed, it is considered that diversity and choice are a positive benefit. However, the principle of 'agent of change' must be considered carefully. This consideration was born from a number of prominent cases where the introduction of new residential units within the vicinity of established entertainment venues impacted upon their potential to continue in the manner that they had previously. This is a concern raised by a number of established food and drink establishments within the proximity of the application site. The matter was highlighted by the (then) Chief Planner in April 2016, when he wrote to all LPA's highlighting:

*"We would like to re-emphasise that updated planning guidance on noise (supporting the National Planning Policy Framework) was published in December 2014. It makes clear that the potential effect of a new residential development being located close to an existing business giving rise to noise, for example a live music venue, should be carefully considered. The guidance also underlines planning's contribution to avoiding future complaints and risks to local business from resulting enforcement action".*

6.1.10 The principle is now enshrined within the NPPF, which at paragraph 182 states:

*"Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed."*

This is further elaborated in the PPG, which states:

*"The potential effect of a new residential development being located close to an existing business that gives rise to noise should be carefully considered. This is because existing noise levels from the business, even if intermittent (for example, a live music venue), may be regarded as unacceptable by the new residents and subject to enforcement action. To help avoid such*

*instances, appropriate mitigation should be considered, including optimising the sound insulation provided by the new development's building envelope."*

- 6.1.11 The requirement is that the LPA should give sufficient consideration to the potential impact of, for example, noise and disturbance on future residents within the proposed scheme. As highlighted above (4.02), there are a number of existing entertainment establishments within close proximity to the application site, some immediately bordering the site boundary. In the main these benefit from licenses that allow opening until 0100 to 0300 on one or more days per week. A number also have outdoor entertainment licenses and outdoor areas with significant capacity for large numbers of patrons.
- 6.1.12 At 4.01 above, we highlight the comments from flats within a nearby building, who identify that they experience a degree of noise and disturbance. Inevitably within a town centre, particularly one with such a tight urban grain, the juxtaposition of residential and commercial uses may lead to occasional conflict. Equally, the operators above indicate that they do, where possible engage with the local community to address issues that arise.
- 6.1.13 The creation of sustainable mixed use communities is highly sustainable and the provision of residential accommodation is a key element of the Council's strategy for the town centre. One might expect purchasers of town centre apartments to see the immediate area's vitality as a positive aspect. However, having regard to the number of nearby venues, Officers consider that the potential impacts require careful consideration. The principal impacts are likely to arise from noise generated by patrons and music, which could cover extended periods into the evening / early morning. In addition, there may be other operational noise impacts such as refuse disposal and servicing.
- 6.1.14 Within the new build elements, both the additional floors to Len House and the new buildings to the rear, a significant number of the units face away from the adjacent entertainment uses. Terraces or balconies within exposed locations are relatively limited. However, those facing may require additional mitigation above what may normally be required. As new build elements, there is considerable flexibility to use new building fabric with increased performance levels and this could be secured through a condition.
- 6.1.15 One objector refers to case law relating to the need to adequately consider the potential limitations of heritage buildings in being able to secure adequate noise mitigation. Within Len House the proposed residential accommodation that will be converted within the existing fabric at first floor level will already be required to mitigate noise impacts from road traffic and also transmission from the commercial uses at ground floor level – to be addressed through conditions. In part the design addresses this, with the use of winter gardens on the frontage. With regard to other rear facing apartments, the character of Len House is that of a robust concrete frame with brick panelling. To the rear elements of the walls are to be upgraded or re-built and where necessary windows that are not capable of restoration replaced. Officers consider that with the improvements to the fabric that are necessary and / or with additional measures such as

secondary glazing, these could be secured by condition without prejudice the sensitivity or significance of the listed building.

6.1.16 In response to objections, the Applicant responds:

*In respect of noise it is proposed that detailed façade calculations and assessments are to be conditioned to be undertaken at a later stage to establish which specific windows may require greater forms of mitigation such as triple glazing and acoustic attenuation ventilation. Triple glazing and acoustic attenuating ventilation is likely to be sufficient in this location based on the noise assessment model already undertaken. The Condition will allow specific measures to be delivered to individual properties where appropriate and go hand in hand with the Condition detailing the replacement windows. It is further considered that this would address the 'agent of change' principle as the details of the Condition could potentially highlight any further or additional mitigation measures necessary to be applied to specific individual dwellings.*

6.1.16 Officers consider that an appropriate condition could secure the further assessment required, with additional acoustic surveys to focus on entertainment based noise, secure the implementation of a scheme of mitigation and require its retention in perpetuity. It is not considered that a s106 agreement is necessary in order to secure such a scheme. As the venues are currently closed, it has not been possible to carry out surveys at the present time, but a conditioned approach is considered acceptable.

#### Residential Uses

6.1.17 The site does not form part of a site allocation, but being within the town centre is a broad location for housing growth as defined under Policy H2(1). The site comprises previously developed land within the defined urban area of Maidstone. In principle the application will make a significant contribution to the provision of high quality housing within a sustainable town centre location. As such, the principle of residential development is acceptable and in general accordance with the provisions of the Development Plan and the NPPF, subject to the assessment of the scheme against the wider policies of the development plan as a whole.

6.1.18 The supporting text to Policy DM5 lists further considerations that will inform as to the acceptability of brownfield development, including:

- Any harm to the character and appearance of an area
- That densities are appropriate
- Impacts on residential amenity
- The scope for sustainable travel modes
- 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.

These, together with other relevant considerations are appraised below.



## 6.2 Heritage

6.2.1 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on decision makers, when considering whether to grant planning permission for development which affects a listed building or its setting, 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.

6.2.2 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on decision makers, when considering whether to grant planning permission for development which may impact upon a conservation area, to pay special attention to the desirability of preserving or enhancing the character and appearance of the conservation area.

Similar requirements apply to the assessment of scheduled ancient monuments.

6.2.3 The National Planning Policy Framework indicates that in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. It also states that local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. It states that local planning authorities should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal. The application is accompanied by a heritage assessment, which identifies the wide range of heritage assets within the vicinity, including a range of listed buildings, conservation areas and scheduled monuments.

6.2.4 The NPPF requires that when considering the impact of a proposal on a heritage asset, the Council should first consider whether the development has sought to minimise any impacts through its design, before considering what the residual level of harm may be.

6.2.5 The NPPF advises that "*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 ...*" This requirement is echoed by policy DM4 of the MBLP. The NPPG sets out that public benefits should be of a scale and nature that benefit the public at large. They may involve direct heritage benefits or wider considerations such as the delivery of housing to meet local needs or other economic or social benefits.

### Len House

6.2.6 The significance of Len House is identified in the above comments from both Historic England and the Council's Conservation Officer and includes:

- The principle significance of its main facades

- The large internal voids and the vehicular ramp that are indicative of its historic function.
  - Its relationship to the Mill Pond.
- 6.2.7 The loss of the building's original use is regretted and could be considered harmful to its significance. However, it is clear from discussions with the previous occupier that the building's location and physical constraints are no longer suited to the functions of a modern motor dealership or similar operation. Such a use would also not be capable of maintaining or restoring the sensitive fabric and could lead to continued decline to a stage where any renovation may not be viable.
- 6.2.8 However, there are heritage benefits associated with achieving a sustainable long-term purpose for the building which minimises harm and provides enhancements. For example, the key features that define its significance will be retained and enhanced as part of the proposed works, including the aforementioned elevations, large ground floor void and the ramp. Features that have been lost such as the original kiosk and neon signage will be re-introduced, further enhancing the public's understanding of the site's history. These would represent heritage benefits.
- 6.2.9 The works to the building have been informed by a detailed historic and structural assessment of its fabric and a scheme involving the minimum necessary intervention has been agreed.
- 6.2.10 The loss of the roof, although utilitarian in character and of lesser significance, would diminish the historic character of the workshop by compressing its internal volume and removing overhead daylight. The two storey roof extension would have a significant impact on the appearance of the building due to its height and extent, although the design is considered appropriately simple and has been set down and back from the front elevation in order to minimise its visibility. Likewise, the proposed set-back of the external amenity space is expected to reduce the intrusive appearance of domestic clutter. The material finish of the roof extension cladding/framing will be critical in the ultimate success of the design as it should appear separate yet complimentary to the existing building. It is suggested that a condition should be added to ensure the uses of appropriate finishes and that the curved corner elements are not designed out at a later stage.
- 6.2.11 The potential replacement of original steel-framed windows has been justified on the grounds they are beyond economical repair, which is accepted. The windows are an important feature and account for a substantial proportion of the listed building's elevations. Any replacement windows are intended to be closely matched in terms of design and detail, which should be carefully controlled through a condition to ensure the appearance of the building is not compromised.
- 6.2.12 The retention of the internal ramp, which is a key internal feature of the building, and its proposed continued use as for vehicles, is welcomed. The partitioning of the ramp from the main area is regrettable as it would

compromise the volume of the space, although a satisfactory argument on fire safety and operational grounds has been provided. It recommend the partition's design is conditioned to ensure that public visitors are able to appreciate its historical function.

- 6.2.13 In principle, the reinstatement of the original fuel kiosk as a beverage kiosk; the reinstatement of the original lighting and signage schemes; as well as general repairs to the historic fabric, are considered heritage benefits. A condition is proposed to ensure that the extensive collection of documents stored within the building are deposited in a suitable archive, such as the Kent Archive, in order that they are preserved in appropriate conditions and available to the wider public. This would also be a heritage benefit.

#### Maidstone Centre Conservation Area

- 6.2.14 The current condition of the car park and hard surfaced open space around the building is considered to detract from the character of the Maidstone Town Centre Conservation Area. The proposed new development on this area, together associated landscaping would subject to scale and design, represent an overall enhancement to both the setting of Len House and the conservation area, including the various GII listed buildings that lie within its wider setting. It is considered that although some of the rear elevations on Bank Street are intrusive and of little interest, a number are clearly historic rear projections that have an appropriately secondary scale and character to their principal northern facades. While the scale of the proposed new buildings is generally larger than anything else in this part of the Conservation Area, where buildings are of primarily 2-3 storeys, the proposed site sections indicate that their height will descend from the rear of Bank Street/High Street towards Palace Avenue, which is largely acceptable.
- 6.2.15 The rear buildings would have a loosely vernacular form by incorporating pitched roofs, with the Palace Avenue block being more contemporary in character. While Officers do not object to this approach, it is questioned whether the material palette of the buildings could better reflect the historic town centre context in terms of brick choices and roof coverings. The design and detailing could have more references to the conservation area context which is set out in detail in the Maidstone Centre Conservation Area Appraisal. Maintaining the design quality of the new buildings through appropriate conditions is an important factor in preserving the character and appearance of the conservation area.
- 6.2.16 Notwithstanding the positive aspects of the new development, I consider the changes to historic ground levels, urban grain and uplift in height and mass would result in harm to the conservation area and setting of adjacent listed buildings. This harm would, however, be less than substantial and the heritage and other public benefits of the proposals are potential mitigation provide mitigation.
- 6.2.17 The extended Len House building would be more prominent in a number of key local views, particularly from the area of the Parish Church and Archbishop's Palace, where there are both listed buildings of high significance and scheduled

ancient monuments. The roof extension would reduce views of Coleman House from this area, which would be beneficial. However, it would also largely obscure the view of Holy Trinity Church spire, which would be harmful due to the loss visual connection between historical landmarks. However, this level of harm is considered to be very limited having regard to the already intervening townscape.

- 6.2.18 The visual impact of the conversion and extension of Len House on the setting of All Saints Conservation Area and its highly graded listed buildings and ancient monuments is likely to be greater at night when the large areas of glazing would provide views into the new uses within the building. The building is expected to have more dominant presence than at present, and therefore be potentially harmful to the setting of heritage assets. However, weight should also be afforded to the existing impact of the intervening highways, their activity and artificial lighting, which represent a significant modern barrier between the two areas, thus diminishing the residual impacts on setting to one that is less than significant.
- 6.2.19 In summary, I consider the proposed works to the listed building would provide a range of heritage benefits alongside works that would cause less than substantial harm to its significance. The rooftop additions to the listed building and new development on the site would also provide benefits by enhancing the appearance of the area, but would also cause a degree of less than substantial harm due to the negative aspects of the scheme outlined above.

#### Archaeology

- 6.2.20 The NPPF sets out that where development has the potential to affect heritage assets with archaeological interest, LPAs should require developers to submit an appropriate desk-based assessment, and where necessary, a field evaluation. Policy DM4 of the adopted Local Plan sets out that planning applications on sites where there is or is the potential for an archaeological heritage asset, must include an appropriate desk based assessment of the asset. In addition where important or potentially significant archaeological heritage assets may exist, developers may be required to arrange for field evaluations to be carried out in advance of the determination of planning applications.
- 6.2.21 The principles of assessing the heritage significance and potential level of harm to archaeological assets are common to the process for built assets described above.
- 6.2.21 Following the initial comments of KCC's archaeologist, an updated desk top based assessment has been submitted. The DBA identifies the existence of a significant number of sensitive designated heritage assets within the wider vicinity. The updated report recognises the high potential of the area to contain significant remains, but notes that as a result of the history of the site, truncation and contamination of remains is possible.
- 6.2.22 Whilst KCC request pre-determination investigations, Officers consider that a pre-commencement condition would be acceptable.

### **6.3 Design and Visual Impact**

- 6.3.1 Both the NPPF and Local Plan emphasise that good quality design is central to the successful delivery of sustainable growth. In particular the NPPF makes clear it's expectations in respect of design quality:

*"The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities."*

It further emphasises that in taking planning decisions the Council will seek to ensure that development:

- a) will function well and add to the overall quality of the area;
  - b) is visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
  - c) is sympathetic to local character and history, including the surrounding built environment and landscape setting;
  - d) establishes a strong sense of place and creates attractive places to live;
  - e) in optimising the potential of any site to accommodate development should provide an appropriate scale and mix of development and include necessary green and other public space.
- 6.3.2 The Local Plan is entirely consistent with the NPPF. It's Spatial Vision / Objectives, together with Policies SP1 and SP18 emphasise that sustainable growth should be delivered alongside protection of the built environment and heritage assets.
- 6.3.3 The Local Plan sets out clear expectations in respect of design quality, stating that "Proposals which fail to take opportunities to secure high quality design will be resisted". Policy DM1 sets out a number of design-led tests including:
- the need to respond to local character, including scale, mass and bulk,
  - the creation of high quality public realm
  - the need to respect the amenity of neighbours
  - delivering high quality design which responds to townscape and heritage settings

### Design

- 6.3.4 The scheme has been designed by Kent-based practice *Holloway* who have considerable experience in delivering town centre regeneration schemes and contemporary design solutions within a heritage context across the County.
- 6.3.5 The brief was to sympathetically restore and adapt Len House in a manner that provides accommodation suited to modern user requirements, whilst ensuring that its heritage can be appreciated to the maximum possible extent. The existing external fabric is principally restored or renewed where necessary, whilst unsympathetic alterations are removed and lost features restored.
- 6.3.6 The intervention of a modern upper element is considered to be sympathetic to the original buildings forms and influenced by its overarching modernist streamline form. It is a significant intervention in the building's fabric and overall form, but one that is considered to be successfully executed.
- 6.3.7 The adjacent new building fronting Palace Avenue adopts the design principles of Len House, but in a more contemporary manner. It is considered that its scale and character compliment, but do not compete with Len House, which remains the prominent building on the site.
- 6.3.8 The new element to the rear adopts a contrasting approach, with a tight urban grain, more organic roof form and modulated heights, informed by the character of the conservation area to the north.
- 6.3.8 The manner in which the refurbished buildings engage with the public realm is positive, with the new public areas fronting Mill Street and the boardwalk re-engaging with the Mill Pond providing public access to the new active uses within the ground floor, adding to the vitality of this area of the town centre. The hard and soft landscaping proposals are of a high quality and as explained below, will incorporate biodiversity enhancement measures.

### Townscape Assessment

- 6.3.9 The application is accompanied by a Townscape and Visual Impact Assessment which assesses the site's context, including topography, surrounding townscape character areas and sensitivity, including the relationship of the site to heritage assets.
- 6.3.10 A visual baseline assessment identified 14 localised viewpoints of the site from surrounding areas of the town centre. The assessment identifies that Len House is a clear landmark building with a high degree of authenticity.
- 6.3.11 The principal view of the site frontage across the approach to River Len bridge from Fairmeadow is of a high sensitivity due to the prominence of the building at this busy open highway junction. The view is framed by other significant urban buildings and the increase in scale is not considered to be harmful. The visual clutter of traffic activity and highway paraphernalia diminishes the sensitivity of the view to some extent. As a result of the sensitive restoration of the building

and public realm fronting it, the impact will be positive and not require any mitigation.



- 6.3.11 The assessment identifies that views from within the All Saints conservation area will change as a result of the increased height of Len House. However, views towards the site from the edge of the conservation area have the distraction of Coleman House behind, which will in-part be screened, which itself will be positive. Views from All saints Church itself are more distant, but the change in massing to Len House is still evident. However, the net impact is significantly mitigated by the lightweight nature of the roof addition.



- 6.3.12 Views from the road network to the south and east represent changing glimpses of the site, with a low level of change, with the viewpoints dominated by traffic conditions.

- 6.3.13 The assessment identifies that the open areas of the site make no positive contribution to the character or quality of the townscape. Whilst the magnitude of change will be significant due to the new build elements, the impact is one of positive change, removing the semi-dereliction of the open area, reinstating the built frontage to Palace Avenue and screening the poor quality buildings to the rear of Gabriel's Hill.



#### Sustainable Design Principles

6.3.14 Whilst heritage buildings often offer limited opportunities for the introduction of sustainable principles, due to its modernist design and linear form, Len House offers a number of opportunities to incorporate measures beyond simply passive fabric first design. These include:

- significantly improving the thermal efficiency and air tightness of the existing listed structures
- installing an extensive solar PV array on the new roof
- extensive areas of green / brown roof combined with the introduction of permeable surfaces across the sites hard and soft landscaped areas
- air sourced heat pumps for the new build element



## **6.4 Living Conditions**

### Existing Residential Neighbours

- 6.4.1 The potential impact of the development on the amenities of the occupiers of adjoining properties is a key planning consideration and an essential element of defining acceptable design. Such impacts may include sunlight and daylight, noise, privacy and overlooking and the general scale and physical relationship of new development to its neighbours. As identified in the NPPF, it is also relevant to consider the amenities of future occupiers of the proposed dwellings.
- 6.4.2 At paragraph 127(f) the NPPF confirms that developments should ensure a high standard of amenity for existing and future users and Policy DM1 (iv) of the MBLP reinforces this requirement.
- 6.4.3 Concerns have been raised by nearby residents regarding, for example, the scale of the development, the impacts upon privacy and loss of daylight and sunlight.
- 6.4.4 At the pre-application stage, the potential for adverse impacts on properties to the rear of Bank Street were identified. No.84, from which the objections have been received, sits within a tight cluster of buildings to the rear of Bank Street. In response the proposed new build element to the rear was pulled away from the boundary and its height to the rear of No. 84 was significantly reduced. Whilst the introduction of built development on land that has sat open for some time will inevitably result in a significant degree of change, by deliberately recognising the adjacency of these properties and cutting out a significant section of the building the proposals ensure that, within the context of a town centre location with a tight urban grain and juxtaposition of buildings and uses, the net impacts on existing neighbours is significantly reduced.
- 6.4.4 Property spacing standards are typically reduced within town centres, particularly having regard to the medieval plot dimensions that define this area's character. Nevertheless, the building is pulled back from the northern boundary and the majority of units are designed to have their primary aspect away from the rear of Bank Street and over the new communal open space. It is therefore not considered that the building would result in an unacceptable loss of privacy and therefore complies with the objectives of the NPPF and policies DM1 and 5 of the MBLP.
- 6.4.5 Officers note that some nearby commercial properties suggest that by being overlooked by new residential apartments, their open spaces, such as terraces, beer gardens, will be less attractive to customers. We do not consider this to be a reason to conclude harm.

### Future Occupiers

- 6.4.6 The assessment above in relation to the 'agent of change' issue considers whether, by virtue of noise unacceptable conditions would be likely to arise. Noise is considered to be a matter that can be managed through conditions. In

terms of other amenity considerations, the majority of residents will have access to a range of private terraces and communal spaces that will serve principal habitable rooms and provide positive outlook conditions with interesting views across the development and the surrounding heritage assets beyond. It is not considered that occupiers will be subject to substandard levels of privacy.

- 6.4.7 Being located within the town centre, residents will have access to a wide range of amenities without the need to travel. Having regard to the high quality of the scheme, we consider that it will provide future occupiers with a very positive environment for urban living.

## **6.5 Highways and Sustainable Travel**

- 6.5.1 The site is highly sustainable, its central location offering good access to amenities, services and employment without the need to travel, but where travel is required, KCC acknowledge that it has good access to a range of public transport options.
- 6.5.2 KCC raise no objections to issues of trip generation (there being a net reduction) and also consider the levels of parking to be appropriate to the town centre, with the proposed vehicular access points being acceptable.
- 6.5.3 KCC also consider that the site has good pedestrian accessibility and that the provision of the boardwalk and new public realm are positive measures.
- 6.5.2 A framework Travel Plan has been provided which KCC consider sets out positive measures to further reduce travel impacts.

## **6.6 Ecology & Biodiversity Enhancement**

- 6.6.1 KCC Ecology advised that the characteristics of the site and buildings would not require an ecological impacts assessment to be carried out due to the lack of habitat. Nevertheless, the applicant has provided a preliminary ecological appraisal, which concludes:
- Low potential to support roosting bats;
  - Moderate potential to support foraging and commuting bats;
  - Moderate potential to support commuting riparian mammals;
  - Low to moderate potential to support notable fish; and
  - High potential to support nesting birds.
- 6.6.2 A number of enhancement measures are recommended, which include:
- • Wildlife friendly landscaping;
  - • Enhanced aquatic habitat;
  - • Biodiverse living roofs;

- Invertebrate habitat features (e.g. bee bricks and log piles);
- Living walls; and
- Bird and bat boxes integrated into the fabric of the building.

It is recommended that these are secured through conditions.

## **6.7 Air Quality**

6.7.1 The site is located within an area of the town centre that is vulnerable to the impact of vehicular emissions on the quality of air. Both the NPPF and Policy DM6 of the Local Plan require the impact of development upon and its potential vulnerability to air quality to be assessed. The assessment identifies that future occupants would not be exposed to pollutant concentrations above the relevant objective levels.

6.7.2 With regard to the potential impact of the operational phase of the development, the transport assessment models a net reduction in traffic compared to the previous use during the am peak and at work, even on the worst case scenario for future trip generation, a small potential increase in the pm. As such, the impacts of the development upon local air quality are predicted to be low / imperceptible.

6.7.3 An emissions mitigation calculation suggests a target mitigation cost of circ £196,000. Best practice suggests that mitigation measures should be of an equivalent value and where possible, the net benefit of the measures quantified. With regard to soft measures, precise calculations are rarely possible, but the applicant has put forward the following measures, which can be monitored through condition:

- EV charging points to an agreed minimum number of parking spaces and latency across the majority of the remainder
- A travel plan incorporating measures to encourage residents to use sustainable transport modes
- Positive levels of cycle provision
- Enhanced pedestrian routes across the site

Having regard to the highly sustainable location and nature of development and its limited impacts, these are considered to be acceptable measures.

## **6.8 Affordable Housing & Infrastructure**

### Affordable Housing

6.8.1 The NPPF sets out that the Government's aspiration for sustainable development include creating " *strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations*".

- 6.8.2 As required by the NPPF, the adopted Local Plan makes clear the type and level of affordable housing that will be expected from development. Policy SP20 identifies that in this location 30% of the scheme should provide for affordable housing. Policy SP20 (6) also notes that *"Where it can be demonstrated that the affordable targets cannot be achieved due to economic viability, the tenure and mix of affordable housing should be examined prior to any variation in the proportion of affordable housing"*.
- 6.8.2 Where there is departure from the affordable policy requirements the onus is therefore on the applicant to demonstrate why the scheme is not policy compliant. At paragraph 57 the NPPF advises that *"It is up to the applicant to demonstrate whether particular circumstances justify the need for a viability assessment (VA) at the application stage"* whilst *"The weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case..."*.
- 6.8.4 As clarified by the NPPG, VA is a process of assessing whether a site is financially viable, by looking at whether the value generated by a development is more than the cost of developing it. The process includes looking at the key elements such as gross development value, development / build costs, land value, landowner premium, and developer return. The aim of the process is to strike a balance between, for example:
- The aspirations of developers in terms of returns against risk
  - The aims of the planning system to secure maximum public benefits through the grant of planning permission
- 6.8.5 In this case, a number of considerations are available to the LPA when considering whether to accept a viability assessment, for example:
- Is the development otherwise compliant with the development plan?
  - Would it contribute positively to achieving sustainable development?
  - Are there other public benefits arising?
- 6.8.6 In the case of this site, having regard to, for example, the costs associated with renovating a listed building and the potential costs of developing a contaminated site, the applicants submitted a VA that sought to demonstrate why affordable housing could not be provided, either on or off site. To assist Members in terms of terminology:

Existing use value - EUV is the value of the land in its existing or lawful use. Existing use value is not the price paid and should disregard hope value.

Benchmark land value - The benchmark land value is established on the basis of the existing use value (EUV) of the land, plus a premium for the landowner. The premium for the landowner should reflect the minimum

return at which it is considered a reasonable landowner would be willing to sell their land.

Residual land value – Residual land valuation is the process of valuing land with development potential. It seeks to identify the sum of money necessary for the purchase of land and is calculated by in essence estimating the value of the completed development (for example direct sales income) and then subtracting the costs of development (for example, build costs, finance costs, professional fees, planning policy requirements and CIL and profit).

If the residual land value falls below the benchmark land value, then it is unlikely that the developer would be incentivized to deliver the assumed level of affordable housing.

6.8.7 The Applicant's VA identifies a benchmark land value of £3,700,000

For a scheme with 30% affordable housing, it generates a residual land value of (minus) -£5,633,063. This is £9,333,063 (deficit) below the benchmark land value – a loss of 8.8%

If the level of affordable housing is reduced to 0%, it generates a residual land value of (minus) -£2,536,452 which is £6,236,453 (the deficit) below the benchmark land value of £3,700,000 – a loss of 0.65%.

The applicant therefore seeks to demonstrate that in planning terms the scheme cannot viably provide an affordable housing offer.

6.8.8 In order to assess the applicant's VA, the Council appointed independent consultants 'RedLoft' to review the submitted VA. In doing so, they tested the method of calculating the sites existing and benchmark land values. They also tested the inputs to the residual appraisal, such as profit margins, build costs, sales income etc. They have advised the Council that whilst they would tweak some of the applicant's assumptions up and some down, they broadly come to the same conclusion.

6.8.9 It is therefore for the Council to consider whether there are overarching benefits that could be achieved in granting planning permission for a scheme without affordable housing. For the reasons outlined in this report, it is considered that having regard to the exceptional circumstances of this site and the wider benefits arising, this approach is justified.

6.8.10 Officers have considered whether a review mechanism should be imposed. Whilst this would often be best practice, having regard to the significant deficit for even a 0% scheme, this is unlikely to serve any beneficial purpose and may detract from the scheme's funding and timing of delivery.

6.8.11 Having regard to the deficit that the applicant needs to address, Officers are developing a series of planning conditions that seek to ensure that the quality of design and heritage restoration is not dumbed down through costs savings.

Infrastructure

- 6.8.12 The Council commenced CIL (Community Infrastructure Levy) charging on 1<sup>st</sup> October 2019 and with the exception of affordable housing provision the remaining infrastructure would be funded by CIL.

## **7 CONCLUSIONS**

- 7.1 The principle of a mixed use development within a sustainable town centre location is acceptable. The balance of commercial and residential uses will make significantly positive contributions to the vitality and viability of the town centre and to the aspiration to introduce more high quality housing to the town centre,
- 7.2 Bringing a vacant building and under-utilised site is also considered to be positive and responds to the aspirations of the Council's Opportunity Site Brief.
- 7.3 It is considered that the development can be achieved without adversely affecting the amenity of existing residents and the operational viability of existing commercial uses.
- 7.4 It is considered that the scheme does result in some harm to Len House and to surrounding heritage assets, for example, loss of the original use, removal of the roof, partial subdivision of the internal space. The scheme will also cause a degree of harm to the setting of the two adjacent conservation area and the listed buildings within them. However, it is considered that this harm is less than significant.
- 7.5 The applicant has demonstrated that they have minimised the harm arising through measures such as; designing the new roof to be lightweight, retaining the large ramp and main ground floor void, as well as restoring the facades. These works respect the key defining features of significance and are considered to be heritage benefits. Additional heritage benefits include, for example, restoring the original forecourt and creating an archive of the building's history.
- 7.6 In terms of the new build elements, through their design they have sought to minimise their impact on the setting of nearby heritage assets and it is considered that the character and appearance of the conservation area will be enhanced.
- 7.7 Notwithstanding that the scheme will result in a degree of harm to heritage assets, which is considered to be less than significant, for the reasons set out above, it is considered that this harm will be outweighed by the significant heritage and public benefits that will arise.

## **8 RECOMMENDATION –**

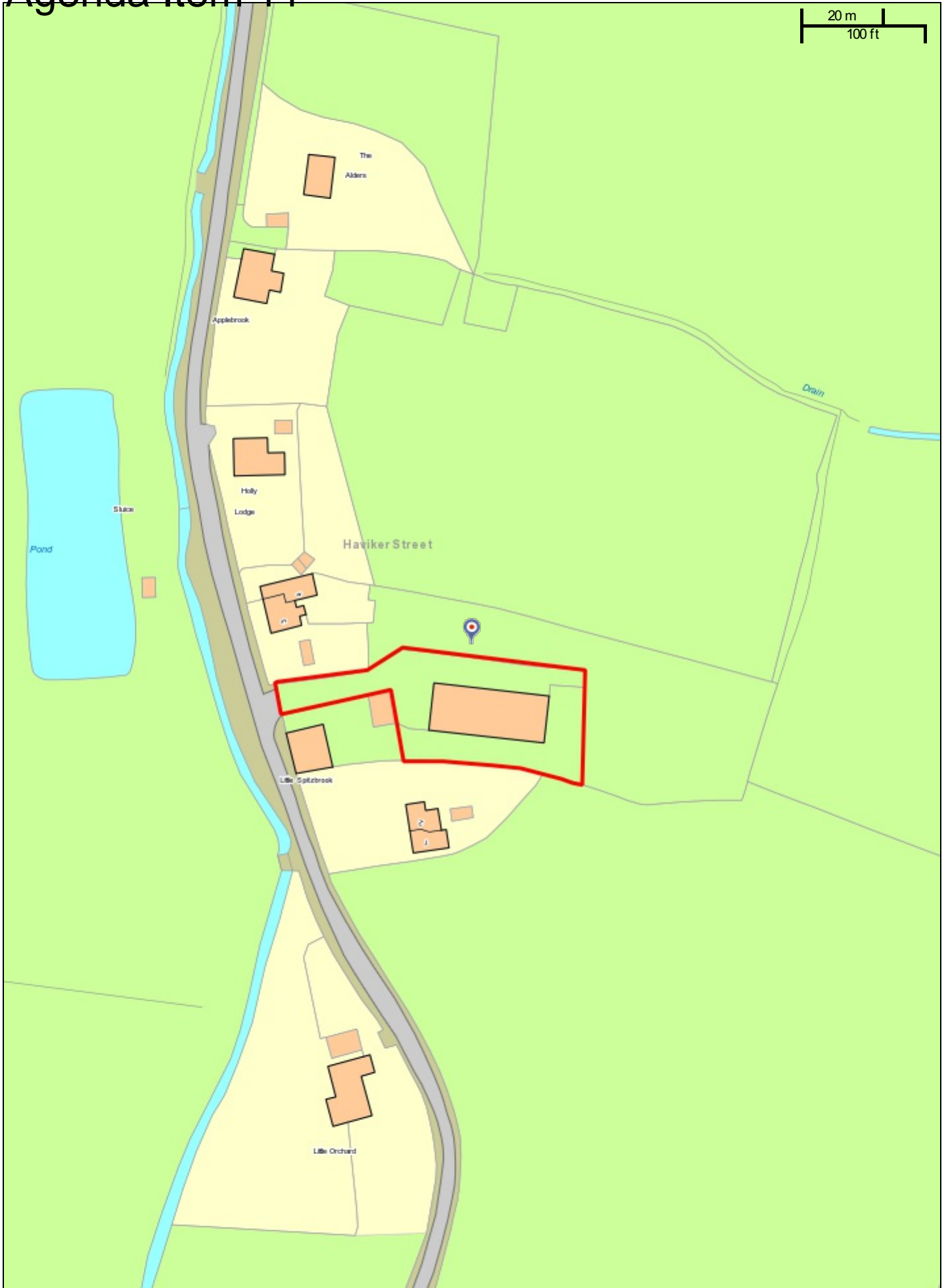
- 8.01 It is recommended that:

Recommendation (A) Planning permission be granted for the development subject to conditions

Recommendation (B) Listed building consent be granted for the associated works to the listed building

- 8.02 Having regard to the complexity of the scheme, Members should note that a detailed schedule of conditions is being finalised with the applicant and will be submitted as an UU ahead of the meeting

# Agenda Item 11



20/500442/FULL Little Spitzbrook Farm, Haviker Street, Collier Street, Kent

Scale: 1:1250

Printed on: 16/3/2020 at 12:21 PM by JoannaW



<b>REFERENCE NO - 20/500442/FULL</b>			
<b>APPLICATION PROPOSAL</b> Conversion of part of agricultural barn to a single dwelling with retention of part for use as an agricultural store, laying out of private garden including erection of woodstore, two car parking spaces and driveway. Installation of a solar PV array and flue on southern roof slope, two heat exchange units and landscaping (part retrospective).			
<b>ADDRESS</b> Little Spitzbrook Farm Haviker Street Collier Street Kent TN12 9RG			
<b>RECOMMENDATION</b> Application Refused			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The previous grounds of refusal have assessed the building as essentially representing a new build dwelling in the open countryside on the basis of the extent of works carried out to the former agricultural building. There is therefore no fall-back position available as set out by <i>Mansell v Tonbridge and Malling BC</i> [2018] JPL 176 to consider the merits of the current proposals against the fall-back position. On this basis, the current proposals, due to the size of the building, its location in an unsustainable location, its conflict with flooding policies and its less than substantial harm to the setting of the nearby listed properties to which there are considered to be little or no public benefits to outweigh this harm, means that the application is considered contrary to policies SS1, SP17, SP21, DM1, DM4, DM30, DM31 and DM32 of the Maidstone Borough Local Plan.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> Cllr David Burton has requested that given the history relating to the previous applications and a request was made by members of the committee for discussions to take place, that this application should also be determined by the committee if officers are minded to recommend refusal.			
<b>WARD</b> Marden and Yalding	<b>PARISH/TOWN</b> Collier Street	<b>COUNCIL</b>	<b>APPLICANT</b> Mr & Mrs Cox <b>AGENT</b> IDE Planning
<b>TARGET DECISION DATE</b> 30/03/20		<b>PUBLICITY EXPIRY DATE</b> 05/03/20	

### **Relevant Planning History**

15/508446/PNQCLA

Prior Notification for the change of use of part of an agricultural building to a dwellinghouse and associated operational development

For it's prior approval for:

- Transport and highways impacts of the development
- Contamination risks on the site
- Flooding risks on the site
- Noise impacts of the development

- Whether the location or siting of the building makes it otherwise impractical or undesirable for the use of the building to change as proposed
- Design and external appearance impacts on the building

Prior approval granted.      Decision Date: 10.12.15

16/503415/SUB  
Submission of details pursuant to Condition 2:  
Materials under reference 15/508446/PNQCLA

Approved.      Decision Date: 09.05.16

18/504086/FULL  
Conversion of agricultural barn to single dwelling with retention of part for use as agricultural store, laying out of private garden including erection of a woodstore, two car parking spaces and driveway, the installation of a solar PV array (two rows) and flue on southern roof slope, two heat exchange units and landscaping (part retrospective).

Refused      Decision Date: 22.03.2019

18/504501/FULL  
Conversion of agricultural barn to single dwelling with retention of part for use as agricultural store, laying out of private garden, two car parking spaces and driveway, the installation of solar PV array on southern roof slope, landscaping (part retrospective).

Refused      Decision Date: 22.03.2019

### **Appeal History:**

20/500029/REF  
LINKED APPEAL: APP/U2235/W/19/3237237 - 18/504086/FULL - Conversion of agricultural barn to single dwelling with retention of part for use as agricultural store, laying out of private garden, two car parking spaces and driveway, the installation of solar PV array on southern roof slope, landscaping (part retrospective).

Appeal in Progress but currently held in obedience by mutual consent of all parties pending the outcome of the current submission.

20/500030/REF  
LINKED APPEAL: APP/U2235/W/19/3237238 - 18/504501/FULL Conversion of agricultural barn to single dwelling with retention of part for use as agricultural store, laying out of private garden including erection of a woodstore, two car parking spaces and driveway, the installation of a solar PV array (two rows) and flue on southern roof slope, two heat exchange units and landscaping (part retrospective).

Appeal in Progress but currently held in obedience by mutual consent of all parties pending the outcome of the current submission.

## **MAIN REPORT**

### **1. DESCRIPTION OF SITE**

- 1.01 The site is located on the east side and towards the southern end of Haviker Street, 230m approx. north of its junction with Green Lane. The main body of the site lies to the rear of the residential properties on Haviker Street at Little Spitzbrook Barn

and the cottages at 3 and 4 Haviker Street. The main body of the site is accessed between the properties at Little Spitzbrook Barn and 3 and 4 Haviker Street.

- 1.02 The main body of the site was until relatively recently occupied by a large steel portal framed agricultural building clad with corrugated iron sheeting and asbestos cement roof sheeting for which prior approval was granted on 10.12.15 for conversion to a residential dwelling.
- 1.03 It is the view of your officers and was confirmed in the previous grounds of refusal (see paragraph 6.02 below), that the agricultural building formerly on the site has, however, been substantially removed/demolished and a new large residential building (the subject of this application) has been erected on the site on the same building footprint and more or less within the same building envelope as the previous building. Retained parts of the original agricultural building have been incorporated into the new building.
- 1.04 The site is adjoined by the residential properties at 1 and 2 Haviker Street Cottages to the south which are Grade II listed and the cottages at 3 and 4 Haviker Street to the north-west are also Grade II listed. The site is adjoined by open agricultural land to the north, east and south-east.
- 1.05 The site is located in the open countryside to the south-east of the Yalding village settlement and north-west of the Marden village settlement. The open countryside location is not subject to any landscape designation. The site is within Flood Zone 3 as shown on the Environment Agency's Flood Map.

## **2. PROPOSAL**

- 2.01 The application has been described by the applicant as the conversion of an agricultural barn to a single dwelling comprising open plan living space with boot room/utility room and store room on the ground floor with retention of part for use as an agricultural store and 4 bedrooms on the first floor, laying out of private garden including erection of woodstore, two car parking spaces and driveway, installation of a solar PV array (two rows) and flue on southern roof slope, two heat exchange units and landscaping (part retrospective).
- 2.02 It is your officers view, as was the officers view with the previously refused applications that the agricultural building formerly on the site has been substantially removed/demolished and a new large residential building (the subject of this application) erected on the site. This was confirmed in the previous grounds of refusal (see paragraph 6.02 below). The previous reports to committee are attached as Appendix 1.
- 2.03 The applicants' agent was therefore requested to amend the description of the development proposed in the application to the erection of a new building as opposed to the conversion of an existing building. Government guidance in the NPPG states that the Local Planning Authority should not amend the description of the development proposed in an application without the change having been first discussed and agreed with the applicant. Hence, the description of the development proposed in the application remains for the conversion of an agricultural barn building contrary to your officer's view and the view set out in the previous decision notices that the agricultural barn building was removed and rebuilt as a new building.
- 2.04 The application is supported by a suite of documents which amongst others includes a Flood Risk Assessment, Flood Warning Strategy, Heritage Statement, Phase 1 Habitat Survey and a form of Planning Statement (referred to as "Policy case in

support of application in principle”) together with a supporting letter which essentially confirms that the “application proposes alterations to a converted barn at Little Spitzbrook so that it more closely matches the floorspace and external appearance of a scheme that was previously granted prior approval”.

2.05 For Members reference, the approved plans/elevations as set out below were granted prior approval in 2015 under reference 15/508446/PNQCLA.

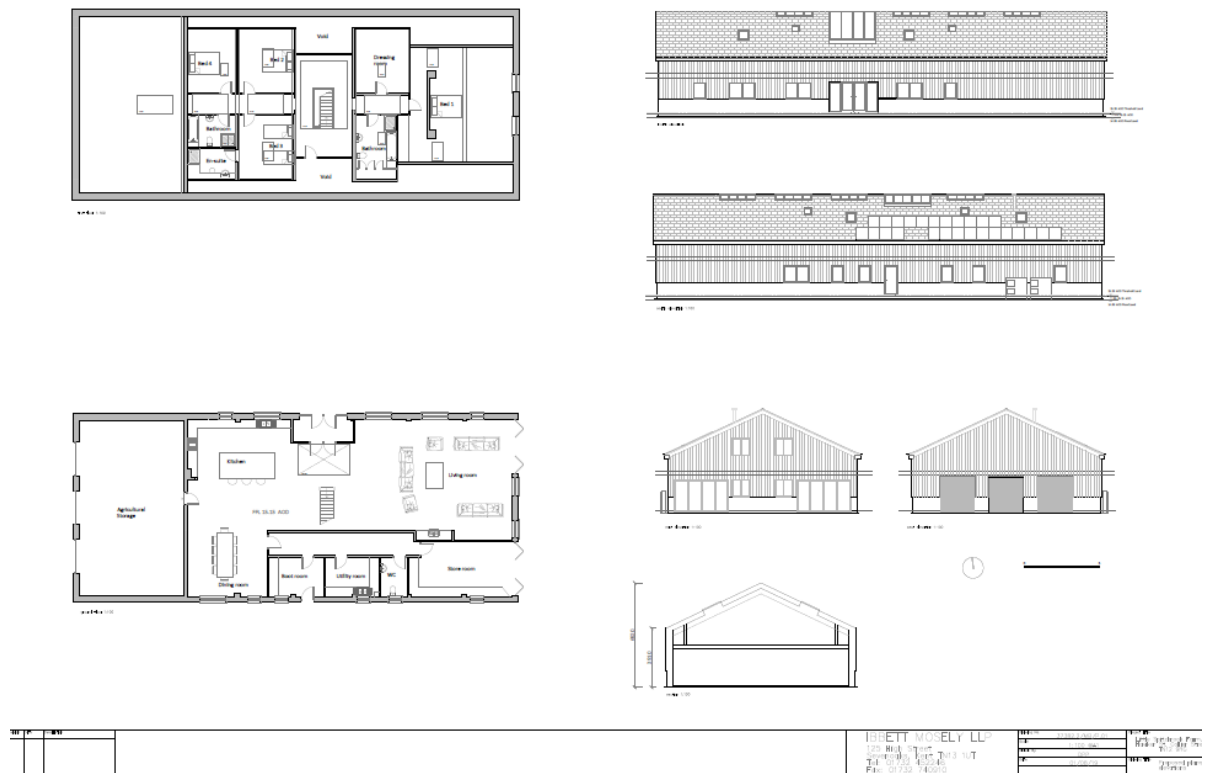
The architectural drawings include:

- FIRST FLOOR PLAN 1:100** - INTERNAL GROSS FLOOR AREA OF ACCOMMODATION 150m<sup>2</sup> (excludes storage)
- GROUND FLOOR PLAN 1:100** - INTERNAL GROSS FLOOR AREA OF ACCOMMODATION 258m<sup>2</sup> (excludes storage)
- NORTH ELEVATION 1:100**
- SOUTH ELEVATION 1:100**
- EAST ELEVATION 1:100**
- WEST ELEVATION 1:100**
- SECTION 1:100**

A north arrow is located at the bottom right of the ground floor plan. A scale bar is provided at the bottom left of the ground floor plan.

NO	DATE	BY
1	2015-05-20	MR M COX
2	2015-05-20	MR M COX
3	2015-05-20	MR M COX
<b>PLANNING</b>		
<b>ep architects</b>		
The Old Coach House 25 High Street Little Spitzbrook Little Spitzbrook Little Spitzbrook Little Spitzbrook		
<b>CLIENT</b> MR M COX <b>PROJECT</b> 4 HAVKER STREET BARN CONVERSION <b>PROPOSED PLANS &amp; ELEVATIONS</b>		
DATE	APPROVED BY	SCALE
2015-05-20	MR M COX	1:100
1696.P.01		8

2.06 The current application (see below for elevations/floor plans) seeks to match as closely as possible the plans as approved and shown above.



- 2.07 A schedule of alterations to the 'as-built' scheme i.e. that which currently exists on-site, and which are proposed as part of this current application are included as Appendix 2 to this report. These alterations seek to return the building to match as closely as possible the building that was the subject of the prior approval.

### 3. POLICY AND OTHER CONSIDERATIONS

Maidstone Borough Local Plan 2017 - Policies SS1, SP17, SP18, SP21, DM1, DM3, DM4, DM8, DM23, DM30, DM31, DM32  
Maidstone Landscape Character Assessment (LCA)  
National Planning Policy Framework (NPPF)  
National Planning Practice Guidance (NPPG)

### 4. LOCAL REPRESENTATIONS

#### Local Residents:

- 4.01 2 representations received from local residents objecting to the application and raising the following (summarised) issues
- This is new build not a conversion
  - Who will ensure no future increase in land levels - these have already been raised contrary to the recommendations of the Environment Agency?
  - Risk of flooding as site is located in a flood risk zone 3. The surrounding properties all flood and when there is an incidence, the houses are cut off from the main road. There is no evacuation route as outlined in the Herrington Consulting report. The raising of the entrance road by 200mm will also impact properties either side in terms of flooding.

### 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)

KCC Highways

- 5.01 This application does not meet the criteria for involvement of KCC highways as set out by the current protocol arrangements.

Environment Agency

- 5.02 No objection subject to the imposition of a number of conditions covering protection of ground water pollution and Flood Risk mitigation measures.

MBC – Environmental Protection Officer

- 5.03 No objection subject to the imposition of a number of conditions covering EV Charging points, Land Contamination, Hours of working, foul drainage and external lighting.

- 5.04 Further comments have not been sought on this application from the Conservation Officer or KCC Ecology on the basis that there is considered to be no significant change to the position as set out in previous report to committee attached as Appendix 1 to this report. Previous comments are set out below for clarity:

Conservation Officer

Advises that even if the new dwelling were not adjudged to lie within the curtilage of Little Spitzbrook Cottages, the building certainly lies within the setting both of these Grade II listed properties, and the adjacent listed Haviker Street Cottages, and any significant development on this land will affect the setting of the listed Little Spitzbrook Cottages.

Further advise that what we are presented with now is entirely new-build development – neither a house nor a barn, but a very large monolithic volume, clad incongruously in grey weatherboard associated with pure agricultural buildings. Comments that the building is in no way therefore a barn conversion, but a wholly new residential construction.

The size and scale of the new residence is wholly out of scale with the listed residential properties, and is damaging not only to their significance and integrity, but is also harmful to the wider, traditional landscape environment in which it sits.

Further comments that there is no functional requirement for the residential property being of such a large scale and so visually dominant, and it is this unnecessary dominance and over-bearing aspect that is so damaging to the setting of the adjacent listed buildings. Comments that the external materials and details are of low quality – poor quality brickwork in stretcher bond, with unsightly expansion joints; reconstituted cement boarding with repeating synthetic embossed patterns; synthetic slate to the roof; storm-proof windows, poor quality plastic rainwater goods; indifferent landscaping.

KCC Ecological Advice Service

Comment that they are satisfied with the conclusions of the submitted ecological report in relation to any potential impacts that the proposed development may have on any protected species or sites. Comment that the site is of low ecological value and they are satisfied with the proposed precautionary mitigation measures included within the report.

Comment that it has been identified that the southern boundary contains habitat suitable for foraging bats which will be retained as part of the proposals. Comment that there are recommendations for a sensitive lighting strategy to ensure that there will be no detrimental impacts and advise that these measures must be implemented as part of the development.

Comment that the application provides opportunities to incorporate features into the design which are beneficial to wildlife, such as native species planting or the installation of bat/bird nest boxes and further enhancements have been included within the submitted ecological report. Advise that measures to enhance biodiversity are secured as a condition of any grant of planning permission in accordance with Government guidance in the NPPF "*opportunities to incorporate biodiversity in and around developments should be encouraged*".

## 6. APPRAISAL

### Main Issues:

6.01 The key issues for consideration relate to:

- Principle
- Relevant development plan policies
- Visual impact
- Residential amenity
- Traffic and parking
- Setting of listed buildings
- Flooding
- Ecology
- Whether the previous grounds of refusal have been addressed by the current submission.

6.02 **Relevant Background:**

The previous two applications, reference no' 18/504086/FULL and 18/504501/FULL were both refused planning permission on the grounds set out below:

(1) Given the extent of the demolition and rebuilding works which have been carried out to the original agricultural barn building on the site and the limited amount of the original structure that has been retained in the new dwelling for which retrospective planning permission is sought, the Council are of the view that the development represents a new build dwelling in an open countryside location which does not have good access to public transport and is remote from local services and facilities. The development represents unsustainable residential development where future occupants would be reliant on private cars and in the absence of any overriding justification or need for the development demonstrated in the application, the development is contrary to Government guidance in the NPPF 2019 relating to sustainable development and policies SS1 and SP17 of the Maidstone Borough Local Plan (Adopted October 2017).

The application proposal is contrary to the objectives of policies SP21 and DM31 of the Maidstone Borough Local Plan (Adopted October 2017) in terms of the residential use of the building, scale and appearance of the building, and in the context of neighbouring properties and countryside landscape.

(2) The dwelling for which retrospective planning permission is sought, by reason of its overall design, appearance, scale and massing, has a harmful impact on the visual amenities, character and appearance of the open countryside location and landscape. The unsympathetic appearance, large scale and visual dominance of the dwelling in relation to the adjoining listed properties 1 and 2 Haviker Street to the south of the site and 3 and 4 Haviker Street to the north-west and the over-bearing impact has a harmful impact on the setting of the adjoining listed buildings. As such, the development is contrary to Government guidance in the NPPF 2019 and policies SS1, SP17, SP18, SP21, DM1, DM4, DM30, DM31 and DM32 of the Maidstone Borough Local Plan (Adopted October 2017).

- (3) The works which have been carried out in excess of those given prior approval under application ref. 15/508446/PNQCLA are likely to make a material difference to the assessment of the flood risk. The extent of the demolition and rebuilding works which have been carried out to the original barn building on the site amount to the erection of a new build dwelling within Flood Zone 3 (high probability of flooding) as shown on the Environment Agency's Flood Map as opposed to the conversion of an existing building. Government guidance in the NPPF 2019 (paras. 157, 158 and 159) seeks to steer new development to areas with the lowest risk of flooding and in the absence of any overriding justification or need for the development on the site being demonstrated in the application, the development is contrary to Government guidance in the NPPF 2019 and policy DM1 of the Maidstone Borough Local Plan (Adopted October 2017).
- 6.03 Whilst both planning applications were refused on the grounds cited above, the minutes of the meeting held on the 14 March 2019 record at 308 in a section entitled "Note" and numbered 2. "Following determination of these applications, reference was made by the Chairman to the desire on the part of Members for further discussions to seek to achieve a solution to the situation which has arisen".
- 6.04 The current application is the result of discussions with the applicants agent and alterations that the owner has made in an attempt to bring forward an application which matches as closely as possible in terms of floorspace and elevations to that granted prior approval under 15/508446/PNQCLA. Improvements have also been made to the cladding of the building to help improve the aesthetic of the external appearance.
- Principle:**
- 6.05 As set out in the previous reports to committee concerning the two refused applications, the site is located in the open countryside to the south-east of the Yalding village settlement and north-west of the Marden village settlement. Whilst the current application has been submitted for the conversion of an agricultural barn building to a dwelling, your officers are of the view and this was confirmed in the grounds of refusal cited in paragraph 6.02 above, that the extent of the demolition and rebuilding works which have been carried out to the original barn building amount to the erection of a new building as opposed to the conversion of an existing rural building. The original barn structure has effectively been demolished and rebuilt as a new dwelling. The principle of the erection of a new dwelling in this open countryside location is therefore not established by the previous grant of prior approval under application ref. 15/508446/PNQCLA which relates to the conversion of the agricultural barn building only.
- 6.06 Development Plan policy and Government guidance in the NPPF supports new housing in sustainable urban locations as an alternative to residential development in more remote countryside locations. The open countryside site, in this case, does not have good access to public transport and is remote from local services and facilities. As such, the site does not represent a sustainable location where such new build dwellings could be considered acceptable in principle.
- 6.07 It is however acknowledged that the current application seeks to amend the design and internal layout so that it is as close as possible to that approved by the prior approval ref. 15/508446/PNQCLA and generally meets the requests as set out by minute 308 – Note: 2) of the planning committee meeting of the 14 March 2019. However, an application of this nature needs to be considered against the requirements of Section 38(6) of the Planning and Compulsory Act 2004 i.e. determination must be made in accordance with the development plan unless material considerations indicate otherwise. In this regard, there has been no change in the principle of development since the previous refusals.



6.08 As set out in paragraph 6.02 above, the previous grounds of refusal related to the principle of development and the fact this amounted to a new build dwelling in an unsustainable location. As established by *R and Elmbridge Borough Council (2019) EWHC 1409 (Admin)* consistency in decision making is very important and members will need to take into account their previous decision when considering whether this ground has now been overcome with the current application. Your officers view is that it has not.

**Relevant development plan policies:**

6.09 As set out in the previous refusals and reports to committee, attached as Appendix 1, similar considerations apply to the current proposals as they did to the previous applications in terms of development plan policies and size of building. However, as set out in 6.02 above, as the Council has already determined that the development proposals for the previously refused applications amounted to a new build dwelling in the countryside. Accordingly, the same consideration should apply to the current proposals as essentially it is only cosmetic changes that are proposed to the building as part of the current application. It is therefore your officers view that DM31 does not apply to the current application. For the sake of clarity, and only on the basis that the applicant is still claiming that the proposals relate to a change of use of the former agricultural building will I set out the conflict with DM31, as was set out by the previous reports to committee.

6.10 As a new build dwelling in the open countryside, policies SS1 and SP17 of the Local Plan are relevant. Policy SS1 states that the Maidstone urban area will be the principal focus for development with the secondary focus being rural service centres. The policy also allows for some development within some larger villages. The development does not accord with policy SS1 and the open countryside location in this case does not represent a sustainable site where such new build dwellings could be considered acceptable in principle. Policy SP17 of the adopted Maidstone Borough Local Plan states that development proposals in the countryside will not be permitted unless they accord with other policies in the plan and they will not result in harm to the character and appearance of the area.

6.11 Policy DM30 of the adopted Maidstone Borough Local Plan relating to design principles in the countryside is also relevant to the current application. The policy seeks to ensure high quality design for proposals in the countryside. Amongst the criteria to be met are the following:

- 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;
- 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.

6.12 The size and massing of the residential building for which part retrospective planning permission is currently being sought is wholly out of scale and character with the adjoining cottage type properties at 1 and 2 Haviker Street Cottages to the south of the site and 3 and 4 Haviker Street to the north-west. These neighbouring cottages are also Grade II listed properties. The large scale and visual dominance of the new residential building in relation to the adjoining listed properties and the over-bearing aspect is considered to be damaging to the setting of the adjoining listed buildings. In light of the above, the proposals are considered to be in conflict with policy DM30 of the adopted Local Plan. The resulting harm to the character and appearance of the area and the countryside landscape is contrary to policy SP17 of the adopted Local Plan.

- 6.13 The applicant maintains the stance as set out for the previously refused applications (contained in Statement - Annex F – Policy case in support of application in principle) that the application is compliant with policy DM31 of the Maidstone Local Plan as it has been submitted for the conversion of an existing agricultural building. However, as previously set out above and as confirmed by the grounds of refusal cited in paragraph 6.02 which confirms the Council’s view that the building is a new built dwelling in the open countryside, your officers disagree with this and DM31 does not apply.
- 6.14 Whilst it is considered that DM31 does not apply to the current proposals taking account of the previous grounds of refusal, an assessment of conformity has been included within this report for completeness. However, members will need to bear in mind the need for consistency (as set out in paragraph 6.08 above) in the decision making process and the significant weight that should be attached to the previous grounds of refusal which established the Council’s view that the building represents a new build dwelling in the countryside.
- 6.15 Policy DM31 of the adopted Maidstone Borough Local Plan is in three parts. Part 1 of the policy reads as follows:  
*Outside of the settlement boundaries as defined on the policies map, proposals for the re-use and adaptation of existing rural buildings which meet the following criteria will be permitted:*
- i. The building is of a form, bulk, scale and design which takes account of and reinforces landscape character;*
  - ii. The building is of permanent, substantial and sound construction and is capable of conversion without major or complete reconstruction;*
  - 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;*
  - 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; and*
  - 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 and visual amenity.*

Part 2 of the policy relates to *proposals for the re-use and adaptation of existing rural buildings for commercial, industrial, sport, recreation or tourism uses* and is therefore not applicable to the current proposals.

Part 3 of the policy is applicable to the current proposals and reads as follows:

*Proposals for the re-use and adaptation of existing rural buildings for residential purposes will not be permitted unless the following additional criteria to the above are met:*

- i. Every reasonable attempt has been made to secure a suitable business re-use for the building;*
- 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; and*

*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.*

- 6.16 With regards to the above criteria to be met in Part 1 of the policy, whilst the original large steel portal framed agricultural barn building clad with corrugated iron sheeting and asbestos cement roof sheeting was typical of buildings found within the open countryside landscape, the current building with its reconstituted cement board cladding to the walls and synthetic slate to the roof, and modern domestic windows and doors is clearly not of a form, bulk, scale and design which takes account of and reinforces the countryside landscape character. It is acknowledged that changes are proposed to the external cladding of the building as part of the current proposals which will replace the cement weatherboarding with dark stained timber cladding and minor changes to the fenestration and existing balcony. These are clearly seen as positive changes as part of this application. Whilst typical of buildings found within the open countryside landscape, the original building on the site, as a result of its form, bulk, scale and design, was not the type of building which was envisaged as being suitable for conversion in accordance with criteria i and ii of Part 1 of Local Plan policy DM31 above.
- 6.17 The original and current buildings on the site do not meet the typology types of "character" former agricultural buildings which harmonise with the rural landscape. The pre-ambule to policy DM31 acknowledges (para. 8.4) that the quality and condition of rural buildings in the borough varies considerably and that the wide range of buildings includes buildings such as oast houses, which are indigenous only to the hop growing areas of the country and exemplify the historical development of agriculture in Kent. The pre-ambule to the policy further states that many of these vernacular buildings have a degree of significance which merits consideration as a heritage asset. The pre-ambule states that these functional buildings are often of simple form and character, so external alterations require careful consideration. Given the extent of the demolition and rebuilding work which has been carried to the original agricultural barn building on the site, your officers are of the view that the works amount to major reconstruction. Again, it is acknowledged that the current application seeks changes to the building (as set out in Appendix 2) which are considered to be an overall improvement to the appearance to the building from that currently constructed on site. However, these changes do not fundamentally change the concept of whether the proposals comply with policy DM31.
- 6.18 With regards to Part 3 of policy DM31, in respect of criteria i: the applicant has failed to make every reasonable attempt to secure a suitable business use for the building. The supporting information for the current application does state that the applicant did make an enquiry to the Council regarding possible use of the building as holiday homes and was advised that such a proposal was not likely to be looked on favourably. However, it states that the applicant's intention is first to pursue a residential use. The policy is clear that " every reasonable attempt has been made to secure a suitable business re-use" Notwithstanding this, tourism is not, however, the only possible business use for the building, and no evidence has been submitted in support of the current application to demonstrate that a commercial re-use of the building was fully explored before the current residential use was considered.
- 6.19 Furthermore, in respect of criteria ii: the building is not 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.
- 6.20 As noted in the comments from the Conservation Officer for the previously refused applications which are still relevant to the current application, the size and scale of

the new residence constructed on the site is wholly out of scale and character with the neighbouring listed residential properties at 1 and 2 Haviker Street Cottages to the south of the site and 3 and 4 Haviker Street to the north-west, and is damaging not only to their significance and integrity, but is also harmful to the wider, traditional landscape environment in which the building sits.

- 6.21 The applicant seeks to explain conformity with this part of the policy on the basis that the building does “fit a pattern of dispersed farm-related development that is characteristic of the locality, and it once served the fruit industry”. I do not, however, consider that a building of this size and design meets the high threshold set by this part of the policy. The application is therefore considered to conflict with criteria i and ii of Part 3 of policy DM31 of the Local Plan. Even when assessed as a conversion of an existing rural building, as suggested by the applicant in the current application, which is not agreed, the conversion fails to meet the majority of the criteria to be met in policy DM31 of the adopted Maidstone Borough Local Plan relating to the conversion of rural buildings.
- 6.22 The previous applications were refused on the basis of conflict with policy DM31 of the Local Plan but clarity was given in the grounds of refusal that the building represented a new building dwelling in the open countryside and whilst it is acknowledged that changes have been made to the overall design, appearance and internal layout of the building, the fundamental principles of the conflict with policy remain. As has been set out above, notwithstanding the conflict with policy, it is not considered that DM31 is relevant to the current application based on the previous grounds of refusal.

#### **Visual Impact**

- 6.23 As set out in the previous officer reports to committee (attached as Appendix 1), as a result of its siting to the rear of the neighbouring residential properties along Haviker Street and the screening provided by existing trees and vegetation, particularly to the south of the site, the large residential building on the site which replaced the former agricultural building does not have a significant impact in public views along Haviker Street. However, the building, as a result of its height and scale, does have an impact from some viewpoints along the road.
- 6.24 The current proposals now being considered seek to make changes to the ‘as built’ building along the lines set out in Appendix 2 of this report. Essentially, and as set out by the applicant they relate to:
1. no increase in the footprint or height of the barn;
  2. to reduce the residential floorspace to 450sq.m. by re-creating the void at first floor level above the agricultural store;
  3. to remove a first floor balcony with the east elevation restored;
  4. to remove first floor windows on the west elevation;
  5. to replace the reconstituted cement weatherboarding that was permitted on all elevations as part of the prior approval with dark stained timber weatherboarding;
  6. to reduce the size of the permitted openings, including the central glazing feature that would extend from the ground to the roof ridge, so making them less dominant when set against the new cladding - the original barn had no window openings instead being lit by a panel of roof lights and sliding doors; what was permitted in the grant of prior approval would make little, if any, reference to adjoining buildings;
  7. to improve upon the energy performance of the permitted development by retaining solar PV panels - two air source heat exchange units would also be kept
- 6.25 The application is accompanied by a set of measurements (Annex G) of the supporting documentation which either establishes indicative measurements from

the relevant drawings of the original building and those measured from the plans of the prior approval and the as built building. None of the measurements however tie up and it appears no measurements have been supplied of the as constructed building i.e without being taken off the plans.

- 6.26 However, the current proposals seek changes as already set out which will bring the building more in line with what was approved in the prior approval application. This will involve some considerable cost to the applicant, and it is recognised that this has been put forward to seek a resolution of this matter. It also seeks to address some of those concerns which were voiced by members of the committee when the previous applications were heard.
- 6.27 However, and notwithstanding this, what members are considering in the current application is the conformity of a substantial former agricultural building being proposed to be converted to residential, which has little architectural merit or key historical links to the rural landscape for instance such as characteristics former agricultural buildings such as Oast houses or other characteristic farm buildings.
- 6.28 The resultant building in the current proposals, whilst much improved from that currently constructed onsite, will still result in a hybrid form of a building which has little association or connection with its former use or character. As such, and given the associated domestication of this substantial building, its increased curtilage and taking into account the previous grounds of refusal which accept the building amounts to a new built dwelling, it will have an increased visual impact in this open countryside location.
- 6.29 In addition, the Maidstone Landscape Character Assessment (LCA) comments that within the character area that the site falls, Laddingford Low Weald is a coherent landscape where continuity is provided by linear development along the roads and the regularity of field pattern, which becomes larger scale away from the settled areas. The LCA states that built development has a moderate impact on the landscape, with a strong contrast between traditional properties and more recent development. It states that visual detractors within the landscape comprise large agricultural barns and silos, polytunnels, pylons and fencing and that whilst there are striking examples of local vernacular, recent development often degrades the setting of traditional buildings. Amongst the actions to conserve and improve the Laddingford Low Weald landscape are to avoid further infill development and soften the visual impact of large agricultural barns and silos with native planting. The current building on the site is considered to have a harmful impact on the visual amenities, character and appearance of the open countryside location and landscape and the same impact will arise from the proposed altered design.
- 6.30 The proposals forming the current application, as a result of its large scale, design and appearance is out of scale and character with the adjoining cottage type properties on Haviker Street, is not of a scale and design normally considered appropriate for new build dwellings in the open countryside, and conflicts with the aims and objectives of the above Landscape Character Assessment. It is however, recognised that the changes now proposed, whilst still conflicting with the development plan are an improvement on the existing building currently on site.
- 6.31 The current proposals have not addressed the previous grounds of refusal which remain as relevant to the current application as it did to the previously refused applications.

**Residential amenity**

- 6.32 The main body of the site in which the application building is located lies to the rear of the residential properties on Haviker Street at Little Spitzbrook Barn and the cottages at 3 and 4 Haviker Street to the north-west. The main body of the site is

accessed between the properties at Little Spitzbrook Barn and 3 and 4 Haviker Street. The residential properties at 1 and 2 Haviker Street Cottages adjoin the site to the south.

- 6.33 No objections were raised on the previously refused applications regarding loss of amenity, outlook, overbearing nature or overlooking. The same can be said for the current proposals. The changes now proposed return the western elevation i.e. that facing towards the rear of properties at Little Spitzbrook Barn, to the same as that approved as part of the Prior Approval application. There are now no first floor windows proposed to that elevation (due to the internal changes proposed by having the agricultural storage room vaulted and removing the currently installed first floor over this area).
- 6.34 No other windows or rooflights overlook adjoining properties and no objections have been raised from the Council's EHO officer regarding potential noise from the heat exchange units. No objections are raised from vehicular or pedestrian movements to/from the site.

#### **Traffic and parking**

- 6.35 Sufficient parking is provided on site to accommodate the needs of the new dwelling. Whilst the application includes the provision of two parking spaces, significantly more can be accommodated on site. There are no concerns raised regarding highway safety and none were raised in the previously refused applications.

#### **Setting of listed buildings**

- 6.36 The neighboring properties at 1 and 2 Haviker Street Cottages to the south of the site and 3 and 4 Haviker Street to the north-west are Grade II listed. The new dwelling on the site lies within the setting of both pairs of adjoining listed buildings and the nature and extent of the development which has been carried out at the site affects the setting of the listed buildings.
- 6.37 The Conservation Officer previously commented on the refused applications that what he was considering was an entirely new-build development – neither a house nor a barn, but a very large monolithic volume, clad incongruously in grey weatherboard associated with pure agricultural buildings. This has now been changed as part of the current proposals to dark stained timber weatherboarding.
- 6.38 The Conservation Officer further commented at that time that the building was in no way therefore a barn conversion, but a wholly new residential construction and that the size and scale of the new residence is wholly out of scale with the listed residential properties, and is damaging not only to their significance and integrity, but is also harmful to the wider, traditional landscape environment in which it sits. The Conservation Officer commented that it was this large scale and visual dominance of the new dwelling and the over-bearing aspect that was so damaging to the setting of the adjacent listed buildings.
- 6.39 Whilst the current proposal has led to some improved design changes, a key one being the change in cladding and removal of the balcony to the east elevation, the principle concerns that the Conservation Officer raised remain in terms of the size and scale of the building.
- 6.40 Whilst the partly retrospective application is considered to be damaging to the setting of the adjacent Grade II listed buildings, it is considered that the development will lead to less than substantial harm to the significance of the designated heritage assets and in such circumstances, Government guidance in the NPPF (para. 196) advises that the resulting harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum

viable use. This is the balancing exercise and will be considered in the overall conclusion on the proposals.

- 6.41 The previous applications were refused on harm to the setting of the adjacent listed buildings and the current proposals have not addressed this harm. As such, the previous grounds of refusal have not been overcome.

#### **Flooding**

- 6.42 The same Flood Risk Assessment and Flood Warning Strategy has been submitted with the current application as was submitted and considered for the previously refused applications. The site falls within the same flood risk categorisation as was previously considered.
- 6.43 The previous grounds of refusal as noted in paragraph 6.02 above referred to a material difference to the assessment of flood risk from that approved under the prior approval application and concluded that the proposals were contrary to the NPPF and policy DM1 of the Local Plan. No further justification, other than those mentioned above, asserts how the current proposals overcome the previous grounds of refusal.
- 6.44 The Environment Agency continue to raise no objection to the application with regards to flood risk however, as was previously set out, it must be noted that the Environment Agency have considered the application as a conversion of an existing agricultural barn to a dwelling as opposed to the erection of a new residential building to which more stringent tests are applied.
- 6.45 For the sake of brevity, I will not repeat all what was previously set out in the officers reports for the two refused applications (which are appended to this report as Appendix 1) in relation to flood risk. The information contained in these reports is as relevant to the current application as it was to the refused applications, principally on the basis that they rely on the same information submitted.
- 6.46 However, for the assessment of the current submission, the Council have confirmed, by reasons of the first ground of refusal cited in 6.02 above, that they consider the building represents a new build dwelling in the countryside. On this basis, the sequential and exception tests need to be passed, which the current proposals fail to meet. As such, the proposals are contrary to the advice in the NPPF on flood risk.
- 6.47 Based on the above assessment and having duly considered the approach adopted by the officer in his report to the two previously refused applications, the previous grounds of refusal have not been overcome by the current submission.

#### **Ecology**

- 6.48 The Phase 1 Habitat Survey is the same as was submitted for the two previously refused applications, however no grounds of objection were raised on ecology grounds. The same applies to the current proposals and it is considered that the suggested site enhancements as recommended by the Habitat Survey could be secured by conditions.

#### **Other Matters**

- 6.49 As with the previous applications, the applicant continues to maintain that the prior approval granted by 15/508446/PNQCLA is a relevant material consideration to this application. As with the previous officers report to committee on this matter, your officers agreed that the fallback position (what could happen on the land if the planning application was not approved), including any permitted development rights (with or without prior approval), can be a material consideration in the

determination of planning applications, see *Mansell v Tonbridge and Malling BC* [2018] JPL 176.

- 6.50 However, following the refusal of both applications, it was confirmed in the decision notices that the Council considered that due to the works which had been carried out to the original agricultural barn building on the site, that the development represented a new build dwelling in the open countryside. As such it was contrary to development plan policies SS1, SP17 and the objectives of policies SP21 and DM31.
- 6.51 Based on this, there is no fall-back position because the previous agricultural building no longer exists. This position is reached on the analysis of *Hibbitt v Secretary of State for Communities and Local Government and Rushcliffe Borough Council* and *Graham Oates v Secretary of State for Communities and Local Government and Canterbury City Council*.
- 6.52 An analysis of the judgements is set out in paragraphs 6.40 – 6.43 of the earlier report (as attached as Appendix 1 to this report).
- 6.53 An alternative view was offered in the previous report to committee as set out in paragraph 6.47, which confirmed that if the committee did not accept the officer's view that the building was in effect a new build dwelling in the countryside and that the works carried out did amount to a conversion, then what could be built under PD (of which the prior approval was an illustration) can and should be given weight as a relevant fallback position (in that the Committee should consider the relative merits of an application proposal against the alternative under PD rights).
- 6.54 It would now be difficult for the committee to reach an opposing view from the previously refused schemes which confirmed the development proposals represented a new build dwelling in the open countryside, especially in the light of the judgement I refer to in paragraph 6.08 in this report above and the weight to be attached to previous decisions. However, it is accepted that the current proposals are an improvement on the existing as built building and could be said to be similar to the prior approval application with the significant improvement to the external cladding material in the form of dark stained timber weatherboarding as opposed to the cement weatherboarding which was approved for the prior approval building.

#### **PUBLIC SECTOR EQUALITY DUTY**

- 6.55 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 previous grounds of refusal have assessed the building as essentially representing a new build dwelling in the countryside on the basis of the extent of works carried out to the former agricultural building. There is therefore no fall back position available as set out by *Mansell v Tonbridge and Malling BC* [2018] JPL 176 to consider the merits of the current proposals against the fall back position.
- 7.02 On this basis, the current proposals, due to the size of the building, its location in an unsustainable location, its conflict with flooding policies and its less than substantial harm to the setting of the nearby listed properties to which there are considered to be little or no public benefits to outweigh this harm, means that the application is considered contrary to policies SS1, SP17, SP21, DM1, DM4, DM30, DM31 and DM32 of the Maidstone Borough Local Plan.

#### **8. RECOMMENDATION**

REFUSE planning permission for the following reason(s):



- 1) Given the extent of the demolition and rebuilding works which have been carried out to the original agricultural barn building on the site and the limited amount of the original structure that has been retained in the new dwelling for which retrospective planning permission is sought, the Council are of the view that the development represents a new build dwelling in an open countryside location which does not have good access to public transport and is remote from local services and facilities. The development represents unsustainable residential development where future occupants would be reliant on private cars and in the absence of any overriding justification or need for the development demonstrated in the application, the development is contrary to Government guidance in the NPPF 2019 relating to sustainable development and policies SS1 and SP17 of the Maidstone Borough Local Plan (Adopted October 2017). The application proposal is contrary to the objectives of policies SP21 and DM31 of the Maidstone Borough Local Plan (Adopted October 2017) in terms of the residential use of the building, scale and appearance of the building, and in the context of neighbouring properties and countryside landscape.
- 2) The dwelling for which retrospective planning permission is sought, by reason of its overall design, appearance, scale and massing, has a harmful impact on the visual amenities, character and appearance of the open countryside location and landscape. The unsympathetic appearance, large scale and visual dominance of the dwelling in relation to the adjoining listed properties 1 and 2 Haviker Street to the south of the site and 3 and 4 Haviker Street to the north-west and the over-bearing impact has a harmful impact on the setting of the adjoining listed buildings. As such, the development is contrary to Government guidance in the NPPF 2019 and policies SS1, SP17, SP18, SP21, DM1, DM4, DM30, DM31 and DM32 of the Maidstone Borough Local Plan (Adopted October 2017).
- 3) The works which have been carried out in excess of those given prior approval under application ref. 15/508446/PNQCLA are likely to make a material difference to the assessment of the flood risk. The extent of the demolition and rebuilding works which have been carried out to the original barn building on the site amount to the erection of a new build dwelling within Flood Zone 3 (high probability of flooding) as shown on the Environment Agency's Flood Map. as opposed to the conversion of an existing building. Government guidance in the NPPF 2019 (paras. 157, 158 and 159) seeks to steer new development to areas with the lowest risk of flooding and in the absence of any overriding justification or need for the development on the site being demonstrated in the application, the development is contrary to Government guidance in the NPPF 2019 and policy DM1 of the Maidstone Borough Local Plan (Adopted October 2017).

Case Officer: James Bailey

<b>REFERENCE NO - 18/504501/FULL</b>		
<b>APPLICATION PROPOSAL</b> Conversion of agricultural barn to single dwelling with retention of part for use as agricultural store, laying out of private garden, two car parking spaces and driveway, the installation of solar PV array on southern roof slope, landscaping (part retrospective)		
<b>ADDRESS</b> Little Spitzbrook Farm Haviker Street Collier Street Kent TN12 9RG		
<b>RECOMMENDATION - REFUSE PLANNING PERMISSION</b>		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> This is an application for largely retrospective planning permission for works carried out on an existing agricultural building. Officers are of the view that the development which has been carried out, as a result of the extent of the demolition and rebuilding works which have taken place, represents a new build residential building in the open countryside for which there is no justification or need demonstrated in the application. The site does not represent a sustainable location where new build dwellings would normally be considered acceptable. The substantial residential building on the site, including the alterations proposed in this application, is considered to have a harmful impact on the visual amenities, character and appearance of the open countryside location and landscape. The large scale and visual dominance of the residential building on the site is considered to be damaging to the setting of the adjoining listed properties on Haviker Street. The development which has been carried out represents new build residential development in an area at high risk of flooding which conflicts with Government guidance in the NPPF.  The differences between this application and the first application ref. 18/504086/FULL, do not address the principal issues relating to the erection of a new substantial residential building in the open countryside, adjoining listed cottages, and in an area at high risk of flood.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> The application has been called-in for consideration by the Planning Committee by Ward Councillor David Burton, given the significance of the scale of potential enforcement action.		
<b>WARD</b> Marden and Yalding	<b>PARISH/TOWN COUNCIL</b> Collier Street	<b>APPLICANT</b> Mr & Mrs Cox <b>AGENT</b> IDE Planning
<b>TARGET DECISION DATE</b> 23/10/18		<b>PUBLICITY EXPIRY DATE</b> 22/11/18

**Relevant Planning History**

15/508446/PNQCLA

Prior Notification for the change of use of part of an agricultural building to a dwellinghouse and associated operational development

For it's prior approval for:

- Transport and highways impacts of the development
- Contamination risks on the site
- Flooding risks on the site
- Noise impacts of the development
- Whether the location or siting of the building makes it otherwise impractical or undesirable for the use of the building to change as proposed
- Design and external appearance impacts on the building

Prior approval granted. Decision Date: 10.12.15

16/503415/SUB

Submission of details pursuant to Condition 2:  
Materials under reference 15/508446/PNQCLA  
Approved. Decision Date: 09.05.16

18/504086/FULL

Conversion of agricultural barn to single dwelling with retention of part for use as agricultural store, laying out of private garden including erection of a woodstore, two car parking spaces and driveway, the installation of a solar PV array (two rows) and flue on southern roof slope, two heat exchange units and landscaping (part retrospective).

Pending Consideration (see previous item on agenda)

## **MAIN REPORT**

### **1. DESCRIPTION OF SITE**

- 1.01 The site is located on the east side and towards the southern end of Haviker Street, 230m approx. north of its junction with Green Lane. The main body of the site lies to the rear of the residential properties on Haviker Street at Little Spitzbrook Barn and the cottages at 3 and 4 Haviker Street. The main body of the site is accessed between the properties at Little Spitzbrook Barn and 3 and 4 Haviker Street. The main body of the site was until relatively recently occupied by a large steel portal framed agricultural building clad with corrugated iron sheeting and asbestos cement roof sheeting for which prior approval was granted on 10.12.15 for conversion to a residential dwelling. It is the view of your officers, that the agricultural building formerly on the site has, however, been substantially removed/demolished and a new large residential building (the subject of this application) has been erected on the site on the same building footprint and more or less within the same building envelope as the previous building. Retained parts of the original agricultural building have been incorporated into the new building. The site is adjoined by the residential properties at 1 and 2 Haviker Street Cottages to the south which are Grade II listed and the cottages at 3 and 4 Haviker Street to the north-west are also Grade II listed. The site is adjoined by open agricultural land to the north, east and south-east.
- 1.02 The site is located in the open countryside to the south-east of the Yalding village settlement and north-west of the Marden village settlement. The open countryside location is not subject to any landscape designation. The site is within Flood Zone 3 as shown on the Environment Agency's Flood Map.

### **2. PROPOSAL**

- 2.01 The application, as submitted, proposes the conversion of an agricultural barn building located to the rear and to the south-east of the residential properties at 3 and 4 Haviker Street to a single-dwelling on two floors with part of the building (the western end of the building) retained for agricultural storage. The dwelling would be accessed from a paved driveway off Haviker Street and the majority of the curtilage around the dwelling would be paved. Two parking spaces are shown within the curtilage in the submitted plans. The submitted plans show the proposed dwelling to incorporate an open plan kitchen/dining room and living room, store room, boot room, utility room and wc on the ground floor and 5 bedrooms, 3 bathrooms and a dressing room on the first floor. A first floor balcony is incorporated to the eastern end of the building. The roof to the dwelling incorporates solar panels to the south facing roof slope. The application is largely retrospective as the works are

substantially completed although the application proposes further works to the building as built.

- 2.02 There is a related application (ref. 18/504086/FULL) which also forms part of the agenda. The related application essentially seeks retrospective permission for the residential building as it currently stands. This application differs from the first application (ref. 18/504086/FULL) in that the first floor residential accommodation in this application is to be reduced from that as built and proposed in the first application to bring it more in line with the previous grant of prior approval under application ref. 15/508446/PNQCLA in terms of floorspace. The 7 bedroom dwelling is to be reduced to 5 bedrooms. The extent of the solar PV array on the southern roof slope is also reduced from that proposed in the first application. In addition to the above, the first floor windows currently installed to the western end of the building are removed. The freestanding log store building and two heat exchange units which have been erected within the curtilage adjacent to the south elevation wall of the building which form part of the first application ref. 18/504086/FULL do not form part of this second application (ref. 18/504501/FULL).
- 2.03 It is the view of your officers, that the agricultural building formerly on the site has been substantially removed/demolished and a new large residential building (the subject of this application) has been erected on the site. The applicants' agent was therefore requested to amend the description of the development proposed in the application to the erection of a new building as opposed to the conversion of an existing building but the agent has declined to agree to this amendment. Government guidance in the NPPG states that the Local Planning Authority should not amend the description of the development proposed in an application without the change having been first discussed and agreed with the applicant. Hence, the description of the development proposed in the application remains for the conversion of an agricultural barn building contrary to officers view that the agricultural barn building was removed and rebuilt as a new building.

### **3. POLICY AND OTHER CONSIDERATIONS**

National Planning Policy Framework (NPPF)  
National Planning Practice Guidance (NPPG)  
Maidstone Borough Local Plan 2017: Policies SS1, SP17, SP18, SP21, DM1, DM3, DM4, DM8, DM23, DM30, DM31, DM32

### **4. LOCAL REPRESENTATIONS**

#### **Local Residents:**

- 4.01 Two representations received from local residents raising the following (summarised) issues:
- The external works to the building now look to be complete.
  - It appears that a completely new building has been erected.
  - The property overshadows neighbouring properties.
  - The new building overlooks neighbouring properties to such an extent that it imposes on the privacy of the neighbouring occupiers.
  - Removal of foliage and trees would mean neighbouring properties would be overlooked.
  - Raising the height of the entrance road from Haviker Street to Little Spitzbrook Farm will significantly impact on flooding to the properties either side of the entrance.

- Raising or changing levels of Little Spitzbrok Farmyard could increase potential flooding to neighbouring properties.
- The plans do not indicate how parking will be provided for a 5 bedroom property. Only 2 car parking spaces are shown on the plans. Haviker Street has no provision for street parking. The addition of several cars will create severe disruption and hazard to road users.
- The only buses that serve Collier Street are on school days, one am/one pm. Residents would need use of a car.
- Traffic generated by a 5 bedroom house will change the nature of the lane.

4.02 The matters raised by neighbours and other objectors are discussed in the detailed assessment below.

## **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)

### **Collier Street Parish Council**

5.01 The Parish Council wish to adopt a neutral stance on this application.

### **Conservation Officer**

5.02 Advises that even if the new dwelling were not adjudged to lie within the curtilage of Little Spitzbrook Cottages, the building certainly lies within the setting both of these Grade II listed properties, and the adjacent listed Haviker Street Cottages, and any significant development on this land will affect the setting of the listed Little Spitzbrook Cottages. Further advises that what we are presented with now is entirely new-build development – neither a house nor a barn, but a very large monolithic volume, clad incongruously in grey weatherboard associated with pure agricultural buildings. Comments that the building is in no way therefore a barn conversion, but a wholly new residential construction. The size and scale of the new residence is wholly out of scale with the listed residential properties, and is damaging not only to their significance and integrity, but is also harmful to the wider, traditional landscape environment in which it sits. Further comments that there is no functional requirement for the residential property being of such a large scale and so visually dominant, and it is this unnecessary dominance and over-bearing aspect that is so damaging to the setting of the adjacent listed buildings. Comments that the external materials and details are of low quality – poor quality brickwork in stretcher bond, with unsightly expansion joints; reconstituted cement boarding with repeating synthetic embossed patterns; synthetic slate to the roof; storm-proof windows, poor quality plastic rainwater goods; indifferent landscaping.

### **MBC Environmental Health**

5.03 Comments that in addition to the previous agricultural use of the site, the site is also within the Council's potential contaminated sites based on information from the contaminated land database and historic maps databases. Further comments that there is no indication of any chance of high radon concentrations and there is no issue with the air quality in the area. Comments that the heat exchange units must be installed and operated in such a way as not to have an adverse impact on all nearby sensitive premises. No objection raised subject to a condition being imposed on any grant of planning permission to ensure that any potential contamination encountered during the works is appropriately dealt with.

**Kent Highways**

- 5.04 Commented that it would appear that this development proposal does not meet the criteria to warrant involvement from the Highway Authority in accordance with the current consultation protocol arrangements.

**KCC Ecological Advice Service**

- 5.05 Comment that they are satisfied with the conclusions of the submitted ecological report in relation to any potential impacts that the proposed development may have on any protected species or sites. Comment that the site is of low ecological value and they are satisfied with the proposed precautionary mitigation measures included within the report. Comment that it has been identified that the southern boundary contains habitat suitable for foraging bats which will be retained as part of the proposals. Comment that there are recommendations for a sensitive lighting strategy to ensure that there will be no detrimental impacts and advise that these measures must be implemented as part of the development. Comment that the application provides opportunities to incorporate features into the design which are beneficial to wildlife, such as native species planting or the installation of bat/bird nest boxes and further enhancements have been included within the submitted ecological report. Advise that measures to enhance biodiversity are secured as a condition of any grant of planning permission in accordance with Government guidance in the NPPF "*opportunities to incorporate biodiversity in and around developments should be encouraged*".

**Environment Agency**

- 5.06 Raise no objection to the application, as submitted, for conversion of the agricultural barn to a single dwelling with retention of part for use as agricultural store. Comment that the submitted Flood Risk Assessment (FRA) outlines flood risk mitigation measures including raising the ground floor to 15.15mAOD above existing ground level and the threshold of the building to 15.23mAOD primarily to protect against flooding. Comment further that the submitted plan shows all bedrooms at first floor level. Recommend the following condition:  
Condition: The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) Herrington Consulting Ltd, dated August 2018 and the following mitigation measures detailed within the FRA:
1. Finished floor levels are set no lower than 15.15mAOD above Ordnance Datum (AOD) and threshold finished floor level are set no lower than 15.23mAOD.
  2. No sleeping accommodation on the ground level.
  3. Sleeping accommodation to be on the first floor as shown on EP Architects drawing No. 1696.P.01 dated 30.09.2015.

Reason: To reduce the risk of flooding and provide a safe access and egress for this development.

Further comment that the Local Authority will also need to be satisfied that, where appropriate, safe access and egress can be achieved from the site during a flood event.

**6. APPRAISAL**

**Main Issues**

- 6.01 The key issues for consideration relate to:

- Principle
- Relevant development plan policies
- Visual impact
- Residential amenity
- Traffic and parking
- Setting of listed buildings
- Flooding
- Ecology
- Other matters (including the relevance of the prior approval application)

### **Principle**

- 6.02 The site is located in the open countryside to the south-east of the Yalding village settlement and north-west of the Marden village settlement. The application, as submitted, proposes the conversion of an agricultural barn building to a single-dwelling on two floors incorporating 5 bedrooms.
- 6.03 Class Q, Part 3 of Schedule 2 to the GDPO 2015 (as amended) permits the conversion of existing agricultural units to residential dwellings within the limits set out in Q.1. The current application does not benefit from permitted development rights because it does not comply with the limits set out in Q.1 and is materially different from the previous prior approval application 15/508446/PNQCLA.
- 6.04 Whilst the current application has been submitted for the conversion of an agricultural barn building to a dwelling, officers are of the view that the extent of the demolition and rebuilding works which have been carried out to the original barn building amount to the erection of a new building as opposed to the conversion of an existing rural building. The original barn structure has effectively been demolished and rebuilt as a new dwelling. The principle of the erection of a new dwelling in this open countryside location is therefore not established by the previous grant of prior approval under application ref. 15/508446/PNQCLA which relates to the conversion of the agricultural barn building only.
- 6.05 Development Plan policy and Government guidance in the NPPF supports new housing in sustainable urban locations as an alternative to residential development in more remote countryside locations. The open countryside site, in this case, does not have good access to public transport and is remote from local services and facilities. As such, the site does not represent a sustainable location where such new build dwellings could be considered acceptable in principle.

### **Relevant development plan policies**

- 6.06 For the reasons set out below, officers are of the view that the development which has been carried out at the site represents the erection of a new build dwelling, as opposed to the conversion of an existing rural building, in the open countryside. As a new build dwelling in the open countryside, policies SS1 and SP17 of the Local Plan are also relevant. Policy SS1 states that the Maidstone urban area will be the principal focus for development with the secondary focus being rural service centres. The policy also allows for some development within some larger villages. The development does not accord with policy SS1 and, as noted in 6.05 above, the open countryside site in this case does not represent a sustainable location where such new build dwellings could be considered acceptable in principle. Policy SP17 of the adopted Maidstone Borough Local Plan states that development proposals in the

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

6.07 Policy DM30 of the adopted Maidstone Borough Local Plan relating to design principles in the countryside is also relevant to the current application. The policy seeks to ensure high quality design for proposals in the countryside. Amongst the criteria to be met are the following:

- 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;

- 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.

6.08 The size and massing of the residential building for which retrospective planning permission is currently being sought is wholly out of scale and character with the adjoining cottage type properties at 1 and 2 Haviker Street Cottages to the south of the site and 3 and 4 Haviker Street to the north-west. These neighbouring cottages are also Grade II listed properties. The large scale and visual dominance of the new residential building in relation to the adjoining listed properties and the over-bearing aspect is considered to be damaging to the setting of the adjoining listed buildings. In light of the above, the proposals are considered to be in conflict with policy DM30 of the adopted Local Plan. The resulting harm to the character and appearance of the area and the countryside landscape is contrary to policy SP17 of the adopted Local Plan.

6.09 The applicant suggests that the application is assessed principally under policies SP21 and DM31 of the adopted Maidstone Borough Local Plan because it is a conversion of an existing agricultural building. Your officers do not agree. For the reasons set out in detail in paragraphs 6.39 to 6.47 below, it is the view of your officer that the application proposal is a new building, therefore DM31 does not apply.

6.10 In any event (and even if the Committee takes the view that the application proposal is a conversion of an existing building and not a new dwelling) it is the view of your officers that the application proposal does not comply with policies SP21 and DM31.

6.11 Policy SP21 states that the Council is committed to supporting and improving the economy of the borough and providing for the needs of businesses. One of the means through which this will be achieved is (Policy SP21 (vii)) by prioritising the commercial re-use of existing rural buildings in the countryside over conversion to residential use, in accordance with policy DM31. The re-use of the former agricultural building is therefore inconsistent with SP21 in principle, subject to the policy DM31.

6.12 Policy DM31 of the adopted Maidstone Borough Local Plan is in three parts. Part 1 of the policy reads as follows:

*Outside of the settlement boundaries as defined on the policies map, proposals for the re-use and adaptation of existing rural buildings which meet the following criteria will be permitted:*

- i. The building is of a form, bulk, scale and design which takes account of and reinforces landscape character;*



## Appendix 1

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- ii. *The building is of permanent, substantial and sound construction and is capable of conversion without major or complete reconstruction;*
- 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;*
- 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; and*
- 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 and visual amenity.*

Part 2 of the policy relates to *proposals for the re-use and adaptation of existing rural buildings for commercial, industrial, sport, recreation or tourism uses* and is therefore not applicable to the current proposals.

Part 3 of the policy is applicable to the current proposals and reads as follows:

*Proposals for the re-use and adaptation of existing rural buildings for residential; purposes will not be permitted unless the following additional criteria to the above are met:*

- i. *Every reasonable attempt has been made to secure a suitable business re-use for the building;*
- 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; and*
- 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.*

6.13 With regards to the above criteria to be met in Part 1 of the policy, whilst the original large steel portal framed agricultural barn building clad with corrugated iron sheeting and asbestos cement roof sheeting was typical of buildings found within the open countryside landscape, the current building with its reconstituted cement board cladding to the walls and synthetic slate to the roof, and modern domestic windows and doors is clearly not of a form, bulk, scale and design which takes account of and reinforces the countryside landscape character. Whilst typical of buildings found within the open countryside landscape, the original building on the site, as a result of its form, bulk, scale and design, was not the type of building which was envisaged as being suitable for conversion in accordance with criteria i and ii of Part 1 of Local Plan policy DM31 above.

6.14 The original and current buildings on the site do not meet the typology types of "character" former agricultural buildings which harmonise with the rural landscape. The pre-amble to policy DM31 acknowledges (para. 8.4) that the quality and condition of rural buildings in the borough varies considerably and that the wide range of buildings includes buildings such as oast houses, which are indigenous only to the hop growing areas of the country and exemplify the historical development of agriculture in Kent. The pre-amble to the policy further states that many of these vernacular buildings have a degree of significance which merits consideration as a heritage asset. The pre-amble states that these functional buildings are often of simple form and character, so external alterations require careful consideration. Given the extent of the demolition and rebuilding work which has been carried to the original agricultural barn building on the site, officers are of the view that the works amount to major reconstruction. Furthermore, the works carried out, particularly

the first floor balcony formed to the eastern end of the building and provision of glazing to the roof which projects above the roof ridge line, are not considered to be in keeping with the building character in terms of design and form and therefore conflict with criteria i and iii of Part 1 of the policy.

- 6.15 With regards to Part 3 of policy DM31, in respect of criteria i: the applicant has failed to make every reasonable attempt to secure a suitable business use for the building. The applicant did make an enquiry to the Council regarding possible use of the building as holiday homes and were advised that such a proposal was not likely to be looked on favourably because the building due to its form, bulk, scale and design would not be considered to accord with the requirements to be met in policy DM31 which still apply to the re-use and adaptation of existing rural buildings for tourism uses. Tourism is not, however, the only possible business use for the building, and no evidence has been submitted in support of the current application to demonstrate that a commercial re-use of the building was fully explored before the current residential use was considered. Furthermore, in respect of criteria ii: the building is not 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. As noted in the comments from the Conservation Officer (see paragraph 5.02 above), the size and scale of the new residence constructed on the site is wholly out of scale and character with the neighbouring listed residential properties at 1 and 2 Haviker Street Cottages to the south of the site and 3 and 4 Haviker Street to the north-west, and is damaging not only to their significance and integrity, but is also harmful to the wider, traditional landscape environment in which the building sits. The application is therefore considered to conflict with criteria i and ii of Part 3 of policy DM31 of the Local Plan. Even when assessed as a conversion of an existing rural building, as suggested by the applicant in the application as submitted, the conversion fails to meet the majority of the criteria to be met in policy DM31 of the adopted Maidstone Borough Local Plan relating to the conversion of rural buildings.

### **Visual impact**

- 6.16 As a result of its siting to the rear of the neighbouring residential properties along Haviker Street and the screening provided by existing trees and vegetation, particularly to the south of the site, the large residential building currently on the site which replaced the former agricultural building does not have a significant impact in public views along Haviker Street. However, the building, as a result of its height and scale, does have an impact from some viewpoints along the road.
- 6.17 The residential building currently on the site differs from that approved under the previous prior approval application in that the residential accommodation now extends into part of the upper part/roof void of the retained agricultural storage part of the building, a first floor balcony has been formed to the eastern end of the building, and the window and door layout to the external facades has changed, including the provision of glazing to the roof which projects above the roof ridge line. The more substantial portal frame which has been erected to the building extends beyond the profile of the existing retained parts of the steel frame to the original building and as a result the current building on the site is slightly higher and more bulky than the building that previously existed on the site. In addition to the above, solar panels have been added to the south facing roof slope and the residential curtilage has been enlarged. First floor windows are currently installed to the western end of the building, and a freestanding log store building and two heat exchange units have been erected within the curtilage adjacent to the south elevation wall but these elements do not form part of the current application. The changes made to the building approved under the previous prior approval application have resulted in the further domestication of the substantial building on

the site and its curtilage and an increased visual impact in the open countryside location.

- 6.18 In the Maidstone Landscape Character Assessment (LCA) (Amended July 2013) the site falls within the Laddingford Low Weald landscape area. The LCA comments that Laddingford Low Weald is a coherent landscape where continuity is provided by linear development along the roads and the regularity of field pattern, which becomes larger scale away from the settled areas. The LCA states that built development has a moderate impact on the landscape, with a strong contrast between traditional properties and more recent development. The LCA comments that visual detractors within the landscape comprise large agricultural barns and silos, polytunnels, pylons and fencing and that whilst there are striking examples of local vernacular, recent development often degrades the setting of traditional buildings. Amongst the actions to conserve and improve the Laddingford Low Weald landscape are to avoid further infill development and soften the visual impact of large agricultural barns and silos with native planting. The current substantial residential building on the site is considered to have a harmful impact on the visual amenities, character and appearance of the open countryside location and landscape. The current substantial new build residential building as a result of its large scale, design and appearance is out of scale and character with the adjoining cottage type properties on Haviker Street, is not of a scale and design normally considered appropriate for new build dwellings in the open countryside, and conflicts with the aims and objectives of the above Landscape Character Assessment.

#### **Residential amenity**

- 6.19 The main body of the site in which the application building is located lies to the rear of the residential properties on Haviker Street at Little Spitzbrook Barn and the cottages at 3 and 4 Haviker Street to the north-west. The main body of the site is accessed between the properties at Little Spitzbrook Barn and 3 and 4 Haviker Street. The residential properties at 1 and 2 Haviker Street Cottages adjoin the site to the south.
- 6.20 The part residential building and part agricultural storage building for which retrospective planning permission is sought in the current application generally reflects the footprint, height, bulk and massing of the agricultural barn building which previously existed on the site and for which prior approval was granted under application ref. 15/508446/PNQCLA for conversion to a dwelling. However, as a result of the more substantial portal frame which has been erected to the retained parts of the original building on the site, the current building is slightly higher and more bulky than the building that previously existed on the site. Given the separation distances between the existing residential building and the neighbouring residential properties referred to above, any modest increases in the height, footprint, bulk and massing of the existing building on the site, which in officers view represents a new building as opposed to the conversion of an existing building (as suggested by the applicant), compared to the previous building are not likely to have any material additional impact on the amenities of the occupiers of the neighbouring properties in terms any unneighbourly overbearing, enclosing, overshadowing and/or loss of outlook impacts. Whilst the size and scale of the new residential building erected on the site is seen as over-bearing and overdominant in the context of the neighbouring smaller cottage type properties on Haviker Street, it is not considered that the building results in any overriding and unneighbourly impact issues.
- 6.21 The large residential building currently on the site has first floor windows to the western end elevation facing the rear of the neighbouring residential property at Little Spitzbrook Barn which increase the potential for overlooking to the rear of that neighbouring property. However, in the current application the first floor windows to

the western end elevation are omitted and as a result it is not considered that the current application raises any overriding issues with regards to loss of privacy to the occupiers of Little Spitzbrook Barn.

- 6.22 The changes made to the first floor fenestration to the side (north and south facing) elevations of the residential building proposed in the current application from that previously approved (under application ref. 15/508446/PNQCLA) are not considered to raise any overriding issues with regards to overlooking and loss of privacy to the occupiers of neighbouring properties.
- 6.23 Vehicular and pedestrian movements to and from the site associated with the residential use of the building via the accessway which runs between the properties at Little Spitzbrook Barn and 3 and 4 Haviker Street are not likely to have a significantly greater impact on neighbouring properties than the vehicular and pedestrian movements associated with the previous agricultural use of the building.

#### **Traffic and parking**

- 6.24 The new dwelling is accessed from an existing accessway off Haviker Street. Whilst the five bedroom dwelling will generate vehicle movements to and from the site and along Haviker Street, any increase in such vehicle movements over and above those associated with the use of the previous agricultural barn building on the site is not likely to be so significant as to materially impact on traffic flows along Haviker Street or result in highway safety issues along the road or in the vicinity of the access to the road.
- 6.25 The submitted site layout plan shows the accessway off Haviker Street and the majority of the land within the site around the new dwelling to be paved with two parking spaces adjacent to the south-western corner of the dwelling. Adequate paved hardstanding areas exist within the site for further vehicle parking to be accommodated on site. The paved hardstanding area at the western end of the building also allows access to the retained agricultural store part of the building. It is not considered that the largely retrospective application raises any overriding traffic, parking or highway safety issues.

#### **Setting of listed buildings**

- 6.26 The neighbouring properties at 1 and 2 Haviker Street Cottages to the south of the site and 3 and 4 Haviker Street to the north-west are Grade II listed. The new dwelling on the site lies within the setting of both pairs of adjoining listed buildings and the nature and extent of the development which has been carried out at the site affects the setting of the listed buildings. The Conservation Officer has advised that what we are presented with now is entirely new-build development – neither a house nor a barn, but a very large monolithic volume, clad incongruously in grey weatherboard associated with pure agricultural buildings. The Conservation Officer further comments that the building is in no way therefore a barn conversion, but a wholly new residential construction and that the size and scale of the new residence is wholly out of scale with the listed residential properties, and is damaging not only to their significance and integrity, but is also harmful to the wider, traditional landscape environment in which it sits. The Conservation Officer comments that it is the large scale and visual dominance of the new dwelling and the over-bearing aspect that is so damaging to the setting of the adjacent listed buildings.
- 6.27 Whilst the development which has been carried out at the site is considered to be damaging to the setting of the adjacent Grade II listed buildings, it is considered that the development has led to less than substantial harm to the significance of the designated heritage assets and in such circumstances, Government guidance in the NPPF (para. 196) advises that the resulting harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. The rebuilding of the former agricultural barn building on the site to

provide a five-bedroom dwelling and an agricultural store is not considered to result in any public benefits which outweigh the resulting harm to the significance of the adjacent designated heritage assets by virtue of the harm to their setting.

### **Flooding**

- 6.28 The site falls within Flood Zone 3 (high probability of flooding) as shown on the Environment Agency's Flood Map. The flood risk is from the nearby river – Lesser Teise – located some 900m to the east of the site. Dwellinghouses are identified as *more vulnerable* in the Flood risk vulnerability classification in the Technical Guidance to the National Planning Policy Framework. The submitted Flood Risk Assessment (FRA) states that the risk of fluvial flooding has been examined under the design flood event, which includes a 35% allowance for climate change over the next 100 years (i.e. a 35% increase in peak river flow) and under this scenario the site is shown to flood, with flood depths reaching a maximum of 130mm next to the building. The FRA further states that the risk to the future occupants of the dwelling has been mitigated by raising the finished floor of the ground floor, which is located 220mm above the design flood level and, in addition, it is proposed that the threshold of the building is raised further to minimize the risk of internal flooding during an event which exceeds the design event. The FRA recommends that the threshold of the building should be set to 15.23m AODN (i.e. 300mm above the design flood level). The raised floor and threshold levels are shown on the submitted proposed plan.
- 6.29 The NPPF states that, where required safe access and escape is available to/from new developments in flood risk areas. The Practice Guidance to the NPPF states that access routes should be such that occupants can safely access and exit their dwellings in design flood conditions and that vehicular access to allow the emergency services to safely reach the development will also be required. The submitted FRA indicates that Haviker Street will be subject to flooding under the design event and this is the only access road to the development. The FRA states that the levels along the safest route to an area outside of the floodplain via Haviker Street have been established and using the design flood event conditions that include the impacts of climate change, the highest predicted flood depths is 0.23m. The FRA concludes that safe access/egress is available to/from the site during a flood event.
- 6.30 The submitted FRA recommends that flood resilience measures be incorporated into the design of the building where practicable, the owner and occupants of the dwelling sign up to the Environment Agency's floodline warnings and that this should be used in combination with the Flood Evacuation Plan that has been prepared (and submitted with the application), and the surface water management strategy for the development will need to be developed to a detailed design stage taking into account the requirements set out in the FRA which propose the use of Sustainable Drainage Systems (SuDS). Implementation of the recommendations of the FRA in the development can be secured by planning conditions imposed on any grant of planning permission.
- 6.31 The issue of flooding was considered under the previous prior approval application ref. 15/508446/PNQCLA for the change of use of part of the building to a dwellinghouse and associated operational development and the previous application was not considered to raise any overriding issues in this regard. It should be noted that Government policy/advice directs that Change of use applications do not need to apply the Sequential and Exception tests to applications (the more stringent tests – which seek to steer development away from areas at risk of flooding) and need only ensure that they are safe. The current application, as submitted, proposes the conversion of an agricultural barn building to a dwelling with part of the building retained for agricultural storage and, as such, the application would not be considered to raise any new flood risk issues which were not considered and

addressed under the previous prior approval application for change of use and conversion of an existing building.

- 6.32 The works which have been carried out in excess of those given prior approval under application ref. 15/508446/PNQCLA are likely to make a material difference to the assessment of the flood risk. As noted in section 6.04 above, your officers are of the view that the extent of the demolition and rebuilding works which have been carried out to the original barn building on the site amount to the erection of a new building as opposed to the conversion of an existing building. The NPPF states (para. 155) that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). The NPPF states (para. 157) that – so as to avoid, where possible, flood risk to people and property, the sequential test (amongst other requirements) and then, if necessary, the exception test should be applied to the location of development. The NPPF states (para. 158) that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding and that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The submitted FRA does not address the issue of the sequential test in relation to the location of the development (for the reasons set out above), and as, in your officers view, the existing residential building on the site represents a new building following demolition of the original barn building, there is no specific reason why the new building needs to be located on the site of the original building in an area at high risk of flooding. The erection of a new build dwelling on the site has not been justified in terms of flood risk.
- 6.33 Whilst the Environment Agency have raised no objection to the application with regards to flood risk (see comments in section 5.06 above), it must be noted that the Environment Agency have considered the application as a conversion of an existing agricultural barn to a dwelling as opposed to the erection of a new residential building to which more stringent tests are applied.

### **Ecology**

- 6.34 The submitted Ecological survey report concludes that the site in general is of low ecological value and that the majority of habitats on the site are common and widespread. The report states that the greatest ecological value is found within the southern boundary habitat which will be retained and enhanced. The current application is essentially retrospective as the works are substantially completed. Any impact on the ecological interests of the site would have already taken place.
- 6.35 The submitted Ecological survey report recommends post development enhancement comprising new planting, including a diverse mixture of native tree and shrub species commonly used for planting hedgerows, the installation of bat boxes within retained boundary trees, the use of a bat sensitive lighting scheme for the development, the installation of a total of three sparrow terrace nest boxes on the external elevations of the building at the eaves, and the installation of log pile refugia within retained boundary habitats for hedgehogs. The Ecological survey report concludes that the proposed site enhancements will maintain and increase the ecological value of the site and provide suitable habitat for a range of wildlife including invertebrates, breeding birds and bats. The proposed site enhancements can be secured by planning conditions imposed on any grant of planning permission

### **Other Matters**

- 6.36 The Applicant asserts that the prior approval granted on 10.12.15 is a relevant material consideration to this application.

- 6.37 Your officers agree that the fallback position (what could happen on the land if the planning application was not approved), including any permitted development rights (with or without prior approval), can be a material consideration in the determination of planning applications, see *Mansell v Tonbridge and Malling BC* [2018] JPL 176.
- 6.38 Your officer's primary position is, however, that there is no fall-back position (in terms of PD rights or the prior approval) in relation to the building that forms the subject of this application because the previous agricultural building no longer exists.
- 6.39 Your officer's rely on the analysis in High Court (*Hibbitt v Secretary of State for Communities and Local Government and Rushcliffe Borough Council*) in a decision dated 09.11.16 and further in the Court of Appeal (*Graham Oates v Secretary of State for Communities and Local Government and Canterbury City Council*) in a decision dated 12.10.18.
- 6.40 In *Hibbitt v SSCLG* [2016] EWHC 2853 (Admin) Green J considered (in the context of whether a development fell within the PD rights in Class Q) the distinction between a conversion, and a rebuild, and summarised the position as follows (at paragraph 27).

*"[27] In my view whilst I accept that a development following a demolition is a rebuild, I do not accept that this is where the divide lies. In my view it is a matter of legitimate planning judgment as to where the line is drawn. The test is one of substance, and not form based upon a supposed but ultimately artificial clear bright line drawn at the point of demolition. And nor is it inherent in "agricultural building". There will be numerous instances where the starting point (the "agricultural building") might be so skeletal and minimalist that the works needed to alter the use to a dwelling would be of such magnitude that in practical reality what is being undertaken is a rebuild. ..."*

- 6.41 Green J's approach was expressly approved by the Court of Appeal in *Oates v SSCLG* [2018] EWCA Civ 2229 in which the court held that a planning inspector had been entitled to find that works to chicken coops was not permitted development as these had resulted in the creation of new buildings, notwithstanding that the original buildings had been incorporated into the new buildings and had not been demolished, see paragraph 37 of the judgment of Lindblom LJ:

*"[37] Put simply, the principle here is unsurprising: that a building constructed partly of new materials and partly of usable elements of previous structures on the site, after other elements of those previous structures have been removed through demolition, may in fact be a "new" building; or it may not. The facts and circumstances of every case will be different. But, in principle, the retention of some of the fabric of an original building or buildings within the building that has been, or is being erected, does not preclude a finding by the decision-maker, as a matter of fact and degree, that the resulting building is, physically, a "new" building, and that the original building has ceased to exist. This, in effect, is what the inspector found here. In doing so she made no error of law. She was not compelled to find that because some elements of the original buildings had survived in the construction of the buildings now on the site, the buildings were not and could not be, as a matter of fact, "new buildings". That suggestion is untenable".*

- 6.42 As illustrated in *Hibbitt*, the retention of part of the original agricultural building (the vertical steel columns and roof rafters only in the current case) does not necessarily

mean the development amounts to a conversion as opposed to a rebuild. The Judge further commented that the nub of the point being made by the Inspector, in the Judge's view correctly, was that the works (which in this case included the construction of all four exterior walls) went a very long way beyond what might sensibly or reasonably be described as a conversion. The Judge commented that the development was in all practical terms starting afresh, with only a modest amount of help from the original agricultural building.

- 6.43 In *Oates*, the court held that the Inspector had made no error in finding that the original buildings had ceased to exist and that she was not compelled to find that because some elements of the original buildings had survived in the construction of the buildings now on the site, the buildings were not and could not be, as a matter of fact, "new buildings".
- 6.44 In the case of the current application building at Little Spitzbrook Farm, your officers are of the view that the extent of the demolition and rebuilding works which have been carried out to the original barn building amount to the erection of a new building as opposed to the conversion of an existing building.
- 6.45 This is because as a result of the works that have in fact been carried out, the original barn structure has effectively been demolished and a new more substantial steel portal frame erected with retained parts of the existing structure (the vertical steel columns and roof rafters of the original portal frame only) tied to the new more substantial portal frame. The more substantial portal frame which has been erected to the building extends beyond the profile of the existing retained parts of steel frame to the original building and as a result the current building on the site is slightly higher and more bulky than the building that previously existed on the site. Horizontal floor beams are provided for the new first floor. New infill foundations appear to have been constructed, and new walls and a roof have been constructed infilling between and around the new steel portal frame and retained vertical steel columns and roof rafters of the original building.
- 6.46 As the original barn building has effectively been replaced with a new building, the fall-back positions of implementing the previous grant of prior approval or indeed relying on the permitted development rights attached to the barn do not now exist.
- 6.47 If the Committee **does not** accept the Officer's view and that the works carried out amount to a conversion, then what could be built under PD (of which the prior approval is an illustration) can and should be given weight as a relevant fallback position (in that the Committee should consider the relative merits of the application proposal against the alternative under PD rights). It is the Officer's view that the alternative development under PD rights i.e the fallback position, would be preferable to the application proposal.
- 6.48 The works proposed in this application are different from those granted prior approval in that the first floor residential accommodation is extended into the upper part/roof void of the retained agricultural storage part of the building, a first floor balcony has been formed to the eastern end of the building, and the window, door and glazing layout to the external facades have changed, including the provision of glazing to the roof which projects above the roof ridge line. The more substantial portal frame which has been erected to the building also results in the current building being slightly higher and more bulky than the original building. In addition to the above differences, solar panels have been added to the south facing roof slope and the residential curtilage has been enlarged.
- 6.49 As set out above, your officer's view is that these additional changes have a harmful visual impact and are detrimental to the setting of the neighbouring listed buildings.
- 6.50 Therefore it is your officer's view that the fallback position does not weigh in favour of granting planning permission for the application proposal.



- 6.51 As the works for which planning permission is sought are substantially completed and the current application is essentially retrospective, the condition requested by the Environmental Health Officer (see 5.03 above) relating to any potential contamination encountered during the works is no longer applicable.
- 6.52 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. CONCLUSION**

- 7.01 The current application is essentially retrospective as the works to provide a new dwelling at the site are substantially completed. The current application proposes further alterations to the new dwelling as built. Whilst the current application has been submitted for the conversion of an agricultural barn building to a dwelling, your officers are of the view that the extent of the demolition and rebuilding works which have been carried out to the original barn building amount to the erection of a new building as opposed to the conversion of an existing building. Your officers stance on this matter is supported by decisions in both the High Court and Court of Appeal.
- 7.02 The former agricultural barn building on the site was granted prior approval under previous application ref. 15/508446/PNQCLA for the change of use of part of the building to a dwellinghouse and associated operational development. As, in your officers view, the agricultural barn building has been subsequently demolished and rebuilt as a dwelling, the fall-back position of converting the former building cannot now be applied. In any case, your officer's consider the application proposal to be more harmful, in terms of visual amenity, than the fallback position under PD (as illustrated by the prior approval).
- 7.03 The open countryside site does not have good access to public transport and is remote from local services and facilities. As such, the site does not represent a sustainable location where such new build dwellings could be considered acceptable.
- 7.04 The changes which have been made to the appearance of the residential building for which prior approval was previously granted under application ref. 15/508446/PNQCLA compared to the building for which retrospective planning permission is currently sought, together with the enlarged residential curtilage and, whilst not part of this application, the associated structures, are considered to result in the further domestication of the substantial building on the site and an increased visual impact in the open countryside location. The current substantial residential building on the site is considered to have a harmful impact on the visual amenities, character and appearance of the open countryside location and landscape.
- 7.05 The size and massing of the dwelling (5 bedrooms) for which retrospective planning permission is currently being sought is wholly out of scale and character with the adjoining Grade II listed cottage type properties at 1 and 2 Haviker Street Cottages to the south of the site and 3 and 4 Haviker Street to the north-west. The large scale and visual dominance of the new dwelling in relation to the adjoining listed properties and the over-bearing aspect is considered to be damaging to the setting of the adjoining listed buildings.
- 7.06 The site is within Flood Zone 3 (high probability of flooding) as shown on the Environment Agency's Flood Map. The principle of conversion of an existing building on the site to a dwelling within the flood zone was established by the previous grant of prior approval under application ref. 15/508446/PNQCLA and a new application

for the conversion of the former building on the site would not be considered to raise any new flood risk issues which were not considered and addressed under the previous prior approval application. However, your officers are of the view that the current residential building on the site represents new build development in an area at high risk of flooding and, as such, Government guidance in the NPPF seeks to direct new residential development away from areas at the highest risk. As a new build residential development the current building on the site is in conflict with the NPPF guidance as the location has not been justified in terms of flood risk.

- 7.07 The development which has been carried out on the site, together with the changes proposed in the current application, is not considered to raise any overriding unacceptable unneighbourly impacts, traffic, parking or highway safety issues, or impact on ecological and biodiversity interests at the site.
- 7.08 The differences between this application and the first application ref. 18/504086/FULL, as outlined in section 2.02 above, do not address the principal issues relating to the erection of a new substantial residential building in the open countryside, adjoining listed cottages, and in an area at high risk of flood.
- 7.09 Refusal of planning permission is recommended for the reasons set out below.

## **8. RECOMMENDATION**

REFUSE planning permission for the following reason(s):

- 1) Given the extent of the demolition and rebuilding works which have been carried out to the original agricultural barn building on the site and the limited amount of the original structure that has been retained in the new dwelling for which retrospective planning permission is sought, the Council are of the view that the development represents a new build dwelling in an open countryside location which does not have good access to public transport and is remote from local services and facilities. The development represents unsustainable residential development where future occupants would be reliant on private cars and in the absence of any overriding justification or need for the development demonstrated in the application, the development is contrary to Government guidance in the NPPF 2019 relating to sustainable development and policies SS1 and SP17 of the Maidstone Borough Local Plan (Adopted October 2017). The application proposal is contrary to the objectives of policies SP21 and DM31 of the Maidstone Borough Local Plan (Adopted October 2017) in terms of the residential use of the building, scale and appearance of the building, and in the context of neighbouring properties and countryside landscape.
- 2) The dwelling for which retrospective planning permission is sought, by reason of its overall design, appearance, scale and massing, has a harmful impact on the visual amenities, character and appearance of the open countryside location and landscape. The unsympathetic appearance, large scale and visual dominance of the dwelling in relation to the adjoining listed properties 1 and 2 Haviker Street to the south of the site and 3 and 4 Haviker Street to the north-west and the over-bearing impact has a harmful impact on the setting of the adjoining listed buildings. As such, the development is contrary to Government guidance in the NPPF 2019 and policies SS1, SP17, SP18, SP21, DM1, DM4, DM30, DM31 and DM32 of the Maidstone Borough Local Plan (Adopted October 2017).
- 3) The works which have been carried out in excess of those given prior approval under application ref. 15/508446/PNQCLA are likely to make a material difference to the assessment of the flood risk. The extent of the demolition and rebuilding works

which have been carried out to the original barn building on the site amount to the erection of a new build dwelling within Flood Zone 3 (high probability of flooding) as shown on the Environment Agency's Flood Map as opposed to the conversion of an existing building. Government guidance in the NPPF 2019 (paras. 157, 158 and 159) seeks to steer new development to areas with the lowest risk of flooding and in the absence of any overriding justification or need for the development on the site being demonstrated in the application, the development is contrary to Government guidance in the NPPF 2019 and policy DM1 of the Maidstone Borough Local Plan (Adopted October 2017).

Case Officer: Jon Barnes

<b>REFERENCE NO - 18/504086/FULL</b>		
<b>APPLICATION PROPOSAL</b> Conversion of agricultural barn to single dwelling with retention of part for use as agricultural store, laying out of private garden including erection of a woodstore, two car parking spaces and driveway, the installation of a solar PV array (two rows) and flue on southern roof slope, two heat exchange units and landscaping (part retrospective).		
<b>ADDRESS</b> Little Spitzbrook Farm Haviker Street Collier Street Kent TN12 9RG		
<b>RECOMMENDATION - REFUSE PLANNING PERMISSION</b>		
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> This is an application for retrospective planning permission for works carried out on an existing agricultural building. Officers are of the view that the development which has been carried out, as a result of the extent of the demolition and rebuilding works which have taken place, represents a new build residential building in the open countryside for which there is no justification or need demonstrated in the application. The site does not represent a sustainable location where new build dwellings would normally be considered acceptable. The substantial residential building on the site is considered to have a harmful impact on the visual amenities, character and appearance of the open countryside location and landscape. The large scale and visual dominance of the residential building on the site is considered to be out of character with and damaging to the setting of the adjoining listed properties on Haviker Street. The development which has been carried out represents new build residential development in an area at high risk of flooding which conflicts with Government guidance in the NPPF.		
<b>REASON FOR REFERRAL TO COMMITTEE</b> The application has been called-in for consideration by the Planning Committee by Ward Councillor David Burton, given the significance of the scale of potential enforcement action.		
<b>WARD</b> Marden and Yalding	<b>PARISH/TOWN COUNCIL</b> Collier Street	<b>APPLICANT</b> Mr & Mrs Cox <b>AGENT</b> IDE Planning
<b>TARGET DECISION DATE</b> 08/10/18		<b>PUBLICITY EXPIRY DATE</b> 22/11/18

### Relevant Planning History

15/508446/PNQCLA

Prior Notification for the change of use of part of an agricultural building to a dwellinghouse and associated operational development

For it's prior approval for:

- Transport and highways impacts of the development
- Contamination risks on the site
- Flooding risks on the site
- Noise impacts of the development
- Whether the location or siting of the building makes it otherwise impractical or undesirable for the use of the building to change as proposed
- Design and external appearance impacts on the building

Prior approval granted. Decision Date: 10.12.15

16/503415/SUB

Submission of details pursuant to Condition 2:  
 Materials under reference 15/508446/PNQCLA

Approved.

Decision Date: 09.05.16

18/504501/FULL

Conversion of agricultural barn to single dwelling with retention of part for use as agricultural store, laying out of private garden, two car parking spaces and driveway, the installation of solar PV array on southern roof slope, landscaping (part retrospective)

Pending Consideration (see next item on agenda)

## **MAIN REPORT**

### **1. DESCRIPTION OF SITE**

- 1.01 The site is located on the east side and towards the southern end of Haviker Street, 230m approx. north of its junction with Green Lane. The main body of the site lies to the rear of the residential properties on Haviker Street at Little Spitzbrook Barn and the cottages at 3 and 4 Haviker Street. The main body of the site is accessed between the properties at Little Spitzbrook Barn and 3 and 4 Haviker Street. The main body of the site was until relatively recently occupied by a large steel portal framed agricultural building clad with corrugated iron sheeting and asbestos cement roof sheeting for which prior approval was granted on 10.12.15 for conversion to a residential dwelling. It is the view of your officers, that the agricultural building formerly on the site has, however, been substantially removed/demolished and a new large residential building (the subject of this application) has been erected on the site on the same building footprint and more or less within the same building envelope as the previous building. Retained parts of the original agricultural building have been incorporated into the new building. The site is adjoined by the residential properties at 1 and 2 Haviker Street Cottages to the south which are Grade II listed and the cottages at 3 and 4 Haviker Street to the north-west are also Grade II listed. The site is adjoined by open agricultural land to the north, east and south-east.
- 1.02 The site is located in the open countryside to the south-east of the Yalding village settlement and north-west of the Marden village settlement. The open countryside location is not subject to any landscape designation. The site is within Flood Zone 3 as shown on the Environment Agency's Flood Map.

### **2. PROPOSAL**

- 2.01 The application, as submitted, proposes the conversion of an agricultural barn building located to the rear and to the south-east of the residential properties at 3 and 4 Haviker Street to a single-dwelling on two floors with part of the building (the ground floor part of the western end of the building) retained for agricultural storage. The dwelling would be accessed from a paved driveway off Haviker Street and the majority of the curtilage around the dwelling would be paved. A detached log store is located to the southern side of the dwelling and two parking spaces are shown within the curtilage in the submitted plans. The submitted plans show the proposed dwelling to incorporate an open plan kitchen/dining room and living room, store room, boot room, utility room and wc on the ground floor and 7 bedrooms, 3 bathrooms, a shower room and a dressing room on the first floor. The roof to the dwelling incorporates solar panels to the south facing roof slope and two freestanding heat exchange units are located adjacent to the south elevation wall of the building. The application is essentially retrospective as the works are substantially completed.
- 2.02 There is a related second application (ref. 18/504501/FULL) which also forms part of the agenda. This application differs from the second application in that the first floor

residential accommodation in this application is essentially as built, extending across the full width of the upper part/roof void of the retained agricultural storage part of the building. In the second application (ref. 18/504501/FULL) the first floor residential accommodation as built is proposed to be reduced to bring it more in line with the previous grant of prior approval under application ref. 15/508446/PNQCLA in terms of floorspace. In addition to the above, the first floor windows currently installed to the western end of the building and the freestanding log store building and two heat exchange units which have been erected within the curtilage adjacent to the south elevation wall of the building are to be considered as part of this application. However, these elements of the development which has been carried out do not form part of the second application.

- 2.03 It is the view of your officers, that the agricultural building formerly on the site has been substantially removed/demolished and a new large residential building (the subject of this application) has been erected on the site. The applicants' agent was therefore requested to amend the description of the development proposed in the application to the erection of a new building as opposed to the conversion of an existing building but the agent has declined to agree to this amendment. Government guidance in the NPPG states that the Local Planning Authority should not amend the description of the development proposed in an application without the change having been first discussed and agreed with the applicant. Hence, the description of the development proposed in the application remains for the conversion of an agricultural barn building contrary to officers view that the agricultural barn building was removed and rebuilt as a new building.

### **3. POLICY AND OTHER CONSIDERATIONS**

National Planning Policy Framework (NPPF)  
National Planning Practice Guidance (NPPG)  
Maidstone Borough Local Plan 2017: Policies SS1, SP17, SP18, SP21, DM1, DM3, DM4, DM8, DM23, DM30, DM31, DM32

### **4. LOCAL REPRESENTATIONS**

#### **Local Residents:**

- 4.01 Three representations received from local residents raising the following (summarised) issues
- The new building is much larger than the original barn on which the planning permission was previously granted.
  - The property overshadows neighbouring properties.
  - The new building overlooks neighbouring properties to such an extent that it imposes on the privacy of the neighbouring occupiers.
  - Removal of foliage and trees would mean neighbouring properties would be overlooked.
  - The Environment Agency's past concern about the possible effects of increased flooding in the area as a result of this new development should be re-assessed.
  - Raising the height of the entrance road from Haviker Street to Little Spitzbrook Farm will significantly impact on flooding to the properties either side of the entrance.
  - Raising or changing levels of Little Spitzbrok Farmyard could increase potential flooding to neighbouring properties.

- The Environment Agency made a ruling when the property was being constructed under the GPDO scheme in 2016 that “no raising of any ground levels was to take place”. This has been blatantly ignored.
  - The development will detract from the value of neighbouring properties should the neighbouring owners wish to sell.
  - The plans do not indicate how parking will be provided for a 7 bedroom property. Only 2 car parking spaces are shown on the plans. Haviker Street has no provision for street parking. The addition of several cars will create severe disruption and hazard to road users.
  - The only buses that serve Collier Street are on school days, one am/one pm. Residents would need use of a car.
  - Traffic generated by a 7 bedroom house will change the nature of the lane.
- 4.02 Issues relating to the impact on the value of neighbouring property are not a material planning consideration and therefore cannot be taken into account in the determination of this application. The other matters raised by neighbours are discussed in the detailed assessment below.

## **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)

### **Collier Street Parish Council**

- 5.01 The Parish Council wish to adopt a neutral stance on this application.

### **Conservation Officer**

- 5.02 Advises that even if the new dwelling were not adjudged to lie within the curtilage of Little Spitzbrook Cottages, the building certainly lies within the setting both of these Grade II listed properties, and the adjacent listed Haviker Street Cottages, and any significant development on this land will affect the setting of the listed Little Spitzbrook Cottages. Further advises that what we are presented with now is entirely new-build development – neither a house nor a barn, but a very large monolithic volume, clad incongruously in grey weatherboard associated with pure agricultural buildings. Comments that the building is in no way therefore a barn conversion, but a wholly new residential construction. The size and scale of the new residence is wholly out of scale with the listed residential properties, and is damaging not only to their significance and integrity, but is also harmful to the wider, traditional landscape environment in which it sits. Further comments that there is no functional requirement for the residential property being of such a large scale and so visually dominant, and it is this unnecessary dominance and over-bearing aspect that is so damaging to the setting of the adjacent listed buildings. Comments that the external materials and details are of low quality – poor quality brickwork in stretcher bond, with unsightly expansion joints; reconstituted cement boarding with repeating synthetic embossed patterns; synthetic slate to the roof; storm-proof windows, poor quality plastic rainwater goods; indifferent landscaping.

### **MBC Environmental Health**

- 5.03 Comments that in addition to the previous agricultural use of the site, the site is also within the Council’s potential contaminated sites based on information from the contaminated land database and historic maps databases. Further comments that there is no indication of any chance of high radon concentrations and there is no issue with the air quality in the area. Comments that the heat exchange units must

be installed and operated in such a way as not to have an adverse impact on all nearby sensitive premises. No objection raised subject to a condition being imposed on any grant of planning permission to ensure that any potential contamination encountered during the works is appropriately dealt with.

### **Kent Highways**

- 5.04 Commented that it would appear that this development proposal does not meet the criteria to warrant involvement from the Highway Authority in accordance with the current consultation protocol arrangements.

### **KCC Ecological Advice Service**

- 5.05 Comment that they are satisfied with the conclusions of the submitted ecological report in relation to any potential impacts that the proposed development may have on any protected species or sites. Comment that the site is of low ecological value and they are satisfied with the proposed precautionary mitigation measures included within the report. Comment that it has been identified that the southern boundary contains habitat suitable for foraging bats which will be retained as part of the proposals. Comment that there are recommendations for a sensitive lighting strategy to ensure that there will be no detrimental impacts and advise that these measures must be implemented as part of the development. Comment that the application provides opportunities to incorporate features into the design which are beneficial to wildlife, such as native species planting or the installation of bat/bird nest boxes and further enhancements have been included within the submitted ecological report. Advise that measures to enhance biodiversity are secured as a condition of any grant of planning permission in accordance with Government guidance in the NPPF "*opportunities to incorporate biodiversity in and around developments should be encouraged*".

### **Environment Agency**

- 5.06 Raise no objection to the application, as submitted, for conversion of the agricultural barn to a single dwelling with retention of part for use as agricultural store. Comment that the submitted Flood Risk Assessment (FRA) outlines flood risk mitigation measures including raising the ground floor to 15.15mAOD above existing ground level and threshold of the building to 15.23mAOD primarily to protect against flooding. Comment further that the submitted plan shows all bedrooms at first floor level. Recommend the following condition:

Condition: The development permitted by this planning permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) Herrington Consulting Ltd, dated August 2018 and the following mitigation measures detailed within the FRA:

1. Finished floor levels are set no lower than 15.15mAOD above Ordnance Datum (AOD) and threshold finished floor level are set no lower than 15.23mAOD.
2. No sleeping accommodation on the ground level.
3. Sleeping accommodation to be on the first floor as shown on EP Architects drawing No. 1696.P.01 dated 30.09.2015.

Reason: To reduce the risk of flooding and provide a safe access and egress for this development.

Further comment that the Local Authority will also need to be satisfied that, where appropriate, safe access and egress can be achieved from the site during a flood event.



## **6. APPRAISAL**

### **Main Issues**

6.01 The key issues for consideration relate to:

- Principle
- Relevant development plan policies
- Visual impact
- Residential amenity
- Traffic and parking
- Setting of listed buildings
- Flooding
- Ecology
- Other matters (including the relevance of the prior approval application)

### **Principle**

6.02 The site is located in the open countryside to the south-east of the Yalding village settlement and north-west of the Marden village settlement. The application, as submitted, proposes the conversion of an agricultural barn building to a single-dwelling on two floors incorporating 7 bedrooms.

6.03 Class Q, Part 3 of Schedule 2 to the GDPO 2015 (as amended) permits the conversion of existing agricultural units to residential dwellings within the limits set out in Q.1. The current application does not benefit from permitted development rights because it does not comply with the limits set out in Q.1 and is materially different from the previous prior approval application 15/508446/PNQCLA.

6.04 Whilst the current application has been submitted for the conversion of an agricultural barn building to a dwelling, officers are of the view that the extent of the demolition and rebuilding works which have been carried out to the original barn building amount to the erection of a new building as opposed to the conversion of an existing rural building. The original barn structure has effectively been demolished and rebuilt as a new dwelling. The principle of the erection of a new dwelling in this open countryside location is therefore not established by the previous grant of prior approval under application ref. 15/508446/PNQCLA which relates to the conversion of the agricultural barn building only.

6.05 Development Plan policy and Government guidance in the NPPF supports new housing in sustainable urban locations as an alternative to residential development in more remote countryside locations. The open countryside site, in this case, does not have good access to public transport and is remote from local services and facilities. As such, the site does not represent a sustainable location where such new build dwellings could be considered acceptable in principle.

### **Relevant development plan policies**

6.06 For the reasons set out below, officers are of the view that the development which has been carried out at the site represents the erection of a new build dwelling, as opposed to the conversion of an existing rural building, in the open countryside. As a new build dwelling in the open countryside, policies SS1 and SP17 of the Local Plan are also relevant. Policy SS1 states that the Maidstone urban area will be the principal focus for development with the secondary focus being rural service

centres. The policy also allows for some development within some larger villages. The development does not accord with policy SS1 and, as noted in 6.05 above, the open countryside site in this case does not represent a sustainable location where such new build dwellings could be considered acceptable in principle. Policy SP17 of the adopted Maidstone Borough Local Plan states that development proposals in the countryside will not be permitted unless they accord with other policies in the plan and they will not result in harm to the character and appearance of the area.

6.07 Policy DM30 of the adopted Maidstone Borough Local Plan relating to design principles in the countryside is also relevant to the current application. The policy seeks to ensure high quality design for proposals in the countryside. Amongst the criteria to be met are the following:

- 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;

- 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.

6.08 The size and massing of the residential building for which retrospective planning permission is currently being sought is wholly out of scale and character with the adjoining cottage type properties at 1 and 2 Haviker Street Cottages to the south of the site and 3 and 4 Haviker Street to the north-west. These neighbouring cottages are also Grade II listed properties. The large scale and visual dominance of the new residential building in relation to the adjoining listed properties and the over-bearing aspect is considered to be damaging to the setting of the adjoining listed buildings. In light of the above, the proposals are considered to be in conflict with policy DM30 of the adopted Local Plan. The resulting harm to the character and appearance of the area and the countryside landscape is contrary to policy SP17 of the adopted Local Plan.

6.09 The applicant suggests that the application is assessed principally under policies SP21 and DM31 of the adopted Maidstone Borough Local Plan because it is a conversion of an existing agricultural building. Your officers do not agree. For the reasons set out in detail in paragraphs 6.39 to 6.47 below, it is the view of your officer that the application proposal is a new building, therefore DM31 does not apply.

6.10 In any event (and even if the Committee takes the view that the application proposal is a conversion of an existing building and not a new dwelling) it is the view of your officers that the application proposal does not comply with policies SP21 and DM31.

6.11 Policy SP21 states that the Council is committed to supporting and improving the economy of the borough and providing for the needs of businesses. One of the means through which this will be achieved is (Policy SP21 (vii)) by prioritising the commercial re-use of existing rural buildings in the countryside over conversion to residential use, in accordance with policy DM31. The re-use of the former agricultural building is therefore inconsistent with SP21 in principle, subject to the policy DM31.

6.12 Policy DM31 of the adopted Maidstone Borough Local Plan is in three parts. Part 1 of the policy reads as follows:

*Outside of the settlement boundaries as defined on the policies map, proposals for the re-use and adaptation of existing rural buildings which meet the following criteria will be permitted:*

- i. The building is of a form, bulk, scale and design which takes account of and reinforces landscape character;*
- ii. The building is of permanent, substantial and sound construction and is capable of conversion without major or complete reconstruction;*
- 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;*
- 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; and*
- 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 and visual amenity.*

Part 2 of the policy relates to *proposals for the re-use and adaptation of existing rural buildings for commercial, industrial, sport, recreation or tourism uses* and is therefore not applicable to the current proposals.

Part 3 of the policy is applicable to the current proposals and reads as follows:

*Proposals for the re-use and adaptation of existing rural buildings for residential purposes will not be permitted unless the following additional criteria to the above are met:*

- i. Every reasonable attempt has been made to secure a suitable business re-use for the building;*
- 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; and*
- 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.*

6.13 With regards to the above criteria to be met in Part 1 of the policy, whilst the original large steel portal framed agricultural barn building clad with corrugated iron sheeting and asbestos cement roof sheeting was typical of buildings found within the open countryside landscape, the current building with its reconstituted cement board cladding to the walls and synthetic slate to the roof, and modern domestic windows and doors is clearly not of a form, bulk, scale and design which takes account of and reinforces the countryside landscape character. Whilst typical of buildings found within the open countryside landscape, the original building on the site, as a result of its form, bulk, scale and design, was not the type of building which was envisaged as being suitable for conversion in accordance with criteria i and ii of Part 1 of Local Plan policy DM31 above.

6.14 The original and current buildings on the site do not meet the typology types of "character" former agricultural buildings which harmonise with the rural landscape. The pre-ambule to policy DM31 acknowledges (para. 8.4) that the quality and condition of rural buildings in the borough varies considerably and that the wide range of buildings includes buildings such as oast houses, which are indigenous only to the hop growing areas of the country and exemplify the historical development of agriculture in Kent. The pre-ambule to the policy further states that many of these

vernacular buildings have a degree of significance which merits consideration as a heritage asset. The pre-amble states that these functional buildings are often of simple form and character, so external alterations require careful consideration. Given the extent of the demolition and rebuilding work which has been carried to the original agricultural barn building on the site, officers are of the view that the works amount to major reconstruction. Furthermore, the works carried out, particularly the first floor balcony formed to the eastern end of the building and provision of glazing to the roof which projects above the roof ridge line, are not considered to be in keeping with the building character in terms of design and form and therefore conflict with criteria i and iii of Part 1 of the policy.

- 6.15 With regards to Part 3 of policy DM31, in respect of criteria i: the applicant has failed to make every reasonable attempt to secure a suitable business use for the building. The applicant did make an enquiry to the Council regarding possible use of the building as holiday homes and were advised that such a proposal was not likely to be looked on favourably because the building due to its form, bulk, scale and design would not be considered to accord with the requirements to be met in policy DM31 which still apply to the re-use and adaptation of existing rural buildings for tourism uses. Tourism is not, however, the only possible business use for the building, and no evidence has been submitted in support of the current application to demonstrate that a commercial re-use of the building was fully explored before the current residential use was considered. Furthermore, in respect of criteria ii: the building is not 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. As noted in the comments from the Conservation Officer (see paragraph 5.02 above), the size and scale of the new residence constructed on the site is wholly out of scale and character with the neighbouring listed residential properties at 1 and 2 Haviker Street Cottages to the south of the site and 3 and 4 Haviker Street to the north-west, and is damaging not only to their significance and integrity, but is also harmful to the wider, traditional landscape environment in which the building sits. The application is therefore considered to conflict with criteria i and ii of Part 3 of policy DM31 of the Local Plan. Even when assessed as a conversion of an existing rural building, as suggested by the applicant in the application as submitted, the conversion fails to meet the majority of the criteria to be met in policy DM31 of the adopted Maidstone Borough Local Plan relating to the conversion of rural buildings.

### **Visual impact**

- 6.16 As a result of its siting to the rear of the neighbouring residential properties along Haviker Street and the screening provided by existing trees and vegetation, particularly to the south of the site, the large residential building currently on the site which replaced the former agricultural building does not have a significant impact in public views along Haviker Street. However, the building, as a result of its height and scale, does have an impact from some viewpoints along the road.
- 6.17 The residential building currently on the site, differs from that approved under the previous prior approval application in that the residential accommodation now extends into the upper part/roof void of the retained agricultural storage part of the building, a first floor balcony has been formed to the eastern end of the building, and the window and door layout to the external facades have changed, including first floor windows to the western end of the building and the provision of glazing to the roof which projects above the roof ridge line. The more substantial portal frame which has been erected to the building extends beyond the profile of the existing retained parts of the steel frame to the original building and as a result the current building on the site is slightly higher and more bulky than the building that previously existed on the site. In addition to the above, solar panels have been

added to the south facing roof slope, the residential curtilage has been enlarged, and a freestanding log store building and two heat exchange units have been erected within the curtilage adjacent to the south elevation wall. This has resulted in the further domestication of the substantial building on the site and its curtilage and an increased visual impact in the open countryside location.

- 6.18 In the Maidstone Landscape Character Assessment (LCA) (Amended July 2013) the site falls within the Laddingford Low Weald landscape area. The LCA comments that Laddingford Low Weald is a coherent landscape where continuity is provided by linear development along the roads and the regularity of field pattern, which becomes larger scale away from the settled areas. The LCA states that built development has a moderate impact on the landscape, with a strong contrast between traditional properties and more recent development. The LCA comments that visual detractors within the landscape comprise large agricultural barns and silos, polytunnels, pylons and fencing and that whilst there are striking examples of local vernacular, recent development often degrades the setting of traditional buildings. Amongst the actions to conserve and improve the Laddingford Low Weald landscape are to avoid further infill development and soften the visual impact of large agricultural barns and silos with native planting. The current substantial residential building on the site is considered to have a harmful impact on the visual amenities, character and appearance of the open countryside location and landscape. The current substantial new build residential building as a result of its large scale, design and appearance is out of scale and character with the adjoining cottage type properties on Haviker Street, is not of a scale and design normally considered appropriate for new build dwellings in the open countryside, and conflicts with the aims and objectives of the above Landscape Character Assessment.

#### **Residential amenity**

- 6.19 The main body of the site in which the application building is located lies to the rear of the residential properties on Haviker Street at Little Spitzbrook Barn and the cottages at 3 and 4 Haviker Street to the north-west. The main body of the site is accessed between the properties at Little Spitzbrook Barn and 3 and 4 Haviker Street. The residential properties at 1 and 2 Haviker Street Cottages adjoin the site to the south.
- 6.20 The part residential building and part agricultural storage building for which retrospective planning permission is sought in the current application generally reflects the footprint, height, bulk and massing of the agricultural barn building which previously existed on the site and for which prior approval was granted under application ref. 15/508446/PNQCLA for conversion to a dwelling. However, as a result of the more substantial portal frame which has been erected to the retained parts of the original building on the site, the current building is slightly higher and more bulky than the building that previously existed on the site. Given the separation distances between the existing residential building and the neighbouring residential properties referred to above, any modest increases in the height, footprint, bulk and massing of the existing building on the site, which in officers view represents a new building as opposed to the conversion of an existing building (as suggested by the applicant), compared to the previous building are not likely to have any material impact on the amenities of the occupiers of the neighbouring properties in terms any unneighbourly overbearing, enclosing, overshadowing and/or loss of outlook impacts. Whilst the size and scale of new residential building erected on the site is seen as over-bearing and overdominant in the context of the neighbouring smaller cottage type properties on Haviker Street, it is not considered that the building results in any overriding and unneighbourly impact issues.
- 6.21 The large residential building currently on the site has first floor windows to the western end elevation of the building facing the rear of Little Spitzbrook Barn as a

result of the extension/enlargement of the first floor residential accommodation in the previously approved (under ref. 15/508446/PNQCLA) residential conversion of the original building. The first floor windows to the western end elevation of the building increase the potential for overlooking to the rear of the neighbouring property at Little Spitzbrook Barn. However, given the separation distance between the first floor windows to the western end of the building and the neighbouring property at Little Spitzbrook Barn, it is not considered that the current proposals raise any overriding issues with regards to loss of privacy to the occupiers of Little Spitzbrook Barn.

- 6.22 The changes made to the first floor fenestration to the side (north and south facing) elevations of the residential building currently on the site from that previously approved (under application ref. 15/508446/PNQCLA), including that resulting from the extension/enlargement of the first floor residential accommodation to provide two additional bedrooms, are not considered to raise any overriding issues with regards to overlooking and loss of privacy to the occupiers of neighbouring properties.
- 6.23 Vehicular and pedestrian movements to and from the site associated with the residential use of the building via the accessway which runs between the properties at Little Spitzbrook Barn and 3 and 4 Haviker Street are not likely to have a significantly greater impact on neighbouring properties than the vehicular and pedestrian movements associated with the previous agricultural use of the building.

#### **Traffic and parking**

- 6.24 The new dwelling is accessed from an existing accessway off Haviker Street. Whilst the seven bedroom dwelling will generate vehicle movements to and from the site and along Haviker Street, any increase in such vehicle movements over and above those associated with the use of the previous agricultural barn building on the site is not likely to be so significant as to materially impact on traffic flows along Haviker Street or result in highway safety issues along the road or in the vicinity of the access to the road.
- 6.25 The submitted site layout plan shows the accessway off Haviker Street and the majority of the land within the site around the new dwelling to be paved with two parking spaces adjacent to the south-western corner of the dwelling. Adequate paved hardstanding areas exist within the site for further vehicle parking to be accommodated on site. The paved hardstanding area at the western end of the building also allows access to the retained agricultural store part of the building. It is not considered that the retrospective application raises any overriding traffic, parking or highway safety issues.

#### **Setting of listed buildings**

- 6.26 The neighbouring properties at 1 and 2 Haviker Street Cottages to the south of the site and 3 and 4 Haviker Street to the north-west are Grade II listed. The new dwelling on the site lies within the setting of both pairs of adjoining listed buildings and the nature and extent of the development which has been carried out at the site affects the setting of the listed buildings. The Conservation Officer has advised that what we are presented with now is entirely new-build development – neither a house nor a barn, but a very large monolithic volume, clad incongruously in grey weatherboard associated with pure agricultural buildings. The Conservation Officer further comments that the building is in no way therefore a barn conversion, but a wholly new residential construction and that the size and scale of the new residence is wholly out of scale with the listed residential properties, and is damaging not only to their significance and integrity, but is also harmful to the wider, traditional landscape environment in which it sits. The Conservation Officer comments that it is

the large scale and visual dominance of the new dwelling and the over-bearing aspect that is so damaging to the setting of the adjacent listed buildings.

- 6.27 Whilst the development which has been carried out at the site is considered to be damaging to the setting of the adjacent Grade II listed buildings, it is considered that the development has led to less than substantial harm to the significance of the designated heritage assets and in such circumstances, Government guidance in the NPPF (para. 196) advises that the resulting harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. The rebuilding of the former agricultural barn building on the site to provide a seven-bedroom dwelling and an agricultural store is not considered to result in any public benefits which outweigh the resulting harm to the significance of the adjacent designated heritage assets by virtue of the harm to their setting.

### **Flooding**

- 6.28 The site falls within Flood Zone 3 (high probability of flooding) as shown on the Environment Agency's Flood Map. The flood risk is from the nearby river – Lesser Teise – located some 900m to the east of the site. Dwellinghouses are identified as *more vulnerable* in the Flood risk vulnerability classification in the Technical Guidance to the National Planning Policy Framework. The submitted Flood Risk Assessment (FRA) states that the risk of fluvial flooding has been examined under the design flood event, which includes a 35% allowance for climate change over the next 100 years (i.e. a 35% increase in peak river flow) and under this scenario the site is shown to flood, with flood depths reaching a maximum of 130mm next to the building. The FRA further states that the risk to the future occupants of the dwelling has been mitigated by raising the finished floor of the ground floor, which is located 220mm above the design flood level and, in addition, it is proposed that the threshold of the building is raised further to minimize the risk of internal flooding during an event which exceeds the design event. The FRA recommends that the threshold of the building should be set to 15.23m AODN (i.e. 300mm above the design flood level). The raised floor and threshold levels are shown on the submitted proposed plan.
- 6.29 The NPPF states that, where required safe access and escape is available to/from new developments in flood risk areas. The Practice Guidance to the NPPF states that access routes should be such that occupants can safely access and exit their dwellings in design flood conditions and that vehicular access to allow the emergency services to safely reach the development will also be required. The submitted FRA indicates that Haviker Street will be subject to flooding under the design event and this is the only access road to the development. The FRA states that the levels along the safest route to an area outside of the floodplain via Haviker Street have been established and using the design flood event conditions that include the impacts of climate change, the highest predicted flood depths is 0.23m. The FRA concludes that safe access/egress is available to/from the site during a flood event.
- 6.30 The submitted FRA recommends that flood resilience measures be incorporated into the design of the building where practicable, the owner and occupants of the dwelling sign up to the Environment Agency's floodline warnings and that this should be used in combination with the Flood Evacuation Plan that has been prepared (and submitted with the application), and the surface water management strategy for the development will need to be developed to a detailed design stage taking into account the requirements set out in the FRA which propose the use of Sustainable Drainage Systems (SuDS). Implementation of the recommendations of the FRA in the development can be secured by planning conditions imposed on any grant of planning permission.

6.31 The issue of flooding was considered under the previous prior approval application ref. 15/508446/PNQCLA for the change of use of part of the building to a dwellinghouse and associated operational development and the previous application was not considered to raise any overriding issues in this regard. It should be noted that Government policy/advice directs that Change of use applications do not need to apply the Sequential and Exception tests to applications (the more stringent tests

– which seek to steer development away from areas at risk of flooding) and need only ensure that they are safe. The current application, as submitted, proposes the conversion of an agricultural barn building to a dwelling with part of the building retained for agricultural storage and, as such, the application would not be considered to raise any new flood risk issues which were not considered and addressed under the previous prior approval application for change of use and conversion of an existing building.

6.32 The works which have been carried out in excess of those given prior approval under application ref. 15/508446/PNQCLA are likely to make a material difference to the assessment of the flood risk. As noted in section 6.04 above, your officers are of the view that the extent of the demolition and rebuilding works which have been carried out to the original barn building on the site amount to the erection of a new building as opposed to the conversion of an existing building. The NPPF states (para. 155) that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). The NPPF states (para. 157) that – so as to avoid, where possible, flood risk to people and property, the sequential test (amongst other requirements) and then, if necessary, the exception test should be applied to the location of development. The NPPF states (para. 158) that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding and that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The submitted FRA does not address the issue of the sequential test in relation to the location of the development (for the reasons set out above), and as, in your officers view, the existing residential building on the site represents a new building following demolition of the original barn building, there is no specific reason why the new building needs to be located on the site of the original building in an area at high risk of flooding. The erection of a new build dwelling on the site has not been justified in terms of flood risk.

6.33 Whilst the Environment Agency have raised no objection to the application with regards to flood risk (see comments in section 5.06 above), it must be noted that the Environment Agency have considered the application as a conversion of an existing agricultural barn to a dwelling as opposed to the erection of a new residential building to which more stringent tests are applied.

### **Ecology**

6.34 The submitted Ecological survey report concludes that the site in general is of low ecological value and that the majority of habitats on the site are common and widespread. The report states that the greatest ecological value is found within the southern boundary habitat which will be retained and enhanced. The current application is essentially retrospective as the works are substantially completed. Any impact on the ecological interests of the site would have already taken place.

6.35 The submitted Ecological survey report recommends post development enhancement comprising new planting, including a diverse mixture of native tree and shrub species commonly used for planting hedgerows, the installation of bat boxes within retained boundary trees, the use of a bat sensitive lighting scheme for the development, the installation of a total of three sparrow terrace nest boxes on the external elevations of the building at the eaves, and the installation of log pile refugia within retained boundary habitats for hedgehogs. The Ecological survey



report concludes that the proposed site enhancements will maintain and increase the ecological value of the site and provide suitable habitat for a range of wildlife including invertebrates, breeding birds and bats. The proposed site enhancements can be secured by planning conditions imposed on any grant of planning permission.

### **Other Matters**

- 6.36 The Applicant asserts that the prior approval granted on 10.12.15 is a relevant material consideration to this application.
- 6.37 Your officers agree that the fallback position (what could happen on the land if the planning application was not approved), including any permitted development rights (with or without prior approval), can be a material consideration in the determination of planning applications, see *Mansell v Tonbridge and Malling BC* [2018] JPL 176.
- 6.38 Your officer's primary position is, however, that there is no fall-back position (in terms of PD rights or the prior approval) in relation to the building that forms the subject of this application because the previous agricultural building no longer exists.
- 6.39 Your officer's rely on the analysis in High Court (*Hibbitt v Secretary of State for Communities and Local Government and Rushcliffe Borough Council*) in a decision dated 09.11.16 and further in the Court of Appeal (*Graham Oates v Secretary of State for Communities and Local Government and Canterbury City Council*) in a decision dated 12.10.18.
- 6.40 In *Hibbitt v SSCLG* [2016] EWHC 2853 (Admin) Green J considered (in the context of whether a development fell within the PD rights in Class Q) the distinction between a conversion, and a rebuild, and summarised the position as follows (at paragraph 27).

*"[27] In my view whilst I accept that a development following a demolition is a rebuild, I do not accept that this is where the divide lies. In my view it is a matter of legitimate planning judgment as to where the line is drawn. The test is one of substance, and not form based upon a supposed but ultimately artificial clear bright line drawn at the point of demolition. And nor is it inherent in "agricultural building". There will be numerous instances where the starting point (the "agricultural building") might be so skeletal and minimalist that the works needed to alter the use to a dwelling would be of such magnitude that in practical reality what is being undertaken is a rebuild. ..."*

- 6.41 Green J's approach was expressly approved by the Court of Appeal in *Oates v SSCLG* [2018] EWCA Civ 2229 in which the court held that a planning inspector had been entitled to find that works to chicken coops was not permitted development as these had resulted in the creation of new buildings, notwithstanding that the original buildings had been incorporated into the new buildings and had not been demolished, see paragraph 37 of the judgment of Lindblom LJ:

*"[37] Put simply, the principle here is unsurprising: that a building constructed partly of new materials and partly of usable elements of previous structures on the site, after other elements of those previous structures have been removed through demolition, may in fact be a "new" building; or it may not. The facts and circumstances of every case will be different. But, in principle, the retention of some of the*

*fabric of an original building or buildings within the building that has been, or is being erected, does not preclude a finding by the decision-maker, as a matter of fact and degree, that the resulting building is, physically, a "new" building, and that the original building has ceased to exist. This, in effect, is what the inspector found here. In doing so she made no error of law. She was not compelled to find that because some elements of the original buildings had survived in the construction of the buildings now on the site, the buildings were not and could not be, as a matter of fact, "new buildings". That suggestion is untenable".*

- 6.42 As illustrated in *Hibbitt*, the retention of part of the original agricultural building (the vertical steel columns and roof rafters only in the current case) does not necessarily mean the development amounts to a conversion as opposed to a rebuild. The Judge further commented that the nub of the point being made by the Inspector, in the Judge's view correctly, was that the works (which in this case included the construction of all four exterior walls) went a very long way beyond what might sensibly or reasonably be described as a conversion. The Judge commented that the development was in all practical terms starting afresh, with only a modest amount of help from the original agricultural building.
- 6.43 In *Oates*, the court held that the Inspector had made no error in finding that the original buildings had ceased to exist and that she was not compelled to find that because some elements of the original buildings had survived in the construction of the buildings now on the site, the buildings were not and could not be, as a matter of fact, "new buildings".
- 6.44 In the case of the current application building at Little Spitzbrook Farm, your officers are of the view that the extent of the demolition and rebuilding works which have been carried out to the original barn building amount to the erection of a new building as opposed to the conversion of an existing building.
- 6.45 This is because as a result of the works that have in fact been carried out, the original barn structure has effectively been demolished and a new more substantial steel portal frame erected with retained parts of the existing structure (the vertical steel columns and roof rafters of the original portal frame only) tied to the new more substantial portal frame. The more substantial portal frame which has been erected to the building extends beyond the profile of the existing retained parts of steel frame to the original building and as a result the current building on the site is slightly higher and more bulky than the building that previously existed on the site. Horizontal floor beams are provided for the new first floor. New infill foundations appear to have been constructed, and new walls and a roof have been constructed infilling between and around the new steel portal frame and retained vertical steel columns and roof rafters of the original building.
- 6.46 As the original barn building has effectively been replaced with a new building, the fall-back positions of implementing the previous grant of prior approval or indeed relying on the permitted development rights attached to the barn do not now exist.
- 6.47 If the Committee **does not** accept the Officer's view and that the works carried out amount to a conversion, then what could be built under PD (of which the prior approval is an illustration) can and should be given weight as a relevant fallback position (in that the Committee should consider the relative merits of the application proposal against the alternative under PD rights). It is the Officer's view that the alternative development under PD rights i.e the fallback position, would be preferable to the application proposal.

- 6.48 The works proposed in this application are different from those granted prior approval in that the first floor residential accommodation is extended into the upper part/roof void of the retained agricultural storage part of the building, a first floor balcony has been formed to the eastern end of the building, and the window, door and glazing layout to the external facades have changed, including first floor windows to the western end of the building and the provision of glazing to the roof which projects above the roof ridge line. The more substantial portal frame which has been erected to the building also results in the current building being slightly higher and more bulky than the original building. In addition to the above differences, solar panels have been added to the south facing roof slope, the residential curtilage has been enlarged, and a freestanding log store building and two heat exchange units have been erected within the curtilage adjacent to the south elevation wall.
- 6.49 As set out above, your officer's view is that these additional changes have a harmful visual impact and are detrimental to the setting of the neighbouring listed buildings.
- 6.50 Therefore it is your officer's view that the fallback position does not weigh in favour of granting planning permission for the application proposal.
- 6.51 As the works for which planning permission is sought are substantially completed and the current application is essentially retrospective, the condition requested by the Environmental Health Officer (see 5.03 above) relating to any potential contamination encountered during the works is no longer applicable.
- 6.52 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. CONCLUSION**

- 7.01 The current application is essentially retrospective as the works to provide a new dwelling at the site are substantially completed. Whilst the current application has been submitted for the conversion of an agricultural barn building to a dwelling, your officers are of the view that the extent of the demolition and rebuilding works which have been carried out to the original barn building amount to the erection of a new building as opposed to the conversion of an existing building. Your officers stance on this matter is supported by decisions in both the High Court and Court of Appeal.
- 7.02 The former agricultural barn building on the site was granted prior approval under previous application ref. 15/508446/PNQCLA for the change of use of part of the building to a dwellinghouse and associated operational development. As, in your officers view, the agricultural barn building has been subsequently demolished and rebuilt as a dwelling, the fall-back position of converting the former building cannot now be applied. In any case, your officer's consider the application proposal to be more harmful, in terms of visual amenity, than the fallback position under PD (as illustrated by the prior approval).
- 7.03 The open countryside site does not have good access to public transport and is remote from local services and facilities. As such, the site does not represent a sustainable location where such new build dwellings could be considered acceptable.
- 7.04 The changes which have been made to the appearance of the residential building for which prior approval was previously granted under application ref. 15/508446/PNQCLA compared to the building for which retrospective planning

permission is currently sought, together with the enlarged residential curtilage and associated structures, are considered to result in the further domestication of the substantial building on the site and an increased visual impact in the open countryside location. The current substantial residential building on the site is considered to have a harmful impact on the visual amenities, character and appearance of the open countryside location and landscape.

- 7.05 The size and massing of the dwelling (7 bedrooms) for which retrospective planning permission is currently being sought is wholly out of scale and character with the adjoining Grade II listed cottage type properties at 1 and 2 Haviker Street Cottages to the south of the site and 3 and 4 Haviker Street to the north-west. The large scale and visual dominance of the new dwelling in relation to the adjoining listed properties and the over-bearing aspect is considered to be damaging to the setting of the adjoining listed buildings.
- 7.06 The site is within Flood Zone 3 (high probability of flooding) as shown on the Environment Agency's Flood Map. The principle of conversion of an existing building on the site to a dwelling within the flood zone was established by the previous grant of prior approval under application ref. 15/508446/PNQCLA and a new application for the conversion of the former building on the site would not be considered to raise any new flood risk issues which were not considered and addressed under the previous prior approval application. However, your officers are of the view that the current residential building on the site represents new build development in an area at high risk of flooding and, as such, Government guidance in the NPPF seeks to direct new residential development away from areas at the highest risk. As a new build residential development the current building on the site is in conflict with the NPPF guidance as the location has not been justified in terms of flood risk.
- 7.07 The development which has been carried out on the site is not considered to raise any overriding unacceptable unneighbourly impacts, traffic, parking or highway safety issues, or impact on ecological and biodiversity interests at the site.
- 7.08 Refusal of planning permission is recommended for the reasons set out below.

## **8. RECOMMENDATION**

REFUSE planning permission for the following reason(s):

- 1) Given the extent of the demolition and rebuilding works which have been carried out to the original agricultural barn building on the site and the limited amount of the original structure that has been retained in the new dwelling for which retrospective planning permission is sought, the Council are of the view that the development represents a new build dwelling in an open countryside location which does not have good access to public transport and is remote from local services and facilities. The development represents unsustainable residential development where future occupants would be reliant on private cars and in the absence of any overriding justification or need for the development demonstrated in the application, the development is contrary to Government guidance in the NPPF 2019 relating to sustainable development and policies SS1 and SP17 of the Maidstone Borough Local Plan (Adopted October 2017). The application proposal is contrary to the objectives of policies SP21 and DM31 of the Maidstone Borough Local Plan (Adopted October 2017) in terms of the residential use of the building, scale and appearance of the building, and in the context of neighbouring properties and countryside landscape.

- 2) The dwelling for which retrospective planning permission is sought, by reason of its overall design, appearance, scale and massing, has a harmful impact on the visual amenities, character and appearance of the open countryside location and landscape. The unsympathetic appearance, large scale and visual dominance of the dwelling in relation to the adjoining listed properties 1 and 2 Haviker Street to the south of the site and 3 and 4 Haviker Street to the north-west and the over-bearing impact has a harmful impact on the setting of the adjoining listed buildings. As such, the development is contrary to Government guidance in the NPPF 2019 and policies SS1, SP17, SP18, SP21, DM1, DM4, DM30, DM31 and DM32 of the Maidstone Borough Local Plan (Adopted October 2017).
  
- 3) The works which have been carried out in excess of those given prior approval under application ref. 15/508446/PNQCLA are likely to make a material difference to the assessment of the flood risk. The extent of the demolition and rebuilding works which have been carried out to the original barn building on the site amount to the erection of a new build dwelling within Flood Zone 3 (high probability of flooding) as shown on the Environment Agency's Flood Map. as opposed to the conversion of an existing building. Government guidance in the NPPF 2019 (paras. 157, 158 and 159) seeks to steer new development to areas with the lowest risk of flooding and in the absence of any overriding justification or need for the development on the site being demonstrated in the application, the development is contrary to Government guidance in the NPPF 2019 and policy DM1 of the Maidstone Borough Local Plan (Adopted October 2017).

Case Officer: Jon Barnes

**ANNEX J**

**UPDATED SCHEDULE OF ALTERATIONS TO AS-BUILT SCHEME (based upon original dated 10.08.19).**

Notes –

This update clarifies nos. #1 and #4; it add #29 referring to cladding with subsequent renumbering.

GF ground floor

FF first floor to eaves

PA prior approval under 15/508446/PNQCLA

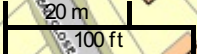
ELEVATION	AMENDMENT to the as built scheme	
East	#	
GF	1.	To replace openings on this elevation to match the PA more closely and those openings retained on the north and south elevations.
	2.	To rebuild section of internal wall to accommodate '1' so it would sit flush with the bifold doors.
FF	3.	To remove balcony.
	4.	To replace openings to accord with the PA more closely and those openings retained on the north and south elevations.
West		
GF	5	To create central (third) set of garage doors as per PA.
FF	6.	To remove all 3 upper level windows as per PA.
North		
GF	7.	To retain the as built 5 smaller window openings (with 8 more-square panes) instead of providing 6 rectangular window openings (comprising 12 panes) under the PA.
	8.	To replace the as built entrance to provide 4 panes as per PA.
FF	9.	To retain this elevation as built i.e. not to provide 6 rectangular openings as originally permitted.
	10.	To retain this elevation as built i.e. not to provide dominant central glazing feature as originally permitted.
Roof	11.	To retain the as built roof lantern over store as the only natural light source – this to be lowered as per '12'.
	12.	To lower remaining roof lanterns so they sit flush with ridge as per officer's 19.07.19 email.

	13.	To retain central glazing as installed within roof slope i.e. not to provide as quite as extensive a central glazing feature as originally permitted and to reduce this to 4 panes as per the PA (cf. the 5 that have been built out).
	14.	To remove 2 velux over store.
	15.	To retain 4 velux on roof slope as installed in contrast with the 6 openings (and what appear to be 24 individual panes, some with a horizontal emphasis) permitted under the PA.
	16.	Not to install solar PV array/solar panels as seemingly shown under PA.
South		
GF	17.	To retain the as built 6 window openings (7 more-square panes) instead of providing 6 rectangular window openings (comprising 12 panes) under the PA.
	18.	To retain single doorway as built cf. ground to ridge central glazing feature originally permitted.
	19.	To retain 2 heat exchange units as installed as per officer's 19.07.19 email.
FF	20.	As for '9'.
	21.	As for '10'.
Roof	22.	To retain flue as installed.
	23.	As for '11'.
	24.	As for '12'.
	25.	To retain roof as clad and not to provide full central glazing feature as originally permitted.
	26.	As for '14'.
	27.	As for '15'.
	28.	To retain PV/solar panels as built and not to extend along whole of southern roof slope as apparently shown in PA.
All elevations	29.	To replace originally permitted cladding with dark stained timber weatherboarding
INTERIOR (ADDITIONAL).	30.	To bring the whole residential floorspace back to the PA.
	31.	To reconfigure accommodation at FFL by reducing the as built beds 2, 3 and 4, lose one bathroom, lose as built beds nos. 5-7.
	32.	The as built bed 1 to lose balcony.
CURTILAGE	33.	To retain private garden/curtilage as laid out.

	34.	To retain log store further to officer's 19.07.19 email.
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NI/29.01.20





20/502043/FULL Maidstone Lawn Tennis Club, Poplar Grove, Maidstone, Kent

Scale: 1:1250

Printed on: 16/6/2020 at 10:48 AM by JoannaW



## REPORT SUMMARY

<b>REFERENCE NO - 20/502043/FULL</b>			
<b>APPLICATION PROPOSAL</b> Demolition of a club house and erection of a new club house with a patio area alongside.			
<b>ADDRESS</b> Maidstone Lawn Tennis Club Poplar Grove Maidstone Kent ME16 0DE			
<b>RECOMMENDATION : GRANT</b> subject to the planning conditions set out in Section 8.0 of the report			
<b>SUMMARY OF REASONS FOR RECOMMENDATION</b> The application would support a community use and facilitate improved facilities. The proposal would be acceptable visually and would not result in undue additional harm to neighbouring residential occupiers such that the proposed development would be in accordance with current policy and guidance and all other material planning considerations are considered acceptable.			
<b>REASON FOR REFERRAL TO COMMITTEE</b> The site is situated on land owned by Maidstone Borough Council.			
<b>WARD</b> Allington	<b>PARISH/TOWN COUNCIL</b>	<b>APPLICANT</b> Maidstone Lawn Tennis Club <b>AGENT</b>	
<b>DECISION DUE DATE</b> 14/07/20	<b>PUBLICITY EXPIRY DATE</b> 22/06/20	<b>OFFICER SITE VISIT DATE</b> 01/06/20	
<b>RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):</b>			
<b>App No</b>	<b>Proposal</b>	<b>Decision</b>	<b>Date</b>
82/1190	Erection of timber hut and 3 hard paved floodlit tennis courts as amended by the agents letter dated 8/11/82 and accompanying plans and specification received on 9/11/82 and as further amended by agents letter dated 15/12/82	Permitted	17/12/82
87/0911	Construction of single tennis court and practice wall as validated by letter received on 26 May 1987.	Permitted	8/9/87
01/1287	Provision of tennis court floodlighting, as shown on LTL report received on 07.08.01 and as amended by additional documents being further drawings and information received on 23.08.01 and 04.09.01.	Permitted	26/9/01
14/0315	Introduction of floodlighting to fourth court (2No. additional 10m lighting columns) as shown on block plan, column and floodlight elevations Philips OptiVision specification and LTL floodlighting luminance plot report reference CalcuLux Area 7.7.0.1 rece	Permitted	21/7/14

## **MAIN REPORT**

### **1.0 DESCRIPTION OF SITE**

- 1.01 The proposal site relates to the Maidstone Lawn Tennis club which is situated within the recreation ground sited off Poplar Grove, Giddyhorn Lane and neighbouring cul-de-sacs. The site area includes the parking area to the north-east of the site which is shared by users of the recreation ground, the pre-school and the Tennis Club.
- 1.02 The site is on elevated land above the parking area, accessed by a pedestrian footpath. There are four existing floodlit tennis courts to the south-east of the site which are enclosed by fencing. There is an existing timber club house building to the north-east of the site approximately 15m from the boundary with 15 Birchwood Road. This is single storey with a corrugated roof and directly adjoins the grassed recreation ground.
- 1.03 The site is within the Maidstone Urban Settlement boundary as defined in the Local Plan, with a public right of way (PROW) sited along the south-eastern boundary of the recreation ground and an area of woodland (protected by a woodland Tree Preservation Order), situated to the south-east of the PROW.

### **2.0 PROPOSAL**

- 2.01 The proposal is to demolish the existing clubhouse and replace it with a larger building which would contain a kitchen, toilet facilities and store. An enclosed area of hardstanding would be provided to the south-west of the new building, extending an existing patio.
- 2.02 The new building would be approximately 11m in width, 4.3m in depth and would be single storey with a pitched roof with an approximate height of 3.9m. This would be compared to the existing building which measures approximately 7.6m in width, 4.2m in depth with a ridge height of approximately 3.5m
- 2.03 The patio area would measure approximately 10m in width and in depth and would be enclosed by fencing and hedging to a height of 2.4m. This would contain a mobility gate to provide access from the north-east.

### **3.0 POLICY AND OTHER CONSIDERATIONS**

The National Planning Policy Framework (NPPF)  
National Planning Practice Guidance (NPPG)  
Maidstone Borough Local Plan 2017 : Policies SS1, SP1, DM1, DM3, DM19 and DM20.

### **4.0 LOCAL REPRESENTATIONS**

#### **Local Residents:**

- 4.01 At the time of writing 15 letters of support have been received, these set out the following comments :
- Good for local community
  - Need for a new clubhouse

- Improved disabled access
- Upgrading for the next generation of players
- Significant financial input

## 5.0 CONSULTATIONS

5.01 None

## 6.0 APPRAISAL

### Main Issues

6.01 The key issues for consideration relate to:

- Principle of development
- Visual amenity (including landscaping)
- Residential amenity
- Highways matters
- Other matters

### **Principle of Development**

6.02 The proposal is to replace an existing clubhouse for an existing tennis club. The tennis club has use of 4 existing tennis courts granted planning permission in the 1980s. The planning statement describes the existing building as being over 30 years old, very small and cramped, containing rotting timber, minimal insulation and no disabled facilities.

6.03 The planning statement continues by setting out that the club has 200 members and is open 365 days a year from 8am to 10pm. The tennis courts are also available to book by the public in order to fulfil the terms of the tennis clubs lease with Maidstone Borough Council (who own the land).

6.04 Paragraph 92 of the NPPF sets out that decisions should plan positively for the provision and use of.....community facilities (such as.....sports venues, open space). Paragraph 96 continues :

*'Access to a network of high quality open spaces and opportunities for sport and physical activity is important for the health and well-being of communities. Planning policies should be based on robust and up-to-date assessments of the need for open space, sport and recreation facilities. Information gained from the assessments should be used to determine what open space, sport and recreational provision is needed, which plans should then seek to accommodate.'*

6.05 Policy SS1 of the Local Plan seeks to promote the multi-functional nature of the borough's open space. Policy DM20 supports the adequate provision of community facilities, which include recreational facilities and sports venues.

6.06 Policy DM19 relates to Publicly accessible open space and recreation and seeks that proposals should not result in a net loss of existing open space or sport and

recreation facilities. This is in accordance with Paragraph 97 of the NPPF which sets out that existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless :

*b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*

*c) the development is for alternative sports and recreational provision, the benefits of which clearly outweigh the loss of the current or former use.*

- 6.07 Policy DM19 also sets out that proposals for new publicly assessable open space and recreation provision should reinforce existing landscape character and respect the amenities of neighbouring occupiers. Policies DM1 and DM3 re-enforce these considerations.
- 6.08 The proposal would replace an existing building, albeit a slightly larger footprint would result. The proposal would also result in the enclosure on a small area of currently open space adjacent to the building.
- 6.09 The principle of a replacement building which would improve the existing facilities of the tennis club is considered acceptable. It will enable the building to provide facilities which would better serve all the users of the tennis club. It is noted that a small area of open space would be lost, however this area is immediately adjacent to the existing building and would be replaced with an enclosed patio to serve the recreational use of the tennis club. As such an alternative recreational use would be provided and the extent and location of the space lost is not considered unacceptable.
- 6.10 It is considered that the principle of the proposed replacement building should be supported subject to the discussion of the material considerations below, namely the impact on visual and residential amenities, together with highways implications.

#### **Visual Impact (including landscaping)**

- 6.11 The wider recreational ground is formed of two distinct areas, separated by a change in topography. The lower part to the north-east contains a large area of grassed open space, play area, car parking area and single storey pre-school buildings and associated play area. The south-western part of the site is at a slightly higher level and again contains a large grassed area of open space, with the tennis courts and existing club house situated in the north-eastern corner. The existing buildings and hardsurfacing is contained within the central part of the recreation ground.
- 6.12 The fundamental position of the clubhouse would remain unchanged, the new building would be marginally larger in every proportion, however the appearance with a green colour weatherboarding and black felt tiles would be in keeping with the surrounding recreational ground and the new building would not appear as unduly prominent within the area of open space.
- 6.13 The new extended patio itself would be principally screened from public views, however the proposed fencing and hedging would be visible. There is an existing smaller patio which is screened by a similar fencing/hedging arrangement. The fencing if visible would be seen in the context of the existing fencing around the perimeter of the tennis courts. The area although 10m in length, relates to a small area of land in terms of the wider recreation ground and the provision of a small

section of additional fencing, which could be substantially screened by a planted hedge (the details of which could be conditioned) is considered acceptable.

- 6.14 The new clubhouse and extended patio would be a suitable replacement to the existing building and would be well related to the existing tennis courts and would not cause significant harm to the visual character and appearance of the area of open space nor the wider street scene from Birchwood Road whereby glimpse views maybe possible.

### **Residential Amenity**

- 6.15 The nearest residential properties are to the north-west of the application site, situated on Birchwood Road. These are predominantly 2-storey detached dwellings, with the road being a cul-de-sac and a pedestrian access into the recreation ground. The boundary of number 15 runs along the boundary with the recreation ground and is sited approximately 15m from the proposed replacement building and patio.

- 6.16 Policy DM1 sets out at (iv) that proposals shall :

*'Respect the amenities of occupiers of neighbouring properties and uses and provide adequate residential amenities for future occupiers of the development by ensuring that the development does not result in, or is exposed to, excessive noise, vibration, odour, air pollution, activity or vehicular movements, overlooking or visual intrusion, and that the built form would not result in an unacceptable loss of privacy or light enjoyed by the occupants of nearby properties.'*

- 6.17 The building is sited a significant distance from the boundary such that it would not be overbearing, cause loss of light or outlook to the neighbouring occupiers, nor would it be overshadowing. The building has been designed so that it would be 'inward' looking towards the tennis courts with an absence of windows in the north-west facing elevation. As such the new building would not cause harm by loss of privacy or overlooking.

- 6.18 The building with its improved facilities may give rise to greater use, with a larger patio area providing again improved external space for use by the users of the clubhouse. This said the recreation ground itself and the use of the tennis courts already provides a certain level of noise and activity and it is not considered that the improved facilities would increase any associated noise and disturbance to a level which would be unneighbourly. The tennis courts are conditioned to not be used beyond 22.00 and it is considered that subject to the same hours of use by the clubhouse and patio the building would not be significantly more harmful than the use of the building it would replace nor the use of the tennis courts or recreation ground in which the club house is located.

- 6.19 Overall it is considered that the proposed development would not have a harmful impact on neighbouring amenity and any potential harm could be mitigated by conditions.

### **Highways**

- 6.20 The proposed replacement clubhouse would improve the facilities of the existing club but it is not considered that it would attract significant additional users that would result in any significant impact on highways or parking matters. The recreational ground benefits from the use of a large car park area and this would be unchanged as a result of the proposed development.

### **Other matters**

- 6.21 The proposal is not considered to have a harmful impact on ecological matters such that the footprint of the existing and replacement buildings would be similar, the area proposed for the patio area is well trodden grass and the existing building is considered to have limited potential in terms of ecological value and therefore its demolition is considered acceptable.
- 6.22 The consultation period expires on 22<sup>nd</sup> June 2020, any further representation received after the publication of this report will be verbally updated upon at the Committee meeting.

### **7.0 CONCLUSION**

- 7.01 The proposed replacement clubhouse and extended patio area would provide improved facilities for a community sports use and the proposal is not considered to be significantly more harmful than that which would be replaced in terms of the impact on visual and residential amenity, such that these and all other material planning consideration are considered to be in accordance with current policy and guidance.

### **8.0 RECOMMENDATION – GRANT Subject to the following conditions**

#### CONDITIONS to include

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 Number 131-A101 Rev I (Proposed plans and elevations)  
Drawing Number 131-A200 A (Block Plan)

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.

Reason: To ensure a satisfactory appearance to the development

4. The development hereby approved shall not commence above slab level until a hard and soft landscape scheme designed in accordance with the principles of the Council's landscape character guidance has been submitted to and approved in writing by the local planning authority. The scheme shall provide details of the proposed hedging around the perimeter of the patio, details of the surfacing of the patio area and details of any proposed fencing and include a planting specification, a programme of implementation and a 5 year management plan. The proposed fencing and surfacing shall be carried out in accordance with the approved details prior to first use of the replacement clubhouse and shall be retained as such.

Reason: In the interests of landscape, visual impact and amenity of the area and to ensure a satisfactory appearance to the development

5. All landscaping approved under Condition 4 shall be carried out during the planting season (October to February) following first use of the replacement clubhouse hereby approved. Any seeding or turfing which fails to establish or any trees or plants which, within five years from the first occupation of a property, commencement of use or adoption of land, 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: In the interests of landscape, visual impact and amenity of the area and to ensure a satisfactory appearance to the development

6. The use of the clubhouse and external patio area hereby permitted shall be restricted to the hours of 8 am to 10 pm.

Reason: In the interests of the amenities of the area.

7. Any musical equipment and/or electrically amplified sound use within the clubhouse shall be so installed, maintained and operated so as to prevent the transmission of noise and/or vibration to any adjacent premises and No musical equipment and/or electrically amplified sound shall be used within the external patio area.

Reason: To safeguard the enjoyment of their properties by adjoining residential occupiers.

8. No external lighting shall be installed on the new clubhouse or within the external patio area.

Reason: In the interests of visual amenity

9. No additional windows, doors, voids or other openings shall be inserted, placed or formed at any time in the north-west facing wall of the building hereby permitted;

Reason: To prevent overlooking of adjoining properties and to safeguard the privacy of their occupiers and to protect the visual amenity of the recreation area and light spillage.

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.



## **THE MAIDSTONE BOROUGH COUNCIL** **PLANNING COMMITTEE – 25<sup>th</sup> June 2020**

### **APPEAL DECISIONS:**

- 1. 19/505160/FULL**      **Erection of 1no. new semi-detached dwelling adjoining 12 Bathurst Close, with associated landscaping/parking.**

**APPEAL:** DISMISSED

12 Bathurst Close  
Staplehurst  
Tonbridge  
Kent  
TN12 0NA

(Delegated)

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- 2. 19/500305/FULL**      **Change of use of land for the erection of 6no. one-bedroom tourist lodges**

**APPEAL:** DISMISSED

River Wood  
Chegworth Lane  
Harrietsham  
Kent

(Committee)

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